

OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 50 WINTER 2025–SPRING 2026 NUMBERS 2 & 3

NOTE

THE REAL RED RIVER RIVALRY

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Introduction

The Red River Rivalry, a historic football feud between the Texas Longhorns and the Oklahoma Sooners, has dominated the region and caused animosity since the game's inception in 1900.¹ "Oklahoma and Texas have had bad blood forever, and the state battle has been personified through the Red River [Rivalry]"² The time-honored fight does not cease within the confines of the annual football game but can be seen through the land disputes along the physical border between the two states. The complicated boundary has created a game over inches, and the legal

* Juris Doctor Candidate, Oklahoma City University School of Law, May 2026. I would like to thank my friends and family for their encouragement throughout my law school journey. I would also like to extend my deepest gratitude to my fellow Oklahoma City University Law Review Board Members, especially my Managing Editor, Anna Robertson, for their commitment to this publication. I would like to dedicate this piece to my grandma, Mary Jane Calvey, and my Mimi, Marilyn Chandler. Their enduring belief in the importance of education, together with their love and support, sparked my journey to law school. May we all strive to inspire the next generation of women, just as they have inspired me.

1. Kaitlyn Underwood, Editorial, *Shoot Down Rivalry's Name Change*, OKLA. DAILY, Apr. 8, 2014, at 3.

2. *Id.*

system, federal government, and state officials have been left with the task of deciding winners and losers.

The Red River has been considered a significant boundary distinction since France and Spain occupied the land in the 1700s.³ Accretion and avulsion add to the complexity of the boundary as questions arise that ask whether “the boundary between Texas and Oklahoma [is] a fixed one, a set line of demarcation, or is it in a constant state of fluvial change?”⁴ While an extensive judicial and legislative history of the attempts to settle disputes exists, problems still arise today, creating judicial inefficiency and the need for government intervention. This Note explores the history of doctrines that guide this border and attempts to offer a solution to the problems plaguing the Red River. It begins by explaining the background of accretion and avulsion, highlighting their impact within the legal world. Next, it frames this issue in the context of the long-standing dispute between Oklahoma and Texas while discussing the current rules governing this subject of law. Then, this Note examines recent legal and administrative disputes arising out of the Red River. Finally, this Note reviews potential solutions and decides whether they possess the ability to aid these disputes.

The Doctrine of Accretion and Avulsion

A. The Doctrine

Water consistently moves, causing streams, rivers, and lakes to change shape.⁵ These alterations create significant difficulties for riparian⁶ property owners as natural changes alter the boundaries of their land through processes like accretion and avulsion.⁷ The doctrine of accretion

3. Diana J. Kleiner, *The Red River: History, Geography, and Significance*, TEX. STATE HIST. ASS'N (May 1, 2019) (1952), <https://www.tshaonline.org/handbook/entries/red-river> (May 1, 2019) (on file with the Oklahoma City University Law Review).

4. Glen Roberson, *Texas-Oklahoma Boundary Controversies*, ENCYC. OKLA. HIST. & CULTURE (Feb 20, 2026), <https://www.okhistory.org/publications/enc/entry?entry=TE025> [<https://perma.cc/95W7-XG9H>].

5. ROBIN KUNDIS CRAIG, ROBERT W. ADLER, & NOAH D. HALL, *WATER LAW* 34 (1st ed. 2017) (ebook).

6. *Riparian*, BLACK'S LAW DICTIONARY (12th ed. 2024) (“Of, relating to, or located on the bank of a river or stream (or occasionally another body of water, such as a lake owner.”)).

7. CRAIG, ADLER, & HALL, *supra* note 5, at 34-35.

concerns the “gradual and imperceptible change to the riparian tract.”⁸ Erosion along one side of a riparian property causes loss of land area; however, the lost silt gradually deposits on to another riparian property, creating “new” land through accretion.⁹ Alluvion, often used synonymously with accretion, describes the deposit of sand or sediment, whereas accretion describes the physical process.¹⁰ Avulsion describes the “sudden and perceptible loss of or addition to land by the action of water.”¹¹ This change is described as more violent and apparent and is usually caused by an identifiable source, compared to the more gradual and natural accretion process.¹² The avulsion process occurs abruptly when a stream “abandons its old and seeks a new bed.”¹³

Issues arise for property owners when accretion or avulsion occurs. Accretion creates problems as “(1) landowners both assume that the waterbody remains their boundary and actually want it to remain so, because continued adjacency to water is valuable; and (2) keeping track of gradual boundary changes is administratively and legally difficult.”¹⁴ Avulsion, however, causes issues for property owners as the sudden change can mean that “property owners cease to be riparians after an avulsive change.”¹⁵ When the riverbed is drastically altered, title is maintained and the established boundary continues “even if the riparian is now cut off from access to the water.”¹⁶ These problems are further exacerbated when a water source acts as the boundary between two pieces of property.

In the context of the Red River, it’s makeup contributes to the problems involving accretion and avulsion. The river covers 1,360 miles, of which 640 miles cover the Oklahoma and Texas border.¹⁷ Due to its large size, the Red River contains “slow-moving and shallow stream[s]” and areas that are “a mile-wide torrent” that can “uproot[] any natural or man-made object[] in its path.”¹⁸

8. 78 AM. JUR. 2D WATERS § 306, Westlaw (database updated Feb. 2026).

9. CRAIG, ADLER & HALL, *supra* note 5, at 34-35.

10. 78 AM. JUR. 2D WATERS § 302, Westlaw (database updated Feb 2026).

11. *Id.* § 305.

12. *Id.*; *see also* CRAIG, ADLER & HALL, *supra* note 5, at 34-35.

13. *Nebraska v. Iowa*, 143 U.S. 359, 361 (1892).

14. CRAIG, ADLER & HALL, *supra* note 5, at 35.

15. *Id.*

16. ANTHONY DAN TARLOCK & JASON ANTHONY ROBISON, LAW OF WATER RIGHTS AND RESOURCES § 3:41 (2025), Westlaw LWATRR.

17. Kliener, *supra* note 3.

18. RUSTY WILLIAMS, THE RED RIVER BRIDGE WAR: A TEXAS-OKLAHOMA BORDER BATTLE 7 (Tex. A&M Univ. Press 2016) (ebook).

B. *Nebraska v. Iowa*

Nebraska v. Iowa is the foundational case that addresses the legal issues involving property disputes caused by shifting water boundaries.¹⁹ The Missouri River is considered to have an especially quick current due to mountain snow causing rises in water levels during specific seasons.²⁰ The volume of water, fast current, and primarily quicksand-based soil cause rapid changes to the river's bank.²¹ This change "is not gradual and imperceptible, but sudden and visible."²² Testimony in this case revealed that while the soil was lost in large portions, it disintegrated upon entering the stream, causing a gradual downstream deposit.²³ This process created problems along the Missouri River, specifically regarding its role as a border between Nebraska and Iowa.²⁴ When each state joined the Union, the boundary was established in the middle of the channel, but, between 1851 and 1877, there were stark changes to the riverbeds.²⁵ Nebraska brought suit alleging that the channel alterations caused the land in question to fall within its territory.²⁶

The Court explored historical applications of the doctrines of accretion and avulsion.²⁷ It referenced Attorney General Cushing's reply to the boundary disputes along the Rio Bravo between the United States and Mexico.²⁸ Cushing stated that through the process of accretion, individuals will lose property but will gain it as well; however, "[t]he general aspect of things remains unchanged"; the river remains as the boundary.²⁹ Alternatively, when a river changes through avulsion and "the nation, through whose territory the river thus breaks its way, suffers injury by the loss of territory greater than the benefit of retaining the natural river boundary, and that boundary remains in the middle of the deserted river bed."³⁰

19. See generally *Nebraska v. Iowa*, 143 U.S. 359 (1892) (holding that the doctrine of accretion guides the boundaries between all property owners and states).

20. *Id.* at 368.

21. *Id.*

22. *Id.* at 368-69.

23. *Id.* at 369.

24. *Id.* at 359.

25. *Id.* at 359-60.

26. *Id.*

27. See *id.* at 360-68.

28. *Id.* at 361.

29. *Id.* at 362 (quoting *Arcifinious Boundaries*, 8 Op. Att'ys Gen. 175, 177 (1858)).

