

RED RIVER PRIVATE PROPERTY PROTECTION ACT

NOVEMBER 4, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2130]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2130) 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 DISCLAIMER AND OUTDATED SURVEYS.**

(a) **IN GENERAL.**—The Secretary disclaims any right, title, and interest to the land located south of the South Bank boundary line in the affected area.

(b) **CLARIFICATION OF PRIOR SURVEYS.**—Surveys conducted by the Bureau of Land Management before the date of the enactment of this Act shall have no force or effect in determining the South Bank boundary line.

**SEC. 3. SURVEY OF SOUTH BANK BOUNDARY LINE.**

(a) **SURVEY REQUIRED.**—To identify the South Bank boundary line in the affected area, the Secretary shall commission a survey. The survey shall—

- (1) adhere to the gradient boundary survey method;
- (2) span the entire length of the affected area;
- (3) be conducted by Licensed State Land Surveyors chosen by the Texas General Land Office, in consultation with the Oklahoma Commissioners of the Land Office;

- (4) be completed not later than 2 years after the date of the enactment of this Act; and
- (5) not be submitted to the Bureau of Land Management for approval.
- (b) APPROVAL OF THE SURVEY.—After the survey is completed, the Secretary shall submit the survey to be approved by the Texas General Land Office, in consultation with the Oklahoma Commissioners of the Land Office.
- (c) SURVEYS OF INDIVIDUAL PARCELS.—
  - (1) IN GENERAL.—Parcels surveyed as required by this section shall be surveyed and approved on an individual basis by the Texas General Land Office, in consultation with the Oklahoma Commissioners of the Land Office.
  - (2) SURVEYS OF INDIVIDUAL PARCELS NOT SUBMITTED TO THE BUREAU OF LAND MANAGEMENT.—Surveys of individual parcels shall not be submitted to the Bureau of Land Management for approval.
- (d) NOTICE.—
  - (1) NOTIFICATION TO THE SECRETARY.—Not later than 30 days after a survey for a parcel is approved by the Texas General Land Office under subsection (c), such office shall provide to the Secretary the following:
    - (A) Notice of the approval of such survey.
    - (B) A copy of such survey and field notes relating to such parcel.
  - (2) NOTIFICATION TO ADJACENT LANDOWNERS.—Not later than 30 days after the date on which the Secretary receives notification relating to a parcel under paragraph (1), the Secretary shall provide to landowners adjacent to such parcel the following:
    - (A) Notice of the approval of such survey.
    - (B) A copy of such survey and field notes relating to such parcel.
    - (C) Notice that the landowner may file an appeal under section 4.
    - (D) Notice that the landowner may apply for a patent under section 5.
    - (E) Any additional information considered appropriate by the Secretary.

#### SEC. 4. APPEAL.

Not later than 1 year after the date on which a landowner receives notification under section 3(d)(2), a landowner who claims to hold right, title, or interest in the affected area may appeal the determination of the survey to an administrative law judge of the Department of the Interior.

