

**Statement of
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**Senate Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
S. 90, Red River Gradient Boundary Survey Act**

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Thank you for the opportunity to present the views of the Department of the Interior on S. 90, the Red River Gradient Boundary Survey Act. S. 90 addresses a complex set of issues concerning the location of the southern boundary of the public domain along the Red River, which since the early 1800s has eluded final resolution. Enacting legislation would be a constructive approach toward long-term resolution of the Red River issues, and the Department supports the overall intent of the bill – obtaining certainty on the location of federal land in relation to adjacent private land.

Background

Along approximately 116 miles of its length, the southern bank of the Red River (as defined by the Supreme Court in 1923) forms the boundary between Federal and non-Federal lands. The vegetation line as described in the Red River Boundary Compact establishes the state line between Oklahoma and Texas. Because of treaties between the United States and Spain that followed the Louisiana Purchase, and the 1867 treaty between the U.S. and three American Indian Tribes that established the Kiowa, Comanche, and Apache (KCA) reservation, there remains a 116-mile strip of public domain land that lies between the medial line and the southern bank of the Red River, from the North Fork of the river east to the 98th Meridian. Under the Act of June 12, 1926, specific percentages of the fluid mineral development royalties on that public domain are deposited into a trust account for the KCA, with the remaining percentage going to the State of Oklahoma.

Identification of the exact boundaries of the public lands along the Red River is challenging for a multitude of reasons. The Department has attempted to survey portions of the area in order to identify the boundaries of certain Indian allotments.

S. 90, Red River Gradient Boundary Survey Act

S. 90 requires the Secretary of the Interior to commission and fund a gradient boundary survey along 116 miles of the Red River. The survey would be conducted by surveyors that are selected jointly by and operating under the joint direction of the Texas General Land Office and both the Attorney General of the State of Oklahoma and Oklahoma Commissioners of the Land Office, in

consultation with each affected federally recognized Indian tribe. Surveyors will also survey individual parcels and identify property boundaries of private parties' property interests. Once conducted, these surveys would be submitted for approval to the specified Texas and Oklahoma authorities. The surveys would not be submitted to the Secretary for approval. After receiving a notice from specified Texas and Oklahoma authorities of the approval of a survey related to an individual parcel, the Department would be required to identify and provide notice of the completed survey to each private owner of land adjacent to that parcel.

The Department would like to work with the sponsor and the Committee on a number of issues, including modifications to provide clarity on the resolution of private property claims. Under S. 90, the Federal contract for a survey of the South Bank Boundary of the Red River would include surveys of individual parcels along the river, which the States of Texas and Oklahoma, respectively, would approve or disapprove, in consultation with affected Federally recognized tribes. We encourage the sponsor to clarify whether the term "individual parcels" refers to private lands owned in either the State of Texas or the State of Oklahoma, as well as whether this term is intended to include parcels allotted to individual Indians. If it is intended to refer to the latter, there is some question as to whether the bill—assigning approval authority for the survey of individual parcels to the states of Texas and Oklahoma—is consistent with the Federal government's trust responsibilities toward these individual Indian allottees. In any event, if "individual parcels" is intended to encompass private landowners' parcels, we encourage the sponsor to include in the legislation an appropriate mechanism for affected private landowners to dispute surveys completed pursuant to the legislation.

The Department further notes that section 3(c) appears to associate completion of individual parcel surveys with a determination of which individuals own a parcel. If a private surveyor is expected to make determinations of individual ownership in addition to conducting surveys of individual parcels, the legislation and the Department's contract with the surveyor should state this clearly, and whether the survey authorized by this bill would supersede any prior surveys and associated deeds.

Especially because the legislation appears to provide for private surveyors making determinations about private property owners' parcels, the Department would like to work with the sponsor on modifications to ensure notification to landowners by an appropriate agency about these determinations. Under section 3(c)(2), within 30 days after receiving a notice of individual parcel approval from the Texas or Oklahoma authorities, the Secretary of the Interior is required to provide notice of the approval to each landowner adjacent to the individual parcel. Because the Secretary of the Interior has no authority to survey privately owned lands that are not coincident with a Federal boundary, the Department has no records of private land ownership in Texas. The Texas General Land Office and the Oklahoma Commissioners of the Land Office have all the information needed to identify private owners of land adjacent to any particular parcel. It may be more appropriate for those offices to notify private property owners in their respective states versus the Secretary of the Interior.

The survey required by S. 90 differs in a key respect from regular surveys that are conducted under contract with the Department. The S. 90 survey would be performed under the direction of the Texas General Land Office and both the Attorney General of the State of Oklahoma and Oklahoma Commissioners of the Land Office, in consultation with each affected Federally

recognized Indian tribe; the Secretary of the Interior is explicitly excluded from directing and approving the survey results.

S. 90 divests the Department of the Interior of its role as surveyor of record to identify the boundaries of public lands, a role it has fulfilled since the Land Ordinance of 1785 and the Northwest Ordinance of 1787. The authority to identify the limits of Federal ownership—in this case, the boundary between Federal and private lands along the Red River—is a responsibility vested in the Secretary. The purpose is to assure that no clouds on title exist for lands conveyed out of Federal ownership. For the past two centuries, the Federal Government has surveyed public lands into townships and sections (Public Land Survey System), establishing legal records that formed the basis on which the government transferred public land to railroads, homesteaders, and others until 1976. The legal descriptions contained in these land records may also form the basis for modern title records and private real estate sales and purchases. The Department also conducts cadastral surveys that establish the boundary between Federal and private lands. The Department would like to work with the sponsor on modifications to ensure that the overall goals of the bill are achieved without divesting the Secretary of his responsibility to review and approve associated surveys.

The Department would also like to work with the sponsor on modifications to ensure consistency with the laws governing Federal contracts. S. 90 requires the Secretary to enter into a Federal contract with a contractor selected by third parties (the Texas General Land Office and the Oklahoma Commissioners of the Land Office, in consultation with the attorney general of the State of Oklahoma and each affected Federally recognized Indian tribe) to perform work that the third party directs and approves. Generally, standard Federal contracting law requires an agency to offer an open competition and to review the qualifications and capacities of the firms responding to the contractual solicitation. Moreover, it would be helpful to the Department if S. 90 clarified the dispute resolution procedures to be used in case a dispute arises between the contractor and the third parties, as well as clarifying which party bears responsibility for enforcing terms in the legislation; for example, the two-year time period for completing the surveys. The Department's role in evaluating whether the contractor fully performed the terms of the contract is also unclear.

Finally, section 4 provides that nothing in the Act modifies any interest of the States of Oklahoma or Texas, or of any Federally recognized Indian tribe, relating to land located north of the South Bank boundary line; modifies any land patented under the "Color of Title Act;" modifies or supersedes the Red River Boundary Compact enacted by the States of Oklahoma and Texas and consented to by Congress pursuant to P.L.106-288; creates or reinstates any Indian reservation or any portion of such a reservation; or alters any valid right of the State of Oklahoma or the Kiowa, Comanche, or Apache Indian tribes to the mineral interest trust fund established under the Act of June 12, 1926. The Department encourages the sponsor to add individual Indian allottees to the list of parties exempted from effect of this Act. Also, we understand that the Department of Justice would like to work with the subcommittee to address a constitutional concern with some of the text in the bill.

Conclusion

Thank you for the opportunity to present these views. I would be pleased to answer any questions.