

**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. \_\_\_\_\_

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**

TO THE HONORABLE JUDGE OF SAID COURT:

1. This lawsuit challenges the unconstitutional and arbitrary seizure of thousands of acres of private property along the Red River in Texas.
2. Plaintiffs are individual property owners and their respective county governments that collectively sue the federal government in opposition to the Bureau of Land Management’s (BLM) claim that the individual Plaintiffs’ private property within Texas along the Red River is federal land.

3. It is well established that Texas begins at the southern bank of the Red River. By definition, the “bank” is the sliver of land that separates the sandy “[river]bed from the adjacent uplands.” “On the valley side of the bank is vegetation and on the river side is bare sand.” *State of Okl. v. State of Tex.*, 260 U.S. 606, 634 (1923).

4. The United States’ ownership of property is limited to bottom-half of the sandy riverbed outside of Texas. Nonetheless, BLM asserts that its boundary extends well past the riverbed into Texas and, in some instances, more than a mile outside of its lawful territory. In doing so, BLM has seized private property and infringed upon the sovereignty of the local county governments. Plaintiffs bring this action under:

- a. The Quiet Title Act (“QTA”), 28 U.S.C. § 2409a, which authorizes a federal district court to adjudicate disputes over the title to real property in which the United States claims an interest;
- b. The Declaratory Judgment Act, 28 U.S.C. § 2201, which authorizes a federal district court in a case or controversy to declare the rights and legal relations of an interested party seeking such declaration.
- c. The Fourth Amendment to the United States Constitution, which prohibits the Government from unreasonably seizing property.
- d. The Due Process Clause of the Fifth Amendment to the United States Constitution, which prohibits the Government from claiming ownership and jurisdiction over land without delineating it with a reasonable degree of specificity.

## I. PARTIES

### A. TEXAS INDIVIDUAL PLAINTIFFS

5. Kenneth Aderholt is a citizen of Wilbarger County, Texas. He owns title to, and has statutory duties regarding, approximately 700 acres within Wilbarger and Wichita Counties, Texas along the Red River. His family has used this land for farming and ranching since 1941. He, his wife, and their two children live on the property and use it for farming and ranching. BLM claims over half of Aderholt's property as federal land.

6. Patrick Canan is a citizen of Clay County, Texas. He owns title to, and has statutory duties regarding, approximately 2,000 acres within Wichita and Clay Counties, Texas along the Red River. He has owned the property since June 24, 1963. He lives on the property with his family and uses it for ranching and farming. BLM claims approximately 1,400 acres of Canan's property as federal land.

7. Kevin Hunter is a citizen of Wichita County, Texas. He owns title to, and has statutory duties regarding, approximately 510 acres within Wichita County, Texas, along the Red River. He and his wife would like to build on their property in the future and are currently using their property for ranching, farming and hunting. BLM claims approximately 250 acres of Hunter's property as federal land.

8. Ronald Jackson is a citizen of Clay County, Texas. He owns title to, and has statutory duties regarding, approximately 1,138 acres within Clay County, Texas, along the Red River. He has owned the property for 11 years uses the property to farm and ranch. BLM claims an unknown amount of Mr. Jackson's property as federal land.

9. William Lalk is a citizen of Wichita County, Texas. He owns title to, and has statutory duties regarding, approximately 196 acres within Wichita County, Texas. Mr. Lalk purchased the property in 1979. BLM claims an unknown amount of Mr. Lalk's property as federal land.

10. Kenneth and Barbara Patton are citizens of Wichita County, Texas. They own title to, and have statutory duties regarding, approximately 1,308 acres within Wichita County, Texas, along the Red River. They have owned the property for almost 16 years. They use the property for ranching and will pass the property to their children upon retirement. BLM claims an unknown amount of Mr. and Mrs. Patton's property as federal land.

11. Jimmy Smith is a citizen of Wichita County, Texas. He owns title to, and has statutory duties regarding, approximately 150 acres within Wichita County, Texas, along the Red River. He has owned the property since September 21, 2006. He lives with his wife and uses the property for farming, ranching, and hosting outdoor concerts. BLM claims approximately 100 acres of Smith's property as federal land.

**B. TEXAS COUNTY LOCAL GOVERNMENT PLAINTIFFS**

12. Wichita County, Texas, is a governmental entity, situated along the Red River. It is one of three counties in which private property within its jurisdiction has been clouded by BLM's claim to title. BLM's claim of title impacts the county's ability to assess ad valorem taxes, interferes with its ability to regulate and provide services for the health, benefit and welfare of its citizens, and infringes upon its sovereignty. Wichita County has all statutory duties regarding land within its jurisdiction delegated to it by the Texas Legislature. TEX. CONST.

ART. IX; TEX. LOCAL GOV'T. A majority vote of the Wichita County Commissioners Court seated on November 12, 2015, approved its participation as a party in this lawsuit.

