

**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.

AMENDED COMPLAINT

TO THE HONORABLE REED O'CONNOR:

Plaintiffs respectfully file this Amended Complaint¹ challenging the unconstitutional and arbitrary seizure of thousands of acres of private property along the Red River in Texas.

1. Plaintiffs are individual property owners, their respective county governments, and the Clay County Sheriff that collectively sue the federal government in opposition to the Bureau of Land Management's (BLM) claim that the individual Plaintiffs' and other private property within Texas along the Red River is federal land.

¹ This Amended Complaint is filed as a matter of course under Fed. R. Civ. P. 15(a)(1)(B).

2. 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.” *Oklahoma v. Texas*, 260 U.S. 606, 634 (1923).

3. 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, infringed upon the sovereignty of the local county governments, and interfered with law enforcement’s ability to discharge its duties arising under Texas law.

I. PARTIES

A. TEXAS INDIVIDUAL PLAINTIFFS

4. Kenneth Aderholt is a citizen of Wilbarger County, Texas. He owns in fee simple title to, and has statutory duties regarding, approximately 700 acres within Wilbarger and Wichita Counties, Texas along the Red River. He acquired title to this property in the manner described in the deeds attached as Exhibits A1-4, which are incorporated by reference and adopted herein. 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. *See* Aderholt Certified Deeds attached as Exhibits A1-4.

5. The legal description for Plaintiff Aderholt’s property is as follows:

- a. SEC 36 NORTH 1/2 80AC, WAGGONER COLONY SUBDIVISION, 6781 FM RD 1763 NORTH, Vernon I-18-C TX 76384;
- b. SEC 22 37 AC, WAGGONER COLONY SUBDIVISION, EAST OF 6901 CR 121 NORTH, PRIVATE ROAD, 6901 CR 121 North, Vernon I-18-C TX 76384;

- c. SEC 35 LESS 7 AC OUT OF NE, CORNER WAGGONER COLONY SUB, 16230 FM RD 370 EAST, Vernon, Texas 76384;
- d. SEC 62 88AC, WAGGONER COLONY SUBDIVISION, 18183 CR 126 EAST, Vernon, Texas, H-18-D, 76384;
- e. 100 ACS BLK 238 WAGGONER COLONY AND 213 ACS ACCRETED LAND, 0 Flippin Road, Old Town Elec;
- f. SEC 63 WAGGONER COLONY SUBD, 9940 CR 123 NORTH, VERNON H-18-D TX 76384;
- g. SEC 47 AND 48 WAGGONER COLONY SUBD, 10016 CR 123 NORTH, Vernon, Texas H-18-D, 76384.

6. Patrick Canan is a citizen of Clay County, Texas. He owns in fee simple title to, and has statutory duties regarding, approximately 2,000 acres within Wichita and Clay Counties, Texas along the Red River. He acquired title to this property in the manner described in the deeds attached as Exhibits B1-2, which are incorporated by reference and adopted herein. 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. *See* Canan Certified Deeds attached as Exhibits B1-2.

7. The legal description for Plaintiff Canan's property is as follows:

- a. BLK 25-A SPECHT/MCCUTCHEN SUB, 462 Ratt Road, Wichita Falls, Texas 76305;
- b. BLK 37-B SPECHT/MCCUTCHEN SUB;
- c. BLK 38 SPECHT/MCCUTCHEN, 1024 Musgraves Road, Wichita Falls, Texas;
- d. 39-B SPECHT/MCCUTCHEN SUB.

8. Kevin Hunter is a citizen of Wichita County, Texas. He owns in fee simple title to, and has statutory duties regarding, approximately 510 acres within Wichita County, Texas, along the Red River. He acquired title to this property in the manner described in the deed attached as Exhibit C, which is incorporated by reference and adopted herein. 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. *See* Hunter Certified Deed attached as Exhibit C.

9. The legal description for Plaintiff Hunter's property is as follows:

- a. 139.76 AC ABST 21 BRYANT BROWN, BURK ABST-EAST, 3361 FM 1177 RD;
- b. 200.04 AC ABST 560 J JOHNSON, BURK ABST-EAST, 0 KENNEDY RD;
- c. 12.26 AC ABST 21 B BROWN, BURK ABST-EAST, 3363 FM 1177 RD;
- d. 157.63 ACS ABST 21 BRYANT BROWN, BURK ABST-EAST, KENNEDY RD.

10. Ronald Jackson is a citizen of Clay County, Texas. He owns in fee simple title to, and has statutory duties regarding, approximately 1,138 acres within Clay County, Texas, along the Red River. He acquired title to this property in the manner described in the deeds attached as Exhibits D1-2, which are incorporated by reference and adopted herein. He has owned the property for 11 years and uses it to farm and ranch. BLM claims an unknown amount of Mr. Jackson's property as federal land. *See* Jackson Certified Deeds attached as Exhibits D1-2.

11. The legal description for Plaintiff Jackson's property is as follows:

- a. SPECHT AND MCCUTCHEON, BLK 8, 2245 Wolf Road, Wichita Falls, Texas 76305;
- b. SPECHT AND MCCUTCHEON BLK 8, ZIMMER HOMES NO. 480143TUR219716, 2501 Wolf Road, Wichita Falls, Texas 76305.

12. William Lalk is a citizen of Wichita County, Texas. He owns fee simple title to, and has statutory duties regarding, approximately 196 acres within Wichita County, Texas. He acquired title to this property in the manner described in the deeds attached as Exhibits E1-2, which are incorporated by reference and adopted herein. Mr. Lalk purchased the property in 1979. BLM claims an unknown amount of Mr. Lalk's property as federal land. *See* Lalk Certified Deeds attached as Exhibits E1-2.

