

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

KENNETH ADERHOLT *et al.*,

Plaintiffs,

v.

Civ. No. 7:15-CV-000162-O

BUREAU OF LAND MANAGEMENT
et al.,

Defendants.

SETTLEMENT AGREEMENT

Plaintiff-Intervenor the State of Texas (the “State” or “Texas”), and Defendants Bureau of Land Management (“BLM”); Brian Steed, in his official capacity as Deputy Director, Policy and Programs, exercising authority of the Director, BLM; the United States Department of the Interior (“Interior”); Ryan Zinke, in his official capacity as Secretary of the Interior; the United States of America (collectively, “Defendants”) (collectively, with the State, “the Parties”) have reached an agreement to resolve the State’s claims in this case *Aderholt v. Bureau of Land Mgmt.*, 7:15-CV-0162-O, with the Parties agreeing to undertake and perform the measures set forth in this stipulated Settlement Agreement (“Agreement”).

WHEREAS, the State filed its Original Intervenor Complaint in this, the above-captioned case (“this Case”) on March 28, 2016 (ECF No. 58), and an amended complaint on April 28, 2016 (ECF No. 70);

WHEREAS, the State’s amended complaint asserted two counts against Defendants: (1) demanding recognition of its sovereign boundary with Oklahoma as the vegetation line established by the Red River Boundary Compact (the “Compact”); and (2) compelling the BLM to conduct a

current gradient boundary survey to establish the boundary of public domain along the disputed portion of the Red River pursuant to both the Federal Land Policy and Management Act of 1976 (“FLPMA”) and Supreme Court precedent in *Oklahoma v. Texas*, 260 U.S. 606 (1923).

WHEREAS, the Parties have filed cross-motions for summary judgment, which motions were fully briefed as of July 12, 2017;

WHEREAS, the Parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to the State’s claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of this Case; and

WHEREAS, the Parties believe that it is in the interests of the public, the Parties, and judicial economy to resolve the claims in this Case without additional litigation;

NOW, THEREFORE, the Parties stipulate and agree to the following:

I. SCOPE OF AGREEMENT

1. This Agreement shall constitute a complete and final settlement of both of the State’s claims alleged in this Case.

2. This Agreement shall not (and shall not be construed to) limit or modify the discretion accorded to Defendants by the FLPMA, the Administrative Procedure Act (“APA”), or general principles of administrative law with respect to the procedures to be followed in undertaking the actions required herein, or as to the substance of any final determination. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take any action in contravention of the FLPMA, the APA, or any other law or regulation, either substantive or procedural.

3. This Agreement in no way affects the rights of the United States as against any

person or entity not a party hereto.

4. This Agreement in no way affects the rights of any federally recognized Indian tribe or Indian allottee.

5. This Agreement is for the purpose of settling litigation and nothing in this Agreement shall be deemed a precedent or constitute an admission of fact or law by any party. This Agreement shall not be used or admitted against any of the Parties to this Agreement in any proceeding except as authorized under Rule 408 of the Federal Rules of Evidence.

6. It is hereby expressly understood and agreed that the Parties jointly drafted this Agreement. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

7. This Agreement shall be governed by and construed under federal law.

8. This Agreement contains all of the agreements between the Parties, and is intended to be and is the final and sole agreement between the Parties concerning the complete and final resolution of the State's causes of action in the Case. The Parties agree that any other prior or contemporaneous representations or understanding not explicitly contained in this Agreement, whether written or oral, are of no further legal or equitable force or effect. Any subsequent modifications to this Agreement must be in writing, and must be signed and executed by or on behalf of the Parties.

9. The provisions of this Agreement shall apply to and be binding upon each of the Parties.

II. SPECIFIC PROVISIONS

10. This Agreement adopts in its entirety as though fully set forth herein the Settlement

Agreement in this Case entered into between Plaintiffs, Plaintiff-Intervenor the General Land Office of Texas (“GLO”), and Defendants, attached hereto as Appendix A (hereinafter “Plaintiffs’ Settlement Agreement”). Notwithstanding the foregoing, to the extent a conflict exists between the obligations and agreements under this Agreement and Plaintiffs’ Settlement Agreement, the language of this Agreement, and not Plaintiffs’ Settlement Agreement, shall control as between the State and Defendants.

11. Plaintiffs’ Settlement Agreement shall be fully enforceable by the State as though it was an original signatory to the agreement, subject to the same limitations imposed on enforcement of the Plaintiffs’ Settlement Agreement as to the original signatories, such as those referenced in Paragraphs 13, 14, and 22, of the Plaintiffs’ Settlement Agreement.