13. Clay County, Texas, is a governmental entity, situated along the Red River. It is one of three counties in which private property within its jurisdiction has been clouded by BLM's claim to title. BLM's claim of title impacts the county's ability to assess ad valorem taxes, interferes with its ability to regulate and provide services for the health, benefit and welfare of its citizens, and infringes upon its sovereignty. Clay County has all statutory duties regarding land within its jurisdiction delegated to it by the Texas Legislature. TEX. CONST. ART. IX; TEX. LOCAL GOV'T. A majority vote of the Clay County Commissioners Court seated on November 9, 2015, approved its participation as a party in this lawsuit.

14. Wilbarger County, Texas, is a governmental entity, situated along the Red River. It is one of three counties in which private property within its jurisdiction has been clouded by BLM's claim to title. BLM's claim of title impacts the county's ability to assess ad valorem taxes, interferes with its ability to regulate and provide services for the health, benefit and welfare of its citizens, and infringes upon its sovereignty. Wilbarger County has all statutory duties regarding land within its jurisdiction delegated to it by the Texas Legislature. TEX. CONST. ART. IX; TEX. LOCAL GOV'T. A majority vote of the Wilbarger County Commissioners Court seated on November 9, 2015, approved its participation as a party in this lawsuit.

**C. PLAINTIFF KENNETH LEMONS, JR. IN HIS OFFICIAL CAPACITY AS CLAY COUNTY SHERIFF**

15. Kenneth Lemons, Jr. is the elected sheriff of Clay County. He appears in his official capacity as Clay County Sheriff. He has law enforcement duties throughout Clay

County, including along the Red River, delegated to him pursuant to the laws of the State of Texas.

16. Defendants' vague assertion of ownership and jurisdiction interferes with the Sheriff's ability to discharge his law enforcement duties by preventing him from being able to discern with reasonable specificity what land Defendants claim. This lack of clarity (1) prevents Sheriff Lemons from being able to enforce certain criminal statutes on private land; and (2) subjects him to potential criminal liability.

17. Furthermore, Defendants' assertion of ownership causes trespassers to encroach onto private landowners' land and engage in unlawful activity under the belief they cannot be removed because it is federal public land. The lawless situation created by Defendants' assertion of ownership interferes with the Sheriff's law enforcement duties to preserve the peace and provide for public safety.

#### **D. FEDERAL GOVERNMENT DEFENDANTS**

18. Defendant the Bureau of Land Management is a bureau within the Department of Interior, tasked with the management of federal property, including any federal property that may lie along the Red River. BLM initiated the surveys and resource management plans at issue in this case. Defendant Bureau of Land Management may be served in accordance with FED. R. Civ. P. 4(i)(2) by serving Bureau of Land Management Washington Office, 1849 C Street, NW, Room 5665, Washington, D.C. 20240.

19. Defendant Neil Kornze is sued in his official capacity as Director of the Bureau of Land Management. Due to his authority as the chief policy maker for BLM, Director Kornze is ultimately responsible for executing the policies and practices of BLM, including the surveys and

resource management plans at issue. Director Kornze may be served in accordance with FED. R. CIV. P. 4(i)(2) by serving Director Neil Kornze, Bureau of Land Management Washington Office, 1849 C Street, NW, Room 5665, Washington, D.C. 20240.

20. Defendant the United States Department of the Interior (DOI) is a department of the federal government that manages the nation's public lands and minerals. DOI has ultimate authority for approval and enforcement of resource management plans. The United States Department of the Interior may be served in accordance with FED. R. CIV. P. 4(i)(2) by serving the United States Department of the Interior, 1849 C Street NW, Washington, D.C. 20240.

21. Defendant Sally Jewell is sued in her official capacity as Secretary of the Interior. Due to her authority as the chief policy maker for DOI, Secretary Jewell is ultimately responsible for executing the policies and practices of DOI, including the approval and enforcement of the resource management plans at issue. Secretary Jewell may be served in accordance with FED. R. CIV. P. 4(i)(2) by serving Secretary Sally Jewell, United States Department of the Interior, 1849 C Street NW, Washington, D.C. 20240.

22. Defendant United States of America claims title to the private property in dispute and is therefore a necessary party under the Quiet Title Act. The United States of America may be served in accordance with FED. R. CIV. P. 4(i) by serving the Civil Process Clerk for Loretta Lynch, United States Attorney General, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001, and by serving the Civil Process Clerk for John R. Parker, United States Attorney for the Northern District of Texas, 1100 Commerce, 3<sup>rd</sup> Floor, Dallas, TX 75242-1699.

## II. JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction under 28 U.S.C. § 2409a (quiet title) and 28 U.S.C. § 1346(f) (quiet title), as this case involves Plaintiffs' claim to ownership of land in the state of Texas, along the southern border of the Red River.

24. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), as this case arises under the Constitution of the United States.

25. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

26. Venue is proper in the Wichita Falls Division of the United States District Court for the Northern District of Texas under 28 U.S.C. § 1391(e), because (1) the United States, and two of its agencies are Defendants; (2) a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District and; (3) the lands which are the subject of this lawsuit are located in Wichita, Wilbarger, and Clay Counties, State of Texas.