13. The legal description for Plaintiff Lalk's property is as follows:

- a. 146.4 AC ABST 37, 0 MARSHALL LOOP, ORIGINAL TOWN ELEC;
- b. 50.00 ACS ABST 321, 0 N MARSHALL LOOP, ORIGINAL TOWN ELEC.

14. Kenneth and Barbara Patton are citizens of Wilbarger County, Texas. They own fee simple title to, and have statutory duties regarding, approximately 1,308 acres within Wichita County, Texas, along the Red River. They acquired title to this property in the manner described in the deed attached as Exhibit F, which is incorporated by reference and adopted herein. 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. *See* Patton Certified Deed attached as Exhibit F.

15. The legal description for Plaintiffs Kenneth and Barbara Patton's property is as follows:

- a. 288.06 AC ABST 791, ORIGINAL TOWN ELEC, 0 N MARSHALL LOOP;
- b. 1020.38 AC ABST 791 ACCRETED ACRES, ORIGINAL TOWN ELEC, 0 FLIPPIN RD.

16. Jimmy Smith is a citizen of Wichita County, Texas. He owns fee simple title to, and has statutory duties regarding, approximately 150 acres within Wichita County, Texas, along the Red River. He acquired title to this property in the manner described in the deeds attached as Exhibits G1-2, which are incorporated by reference and adopted herein. 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. *See* Smith Certified Deeds attached as Exhibits G1-2.

17. The legal description for Plaintiff's property is as follows:

- a. 24.29 ACS BLK 102 RRVL, NON A1 E1, N RED RIVER EXPY;
- b. 13.75 AC BLK 102 RRVL, BURK ABST-WEST, 1525 E 3RD ST;
- c. 98.48 ACS BLKS 101, 102, & 103 RRVL, NON A1 E1, 0 HWY 277.

B. TEXAS COUNTY LOCAL GOVERNMENT PLAINTIFFS

18. 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 CODE. A majority vote of the Wichita County Commissioners Court seated on November 12, 2015, approved its participation as a party in this lawsuit.

19. 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 CODE. A majority vote of the Clay County Commissioners Court seated on November 9, 2015, approved its participation as a party in this lawsuit.

20. 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 CODE. 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

21. 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.

22. Defendants' failure to delineate their property with reasonable specificity prevents him from being able to discern what land Defendants claim, which interferes with the Sheriff's ability to discharge his law enforcement duties. 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.

23. 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

24. 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 has been served and made appearance in this matter.

25. 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 has been served and made appearance in this matter.

26. 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 has been served and made appearance in this matter.

27. 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 has been served and made appearance in this matter.

28. 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 has been served and made appearance in this matter.

II. JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction under 28 U.S.C. § 2409a (quiet title); 28 U.S.C. § 1346(f) (quiet title); 28 U.S.C. § 1361 (mandamus); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1346(a)(2) (civil action against the United States); 28 U.S.C. § 2201 (authorizing declaratory relief); 28 U.S.C. § 2202 (authorizing injunctive relief); 5 U.S.C. §§ 702 and 706 (providing for judicial review of agency action); United States Constitution, Amendment IV; and United States Constitution, Amendment V.

30. 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

31. 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.²

32. 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").

33. 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.*; *Oklahoma v. Texas*, 260 U.S. 606, 623 (1923).

34. In 1922, Oklahoma sued Texas claiming that, per its admittance into the union, Oklahoma owned the entirety of the Red River riverbed. *Oklahoma v. Texas*, 258 U.S. 574, 583,

² 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.

588 (1922).

35. 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.

36. 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.³ *Id.* at 591.

B. THE 1923 SUPREME COURT DECISION

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

38. Oklahoma and the United States contended that the southern bank and boundary “[were] at the foot of a range of hills or bluffs which fringes the south side of the valley through which the river runs, while Texas insist[ed] that they [were] ‘at the low-water mark’ on that side of the river[.]” The Court considered this dispute to be the principal issue. *Id.* at 625.

³ Through an 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 tribes. *Oklahoma v. Texas*, 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. *Oklahoma v. Texas*, 258 U.S. at 594.

39. The Court determined that Treaty intended the bank to be the “water-washed and *relatively permanent* elevation or acclivity at the outer line of the river bed which separates the bed from the adjacent upland[.] *Id.* at 631-32 (emphasis added).

40. The Court further 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.

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

42. The Court determined that the bed was “all of the area which is kept practically bare of vegetation by the wash of waters of the river from year to year in their onward course[.]” *Id.* at 632.

43. The Court specifically excluded lateral valleys, which have the characteristics of relatively fast land and are usually covered in upland grasses and vegetation, from their description of bed and bank, even though they may be “temporarily overflowed in exceptional instances when the river is at flood.” *Id.*

44. The Court noted that “valley land always has been dealt with as upland.” And further, that “the United States had surveyed and disposed of valley lands on the north, and that Texas had “surveyed and disposed of that on the south side under her land laws.... Patents were issued for practically all the land. Individuals freely sought and dealt with it as upland.” *Id.* at 633.

45. The Court noted that much of the valley land lying south of the gradient boundary had been disposed of by Texas 50 to 70 years prior, and in that long period, “there was never any suggestion that this valley land was part of the river bed, nor that the shifting elevations of said

within the sand bed were the river's banks, nor that the land on the south side belonged to the United States." *Id.* at 635-36.

46. In holding that the boundary is the south bank of the Red River, the Court did not find that the bank was a fixed point, but rather a boundary line subject to the right application of the doctrines of erosion and accretion and of avulsion to any intervening changes. *Id.* at 636.

47. Quoting *Arkansas v. Tennessee*, the Court found that "when the bed and channel [of rivers] are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream[.]" *Id.* (quoting, 246 U.S. 158, 173).

