

**Testimony of
Steve Ellis, Deputy Director
Bureau of Land Management
Department of the Interior
House Natural Resources Committee
Subcommittee on Public Lands & Environmental Regulation
H.R. 4979, Red River Private Property Protection Act
July 29, 2014**

Thank you for the opportunity to testify on H.R. 4979, the Red River Private Property Protection Act, which seeks to address potential conflicts in land ownership along the Red River in Oklahoma and Texas. The complex history of the Red River corridor presents Federal and state land managers, as well as private land owners, with many challenges. As we continue to work toward the responsible management of resources on public lands in Kansas, Oklahoma, and Texas, the Department of the Interior (Department) and Bureau of Land Management (BLM) remain committed to engaging Members of Congress, local, state, and tribal officials and members of the public in resolving potential land ownership disputes in the area.

The Department shares the goal of providing legal certainty to property owners along the Red River. However, the Department cannot support H.R. 4979 as currently written because the bill could result in the transfer of Federal lands and mineral estate out of Federal ownership without adequate demonstration of private ownership or compensation to U.S. taxpayers. The Department is also concerned the legislation may adversely affect ownership interests of tribal nations in the area. The Department and BLM recognize the importance of identifying the status of lands along the Red River and look forward to working with the Members of the Committee and the public to ensure the appropriate management of lands in the public domain.

Red River Boundary

The public lands managed by the BLM along a 116-mile continuous stretch of the Red River originally came into Federal ownership as part of the Louisiana Purchase from France in 1803. A series of subsequent treaties with foreign governments in 1819, 1828, and 1838 set the south bank of the river as the southern border of the United States and the northern border of what is now the State of Texas. In 1867, when a portion of this public domain was reserved for the Kiowa-Comanche-Apache (KCA) Reservation (Reservation), the “middle of the main channel” of the river between the 98th Meridian and the North Fork of the river was established as the Reservation’s southern boundary. The remaining land between what is now called “the medial line” and the south bank retained its status as public land, which continues to the present.

In a series of decisions in the 1920s, the U.S. Supreme Court adopted a method known as the gradient boundary method for determining the location of the border between Texas and Oklahoma along the south bank of the river. In giving certainty to the boundary’s location and the extent of tribal holdings, the Court’s decisions also provided a basis for clarifying private land ownership on each side of the river. The terminology for determining the location of public domain lands and private property boundaries – medial line, cut bank, and gradient boundary – has been the accepted standard since the 1920s Supreme Court rulings.

In 1981 and 1984, two separate Oklahoma landowners argued in U.S. District Court that under riparian law, changes in the river's location had expanded their private holdings while reducing the acreage of the Texas landowners whose properties faced them across the river. In both cases, the District Court followed the Supreme Court's established principles concerning the location of public and private lands. Private property in Oklahoma extended to the center of the river, while private property in Texas stopped at the ordinary high water mark on the south bank, with the remaining land being part of the original public domain located in Oklahoma.

Despite the Court's identification of a defined border, certain areas along the Red River remained in dispute. In 2000, the state legislatures of Oklahoma and Texas, along with tribal leaders from the neighboring Kiowa, Comanche, and Apache Tribes and Chickasaw and Choctaw Nations, attempted to resolve these remaining issues by agreeing to the Red River Boundary Compact. Congress later consented to the Compact, and in doing so, agreed to move the jurisdictional boundary between the states from the south bank gradient line to the south bank vegetation line. The Compact explicitly did not change the title of any person or entity, public or private, to any of the lands adjacent to the Red River. Although the Compact may have shifted the boundary between the states, the location and status of lands in the public domain remained unchanged.

In addition to Federal, state, and private land in the area, the Chickasaw and Choctaw Nations also hold ownership interests east of the 98th Meridian intermittently to the border between the states. Tribal land ownership extends from the north bank across the river to the gradient boundary on the south bank. There are no current estimates for the total Tribal acreage in this area.

The varied and, in places, uncertain ownership of lands along the Red River has recently led to concerns from local landowners that the BLM is seeking to expand its presence in the area or gain ownership of lands belonging to private parties. Neither the Department nor the BLM are expanding Federal holdings along the Red River. The current work underway by the BLM through its resource management planning process is intended to identify, with certainty, and propose management alternatives for lands which fall within the public domain but have never been patented, reserved, or disposed.

Resource Management Planning in Kansas, Oklahoma, & Texas

The BLM is currently in the initial stages of updating its Resource Management Plan (RMP) for public lands in Kansas, Oklahoma, and Texas, which include the area along the Red River. The BLM estimates approximately 30,000 acres of public land exist along the Red River between the North Fork of the river and the 98th Meridian. The resource management planning process will update the current RMPs covering this area, which were developed in 1994 and 1996, and establish a long-term plan articulating the BLM's objectives and strategies for maintaining the health and productivity of public lands in the region.