## III. STATEMENT OF FACTS

### A. HISTORICAL PRECEDENT

27. The Louisiana Purchase in 1803 established the southern bank of the Red River as the boundary between the United States and Spain, the predecessor in interest to the State of Texas. In the treaty between France and the United States, the United States acquired ownership of the entire bed of the Red River and the lands lying to its North.<sup>1</sup>

---

<sup>1</sup> U.S. Library of Congress, Collections. *Louisiana: European Explorations and the Louisiana Purchase: A Question of Boundaries*. Available at: <https://www.loc.gov/collections/louisiana-european-explorations-and-the-louisiana-purchase/articles-and-essays/a-question-of-boundaries/>; Accessed 10/04/15.



28. Reaffirming the Louisiana Purchase boundary, Spain's 1819 treaty with the United States established the border between the two nations as the "south cut bank" of the Red River. Treaty of Amity, Settlement, and Limits, Between the United States of America and his Catholic Majesty, art. 3, Feb. 22, 1819, 8 Stat. 252. (hereinafter "Adams-Onís Treaty").

29. In 1838, after the Republic of Texas gained its independence from Mexico, the nation of Texas entered into a treaty with the United States upholding the Adams-Onís Treaty as the official border. *Id.* Under the Adams-Onís Treaty, both countries maintained their ability to access and navigate the river, but full ownership of the riverbed remained with the United States. *Id.*; *State of Okl. v. State of Tex.*, 260 U.S. 606, 623 (1923).

30. In 1922, Oklahoma sued Texas claiming that, per its admittance into the union, Oklahoma owned the entirety of the Red River riverbed. *State of Okl. v. State of Tex.*, 258 U.S. 574, 583, 588 (1922).

31. Intervening, the United States also claimed title to the entirety of the riverbed, insisting that because the Red River is not navigable in the disputed stretch, Oklahoma did not gain title under the rule of equality among the states. *Id.* at 588.

32. The Supreme Court found that no portion of the Red River within Oklahoma was navigable. Therefore, title to the riverbed did not pass to Oklahoma upon its admission to the Union. Any lawful claim gained upon admission, to any part of the riverbed, could only be sustained through incidental claims relating to its ownership of riparian lands on the northerly bank.<sup>2</sup> *Id.* at 591.

---

<sup>2</sup> Through a 1867 treaty between the United States and the Kiowa, Comanche, and Apache Tribes, the territory north of the "middle of the main channel" of the Red River was set apart as a reservation and permanent home for those

**B. THE 1923 SUPREME COURT DECISION**

33. In 1923 the Supreme Court reaffirmed that the south cut bank, or the southern gradient boundary, was the northern border of Texas. *State of Okl. v. State of Tex.*, 260 U.S. 606, 625 (1923).

34. The Court determined that the south cut bank is, “[the] bank at the mean level of the water, when it washes the bank without overflowing it... subject to the right application of the doctrines of erosion and accretion and of avulsion to any intervening changes.” *Id.* at 636.

35. Both title and jurisdictional boundaries follow the natural and gradual progression of the river as it changes through accretion and erosion. *Id.*

36. Where avulsive acts have caused the river to suddenly leave its old bed and form a new channel, the resulting change of the channel does not change the title boundary. *Id.*

37. Due to its sandy riverbeds, avulsive acts along this stretch of the Red River are rare.

38. As of 1923, the totality of the Supreme Court opinions, historical acts, and treaties established:

- a. Any ownership rights belonging to Oklahoma in the bed of the Red River came through grants or reservations given it by the United States and stop at the medial

---

tribes. *State of Okl. v. State of Tex.*, 258 U.S. at 592; TREATY WITH THE KIOWA AND COMANCHE, art. 2, October 21, 1867, 15 Stat. 581. This reservation was maintained until the Act of June 6, 1900 §6, 31 Stat. 672, 676 and Enabling Act of June 5, 1906, 34 Stat. 213, which directed that the reservations be disposed of by reserving common grazing lands, allotting severalty to each member of the tribes, reserving four sections in each township for the future state of Oklahoma, and by subjecting the remaining lands to particular modes of entry and acquisition. *Id.* Like the 1867 treaty, these acts were limited to the territory north of the middle of the main channel of the river. *Id.* The Court determined that the main channel designated under the treaty must extend from one cut bank to the other, and that north of the medial line must be what was designated as the Indian boundary. *State of Okl. v State of Tex.*, 258 U.S., at 594.

line of the river due to the river's non-navigability and prior congressional actions;

- b. Ownership of southern strip of riverbed to the south bank remained with the United States and was not considered Indian Territory, though it did jurisdictionally lie within Oklahoma. This left the United States with title to the portion of the Red River riverbed lying between the medial line and the southern bank of the Red River; and
- c. Texas possessed no ownership of the Red River riverbed. Its "northern" boundary for private property ownership, political, and jurisdictional boundaries ended at the southern gradient boundary of the south cut bank of the Red River;
- d. As the Red River ebbed and flowed due to erosion and accretion along its sandy banks, so too did these boundaries meander.