30. *Id.*

The Court continued, offering Don Antonio Riquelme's perspective regarding the doctrine.³¹ He stated that nations must adhere to these doctrines and submit to the changes in the land.³² Additionally, Riquelme asserted that when territory is gradually lost by one property owner and gained by another due to accretion, the change can be considered as "a new acquisition of property".³³ However, when the river moves inside one's territory due to avulsion, the abandoned channel "will incur no change of master."³⁴ The Court highlighted that this outlook originates from Rome, and then it was transferred to the *Partidas*³⁵ and remains within the laws of Spain and Mexico.³⁶ The doctrine was eventually incorporated in England and subsequently in the United States.³⁷

The defendant contended that despite the well-settled historical doctrine, it ought not apply to the Missouri River because land is suddenly lost and gradually deposited downstream, unlike the examples mentioned.³⁸ However, the Court concluded that the law of accretion applies to the Missouri River, and the changes in the riparian through this process caused a varying line between the two states.³⁹ Yet there was still a portion of the river that had suddenly cut through and created a new channel.⁴⁰ The Court stated that the doctrine of avulsion would govern the river, and the boundary would remain along the old channel.⁴¹ In its conclusion, the Court held that "the parties may agree to a designation of

31. *Id.*

32. *Id.* at 362-63 (citing Riquelme, Don Antonio, *Elementos de Derecho Público Internacional: Con Esplacacion de Todas las Reglas que, Segun los Tratados, Estipulaciones, Leyes Vigentes y Costumbres, Constituyen*, Spain: Imprenta de D. Santiago Saunague, 1849, t. 1, p. 83, <https://babel.hathitrust.org/cgi/pt?id=njp.32101072988221&seq=7> (on file with the Oklahoma City University Law Review)).

33. *Id.* (citing Riquelme, *supra* note 32).

34. *Id.* at 363 (citing Bello, Andres, *Principos de Derecho Internacional*, 2nd ed., Peru: Imprenta de J. Masias, 1844, p. 38, <https://babel.hathitrust.org/cgi/pt?id=uc1.aa0005195532&seq=10&q1=del+otro> (on file with the Oklahoma City University Law Review)).

35. Helen L. Clagett, *Las Siete Partidas*, 22 Q.J. LIB. CONGRESS 341, 341 (1965) ("An extensive body of literature in various languages by authors of many nations attests to the worldwide influence of this legal compendium and to the fact that it still remains of practical application not only in its own country but in other civil law jurisdictions as well.").

36. *Nebraska*, 143 U.S. at 364.

37. *Id.*

38. *Id.* at 367.

39. *Id.* at 370.

40. *Id.*

41. *Id.*

such boundary, and such designation will pass into a final decree,” unless the two could not concur.⁴² The state officials agreed on the terms of the boundary, and the Court entered into a decree outlining the exact boundary lines three months later.⁴³

Historical Perspective of the Red River Boundary Dispute

The boundary dispute along the Red River began with the acquisition of the Louisiana territory in 1803.⁴⁴ President Thomas Jefferson secured 828,800 square miles from France, thus doubling the size of the nation and expanding American exploration efforts.⁴⁵ However, problems arose as “[t]he seller didn’t know precisely what he had to sell, and the buyer didn’t know the exact extent of his purchase.”⁴⁶ When France and Spain originally transferred this land between themselves there was never a set boundary, so “the United States and France presumed that the territory was made up of the Mississippi River, including . . . the Red River Valley as far as the frontier of the Spanish province of Texas.”⁴⁷ As a result, disputes plagued the newly established U.S. territory and Spain regarding the exact location of the boundary between these two countries.⁴⁸ After several years of uncertainty, Secretary of State John Quincy Adams and Spanish Foreign Minister Luis de Onís met to discuss the acquisition of Florida; however, while in front of each other, the two decided to examine the Red River boundary.⁴⁹ The pair reached an agreement and wrote the Adams–Onís Treaty of 1819, in which the border was placed “on the southern riverbank of the [Red River], not midstream as was usual.”⁵⁰ Secretary Adams argued that the boundary ought to be set along the bank because it was simple and would lead to less legal controversy.⁵¹ While Spain’s influence and desire to expand were faltering, the United States needed a consistent

42. *Id.*

43. *Nebraska v. Iowa*, 145 U.S. 519, 519 (1892).

44. Roberson, *supra* note 4.

45. WILLIAMS, *supra* note 18, at 6.

46. *Id.*

47. LIBR. OF CONG., GEOGRAPHY & MAP DIV., LOUISIANA: EUROPEAN EXPLORATIONS AND THE LOUISIANA PURCHASE 6-7 (2004).

48. *Id.*; Roberson, *supra* note 4.

49. WILLIAMS, *supra* note 18.

50. *Id.*; Roberson, *supra* note 4; *see also* Treaty of Amity, Settlement, and Limits, Between the United States of America and His Catholic Majesty (Adams–Onís Treaty), U.S.–Spain, Feb. 22, 1819, 8 Stat. 252.

51. W. Clayton Carpenter, *The Red River Boundary Dispute*, 19 3 Am. J. Int’l L. 517, 518 (1925).

boundary so that when “questions of title and controversies” arose with new settlements, there would be no question as to where the boundaries lay.⁵² Accordingly, when the treaty was ratified, it stated that the boundary between the United States and Spain should “follow the *west bank* of the Sabine, the *south bank* of the Arkansas, but ‘*the course*’ of the Red River.”⁵³

The southern bank continued as the boundary between the United States and Mexico when Mexico gained control of what is now Texas.⁵⁴ Soon after, Anglo-American settlers began illegally entering Mexico.⁵⁵ And in 1836, the Republic of Texas was formed, and officials reaffirmed the language within the Adams–Onís Treaty.⁵⁶ However, the boundary still caused issues when Texas became the twenty-eighth state of the United States in 1845.⁵⁷

Even though Texas was now a part of the United States, issues involving the Red River continued throughout the 1800s. Captain Randolph Marcy discovered the north fork of the Red River in 1852, and Texans claimed the land, citing doubts about its inclusion in the boundary agreement.⁵⁸ In 1867, treaties created a reservation for the Kiowa, Comanche, and Apache tribes along the Red River and placed its border “north of the middle of the main channel” thus creating more uncertainty.⁵⁹ Finally, the Greer County War began, and the Supreme Court finally discussed the Red River dispute in *United States v. Texas*.⁶⁰ In *United States v. Texas*, or the “Greer County case,” the Court was tasked with determining the boundary established by the Adams–Onís Treaty.⁶¹ Upon reviewing the maps used by Adams and Onís, the Court found that the pair intentionally placed the boundary, and there it would remain.⁶² The Court stated:

[T]he North Fork of Red River, and north of a line following westward, as prescribed by the treaty of 1819

52. *Id.* (citing *ex parte* statements made by John Quincy Adams).

53. *Id.* at 519.

54. Roberson, *supra* note 4.

55. WILLIAMS, *supra* note 18, at 8.

56. *Id.*

57. *Id.*; Roberson, *supra* note 4.

58. Roberson, *supra* note 4.

59. *Id.* (internal quotation marks omitted).

60. *Id.*; *United States v. Texas*, 162 U.S. 1, 2-3 (1896).

61. Roberson, *supra* note 4; Carpenter, *supra* note 51, at 519; *Texas*, 162 at 2-3.

62. *U.S. v. Texas*, 162 U.S. 1, 90-91.

between the United States and Spain, the course, and along the south bank, both of Red River and . . . [the] South Fork of Red River until such line meets the 100th meridian of longitude . . . constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America.⁶³

The “Greer County case” appeared to solve the problems along the Red River, but nearly one hundred years after the Adams–Onís Treaty, oil was discovered along the Red River in 1918.⁶⁴ Texas oilmen drilled wells “as close to the river as possible and sometimes actually in the river.”⁶⁵ Property owners, tribal citizens, the State of Oklahoma, and the federal government each believed they had rights to minerals along the Red River.⁶⁶ Still, with uncertainty regarding the boundary, there was no established legal assertion anyone could employ.⁶⁷ Accretion and avulsion added to the problems along the boundary.⁶⁸ While the “Greer County case” stated that the boundary was along the course of the south bank of the river, questions arose about the exact location of the bank and whether the line could move when the river changed.⁶⁹

In a series of cases in the 1920s, the Supreme Court reviewed its previous determinations and sought to settle any future boundary disputes.⁷⁰ In the 1921 *Oklahoma v. Texas* case, Oklahoma brought suit to determine the “true boundary line” between the two states.⁷¹ Texas rejected the assertion that the Adams–Onís Treaty established the boundary along the southern bank; accordingly, Texas claimed that *United States v. Texas* was wrongly decided.⁷² Texas asserted that the boundary between the states was in the middle of the Red River.⁷³ Complicating the

63. *Id.*

64. Carpenter, *supra* note 51, at 519.

65. Roberson, *supra* note 4.

66. *Id.*

67. *Id.*

68. Carpenter, *supra* note 51, at 520-23.

69. Roberson, *supra* note 4.

70. *Id.*

71. *Oklahoma v. Texas*, 256 U.S. 70, 81 (1921).

