

**Testimony of Mr. Pat Canan**

**July 29, 2014**

**Submitted to the  
Subcommittee on Public Lands and Environmental Regulation  
House Committee on Natural Resources  
United States House of Representatives**

**Legislative Hearing on H.R. 4979, the “Red River Private Property Protection Act”**

Chairman Bishop, Ranking Member Grijalva, members of the subcommittee, thank you for the opportunity to testify before you today. My name is Patrick Canan, and I am a landowner along the Red River in Texas that falls between the 98<sup>th</sup> Meridian and the North Fork of the Red River. My property is more specifically located on the Clay County/Wichita County boundary and includes both river bottom lands plus land above the old ancient geological bluff. This land was deeded by the State of Texas by Patent dated January 29, 1858 and this Patent was filed of record in Clay County, Texas on June 27, 1881. The Patent description specifically calls the north side of this tract “to a stake on the Bank of the Red River.” Since this description was coming from the south side of the river and going north, the bank called for was the south bank of the Red River.

In January, 1994 the U.S Department of the Interior Bureau of Land Management (BLM), published an Oklahoma Resource Management Plan that addressed the Red River Management. In this document the BLM recognized that the lands along the Red River could not be defined until the U.S. Congress establishes the permanent state boundary between Oklahoma and Texas. This jurisdictional boundary was subsequently established by the Red River Boundary Compact in 1999. The boundary agreed to was the continuous vegetation line along the south bank of the Red River. In the BLM Resource Management Plan of 1994, the boundary thus established was recognized to result in essentially no public domain along the Red River in the area in question.

Recently the BLM has begun the process of a Resource Management Plan that again addresses the issue of public domain along the Red River. In the initial set of public hearings, the BLM stated that this would impact up to 116 miles of the Red River and could include up to 90,000 acres of public domain along the Red River. Assuming this estimate is correct, the average width of this public domain along these 116 miles will be 1.21 miles. So starting at the south part of the river bed, the BLM is claiming that the land an average of 1.21 miles into Texas is public domain lands. This is the same land that was deeded by the State of Texas in 1858. I understand that the BLM estimates of public domain land along the Red River is a moving target and the subsequent estimates by the BLM have reduced the numbers of public domain acres south of the medial line to 30,000 acres. However, this is still a huge impact to deeded land in Texas, including land on my property.

The recognized boundary between the State of Texas and the State of Oklahoma is the gradient boundary along the south side of the Red River. This gradient boundary was

recognized by the Supreme Court in 1923 and this was in response to oil that was discovered along the Red River in 1919. The court defined the south bank as “the water-washed and relatively permanent elevation or acclivity at the outer line of the riverbed which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the waters within the bed and to preserve the course of the river, and the boundary intended is on and along such banks at the average or mean level attained by the waters in periods when they reach and wash the bank without overflowing it while the “bed” includes all area kept practically bare of vegetation by the wash of the waters from year to year, though parts are left dry for months at a time, but not the lateral valleys having the characteristics of relatively fast land, and usually covered by upland grasses and vegetation, though temporarily overflowed in exceptional instances, when the river is at flood.”

The bank of the Red River constituting the boundary between Oklahoma and Texas under the Spanish treaty of 1819 is the so-called “cut bank” effectively confining the water to the sand bed, save in exceptional instances when the river is at flood and overflows, and not the range of bluffs marking the exterior limits of the valley through which the river flows”.

The application of the “gradient boundary” as defined by the Supreme Court was first applied along the Red River by surveyors Arthur D. Kidder and Arthur A. Stiles in 1924. These two men surveyed the area known as the Big Bend area along the river and then followed that with the Fort Auger area on the Red River. Both these areas are located northwest of the town of Burkburnett, Texas and this is the area where oil was discovered in 1919. No other areas were surveyed along the river by Kidder and Stiles as they did not receive any other requests by the United States.

In 2008 the BLM entered upon my land along the Red River to survey this land for any “Indian” lands that may have been in the river bottom. I allowed the BLM to enter through my gate at the front of my property so they would not have to walk in from the Oklahoma side of the river. This year after attending the public BLM hearings in Wichita Falls, I went down into the area that the BLM surveyed in 2008 and found a cadastral survey marker that was placed on my property. This survey marker is shown on an attachment and this marker shows that the boundary between Texas and Oklahoma is at this point. The field notes state this corner “is located at the toe of slope to the outside of the left bank of the abandoned channel of Gilbert Creek, also, the abandoned channel is located adjacent to the bluff banks.” This point is over 1.7 miles south of the south bank of the river bed. The left bank that BLM is referring to in the field notes is actually a man made berm that was pushed up in the early 1970ties using a bull dozer to control the flow of water from several springs that flow at the base of the bluff. This survey marker shows that the BLM is claiming that the gradient boundary is located at the base of the ancient geological bluff and not at the actual gradient boundary that exists along the river bed.