39. In accord with its 1923 ruling, the Supreme Court commissioned a survey and ordered that surveyors Kidder and Stiles apply the Court's process to determine the gradient boundary as of 1923 and conduct a survey of various portions of the boundary-bank of the Red River.

40. The Kidder and Stiles survey was completed and certified by the Court in 1925 and entered into the record by an official decree of the Court. The Kidder and Stiles survey does not establish a permanent boundary. Rather, it identified parts of the gradient boundary at that point in time.

41. Kidder and Stiles did not survey the entire 116-mile stretch of the Red River at issue in this dispute. Land belonging to several of the individual Plaintiffs was not encompassed by the Kidder and Stiles survey.

42. The Kidder and Stiles survey does not presently represent the south bank's gradient boundary due to the Red River's erosion and accretion over the past 90 years. In many places, the waters of the Red River flow more than a mile away from their 1923 location.

**C. RED RIVER BOUNDARY COMPACT**

43. In 1999, Texas and Oklahoma entered into an interstate compact addressing the political and jurisdictional boundary between the two states. The Red River Boundary Compact was ratified by Congress in 2000.

44. Prior to the compact, and due to the highly transitory nature of the Red River, questions as to jurisdiction between Oklahoma, Texas, and the Federal Government along the Red River rendered all sovereignties unable to prosecute for crimes or collect taxes.

45. This rendered large portions of the northern border of Texas a "no man's land" where distribution and production of drugs, prostitution, illegal gambling, and dog and cock fighting occurred regularly without any means of redress.

46. Through the Red River Boundary Compact, Texas and Oklahoma established the permanent political and jurisdictional boundary between Texas and Oklahoma as the vegetation line along the south cut bank of the Red River, a line which is close to the historical boundary location, and which can be visually identified without the need of a current survey. H.B. 1355, 76<sup>th</sup> Leg., Reg. Sess. (Tex. 1999); S.B. 175, 47<sup>th</sup> Leg., 1<sup>st</sup> Spec. Sess. (Okla. 1999); Red River Boundary Compact of 2000, Pub. L. No. 106-288, 114 Stat. 919.

47. The Compact explicitly granted Texas sovereignty over all lands south of the southern vegetation line. *Id.*

48. In a departure from the 1923 case, the Compact states that an immediately perceivable naturally occurring avulsion would no longer fix the state boundaries. Instead, Oklahoma and Texas agreed that the boundary line would move with the “visually identifiable continuous line of vegetation” adjacent to the riverbed. *Id.*

49. The Compact does not change the title or rights of any person or entity, public or private, to any of the lands adjacent to the Red River, nor does it change the boundaries of those lands. The vegetation line may change, and with it the state boundaries, but not what is owned by the respective property owners. *Id.*

#### **D. BLM CLAIMS TITLE TO TEXAS PROPERTY**

50. On its own initiative in 2003, BLM began the process of conducting a dependent resurvey along portions of the Red River to determine United States’ interest in the Red River riverbed.

51. In 2007, BLM representatives contacted Canan regarding permission to enter upon his property, which he granted. BLM affixed survey markers onto Canan’s property in 2008. One of these markers – approximately a mile away from the Red River – designates a boundary line of Texas as part of its identification of BLM claimed public lands within Canan’s property.



According to BLM's survey, approximately 1400 acres of Canan's property belongs to the federal government. *See* Ex. A.

52. Entering through Canan's land, BLM surveyed Hunter's property sometime in 2007 and affixed survey markers in 2008. One of these markers designates the medial line of the Red River and is placed approximately half a mile from the main course of the Red River.



According to BLM's survey, approximately 250 of Hunter's 510 acres belongs to the federal government. *See* Ex. B.

53. In 2009, the Bureau of Land Management published into the Federal Register an updated survey covering a small portion of the Red River through Clay and Wichita, counties. 74 FED. REG. 28061-62. This survey shows the area within Canan and Hunter's property where BLM placed survey markers, designating Canan and Hunter's land as federal lands.

54. On information and belief, Defendants' claim the same surveying method would be applicable to a 116-mile stretch of the Red River through Clay, Wichita and Wilbarger

counties. BLM has published a map generally identifying its claimed territory along the 116-mile stretch of the Red River. *See* Ex. C.

55. In some places, the BLM map and survey place its boundary more than a mile beyond the south gradient boundary as defined by the Supreme Court in 1923.

56. BLM's map and survey likewise places its boundary outside of the flood line as it existed during the May 2015 floods.

57. During the May 2015 floods, the United States Geological Survey (USGS) measured the flow rate of the Red River at 49,800 ft<sup>3</sup> / second—over 820 times higher than its average rate from the previous eight months. At the same time, the USGS measured the depth of the Red River in that area to be 11.88'—nearly three feet above what the National Weather Service considers flood-stage for that part of the river.

58. Nevertheless, the water at that time did not reach the BLM's alleged boundary.

59. In some areas, the boundary that the BLM now claims lies a mile into Texas from the current path of the river and 100 feet up on a high bluff. In many more areas, BLM's "boundary line" lies thousands of feet into Texas from the current Red River riverbank.

