

SUBJECT: Adoption of the Red River Boundary Compact

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 7 ayes — Walker, Crabb, Bosse, F. Brown, Hardcastle, Howard, Mowery
0 nays
2 absent — Krusee, B. Turner

WITNESSES: For — Michael E. Compton; J. Keith Gary; Bill Powers, Texas Farm Bureau
Against — None
On — William A. Abney, M’Lou Patton Bell, Charles Tom Henderson, C. B. Thomson, Texas Red River Boundary Commission; James Dunegan, Michael Kiefner, Oklahoma Red River Boundary Commission; Neal Leader, Attorney General of Oklahoma

BACKGROUND: In 1896 and 1923 decisions, the U.S. Supreme Court defined the boundary between Texas and Oklahoma along the Red River as the gradient line on the south bank of the river. In 1995, Texas and Oklahoma created the Red River Boundary Commission to establish a permanent, identifiable boundary based on historical, practical, and economic considerations.

DIGEST: CSHB 1355 would enact the Red River Boundary Compact into state law. The compact would become binding once both the states of Texas and Oklahoma have enacted the compact and the U.S. Congress has given its consent.

Boundary definition and sovereignty. The compact would establish the permanent political boundary between Texas and Oklahoma along the Red River portion of the border between the states. The boundary would be defined as the vegetation line on the south bank of the river. The vegetation line would be defined as “the visually identifiable uniform line of vegetation” that is adjacent to the bare portion of the riverbed and consistent with the vegetation beyond the riverbed.

On the effective date of the compact, Oklahoma would possess sovereignty over all land north of the vegetation line, while Texas would possess sovereignty over all land south of the line. The states would agree that changes in the vegetation line due to accretion, erosion, and avulsion would change the boundary between the states and the sovereignty of the states in the land affected by the changes. If man-made events altered or disturbed the vegetation line, the boundary would be an artificial line formed by extending the natural vegetation lines above and below the area of man-made alteration or disturbance. The compact would not affect the sovereignty of federally recognized Indian tribes along the Red River.

The portion of the Red River boundary in the Lake Texoma area would remain the same as currently defined. If the states chose to mark the boundary in the Lake Texoma area, they would share equally the cost of maintaining the lines of demarcation, unless they chose to seek funding from other sources.

Land titles. The compact would not affect litigation concerning land titles that was underway before the effective date of the compact. Public records of either state concerning land that had changed sovereignty due to the compact would be recognized by the other state. Certified copies of such records would be transferred between the two states.

Taxes. Land that changed sovereignty due to the compact would be taxed in future years only by the state gaining sovereignty of the land. Taxes in the first year that the compact was in effect would be assessed only by the state that had sovereignty of the land as of January 1 of the year in question. Land that changed sovereignty during a calendar year due to changes in the vegetation line would be taxed only by the sovereign state as of January 1 of that year.

Property and water rights. The compact would not affect the title or boundaries of public or private land or the riparian rights of adjacent landowners. It would not affect the ownership or regulation of any public or private water or water rights.

Enforcement. The compact would not limit or prevent either state from instituting court actions to protect a right listed in the compact or to enforce

any of its provisions.

Amendments. The language of the compact adopted by each state would have to be substantially the same as the language adopted by the other state. If there were substantive differences between the two versions of the compact, the General Land Office (GLO) would have the authority to negotiate with representatives from Oklahoma to resolve the differences, in cooperation with the members of the Red River Boundary Commission. The GLO also would have the authority to negotiate with representatives from Oklahoma to develop procedures to implement the compact. The governor would have to approve the implementation procedures

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS
SAY:

CSHB 1355 would define the Red River boundary between Texas and Oklahoma in a manner that would be easily identifiable for jurisdictional purposes without affecting ownership of property and other interests. The current definition of the Red Rive boundary between the states is impractical. The gradient line method is not helpful for law enforcement officers, property owners, and members of the public because it fails to provide a clear demarcation of the boundary. The compact implemented by this bill would establish a boundary that could be easily seen and understood throughout the Red River valley.

The vegetation line has historic, practical, and economic value as a method to determine the boundary. It would be much easier to determine than the gradient line, which involves an expensive survey taking at least one day. Land owners have used the vegetation line as an informal guide for generations, so it is a well-known concept. The cost of keeping the boundary visible would be negligible.

Law enforcement officials are particularly interested in using a clearly visible border demarcation to determine where they have the authority to pursue and arrest suspects. They support the vegetation line boundary as the most practical method to assist them in conducting their job in the field. Landowners along the Red River are comfortable with the vegetation line to mark the boundary. They understand that land may change jurisdictions due to the natural flow of the river. They are primarily concerned with a clear

method to identify the boundary, which the vegetation line would provide.

Every member of the Texas House of Representatives with districts covering the Red River boundary area is a coauthor of HB 1355. This indicates the strong level of regional support for the compact as written in this bill.

CSHB 1355 would not violate the rights of landowners along the Red River. The compact has specific provisions to protect property, riparian, and water rights along the Red River, including agreements made under the Red River Compact. It would limit the taxation of land that changed jurisdiction to only one state in any given year, and it would ensure that property titles were respected between the states if land changed jurisdiction.

Though a few differences remain between the Texas and Oklahoma commission members on the final language of the compact, both states support the vast majority of the provisions listed in this bill. The differences between the states are minor at this point and should be easily resolved in the near future. Approving CSHB 1355 would send a strong signal to the state of Oklahoma that Texas is eager to resolve the boundary question in a timely manner. The bill would allow for flexibility to negotiate the final terms of the compact in the best interests of both states.

OPPONENTS
SAY:

It would be premature for the Texas Legislature to enact this bill until the Oklahoma commission members have agreed in full to the final language of the compact. Members of the Oklahoma Red River Boundary Commission have not yet formally agreed with the final language of the compact included in CSHB 1355. Outstanding differences remain over the definition of vegetation, the effects of the compact on property rights and water rights, and the delineation of a portion of the boundary near Lake Texoma.

The Oklahoma Commission members have submitted a proposal to the Texas Commission making substantive changes to the language dealing with the issues listed above. The full commission has not had a chance to discuss the changes in the proposal. The Legislature should wait until the commission members have settled their differences before finally approving the compact.

NOTES:

The committee substitute added points (3) through (5) in Article VII of the compact providing that riparian rights of adjacent landowners and the ownership and regulation of water and water rights would not be affected by

the compact. The substitute also amended Sections 12.003 and 12.004 of Article X to state that the commissioner of the General Land Office “has the authority to negotiate” with Oklahoma, rather than “shall negotiate.” The substitute also added Section 12.005 in Article X of the compact, which states that the boundary compact would not affect the Red River Compact described in Section 46.103 of the Water Code, which regulates and apportions water use among Texas, Oklahoma, Arkansas, and Louisiana.

The companion bill, SB 531 by Haywood, has been referred to the Senate Select Committee on Border Affairs.