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113TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
113–700

RED RIVER PRIVATE PROPERTY PROTECTION ACT

DECEMBER 22, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4979]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4979) to provide legal certainty to property owners along the Red River in Texas, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Red River Private Property Protection Act".

SEC. 2. DISCLAIMER OF INTEREST.

The Secretary hereby disclaims any right, title, and interest to all RedRiver lands located south of the South Bank of the Red River. This Act does not change or affect in any manner the sovereignty rights of federally recognized Indian tribes over lands located to the north of the South Bank of the Red River. Tribal sovereignty rights continue to be established and defined by controlling Federal law.

SEC. 3. ISSUANCE OF CLAIM AND/OR DEEDS.

(a) IN GENERAL.—The Secretary shall relinquish, disclaim, and shall transfer by special warranty deed all right, title, and interest of the United States in and to Red River lands to any claimant who demonstrates to the satisfaction of the Secretary that they—

(1) hold all right, title, and interest under a chain of title for at least 30 years from the time of submission;

(2) have a deed recorded in the appropriate county; and

(3) have paid all taxes assessed on the land and any interest and penalties associated with any period of tax delinquency.

(b) PUBLIC NOTIFICATION.—The Secretary shall publish in the Federal Register and on official and appropriate Web sites the process to receive written and/or elec-

tronic submissions of the documents required under subsection (a). The Secretary shall treat all proper notifications received from the claimant as fulfilling the satisfaction requirements under subsection (a).

(c) STANDARD OF APPROVAL.—The Secretary shall accept all official county and State records as filed in the county on the date of submission proving right, title, and interest, including all land accreted to those lands identified by such records by the processes of erosion and accretion.

(d) TIME PERIOD FOR APPROVAL OR DISAPPROVAL OF REQUEST.—The Secretary shall approve or disapprove a request for a special warranty deed under subsection (a) not later than 180 days after the date on which the written request is received by the Secretary. If the Secretary fails to approve or disapprove such a request by the end of such 180-day period, the request shall be deemed to be approved.

(e) REQUIREMENTS FOR DECISION.—Any final decision by the Secretary must contain—

(1) a field note description used to determine the property claim, which must be—

(A) sufficient to locate the land on the ground;

(B) consistent with the claimant's deed; and

(C) include all land accreted to the claimant by the processes of erosion and accretion;

(2) an accurate plat of the land that is—

(A) consistent with the field notes; and

(B) prepared by a Texas licensed State land surveyor; and

(3) any other matters required by law or as the Secretary considers appropriate consistent with the provisions and intent of this Act.

SEC. 4. ADMINISTRATIVE HEARING.

(a) IN GENERAL.—The Secretary shall establish procedures for an administrative hearing—

(1) for a claimant to redress the final decision made pursuant to section 3 regarding a claim by Secretary to their property; and

(2) to adjudicate disputes between two or more private property owners who have interest claims that overlap pursuant to documents submitted under section 3.

(b) JUDICIAL RESOLUTION.—If after the final determination has been issued under subsection (a) and the private property owner disputes the decision, the private property owner may pursue their claim via Federal district court within the State of Texas.

SEC. 5. RESOURCE MANAGEMENT PLAN.

The Secretary shall ensure that no parcels of Red River lands are treated as Federal land for the purpose of any resource management plan until the Secretary has ensured that such parcels are not subject to transfer under section 3.

SEC. 6. CONSTRUCTION.

Nothing in this Act shall alter—

(1) any present or future rights and interests of the Kiowa, Comanche, and Apache Tribes and their members or Indian successors-in interest;

(2) any tribal trust lands;

(3) allotted lands that may be held in trust or lands subject to a Federal restriction against alienation;

(4) any boundaries of lands owned by the tribes and nations referred to in paragraph (1), including lands referred to in paragraphs (2) and (3), pursuant to the gradient boundary survey method; and

(5) the sovereign rights, jurisdiction, or other governmental interests of the Kiowa, Comanche, and Apache Tribes and their members or Indian successors-in interest presently existing or which may be acknowledged by Federal and tribal law.

SEC. 7. SALE OF REMAINING RED RIVER SURFACE RIGHTS.