72. *Id.* at 83-84.

73. *Id.* at 83.

case, oil and gas deposits and tribal land meant that determining the official state lines had real impacts for landowners and the government alike.⁷⁴ The Court was presented with two questions: (1) whether the determination in *United States v. Texas* was definite in its boundary definition, and (2) if *United States v. Texas* was not conclusory, whether the Adams–Onís Treaty of 1819 could be interpreted to set the boundary in the middle of the Red River.⁷⁵ The Court reviewed the decree in *United States v. Texas* and decided that the treaty “intended that the line should be run from the Gulf along the western bank of the Sabine River, and after it reached Red River that it should follow the course of that river, leaving both rivers within the United States.”⁷⁶ Therefore, the Court embraced the Adams–Onís Treaty of 1819 and held that the southern bank was the true Red River border in its entirety.⁷⁷

In 1922, the Court was presented with a different boundary question—is the entirety of the Red River a part of Oklahoma?⁷⁸ Oklahoma brought suit against Texas to determine the ownership of the southern portion of the Red River from the medial line to the southern embankment.⁷⁹ However, the United States intervened in the case as it believed it had claim to the forty-three miles in question.⁸⁰ Oklahoma contended that it received ownership of the river after gaining statehood in 1907.⁸¹ Oklahoma, having the burden to prove it possessed the rights to the riverbed, pointed to the Louisiana Purchase of 1803 and the Adams–Onís Treaty of 1819.⁸² The State claimed that because the United States “acquired the full title to the bed of the river” in those treaties, Oklahoma acquired subsequent ownership when it became a state.⁸³ Therefore, Oklahoma asserted that its burden was met through the “constitutional rule of equality among the States whereby each new State becomes . . . the owner of the soil underlying the navigable waters within its borders.”⁸⁴ The Court disagreed and held that Red River was unnavigable.⁸⁵

74. *Id.* at 84.

75. *Id.* at 85.

76. *Id.* at 92.

77. *Id.* at 92–93.

78. *Oklahoma v. Texas*, 258 U.S. 574, 579 (1922).

79. *Id.* at 578–79.

80. *Id.* at 579.

81. *Id.* at 583.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 591.

Navigability is determined by assessing “whether [the waterway] is used, or is susceptible of being used, in its natural and ordinary condition as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.”⁸⁶ After assessing various scientific and historical data, the Court found that the Red River was not navigable; therefore, Oklahoma did not receive title to the entirety of the bed in 1907.⁸⁷ Oklahoma was now to only have claim to the bed if it was “incidental to its ownership of riparian lands.”⁸⁸

This decision also spoke on the portions of land along the Red River owned by the Kiowa, Comanche, and Apache Tribes.⁸⁹ When the United States and these tribes entered into a treaty in 1867,⁹⁰ the “middle of the main channel” marked the boundary for their respective reservations.⁹¹ The reservations were altered by the Act of 1900 and the Act of 1906, which required the disposal of this land.⁹² The area in question was a part of this disposed land; therefore, the Court was asked whether “the riparian claims relate[d] to what was intended by the term[] ‘middle of the main channel’ . . . as used in defining the southerly boundary of the treaty reservation” and “whether the disposal of the lands . . . carried with it any right to the river bed in front of them.”⁹³ The Court determined that the acts and treaty were clear in their meaning—the United States did not intend to dispose of anything more than the northern portion of the Red River because the southern half was never included in any of the acts or the treaty language.⁹⁴ Thus, even though the acts called for the disposal of the land along the Red River, the conveyances were only to extend to the middle of the river—but not past.⁹⁵

86. *Id.* at 586.

87. *Id.* at 587-92.

88. *Id.* at 591-92.

89. *Id.* at 592.

90. Treaty Between the United States of America and the Kiowa, Comanche, and Apache Tribes of Indians, Oct. 21, 1867, 15 Stat. 589. This supplemental treaty between the United States and these tribes incorporated the original treaty by reference, see also Treaty Between the United States of America and the Kiowa and Comanche Tribes of Indians, Oct. 21, 1867, 15 Stat. 581.

91. *Id.* (“[T]he territory north of the ‘middle of the main channel’ of the Red River and between the 98th meridian and the North Fork was set apart as a reservation and permanent home for those tribes.”).

92. *Id.* at 592-93. *see also* Act of June 6, 1900, ch. 813, § 6, 31 Stat. 672, 676; Act of June 5, 1906, ch. 2580, 34 Stat. 213.

93. *Oklahoma*, 258 U.S. at 593-94.

94. *Id.* at 595-96.

95. *Id.* at 596.

Later in 1923, the Supreme Court revisited the boundary determination in *Oklahoma v. Texas*.⁹⁶ While the “Greer County case” and the 1921 case set the boundary along the southern bank, questions remained regarding the actual location of that line.⁹⁷ The Court confirmed that the boundary was “as it was in 1821, when the [Adams–Onís] treaty became effective, [and remains] the boundary of today, subject to the right application of the doctrines of erosion and accretion and of avulsion to any intervening changes.”⁹⁸ However, the Court highlighted that while the boundary was based upon the 1819 treaty, it was impossible to estimate the exact boundary from that time period.⁹⁹ The Court concluded that three commissioners would make the determination of what truly marked the boundary.¹⁰⁰

Surveyors Colonel Arthur A. Stiles and Arthur D. Kidder were appointed as commissioners to complete the daunting task of solving the boundary dispute.¹⁰¹ To aid in their determination, Stiles invented the “gradient boundary” method.¹⁰² The pair utilized this method and found the gradient boundary through a “close study [by] walking the banks, not by inspection from a distance.”¹⁰³ In 1925, the Supreme Court reviewed Kidder and Stiles’s findings.¹⁰⁴ The Court observed witness posts, reference monuments, maps, and reports prepared by the commissioners and confirmed Kidder and Stiles’s boundary determination.¹⁰⁵ Additionally, the Court stated that:

[T]he line delineated and set forth in the report and on the maps accompanying the same and referred to therein be

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

97. *Id.* at 624–35.

98. *Id.* at 636.

99. *See id.* at 638.

100. *Id.* at 640.

101. *Oklahoma v. Texas*, 265 U.S. 500, 503 (1924) (decree); Nedra Foster Townsend, *The Red River Flows On*, AM. SURVEYOR (May 25, 2019), <https://amerisurv.com/2019/05/25/the-red-river-flows-on/> [https://perma.cc/BH3A-ZH3H].

102. Richard L. Elgin, *The Short Story of the Red River*, *Oklahoma v. Texas*, and the Gradient Boundary—1803–1952, AM. SURVEYOR (Apr. 19, 2019), <https://amerisurv.com/2019/04/19/the-short-story-of-the-red-river-oklahoma-v-texas-and-the-gradient-boundary-1803-1952/> [https://perma.cc/KN86-XS23].

103. *Id.* (quoting Arthur A. Stiles, *The Gradient Boundary—The Line Between Texas and Oklahoma Along the Red River*, 30 TEX. L. REV. 305, 316 (1952)).

104. *Oklahoma v. Texas*, 267 U.S. 452, 454 (1925) (decree).

105. *Id.*

established and declared to be the true boundary between the States of Texas and Oklahoma along the part of the Red River designated in such report subject however to such changes as may hereafter be wrought by the natural and gradual processes known as erosion and accretion . . .¹⁰⁶

Therefore, the Court determined that “[f]or the purposes of fixing the boundary, the south bank is the cut bank of the Red River and thus forms the legal boundary between Oklahoma and Texas”¹⁰⁷ and established where that boundary lay.¹⁰⁸ The states accepted this determination; however, locating the precise point of the south bank caused strife.¹⁰⁹

In 1991, Oklahoma and Texas established Red River Boundary Commissions to designate the boundary determinations.¹¹⁰ The commissions were tasked with “establishing the exact location of the south bank of the Red River; holding hearings on both Texas and Oklahoma with the Bureau of Land Management and other ‘interested parties’; and filing a final report outlining action deemed warranted with the governors and the states’ legislatures.”¹¹¹ By 1999, the states submitted legislation that outlined the boundary as “the vegetation line along the south bank of the Red River extending on a line from the 100th Meridian east to Lake Texoma as the northern border of Texas,” with an exception outlined for the Texoma area and a requirement involving the placement of physical markers.¹¹² Additionally, the legislation outlined that Oklahoma now possessed sovereignty of the lands north of the vegetation line, Texas retained sovereignty of the lands to the south, and the sovereignty of the tribal lands would remain unaffected by the new boundary determination.¹¹³ Both states’ governors signed the legislation.¹¹⁴ In 2000, Congress passed a joint resolution officially recognizing the boundary

106. *Id.* at 454-55.

