



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2014

The Honorable Neil Kornze
Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Rm. 5665
Washington, DC 20240

Dear Director Kornze:

I write in response to your June 19, 2014, letter and the testimony that Deputy Director Steve Ellis recently provided to the U.S. House of Representatives. While I appreciate your response, your letter fails to adequately answer the most important legal questions raised in my April 22 letter and the testimony recently provided by the Bureau of Land Management (BLM) only serves to underscore just how important it is that BLM provide answers.

As you know, when Deputy Director Ellis testified before the U.S. House Committee on Natural Resources' Subcommittee on Public Lands and Environmental Regulation, he was joined at the witness table by Mr. Pat Canan, a Texan and a landowner who owns property that the BLM now purports to own. As Mr. Canan explained in his testimony to the committee, the very same 90,000 acres that BLM is now attempting to claim as its own "is the same land that was deeded by the State of Texas in 1858." Texans like Mr. Canan have owned and paid taxes on this land for generations. Given that, it is inconceivable that the BLM would now come in and simply declare that the federal government owns this land.

The BLM's apparent attempt to strong-arm Texas landowners out of the land they have cultivated and lived on for generations is unacceptable. And the BLM's failure to provide clarity regarding the ultimate process or timing for completing its land-grab is imposing serious economic damage on Americans without due process. As Mr. Canan testified to the committee: "The claim by BLM on the 90,000 acres or any acreage along the river has clouded title to my land and has impacted my ability to manage this river bottom. Land sales along the river have come to a standstill and land values along the river have decreased... This land has been bought and sold along the river up until this latest BLM claim."

While your June 19 letter to me indicated that you "would like to reiterate the BLM's commitment to maintaining...relationships with the citizens, industry, and other interested groups..." the BLM's actions to this point do not match your rhetoric.

Frankly, the BLM appears to be more concerned with expanding its property holdings—at the expense of private landowners—than it does with doing the right thing and recognizing the rights

of generations of Texas families who have owned, cultivated, and paid taxes on this land. Just consider, for example, Deputy Director Ellis' testimony to the committee, wherein he purported to sympathize with the plight of landowners but nonetheless expressed the BLM's opposition to federal legislation that would remedy the situation: "because the bill could result in the transfer of Federal lands and mineral estate out of Federal ownership..."

Given the BLM's apparent commitment to pursuing the current course of simply claiming private land as its own—while in the meantime clouding the title of private property along the Red River—I must reiterate two questions that I first posed in my April 22 letter, but that still have not been adequately answered: (1) what land does the BLM now claim belongs to the federal government; and (2) what is the legal basis for that claim?

First, in a 1994 Resource Management Plan/Environmental Impact Statement (RMP/EIS) for land along the Red River, the BLM stated that it could not determine how much land along the Red River belonged to the federal government until the border dispute between Texas and Oklahoma was resolved. As you know, that dispute was resolved by the Red River Boundary Compact in 2000. Yet now, your June 19 letter states that the Compact "did not change the United States' existing interests in any public domain lands along the Red River." Thus, while the BLM previously stated that the Texas-Oklahoma border dispute necessarily impacted land ownership, you now claim that the ratification of the Red River Compact only addressed the state line.

This evasive answer only worsens the very problem that was highlighted in Mr. Canan's congressional testimony—which is that the BLM's mishandling of this situation has clouded title to thousands of acres and brought Texas land sales along the Red River "to a standstill." With that in mind, I reiterate my original question and request that you identify, with specificity, the metes and bounds of private property along the Red River that the BLM now purports to own.

Second, your letter also fails to address the legal basis for the BLM's claim to land along the Red River. In a parenthetical, your June 19 letter cites a Supreme Court decision from the 1920s for the proposition that the United States owns everything south of the medial line to the gradient line of the Red River. But you seem to ignore that, in the very same decision, the Supreme Court stipulated that there must be a case-by-case application of the riparian "doctrines of erosion and accretion and avulsion to any intervening changes." *Oklahoma v. Texas*, 261 U.S. 345 (1923). If the BLM now claims that the movement of the Red River over the last 200 years does not inure to the ownership of Texas landowners, it must prove as much under the common law doctrines of erosion and accretion and avulsion on a case-by-case basis—and cannot now broadly assert ownership over thousands of acres that have been in the hands of Texas families for generations.

Lastly, and perhaps most disturbingly, your letter does not even begin to address the legal process that the BLM owes to Texas landowners. Instead, you offer only that "BLM will determine the uses and extent of these public lands through the current public planning process and any necessary surveys." To the extent such vague words describe any process, they suggest only that landowners must sit patiently by as BLM determines—inside a bureaucratic black box

with no apparent meaningful due process—how much of their land supposedly belongs to the federal government.

Texas landowners deserve better—and they deserve better from their federal government agencies and officials. Hardworking Texans have been cultivating, improving, and paying taxes on this land for generations. These landowners should not be relegated to by-stander status only to find out years from now that BLM plans to take their land. At that point, their last resort may be only a time-consuming and expensive lawsuit. In the event litigation is required, the State of Texas stands ready to join the legal fight and will take all necessary legal action to defend the rights of Texas landowners. Of course, litigation can be avoided, and the property rights of all parties can be more quickly resolved, if the BLM were to provide—similar to what has been proposed in recent weeks by Congressman Mac Thornberry—a streamlined process for Texas landowners to confirm (with finality) their ownership rights.

With that in mind, I hope the BLM will reconsider its course, quickly and directly address claims to private lands in Texas, and redress the harm it has already caused to Texans who own property along the Red River. In the meantime, I look forward to your prompt response to the questions I reiterate above.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", written in a cursive style.

Greg Abbott
Attorney General of Texas

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