#### SEC. 5. RED RIVER SURFACE RIGHTS.

- (a) NOTIFICATION OF APPLICATION PERIOD FOR PATENTS.—
  - (1) IN GENERAL.—On the date that is 18 months after the date on which the Secretary receives notification relating to a parcel under section 3(d)(1), the Secretary shall determine whether such parcel is subject to appeal.
  - (2) PARCEL NOT SUBJECT TO APPEAL.—Not later than 30 days after the date on which the Secretary determines a parcel is not subject to appeal, the Secretary shall—
    - (A) notify landowners adjacent to such parcel that the Secretary shall accept applications for patents for that parcel under subsection (b) for a period of 210 days; and
    - (B) begin accepting applications for patents for that parcel under subsection (b) for a period of 210 days.
  - (3) PARCEL SUBJECT TO APPEAL.—If the Secretary determines a parcel is subject to appeal, the Secretary shall, not less than once every 6 months, check the status of the appeals relating to such parcel, until the Secretary determines such parcel is not subject to appeal.
- (b) PATENTS FOR LANDS IN THE AFFECTED AREA.—If the Secretary receives an application for a patent for a parcel of identified Federal lands during the period for applications for such parcel under subsection (a)(2)(B) and determines that the parcel has been held in good faith and in peaceful adverse possession by an applicant, or the ancestors or grantors of such applicant, for more than 20 years under claim (including through a State land grant or deed or color of title), the Secretary may issue a patent for the surface rights to such parcel to the applicant, on the payment of \$1.25 per acre, if the patent includes the following conditions:
  - (1) All minerals contained in the parcel are reserved to the United States and subject to sale or disposal by the United States under applicable leasing and mineral land laws.
  - (2) Permittees, lessees, or grantees of the United States have the right to enter the parcel for the purpose of prospecting for and mining deposits.
- (c) PENDING REQUESTS FOR PATENTS.—The Secretary shall not offer a parcel of identified Federal land for purchase under section 6 if a patent request for that parcel is pending under this section.

**SEC. 6. RIGHT OF REFUSAL AND COMPETITIVE SALE.****(a) RIGHT OF REFUSAL.—**

(1) **OFFERS TO PURCHASE.**—After the expiration of the period for applications under section 5(a)(2)(B), the Secretary shall offer for purchase for a period of 60 days for each right of refusal—

(A) the surface rights to the remaining identified Federal lands located north of the vegetation line of the South Bank to—

(i) the adjacent owner of land located in Oklahoma to the north with the first right of refusal;

(ii) if applicable, the adjacent owner of land located in Texas to the south with the second right of refusal;

(iii) if applicable, the adjacent owner of land located to the east with the third right of refusal; and

(iv) if applicable, the adjacent owner of land located to the west with the fourth right of refusal; and

(B) the surface rights to the remaining identified Federal lands located south of the vegetation line of the South Bank to—

(i) the adjacent owner of land located in Texas to the south with the first right of refusal;

(ii) if applicable, the adjacent owner of land located in Oklahoma to the north with the second right of refusal;

(iii) if applicable, the adjacent owner of land located to the east with the third right of refusal; and

(iv) if applicable, the adjacent owner of land located to the west with the fourth right of refusal.

(2) **REMAINING IDENTIFIED FEDERAL LANDS DEFINED.**—In this subsection, the term “remaining identified Federal lands” means any parcel of identified Federal lands—

(A) not subject to appeal under section 4;

(B) not determined by an administrative law judge of the Department of the Interior or a Federal court to be the property of an adjacent landowner; and

(C) not patented or subject to a pending request for a patent under section 5.

(b) **DISPOSAL BY COMPETITIVE SALE.**—If a parcel offered under subsection (a) is not purchased, the Secretary shall offer the parcel 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.

(c) **CONDITIONS OF SALE.**—The sale of a parcel under this section shall be subject to—

(1) the condition that all minerals contained in the parcel are reserved to the United States and subject to sale or disposal by the United States under applicable leasing and mineral land laws;

(2) the condition that permittees, lessees, or grantees of the United States have the right to enter the parcel for the purpose of prospecting for and mining deposits; and

(3) valid existing State, tribal, and local rights.

(d) **REPORT.**—Not later than 5 years after the date on which the survey is approved, 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 the parcels of identified Federal lands that have not been sold under subsection (b) and a description of the reasons such parcels were not sold.

**SEC. 7. RESOURCE MANAGEMENT PLAN.**

The Secretary may not treat a parcel of identified Federal lands as Federal land for the purposes of a resource management plan if the treatment of such parcel does not comply with the provisions of this Act.

**SEC. 8. CONSTRUCTION.**

(a) **LANDS LOCATED NORTH OF THE SOUTH BANK BOUNDARY LINE.**—Nothing in this Act shall be construed to modify the interest of Texas or Oklahoma or sovereignty rights of any federally recognized Indian tribe over lands located to the north of the South Bank boundary line as established by the survey.

