

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

KENNETH ADERHOLT; PATRICK §
CANAN; KEVIN HUNTER; §
RONALD JACKSON; WILLIAM §
LALK; KENNETH PATTON; §
BARBARA PATTON; JIMMY SMITH; §
KENNETH LEMONS, JR., in his §
official capacity as Clay County Sheriff; §
WICHITA COUNTY, TEXAS; CLAY §
COUNTY, TEXAS; WILBARGER §
COUNTY, TEXAS, §

Plaintiffs, §

v. § CIVIL ACTION NO. 7:15-cv-00162-O

§
BUREAU OF LAND MANAGEMENT, §
NEIL KORNZE, in his official capacity §
as Director, Bureau of Land §
Management; UNITED STATES §
DEPARTMENT OF THE INTERIOR; §
SALLY JEWELL, in her official capacity §
as Secretary of the Interior; and §
UNITED STATES OF AMERICA, §
Defendants. §

ORIGINAL COMPLAINT OF INTERVENOR THE STATE OF TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas files this complaint against the Bureau of Land Management (“BLM”); Neil Kornze, in his official capacity as Director, Bureau of Land Management; the United States Department of the Interior; Sally Jewell, in her official capacity as Secretary of the Interior; and the United States of America (collectively, the “Defendants”) to establish recognition of its boundary and

prevent the federal government's unlawful encroachment upon land comprising the State of Texas.

I. JURISDICTION

1. This Court has jurisdiction over the State's claim under 28 U.S.C. § 1331 because it involves federal questions involving statutes, law and treaties of the United States, and under 28 U.S.C. §§ 2201, 2202 authorizing relief pursuant to the Declaratory Judgment Act.

II. PARTIES

2. Plaintiffs Kenneth Aderhot, Patrick Canan; Kevin Hunter; Ronald Jackson; William Lalk; Kenneth Patton; Barbara Patton; and Jimmy Smith; are Texas private-property owners along the disputed 117-mile stretch along the Red River who seek to quiet title to their property against the federal government's ownership claims. Plaintiffs Kenneth Lemons, Jr., in his official capacity as Clay County Sheriff; Wichita County, Texas; Clay County, Texas; and Wilbarger County, Texas, seek identification of private versus federally owned property to aid in law enforcement and for taxation purposes (collectively, the "Plaintiffs"), who can be served through their attorney of record, Robert Henneke, Texas Public Policy Foundation, Center for the American Future, 901 Congress Avenue, Austin, Texas 78701.

3. Defendant Bureau of Land Management may be served in accordance

with Federal Rule of Civil Procedure (4)(i)(2) by serving the Bureau of Land Management Washington Office, 1849 C Street, NW, Room 5665, Washington, D.C. 20240.

4. Defendant Neil Kornze, in his official capacity as Director, Bureau of Land Management, may be served in accordance with Federal Rule of Civil Procedure 4(i)(2) by serving Director Neil Kornze, Bureau of Land Management, Washington Office, 1849 C Street, NW, Room 5665, Washington, D.C. 20240.

5. Defendant the United States Department of the Interior may be served in accordance with Federal Rule of Civil Procedure 4(i)(2) by serving the United States Department of the Interior, 1849 C Street NW, Washington, D.C. 20240.

6. Defendant Sally Jewell, in her official capacity as Secretary of the Interior, may be served in accordance with Federal Rule of Civil Procedure 4(i)(2) by serving the United States Department of the Interior, 1849 C Street NW, Washington, D.C. 20240.

7. Defendant the United States of America may be served in accordance with Federal Rule of Civil Procedure 4(i) by serving the Civil Process Clerk for Loretta Lynch, United States Attorney General, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, and by serving the Civil Process Clerk for John R. Parker, United States Attorney for the Northern District of Texas, 1100 Commerce, 3rd Floor, Dallas, Texas, 75242-1699.

8. The State of Texas moved to intervene to protect its sovereign interest in demanding recognition of its border along the Red River. The State's motion to intervene is still pending in this Court.

III. FACTUAL BACKGROUND

9. The State of Texas moved to intervene in this lawsuit under Federal Rule of Civil Procedure 24 to protect its sovereign boundary along the Red River in Clay, Wichita, and Wilbarger counties against encroachment by the federal government's claim of up to 90,000 acres of land south of the Red River.

10. The federal government owns from the medial line of the Red River (an imaginary line through the center of the river's flow) to the south gradient line of Red River's cut bank. *See Oklahoma v. Texas*, 261 U.S. 345, 346 (1923) (holding that "full title and ownership of so much of the bed of the river as lies south of its medial line are in the United States").

