



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

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Memorandum

To : Deputy Assistant Secretary—Indian Affairs (Operations)
From : Associate Solicitor, Indian Affairs
Subject: Status of Title to the Arkansas Riverbed Lands in Oklahoma

By your memorandum of March 15, you requested our opinion as to whether or not the bed of the Arkansas River is held in a trust status by the United States for the benefit of the Cherokee, Choctaw, and other tribes with an ownership interest in the riverbed.

The lands in question were acquired by the Cherokee and Choctaw Tribes as a result of the treaties of New Echota, 7 Stat. 478, and Dancing Rabbit Creek, 7 Stat. 333. The Supreme Court in Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970), determined that the patents issued pursuant to the treaties had conveyed all the interest of the United States in the lands described in the patents to the tribes, including the bed of the Arkansas River.

Despite the fact that the Supreme Court's ruling thoroughly discussed the various treaties, agreements, and §27 of the Act of April 26, 1906, 34 Stat. 148, 1/ the State of Oklahoma and others attempted to relitigate the ownership issue by arguing that the Supreme Court had only decided that the tribes had originally acquired title pursuant to the treaties, but had not actually decided who presently owns the riverbed. This effort failed when in Cherokee

1/ The 1906 Act was intended to dissolve the tribal governments and to divide and distribute tribal assets to individual tribal members. Section 27 of the act states in relevant part: "That the lands belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, upon the dissolution of said tribes, shall not become public lands nor property of the United States, but shall be held in trust by the United States for the use and benefit of the Indians respectively comprising each of said tribes. . . ."

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Nation v. State of Oklahoma, 461 F.2d 674 (10th Cir. 1972), the court found that the State's argument had no merit and that the Supreme Court had addressed and disposed of the ownership issue. Title to the riverbed was clearly vested in the tribes. Once again, despite the court having discussed the 1906 Act, supra, the State and other petitioners asserted that if the tribes owned the riverbed, they owned it in fee and the bed was in a taxable status.

In Cherokee Nation Tribe of Indians v. State of Oklahoma, 416 F. Supp. 838 (E.D. Oklahoma 1976), the court made a clear holding that the riverbed was in trust and non-taxable. It premised this decision on two separate grounds: first, that as a general principle tribal land title to which is held by the United States for the benefit of a tribe is in trust. The court found that title to the land in question was in the United States, being held by the United States for the benefit of the tribes involved, and therefore in trust. Second, the court found that under §27 of the 1906 act, irrespective of ambiguous language referring to dissolution of the tribal governments, the United States was clearly holding title in trust for the tribes.

In short, the issue of title and the land's status have been thoroughly litigated, and the courts reached the conclusion that the riverbed of the Arkansas River is held by the United States in trust for those tribes with an interest in the riverbed. 2/

Lawrence J. Jensen
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2/ The relative tribal interests were determined in Choctaw Nation v. Cherokee Nation, 393 F. Supp. 224 (E.D. Oklahoma, 1975).