(b) **PATENTS UNDER THE COLOR OF TITLE ACT.**—Nothing in this Act shall be construed to modify land patented under the Act of December 22, 1928 (Public Law 70-645; 45 Stat. 1069; 43 U.S.C. 1068; commonly known as the Color of Title Act), before the date of the enactment of this Act.

(c) RED RIVER BOUNDARY COMPACT.—Nothing in this Act shall be construed to modify the Red River Boundary Compact as enacted by the States of Texas and Oklahoma and consented to by the United States Congress by Public Law 106-288 (114 Stat. 919).

**SEC. 9. DEFINITIONS.**

In this Act:

(1) AFFECTED AREA.—The term “affected area” 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) GRADIENT BOUNDARY SURVEY METHOD.—The term “gradient boundary survey method” means the measurement technique used to locate the South Bank boundary line under the methodology established in *Oklahoma v. Texas*, 261 U.S. 340 (1923) (recognizing that the boundary line between the States of Texas and Oklahoma along the Red River is subject to change due to erosion and accretion).

(3) IDENTIFIED FEDERAL LANDS.—The term “identified Federal lands” means the lands in the affected area from the South Bank boundary line north to the medial line of the Red River as identified pursuant to this Act.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(5) SOUTH BANK.—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 Red 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 *Oklahoma v. Texas*, 261 U.S. 340 (1923)).

(6) SOUTH BANK BOUNDARY LINE.—The term “South Bank boundary line” means the boundary between Texas and Oklahoma identified through the gradient boundary survey method (as specified in the sixth and seventh paragraphs of *Oklahoma v. Texas*, 261 U.S. 340 (1923)).

(7) SURVEY.—The term “survey” means the survey required by section 3(a).

(8) VEGETATION LINE.—The term “vegetation line” means the visually identifiable continuous line of vegetation that is adjacent to the portion of the riverbed kept practically bare of vegetation by the natural flow of the river and is continuous with the vegetation beyond the riverbed.

**PURPOSE OF THE BILL**

The purpose of H.R. 2130 is to provide legal certainty to property owners along the Red River in Texas.

**BACKGROUND AND NEED FOR LEGISLATION**

Confusion and dispute over the Texas-Oklahoma border has been ongoing for over 200 years. Under the Louisiana Purchase in 1803, the United States bought from France land that included the riverbed of the Red River. Subsequent treaties between the United States and Spain, Mexico, and the Republic of Texas confirmed that the boundary between the Texas and Oklahoma was the south bank of the River. In 1867, the U.S. signed a treaty with the Kiowa, Comanche, and Apache Tribes that designated a reservation north of the “middle of the main channel” of the Red River between the 98th Meridian and the North Fork. Congress later disposed of the reservation and created a grazing reserve that was ultimately disposed of in 1906. However, since the southern boundary of the reservation and grazing reserve was defined as the “middle of the main channel,” the land between the medial line of the River and the south bank remained as federal land.

After oil was discovered in an area around the Red River, Oklahoma brought suit against Texas in 1919 to determine the common boundary. In a 1923 decision and decree, the U.S. Supreme Court adopted the gradient boundary survey method for determining the

boundary between Texas and Oklahoma. *Oklahoma v. Texas*, 261 U.S. 340. According to this decision, the gradient boundary is on and along the south bank at the average or mean level of the waters when they reach and wash the bank without overflowing it. In unique areas where there is no well-defined cut bank, but only a gradual incline from the sand bed of the River to the upland, the boundary is a line conforming to the mean level of the water when at other places in that vicinity they reach and wash the cut bank without overflowing it.

In 2000, House Joint Resolution 72, which codified the *Red River Boundary Compact* agreed to by Texas and Oklahoma, was signed into law. The purpose of the compact was to establish a visible boundary between the two states that would resolve jurisdictional and sovereignty disputes issues. The compact set the political boundary as the vegetation line on the south bank of the Red River. While the compact does not affect land ownership, it is widely accepted that the vegetative line and the gradient boundary can be relatively the same or at least within feet of each other.