60. BLM alleges that the federal government owns up to and possibly exceeding 90,000 acres of Texas land lying outside of the south vegetation line of the Red River.

61. In litigation arising out of a dispute among landowners along the Red River in the early 1970's, the United States declined to participate because it claimed not to own any property outside the riverbed. *Hamill v. Bryant*, 7-CV-586, Vol. 1116 at 20 (N.D. Tex., Mar. 20, 1972).

62. Plaintiffs' properties fall within this disputed area that BLM now claims belongs to the United States.



63. Both Plaintiffs Hunter and Canan have been told by the BLM that establishing their property boundary based upon the current location of the Red River waters to define the gradient boundary “is an incorrect procedure.” Ex. D, Letter to Canan, June 9, 2015; Ex. E, Letter to Hunter, June 23, 2015.

64. BLM has not surveyed most of the land it claims, and it has provided no clear indication of where it believes the boundary to its land lies.

65. On information and belief, Defendants do not intend to survey most of the land they claim to own. During an October 13, 2015, public hearing on BLM’s proposed revisions to its Management Plan, BLM representatives notified attendees that “... we don’t have the funds to survey it. We’re not allowed to survey it right now. Until that happens we can’t get those implementation level decisions that you want answered - until we get whether or not we should or should not do something with it later on.”

66. During the same public meeting, when asked whether or not clarity would be given on boundary issues, the BLM representative answered, “Not on property ownership. The reason is because it’s going to take a lot of money to do that and we don’t want to tie the [Resource Management Plan] process to the Red River because that will break down the processes...”

67. BLM’s vague assertions of ownership have put a cloud upon individual Plaintiffs’ titles, preventing them from disposing of their property, borrowing against their property, or otherwise fully enjoying their property.

68. Due to BLM's failure to delineate the property it claims, Plaintiffs have no reasonable way of knowing where they must comply with BLM's regulations on portions of their property or who is lawfully on land potentially claimed by Defendants.

69. Failure to comply with BLM's regulations could result in criminal and civil penalties.

70. Because of BLM's failure to indicate the location of the land it claims, Plaintiff Counties do not know what amount of land within its jurisdictions is taxable; Plaintiff Sheriff Lemons does not know who is trespassing; and Plaintiff landowners do not know how much land they must pay taxes on.

71. Defendants' interference with Plaintiffs' property rights amounts to an unreasonable seizure of property under the Fourth Amendment to the United States Constitution.

#### **E. BLM INSTIGATES LAWLESSNESS**

72. BLM has caused the kind of "no man's land" situation that the Red River Boundary Compact was enacted to prevent.

73. Plaintiffs and other neighboring property owners have experienced numerous incidents of trespass by the public, on foot as well using ATVs up and down the river.

74. Every weekend on the southern side of the Highway 79 bridge, which stretches between Oklahoma and Texas, hundreds of people crowd onto allegedly federal land to engage in using and producing various illegal drugs, prostitution, and violence.

75. As a result, trenches from ATVs have eaten out portions of the bed and banks of the river, the river is constantly littered with beer cans and other trash, and local law enforcement from Texas and Oklahoma are unable to prevent or control the debauchery.

76. Upon information and belief, BLM's policy and practice is to not manage or provide law enforcement to this "no man's land" created by BLM's unlawful redrawing of the boundaries of the Red River.

77. Upon information and belief, BLM would similarly fail to manage or provide law enforcement to additional property that it intends to claim through its artificial redrawing of the boundaries of the Red River.

78. The cost of this "no man's land" to the counties is significant.

79. The lawless situation created by undefined public land interferes with the Sheriff's law enforcement duties.

80. All of the County Plaintiffs provide law enforcement to protect the health and safety of their citizens. TEX. HEALTH & SAFETY CODE § 121.003, TEX. CODE CRIM. PROC. §§ 14.01, 14.02.

81. Upon information and belief, the cost of providing these services will increase should BLM expand the strip of land it claims to own along the Red River.

82. The County Plaintiffs' ability to carry out their other obligations is also impaired by the fact that Defendants refuse to indicate the location of the land they claim with reasonable specificity. For example, the Counties, amongst other things, determine the value of all property within their jurisdiction for taxation purposes. TEX. TAX CODE § 26.04; institute and enforce burn bans during drought conditions, TEX. LOC. GOV'T CODE § 352.081; regulate archery and hunting, TEX. LOC. GOV'T CODE § 235.041, et seq.; contain and regulate invasive plant species, TEX. AGRIC. CODE § 71.153; and remedy public nuisances, TEX. HEALTH & SAFETY CODE, Ch.

343. Each of these responsibilities is rendered more difficult or impossible, by the fact that the Counties and Sheriff Lemons cannot determine the boundaries of federal land.

#### IV. CLAIMS FOR RELIEF

83. In *State of Okl. v. State of Tex.*, 265 U.S. 493, 496 (1924), the Supreme Court defined the southern bank of the Red River as “the water-washed and relatively permanent elevation or acclivity...along the southerly side of the river.”