48. Following the 1923 decision, the Court issued the following order:

"It is ordered and decreed: 1. The boundary between the states of Oklahoma and Texas, ... is part of the international boundary established by the treaty of 1819 between the United States and Spain, and is on and along the south bank of that river (Red River) as the same existed in 1821, when the treaty became effective, save as hereinafter stated. 2. Where intervening changes in that bank have occurred through the natural and gradual processes know as erosion and accretion the boundary has followed the change; but where the stream has left its former channel and made for itself a new one through adjacent upland by the process known as avulsion the boundary has not followed the change, but has remained on and along what was the south bank before the change occurred....4. The rules stated in the last two paragraphs *will be equally applicable to such changes as may occur in the future.*" (emphasis added).

The partial decree in *Oklahoma v. Texas*, 261 U.S. 340, 341, 43 S. Ct. 376 (1923).

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

b. Ownership of southern strip of riverbed between the medial line and 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.

50. 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.

51. 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.

52. 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.

53. 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

54. 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.

55. 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.

56. 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.

57. 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, 76th Leg., Reg. Sess. (Tex. 1999); S.B. 175, 47th Leg., 1st Spec. Sess. (Okla. 1999); Red River Boundary Compact of 2000, Pub. L. No. 106-288, 114 Stat. 919, [hereinafter “Red River Compact”].

58. The Compact explicitly granted Texas sovereignty over all lands south of the southern vegetation line. *See* Red River Compact.

59. 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.*

60. As of the date of ratification of the Compact, Defendants had never asserted any claim, right, or title to individual Plaintiffs' properties nor had Defendants ever asserted any claim, right, or title to property within Wilbarger, Wichita, and Clay Counties, except as had been previously been recorded or specifically judicially determined.

D. BLM CLAIMS TITLE TO TEXAS PROPERTY

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

62. In 2007, BLM representatives contacted Canan regarding permission to enter upon his property, which he granted. Without his knowledge, 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* Exhibit I.

63. Entering through Canan's land, without Hunter's knowledge, 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* Exhibit I.

64. BLM surveyed Smith's property sometime in 2008 and affixed survey markers. One of these markers – approximately a three quarters of a mile away from the Red River – designates a boundary line of Texas as part of its identification of BLM claimed public lands within Smith's property.



According to BLM's survey, approximately 100 of Smith's 140 acres belongs to the federal government. *See* Exhibit J.

65. In 2009 and 2010, the Bureau of Land Management published into the Federal Register updated surveys covering small portions of the Red River through Clay and Wichita, counties. *See, e.g.*, 74 FED. REG. 28061-62; 75 FED. REG. 8738-39. These surveys show the area within Canan, Hunter, and Smith's property where BLM placed survey markers, designating Canan, Hunter, and Smith's land as federal lands.

66. The markers state that they are unlawful to remove.

67. On information and belief, Defendants claim the same surveying method applies to the 116-mile stretch of the Red River within Clay, Wichita and Wilbarger counties. BLM has published a map identifying its claimed territory along the 116-mile stretch of the Red River. *See* Exhibit K.

68. At a minimum, BLM's published maps establish that Defendants claim territory inside of Texas from the southern vegetation line, the Compact boundary, which overlaps onto individual Plaintiffs' properties that abut the vegetation line.

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

70. BLM's maps and surveys likewise place its boundary outside of the flood line as it existed during the May 2015 floods. This is necessarily error as the Supreme 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.***" *Oklahoma v. Texas*, 260 U.S. at 636 (emphasis added). The May 2015 flood waters came nowhere near BLM's map and survey boundaries.

71. During the May 2015 floods, the United States Geological Survey (USGS) measured the flow rate of the Red River at 49,800 ft³ / 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.

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

73. 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.

74. 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 and boundary bank of the Red River.

75. 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).

76. Plaintiffs' properties fall within this disputed area that BLM previously disclaimed but now claims belongs to the United States.

77. 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.” Exhibit L, Letter to Canan, June 9, 2015; Exhibit M, Letter to Hunter, June 23, 2015.

78. BLM has not surveyed most of the land it claims.

79. 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.”

80. 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...”

81. The Federal Land Policy and Management Act (FLPMA) of 1976, which governs BLM’s policies and procedures, requires the development and maintenance of land use plans. The Secretary of the Interior is instructed to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the *public lands*.” 43 U.S.C § 1712 (a) (emphasis added).

82. Under FLPMA, public lands are, “any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management[.]” 43 U.S.C. § 1702(e).

83. Development of land use plans, like the Resource Management Plan the BLM is currently developing for the disputed area, are exactly what the FLPMA contemplates under its mandatory instruction to the Secretary of the Interior. 43 U.S.C. § 1712.

84. BLM's initiation of the Resource Management Planning process and the related published maps of the disputed area demonstrate that the federal government asserts ownership over the disputed land is public, federal land.

85. In invited testimony before the House Natural Resources Committee, Steve Ellis, Director of the BLM, was asked to describe the federal ownership claims. His response is as follows:

Back when the Louisiana Purchase, this land became public domain, then, I believe it was in, back in 1867 the Kiowa, Comanche, and Apache reservation was established, and the southern boundary of that was set at the medial line of the river, which is essentially the centerline of the river. Everything then south of there to what was referred to as a gradient line is now public domain, and this approximate acreage, our staff tells me, based on their soil surveys, is approximately 30,000 acres. So this is the area the BLM is now looking at as part of the land use planning project. As part of the Resource Management Planning process, is that piece of ground that is essentially along this 116-mile stretch from the 98th meridian on the east to the North fork of the Red River west.

Red River Private Property Protection Act: Hearing on H.R. 4979 Before the H. Subcomm. on Pub. Lands and Env't Reg., 113th Congress. (Hearing, July 29, 2014) (statement of Steven Ellis, Director of BLM, Panel II). Available at: <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=388599>; Accessed: 2/2/16. [hereinafter Hearing on H.R. 4979].

