

# It takes two to redraw water boundary

*"You can sail on a ship by yourself  
/ Take a nap or nip by yourself/  
You can get into debt on your own/  
There are lots of things that you can  
do alone / But it takes two to tango."  
— lyrics by Hoffman & Manning, 1952*

Oklahoma and Texas compete for many things. One current concern for Oklahoma is Texas' ever-growing need for raw water. The Red River represents not just the dividing line between the states, but also a source of raw water for both states.

The Red River Boundary Compact was the result of collective efforts of the legislatures of Oklahoma and Texas, as well as the Native American tribes of Apache, Comanche and Kiowa. The Red River Boundary Commission was empaneled in 1991 to resolve a boundary dispute that then existed between Oklahoma and Texas.

After consent by Congress in 2000, the compact established



## BUSINESS VIEWPOINT

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the permanent political boundary between Oklahoma and Texas by reference to a "vegetation line" along the south bank of the Red River. The only exception was in the Lake Texoma area, where the boundary is defined by reference to normal pool elevation and the south bank of the Red River as located and marked by the U.S. Army Corps of Engineers in connection with the construction of the lake.

Unfortunately for Texas, when the boundary between Oklahoma and Texas was redrawn, only one raw water pump is located entirely

within Texas. Formerly, there were seven pumps located on a parcel of land that juts out into Lake Texoma. The North Texas Municipal Water District operates the pump and would like to operate the other six pumps that the NTMWD formerly operated until the boundary was redrawn.

The district provides drinking water to more than 1.5 million people in one of Texas' most rapidly growing areas. Recent drought conditions have led the Texas Legislature and Gov. Rick Perry to authorize the re-establishment of the commission for the express purpose of redrawing the boundary between Oklahoma and Texas.

Texas' goal of redrawing the boundary is just the latest of its efforts to increase its source of raw water. The Tarrant Regional Water District first attempted to purchase water from the state of Oklahoma and the Choctaw and Chickasaw nations.

When that effort failed, TRWD sought judicial interpretation of the Red River Compact (between Arkansas, Louisiana, Oklahoma and Texas) to allow Texas to cross Oklahoma's border to take additional water.

TRWD's strategy was to seek water take permits from the Oklahoma Water Resources Board, knowing that it was unlikely that such permits would be granted. TRWD sued OWRB in federal court, seeking to prevent the OWRB from denying the permits.

On June 13, 2013, the U.S. Supreme Court held that, by entering into the Red River Compact, Oklahoma did not agree to allow Texas to cross the border to take water from the Red River. Having agreed with Oklahoma's position on sovereignty of its border and Oklahoma's right to decline to allow Texas to cross over, the U.S. Supreme Court appears to have put to rest this strategy.

Now Texas wants to renegotiate the Boundary Compact. The problem is that a compact is a contract. Oklahoma has not made public any inclination that it is interested in entering into negotiations.

So it seems that if Oklahoma likes its Red River Boundary, it can keep its Red River Boundary because, after all, "It Takes Two to Tango."

Ken Williams is a shareholder with Hall Estill where he assists clients in matters dealing with environmental and water law, among other areas.

The views expressed here are those of the author and not necessarily the Tulsa World. To inquire about writing a Business Viewpoint column, email a short outline of the article to Business Editor Rod Walton at [rod.walton@tulsaworld.com](mailto:rod.walton@tulsaworld.com). The column should focus on a business trend; the outlook for the city, state or an industry; or a topic of interest in an area of the writer's expertise. Articles should not promote a business or be overly political in nature.

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