Accretion, erosion, and avulsion have gradually altered the course and location of the Red River in the area subject to this bill. Accretion can be generally defined as the deposit of soil along the bank or bed of a river and erosion is the removal of soil from the banks or bed of a river. Legally, a landowner is allowed to keep the accretions attached to his or her land but loses title to eroded lands. An avulsion is the sudden change in a channel of a boundary river that can be caused through natural events or as a result from human activity. When this sudden change occurs, the boundary remains where it was before the avulsion event. The decree rendered in the 1923 U.S. Supreme Court decision explicitly addresses accretion, erosion, and avulsion and recognized that the boundary between Texas and Oklahoma would continually move with the River through accretion and erosion but not through avulsion.

The Bureau of Land Management (BLM) is currently updating its Oklahoma, Kansas, and Texas Resource Management Plan (RMP), which covers the 116-mile stretch of the Red River subject to this bill. BLM estimates this revision will be finalized in January 2018. BLM originally stated there are an estimated 90,000 acres of land along this stretch of the River that may be considered public domain and managed as federal land. BLM has since reduced this estimate to at most 30,000 acres, of which only 6,402 acres have been actually surveyed.

These statements and the pending RMP revision have caused great concern among local landowners and others that the federal government is claiming to own land which was previously deeded to individual citizens. Most landowners along the River are now unsure if the land that they have held title to and have paid taxes on, in many cases for generations, will remain in their families or be subject to federal ownership and management. Further, the entire 116-mile stretch of the Red River at question has never been surveyed by BLM, and the method used to survey small stretches of the River strays widely from the accepted gradient boundary survey method established by the 1923 U.S. Supreme Court decision and decree. BLM's surveys have been contested by landowners, county officials, the Texas General Land Office (GLO), and others.

This bill attempts to make clear who actually holds title to the land at question. To do so, H.R. 2130 requires BLM to disclaim any right, title, and interest to certain lands along a 116-mile stretch of the River located south of the south bank boundary line of the River. BLM is also required to commission a survey of the entire stretch of contested land along the River using the gradient boundary survey method developed and backed by the U.S. Supreme Court. The survey must also be conducted by Licensed State Land Surveyors and approved by the Texas GLO. Landowners are allowed to appeal further public domain claims by BLM through an Administrative Law Judge. BLM is prevented from treating parcels in the affected area as federal land under any RMP until the survey has been completed and approved and the parcels are no longer subject to further appeal. BLM is required to sell off the surface rights of the remaining federally-owned land at fair market value after the proper boundary line is located and settled and submit to Congress a list of federal lands that have not been sold and the reasons why. The bill also explicitly states that the interest of the states and the sovereignty rights of the federally recognized Indian tribes north of the Texas state boundary line will not be affected.

During Committee consideration of the bill, Chairman Rob Bishop offered an Amendment in the Nature of a Substitute (ANS), which was approved by voice vote. The ANS makes technical and conforming changes, clarifies aspects of the survey and appeals procedure, requires the Texas GLO to approve the survey in consultation with the Commissioners of the Land Office in Oklahoma, ensures that the bill does not modify the Red River Boundary Compact, and allows land parcels to be surveyed and approved on an individual basis. The ANS also allows landowners to file for a modified Color-of-Title Act land patent request and sets forth procedures on the first and subsequent rights of refusal for adjacent Oklahoma and Texas landowners.

A previous version of this bill, H.R. 4979, the Red River Private Property Protection Act, also authored by Congressman Mac Thornberry, was considered by the Natural Resources Committee during the 113th Congress. The Subcommittee on Public Lands and Environmental Regulation held a hearing on the bill, and it was favorably reported to the House of Representatives by voice vote (House Report 113-700).

