

Louisiana's Waterbodies: Ownership and Access

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Types of Waterbodies

- Public canal
- Private canal
- Naturally navigable waterbody
- Naturally non-navigable waterbody

Private Canals



La. R.S. 9:1251

- Express or tacit permission to cross private land, solely for the purpose of providing a convenience to and from waters for boating or to access any recreational site, does not create a servitude or right of passage.

Cenac v. Public Access Water Rights Association

2002-2660 (La. 06/27/03); 851 So.2d 1006

- Public historically and continuously used Company Canal and boat launch
- Court:
 - Navigable in fact ≠ public canal
 - Mere toleration of public use ≠ implied dedication to public use

Natural Waterbodies



La. Civil Code art. 450

- Public things are owned by the state or its political subdivisions in their capacity as public persons.
- Public things that belong to the state are such as
 1. running waters,
 2. the waters and bottoms of natural navigable water bodies,
 3. the territorial sea, and
 4. the seashore.

What does “navigable in law” mean?

- “If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact and becomes in law a public river or highway.” *Ramsey River Rd. Property Owners Assoc. v. Reeves*, 396 So.2d 873, 876 (La. 1981).
- “Navigability, in the sense of the law, is not destroyed because the watercourse is interrupted by occasional natural obstructions or portages; nor need the navigation be open at all seasons of the year, or at all stages of the water.” *Ramsey River Rd. Property Owners Assoc. v. Reeves*, 396 So.2d 873, 876 (La. 1981) (citing *Economy Light and Power Co. v. U.S.*, 256 U.S. 113 (1921)).

Burns v. Crescent Gun & Rod Club

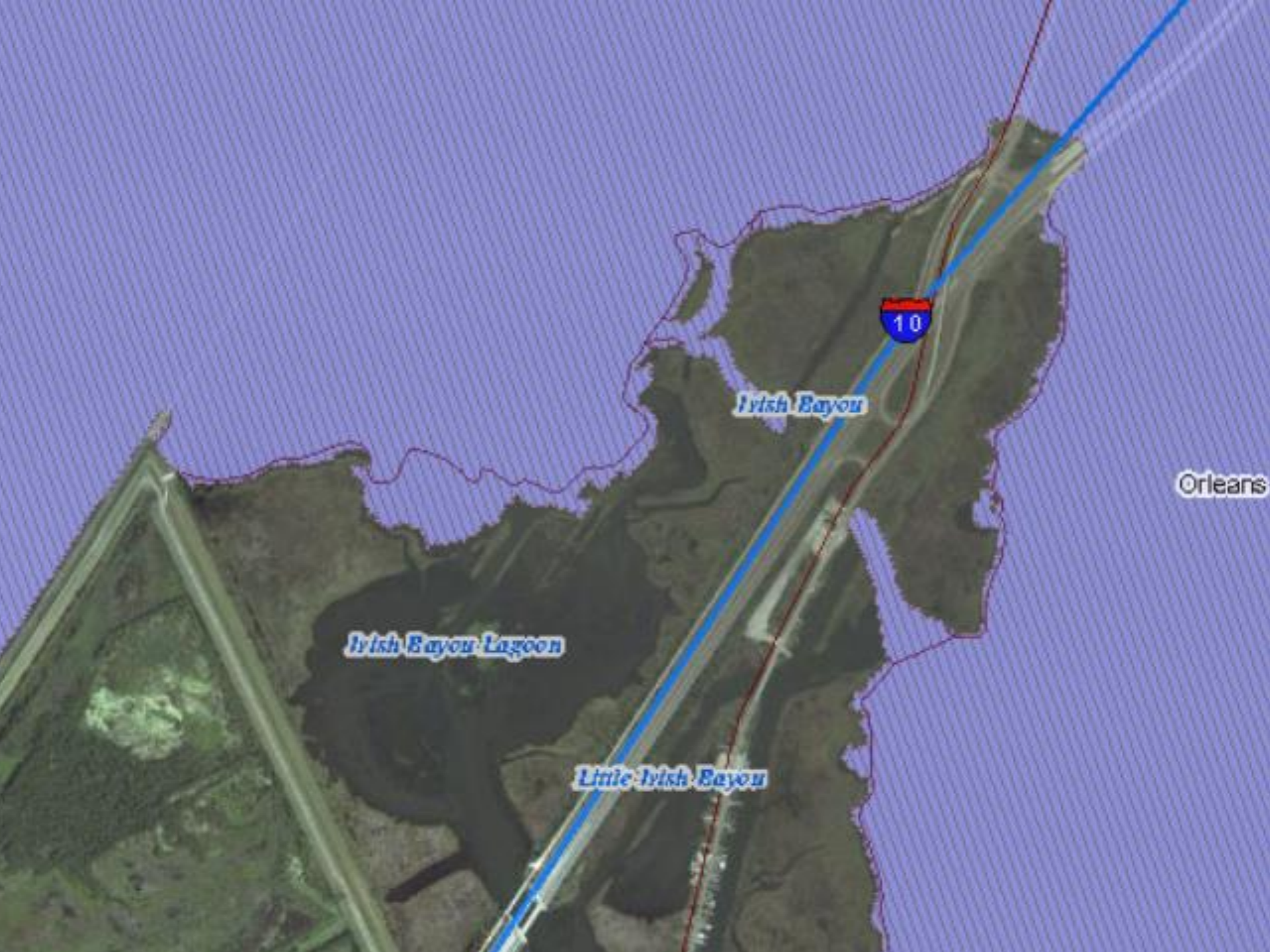
116 La. 1038, 1041 (1906)