11. The United States Supreme Court held that the northern boundary of Texas was the cut bank on the southern side of the sand bed formed by the south bank of the river (also referred to as the south gradient line boundary) and the boundary followed along that bank at the mean water level, when it washes the bank without overflowing it. *Oklahoma v. Texas*, 260 U.S. 606, 636, 640 (1923).

12. In 1923, the Court sent a commission of three surveyors to conduct a gradient boundary survey to mark the northern Texas border. *Id.* The United States Supreme Court certified the survey in 1925.

13. The Court recognized that this boundary could change based on erosion and accretion, but in the instance of an avulsive event—where the river leaves its banks and changes course—the boundary would remain unchanged. *Id.* at 636.

14. The party asserting material changes in the boundary bears the burden of proving the cause of those changes, whether old or new. *Id.* at 638.

15. In 2009, the BLM performed a Cadastral survey marking the south bank of the Red River.

16. Cadastral surveys mark or reestablish boundaries of public lands in the United States, but they are based upon law rather than science.

17. A Cadastral survey differs from a gradient boundary survey.

18. On information and belief, the BLM has not conducted a gradient boundary survey as required by the United States Supreme Court to accurately determine the boundary along the Red River in Clay, Wichita, and Wilbarger counties. *Id.* at 636, 640.

19. On information and belief, the BLM has failed and refused to conduct a gradient boundary survey. BLM representatives orally notified attendees of the October 13, 2015, public hearing that it did not have the funds to conduct a survey of the land it claims, and would not provide clarity regarding property ownership because it was expensive and it did not want to tie the Resource Management Planning process (which guides the management of BLM-administered public

resources and mineral lands in its jurisdiction within Oklahoma, Kansas, and Texas) to the Red River.

20. The BLM's failure to conduct the appropriate survey has placed that portion of the Texas border in doubt by impairing the ability to locate the border with specificity.

IV. CLAIM FOR RELIEF

21. The United States, by and through the BLM, claims ownership of up to 90,000 acres of land along a 117-mile stretch between the Red River and Texas as part of the public domain.

22. This land was previously considered part of Texas and has been cultivated and controlled by Texas land owners for generations.

23. The BLM has not previously managed the property it now claims it owns.

24. This section of the Texas border has become uncertain due to the BLM's ownership claims.

25. The BLM has failed to conduct the requisite gradient boundary survey or identify any avulsive events that would support its claim that the current boundary is miles away from the river's bank.

26. The State of Texas seeks resolution of questions surrounding its border in Clay, Wichita, and Wilbarger counties.

27. An actual controversy exists between the State and the Defendants arising out of the assertion of ownership which they vaguely and improperly defined.

28. The State has a sovereign right to demand recognition from other sovereigns of its border. *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982).

29. The State of Texas has a legitimate concern that its border could be altered by misidentification of the actual border due to the BLM's refusal to conduct the necessary gradient boundary survey.

30. The BLM failed to prove any changes to the boundary were caused by accretion, erosion, or avulsion. *See Oklahoma v. Texas*, 260 U.S. at 636.

31. The State alleges that the United States' claim to the property is invalid and unlawful.

32. The State seeks a declaratory judgment that the BLM must conduct a gradient boundary survey and prove the cause of the changes to the boundary in accordance with *Oklahoma v. Texas*, 260 U.S. 606 (1923).

33. There is a justiciable controversy between the State and the Defendants as to whether they can unreasonably and unlawfully alter Texas's border.

34. Resolution of this controversy will restore the State's sovereign right to demand recognition of its border from other sovereigns.

V. CONCLUSION AND PRAYER FOR RELIEF

The State of Texas respectfully asks this Court for the following relief:

35. A declaration that the BLM must conduct a gradient boundary survey of the entire area along the Red River in Clay, Wichita, and Wilbarger counties that it claims is part of the public domain;
36. A judgment that the Defendants must prove any changes to the expanse of land owned by the federal government along the border were caused by accretion, erosion, or avulsion;
37. A declaration that the federal government does not own land beyond the south cut bank of the Red River;
38. An order enjoining the Defendants from claiming any land belonging to Texas;
39. An order awarding costs, fees, and attorneys' fees; and
40. All such further relief as may be appropriate under the law.

Respectfully submitted,

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ATTORNEYS FOR INTERVENOR
THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I, Megan Neal, hereby certify that on this the 18th day of November, 2015, a true and correct copy of the foregoing document was transmitted via electronic service or certified mail as indicated below:

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