

History of the Arkansas

Riverbed

from 1830 to 2012

1830--Treaty of Dancing Rabbit Creek between the U.S. and the Choctaw Nation, Sept. 27, 1830, 7 Stat. 333-334.

1835--Treaty of New Echota between the U.S. and the Cherokee Nation December 29, 1835, 7 Stat. 478

1837--Treaty between the U.S. and the Chickasaw Nation of January 17, 1837, 11 Stat. 573; Treaty of June 22, 1855, 11 Stat. 611.

1893--Act of Congress of March 3, 1893, 27 Stat. 645, The Dawes commission was created to negotiate with the Indian tribes that had been located in Oklahoma on the allotment of land to their individual members in preparation for the final dissolution of the tribes.

1898--General Land Office had completed a survey of all the lands of the Five Civilized Tribes.

1906--Congress provided for the disposition of all Five Civilized Tribes lands with the provision that any remaining tribal property 'be held in trust by the United States for the use and benefit of the Indians.' Act of April 26, 1906, 27, 34 Stat. 148. The Cherokee, Choctaw and Chickasaw claim title to the bed of the Arkansas River by treaty and patent from the United States. Because the land was not individually allotted or otherwise disposed of pursuant to the 1906 Act, title remained in petitioners or passed to the United States to be held in trust for them.

1907--Oklahoma become a state , Oklahoma claimed ownership and for many years the Nations were without resources to pursue their rights. The State of Oklahoma claims to the river was directed to the--equal footing doctrine, and that it was no exception to the rule that newly admitted states acquired legal title to all navigable water within their borders.

1908--Flooding along the Arkansas in Tulsa. The railroads are hit hard.

1910- Allotments in the Five Civilized Tribes are complete.

1913--Brewer - Elliott oil and gas vs United States, Arkansas River from mouth of the Grand River to Arkansas State line only navigable river in Oklahoma.

1923--Disastrous floods had struck Oklahoma in June and October of 1923. The Canadian River shattered Oklahoma City's water supply dam. In Tulsa the Arkansas destroyed the city waterworks and drove 4,000 from their homes. Nearly every wagon and railroad bridge in central Oklahoma was washed out. There were proposals to create reservoirs on the Arkansas and Red Rivers to help prevent future flooding

1927-- The greatest flood every know on the Arkansas came out of Kansas. As a result of excessive rainfall, the Arkansas River became a conduit for an eight to ten foot wall of water--with registered flows of 750,000 cubic feet per second--roaring down the valley and emptying into the Mississippi River. Nearly every levee down river from Fort Smith, Arkansas, to the Mississippi, was destroyed.

This occurrence led to the formation of the ARFCA (Arkansas River Flood Control Association). The focus of this organization was to lobby members of Congress for a comprehensive flood control program.

The next year a flood control act is passed by Congress. The Arkansas and Red Rivers are included for survey as part of this comprehensive study.

1935 --U. S. Army Corps of Engineers informs Congress that Arkansas River Navigation is technically but not economically feasible. Independent estimates put the cost for Arkansas River Navigation much lower than the Corps' figures

1936--Congress ignores the Corp of Engineer's negative report and passes a landmark flood control act. As a result of this legislation the Southwestern Division of the Corps of Engineers was created, and authorization given to 211 flood control projects in 31 states

1937--July 14. Southwestern Division begins work in territory that includes the upper Arkansas, Red, White, and Black River basins, among others.

1939--July 1. Tulsa District of U. S. Army Corps of Engineers is formed from the Little Rock District, and receives \$11,000,000 for work on eight authorized projects.

1941--Flooding along the Arkansas River between Muskogee and Ft. Smith December 7. The Japanese attack Pearl Harbor. The United States enters World War II (1941-1945).

1943--Flooding -24 inches of rain in 6 days from McAlester to Muskogee. Some reports state that "half of Arkansas" was underwater

1946-- Rivers and Harbors Act authorizing the building of the McClellan-Kerr Arkansas River Navigation System is passed by Congress. The plan includes hydropower, flood control, recreation, and navigation from Catoosa, Oklahoma to the Mississippi River.

Fortunately, Arkansas Senator John L. McClellan, and Oklahoma Senator Elmer Thomas, sat on the Senate Appropriations Committee.

1948--Oklahoma Governor Robert S. Kerr runs a successful campaign to become Oklahoma's junior senator. Once in Congress he will champion waterway transportation.

1954--Arkansas River navigation is placed in a "deferred for further study" category. A major engineering problem needs to be solved: 100 million tons of silt flowing down the Arkansas annually could prevent navigation.

A study conducted by Professor Hans Albert Einstein, son of the famous scientist, proposed a way for the river to clean itself, thus reducing sedimentary flow. Major reaches of the river would be deepened, straightened, and narrowed. This would stabilize the banks and make the river flow faster. The faster waters would flush out sediment that would otherwise settle and require constant dredging.