107. Roberson, *supra* note 4.

108. *Oklahoma*, 267 U.S. at 454-55.

109. Roberson, *supra* note 4.

110. *Id.*

111. Glen Roberson, *Red River Boundary Compact*, ENCYC. OKLA. HIST. & CULTURE (Jan. 15, 2010), <https://www.okhistory.org/publications/enc/entry?entry=RE008> [<https://perma.cc/4KH7-RK3Z>].

112. *Id.*

113. H.R.J. Res. 72, 106th Cong. § 1(b), (d), 114 Stat. 919, 919 (2000).

114. *Id.* § 1(b)(1)-(2), 114 Stat. at 919.

created by the Red River Compact.¹¹⁵ Most importantly however, both states admitted that there were “actual and potential disputes, controversies, criminal proceedings, and litigation arising, or that may arise, out of the location of the boundary line between the states along the Red River.”¹¹⁶

The Problems with the Red River Compact

The Red River Compact signified a change in the relationship between Oklahoma and Texas. The purpose of the Compact was clear—the two states wished to create “a friendly and harmonious interstate relationship” and to avoid a variety of legal issues.¹¹⁷ However, since the Compact’s passing in 2000, problems have continued between landowners, agencies, Tribal Nations, and the two states. These examples illustrate the ongoing issues with the current Compact and show how the courts assess these jurisdictional problems.

A. The Bureau of Land Management

“That’s Oklahoma. And I’m in Texas. And we’re a foot apart, a mile from the river,” stated Pat Canan, a Texas landowner whose property was seized by the federal government, sparking controversy.¹¹⁸ In 2003, after the Compact passed, the Bureau of Land Management (“BLM”) began surveying the Red River in an effort to establish the federal government’s interest in the boundary.¹¹⁹ At its inception, the BLM was created as an effort to ensure that public lands could be managed for present and future protection.¹²⁰ In *Aderholt v. Bureau of Land Management*, plaintiffs alleged that the BLM used incorrect surveying methods that resulted in the federal government claiming privately owned land south of the vegetation

115. *Id.* § 1(a).

116. Red River Boundary Compact, TEX. NAT. RES. CODE ANN. § 12.002, art. I(a)(1) (West 2024); OKLA. STAT. tit. 74, § 6106, art. I(A)(1) (2026).

117. tit. 74, § 6106, art. I(B)(1)–(4).

118. Rennee Montagne, *Landowners and Federal Officials Dispute Red River’s Boundaries*, NPR, (June 8, 2017), <https://www.npr.org/2016/06/08/481206868/landowners-and-federal-officials-dispute-red-rivers-boundaries> [<https://perma.cc/F32E-W8TP>].

119. *Aderholt v. Bureau of Land Mgmt.*, No 7:15-cv-00162-O, 2016 WL 3541857, at *2 (N.D. Tex. June 29, 2016).

120. Federal Land Policy and Management Act of 1976 § 102, 43 U.S.C § 1701(a)(2).

line of the Red River.¹²¹

The plaintiffs, consisting of Texas landowners, county governmental bodies, and the county sheriff, brought this suit after the BLM began surveying their land in 2003.¹²² The complaint alleged that the BLM began to place survey markers on their property to designate the boundary between the states; however, these markers were—at times—a mile from the actual river.¹²³ Thus, hundreds of acres of the plaintiffs' property became federal land seemingly overnight.¹²⁴ The complaint also alleged that the BLM survey (1) did not follow boundary changes caused by the 2015 Red River flood, during which the high-water levels of the Red River still did not reach the survey markers placed by the BLM; (2) did not apply a consistent stance with their reasoning in *Hamill v. Bryant*, a Red River landowner dispute in which the federal government did not participate as it claimed no property interest in the disputed land, the same land now claimed by the BLM; and (3) did not respect the plaintiffs' property interests, thus clouding the plaintiffs' title.¹²⁵ Attempting to end the "lawlessness" initiated by the BLM, the plaintiffs pursued quiet title and declaratory, injunctive, and mandamus relief for the court to determine the official gradient boundary, for the violations of the Fifth Amendment's Due Process Clause, and for the unreasonable seizure of property as protected by the Fourth Amendment.¹²⁶

The plaintiffs relied heavily upon the 1923 *Oklahoma v. Texas* case in their following motion for summary judgment.¹²⁷ In their motion, plaintiffs asserted that the issue was whether the BLM's surveys directly went against the legal standards set by the Supreme Court in 1923.¹²⁸ *Oklahoma v. Texas* stated that the boundary included "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 . . . and serves to confine the waters within the bed and preserve the course of the river."¹²⁹

121. Plaintiffs' Amended Complaint at *42-46, *Aderholt*, 2016 WL 373541857 (No. 15-cv-00162-O).

122. *Id.* at *1.

123. *Id.* at *18.

124. *See id.*

125. *Id.* at *18-20.

126. *Id.* at *27-42.

127. Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment at 1, *Aderholt*, 2016 WL 373541857 (No. 15-cv-00162-O).

128. *Id.*

129. *Id.* (alteration in original) (internal quotation marks omitted) (quoting *Oklahoma v. Texas*, 260 U.S. 606, 631-32 (1923)).

Additionally, the plaintiffs stated that the surveyors considered the bluffs to be a part of the river banks in violation of the *Oklahoma v. Texas* case as it stated that “the banks of the river are neither the ranges of bluffs which mark the exterior limits of the valley, nor the low shifting elevations within the sand bed.”¹³⁰ Further, the motion called to the doctrine of accretion and avulsion, additionally set forth in the 1923 case.¹³¹ The plaintiffs claimed that due to these doctrines that bind the boundary definition of the Red River, the southern bank is always the boundary between the states unless sudden avulsion changes the landscape.¹³²

Aderholt ended after the parties entered into a settlement agreement.¹³³ In this agreement the parties agreed that the 1923 *Oklahoma v. Texas* case defines the states’ boundary, and the gradient boundary method is the applicable survey standard.¹³⁴ Additionally, the parties agreed to the riparian law principle outlined in *Oklahoma v. Texas*; therefore, “where a boundary bank is changed by these processes, the boundary, whether private or public, follows the change.”¹³⁵ Although the parties’ settlement agreement did not resolve the boundary’s precise location, it did outline the BLM’s compromise to comply with the agreed law outlined in *Oklahoma v. Texas*.¹³⁶ Additionally, the BLM agreed to cancel their survey and boundary determinations but reserved the right to resurvey in the future.¹³⁷

Even though this case was not fully adjudicated, it was deemed a win in the eyes of the Texas landowners who could not imagine that their generationally Texan-owned land plots could ever be considered a part of Oklahoma. However, this determination still highlights the uncertainty of the Red River as a boundary and the legal doctrines that guide it. The federal government still maintains the right to survey, and the future of property rights along the ever-changing body of water are not secured.

B. Civil and Criminal Court Cases

130. *Id.* at 1 (citing *Oklahoma v. Texas*, 260 U.S. 606, 635 (1923)).

131. *Id.* at 7.

132. *Id.* at 7-8.

133. See Amended Joint Motion to Approve Settlement Agreement, Exhibit A. at 2, *Aderholt*, 2016 WL 373541857 (No. 15-cv-00162-O).

134. *Id.* at 7.

135. *Id.* at 7-8 (internal quotation marks omitted) (quoting *Oklahoma v. Texas*, 268 U.S. 252, 256 (1925)).

136. *Id.* at 8.

137. *Id.*

The court system has been plagued by civil and criminal cases where disputes arise along the Red River. However, the actual location of the area can bring questions of jurisdiction and venue. Thus, without a clear answer as to whether a particular parcel of land is in Oklahoma or Texas, courts are burdened with answering these questions and often waste time, money, and resources in determining the proper jurisdiction and venue.

1. Civil Case Examples

There are many civil cases that raise jurisdiction- and venue-related questions in matters that arise over land along the Red River. The following case illustrations act as an example of the problems that afflict this area of the law, but the extent of this problem can be found throughout a multitude of cases in both state and federal court.