#### COMMITTEE ACTION

H.R. 2130 was introduced on April 30, 2015, by Congressman Mac Thornberry (R-TX). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands. On September 9, 2015, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an amendment in the nature of a substitute. The amendment was adopted by voice vote. On September 10, 2015, the bill, as amended, was ordered favorably reported to the House of Representatives by bipartisan roll call vote of 21 to 11, as follows:

## Committee on Natural Resources

U.S. House of Representatives

114th Congress

Date: 09-10-15

Recorded Vote # 5

Meeting on / Amendment on: **On favorably reporting H.R. 2130 (Rep. Mac Thornberry), "Red River Private Property Protection Act"**

| MEMBERS                                 | Yes | No | Pres | MEMBERS                  | Yes | No | Pres |
|---|-----|----|------|--------------------------|-----|----|------|
| <b>Mr. Bishop, UT, Chairman</b>         | X   |    |      | <b>Mr. LaMalfa, CA</b>   | X   |    |      |
| <i>Mr. Grijalva, AZ, Ranking Member</i> |     | X  |      | <i>Mrs. Dingell, MI</i>  |     | X  |      |
| <b>Mr. Young, AK</b>                    | X   |    |      | <b>Mr. Denham, CA</b>    | X   |    |      |
| <i>Mrs. Napolitano, CA</i>              |     | X  |      | <i>Mr. Gallego, AZ</i>   |     | X  |      |
| <b>Mr. Gohmert, TX</b>                  | X   |    |      | <b>Mr. Cook, CA</b>      | X   |    |      |
| <i>Mrs. Bordallo, Guam</i>              | X   |    |      | <i>Mrs. Capps, CA</i>    |     |    |      |
| <b>Mr. Lamborn, CO</b>                  |     |    |      | <b>Mr. Westerman, AR</b> | X   |    |      |
| <i>Mr. Costa, CA</i>                    |     |    |      | <i>Mr. Polis, CO</i>     |     | X  |      |
| <b>Mr. Wittman, VA</b>                  | X   |    |      | <b>Mr. Graves, LA</b>    |     |    |      |
| <i>Mr. Sablan, CNMI</i>                 |     |    |      | <i>Mr. Clay, MO</i>      |     | X  |      |
| <b>Mr. Fleming, LA</b>                  | X   |    |      | <b>Mr. Newhouse, WA</b>  |     |    |      |
| <i>Mrs. Tsongas, MA</i>                 |     | X  |      | <b>Mr. Zinke, MT</b>     | X   |    |      |
| <b>Mr. McClintock, CA</b>               |     |    |      | <b>Mr. Hice, GA</b>      | X   |    |      |
| <i>Mr. Peirluisi, Puerto Rico</i>       |     |    |      | <b>Ms. Radewagen, AS</b> | X   |    |      |
| <b>Mr. Thompson, PA</b>                 | X   |    |      | <b>Mr. MacArthur, NJ</b> | X   |    |      |
| <i>Mr. Huffman, CA</i>                  |     | X  |      | <b>Mr. Mooney, WV</b>    | X   |    |      |
| <b>Mrs. Lummis, WY</b>                  | X   |    |      | <b>Mr. Hardy, NV</b>     |     |    |      |
| <i>Mr. Ruiz, CA</i>                     |     | X  |      |                          |     |    |      |
| <b>Mr. Benishck, MI</b>                 | X   |    |      |                          |     |    |      |
| <i>Mr. Lowenthal, CA</i>                |     | X  |      |                          |     |    |      |
| <b>Mr. Duncan, SC</b>                   | X   |    |      |                          |     |    |      |
| <i>Mr. Cartwright, PA</i>               |     | X  |      |                          |     |    |      |
| <b>Mr. Gosar, AZ</b>                    | X   |    |      |                          |     |    |      |
| <i>Mr. Beyer, VA</i>                    |     |    |      |                          |     |    |      |
| <b>Mr. Labrador, ID</b>                 | X   |    |      |                          |     |    |      |
| <i>Mrs. Torres, CA</i>                  |     |    |      | <b>TOTALS</b>            | 21  | 11 |      |

## 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 received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 2130—Red River Private Property Protection Act*

Summary: H.R. 2130 would establish a process under which the Bureau of Land Management (BLM) would dispose of roughly 30,000 acres of federal land along the border between Texas and Oklahoma. As part of that process, the bill would require BLM to commission a survey of a 116-mile segment of the Red River and about 160 tracts of land adjacent to the river.