U.S. General Land Office Survey Map

- Surveyed in the winter and spring of 1843
- Approved on September 26, 1846





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Irish Bayou

Irish Bayou Lagoon

Little Irish Bayou

Orleans

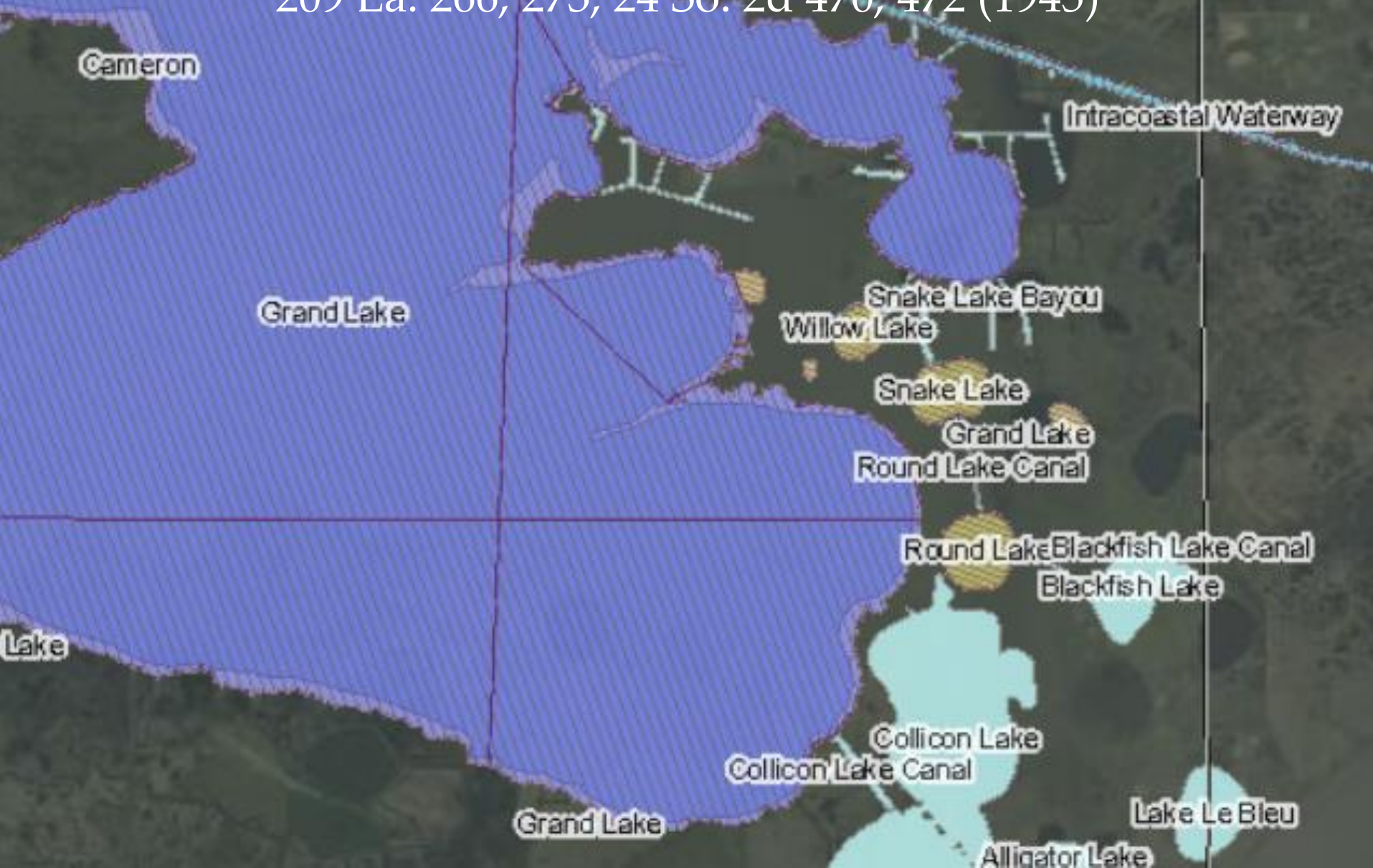
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- Irish Bayou = arm of the sea = navigable
 - “It is a safe harbor, and has received storm-tossed boats and afforded them ample protection. It is a large indentation on the coast of the lake and is in that light highly useful. It, as well as the lake, is an arm of the sea, not susceptible of private ownership.”
- Irish Lagoon, Branch Bayou, Little Irish Bayou ≠ navigable
 - Always clogged; difficult to access in a pirogue