84. The northern boundary of Texas, the Court noted, is an imaginary line “along that bank at the mean level attained by the waters of the river when they reach and wash the bank without overflowing it.” *Id.* at 497.

85. BLM’s managed territory is between this southern bank and the medial line of the Red River.

86. By definition, the “bank” is the sliver of land that separates the sandy “[river]bed from the adjacent uplands.” *State of Okl. v. State of Tex.*, 260 U.S. 606, 632 (1923).

87. “On the valley side of the bank is vegetation and on the river side is bare sand.” *Id.* at 634.

88. The vegetation line marks the outermost boundary of the bank.

89. The riverbed includes “all of the area which is kept practically bare of vegetation by the wash of the waters of the river from year to year in their onward course, although parts of it are left dry for months at a time.” *Id.* at 632.

90. The riverbed “neither takes in overflowed land beyond the bank, nor includes swamps or low grounds liable to be overflowed, but reclaimable for meadows or agriculture, or

which, being too low for reclamation, though not always covered with water, may be used for cattle to range upon, as natural or unenclosed pasture.” *Id.* at 629.

91. The uplands are “fairly covered with grasses and other upland growth, and often studded with trees,” despite the fact that they may be “temporarily overflowed in exceptional instances when the river is at flood.” *Id.* at 634, 632.

92. The valley land south of the vegetation line has “always has been dealt with as upland.” *Id.* at 636.

93. In the event of erosion or accretion (small and gradual changes in the riverbank over time), the boundary between the states follows the river.

94. However, in the event that an avulsion occurred, natural or otherwise, the boundary does not follow the avulsive change, but remains fixed in its location prior to the avulsive act.

95. An avulsion represents a sudden departure from the river channel followed by the river cutting a new path across a neck of land and moving land from one side of the river to the other. *Id.* at 640.

96. Due to the soft, sandy bank of the Red River along this 116-mile stretch, no avulsions have occurred since 1925.

97. Courts should presume that movements of the river are caused by regular erosion and accretion. The party asserting that river’s current path was caused by avulsion has the burden of proving its assertion. *State of Okl. v. State of Tex.*, 260 U.S. 606, 638 (1923).

**A. COUNT ONE - Quiet Title for Individual Plaintiffs**

98. Plaintiffs reallege the allegations set forth in the paragraphs above.

99. Pursuant to 28 U.S.C. § 2409a, the United States is subject to a suit to quiet title to real property in which both the Plaintiffs and the United States claim an interest.

100. Defendants claim land on Plaintiffs' properties along the Red River.

101. In particular, the Defendants claim to own all the land between the medial line and the southern "gradient boundary," or boundary-bank of the Red River.

102. Defendants claim that this boundary bank falls a significant distance—in some places over a mile—inland of the vegetation line and the flowing water of the Red River.

103. Defendants also claim that this boundary bank falls outside the outermost edges of the Red River when the river was at flood-stage in May of 2015.

104. Defendants' are incorrect in claiming that the 1923 Supreme Court decision fixed the southern boundary of federal land. As the Red River eroded north, BLM claims that this expanded its territory instead of its territory conforming to the constant meandering of the river.

105. Plaintiffs allege that the method for determining the boundary bank must be in accord with *State of Okl. v. State of Tex.*, 260 U.S. 606 (1923).

106. Plaintiffs also allege that, as a matter of law, the boundary bank may not fall outside the vegetation line unless there has been an avulsive event.

107. Plaintiffs also allege that, as a matter of law, the boundary bank may not fall outside the edge of the river when the river is at flood stage unless there has been an avulsive event.

108. Defendants have not proven that its alleged location of the boundary bank was caused by avulsion.

109. Accordingly, Plaintiffs allege that any United States claim to Plaintiffs' property outside of the vegetation line is invalid and unlawful.

110. Plaintiffs are entitled to an order of this Court quieting title to such lands as described in their individual titles, deeds, tax appraisals and dry land exposed due to accretion.

**B. COUNT TWO - Quiet Title for County Plaintiffs**

111. Plaintiffs reallege the allegations set forth in the paragraphs above.

112. Pursuant to 28 U.S.C. § 2409a, the United States is subject to a suit to quiet title to real property in which both the Plaintiffs and the United States claim an interest.

113. Defendants claim land along the Red River falling within Clay, Wilbarger, and Wichita Counties.

114. In particular, Defendants claim to own all the land between the medial line and the southern "gradient boundary," or boundary-bank of the Red River.

115. Defendants claim that this boundary bank falls a significant distance—in some places over a mile—inland of the vegetation line and the flowing water of the Red River.

116. Defendants also claim that this boundary bank falls outside the outermost edges of the Red River when the river was at flood-stage in May of 2015.

117. Plaintiffs allege that the method for determining the boundary bank must be in accord with *State of Okl. v. State of Tex.*, 260 U.S. 606 (1923).

118. Plaintiffs also allege that, as a matter of law, the boundary bank may not fall outside the vegetation line unless there has been an avulsive event.

