

Testimony given before the Committee on Resources
U.S. House of Representatives
by
Honorable Gregory Pyle
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Mr. Chairman, Members of the Committee, ladies and gentlemen.

My name is Greg Pyle and I am the Chief of the Choctaw Nation of Oklahoma. I am here today to support the passage of a long-awaited resolution to the tribal claims relating to the Arkansas Riverbed of Eastern Oklahoma, H.R. 3534, introduced and supported by Congressmen Carson, Watkins, Kildee and Largent. I say long awaited, since claims involving the River itself and the resources and lands associated with it have been before the Courts, the Tribal Councils and the Congress continuously over the past 35 years. We are asking today for legislative support which would lay to rest all these issues, and which would benefit the United States, the Tribes and all the citizens of Oklahoma. We are asking for your support today as a matter of equity and as a matter of fulfilling the government to government and trust relationships between our tribes and our Country.

Background.

Prior to the 1800s, the Choctaw and the Cherokee and Chickasaw Nations lived, and had lived from time immemorial, in the Southeastern region of the United States. We were good friends to the colonists, supporters of the fledgling Nation and had been very successful in accommodating our agrarian lifestyle to that of our new, European neighbors. Unfortunately, our lands made tempting targets, and soon, various factions were lobbying to take over the lands of the Choctaws. For a period we resisted, but, with the other tribes of the Southeast, we were forced to give up our lands. Our Tribes were forcibly removed to what was then the newly purchased territory of Oklahoma, the so-called Indian territory. This removal, known as the Trail of Tears, took place in stages in the 1830s. As part of this policy and resettlement, our Tribes signed treaties giving us title to lands and waters in the new territories. These treaties, the terms of which were dictated by the United States, included transfer, in fee simple, of all title and rights to the riverbed of the Arkansas River.

The ownership by the Tribes of the River, its bed and its resources, was renewed by the Federal government by the Act of April 30, 1906 (34 Stat. 137), which held that all the rights of the tribes were reserved to them, but were to be held in trust by the United States. Unfortunately, when the State of Oklahoma was admitted to the Union, a Solicitor in the Department of the Interior gave an erroneous opinion on the River's ownership. In response to a State request for clarification, the Solicitor gave an opinion stating that the River was now the property of the State. Strange as it seems at this time, no one challenged this opinion (as a matter of fact, it is questionable at this time as to how many people knew of it). Based on this opinion, the State treated the river as part of its property, and dealt with the United States and other parties as if it owned the River. The Tribes complained a number of times that their rights in the River were being ignored, but the United States, which under law had the responsibility to protect the interests of the Tribes, refused to take any action.

During the 50 years following the creation of the State of Oklahoma and the erroneous opinion, two major changes in the River occurred. First, the riverbed of the Arkansas River shifted. Over time, the course of the River moved in a meandering fashion. Through the process of accretion and avulsion, former riverbed became dry land. More than 7,500 acres of land was created in this fashion. Though by law, this land became part of the tribal property, no Federal agency took this into consideration. I don't know what it is like in your States, but in Oklahoma, if land, which is good for farming or pasturage, is left vacant, the neighboring farmers have a tendency to move in. That is what happened. Over the past 80 years, non-Indian farmers have moved onto the property and are farming it or using it, without any legal authority. At the same time, under the authority from the State, sand and gravel and coal and gas resources associated with the River were extracted and sold by non-Indians, without any consideration or compensation to the Tribes. This causes a problem, now that the tribal ownership has been reasserted.

Second, in the 1940's, as part of the Federal move to control floods and watercourses, the giant Kerr-McClellan Dams and power generation system was developed and built. Without any regard to tribal rights (which at the time existed but were not recognized) millions of tons of tribal sand and gravel and stretches of useable land associated with the River, were taken by the Federal Government. To this day, there has been no compensation to the Tribes for this taking. This constitutes the only instance, of which we are aware, where tribal trust property, supposedly under Federal protection, was taken by the Federal government without any consideration or compensation.

In 1965, the Tribes finally gained permission to sue the State of Oklahoma for clarification of the title to the Arkansas River. In 1970, the United States Supreme Court, 396 U.S. 620 (1970), held that the three Tribes, together, owned all rights to the Arkansas River and its resources.

Current suit against the government.

For the last three decades, the Tribes have sought redress for the wrongs associated with past mismanagement by the Interior Department of the River. These include:

- Failure of our trustee to protect Indian interests to the 7,500 acres of new property;
- Failure of our trustee to protect Indian interests to minerals, including sand and gravel and coal and gas.
- Failure to compensate the Tribes for the taking of resources involved with the Kerr-McClellan Dam system, takings which were done by the Federal government itself;
- Failure to make plans for the utilization of these properties for the benefit of the Tribes in the future.

Sporadic negotiations with the United States have been unsuccessful, despite an Interior opinion in the 1970s that if the United States had known when the water projects were built that the tribes owned the river, compensation would have been paid. While negotiations have had their ups and downs over the years, experience has taught us that no one will protect our interests, if we do

not do it. For that reason, an action was filed in Federal Court in 1989 for damages for mismanagement of tribal trust properties. Delay after delay has happened, and we are still in Court with the Department of the Interior over these charges.

