

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

September 9, 2015

To: Natural Resources Committee Members

From: Majority Committee Staff, Sub. on Federal Lands, Spencer Kimball, x 6-7736

Subject: Full Committee Markup on H.R. 2130 (Thornberry), "*Red River Private Property Protection Act.*"

Summary of the Bill

The purpose of H.R. 2130, introduced by Rep. Thornberry, is to provide legal certainty to property owners along the Red River in Texas, and for other purposes. Specifically, the bill:

- Requires the Bureau of Land Management (BLM) to disclaim any right, title, and interest to certain lands along a 116-mile stretch of the Red River between Texas and Oklahoma located south of the South Bank boundary line of the river.
- Directs BLM to commission a survey of the entire stretch of the river to find the proper boundary between Texas and Oklahoma. This survey must adhere to the gradient boundary survey method developed and backed by the U.S. Supreme Court, be conducted by Licensed State Land Surveyors chosen by the Texas General Land Office (GLO), be submitted to the Texas GLO for approval, and be completed within two years of enactment of the bill.
- Prevents BLM from treating parcels in the affected area as federal land under any Resource Management Plan (RMP) until the survey has been completed and approved and the parcels are no longer subject to further appeal.
- Requires BLM to sell the surface rights of any remaining publicly owned land at fair market value after the proper boundary line is located and settled.
- Requires BLM to submit to Congress a list of federal lands that have not been sold and the reasons why.
- Allows landowners who hold the proper right, title, and/or interest of lands in the contested area to appeal any further public domain claims by BLM through an Administrative Law Judge.
- Explicitly states that the interest of the states and the sovereignty rights of the federally recognized Indian tribes north of the South Bank boundary line will not be affected.

Bill Co-Sponsors

Rep. John Carter (R-TX-31), Rep. Blake Farenthold (R-TX-27), Rep. Louie Gohmert (R-TX-1), Rep. Michael McCaul (R-TX-10), Rep. John Ratcliffe (R-TX-4), Rep. Pete Sessions (R-TX-32)

Background

History

Confusion and dispute over the Texas-Oklahoma border has been ongoing for over 200 years. Under the Louisiana Purchase in 1803, the United States bought from France land that included the riverbed of the Red River. Subsequent treaties between the United States and Spain, Mexico, and the Republic of Texas confirmed that the boundary between the two states was the south bank of the Red River.

In 1867, the U.S. signed a treaty with the Kiowa, Comanche, and Apache Tribes that designated a reservation north of the “middle of the main channel” of the Red River between the 98th Meridian and the North Fork. Congress later disposed of the reservation and created a grazing reserve that was ultimately disposed of in 1906. However, since the southern boundary of the reservation and grazing reserve was defined as the “middle of the main channel,” the land between the medial line of the river and the south bank remained as federal land.

After oil was discovered in area around the Red River, Oklahoma brought suit against Texas in 1919 to determine the common boundary. In a 1923 decision and decree, the U.S. Supreme Court adopted the gradient boundary survey method for determining the boundary between Texas and Oklahoma.¹ According to this decision, the gradient boundary is on and along the south bank at the average or mean level of the waters when they reach and wash the bank without overflowing it. In unique areas where there is no well-defined cut bank, but only a gradual incline from the sand bed of the river to the upland, the boundary is a line conforming to the mean level of the water when at other places in that vicinity they reach and wash the cut bank without overflowing it.²

In 2000, House Joint Resolution 72, which codified the *Red River Boundary Compact* agreed to by Texas and Oklahoma, was signed into law. The purpose of the compact was to establish a visible boundary between the two states that would resolve jurisdictional and sovereignty disputes issues. The compact set the political boundary as the vegetation line on the south bank of the Red River. While the compact does not affect land ownership, it is widely accepted that the vegetative line and the gradient boundary can be relatively the same or at least within feet of each other.

¹ *Oklahoma v. Texas*, 261 U. S. 340.

² *Id.*

Accretion, Erosion, and Avulsion

Accretion, erosion, and avulsion have gradually altered the course and location of the Red River in the area subject to this bill. Accretion can be generally defined as the deposit of soil along the bank or bed of the river and erosion is the removal of soil from the banks or bed of a river. Legally, a landowner is allowed to keep the accretions attached to their land but loses title to eroded lands. An avulsion is the sudden change in a channel of a boundary river that can be caused through natural events or as a result from human activity. When this sudden change occurs, the boundary remains where it was before the avulsion event. The decree rendered in the 1923 U.S. Supreme Court decision explicitly addresses accretion, erosion, and avulsion and recognized that the boundary between Texas and Oklahoma would continually move with the river through accretion and erosion but not through avulsion.³

BLM Claims to Private Lands

BLM is currently updating its Oklahoma, Kansas, and Texas RMP, which covers the 116-mile stretch of the Red River on the border between Texas and Oklahoma subject to this bill. BLM estimates this revision will be finalized in January 2018. BLM originally stated there are an estimated 90,000 acres of land along this stretch of the river that may be considered public domain and managed as federal land. BLM has since reduced this estimate to at most 30,000, of which only 6,402 acres have been actually surveyed.