In *Boaz Legacy, L.P. v. Roberts*, Boaz sued Roberts, in Texas state court, over a tract of land along the southern bank of the Red River.¹³⁸ However, the defendant “removed the case to federal court and then moved to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1),” which the district court granted as Roberts was able to provide evidence that the disputed area was north of the vegetation line, and therefore was in Oklahoma.¹³⁹ On review, the Fifth Circuit discussed that although the plaintiff attempted to assert arguments about the Red River Compact, the issue before them was “purely jurisdictional” and given the undisputed evidence of the location of the land in question, coupled with the language of the Compact, the federal court in Texas properly dismissed due to the lack of subject matter jurisdiction.¹⁴⁰

W.C. Chapman, L.P., v. Cavazos, is an example of another common legal dispute in the area.¹⁴¹ W.C. Chapman, the plaintiff, and Cavazos, the defendant, argued about the ownership of twenty acres along the Red River.¹⁴² The plaintiff brought suit “requesting (1) judgment for the title and possession of the Disputed Property; (2) judgment removing the cloud on Plaintiff’s title to the Disputed Property; and (3) that Defendant be

138. 628 Fed. Appx. 318, 319 (5th Cir. 2016).

139. *Id.*

140. *Id.* at 320.

141. See generally *W.C. Chapman, L.P. v. Cavazos*, No. 21-cv-00893, 2022 WL 1558502 (E.D. Tex. May 17, 2022) (considering whether to transfer venue under 28 U.S.C. § 1404(a)).

142. *Id.* at *1.

enjoined for entering the Disputed Property and from taking any action dispossessing Plaintiff from its ownership and occupancy.”¹⁴³ However, even before these issues could be heard by the court, the jurisdictional question had to be settled after the defendant filed a motion to transfer under 28 U.S.C. § 1404(a) to the Eastern District of Oklahoma.¹⁴⁴

The defendant believed the disputed land was in Oklahoma, but the plaintiff believed it was in Texas; therefore, the court had to determine “‘whether the judicial district to which transfer [was] sought would have been a district in which the claim could have been filed,’ or whether all parties consent[ed] to a particular jurisdiction.”¹⁴⁵ Once that is determined, a court will turn to “a number of public and private interest factors, none of which can be said to be of dispositive weight.”¹⁴⁶ Because the parties argued whether the location of the property was in Oklahoma or Texas, the court reviewed evidence from both in order to continue its § 1404 analysis.¹⁴⁷

The plaintiff pointed to the language of the Red River Boundary Compact and stated that, per the previous survey, the land was south of the boundary line, and therefore in Texas.¹⁴⁸ The defendant however, stated that his deed and tax records, which were recorded and accepted in McCurtain County, Oklahoma, served as administrative proof that the disputed land was in Oklahoma.¹⁴⁹ After reviewing a multitude of evidence, the court determined the plaintiff established that the disputed land was in Texas based upon the language of the Red River Boundary Compact that clearly sets the boundary at the vegetation line.¹⁵⁰ The court found that the “[p]laintiff’s evidence goes to the heart of the dispositive question presented by the Compact—it directly demonstrates that the Disputed Property is located south of the Red River’s south vegetation line, and, thus, in Texas.”¹⁵¹ The court continued to do a § 1404(a) analysis using 28 U.S.C. § 1391(b) but found that the defendant not only failed to meet his burden of establishing that venue in the Eastern District of Oklahoma was proper, he also failed to meet his burden of proving the

143. *Id.*

144. *Id.*

145. *Id.* at *2 (quoting *In re Volkswagen Ag*, 371 F.3d 201, 203 (5th Cir. 2004)).

146. *Id.* (citing *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004)).

147. *Id.* at *7.

148. *Id.*

149. *Id.*

150. *Id.* at *8.

151. *Id.* at *10.

private and public factors of transfer weighed in his favor.¹⁵² The court concluded that transfer was inappropriate.¹⁵³

2. Criminal Case Example

Brown v. State illustrates a Red River jurisdictional issue that can arise in a criminal law setting.¹⁵⁴ Jeremy Brown was convicted for murder after a domestic violence assault resulted in the death of his infant daughter.¹⁵⁵ Brown had an extensive abusive history with his partner, Karina Ortiz.¹⁵⁶ After a particularly violent encounter, Brown and Ortiz left with their infant to take the baby “somewhere safe.”¹⁵⁷ The couple began driving, but during their travels Brown began to violently strike Ortiz, who was driving at the time.¹⁵⁸ After stopping the vehicle, Ortiz continued to receive blows until she fell out of the vehicle and attempted to retrieve her daughter.¹⁵⁹ Brown exited the car and dragged Ortiz away from the vehicle, at which point Ortiz ran to a car that had stopped at a nearby intersection.¹⁶⁰ The violence continued until Ortiz was able to climb into the stopped vehicle.¹⁶¹ Brown then retreated to Ortiz’s car and fled with the infant still in the backseat.¹⁶² At some point in the night, Brown attempted to make a U-turn and drove the vehicle into the Red River.¹⁶³ The following day he stated near a bystander that the car in the water was his and that his child was “still in the car.”¹⁶⁴

On appeal, one of the issues Brown raised was whether Texas could exercise jurisdiction over him because his daughter’s death occurred in the middle of the Red River.¹⁶⁵ Brown cited the Red River Boundary Compact and stated that because the child died due to the impact in the river, the offense actually took place in Oklahoma since the boundary between the

152. *Id.* at *10-13.

153. *Id.* at *13.

154. *Brown v. State*, No. 02-22-00037-CR, 2023 WL 5765789 (Tex. Ct. App. Sep. 7, 2023).

155. *Id.* at *1.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at *2.

164. *Id.*

165. *Id.* at *8.

states was “the vegetation line along the south bank of the Red River.”¹⁶⁶ Therefore, Brown claimed that Texas lacked “territorial jurisdiction” over him and that Oklahoma should have tried him instead.¹⁶⁷

The Texas Court of Appeals did not agree with this claim.¹⁶⁸ Brown was convicted of murder; under Texas Penal Code, “a person who intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes death is guilty of murder.”¹⁶⁹ Brown’s clearly dangerous conduct that resulted in his daughter’s death occurred in Texas, thereby giving Texas jurisdiction.¹⁷⁰ The Texas Court of Appeals affirmed Brown’s conviction.¹⁷¹

C. Lake Texoma

The Red River Boundary Compact makes it clear; the border along these two states is along the southern vegetation line of the river and is subject to the doctrine of accretion and avulsion, except along Lake Texoma.¹⁷² However, even the seemingly definite portions of this boundary can be muddled by the smallest of issues, including zebra mussels.¹⁷³ For years, Dallas and surrounding cities used water from the North Texas Municipal Water District until 2009 when invasive zebra mussels were discovered in Lake Texoma.¹⁷⁴ These tiny creatures raised boundary questions since 18 U.S.C. § 42 prohibits the transportation of zebra mussels across state lines and the water pumping potentially caused these animals to be “transported” since the location of the water pump was in question.¹⁷⁵

Originally, the Adams–Onís Treaty of 1819 would have placed the pumping station in Texas; however, the Red River Boundary Compact of 2000 required the states to enter into a future Texoma Area Boundary

166. *Id.* (quoting TEX. NAT. RES. CODE ANN. § 12.002, art. II (b) (West 2024)).

167. *Id.*

168. *Id.* at *9.

169. *Id.*; see TEX PENAL CODE ANN. § 19.02(b)(2) (West 2025).

170. *Brown*, 2023 WL 5765789, at *8.

171. *Id.* at *9.

172. OKLA. STAT. tit. 74, § 6106 art. II(B) (2025).

173. Kayla Guo, *How Zebra Mussels and a Lake Texoma Pump Station Spurred Texas to Redraw its Border with Oklahoma*, TEX. TRIB. (Nov. 7, 2024), <https://www.texastribune.org/2024/11/07/texas-oklahoma-border-change-lake-texoma/> [<https://perma.cc/RMX3-D5B7>].

174. *Id.*

175. *Id.*; 18 U.S.C. § 42(a)(1), (b).