CBO estimates that enacting the bill would increase net offsetting receipts, which are treated as reductions in direct spending, by \$5 million over the 2018–2025 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 2130 would not affect revenues. In addition, based on information provided by BLM and the Texas General Land Office, CBO estimates that implementing the bill would cost \$2 million over the 2016–2020 period, assuming appropriation of the necessary amounts.

CBO estimates that enacting H.R. 2130 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2026.

H.R. 2130 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2130 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

|   | By fiscal year, in millions of dollars— |      |      |      |      |      |      |      |      |      |           |           |
|---|---|------|------|------|------|------|------|------|------|------|-----------|-----------|
|   | 2016                                    | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2016-2020 | 2016-2025 |
| <b>CHANGES IN DIRECT SPENDING</b>                   |   |      |      |      |      |      |      |      |      |      |           |           |
| Discounted Land Sales                               |   |      |      |      |      |      |      |      |      |      |           |           |
| Estimated Budget Authority .....                    | 0                                       | 0    | *    | *    | *    | *    | *    | *    | *    | *    | 1         | 2         |
| Estimated Outlays .....                             | 0                                       | 0    | *    | *    | *    | *    | *    | *    | *    | *    | 1         | 2         |
| Fair Market Value Land Sales                        |   |      |      |      |      |      |      |      |      |      |           |           |
| Estimated Budget Authority .....                    | 0                                       | 0    | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -3        | -7        |
| Estimated Outlays .....                             | 0                                       | 0    | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -3        | -7        |
| Total Changes                                       |   |      |      |      |      |      |      |      |      |      |           |           |
| Estimated Budget Authority .....                    | 0                                       | 0    | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -2        | -5        |
| Estimated Outlays .....                             | 0                                       | 0    | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -2        | -5        |
| <b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b> |   |      |      |      |      |      |      |      |      |      |           |           |
| Estimated Authorization Level .....                 | 1                                       | *    | *    | *    | *    | *    | *    | *    | *    | *    | 2         | 2         |
| Estimated Outlays .....                             | *                                       | *    | *    | *    | *    | *    | *    | *    | *    | *    | 2         | 2         |

Note: Components may not sum to totals because of rounding; \* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in 2016 and that the necessary amounts will be appropriated for each fiscal year.

*Direct spending*

CBO estimates that enacting H.R. 2130 would increase net offsetting receipts by \$5 million over the 2018–2025 period. That estimate includes two components: provisions authorizing BLM to convey certain federal lands to private citizens for \$1.25 an acre would reduce offsetting receipts by roughly \$2 million over that period; provisions requiring the BLM to sell federal lands for fair market value would increase offsetting receipts by \$7 million over that period.

Red River Boundary. A series of treaties in the early 1800s established the south bank of the Red River as the southern border between the United States and what is now the state of Texas. In 1867, the federal government established the Kiowa-Comanche-Apache Reservation in what is now the state of Oklahoma and set the southern border of the reservation as the center of the Red River. Any land located between the center of the river and the southern bank remained federal land.

Over time, the path of the river shifted, exposing lands that were once regularly submerged. For decades, parcels of land, primarily south of the river's new southern bank, were sold to individuals in Oklahoma and Texas. Some individuals who obtained deeds to the affected parcels built structures and paid taxes on them. However, in the early 1980s, a U.S. District Court reestablished that private property in Oklahoma extended to the center of the river as it flowed in the 1800s while private property in Texas extended to the southern bank of the river as it flowed at that time. As a result, some of the land that was occupied by private landowners was awarded to other landowners across the river while other land was reclaimed as federal land under the jurisdiction of BLM.