These statements and the pending RMP revision have caused concern among local landowners and other stakeholders that the federal government is claiming to own land which was previously deeded to individual citizens. Most landowners along the river are now unsure if the land that they have held title to and have paid taxes on, in many cases for generations, will remain in their families or be subject to federal ownership and management. Further, the entire 116-mile stretch of the river at question has never been surveyed by the BLM, and the portions that the agency most recently surveyed stray widely from the accepted gradient boundary survey method established by the 1923 U.S. Supreme Court decision and decree. BLM's surveys have been contested by landowners, County officials, the Texas GLO, and others.

Need for Legislation

This bill attempts to make clear who actually holds title to the land at question. To do so, H.R. 2130 requires BLM to commission a survey of the entire stretch of contested land along the river using the gradient boundary survey method developed and backed by the U.S. Supreme Court. The survey must be conducted by Licensed State Land Surveyors and approved by the Texas GLO in consultation with the Commissioners of the Land Office in Oklahoma. Landowners are allowed to appeal any further public domain claims by BLM through an Administrative Law Judge. The bill requires BLM to sell off the surface rights of the remaining federally owned land at fair market value after the proper boundary line is located and settled.

³ *Id.*

The bill also explicitly states that the interest of the states and the sovereignty rights of the federally recognized Indian tribes north of the Texas State boundary line will not be affected.

A similar version of the bill, H.R. 4979, was introduced by Rep. Thornberry in June 2014. On December 22, 2014, the Committee on Natural Resources amended the bill and reported it to the full House. However, it was not taken up for a vote before the end of the Congress.

Support for the Legislation

The bill is currently supported by the Oklahoma Farm Bureau, Texas Farm Bureau, American Farm Bureau, Texas General Land Office and the Texas, and Southwestern Cattle Raisers Association

Administration Position

BLM Deputy Director Steve Ellis testified against the previous version of the bill, H.R. 4979, during the last Congress. BLM does not have an official position on the current, revised version of the bill, but will likely oppose the bill in its current form.

Section-by-Section Analysis of H.R. 2130

SECTION 1. SHORT TITLE.

SEC. 2. DISCLAIMER AND OUTDATED SURVEYS.

- (a) The Secretary of the Interior disclaims any right, title, and interest to all land located south of the South Bank boundary line of the Red River in the affected area.
- (b) Previous surveys conducted by the BLM will have no force or effect in determining the current South Bank boundary line.

SEC. 3. IDENTIFICATION OF CURRENT BOUNDARY.

- (a) The Secretary shall commission a new survey of the South Bank boundary line that adheres to the gradient boundary survey method, spans the entire length of the affected area, is conducted by Licensed State Land Surveyors chosen by the Texas General Land Office, and is completed not later than 2 years after the date of the enactment of this Act.
- (b) The Secretary shall submit the survey conducted under this Act to the Texas General Land Office for approval.

SEC. 4. APPEAL.

Not later than 1 year after the survey is completed and approved, a private property owner who holds right, title, or interest in the affected area may appeal public domain claims by the Secretary to an Administrative Law Judge.

SEC. 5. RESOURCE MANAGEMENT PLAN.

The Secretary shall ensure that no parcels of land in the affected area are treated as federal land under an RMP until the survey has been completed and approved and the Secretary ensures that the parcel is not subject to further appeal.

SEC. 6. CONSTRUCTION.

This Act does not change or affect in any manner the interest of the States or sovereignty rights of federally recognized Indian tribes over lands located to the north of the South Bank boundary line of the Red River as established by this Act.

SEC. 7. SALE OF REMAINING RED RIVER SURFACE RIGHTS.

- (a) After the survey has been completed and approved, the Secretary shall offer any and all such remaining identified Federal lands for disposal by competitive sale for not less than fair market value as determined by an appraisal conducted in accordance with nationally recognized appraisal standards.
- (b) The sale of identified Federal lands shall be subject to valid existing tribal, State, and local rights.
- (c) Net proceeds from the sale of identified Federal lands shall be used to offset any costs associated with this Act.
- (d) Not later than 5 years after the date of the enactment of this Act, the Secretary shall submit to Congress a list of any identified Federal lands that have not been sold and the reasons such lands were not sold.

SEC. 8. DEFINITIONS.

Defines “Affected area,” “Secretary,” “South Bank,” “South Bank Boundary Line,” and “Gradient Boundary Survey Method.”

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Effect on Current Law

H.R. 2130 does not affect current law.

Anticipated Amendments

Rep. Rob Bishop (R-UT-1) will offer an Amendment in the Nature of a Substitute (ANS) that makes technical and conforming changes, clarifies aspects of the survey and appeals procedure, requires the Texas GLO to approve the survey in consultation with the Commissioners of the Land Office in Oklahoma, ensures that the bill does not modify the Red

River Boundary Compact, and allows land parcels to be surveyed and approved on an individual basis. The ANS also allows landowners to file for a modified Color-of-Title Act land patent request and sets forth procedures on the first and subsequent rights of refusal for adjacent Oklahoma and Texas landowners.