

[H.R. 2130, Red River Private Property Protection Act](#)

FLOOR SITUATION

On Wednesday, December 9, 2015, the House will consider [H.R. 2130](#), *the Red River Private Property Protection Act*, under a [structured rule](#). H.R. 2130 was introduced on April 30, 2015 by Rep. Mac Thornberry (R-TX) and was referred to the House Committee on Natural Resources, which ordered the bill reported, as amended, by a vote of 21 to 11 on September 10, 2015.

SUMMARY

H.R. 2130 requires the Bureau of Land Management (BLM) to disclaim any right, title, and interest to certain lands along a portion of the Red River in Texas. Specifically, the bill:

- Requires the Secretary of the Interior to commission a survey of a 116-mile segment of the River and about 160 tracts of land adjacent to the river to identify a boundary line;
- Specifies that the survey must be conducted by an entity chosen by the Texas General Land Office, in consultation with the Oklahoma Commissioners of Land Office, and completed within two years of enactment;
- Requires the Secretary to submit the completed survey to the respective state land offices for approval, which are charged with approving specific parcels of land individually;
- Requires the state land offices to notify the Secretary when such parcels are approved;
- Requires the Secretary, within thirty days after receiving such notification, to notify adjacent landowners of the approval and of their rights to appeal;
- Provides that landowners in affected areas may appeal the survey determination to an administrative law judge of the Department of the Interior;
- Prevents BLM from treating parcels of land 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 appeal;
- Requires BLM to sell-off surface rights of the remaining federally-owned land at fair market value after the proper boundary line is located and settled and to submit to Congress a list of federal lands that have not been sold and the reasons why;

- Does not modify the Red River Boundary Compact and specifies that the interests of states and sovereignty of federally-recognized Indian tribes north of the Texas state boundary line will not be affected; and,
- 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.

BACKGROUND

There has been confusion and dispute about the Texas-Oklahoma border for more than 200 years. The Louisiana Purchase and subsequent treaties between the United States and Spain, Mexico, and the Republic of Texas “confirmed that the boundary between Texas and Oklahoma was the south bank of the [Red] River.”¹ In 1867, the U.S. signed a treaty with several Indian tribes that designated a reservation north of the “middle of the main channel” of the River in certain areas. Congress later disposed of the reservation and created a grazing reserve that was 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.”²

Following the discovery of oil in an area around the Red River, Oklahoma brought suit against Texas in 1919 to determine the common boundary. In 1923, the Supreme Court adopted a certain survey method (the gradient survey method) for determining the boundary. The decision and decree determined that “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.”³

On July 24, 2000, the House passed [H.J. Res. 72](#), a joint resolution granting the consent of the Congress to the Red River Boundary Compact, by voice vote. The resolution codified the Red River Boundary Compact agreed to by Oklahoma and Texas, which established a visible boundary between the two states to resolve jurisdictional and sovereignty dispute issues and set the political boundary as the vegetation line on the south bank of the Red River. However, accretion,⁴ erosion, and avulsion⁵ have gradually altered the course and location of the river in the area subject to the bill.

BLM is currently in the process of updating its Oklahoma, Kansas, and Texas RMP, which covers the 116-mile stretch of the Red River covered by H.R. 2130. BLM has estimated that some 30,000 acres, of which only 6,402 acres have been surveyed, may be considered public domain and managed as federal land. Consequently, local landowners are concerned 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.”⁶ Moreover, “the entire 116-mile stretch of the Red River at question has never been surveyed by BLM,

¹ See [House Report 114-327](#) at 4.

² Id.

³ Id.

⁴ Accretion can be generally defined as the deposit of soil along the bank or bed of a river.

⁵ 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.

⁶ Id. at 5.

and the method used to survey small stretches of the River strays widely from the accepted gradient boundary survey method established by the 1923 U.S. Supreme Court decision and decree.”⁷

H.R. 2130 is designed to make clear who actually holds title to the land in question. According to the bill sponsor, “private landowners deserve absolute clarity from the Bureau of Land Management (BLM) and a fair resolution to this issue. Until that happens, we will not let up in our efforts to assure landowners that their private property rights along the Red River will be protected.”⁸

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 2130 would increase net offsetting receipts, which are treated as reductions in direct spending, by \$5 million over the 2018 to 2025 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 2130 would not affect revenues. CBO also estimates that implementing the bill would cost \$2 million over the 2016 to 2020 period, assuming appropriation of the necessary amounts.

AMENDMENTS

1. Rep. Rob Bishop (R-UT)—The [manager’s amendment](#) ensures that nothing in the bill would create or reinstate a tribal reservation or any portion of a tribal reservation; ensures that nothing in the bill will alter the valid rights of the Kiowa, Comanche, and Apache Nations to the mineral interest trust fund created pursuant to the Act of June 12, 1926; allows for the affected federally recognized Indian tribes to be a part of the survey process; and allows for further judicial review after the administrative appeals process for landowners.
2. Rep. Tom Cole (R-OK)—The [amendment](#) ensures the bill preserves past and current surface and mineral rights for affected Indian tribes.

STAFF CONTACT

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.

⁷ Id.

⁸ See Press Release—“[Thornberry, Cornyn introduce bills to resolve Red River land dispute](#),” April 30, 2015.