Plan updates are needed for public lands in the Red River area specifically to address issues ranging from potential oil and gas development to public access for recreation and various other uses. The BLM's management focus along the Red River to date has been for oil and gas

activities and livestock grazing on public land allotments in Oklahoma, though public land south of Waurika, Oklahoma, currently receives extensive recreational use.

The process for updating land use plans involves numerous steps that allow for public input, analysis, and informed decision-making with regard to public resources. In order to ensure the appropriate consistency with other governmental planning efforts, the BLM has already engaged local, state, Federal, and tribal representatives as cooperating agencies in the preparation of the RMP. Multiple county governments and agencies of the States of Texas and Oklahoma have agreed to participate as cooperating agencies. Although the RMP does not apply to state or private lands, this process and outreach ensures full consideration of adjacent issues, including local uses of resources on public lands.

BLM Management Authorities

Public lands are managed by the BLM under a variety of statutes that provide the agency the authorities necessary to address issues and disputes in land ownership. Under the Federal Land Policy and Management Act of 1976 (FLPMA), the BLM is authorized to transfer or dispose of lands that have been identified as potentially suitable for disposal in an approved land use plan or through an amendment to an existing plan. Through these authorities, the BLM has been able to effectively manage and resolve many land use conflicts.

The Color of Title Act provides a unique mechanism to resolve certain private party claims on public land which may be applicable to issues along the Red River. Any individual, group, or corporation who presents evidence of having title to public lands may file a color-of-title claim with the BLM. Accepted filings grant the applicant a patent conveying clear title to the lands upon payment of a fair and reasonable sale price which reflects the current market value of the lands, but may be discounted to account for improvements made on the land or previous property taxes paid. Guidance for implementing the Color of Title Act is found in Department regulations, Interior Board of Land Appeals (IBLA) decisions, and court decisions. The obligation to establish a valid color-of-title claim is upon the claimant.

The BLM also has a number of other authorities under which it may seek to transfer or dispose of lands, including sales, exchanges, the issuance of rights-of-way, and the Recreation and Public Purposes Act (R&PP).

Through the resource management planning process in Kansas, Oklahoma, and Texas, along with its existing authorities under FLPMA, the Color of Title Act, and the R&PP Act, the BLM will be able to identify and resolve land ownership issues associated with the Red River.

H.R. 4979, Red River Private Property Protection Act

H.R. 4979, the Red River Private Property Protection Act, attempts to resolve potential land ownership conflicts along the Red River by requiring the Secretary of the Interior (Secretary) to transfer public lands through quit claim deed to any claimants with official county or state records indicating that the claimant holds all right, title and interest to those lands. The legislation does not specify what types of documents constitute sufficient official county or state records to satisfy a quit claim request or how to handle competing claims to such lands, yet requires the Secretary to approve such transfers within 120 days of a claimant's submission.

The Department opposes several provisions within H.R. 4979, principally involving the bill's requirement that the Secretary transfer what may be public lands out of Federal ownership without ensuring a fair return to the U.S. taxpayer. Federal law, including FLPMA, directs that it is the policy of the United States that public lands be retained in Federal ownership unless as a result of the land use planning process it is determined that disposal will serve the national interest.

The bill also appears to propose the transfer of not only public surface ownership to claimants, but also the subsurface mineral estate. According to Section 209 of FLPMA, the United States generally retains mineral interests when transferring lands out of Federal ownership. Mineral interests in the Red River area are also uniquely addressed in the Act of June 12, 1926, and carry a trust responsibility that, if transferred, could result in a taking of Oklahoma and tribal mineral interests. Under existing law, 62.5 percent of the royalty revenue from the development of the Federal mineral estate between the 98th Meridian and the North Fork of the Red River is owed to the Kiowa, Comanche, and Apache Tribes, with the remaining 37.5 percent owed to the State of Oklahoma. The legislation may also adversely affect ownership interests of the Chickasaw and Choctaw Nations in the area between the 98th Meridian and the border with the State of Arkansas.

The Red River area's long history of oil and gas exploration would make transfers of interest in public land and the associated mineral estate to claimants problematic. Many sites in the area contain historic oil field equipment that may contain public health and safety and environmental hazards. The legislation is unclear if liability for these sites would be transferred to claimants. It is also unclear which public lands or mineral estate would be transferred under H.R. 4979 due to provisions in the bill preventing the BLM from completing its RMP to identify public lands, a step that FLPMA mandates precedes any disposal and must guide land-use decisions.

Additionally, the legislation's proposed requirement that the Secretary issue a decision within 120 days does not allow adequate time for the BLM to respond to quit claim requests, including arranging or executing surveys of affected properties, complying with the requirements of other applicable laws and performing research to validate the submitted claims.

Finally, the Department is concerned H.R. 4979 does not provide a process for adjudicating disputes. Because it is not uncommon for land records to contain errors creating overlapping interests between two or more parties, disputes are likely to arise among adjacent landowners and between private parties with leases to develop oil and gas resources.

Conclusion

Thank you for the opportunity to testify on H.R. 4979. I will be glad to answer any questions.