Agreement to establish the boundary of this gray area.¹⁷⁶ After the zebra mussel issue was discovered, an investigation uncovered that the Texoma Area Boundary Agreement placed the pumping station in Oklahoma.¹⁷⁷ An agreement had to be made, but it had to be carefully crafted since it impacted the water access of a highly populated area.¹⁷⁸ Additionally, this agreement could not simply give one state additional land since a state “growing” in land size requires congressional approval.¹⁷⁹ Thus, the swapping of a mere 1.34 acres of underwater land between the states required intense precision.¹⁸⁰ Former Senate Floor Leader Greg McCortney stated the sentiments between the states eloquently: “That’s the struggle. We have that friendly rivalry for sure, and we want to be good neighbors At the same time when you kind of look at where we are, it’s hard to know what is the right path forward”¹⁸¹

In 2004, after extensive surveying, legal research, and engineering, Oklahoma and Texas finally entered into the Amended and Restated Texoma Area Boundary Agreement.¹⁸² The states exchanged equal land area, and the water access to nearly two million people in Texas remained intact.¹⁸³ However, the North Texas Water Municipal District agreed to pay \$10 million for past water use and an additional \$800,000 in fees related to finding the precise boundary.¹⁸⁴ When asked about the agreement, the North Texas Municipal Water District stated:

We’re pleased we’ve reached an agreement with our partners in Oklahoma ensuring continued use of our Lake Texoma pump station to provide water to our rapidly growing service area. This agreement secures a vital water

176. Guo, *supra* note 173; Red River Boundary Compact, TEX. NAT. RES. CODE ANN. § 12.002(d)-(e) (West 2024); OKLA. STAT. tit. 74, § 6106 art. II(D)-(E).

177. Guo, *supra* note 173.

178. *Id.*

179. *Id.*

180. *Id.*

181. Tres Savage, *Questions Linger Over Texas Water Pump on Oklahoma Side of Lake Texoma*, NONDOC (Apr. 13, 2023), <https://nondoc.com/2023/04/13/texas-water-pump-located-on-oklahoma-side-of-lake-texoma/> [https://perma.cc/8YB5-G6LK].

182. OKLA.’S CONTINGENCY REV. BD., AMENDED AND RESTATED TEXOMA AREA BOUNDARY AGREEMENT 1 (2024).

183. Graycen Wheeler, *Oklahoma’s Iconic Shape is About to Change... but Only a Little*, KOSU (Oct. 11, 2024), <https://www.kosu.org/local-news/2024-10-11/oklahomas-iconic-shape-is-about-to-change-but-only-a-little> (on file with the Oklahoma City University Law Review).

184. Guo, *supra* note 173.

supply for the region, as Lake Texoma accounts for approximately 20 percent of [the North Texas Water Municipal District]’s permitted water supplies that serve more than two million North Texans.¹⁸⁵

This dispute, while now settled, proves the Red River boundary contention knows no bounds, and solutions require careful review, even when the land swapped equals roughly a football field for each state.

D. Issues Summarized

The issues surrounding the Red River boundary cannot be minimized into a concrete singular issue. Instead, difficulties permeate throughout all areas and into the lives of all who have an interest in the areas surrounding this river border. The BLM surveying issues highlight the trouble with the gradient boundary approach and how, without extensive knowledge of the process, it can impact landowners. The civil and criminal case law illustrates that boundary disputes can clog the judicial branch and cause unnecessary burdens to landowners, mineral interest owners, the government, and everyday citizens alike. Finally, the Lake Texoma dispute exemplifies that Oklahoma and Texas can reach agreements to solve border arguments but not without extensive research, surveys, and costs. A potential solution to these problems must take into account the issues that have troubled the past while considering the potential questions of the future.

Proposed Solution

As evidenced by the many legal, administrative, and governmental issues surrounding the Red River boundary, the border dispute between Oklahoma and Texas was not entirely solved by the Adams–Onís Treaty of 1819, the 1920s Red River litigation, or the Red River Boundary Compact of 2000. If the goal of the states is to truly establish “a friendly and harmonious interstate relationship,”¹⁸⁶ then the current legal doctrines need serious review. The problem with the current boundary is exactly what makes it so unique—its basis in history. Therefore, a solution must

185. Austin Hedgoth, *Dispute Over Red River Boundary Settled*, KXII (Oct. 10, 2024), <https://www.kxii.com/2024/10/10/dispute-over-red-river-boundary-settled/> [<https://perma.cc/LU2B-2P3R>].

186. OKLA. STAT. tit. 74, § 6106(B)(1) (2025).

factor in the storied past of the Red River while solving its contemporary issues.

A. Should the States Adopt a Different Boundary Designation?

A simple solution to the Red River problem would be to designate another, more readily used, boundary system. Other states realize the perplexities involving a river boundary and employ several different means to establish an official boundary. However, to simplify the decision, many states set the boundary at the middle of the river to avoid the complications of accretion and avulsion that arise out of an embankment-based boundary. The Supreme Court has recognized the “live thalweg” approach as the presumptive method for establishing an interstate border in situations where there is no legislation on the matter.¹⁸⁷ A thalweg boundary is an internationally recognized standard that sets the middle of the river as the clear boundary.¹⁸⁸ This system is preferred by many because it “guarantees equal rights of access and use to each riparian state.”¹⁸⁹

Illinois and Iowa provide an example of a thalweg boundary as the two states are separated by the Mississippi River.¹⁹⁰ The boundary between these states has a storied past, as Illinois joined the United States after the 1783 treaty of Paris and Iowa joined the Union as a part of the Louisiana Purchase.¹⁹¹ However, these states have set their boundary as “the middle of the main channel of the stream.”¹⁹² The Supreme Court, when ruling about this boundary in 1893, stated the middle-of-the-channel boundary type was a common and “modern” border distinction when a navigable channel represented the boundary between two states.¹⁹³ Washington and Oregon, separated by the Columbia River;¹⁹⁴ Louisiana and Mississippi, separated by the Mississippi River;¹⁹⁵ Kansas and Missouri, separated by the Missouri River;¹⁹⁶ and countless other states utilize this method, and the boundaries between these states are solidified often as the “deepest or

187. TARLOCK & ROBISON, *supra* note 16, § 3:37 (collecting cases).

188. *Id.*

189. *Id.*

190. *Iowa v. Illinois*, 147 U.S. 1, 2 (1893).

191. *Id.* at 2-3.

192. *Id.* at 7.

193. *Id.* at 8.

194. *Washington v. Oregon*, 211 U.S. 127, 131 (1908).

195. *Louisiana v. Mississippi*, 202 U.S. 1, 33 (1906).

196. KAN. STAT. ANN. § 82a-527a (2025).

navigable part of [a] channel.”¹⁹⁷

So why, if this is such a common practice, is the middle of the channel not the boundary between Oklahoma and Texas? Ultimately, settling the boundary at the deepest part of the Red River would not solve the issues surrounding this complicated border. Per the 1922 case, *Oklahoma v. Texas*, there are extensive portions of the Red River that are owned and maintained by the federal government.¹⁹⁸ In his testimony before the Subcommittee on Public Lands and Environmental Regulation, Deputy Director of the BLM, Steve Ellis, spoke about the publicly held lands along the Red River.¹⁹⁹ The subcommittee was discussing the Red River Private Property Protection Act, which proposed to eliminate the federally owned land along the Red River and to transfer said land to property owners who demonstrated adequate ownership through chain of title, deeds, or tax records.²⁰⁰ Ellis spoke of the 116-mile stretch of federally owned land along the Red River that is maintained by the BLM that would be impacted by the Act.²⁰¹ His testimony outlined the complicated issue through his explanation of the history of the area and the Red River Compact, which moved the boundary to the vegetation line of the southern bank of the Red River instead of the former gradient line.²⁰² He stated that the Red River Compact “did not change the title of any person or entity, public or private, to any of the lands adjacent to the Red River”; therefore, even though the Compact “shifted the boundary between the states, the location and status of lands in the public domain remained unchanged.”²⁰³ Additionally, Ellis highlighted that the Compact set the boundary of tribal land along the Red River “from the north bank across the river to the gradient boundary on the south bank.”²⁰⁴

Even though the Red River Privacy Protection Act was never enacted, Ellis’s testimony serves as an example of the potential concerns that could arise if the boundary between the Red River was suddenly set along the medial line. Unlike the potential Act’s solution, the medial line solution

197. TARLOCK & ROBISON, *supra* note 16, § 3:37.

198. *Oklahoma v. Texas*, 258 U.S. 574, 591-92 (1922).

199. *Red River Private Property Protection Act: Hearing on H.R. 4979 Before the Subcomm. on Pub. Lands & Env’t Regul., of the H. Comm. on Nat. Res.*, 113th Cong. (2014) [hereinafter *Hearings*] (testimony of Steve Ellis, Deputy Director, Bureau of Land Mgmt.).

200. Red River Privacy Protection Act, H.R. 4979, 113th Cong. § 3(a) (2014).

201. *Hearings*, *supra* note 199.