86. BLM's commencement of the Resource Management Planning process encompassing individual Plaintiffs' properties and land within Clay, Wichita, and Wilbarger counties demonstrates federal assertion of title, ownership and control over Plaintiffs' lands as public and has put a cloud upon individual Plaintiffs' titles, preventing them from disposing of their property, borrowing against their property, or otherwise fully enjoying their property.

87. BLM's threat to Plaintiffs' property is not hypothetical. BLM's established survey practice of taking soil samples and conducting dependent resurveys and all activities concerning and surrounding Plaintiffs' property while developing BLM's Resource Management Plan "demonstrate a realistic danger of sustaining a direct injury from its application." *Ziegler v. Ziegler*, 632 F.2d 535, 538 (5th Cir. 1980) (citing *O'Shea v. Littleton*, 414 U.S. 488, 494, (1974)).

88. The federal government, through the BLM, has taken concrete and definite actions designed to strip Plaintiffs of their private property. For Sheriff Lemons, County Plaintiffs, and Individual Plaintiffs, the Supreme Court has held, "One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough." *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923).

89. 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 claimed by Defendants.

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

91. Because of BLM's failure to indicate with specificity 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.

E. BLM'S METHODS OF DETERMINING THE GRADIENT BOUNDARY ARE CONTRARY TO THE SUPREME COURT'S MANDATE

92. The surveys conducted by BLM on Plaintiff Canan, Hunter, and Smith's property sought to locate the historical boundary bank. That is demonstrated by notes accompanying the

surveys, “... and the adjusted 1875 left bank meanders of a portion of the Red River, designed to restore the corners in their true original locations[.]” *See* Exhibit N.

93. The process of locating original marker locations, as performed by the BLM, is contrary to the Supreme Court 1923 opinion, which describes a dynamic and moving boundary that would not only differ from year to year, but day to day.

94. Testimony given by Steve Ellis, Deputy Director of BLM, in front of the House Natural Resources Subcommittee shows that BLM is not following the instructions of the 1923 decision. As part of his response describing the federal ownership claim in the disputed area, Ellis stated that “this approximate acreage, based on what staff tells me, based on their *soil surveys*, is approximately 30,000 acres.” Hearing on H.R. 4979 (emphasis added).

95. Nowhere in the 1923 Supreme Court decision does the Court instruct soil samples be taken in order to locate the gradient boundary. Furthermore, the results achieved place the boundary bank over a mile from its current location. No method designed to be in accord with the 1923 decision could reach such a result.

96. Even if BLM were to conduct more surveys along the disputed stretch, their established methodology is fundamentally flawed in that it is not the gradient boundary survey method instructed by the Supreme Court.

97. BLM’s proposed definition of river bank would result in tributaries existing within the river.

F. H.R. 2130: RED RIVER PRIVATE PROPERTY PROTECTION ACT

98. In April of 2015, U.S. Congressman Mac Thornberry submitted H.R. 2130 before the United States House of Representatives as a means of resolving the dispute between the federal government and Texas landowners. H.R. 2130, 114th Cong. (2015).

99. Generally, the Red River Private Property Protection Act seeks to invalidate prior

BLM surveys that identify the “South Bank boundary line in the affected area,” and for the Secretary to disclaim “any right, title, and interest to the land located south” of the same. *Id.* § 2.

100. The proposed Act specifically states that interests in lands lying north of the south bank boundary line would not be modified. *Id.* § 8.

101. Additionally, Rep. Thornberry’s Act instructs that the entire 116-mile stretch be surveyed in accordance with the “gradient boundary survey method” used in *Oklahoma v. Texas*, 261 U.S. 340 (1923) and which recognizes that the boundary between Oklahoma and Texas along the Red River changes due to erosion and accretion. *Id.* § 9.

102. Though this Act has passed through the House, dissent has stated, “If Texas wants to challenge BLM’s survey methods and interpretation of the law, it should do so in the courts, not Congress.” *Id.* (dissenting view).

103. The Executive Office of the President threatened to veto this legislative proposal due to the executive branch’s view that the result would be to “transfer [of] lands out of *Federal ownership* without ensuring a fair return to the taxpayer.” Statement of Admin. Policy, Exec. Office of the President H.R. 2130 - Red River Private Property Protection Act (Dec. 8, 2015), https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr2130h_20151208.pdf. (emphasis added).

G. BLM INSTIGATES LAWLESSNESS

104. BLM has caused the kind of “no man’s land” situation that the Red River Boundary Compact was enacted to prevent.

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.

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

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

112. 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.

113. 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.

114. 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.

115. 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 and private property.

IV. CLAIMS FOR RELIEF

116. In *Oklahoma v. Texas*, 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.”

117. 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.

118. The United States has title to the portion of the sandy riverbed between the southern bank and the medial line of the Red River.

119. The Court in 1923 established the methodology by which to measure the gradient boundary but did not fix the southern gradient boundary.

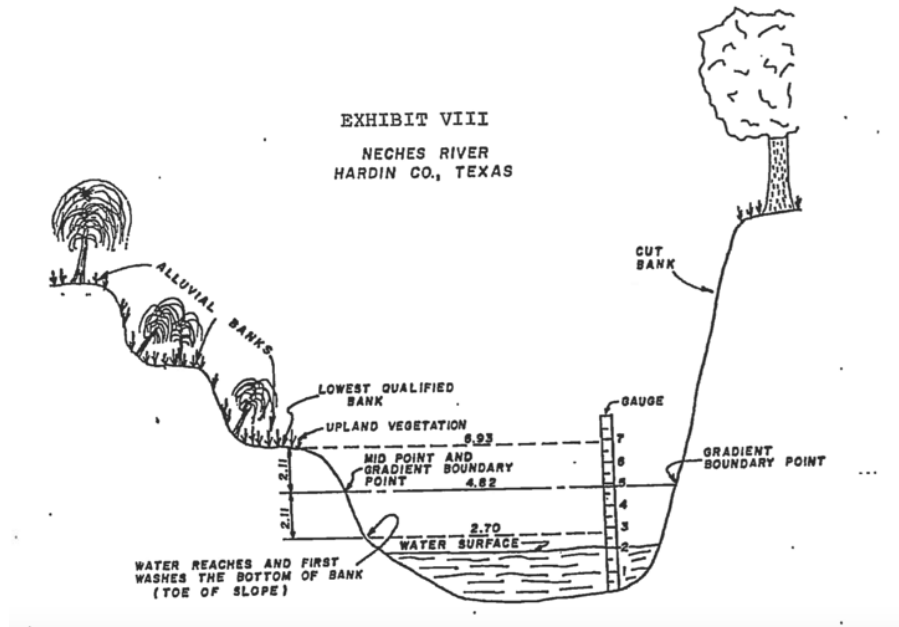
120. As a result of the 1923 case, the Court found the gradient boundary to be a dynamic boundary subject to the application of erosion, accretion, and avulsion.