O'Brien v. State Mineral Bd.

209 La. 266, 273, 24 So. 2d 470, 472 (1945)



O'Brien v. State Mineral Bd.

209 La. 266, 273 (1945); 24 So. 2d 470, 472

- Snake Lake, Willow Lake, and Snake Bayou
 - Privately owned
 - Surrounded on all sides by marshes
 - “These dead-end bodies were never destined to be public waterways for commerce or navigation and are of no commercial importance.”
 - “Whether Snake Bayou, Snake Lake, etc., were navigable or not in 1812 and 1883 cannot be definitely determined from the record.”

Miami Corp. v. State

Cameron

Grand Lake



Miami Corp. v. State

186 La. 784 (1936); 173 So. 315

- Grand Lake's navigability conceded by parties
- Question: whether eroded land, which has been added to the bed of the lake by subsidence and erosion, is now the property of the State
 - Answer: YES
- Why?
 - "Because, to hold otherwise would be contrary to sound principles and public policy upon which the rule is predicated. It is the rule of property and of title in this State, and also a rule of public policy that the State, as a sovereignty, holds title to the beds of navigable bodies of water."

State v. Scott

185 So. 2d 877 (La. App. 1 Cir. 1966)

- State patented 1321 acres of sea marsh in Lafourche Parish in 1883



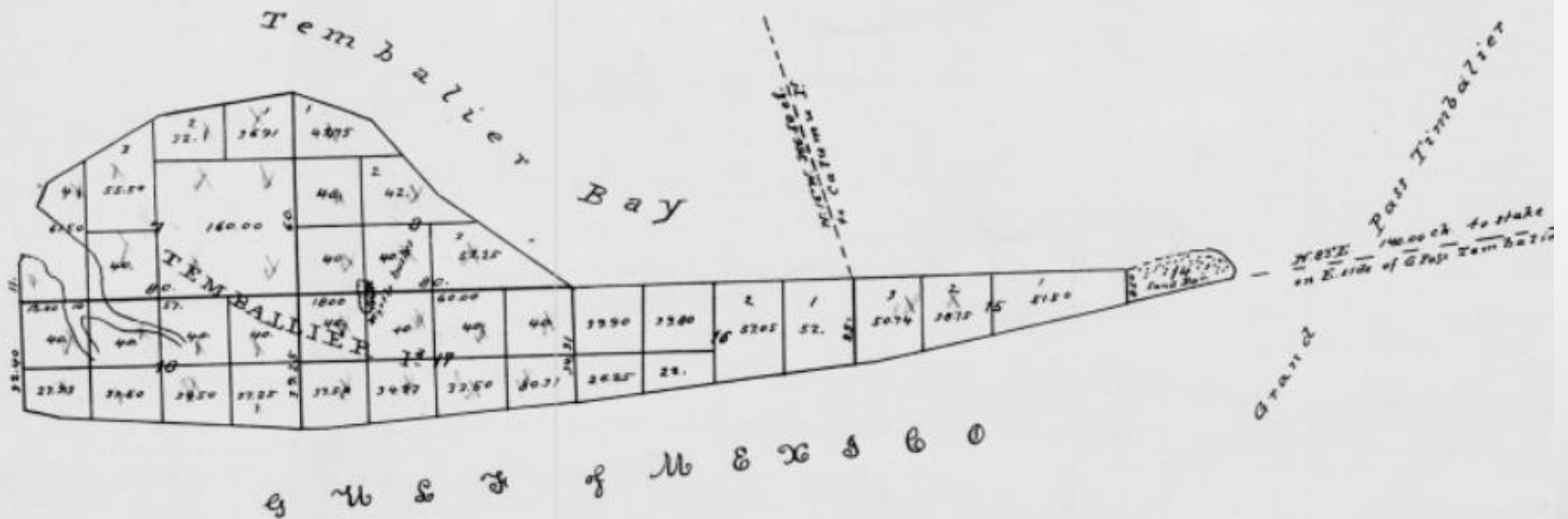
State v. Scott

185 So. 2d 877 (La. App. 1 Cir. 1966)

1842 Original Survey by GLO

1842

South Eastern Dist.
La.