This plan was tested by the Waterways Experiment Station and was found to work. The system would work so good that \$31,000,000 could be stricken from the budget for three upstream dams which had been designed to trap sediment. This solved the sediment problem.

1956--Oklahoma Senator Robert S. Kerr wins funds for three reservoirs vital to the navigation system in return for throwing his support to the popular Federal Aid Highway Act (which authorized the interstate highway system). President Eisenhower vetoed the bill, but his veto was overridden by Congress. The question now was how to get the President to spend the money authorized for the project.

At this juncture, Republican Congressman Page Belcher, from Tulsa, had a talk with the President over breakfast. Congressman Belcher stated plainly that the river project meant a lot to his constituents back home, and that he might lose his seat to a Democrat if funding were not authorized. As a result, President Eisenhower put funding for the navigation project in the White House budget.

Work resumes on Oologah Reservoir, and begins on Keystone and Eufaula Reservoirs.

These upstream lakes are vital to the navigation system. In addition to providing flood control, hydroelectric power, and recreation, these reservoirs were designed as one means to regulate the depth of water in the navigation channel.

1963--January 1. Senator Robert S. Kerr of Oklahoma, the acclaimed "King of the U. S. Senate" dies. Senator John L. McClellan of Arkansas, picks up the torch in the struggle for funds to complete the Arkansas River navigation project.

1964--Construction begins on Robert S. Kerr Lock and Dam No. 15.

1966--Construction begins on W. D. Mayo Lock and Dam No. 14.

1966--The District Court in 1966 held that land grants made to the Nations by the United States conveyed no rights to the bed of the navigable portion of the Arkansas River. The court held that title to the river bed, remained in the United States until 1907, when it passed to the State upon Oklahoma's admission to the Union.

1968-- The Cherokee, Choctaw and Chickasaw appealed to the United States Court of Appeals for the Tenth Circuit, but they reaffirmed the judgment of the District Court. 402 F.2d 739 (1968).

1970-- The Nations then appealed their case to the United States Supreme Court. In a historic 1970 decision on the eve of completion of the inland waterway, in [Choctaw Nation v. Oklahoma, 397 U.S. 620 \(1970\)](#) the high court confirmed the Nations' ownership of the riverbed, subject to the navigational servitude of the USACOE

December 30, 1970--The waterway is ready for use, 448 miles, 17 Locks and Dams. The Arkansas River Navigation project provides a minimum 9 foot deep channel with a total lift of 420 feet, 450 miles long, from the Mississippi River to the head of navigation at Catoosa, near Tulsa, Oklahoma.

January 3, 1971-- First commercial barge to the Port of Muskogee. The cargo is steel pipe manufactured by Republic Steel.

June 5, 1971--. The President of the United States, Richard M. Nixon, was the keynote speaker for the **Dedication of McClellan-Kerr Arkansas River Navigation System at the Tulsa Port of Catoosa.**

1971–The Supreme court had remanded the case back to the Eastern District Court of Oklahoma for finally settlement. This case was finalized in 1976, and all lands were turn over to the Bureau of Indian Affairs for management. The BIA utilized the Holway study a river movement study conducted in 1973-1974 by W.R. Holway and Associates under contract to the Bureau of Indian Affairs for ownership.

1979– Arkansas Riverbed Authority, a consortium composed of the Cherokee, Choctaw and Chickasaw Tribes was formed to help manage the River.

1988 - 1989--The BLM cadastral survey office started a preliminary study of the Arkansas Riverbed properties under Congressional funding for an official river movement study.

April 21, 1989--, Cherokee, Chickasaw and Choctaw Tribes contend that the United States, as trustee, has misappropriated and mismanaged the Arkansas Riverbed Property. Accordingly, the Tribes filed the present actions in the Court of Federal Claims, alleging that the United States breached its fiduciary duties as trustee of the Tribes' interests in the riverbed lands.

January 28, 1994, the trial court denied the Government's motion for summary judgment on the Tribes' claims. The trial court concluded: "title to the riverbed land must be resolved before the court can determine which, if any, land owned by the Tribes was mismanaged, not managed, or subject to unauthorized use by the defendant."

1997—United States initiated one quiet title lawsuit United States v Pates Farms, et al., Case No. CIV-97-685-B. After two years this case was dismissed for failure to timely serve all of the defendants.

2000 –Arkansas Riverbed Federal Negotiation Team: Appointed by Deputy Secretary of the Interior to facilitate and negotiated a resolution and settlement to a long-standing dispute involving United States Government and various Indian Tribes regarding the Arkansas Riverbed.

2002--After years of negotiation following the Supreme Court ruling, the tribes were able to reach a settlement agreement with the United States government over the use of the riverbed. Late in 2002 the Congress passed the Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act whereby the Tribes received payment for past damages and for the value of dry-bed claim areas in the lower reach of the river in exchange for a relinquishment of all claims to their dry bed claim areas that were occupied by third parties in the lower reach of the river.