In the meantime, another factor has developed. The United States now realizes that as the trustee for the Tribes, it is the responsibility of the government to sue the current occupants of the land to quiet title and gain possession for the Tribes of the 7,500 acres in new property. These lawsuits would involve at least 600 litigants (that we have identified). One such action, which was filed by the United States, was dismissed without prejudice of renewal, for procedural grounds. However, the precedent for such suits has been established.

If these actions go forward, total chaos regarding property rights and values along the Arkansas River will occur. Unless a settlement can be reached, the United States will have to file between 600 - 800 cases involving thousands of litigants and occupants, to clear the tribal title and displace current possessors. Once the first actions are filed, title to property along the river will be clouded for decades. The Tribes do not want this end to the tale, but know they must come to Congress to protect their rights. Mr. Chairman, let me state on behalf of the Choctaw Nation that we hope there will never be a need for these lawsuits. We do not want the disruption of personal lives and fortunes which these suits will cause, and we know that the political costs of such actions will be great. At the same time, the status quo, where the rights of the Tribes have not been protected, is unacceptable.

The proposal

Due to the delay in the lawsuits and the cost involved in pursuing them, along with our desire to resolve these issues in such a way that does not disrupt the lives of any Indian or non-Indian, we have joined with our fellow Tribes, the Cherokee and the Chickasaw, to put forward a legislative proposal to resolve, once and for all and in a comprehensive fashion, all issues regarding the Arkansas River. In its entirety, the proposal is:

- Agree to pay the Tribes a sum of approximately \$41M for compensation of loss of tribal resources for the last 9 decades of BIA mismanagement. It also buys 7,500 acres of land and the sand and gravel, coal and gas, and any other minerals, from the Tribes and makes provision for the government to take steps to clear the title of this land for the current occupants. Also, the bill contains a one time payment of about \$8 M for the value of land used for the continued production of electricity by powerheads located in the River.

- The three Tribes agree to give up all rights to the 7,500 acres of land transferred, and to settle all claims against the U.S. for damages from past mismanagement. No interest on the past claims is sought.

- Funds would be deposited in tribal shares in accounts which the Tribes could use for various social, educational, health and other programs, including the purchase of very specifically designated property to replace part of the 7,500 acres transferred.

That's essentially it. Seems simple enough, and it is, though the attorneys take 4 pages to say it in statutory language. The Tribes, in exchange for one payment, give up all rights, past,

present and future, in the 7,500 acres of land created by the Arkansas River, and claims for damages arising for past mismanagement, and any rights to resources taken from the property in the future.

We have a representative of the Administration here to testify today, but it has been plain for some time that the Department of the Interior has supported the concept of such a political solution without caveat. Let's be plain in this statement, this goes way beyond a simple lawsuit. This is a problem crying for a political solution. This is the only taking of tribal property for a Federal use, without compensation, on record, and it continues to this day. The fact that this was all based on one Solicitor's misunderstanding of the law is irrelevant. This is where we are. The people in Interior, and in my opinion, many in Justice, are aware of this fact and want there to be an end to these problems.

Our problem in resolving this with the Departments seems to be a matter of money, and to be more specific, a matter of budget. For decades, the Federal government has offered to settle for a \$10 M token payment. IN ALL OF THAT TIME, NO RATIONALE FOR THIS AMOUNT HAS BEEN PRODUCED. We have been told this is the cost the Federal government would spend to sue for possession of the property. We have been told this is what the "nuisance value" of dealing with the Tribes is going to be. We have been told that this is the amount, because that's all there is.

To be blunt, Mr. Chairman, we are caught in a budget squeeze. The Department of the Interior is concerned that any settlement reached will ultimately have to be accommodated within their budget allocation. Likewise, the Department of Justice is concerned that the claim will come out of its judgment fund. We know times are hard with budget constraints, but we are tired of being the pawns in a Departmental budget chess match.

In contrast, the Tribes, with Federal support, have conducted several studies to show that the value of the land and the resources the Tribes have lost, or which will be lost, is much higher. Originally, we started this process over 15 years ago asking for over \$100 M. dollars. Through a process of "negotiating with ourselves", we have now arrived at a figure for which we are willing to settle our issues for \$49M. This includes a one time payment to cover the loss of revenue caused by the production of electricity in the future. Frankly, Mr. Chairman, we have come to the end of our patience. If the Tribes are not able to settle for a reasonable figure for these claims, we have to consider proceeding with our Court actions, including those for restitution of control over the 7,500 acres of land.

If a statutory settlement can be reached, millions of dollars in attorney and litigation expense on the part of the government, the Tribe, and the current constituent possessors of the property can be saved. Finally, let me add for the benefit of my representatives, it is a fact that any settlement figure paid to the Tribes will stay in Oklahoma. It will provide the Tribes with sorely needed capital for economic development, and such tribal services as health care and education. It will benefit the entire State.

Mr. Chairman, I want to thank you for asking me to testify on this measure so crucial to my tribe, and I want to ask you to fully support H.R. 3534.