Discounted Land Sales. Under the Color of Title Act, individuals can acquire clear title to up to 160 acres of federal land if they hold title to the land, were unaware that title to the land was originally vested in the federal government, and meet certain other conditions. The act requires that individuals pay fair market value for acquired lands; however, the estimated value may be reduced to account for several factors, including improvements made on the land and property taxes paid. The minimum cost to acquire lands under the Color of Title Act is \$1.25 per acre.

Under current law, CBO estimates that 20,000 acres of federal land along the Red River are occupied by private landowners and owners of about 50 percent of that land (10,000 acres) meets the conditions necessary to be acquired under the Color of Title Act. We also estimate that owners of about 80 percent of the land eligible to be acquired (8,000 acres) will complete their claims. Finally, we estimate, based on the amounts paid to acquire lands under that act in recent years, that landowners will pay about \$200 an acre (roughly 15 percent of the estimated fair market value), on average, to acquire the affected lands. As a result, CBO estimates that, BLM will collect offsetting receipts totaling roughly \$2 million over the 2018–2025 period from individuals acquiring land under the Color of Title Act.

Section 5 would require BLM to convey federal lands to private landowners who seek to acquire title and meet conditions similar to those required under the Color of Title Act. The bill would require landowners to pay \$1.25 an acre (less than one-tenth of one percent of the estimated fair market value) to acquire the affected lands and, unlike the Color of Title Act, would not cap the number of acres a landowner could acquire at that price. CBO expects that eliminating the cap would make roughly 75 percent of the privately-occupied federal lands (15,000 acres) eligible for purchase at \$1.25 per acre. We also expect that the lower price would increase the amount of land purchased to 95 percent of that amount (14,250 acres). Therefore, CBO estimates that, under section 5, BLM would collect offsetting receipts totaling roughly \$20,000 over the 2018–2025 period. On net, CBO estimates that enacting the bill would reduce the amount of offsetting receipts BLM would collect from selling land at discounted prices by \$2 million over the 2018–2025 period.

**Fair Market Value Land Sales.** Under the Federal Land Policy and Management Act (FLPMA), BLM has the authority to dispose of federal lands in accordance with an approved land use plan. The agency is currently drafting a new plan that will determine how federal lands along the Red River will be administered. Based on information provided by BLM, CBO expects that the agency will probably identify all 30,000 acres of federal land along the river for disposal when its plan is completed in 2018.

Under current law, CBO estimates that BLM could sell about 22,000 acres of federal land along the Red River (the land remaining after conveyances under the Color of Title Act) at fair market value beginning in 2018. We also estimate, based on the value of similar lands in the area, that the fair market value of the affected lands would average about \$1,500 an acre. Thus, CBO estimates that BLM could collect offsetting receipts from land sales along the Red River totaling up to \$33 million over the 2018–2025 period. However, because we are uncertain about the actions BLM will take under the pending resource management plan, CBO estimates, after considering a range of possible outcomes, that the agency will collect receipts totaling about \$17 million over that period.

Section 6 would require BLM to sell at fair market value all lands along the Red River that are not sold at a discount under section 5. CBO estimates that, under the bill, the agency would sell roughly 16,000 acres of federal land at an average price of \$1,500 an acre. Thus, CBO estimates that, under the bill, BLM would generate offsetting receipts from the sale of federal land along the river totaling \$24 million over the 2018–2025 period. On net, CBO estimates that conducting the land sales required under section 6 would increase offsetting receipts by \$7 million over that period.

#### *Spending subject to appropriation*

H.R. 2130 would require BLM to commission a survey of a 116-mile segment of the Red River and about 160 tracts of land adjacent to the river. Based on information provided by the Texas General Land Office, the entity that would oversee the survey, CBO estimates that conducting the survey would cost roughly \$1 million over the 2016–2017 period. In addition, CBO estimates, based on

the cost of carrying out similar activities, that BLM would spend about \$2 million over the 2018–2025 period to administer the conveyance of the affected lands. Because CBO expects that, under current law, BLM may carry out many of the tasks required under H.R. 2130, we estimate that implementing the bill would increase discretionary spending, relative to current law, by roughly \$2 million over the 2016–2020 period, assuming appropriation of the necessary amounts.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2130, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON SEPTEMBER 10, 2015