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

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

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

124. Conceptually, the relationship between the riverbed, gradient boundary, and upland vegetation line can be depicted by the following diagram of a river's cross section:



125. 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.” 260 U.S. at 632.

126. 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.

127. 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.

⁴ Darrell D. Shine, *Why Not the Gradient Boundary for All States?*: Gradient Boundary Drawing of Neches River, 10, in Darrell D. Shine’s Guide to [Mostly] Texas Surveying, (William B. Bernsen Comp. 2008) http://www.abslandtx.com/archives/DDS_Guide_to_mostly_Texas_Surveying.pdf. accessed 2.5.16.

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

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

130. Courts should presume that movements of the river are caused by regular erosion and accretion. *Oklahoma v. Texas*, 260 U.S. 606, 638 (1923).

A. COUNT ONE - Quiet Title for Individual Plaintiffs Canan, Hunter, and Smith

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

132. 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.

133. Defendants claim land on Plaintiffs’ properties along the Red River.

134. 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. However, they have claimed land far beyond the boundary bank.

135. Defendants have hammered permanent survey markers in Plaintiffs’ land claiming to show the boundary of federal property.

136. Consistent with these survey markers, Defendants entered a survey into the federal register in 2009 claiming to own significant portions of Plaintiffs’ land.

137. Defendants survey and survey markers show that Defendants claim that the 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.

138. 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.

139. Plaintiff Canan had a survey conducted to determine the current location of the gradient boundary. That survey was conducted by Texas registered professional land surveyor, Dennis Probst of Corlett, Probst, and Boyd, P.L.L.C. and is attached as Exhibit O.

140. The boundary established by the survey commissioned by Canan shows the gradient boundary to be more than a mile north of where BLM claims the boundary is located.

141. Plaintiffs Hunter and Canan submitted this survey as evidence of the boundary's location to BLM.

142. BLM denies the accuracy of Canan's survey and the methods his surveyor used to establish the gradient boundary.

143. In particular, Defendants claim that the gradient boundary may not be established by starting at the running water of the river.

144. From BLM's maps, it appears that BLM determined the gradient boundary by relying on surveys conducted in 1875 or the 1920's, or by merely following the high bluff bank.

145. The boundary identified by BLM's survey on Canan's property appears to apply a method assuming that the 1923 Supreme Court decision fixed the southern boundary of federal land.

146. Defendants are incorrect that, as the Red River eroded north, U.S. territory was expanded instead of its territory conforming to the constant meandering of the river.

147. Plaintiffs allege that the method for determining the boundary bank must be in accord with *Oklahoma v. Texas*, 260 U.S. 606 (1923).

148. Plaintiffs allege that in order to complete a gradient boundary survey along the Red River that is in accordance with the methodology established by the Court in *Oklahoma v. Texas*, 260 U.S. 606 (1923), surveyors must identify the current boundary then existing, as of the date of survey, rather than assuming a static boundary and attempting to locate any markers from

previous surveys.

149. 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.

150. 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.

151. Defendants have not proven that its alleged location of the boundary bank was caused by avulsion, as is required by the method laid out by the Supreme Court.

152. Accordingly, Plaintiffs allege that any United States claim to Plaintiffs' property within Texas from the southern vegetation line necessarily falls outside the boundary bank and is therefore invalid and unlawful.

153. 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 Unsurveyed Individual Plaintiffs

154. Unsurveyed Plaintiffs reallege the allegations set forth in the paragraphs above.

155. 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 unsurveyed Plaintiffs and the United States claim an interest.

156. Defendants claim land on unsurveyed Plaintiffs' properties south of the vegetation line and the boundary bank along the Red River.

157. 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.

158. Defendants' survey and survey markers located on Plaintiffs Canan and Hunter's land show that Defendants claim that the 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.

159. Further, Defendants' survey markers and surveys along the Red River, including those published at 74 FED. REG. 28061-62 and 75 FED. REG. 8738-39, demonstrate that Defendants are using an unlawful survey method. Whatever methods used by Defendants, their results could not possibly have been achieved following the method laid out in *Oklahoma v. Texas*, 260 U.S. 606 (1923). Therefore, there is dispute between unsurveyed Plaintiffs and Defendants as to the applicable method of determining the boundaries of their land.

160. 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.

161. Defendants have used surveys and survey markers located on Plaintiff Canan and Hunter's land to create maps showing Defendants' ownership of unsurveyed Plaintiffs' property lying south of the vegetation line and boundary bank.

162. At a minimum, Defendants' published maps demonstrate Defendants' claim of ownership over unsurveyed Plaintiffs' land south of the vegetation line and the boundary bank along the Red River.

163. As described above, Defendants have initiated a Resource Management Plan based on federal assertion of title, control, or ownership, designating significant portions of unsurveyed Plaintiffs' property south of the vegetation line and boundary bank as public land.