2010-- Department of the Interior, Bureau of Land Management, (BLM) has completed plats representing the **DISCLAIMED DRYBED LANDS- The term `Disclaimed Dry bed Lands' means all Dry bed Lands along the Arkansas River that are located in Township 10 North in Range 24 East, Townships 9 and 10 North in Range 25 East, Township 10 North in Range 26 East, and Townships 10 and 11 North in Range 27 East, in the State of Oklahoma, (identifying said riverbed as instructed by the Settlement Act Public Law No. 107-331, enacted December 13, 2002). The Nations will continue to own the wet bed of the river from bank to bank as well as their unallotted lands that remain in the dry-bed lands in this portion of the river.**

2011- 2012--Department of the Interior, Bureau of Land Management, is now working on that portion underlying Kerr Lake from Township 10 North in Range 23 East through Section 21 of Township 11 North Range 21 East. The Nations will own that portion of Historical Claim Area, the 1960 wet bed river and the 1897 old riverbed. From Section 20 of Township 11 North Range 21 East to the mouth of the Grand River the Nations will own the wet bed river, the term `Wet bed Lands' means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Dry bed Lands. The term `Wet bed Lands' is intended to have the same meaning as the term `Present Channel Claim Areas' as utilized by the Bureau of Land Management Cadastral Survey Geographic Team in its preliminary survey of the Arkansas River. They will also own the dry bed lands Cadastral Survey Geographic Team in its preliminary survey of the Arkansas River. The term `Dry bed Lands' means those lands which, on the date of enactment of this title, lie above and contiguous to the mean high water mark of the Arkansas River in the State of Oklahoma. The term `Dry bed Lands' is intended to have the same meaning as the term "Upland Claim Area" as used by the Bureau of Land Management term "Dry bed Lands" includes the lands within the old 1897 riverbed.

Tribal ownership of the Arkansas Riverbed

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

FILED

APR 15 1975

CHARLES N. HASKELL
CLERK, U. S. DISTRICT COURT
DEPUTY CLERK

THE CHOCTAW NATION and)
the CHICKASAW NATION,)
)
Plaintiffs,)
vs.)
)
THE CHEROKEE NATION,)
)
Defendant.)

No. 73-332-Civil

J U D G M E N T

Based upon the Memorandum Opinion of the Court this day filed,

IT IS ORDERED, ADJUDGED AND DECREED that the south portion of the Arkansas River bed from the Canadian fork to the Arkansas-Oklahoma border belongs to the plaintiffs, Choctaw Nation having an undivided 3/4 interest and the Chickasaw Nation having an undivided 1/4 interest; that the thread of the main channel of said river shall be the dividing line of the river bed, the south portion thereof belonging to the plaintiffs in fee simple, to the exclusion of the defendant, Cherokee Nation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the north portion of the Arkansas River bed from the Canadian fork to the Arkansas-Oklahoma border belongs to the defendant, Cherokee Nation; that the thread of the main channel of the river shall be the dividing line of the river bed, the north portion thereof belonging to the defendant in fee simple, to the exclusion of the plaintiffs, Choctaw and Chickasaw Nations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the effective date of this Judgment shall be the 16th day of November, 1907, the date Oklahoma became a state and technically took possession of the Arkansas River, which possession was continued until the Supreme Court decision in Choctaw v. Oklahoma, 397 U.S. 620 (1970).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court will retain jurisdiction to hear and determine any further questions which might arise growing out of the jurisdictional Act.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the cost of this action shall be borne by the plaintiffs.

Dated this 15th day of April, 1975.

William J. Holloway, Jr.
WILLIAM J. HOLLOWAY, JR., Circuit Judge

Luther Bohanon
LUTHER BOHANON, District Judge

Fred Daugherty
FRED DAUGHERTY, District Judge

Ownership of the River is tax exempt and USA in Trust



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

Rec'd Correspondence Ofc-E

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Memorandum

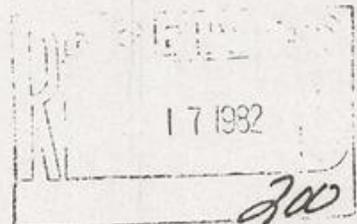
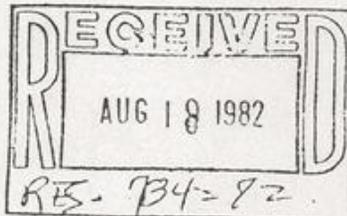
To : Deputy Assistant Secretary—Indian Affairs (Operations)
From : Associate Solicitor, Indian Affairs
Subject: Status of Title to the Arkansas Riverbed Lands in Oklahoma

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

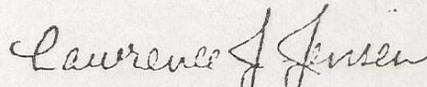
^{1/} The 1906 Act was intended to dissolve the tribal governments and to divide and distribute tribal assets to individual tribal members. Section 27 of the act states in relevant part: "That the lands belonging to the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, upon the dissolution of 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. . . ."



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

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