

GRANTING THE CONSENT OF THE CONGRESS TO THE RED
RIVER BOUNDARY COMPACT

JULY 20, 2000.—Referred to the House Calendar and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.J. Res. 72]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 72) granting the consent of the Congress to the Red River Boundary Compact, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution as amended do pass.

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The amendment is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. CONGRESSIONAL CONSENT.

(a) **IN GENERAL.**—The consent of Congress is given to the Red River Compact entered into between the States of Texas and Oklahoma and the new boundary established by the compact.

(b) **NEW COMPACT.**—The compact referred to in subsection (a) sets the boundary between the States of Texas and Oklahoma as the vegetation line on the south bank

of the Red River (except for the Texoma area where the boundary is established pursuant to procedures provided for in the compact) and is the compact—

(1) agreed to by the State of Texas in House Bill 1355 approved by the Governor of Texas on May 24, 1999; and

(2) agreed to by the State of Oklahoma in Senate Bill 175 approved by the Governor of Oklahoma on June 4, 1999.

(c) COMPACT.—The Acts referred to in subsection (b) are recognized by Congress as an interstate compact pursuant to section 10 of Article I of the United States Constitution.

(d) CONSTRUCTION.—The compact shall not in any manner alter—

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

(2) any tribal trust lands;

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

(4) any boundaries of lands owned by the tribes and nations referred to in paragraph (1), including lands referred to in paragraphs (2) and (3), that exist now or that may be established in the future under Federal law; and

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

(e) EFFECTIVE DATE.—This Act shall take effect on August 31, 2000.

PURPOSE AND SUMMARY

H.J. Res. 72 grants the consent of Congress to the Red River Boundary Compact establishing a more definite State border between Texas and Oklahoma.

BACKGROUND AND NEED FOR THE LEGISLATION

Article I, section 10, clause 3 of the United States Constitution provides, “No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign power. . . .”

Congressional consent is required for such agreements and compacts to ensure that they do not work to the detriment of another State and that they do not conflict with Federal law or Federal interests.

A large portion of the boundary between Oklahoma and Texas has historically been the Red River, originally the southern limit of the Louisiana Purchase.¹ The Red River, however, is subject to the forces of nature and, thus, is destined to change continually. Water levels rise, the river at times diverges into several streams, and erosion and deposits of alluvial sand all contribute to constantly changing the south bank boundary line between Oklahoma and Texas.

As a result, the use of the river as a sound political boundary has been problematic. While the border established by the Trans-

¹Louisiana was purchased by the United States from France in 1803 for \$15 million. Prior to its ownership by France, the area had been in the possession of Spain, although its precise boundaries were somewhat indefinite. In 1819, Secretary of State John Quincy Adams completed negotiations with Spain over the possession of Florida in the Transcontinental Treaty. The Treaty fixed the western boundary of the Louisiana Purchase at the Pacific Ocean (encompassing and area which had already been explored by Lewis and Clark) and set the Purchase’s southern boundary with the Spanish possession of Texas at the southern bank of the Red River. In that treaty, Spain renounced its claim to Florida and the United States renounced its claim to Texas. After an armed struggle for independence, Texas became a republic in 1836 and, following approval by Texans of a Congressional resolution of annexation, Texas was eventually admitted into the Union on December 22, 1845. Oklahoma was admitted to the Union on November 16, 1907. The Red River boundary between the two States extends for a distance of approximately 517 miles.

continental Treaty was maintained with Mexico from 1824 and Texas from 1836, over the course of the next 170 years the boundary frequently generated sundry property disputes and skirmishes.

In 1996, Oklahoma and Texas established the Red River Boundary Commission to clarify an appropriate, practical boundary line between the two States. It recommended that the boundary be changed from the gradient line of the south bank to the “vegetation line” of the south bank of the Red River to produce a more stable and more clearly visible border. The legislatures of the respective States passed the Red River Boundary Compact² and H.J. Res. 72 was introduced granting the Congressional approval required by the Constitution.

On October 26, 1999, the Subcommittee on Commercial and Administrative Law held a hearing and markup on H.J. Res. 72, and reported it to the Committee on the Judiciary. However, both before and after its action, concerns were expressed by representatives of several Indian nations concerning the effect of the Compact on their lands and rights. Specifically, three Indian tribes, the Kiowa, the Comanche, and the Apache (the KCA) were concerned about how the proposed resolution of the boundary would impact on their land rights and their rights to royalties from oil and gas sites located along the border of Oklahoma and Texas.

During Full Committee consideration, an amendment was adopted clarifying that Congressional approval of the Compact does not alter the boundaries, the rights or the jurisdiction of the KCA tribes or those of the Chickasaw or Choctaw Nations which are, or in the future may be, established under Federal law. H.J. Res. 72 thus eliminates the problem of an inconsistent State boundary while ensuring that the rights and interests of the KCA, the Choctaw and Chickasaw Nations will be held harmless by Congress’ approval of the Compact.

HEARINGS

The committee’s Subcommittee on Commercial and Administrative Law held one day of hearings on H. J. Res. 72 on October 26, 1999. Testimony was received from the Honorable Mac Thornberry, United States House of Representatives, Thirteenth District of the State of Texas; the Honorable Max Sandlin, United States House of Representatives, First District of the State of Texas; The Honorable David B. Braddock, the Oklahoma House of Representatives, District 52, Altus, Oklahoma; Eric Sigsbey, Esquire, General Counsel, Texas General Land Office, Austin, Texas, with additional material submitted by the Kiowa, Comanche, and Apache Intertribal Land Use Committee.