164. As described above, the executive branch has issued a veto threat to H.R. 2130 because it claims the land south of the boundary bank to be publicly owned land.

165. Defendants are incorrect in claiming that the 1923 Supreme Court decision fixed the southern boundary of federal land.

166. Defendants are incorrect that as the Red River eroded north, U.S. territory expanded instead of its territory conforming to the constant meandering of the river.

167. Unsurveyed Plaintiffs allege that the method for determining the boundary bank must be in accord with *Oklahoma v. Texas*, 260 U.S. 606 (1923).

168. Unsurveyed Plaintiffs allege that in order to complete a gradient boundary survey along the Red River that is in accordance with the methodology established by the Court in *Oklahoma v. Texas*, 260 U.S. 606 (1923) surveyors must identify the boundary then existing, as of the date of survey, rather than assuming a static boundary and attempting to locate any markers from previous surveys.

169. Unsurveyed 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.

170. Unsurveyed 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.

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

172. Accordingly, unsurveyed Plaintiffs allege that any United States claim to Plaintiffs' property outside of the vegetation line vegetation line inside Texas necessarily falls outside the boundary bank and is therefore invalid and unlawful.

173. Unsurveyed 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 THREE - Quiet Title for County Plaintiffs

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

175. 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 a "right, title, or

interest.”

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

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

178. 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.

179. Plaintiffs allege that the method for determining the boundary bank must be in accord with *Oklahoma v. Texas*, 260 U.S. 606 (1923).

180. Plaintiffs allege that in order to complete a gradient boundary survey along the Red River that is in accordance with the methodology established by the Court in *Oklahoma v. Texas*, 260 U.S. 606 (1923) surveyors must identify the boundary then existing, as of the date of survey, rather than assuming a static boundary and attempting to locate any markers from previous surveys.

181. 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.

182. 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.

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

184. Accordingly, Plaintiffs allege that any United States claim to Plaintiffs’ property south of the vegetation line inside Texas necessarily falls outside the boundary bank and is therefore invalid and unlawful.

185. Plaintiffs have an interest in the disputed property because, as Counties, Plaintiffs collect property tax on the disputed land. Under Texas tax law, the Counties have an automatic lien on all property in their jurisdiction for unpaid property taxes for a period of time each year. TEX. PROP. TAX. CODE Sec. 32.01. This lien renews each year automatically when taxes are assessed and remains until taxes are paid.

186. Additionally, Plaintiffs have a legal obligation to and provide health, safety and welfare services to residents residing on said properties.

187. Accordingly, Counties are injured by the unlawful federal seizure of property within their jurisdiction because it reduces their tax revenue and affects their lien interests.

188. Counties are also injured by the uncertainty created by BLM's arbitrary claims to an unspecified amount of property within Plaintiffs' jurisdictions. Pursuant to the Supremacy Clause, Counties are prohibited from assessing and collecting ad valorem taxes on federal land. The Counties have an interest, therefore, in the taxable lands within its jurisdiction. Determination of Defendants' title within each of the Counties' respective jurisdiction is inherently necessary for the Counties to identify taxable and non-taxable properties.

189. 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). Furthermore, how much of the individual Plaintiffs' properties is or is not owned by the federal government determines how much ad valorem taxes each county may assess upon the Individual Plaintiffs and other private property owners along the Red River.

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

C. COUNT FOUR – Declaratory, Mandamus, and Injunctive Relief for County Plaintiffs Against Defendants for Unlawful and Unconstitutional Actions

191. Defendants have acted unlawfully by adopting survey methods that are contrary to Supreme Court precedent, claiming land within Plaintiffs’ jurisdictions beyond Defendants’ proper borders, and by asserting federal jurisdiction over land within Plaintiffs’ traditional jurisdiction without specifying the extent of the property claimed with reasonable specificity.

192. Plaintiffs are injured by this unlawful activity because, as Counties, Plaintiffs collect property tax on the disputed land. Under Texas tax law, the Counties have an automatic lien on all property in their jurisdiction for unpaid property taxes for a short time each year. TEX. PROP. TAX. CODE § 32.01. This lien renews each year automatically when taxes are assessed and remains until taxes are paid.

193. Counties have no authority to tax federal holdings.

194. Accordingly, Counties are injured by the unlawful seizure of property within their jurisdiction because it reduces their tax revenue and affects their lien interests.

195. Counties are also injured by the uncertainty created by BLM’s arbitrary claims to an unspecified amount of property within Plaintiffs’ jurisdictions.

196. For example, Plaintiffs must know what property they can tax each year. Additionally, Plaintiffs have a legal obligation to and provide health, safety and welfare services to residents residing on said properties. Uncertainty about federal ownership of the property renders these responsibilities difficult and opens the Counties and their officials up to potential litigation or federal prosecution. For example, County law enforcement must enforce criminal statutes that turn on property ownership. *See, e.g.*, 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). This ambiguity is contrary to the Due Process Clause of the Fifth

Amendment.

197. 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).

198. To the extent that Plaintiffs’ interests in the disputed properties is not sufficient to create standing under the Quiet Title Act, Plaintiffs are entitled to bring a claim for declaratory and injunctive relief under 5 U. S. C. § 702. *See Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199, 2212 (2012).

199. Plaintiffs have no other speedy or adequate remedy at law because IBLA has ruled that it does not have jurisdiction over boundary disputes or Constitutional claims.

200. Defendants have a non-discretionary duty to follow the mandates of the Supreme Court and the United States Constitution.

D. COUNT FIVE – Declaratory, Injunctive, and Mandamus Relief to Determine Proper Survey Standards for Determining the South Bank and Gradient Boundary of the Red River

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

202. Plaintiffs, with the exception of Sherriff Lemons, own or otherwise have an interest in properties lying adjacent to the gradient boundary of the Red River.