119. Plaintiffs also allege that, as a matter of law, the boundary bank may not fall outside the edge of the river when the river is at flood stage unless there has been an avulsive event.

120. Defendants have not proven that its alleged location of the boundary bank was caused by avulsion.

121. Accordingly, Plaintiffs allege that any United States claim to Plaintiffs' property south of the vegetation line is invalid and unlawful.

122. Plaintiffs have an interest in the disputed property because, as Counties, Plaintiffs collect property tax on the disputed land and provide health, safety and welfare services to residents residing on said properties.

123. Moreover, the Counties have an interest in the disputed property because they "might potentially affect the property rights of [their residents] through successfully litigating their claims." *Alaska v. Babbitt*, 38 F.3d 1068, 1074 (9th Cir.1994); *Shawnee Trail Conservancy v. U.S. Dept. of Agric.*, 222 F.3d 383, 388 (7th Cir. 2000).

124. Plaintiffs are thus entitled to an order of this Court quieting title to all private property along the Red River in Wichita, Wilbarger and Clay Counties.

**C. COUNT THREE – Declaratory Judgment to Determine Property Boundaries, *in the alternative to Counts One and Two***

125. Plaintiffs reallege the allegations set forth in the paragraphs above.

126. An actual controversy exists between the Plaintiffs and Defendants arising out of the assertion of ownership and jurisdiction over property they refuse to delineate with reasonable specificity.



127. Plaintiffs seek declaratory judgment that the method for determining the boundary bank must be in accord with *State of Okl. v. State of Tex.*, 260 U.S. 606 (1923).

128. Plaintiffs also seek declaratory judgment that, as a matter of law, the boundary bank may not fall outside the vegetation line unless there has been an avulsive event.

129. Plaintiffs also seek declaratory judgment that, as a matter of law, the boundary bank may not fall outside the edge of the river when the river is at flood stage unless there has been an avulsive event.

130. Plaintiffs seek declaratory judgment that any United States claim to Plaintiffs' property outside of the vegetation line is invalid and unlawful.

131. Plaintiffs are entitled to an order of this Court quieting title to such lands as described in their individual titles, deeds, tax appraisals and dry land exposed due to accretion.

**D. COUNT FOUR – Declaratory Judgment for Plaintiff Clay County Sheriff Lemons**

132. Plaintiffs reallege the allegations set forth in the paragraphs above.

133. An actual controversy exists between the Plaintiffs and Defendants arising out of the assertion of ownership and jurisdiction over property they refuse to delineate with reasonable specificity.

134. Plaintiff Sheriff Lemons is unable to fully perform his law enforcement duties due to the ambiguity of the boundaries of the property claimed by Defendants. Many offenses turn on determination of private property ownership and boundaries, including, for example TEX. PEN. CODE § 30.05 (criminal trespass), TEX. PARKS & WILD. CODE § 61.022 (killing a white-tailed deer on private property without the landowner's consent).

135. Plaintiff Sheriff Lemons is unable to fully perform his law enforcement duties without subjecting himself to potential criminal penalties for removing people from allegedly federal public lands.

136. Plaintiff Sheriff Lemons seeks declaratory judgment that, as a matter of law, the boundary bank may not fall outside the vegetation line unless there has been an avulsive event.

137. Sheriff Lemons seeks declaratory judgment that, as a matter of law, the boundary bank must fall well within the point at which the water reaches when the river is at flood stage unless there has been an avulsive event.

138. Sheriff Lemons seeks declaratory judgment that any United States claim to Plaintiffs' property outside of the vegetation line is invalid and unlawful.

**E. COUNT FIVE - Declaratory Judgment for Violations of Due Process Clause of the Fifth Amendment to the United States Constitution**

139. Plaintiffs reallege the allegations set forth in the paragraphs above.

140. An actual controversy exists between the Plaintiffs and Defendants arising out of the assertion of ownership and jurisdiction over property they refuse to delineate with reasonable specificity.

141. BLM agents have contacted Plaintiffs and other property owners along the Red River and notified them of BLM's claimed ownership to an undefined portion of their land beyond the vegetation line.

142. BLM has published maps and land management plans asserting ownership and jurisdiction of a broad but undefined stretch of land beyond the vegetation line.

143. Defendants have refused to provide Plaintiffs with specific information about the boundary of their claimed public lands despite many requests for clarification from Plaintiffs.

144. Defendants' failure to delineate the lands they claim to own with reasonable specificity violates the Fifth Amendment's guarantee that citizens "receive fair notice of the conduct that will subject him to punishment" sufficient to "allow [them] to order their behavior." *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003).

145. Plaintiffs are currently being injured by Defendants' failure to delineate the lands they claim to own with reasonable specificity. For example, Plaintiff landowners are not able to dispose of, borrow against, or improve their land as a result of Defendants' assertion of ownership. Plaintiff landowners are also not able to exclude others from portions of their properties to which BLM potentially claims ownership.

