

STATE OF LOUISIANA

IBLA 72-383

Decided April 17, 1973

Appeal by the State of Louisiana from two decisions dated March 23, 1972, by the Eastern States Land Office denying two applications (ES-6522, ES-7027) for swampland selections by the State.

Affirmed.

Swamplands

Lands in Louisiana which are located between the low-and high-water mark of a navigable river are known as batture lands and considered to be part of the river-bed, title to which vested in the State upon its admission to the Union in 1812, thus making them unavailable for selection under the Swamp Lands Acts of 1849 and 1850.

Words and Phrases

"Batture" or "batture lands" are lands situated between the low-water and high-water mark of a river, and are considered to be part of the river-bed.

APPEARANCES: Ellen Bryan Moore, Register, State Land Office, Baton Rouge, Louisiana.

OPINION BY MR. RITVO

The State of Louisiana has appealed to the Secretary of the Interior from decisions by the Eastern States Land Office which denied two applications by the State for swampland selections. The Land Office determined that the adjoining selected lands were part of the bed of the Old River and under established doctrine a State upon admission to the Union becomes entitled to the soil under the navigable waters within its boundaries. Therefore, it held that Louisiana could not select the lands as swamp or overflowed since title had passed to the State as incident to sovereignty when Louisiana entered the Union in 1812.

Louisiana filed applications for the selected areas under the Swamp Lands Acts of March 2, 1849 (9 Stat. 352), and September 28, 1850 (9 Stat. 519), which provide that all swamp and overflowed lands unfit for cultivation shall be granted in fee simple to the State to aid in construction of necessary levees and drains for reclamation of swamp and overflowed lands. The Act of March 2, 1849, granted Louisiana the swamp and overflowed lands within that State upon approval of the Secretary of the Interior. The somewhat similar Act of September 28, 1850, granted the State of Arkansas and other states in the Union swamp and overflowed lands but provided that the Secretary was under the duty to make out accurate lists and plats of the available lands and transmit the same to the governor of the state at his request. The general provisions of the 1850 Act were carried into sections 2479-2481 of the Revised Statutes (1875), 43 U.S.C. §§ 982-84 (1970). The Department of the Interior has considered the 1850 Act to be substantially a reenactment of the 1849 Act so far as Louisiana is concerned. State of Louisiana v. State Exploration Co., 73 I.D. 148, 150 (1966); Swamp-Land Grants and Mineral Lands (Secretary's Instructions), 46 L.D. 389, 390 (1918).

The first application (ES-6522) was filed on October 28, 1969, and the second (ES-7027) on February 27, 1970. Louisiana's first application described the selected lands as follows:

All lands lying between the traverse of Raccourci Levee and batture and the traverse of Old River lying in T. 3 S., R. 9 E., Louisiana Meridian, Parish of Pointe Coupee, according to plat approved July 9, 1855.

The later application gave a similar description:

All lands lying between the traverse of the batture and the traverse of Old River lying in T. 3 S., R. 8 E., Louisiana Meridian, Parish of Pointe Coupee, according to plat approved November 1, 1855.

The areas selected by Louisiana are designated on the plats as "batture lands." The United States Supreme Court described batture as "lands located between the low- and high-water mark of a river." General Box Co. v. United States, 351 U.S. 159, 160 (1956). This case cited a Louisiana decision which said batture is "that part of the riverbed which is uncovered at the time of low water but is covered annually at high water; when it ceases to be covered at the time of ordinary high water, it ceases to be batture and becomes the bank of the river." Boyce Cottinseed Oil Mfg. Co. v. Board of Commissioners, 107 So. 506, 508 (La., 1926). These batture lands usually consist of tracts between the original meander lines of the Mississippi River and the thread of the river.

More recently another Louisiana court stated:

* * * [B]atture land, i.e., that part of the riverbed uncovered at the time of low water, but annually covered at the time of ordinary high water. Board of Commissioners v. St. Landry Parish School Board, 130 So. 2d 692, 695 (La., 1961).

Louisiana has elected to make the showing made on the plats and in the field notes the basis for determining what lands passed to them under the grant. 43 CFR 2625.0-3. Following these procedures the Land Office determined that the selected areas were a part of the bed of a navigable river, title to which vested in the State of Louisiana upon its admission to the Union in 1812, as an incident of its sovereignty.

The State of Louisiana filed notice of appeal from the Land Office's decision on April 27, 1972. The Register for the State Land Office submitted four documents which allegedly proved that the areas in question were not parts of the riverbed when Louisiana was admitted to the Union. First, there was a survey plat approved by R. W. Boyd, Surveyor General of Louisiana, on August 27, 1849, designating parts of the selected areas as "Raccourci Settlement" and "Batture". It further established the boundaries of the Mississippi River in 1808 and the private land grants in relation to the river. The plat shows a shift in the bank of the river from its position in 1808 to its position in 1849 southward towards the land in the selected area. Second, an 1808 plat was submitted with a copy of testimony by one Samuel Bush sworn and subscribed on August 7, 1849. Bush testified to the existence of a road in the year 1806 and the plat indicated the presence of a road lying outside a private land grant and in the area selected by the State. Third, a deposition by Benjamin Collins, taken in 1849, containing a reference to Raccourci Settlement where Collins lived from 1808 to 1812. Finally, there was included correspondence by a deputy surveyor in 1842 referring to vacant lands between the Mississippi River and the private land grants.

After a thorough review of all documents and plats submitted to this Board, we do not find sufficient evidence to warrant reversal of the Land Office's decision. The evidence submitted on appeal by the State of Louisiana does not negate the Land Office's interpretation of the plats and records. The very nature of batture is that it is accessible and available for use during a part of the year and inaccessible due to high water at other times of the year. General Box Co. v. United States, *supra*. The depositions and plats submitted by the Louisiana State Land Office merely make reference to intermittent usage of and passage across the batture. In no way do these

documents confirm the fact that the selected areas were swamplands rather than batture lands in 1812. They testify to sporadic use, settlement, and traverse over the area, all of which could have occurred even if the selected areas were batture lands. It seems clear to this Board that the areas selected by the State of Louisiana are batture lands. Batture lands are part of the riverbed and cannot be included in a swamp and overflowed land selection.

Therefore, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Land Office is affirmed.

Martin Ritvo, Member

We concur:

Anne P. Lewis, Member

Edward W. Stuebing, Member.