203. The gradient boundary along much of this land has not been surveyed. However, 43 U.S. Code § 1711(b) mandates that Defendants conduct a survey to determine the boundary as soon as possible.

204. Upon information and belief, Defendants have developed an official method for determining the location of the gradient boundary along Plaintiffs’ properties that is contrary to the method expressly mandated by the Supreme Court.

205. This belief is buttressed by the fact that Defendants have conducted surveys on adjacent properties (owned by Plaintiffs Canan, Hunter, and Smith) that place the gradient boundary well south of where it could possibly be located had Defendants followed the mandates of the Supreme Court.

206. Additionally, Defendants have published maps claiming to own a portion of Plaintiffs' unsurveyed properties (consistent with the claims on Canan, Hunter, and Smith's properties) well south of where the gradient boundary could possibly be located by the mandates of the Supreme Court.

207. Defendants' agents have informed Plaintiff Aderholt that Defendants believe they own all property up to the high bluff bank, contrary to well established law.

208. Defendants have issued official opinions rejecting surveys of the gradient boundary provided by Plaintiffs Hunter and Canan. (Attached as Exhibits M and N.)

209. In the official BLM opinion rejecting those surveys, Defendants stated that they believe that the proper method to determine the gradient boundary begins by finding the boundary as it existed in the 1920's. Ex. M, BLM Resp. to Canan at p. 1.

210. BLM's official opinion also asserts that it is improper for surveyors determining the location of the gradient boundary to start that determination by "going to the south edge of the running water" of the Red River. Ex. M, BLM Resp. to Canan at p. 1.

211. Furthermore, BLM's official opinion asserts that the gradient boundary falls outside of the banks of the river when the river is at flood stage. Ex. M, BLM Resp. to Canan at p. 2.

212. BLM's statements are contrary to the procedures mandated by the Supreme Court. See, *Oklahoma v. Texas*, 260 U.S. 606, 636 (1923) (The boundary is dynamic and is determined by the river's current location, not its location in the past.); *Id.* at 632 (riverbed does not include

flood-plain.); *Oklahoma v. Texas*, 265 U.S. 493, 497 (1924) (The boundary must be determined by starting at the lowest possible “bank in that vicinity.”); Arthur A. Stiles, *The Gradient Boundary - The Line Between Texas and Oklahoma Along the Red River*, 30 TEXAS L. REV. 305, 310 (1952) (a “realistic view of the gradient boundary” can only be had by “walking along the bank of the river and closely observing the edge of the flowing water”).

213. Defendants have relied on this faulty understanding of their boundaries to publish maps and propose Resource Management Plans for Plaintiffs’ properties.

214. Defendants have also relied on this faulty understanding to reject boundary surveys conducted on behalf of Plaintiff Jackson. According to BLM, Jackson’s surveyor should have followed the erroneous boundary bank established by BLM’s surveyors on Plaintiff Canan’s property. BLM Letter to Jackson at p. 3 (Attached as Exhibit P).

215. Accordingly, an actual controversy exists between the parties over the method to determine the gradient boundary along Plaintiffs’ properties.

216. Plaintiffs are injured because Defendants claims to own large swaths of their properties has made it impossible to sell or use their properties without fear of civil and criminal penalties.

217. Plaintiffs have no other speedy or adequate remedy at law because IBLA has ruled that it does not have jurisdiction over boundary disputes or Constitutional claims.

218. Defendants have a non-discretionary duty to follow the mandates of the Supreme Court and the United States Constitution.

E. COUNT SIX – Declaratory, Injunctive, and Mandamus Relief for Plaintiff Clay County Sheriff Lemons

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

220. 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.

221. Plaintiff has a statutory duty to provide law enforcement within his jurisdiction. He fully intends to fulfil that duty.

222. 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).

223. 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.

224. Plaintiffs have no other speedy or adequate remedy at law because IBLA has ruled that it does not have jurisdiction over boundary disputes or Constitutional claims.

225. Defendants have a non-discretionary duty to follow the mandates of the Supreme Court and the United States Constitution.

F. COUNT SEVEN – Declaratory, Injunctive and Mandamus Relief for Violations of Due Process Clause of the Fifth Amendment to the United States Constitution

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

227. 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.

228. 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 and boundary bank.

229. BLM has published maps and land management plans asserting ownership and jurisdiction of a broad but vaguely defined stretch of land beyond the vegetation line and boundary bank.

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

231. In sum, Defendants have refused to survey Plaintiffs' properties, have published maps with vague and clearly erroneous boundaries, have rejected surveys by licensed surveyors conducted according to the methods mandated by the Supreme Court, and have refused to give any guidance to Plaintiffs as to how to determine the boundary of BLM land on their properties.

232. 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).

233. 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 claims ownership.

234. By way of example, 18 U.S.C. § 844(f)(1) makes it a crime, punishable by a mandatory minimum of five years in federal prison, to damage federal property. Traditional ranching practices involve clearing brush, lighting fires, and other activities that would be

considered damaging federal property. Because Plaintiffs have no way to reasonably ascertain where their properties end and federal property begins, Plaintiffs must refrain from conducting such legal activities on their properties in order to avoid the risk of prosecution under 18 U.S.C. § 844(f)(1).

235. Plaintiffs have concrete plans to conduct controlled burns on their property. For example, Plaintiffs Patrick Canan, Kevin Hunter, and Jimmy Smith have been prevented from burning for fear of prosecution.

236. As a further example, 43 CFR 8365.1-2 states that “On all public lands, no person shall...[l]eave personal property unattended longer than 10 days.” Plaintiffs lawfully leave personal property on their land for longer than 10 days, including for example, hunting stands and feeders. Due to Defendants’ failure to delineate ownership with reasonable specificity, Plaintiffs face a credible threat of prosecution for violating this and other land use regulations or having their property disposed of.