12. In addition to fully incorporating the Plaintiffs’ Settlement Agreement herein, attached hereto as Appendix A, Defendants and the State include the additional settlement provision set forth below.

13. The Parties agree the Dependent Resurvey and Survey addressing lands in Township 5 South, Range 14 West of the Indian Meridian, Oklahoma under Group Numbers 81 and 126 OK, and Assignment Instructions dated November 23, 1999 and May 13, 2004, noticed at 71 Fed. Reg. 28,371-72 (May 16, 2006) (hereinafter referred to as “Group Numbers 81 and 126 OK Surveys”), did not seek to identify the political boundary between the States of Oklahoma and Texas. As provided by the Red River Boundary Compact, “[t]he permanent political boundary line between the states of Texas and Oklahoma along the Red River is the vegetation line along the south bank of the Red River except for the Texoma area, where the boundary does not change.” Tex. Nat. Res. Code Section 12.002, art II, ¶ B; Okla. Stat. Ann. Tit. 74 § 6106, art. II, ¶ B. The Group Numbers 81 and 126 OK Surveys do not reflect Defendants’ position as to the

political boundary between the States of Texas and Oklahoma.

14. Upon execution by the Parties, they shall, by joint motion, move the Court for approval of the Agreement. Within 30 days of the Court approving the Agreement, Defendants shall clerically correct the field notes for the Group Numbers 81 and 126 OK Surveys to clarify that any references to the location of the Texas/Oklahoma border do not reflect Defendants' position as to the present-day political boundary between the States of Texas and Oklahoma. Within 120 days after this Agreement becomes final, Defendants will make a good faith effort to remove any reference to the States of Texas or Oklahoma from the survey monuments associated with Group Numbers 81 and 126 OK Surveys, on the condition that Defendants can obtain access to those survey monuments. If Defendants' effort to access a property to alter the monuments is denied, Defendants will notify the Office of the Attorney General of Texas in writing within 14 days of denial of access and will include in the notification the name(s) and contact information of the person(s) denying access and the location of the monuments, so that the Office of the Attorney General may contact that (those) person(s) to attempt to convince them to allow Defendants access to the monuments described in this Paragraph. The State's remedy, if Defendants fail to undertake any obligation described under this Paragraph, is to reinstitute their law suit.

III. SAVINGS PROVISIONS

15. Nothing in the terms of this Agreement shall be construed to limit, expand, or otherwise modify the authority accorded to Defendants under the United States Constitution, any statute or regulation, or by general principles of administrative law.

16. The obligations imposed upon Defendants under this Agreement can only be undertaken using appropriated funds. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available,

or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341, or any other appropriations law.

IV. EFFECTIVE DATE, REMEDIES, AND RELEASES

17. As referenced in Paragraph 14, this Agreement shall be filed with the Court, along with a proposed order of dismissal that will incorporate the terms of this Agreement.

18. This Agreement shall become effective on the date upon which the Court approves the Agreement. If the Court does not approve the Agreement as submitted, this Agreement is voidable by either party upon written notice.

19. Within five (5) days of the Plaintiffs, GLO, and Defendants filing a stipulated motion dismissing Plaintiffs' and GLO's claims pursuant to Paragraph 17 of Plaintiffs' Settlement Agreement, or the Court's approval of this Agreement pursuant to Paragraph 18 of this Agreement, whichever is later, Defendants and the State will make a joint filing, consistent with the proposed filing attached hereto as Appendix B, dismissing the State's claims. Consistent with the Plaintiffs' Settlement Agreement, the Parties agree that such dismissal will be with prejudice, except that it shall be without prejudice to the State asserting any claims, subject to any jurisdictional and/or other defenses that Defendants may raise, as to any future agency action, as that term is defined by 5 U.S.C.A. § 551(13), that occurs after the effective date of the Agreement, by Defendants regarding the location of the boundary between private and federal land along the Red River, including but not limited to, surveys or resurveys approved after the effective date of this Agreement. Furthermore, such dismissal shall also be without prejudice to the State refiling its claims if Defendants fail to undertake the obligations set forth above in Paragraph 14.

V. FEES AND COSTS

20. Each Party shall bear its own fees and costs.

VI. SIGNATURE OF PARTIES

21. The Parties represent that the persons executing the Settlement Agreement on each Party's behalf have been duly authorized by all necessary and appropriate action to enter into this Settlement Agreement.

SO STIPULATED

on behalf of the State of Texas:



Amy Davis
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General of Texas

on behalf of Defendants:



Jason A. Hill
Trial Attorney, Natural Resources Section
Environment and Natural Resources Division
United States Department of Justice