146. Plaintiff Sheriff Lemons is unable to fully perform his law enforcement duties without subjecting himself to potential criminal penalties for removing people from allegedly federal public lands.

**F. COUNT SIX – Declaratory Judgment for Unreasonable Seizure of Property Under the Fourth Amendment to the United States Constitution**

147. Plaintiffs reallege the allegations set forth in the paragraphs above.

148. An actual controversy exists between the Plaintiffs and Defendants arising out of the Defendants' unreasonable seizure of Plaintiffs' property.

149. Under the Fourth Amendment to the Constitution, Plaintiffs have a right to be free of unreasonable seizure of their property.

150. Defendants' seizure violates the Fourth Amendment because it is "(a) a meaningful interference with [Plaintiffs'] possessory interests in [their] property, which is (b) unreasonable because the interference is unjustified by...law or, if justified, then uncompensated." *Severance v. Patterson*, 566 F.3d 490, 503–04 (5th Cir.2009).

151. Plaintiffs' property, and right to exclude others from that property, is protected from unreasonable seizures by the Fourth Amendment. A public invasion of private property sponsored by government officials is a seizure for purposes of the Fourth Amendment.

152. Defendants' unreasonable assertion of ownership of Plaintiffs' property is interfering with Plaintiffs' exercise of property rights, including their possessory rights such as excluding the public from their property, improving the property, and using the property as collateral or disposing of it.

153. There is a justiciable controversy as to whether Defendants may unreasonably seize Plaintiffs' property.

154. A declaratory relief judgment as to whether Defendants may unreasonably seize Plaintiffs' property will serve a useful purpose in clarifying and settling the legal relations between Plaintiffs and Defendants.

155. A declaratory relief judgment as to whether Defendants may unreasonably seize Plaintiffs' property will terminate and afford relief from the uncertainty and insecurity which gives rise to this controversy.

## V. CONCLUSION AND PRAYER FOR RELIEF

THEREFORE, Plaintiffs requests relief against the Defendants as follows:

1. On the First Count –
  - a. An order quieting Defendants' title in and to the Individual Plaintiffs' Properties as pleaded herein;
  - b. A declaration that the surveys published at 74 FED. REG. 28061-62 are invalid as they do not follow the methodology for determining the boundary bank as described in *State of Okl. v. State of Tex.*, 260 U.S. 606 (1923);
  - c. A judgment that, absent demonstrated proof of an avulsion, Defendants have no right, title or interest in individual Plaintiffs' Properties outside of the vegetation line of the south bank of the Red River.
2. On the Second, Third, and Fourth Counts –
  - a. An order quieting Defendants' title in and to all land along the Red River in Wilbarger, Wichita, and Clay Counties outside of the vegetation line of the South Bank of the Red River;
  - b. A declaration that the surveys published at 74 FED. REG. 28061-62 are invalid as they do not follow the methodology for determining the boundary bank as described in *State of Okl. v. State of Tex.*, 260 U.S. 606 (1923);
  - c. A judgment that, absent demonstrated proof of an avulsion, Defendants have no right, title or interest in land along the Red River in Wilbarger, Wichita and Clay Counties, outside of the vegetation line of the south bank of the Red River.

3. On the Fifth Count –
  - a. A declaration that the Defendants violate the Fifth Amendment to the Constitution by asserting ownership and federal jurisdiction over land without delineating the boundaries of that land with a reasonable degree of specificity;
  - b. An order permanently enjoining Defendants from enforcing BLM regulations on lands they have not delineated with a reasonable degree of specificity;
  - c. An order permanently enjoining Defendants from implementing any land use plans on lands they have not delineated with a reasonable degree of specificity.
4. On the Sixth Count –
  - a. A declaration that the Defendants violate the Fourth Amendment to the Constitution by unreasonably asserting ownership of Plaintiffs' property;
  - b. A declaration that Defendants have unreasonably seized Plaintiffs' land and right to exclude others by claiming that the land is public;
  - c. An order permanently enjoining Defendants from seizing Plaintiffs' property.
5. An order awarding costs, fees and attorney's fees to the extent permitted by law;  
and
6. An order granting any such further and other relief as may be appropriate.

Respectfully Submitted,



---

ROBERT HENNEKE  
Texas Bar No. 24046058

[rhenneke@texaspolicy.com](mailto:rhenneke@texaspolicy.com)

JOEL STONEDALE (pro hac vice  
admission pending)

Texas Bar No. 24079406

[jstonedale@texaspolicy.com](mailto:jstonedale@texaspolicy.com)

LEIGH THOMPSON (pro hac vice  
admission pending)

Texas Bar No. 24093255

[lthompson@texaspolicy.com](mailto:lthompson@texaspolicy.com)

CHANCE WELDON (pro hac vice  
admission pending)

Texas Bar No. 24076767

[cweldon@texaspolicy.com](mailto:cweldon@texaspolicy.com)

Texas Public Policy Foundation

Center for the American Future

901 Congress Avenue

Austin, TX 78701

PHONE: (512) 472-2700

FAX: (512) 472-2728

*Attorneys for Plaintiffs*