(a) COMPETITIVE SALE OF IDENTIFIED FEDERAL LANDS.—After the Secretary has ensured that Red River lands parcels are not subject to transfer under section 3, the Secretary shall offer any and all such remaining identified Federal lands for disposal by competitive sale for not less than fair market value as determined by an appraisal conducted in accordance with nationally recognized appraisal standards, including the Uniform Appraisal Standards for Federal Land Acquisitions; and the Uniform Standards of Professional Appraisal Practice.

(b) EXISTING RIGHTS.—The sale of identified Federal lands under this section shall be subject to valid existing tribal, State, and local rights.

(c) PROCEEDS OF SALE OF LANDS.—Net proceeds from the sale of identified Federal lands under this section shall be used to offset any costs associated with this Act.

(d) REPORT.—Not later than 5 years after the date of the enactment of this Act, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a list of any identified Federal lands that have not been sold under subsection (a) and the reasons such lands were not sold.

SEC. 8. DEFINITIONS.

For the purposes of this Act—

(1) the term "Red River lands" means lands along the approximately 116-mile stretch of the Red River from its confluence with the North Fork of the Red River on the west to the 98th meridian on the east between the States of Texas and Oklahoma;

(2) the term "Secretary" means the Secretary of the Interior, acting through the Director of Bureau of Land Management;

(3) the term "South Bank" means the water-washed and relatively permanent elevation or acclivity, commonly called a cut bank, along the southerly or right side of the river which separates its bed from the adjacent upland, whether valley or hill, and usually serves to confine the waters within the bed and to preserve the course of the river; as specified in the fifth paragraph of the decree rendered March 12, 1923, in *Oklahoma* v. *Texas*, 261 U. S. 340, 43 S. Ct. 376, 67 L. Ed. 687; and

(4) the term "Gradient Boundary Survey" means the measurement technique used to demarcate a division of ownership or jurisdiction along the South Bank under the methodology established by the United States Supreme Court which recognizes that the boundary line between the States of Texas and Oklahoma along the Red River is subject to such changes as have been or may be wrought by the natural and gradual processes known as erosion and accretion as specified in the second, third, and fourth paragraphs of the decree rendered March 12, 1923, in *Oklahoma* v. *Texas*, 261 U. S. 340, 43 S. Ct. 376, 67 L. Ed. 687.

PURPOSE OF THE BILL

The purpose of H.R. 4979 is to provide legal certainty to property owners along the Red River in Texas.

BACKGROUND AND NEED FOR LEGISLATION

In title disputes, especially in incidents where the long-standing management, care or knowledge of ownership (including improvements) were exercised, and a clear delinquency, dereliction or nonexistent control of federal responsibility over the land has occurred (without fault or negligence by the State or affected property owner), the Committee on Natural Resources recognizes the rights of the property owners. The longstanding ownership, management and care of these disputed lands, recognized as previously paid for and/or maintained under State jurisdiction, should protect and guarantee the property rights of the affected land owners. They should be insulated from federal behavior or response so severe as to hold them in trespass, mimic a taking of their property or hold their land hostage for a ransom to regain title to property they already own. The Committee on Natural Resources generally believes that when federal survey errors result in a potential conflict of title with private property owners, State and local land ownership records should be the arbiter for determining ownership.

H.R. 4979 would direct the Bureau of Land Management (BLM) to relinquish and transfer by special warranty deed land along 116 miles of the Red River in Texas to a landowner who can prove through official State or county records that he or she fully owns the land. In addition, the bill would require BLM to issue a public notice of process and accept all legitimate claims of ownership. It would establish a 180-day time period in which BLM must act on a request and establishes that multiparty disputes would be resolved in Federal district court. Furthermore, the bill would pre-

vent any of the land in question from being included in any federal land resource management plan revision until ownership is resolved. Finally, the bill requires the sale of excess BLM lands along the Red River, ensures that tribal sovereignty rights are protected, and any ownership interests of tribal nations in the area is retained.

BLM is resurveying the land along the Red River to update the federal land resource management plan for Texas and Oklahoma. The survey process has raised questions of overlapping ownership claims, which brought this issue to the forefront. Initially, BLM claimed it may own 90,000 acres along the River, but that estimate has been cut to 30,000 acres, of which only 6,402 acres have been actually surveyed. There remain multiple landowners who hold title to land included in the 30,000 acres. These landowners have been paying taxes on the land, and in some cases, have held title to the land for generations.