COMMITTEE CONSIDERATION

On October 26, 1999, the Subcommittee on Commercial and Administrative Law met in open session and ordered favorably reported H.J. Res. 72, as amended, by a voice vote, a quorum being present. On July 19, 2000, the committee met in open session and ordered favorably reported H.J. Res. 72 with an amendment by a voice vote, a quorum being present.

²House Bill 1355 was approved by the Governor of Texas on May 24, 1999 and Senate Bill 175 was approved by the Governor of Oklahoma on June 4, 1999.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the committee believes that the resolution will have no cost for the current fiscal year, and none for the next five fiscal years. At the time of the filing of this report, the Congressional Budget Office estimate was not available.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in article I, section 10, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section one, subparagraph (a), grants Congressional consent to the Red River Compact entered into between the States of Texas and Oklahoma and the new boundary established by it, Subparagraph (b), provides that the compact sets that new boundary as the vegetation line on the south bank of the Red River (except for the Texoma, area, where the boundary is to be established as provided in the compact after subsequent deliberations by the two States). It specifies that it is the compact that Texas agreed to by House Bill 1355 (approved by the Governor of Texas on May 24, 1999) and agreed to by Oklahoma in Senate Bill 175 (approved by the Governor of Oklahoma on June 4, 1999). Subparagraph (c) references the actions of the States as an interstate compact pursuant to article I, section 10 of the United States Constitution. Subparagraph (d) clarifies that the compact shall in no way alter: (1) the present or future rights and interests of the Kiowa, Comanche, and Apache Tribes, the Chickasaw and Choctaw Nations and their members, or Indian successors-in-interest; (2) any tribal trust lands; (3) allotted lands that may be held in trust or lands subject to a Federal restriction against alienation; (4) any boundaries of land owned by the above named tribes and nations (including tribal and allotted lands referred to in paragraphs (2) and (3), that exist now or that

may be established in the future under Federal law) and (5) the sovereign rights, jurisdiction, or other governmental interests of the above-named tribes and nations and their members or Indian successors in interest presently existing or which may be acknowledged by Federal and tribal law. Subparagraph (e) provides that the effective date is August 31, 2000.

AGENCY VIEWS

DEPARTMENT OF THE INTERIOR,
Washington, DC, November 9, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Department understands that H. J. Res. 72, "a joint resolution granting the consent of Congress to the Red River Boundary Compact" (Compact) will soon be subject to a vote by the Committee. The Compact embodies an agreement between the State of Texas and the State of Oklahoma to establish the vegetation line of the south boundary of the Red River as the boundary between the two states. Although we support enactment of H. J. Res. 72, we are concerned about its effect on the Indian Tribes and their members who may hold beneficial interest in lands that border the north bank of the Red River in Oklahoma. Those Tribes are the Kiowa, Comanche, Apache, Chickasaw and Choctaw and their members.

The Red River is owned from the north bank to the thread by riparian land owners; lands underlying the thread to the south bank are federal public lands administered by the Bureau of Land management. We have identified 1,600 acres of land held in trust for the Chickasaw and Choctaw Nations, twenty-six trust allotments held by Kiowa, Comanche and Apache (KCA) Tribes and approximately twenty-five restricted allotments held by members of the Chickasaw and Choctaw Nations that border the Red River. The Act of June 12, 1926, created a trust fund from monies derived from oil and gas deposits underlying the federal lands from the mouth of the North Fork of the Red River along the river to the 98th meridian for the benefit of enrolled members of the KCA Tribes and their unallotted children. The 1926 Act provides that 62½ percent of any mineral royalties are to be distributed to the KCA members, 37½ percent are to be distributed to the State of Oklahoma.

Our concern is two fold. First, the movement of the Red River, and thus, the vegetation line, is inevitable. The state proponents of the Compact admit that while property title rights are unaffected by the Compact, it is likely that the legal location of some property could change from one state to the other. The Indian trust allotments were carved from the Oklahoma Tribes' former reservations and treaty lands. Over the past century, federal courts in Oklahoma have interpreted the nature of the federally allotted and tribal lands, and the federal government has administered the trust allotments in reliance upon that body of law. The surface and mineral interests of the Indian landowners who hold the beneficial title to the allotments, as well as the right of all KCA members to receive royalties from minerals underlying a portion of the riverbed,

constitute property rights that may not be diminished by the operation of the Compact. In the absence of clarifying language which addresses the continued nature of the trust and restricted allotments and the tribal trust lands, confusion as to the legal authorities and correlative rights of the Indian landowners could result.

Second, the inherent tribal sovereignty of the Oklahoma Tribes over tribal and allotted lands emanates from the location of those lands as existing within the boundaries of their former reservations in Oklahoma. Important judicial and administrative decisions have been made concerning the civil and criminal jurisdiction of the Oklahoma Tribes based on the historical evolution of those lands from the Indian and Oklahoma Territories. Any change in the legal location of the Indian trust and restricted lands could result in uncertainty as to the applicability of tribal and federal legal authority and the assertion of tribal jurisdiction over these lands.

For these reasons, we propose the following amendment to H. J. Res. 72. "The Compact shall not affect or diminish any present or future rights and interest of the Kiowa, Comanche and Apache Tribes, the Chickasaw Nation and the Choctaw Nation of Oklahoma, and their members or successors in interests, nor any boundaries, that are now, or may be established, under federal law, nor shall this Compact affect or abate the sovereign rights, jurisdiction, or other governmental interests, of the Kiowa, Comanche and Apache Tribes, the Chickasaw Nation and the Choctaw Nation of Oklahoma, presently existing, or which may be acknowledged, by federal and tribal law."

Sincerely,

BRUCE BABBITT, *Secretary of Interior.*

cc: Honorable John Conyers, Jr.
Ranking Minority Member