237. There is a credible threat of Plaintiffs being prosecuted for otherwise lawful activities, such as controlled burning, if it is found to occur on public lands. *See, e.g. United States v. Hammond*, Nos. 12–30337, 12–30339 (9th Cir. Feb 7, 2014) (upholding recent conviction under 18 U.S.C. § 844(f)(1)).

238. Likewise, 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.

239. Plaintiffs have no other speedy or adequate remedy at law because IBLA has ruled that it does not have jurisdiction over boundary disputes or Constitutional claims.

240. Defendants have a non-discretionary duty to follow the mandates of the Supreme Court and the United States Constitution.

G. COUNT EIGHT – Declaratory, Injunctive and Mandamus Relief for Unreasonable Seizure of Property Under the Fourth Amendment to the United States Constitution

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

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

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

244. 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).

245. 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.

246. 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.

247. As described above, Defendants' assertion of ownership and methods of locating the boundary bank are unreasonable and contrary to law.

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

249. 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.

250. 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.

251. Plaintiffs have no other speedy or adequate remedy at law because IBLA has ruled that it does not have jurisdiction over boundary disputes or Constitutional claims.

252. Defendants have a non-discretionary duty to follow the mandates of the Supreme Court and the United States Constitution.

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 Plaintiffs Canan, Hunter and Smith's properties as pleaded herein;

b. A declaration that the surveys published at 74 FED. REG. 28061-62 and 75 FED. REG. 8738-39 are invalid and void as they do not follow the methodology for determining the boundary bank as described in *Oklahoma v. Texas*, 260 U.S. 606 (1923);

c. A judgment that Defendants have no right, title or interest in Plaintiffs Canan, Hunter, or Smith's properties outside of the vegetation line or boundary bank on the south side of the Red River.

2. On the Second Count -

a. An order quieting Defendants' title in and to the Individual Plaintiffs' properties as pleaded herein;

b. A declaration that the Defendants' surveys along the Red River in Wichita, Wilbarger, and Clay Counties, including those published at 74 FED. REG. 28061-62 and

75 FED. REG. 8738-39, are invalid and void as they do not follow the methodology for determining the boundary bank as described in *Oklahoma v. Texas*, 260 U.S. 606 (1923);

c. A declaration that the map of unsurveyed Plaintiffs' property, as attached as Exhibit K, is invalid as it does not follow the methodology for determining the boundary bank as described in *Oklahoma v. Texas*, 260 U.S. 606 (1923);

d. A judgment that, Defendants have no right, title, or interest in individual Plaintiffs' properties outside of the vegetation line or the boundary bank on the south side of the Red River.

3. On the Third Count –

a. An order quieting Defendants' title in and to all the land along the Red River in Wilbarger, Wichita, and Clay Counties outside of the vegetation line or the boundary bank on the south side of the Red River;

b. A declaration that the Defendants' surveys performed along the Red River in Wilbarger, Wichita and Clay Counties, including those published at 74 FED. REG. 28061-62 and 75 FED. REG. 8738-39, are invalid and void as they do not follow the methodology for determining the boundary bank as described in *Oklahoma v. Texas*, 260 U.S. 606 (1923);

c. A judgment that, Defendants have no right, title or interest in Wilbarger, Wichita and Clay Counties outside of the vegetation line or boundary bank on the south side of the Red River.

4. On the Fourth Count–

a. An order declaring the Defendants' surveys performed along the Red River in Wilbarger, Wichita, and Clay Counties, including those published at 74 FED. REG. 28061-62 and 75 FED. REG. 8738-39, unlawful and void;

b. An order declaring that the proper method for locating the boundary bank

is to locate the current bank by the process laid out in *Oklahoma v. Texas*, 260 U.S. 606 (1923) rather than the historic bank;

c. An order declaring that, Defendants cannot claim property beyond the vegetation line or boundary bank on the south side of the Red River; and

d. An order enjoining Defendants from using any survey method that results in finding the boundary bank outside the vegetation line.

5. On the Fifth Count–

a. An order declaring the Defendants’ surveys performed along the Red River in Wilbarger, Wichita, and Clay Counties, including those published at 74 FED. REG. 28061-62 and 75 FED. REG. 8738-39, unlawful and void;

b. An order declaring that the proper method for locating the boundary bank is to locate the current bank by the process laid out in *Oklahoma v. Texas*, 260 U.S. 606 (1923) rather than the historic bank;

c. An order declaring that, as a matter of law, the boundary bank may not fall outside the vegetation line unless there has been an avulsive event;

d. An order declaring 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;

e. An order declaring that, as a matter of law, the boundary bank can only be determined by starting at the running water of the river;

f. An order declaring that, as a matter of law, the boundary bank must be determined by starting at the *lowest possible* “bank in that vicinity”; and

g. An order enjoining Defendants from using any survey method which results in finding the boundary bank outside the vegetation line.

6. On the Sixth Count–

a. An order declaring that, as a matter of law, the boundary bank may not fall outside the vegetation line unless there has been an avulsive event;

b. An order declaring 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;

c. An order declaring that any United States claim to Plaintiffs’ property outside of the vegetation line or boundary bank is invalid and unlawful;

d. An order declaring that BLM may not assert jurisdiction over property when it has not designated the extent of its holdings in that property with a reasonable degree of specificity; and

e. An order enjoining Defendants from asserting jurisdiction over land they have not delineated with a reasonable degree of specificity.

7. On the Seventh 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; and

c. An order permanently enjoining Defendants from implementing any land use plans on lands they have not delineated with a reasonable degree of specificity.

8. On the Eighth 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; and

c. An order permanently enjoining Defendants from seizing Plaintiffs' property.

9. An order awarding costs, fees and attorney's fees under 28 U.S.C. § 2412 or to the extent permitted by law; and

10. An order granting any such further and other relief as may be appropriate.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Plaintiffs' Amended Complaint was served via the CM/ECF electronic system to all parties of record on February 9, 2016:

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