202. *Id.*

203. *Id.*

204. *Id.*

would not implicate the federal government's publicly held land in this area, as a change in the boundary would not automatically alter the ownership status of the United States. However, there are other areas that would be greatly impacted by this change.

For example, the oil and gas industry in this region would be implicated by a change in the boundary. Historically, oil and gas have always complicated the Red River boundary as the 1920s Red River litigation was sparked by the discovery of oil in north Texas.²⁰⁵ Known as the Burkburnett oilfield discovery, the sudden boom of the oil and gas industry brought hundreds of oil companies to the region.²⁰⁶ Wells were soon erected on the Texas side of the river, sometimes popping up in the Red River itself.²⁰⁷ The Kiowa, Comanche, and Apache tribes, who owned property on the Oklahoma side, asserted that these Texas drillers owed royalty payments to the tribes or claimed entire ownership of the wells based on their location.²⁰⁸ Thus, the 1920s litigation attempted to settle the boundary, but mineral rights, drilling permits, and regulation guidelines continue to impact the area and created hostility.

If the boundary were to be changed from the southern vegetation line to the thalweg method, thousands of mineral interest owners could potentially lose valuable ownership of their property below the surface. A change of this nature has the potential to harm the oil and gas industry and mineral interest owners in the region due to the creation of unmarketable title when the boundary would change. In Oklahoma, "[a] marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record."²⁰⁹ The Production Revenue Standards Act requires that mineral interest owners receive their legally entitled proceeds after production.²¹⁰ However, if a mineral interest owner's title is deemed "unmarketable," then they receive a significantly lower interest on their unreceived proceeds collected by producers than the mineral interest owners with

205. Roberson, *supra* note 4.

206. K.A. Wells & K.L. Wells, *Boom Town Burkburnett*, AM. OIL & GAS HIST. SOC'Y (July 28, 2025), <https://aoghs.org/petroleum-pioneers/burkburnett-oil/> [<https://perma.cc/7NM8-B92W>].

207. Roberson, *supra* note 4.

208. *Id.*

209. OKLA. BAR. ASS'N, REAL PROP. L. SECTION, TITLE EXAMINATION STANDARDS HANDBOOK 1 (2024), <https://www.okbar.org/wp-content/uploads/2024/09/2024-Supplemental-Handbook-Final57.pdf> [<https://perma.cc/343C-KPH4>].

210. OKLA. STAT. tit. 52, § 570.10(A) (2026).

marketable title.²¹¹ Therefore, if the boundary was changed, then mineral interest owners would be harmed as the sudden change in the border would cloud their title and their oil and gas proceeds would (1) be held by the producers until title could be determined and (2) receive a lower interest rate due to its unmarketability. Additionally, producers in the region would be harmed as the formerly unclouded mineral interest information that they previously relied upon would now be deemed unmarketable. This change would cause producers to hold royalty payments with interest until proper ownership could be determined, thus unnecessarily creating costs for producers.

Additionally, a sudden change in boundary structure would greatly impact the Tribal Nations in the region. The jurisdictional areas of the Chickasaw, Kiowa, Comanche, Apache, and Choctaw tribes are found along the Red River.²¹² Tribal Nations are “distinct governments that have the same powers as federal and state governments to regulate their internal affairs.”²¹³ In 2020, the landmark *McGirt v. Oklahoma* case found that since reservations were never formally dissolved, large portions of Oklahoma were considered Indian Country.²¹⁴ After *McGirt*, Oklahoma entered into a new era of jurisdictional uncertainty. Slowly but surely, the Tribal Nations, Oklahoma, and the courts alike have attempted to navigate tribal sovereignty.²¹⁵ When reflecting on the *McGirt* decision, the Chief of the Choctaw Nation, Gary Batton, stated that *McGirt* “was a big win for all tribal nations, in that, it recognize[d] the sovereignty our ancestors walked the Trail of Tears to preserve, [and it] was memorialized in treaties which remain in force to this day.”²¹⁶

This area of law still contains unanswered questions. As Oklahoma

211. *Id.* § 570.10(D)(1-2) (2025).

212. Okla. Dep’t of Transp., Plan & Rsch. Div., *Tribal Jurisdictions in Oklahoma* (illustration 2008), <https://oklahoma.gov/content/dam/ok/en/oja/documents/10%2037%20Federally%20Recognized%20Tribes%20in%20OK.pdf> [https://perma.cc/5QS6-TMA7].

213. Vivian Morris, *Tribal-State Policy 101: What is Tribal Sovereignty?*, OKLA. POL’Y INST. (Last updated May 10, 2025), <https://okpolicy.org/tribal-state-policy-101-what-is-tribal-sovereignty/> [https://perma.cc/TVX2-PK2G].

214. *Id.*; *McGirt v. Oklahoma*, 591 U.S. 894, 897-98 (2020).

215. *See generally* *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022) (holding that the state and federal governments share “concurrent jurisdiction to prosecute crimes committed by non-Indians in Indian country”).

216. Chief Garry Batton, *Chief Reflects on the Impact of McGirt Ruling, Five Years Later*, CHOCTAW NATION OKLAHOMA (July 7, 2025), <https://www.choctawnation.com/news/chiefs-blog/chief-reflects-on-the-impact-of-mcgirt-ruling-five-years-later/> [https://perma.cc/G34W-XH2Y].

and the Tribal Nations attempt to journey through the unknown, a change in the boundary determination through reclassification would greatly impact the area's jurisdictional grounds. If the boundary was suddenly determined by a thalweg approach, then land formerly believed to be in Texas could be included in tribal land. A change like this would require an extensive study of the treaties between the Tribal Nations and the United States and would undoubtedly bring countless questions to an already overwhelmed federal court system.

B. Updating the Current Structure

As evidenced by the thalweg solution, a simple fix to the Red River border can have drastic impacts on Oklahoma and Texas. Therefore, the best way to approach a solution is to amend the current legal structure of the boundary and strengthen it to fit the current needs of the states. This can be achieved by one thing—emboldening the Red River Boundary Commission and ensuring that the federal government participates. Improved structure and support will take an immense amount of time and resources, but a strategic overhaul of the current system could ensure stability for generations.

1. The Red River Boundary Commission

As stated previously, the Red River Boundary Commission worked to determine the exact location of the southern bank of the river, and those findings led to the Red River Compact of 2000.²¹⁷ When it was created, the commission was made up of representatives from Oklahoma, Texas, and members of the Kiowa, Comanche, and Apache tribes.²¹⁸ The commission's goal was to further the desires of both states and the tribes while also finding a compromise that all parties could agree to.²¹⁹ But once the agreement was met, the respective commissions of each state were disbanded until the recent Lake Texoma boundary dispute.²²⁰ Texas and Oklahoma recreated their boundary commissions so that the states could evaluate surveys and historical data, redraw the conflicted area within Lake Texoma, and, importantly, work with the other state to ensure

217. Roberson, *supra* note 111.

218. *Id.*

219. *Id.*

220. Wheeler, *supra* note 183.

cooperation and coordination.²²¹ Texas's statute outlined that its commission was to be made of five members, including a presiding officer, all appointed by the governor to uphold the interests of property owners, the government of Texas, and the public.²²² The Oklahoma commission was to consist of the Governor, Lieutenant Governor, Attorney General, President Pro Tempore of the Oklahoma State Senate, and the Speaker of the Oklahoma House of Representatives, with an exception that any of these members could appoint a designee if they so wished.²²³ However, both states' statute schemes contained an interesting provision—the commissions would conclude after the problems along Lake Texoma were solved.²²⁴

The commission structure is where effective change can be made. If Oklahoma and Texas were to establish a permanent Red River Boundary Commission that did not just exist to solve high-profile problems, but instead continuously worked to evaluate the boundary, then the continuous problems on the river would lessen. A long-lasting commission made up of representatives from both states could meet frequently and resolve minor issues, and therefore remedy disputes before they bubble over. The Red River Boundary Commission would not only consist of experts on the boundary but would also be responsible for advocating for their states' interests when disputes begin. Instead of having to spend valuable time and resources forming a commission, conducting surveys, and evaluating historical data when an issue arises, a steadfast commission would consistently procure this information to better assess disagreement.