This uncertainty threatens the value of privately-owned land as any sale would carry a clouded title. It has also halted the willingness of landowners to continue making improvements on the land or to utilize the land to its full potential through agricultural or other types of development. BLM has said that it does not intend to expand federal holdings but merely wants to develop a plan for appropriate management of lands already in federal ownership. H.R. 4979 will determine rightful ownership and bring needed certainty to the land owners along the Red River in both Texas and Oklahoma by ensuring that the private property interests are protected instead of absorbed into BLM's existing massive federal holdings.

COMMITTEE ACTION

H.R. 4979 was introduced on June 26, 2014, by Congressman Mac Thornberry (R–TX). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Public Lands and Environmental Regulation. On July 29, 2014, the Subcommittee held a hearing on the bill. On November 19, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee on Public Lands and Environmental Regulation was discharged by unanimous consent. Chairman Doc Hastings (R–WA) offered an amendment designated Bishop.076; the amendment as adopted by voice vote. No further amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides

that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee believes that enactment of this bill will not have a significant effect on the federal budget.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide legal certainty to property owners along the Red River in Texas.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of Rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

H.R 4979: RED RIVER PRIVATE PROPERTY PROTECTION ACT

On July 26, 2013, the Bureau of Land Management (BLM) issued a Notice of Intent to begin work on a revision to the Oklahoma, Kansas, and Texas Resource Management Plan (RMP). The RMP covers Federal land along the Red River between Texas and Oklahoma, where the BLM estimates that the Federal government retains interest in approximately 30,000 acres, 23,000 acres of which are overlaid by private deeds. There are many overlapping claims, missing and unreliable records, and even competing claims from both Texas and Oklahoma over the same pieces of property. BLM is revising the RMP, which includes a comprehensive land survey, in order to clear up all of these uncertainties. The agency has to complete the public planning process and land survey before it can issue title to claimants.

Unfortunately, whether intended or not, H.R. 4979, by disrupting the planning process, would make it impossible for the Interior Department to recognize ownership claims. The bill would require the Secretary to recognize, within 120 days, any county or state record provided by an individual with a property interest in the Red River. This timeline is unrealistic and the requirement could lead to the transfer of Federal land without fair compensation. Additionally, the bill requires BLM to transfer not only the surface estate but also the subsurface estate, which is counter to standard practice and jeopardizes a long standing agreement between the Federal government and the Kiowa, Apache, and Comanche tribes. These tribes receive 62.5 percent of any royalty generated for oil and gas development along this section of the Red River. If the subsurface mineral estate is transferred away, this important source of revenue relied on by the tribes could be jeopardized. With the long, complicated history and various ownership claims along the Red River, BLM has to be allowed to complete its planning process and land survey H.R. 4979 would make a resolution nearly impossible.

At markup, the majority amended the bill in an effort to address many of the concerns highlighted by the administration. While we appreciate the effort to improve the bill, the reported bill is still unworkable. The amended text sets up an arbitration process for overlapping ownership claims, extends the timeline for issuing deeds, and even appears to add language to protect certain tribal interests.

The amended bill adds 60 days to the timeframe for approving claims and issuing deeds. This may seem like an improvement, but 180 days is still an unrealistic goal that could complicate matters even further. The projected completion date of 2018 seems like a long time, but considering that there have been disputes over own-

ership in this area for over 200 years, it makes sense that, in order to get it done right, it will take time.

Furthermore, the dispute resolution process set up by the bill presents a variety of problems. The difficulty of verifying overlapping ownership claims is something that the administration mentioned in their testimony on the bill. there are many instances where multiple private deeds overlay a single plot of land, and some of these plots of land may in fact be wholly private, meaning the Federal government has no interest in the land. That is why the survey and land planning process must occur before the Secretary can disclaim land or issue patents for private land. However, under the bill's arbitration process, the BLM could be forced to make a decision before knowing if it even has jurisdiction over the land.

Lastly, as mentioned above, the Federal government has a special relationship with several Native American tribes in this area, and 62.5 per cent of the royalty revenue from oil and gas development is owed to these tribes. The remaining 37.5 is paid to the state of Oklahoma. This legislation could complicate this arrangement and potentially make it impossible for the Federal government to fulfill this commitment. We cannot support H.R. 4979.

PETER DEFAZIO,
Ranking Member, Committee on Natural Resources.
RAÚL GRIJALVA,
Ranking Member, Subcommittee on Public Lands and Environmental Regulation.

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