The claim by the BLM on the 90,000 acres or any acreage along the river has clouded the title to my land and has impacted my ability to manage this river bottom. Land sales along the river have come to a standstill and land values along the river have decreased.

Private landowners along the river have been effective and conservative stewards of the land. Most of this land has been fenced and managed for livestock and farming since the late 1800's. Many of the landowners along this stretch of river make their livings and support their families on the land now being claimed by the BLM. This land has been bought and sold along the river up until this latest BLM claim. The passage of H.R. 4979 would clear up this issue along the Red River and the re-establish the private property rights to the landowners along this section of the river.

## ATTACHMENTS



Cadastral Survey Marker 2008



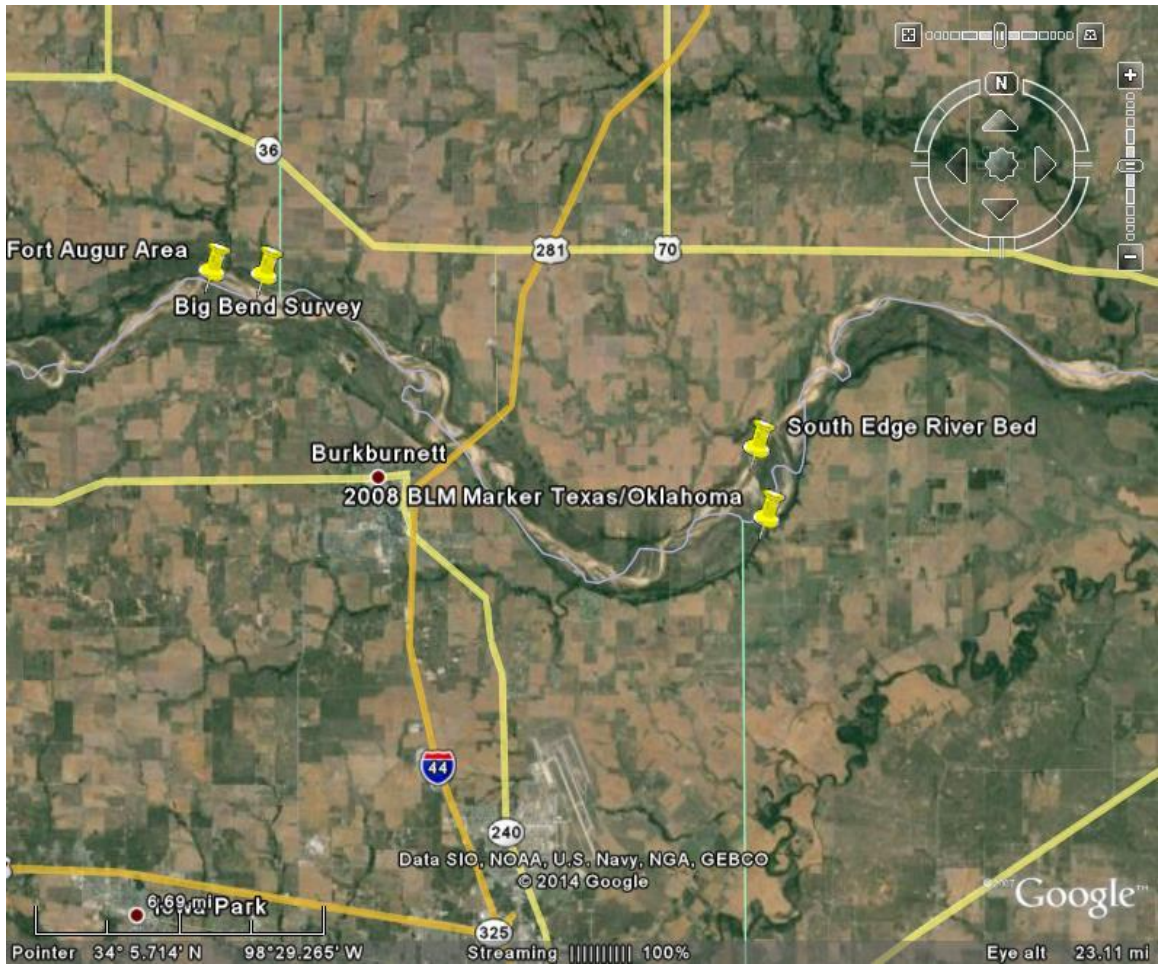
Red River Bed. Picture taken from top of Cut Bank.



Cut Bank along edge of River Bed



River Bottom View from top of High Bluff



Location of Kidder & Stiles surveys, Red River Bed and BLM survey marker.



Tree line represents base of Bluff, green tee post on right shows location of survey marker set by BLM and slight incline shows dirt that was pushed up by dozer to control water from springs.