A perpetual commission would work because it already does work for the Red River Compact Commission. In 1978, Oklahoma, Texas, Arkansas, Louisiana, and the United States entered into the Red River Compact.²²⁵ The purpose of the 1978 Compact, unlike the 2000 Compact, was to outline the “control and distribution of the interstate water of the Red River and its tributaries.”²²⁶ The 1978 Compact however, established an ongoing commission, titled the Red River Compact Commission, with two representatives from each state.²²⁷ These representatives can adopt

221. OKLA. STAT. tit. 74, § 6112 (2025); TEX. NAT. RES. CODE ANN. § 12.056 (West 2024).

222. TEX. NAT. RES. CODE ANN. § 12.053(a) (West 2024).

223. OKLA. STAT. tit. 74, § 6110(B)(1)-(5) (2026).

224. OKLA. STAT. tit. 74, § 6113 (2025); TEX. NAT. RES. CODE ANN. §§ 12.057-.058 (West 2024).

225. OKLA. STAT. tit. 82, § 1431(2025) (text of Compact).

226. *Id.* at art. I, § 1.01(a).

227. *Id.* at art. IX, § 9.01.

rules; utilize engineering, legal, and clerical staff members to aid their functions; enter into contracts; and, most importantly, “[m]ake findings, recommendations or reports in connection with carrying out the purposes of this Compact.”²²⁸ Additionally, the Red River Compact Commission must collect data involving the water quality, quantity, and storage.²²⁹ Therefore, even though water-rights fights can be contentious, there is a base line of communication, expertise, and data between the states.²³⁰

If Oklahoma and Texas were to adopt this model permanently, it would greatly aid courts, agencies, and policy decisions as the Red River Boundary Commission would be emboldened to consistently discover and monitor boundary changes along the Red River. The commission could draft recommendations and policies that the states’ legislatures could adopt with sound mind. Tribes could work side by side with the commission to ensure that their rights and interests are protected. Finally, Oklahoma and Texas would have a reoccurring place to air grievances—outside of the courtroom.

2. Federal Involvement

The Red River Boundary Commission cannot be the only solution to this problem. The federal government must step up to enact real change in the problems surrounding the Red River. In 2018, the federal government passed an extensive spending bill that authorized \$1 million in funding for a survey along the Red River.²³¹ However, this bill did not include specifics on the methods that should accompany the survey.²³² In 2019, the federal government passed the John D. Dingell, Jr. Conservation, Management, and Recreation Act (“Dingell Act”).²³³ As a part of this large Act, the government commissioned the Red River Gradient Boundary Survey.²³⁴ This section outlines that the Secretary of the Interior must

228. *Id.* at art. X, § 10.01(a)-(g).

229. *Id.* art. X, § 10.02(b).

230. See *Tarrant Reg’l Water Dist. v. Herrmann*, 569 U.S. 614 (2013), for an example of the Court looking at complex data surrounding the water along the Red River when the Red River Compact was questioned.

231. Trish Choate, *Trump Signs into Law a \$1 Million Survey of Disputed Boundary*, TIMES REC. NEWS (Mar. 28, 2018), <https://www.timesrecordnews.com/story/news/local/2018/03/28/trump-signs-into-law-1-million-survey-disputed-boundary/466288002/> [<https://perma.cc/5XZ3-3S26>].

232. *Id.*

233. John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, Pub. L. No. 116-9, 133 Stat. 580.

234. *Id.* § 1120, 133 Stat. 580, 634-36.

“commission a survey to identify the South Bank boundary line in the affected area.”²³⁵ Surveyors will be selected by the Secretary with consideration of the opinions of the Texas General Land Office and the Oklahoma Commissioners of the Land Office and will utilize the gradient survey boundary method, the original survey method by Kidder and Stiles.²³⁶ Once completed, the survey must be approved by the Texas General Land Office; the Oklahoma Commissioners of the Land Office, in collaboration with the Oklahoma attorney general; the impacted federally recognized tribes; and the Secretary of the Interior.²³⁷

The problems leading to the passage of the Dingell Act are the exact reason it will not work in the future without nuance. The previously mentioned BLM survey that led to *Aderholt* caused immense national attention resulting in the passage of the Red River Gradient Boundary Survey portion of the Dingell Act.²³⁸ But the Act states directly that when the Secretary of the Interior effectuates the Act, they are “acting through the Director of the Bureau of Land Management.”²³⁹ Without specific powers given to Oklahoma and Texas to directly participate in the survey, the same problems that led to *Aderholt* could ensue. Even if Oklahoma and Texas had the authority to deny the results of a survey, the government risks wasting millions of dollars if the interests of the states are not upheld, which could cause the surveys to be consistently litigated.

3. Reform in Action

Therefore, the best solution is to push the federal government to conduct their formal survey but to also include a provision that allows the Red River Commission to make recommendations to the federal government through the surveyor selection process. Additionally, the Red River Commission should be able to make recommendations and give reports directly to the surveyors. This solution would require full coordination and participation between states and the federal government, but it would remedy many of the present legal issues on the Red River.

A one-time survey would not prevent future problems forever. For example, the doctrines of accretion and avulsion guide the southern bank. When sudden avulsion impacts the appearance of the bank, the Supreme

235. *Id.* § 1120(b)(1)(A), 133 Stat. 580, 634, 635.

236. *Id.* § 1120(b)(1)(B); Elgin, *supra* note 102.

237. *Id.* § 1120(b)(2), 133 Stat. at 634.

238. Choate, *supra* note 231.

239. § 1120(a)(4), 133 Stat. at 634.

Court has held that the boundary remains in place even though the location of the bank dramatically changed.²⁴⁰ When gradual accretion occurs, the river boundary follows that change.²⁴¹ Presently, if a landowner on the Red River experienced avulsion, it would be difficult at times to ascertain the original location of the southern bank. If the federal government completed an updated survey, then the Red River Boundary Commission could note and record changes caused by accretion and avulsion thereby ensuring consistency and currentness.

Additionally, this change could aid the federal government when they use the gradient boundary survey method, the method used along the Red River. The Red River is the only boundary that utilizes this surveying method, making it extremely complex.²⁴² Currently there is little to no scholarship that outlines the extensive historical, scientific, and legal works that aided Kidder and Stiles when they originally used this method.²⁴³ Without understanding this survey method, the federal surveyors risk causing error and confusion. Therefore, if there were a full-time Red River Boundary Commission, then they could dedicate themselves to understanding the historical perspective of the Red River. This commission would collect historical data, legal documents, and scientific research that could assist the federal surveyors in properly surveying the Red River. Without a body dedicated to collecting and enforcing the historical information about the gradient boundary survey, we again risk the complications that led to *Aderholt* and the Lake Texoma dispute.

Finally, if this solution were implemented, then the data, records, and recommendations created by the Red River Boundary Commission could act as a guiding force for matters outside of the federal surveyors and the commission's control. Instead of lawyers, judges, and legal staff having to comb through complicated historical data and participate in highly contested jurisdiction and venue fights, they could first use the updated survey, but the works of the commission would continue to guide the legal world as boundaries continue to change and disputes continue to arise.

This solution highlights that the current plan by the federal government—simply to resurvey—is an insufficient means to a complicated end. The emphasis must always be on the interests of the states. Oklahoma and Texas must be given a position to zealously advocate

240. *Oklahoma v. Texas*, 261 U.S. 340, 341 (1923) (partial decree).

241. *Id.*

242. Elgin, *supra* note 102.

243. *Id.*

for the needs of their citizens and the land along their borders. The best way to achieve that goal is to have a forever Red River Boundary Commission with the sole purpose of guaranteeing that when there is outside federal involvement, these federal surveyors are aware of the complexities of the Red River.

Conclusion

There will always be conflict along the Red River. It is an area complicated by oil and gas, tribal jurisdictions, federal interests, water rights, and an ever-changing boundary. However, this solution allows for federal involvement with an emphasis in the states' perspective. The focus of fixing the Red River boundary disputes should be to ensure Oklahoma and Texas are not strong-armed out of the discussion but instead are fully fledged members of creating the solution.

"It's not a fight. It's not a battle. . . . The Red River Rivalry is a war."²⁴⁴ This quote might have been said about the annual football battle between the Oklahoma Sooners and the Texas Longhorns, but it permeates throughout the narrative of these two states. Oklahoma and Texas will continue to desire the best possible outcomes for their citizens, landowners, and local governments. Every inch of land is important, whether it is lost or gained, in the eyes of Sooner fans and Longhorn enthusiasts. However, by allowing the federal government to complete a proper survey, with input from a permanent Red River Boundary Commission, these two states would finally have a voice in mending the Red River boundary dispute.

244. RJ Young, *Rivalry's Legacy Rooted in Tradition*, OKLA. DAILY, Sep. 28, 2010, at B4.