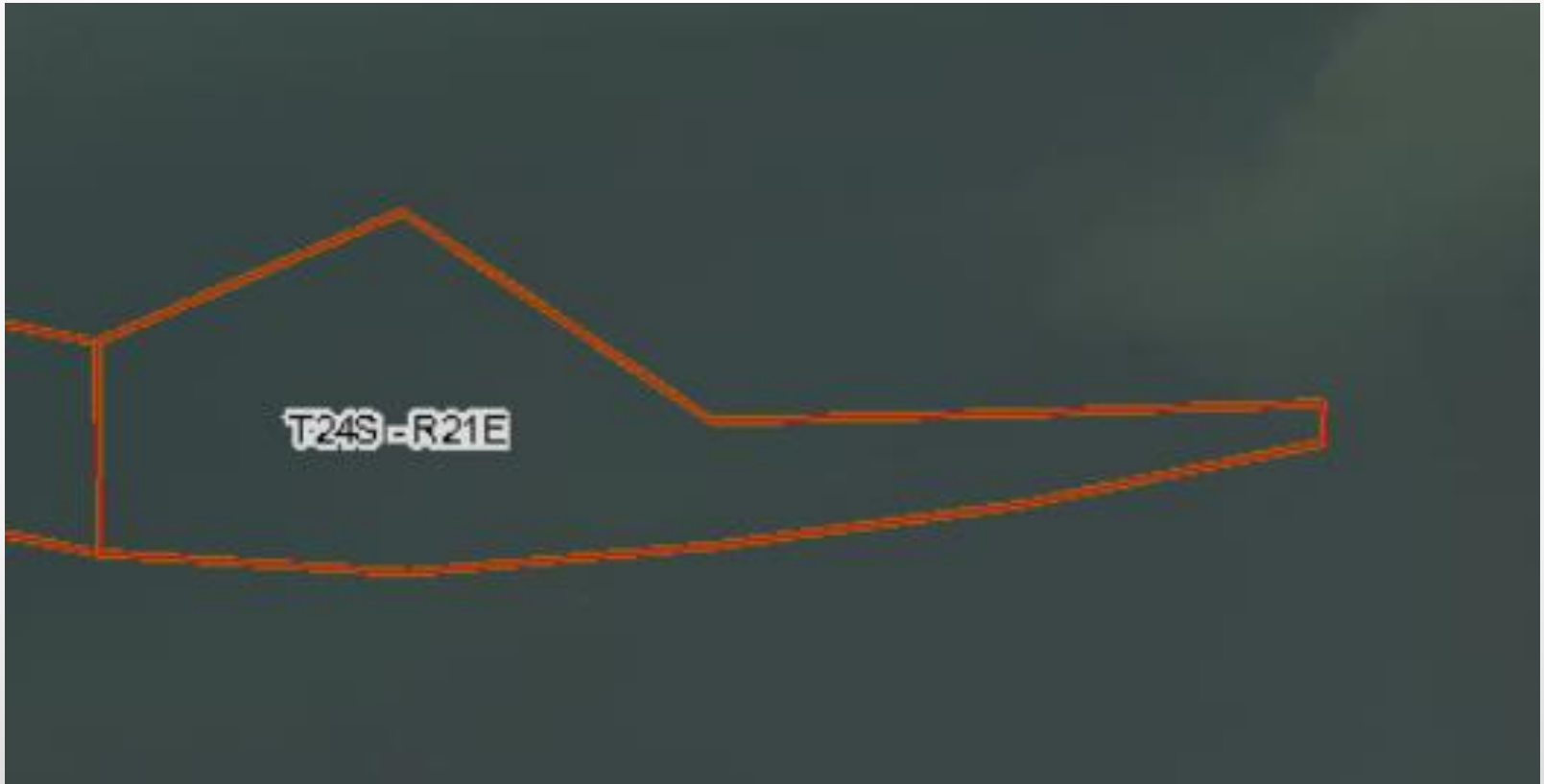


Variation 9° E

State v. Scott

185 So. 2d 877 (La. App. 1 Cir. 1966)

- By 1960, land had eroded into the Gulf of Mexico



State v. Scott

185 So. 2d 877 (La. App. 1 Cir. 1966)

- Both parties claimed ownership.
- Court quoted and applied Miami Corp.:
- “When submersion occurs, the submerged portion becomes a part of the bed or bottom of the navigable body of water in fact, and therefore the property of the State, by virtue of its inherent sovereignty, as a matter of law.”