|   | By fiscal year, in millions of dollars— |      |      |      |      |      |      |      |      |      |      |               |               |
|---|---|------|------|------|------|------|------|------|------|------|------|---------------|---------------|
|   | 2015                                    | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2015–<br>2020 | 2015–<br>2025 |
| Statutory Pay-As-You-Go Impact .....        | 0                                       | 0    | 0    | 0    | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -2            | -5            |
| NET INCREASE OR DECREASE (-) IN THE DEFICIT |   |      |      |      |      |      |      |      |      |      |      |               |               |
| Statutory Pay-As-You-Go Impact .....        | 0                                       | 0    | 0    | 0    | -1   | -1   | -1   | -1   | -1   | -1   | -1   | -2            | -5            |

Increase in Long Term Direct Spending and Deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2026.

Intergovernmental and Private-Sector Impact: H.R. 2130 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: FederalCosts: Jeff LaFave; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

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 credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, implementation of this bill would cost \$2 million over the 2016–2010 time period, subject to appropriation, while increasing net offsetting receipts by \$5 million over the 2018–2025 time period.

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

Federal interest in land along the Red River between Texas and Oklahoma dates back to the Louisiana Purchase. Fast forward more than two hundred years, several treaties and compacts later, and there is still confusion about the amount of land owned by the Federal government and the location of the boundary between Texas and Oklahoma.

In several cases during the 1920s, the Supreme Court of the United States ruled that the boundary between Texas and Oklahoma along the Red River is determined by the gradient boundary method. Using this method in the years since, the Bureau of Land Management (BLM) estimates that the Federal government retains interest in approximately 30,000 acres along the 116 mile stretch of the Red River, 23,000 of which are overlaid by private deeds. On July 26, 2013, BLM issued a Notice of Intent to begin work on a revision to the Oklahoma, Kansas, and Texas Resource Management Plan (RMP), which includes a comprehensive survey of the area and verification of ownership. There are many overlapping claims, missing and unreliable records, and even competing claims from both Texas and Oklahoma over the same pieces of property. Completion of the public planning process and survey will clear up all of the uncertainty.

H.R. 2130 would halt that process and nullify all previous BLM surveys, transferring authority to survey the area to the Texas General Land Office. After nearly 100 years of uncontested surveys, the sponsors of H.R. 2130 claim that BLM has misinterpreted the Supreme Court's definition of gradient and argue that the Texas border should be closer to the waterline of the river. Transferring BLM's survey authority to the Texas General Land Office would permit the State of Texas to conduct a survey that moves its border northward toward the water, effectively eliminating a large portion of the estimated federal land holdings.

This is unfair to the American taxpayers, who deserve fair compensation for their assets. If Texas wants to challenge BLM's survey methods and interpretation of the law, it should do so in the courts, not Congress.

Additionally, this 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 part of this land no longer belongs to the federal government, this important source of revenue relied on by the tribes could also vanish into thin air.

With the long, complicated history and various ownership claims along the Red River, BLM must be allowed to complete its planning process and land survey. The survey is neither a land grab nor an example of government overreach; it is simply a federal

agency trying to resolve a very complex situation. Restricting the survey authority of the BLM, the Federal government's surveyor of record, sets a dangerous precedent. We oppose H.R. 2130 because it blindly erases an asset owned by all Americans.

RAÚL M. GRIJALVA,  
Ranking Member, Com-  
mittee on Natural Re-  
sources.

NIKI TSONGAS,  
Ranking Member, Sub-  
committee on Federal  
Lands.

JARED HUFFMAN,  
Ranking Member, Sub-  
committee on Water,  
Power and Oceans.

ALAN LOWENTHAL,  
Ranking Member, Sub-  
committee on Energy and  
Mineral Resources.

GRACE NAPOLITANO,  
Member of Congress.

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