

Draft State/Tribal Water Compact, Public Discussion Draft

State-Tribal Water Compact
PUBLIC DISCUSSION DRAFT

ARTICLE 1. PURPOSES OF COMPACT

Section 1.1 The principal purposes of this Compact are:

- (a) To provide mutual respect for tribal and state sovereignty;
- (b) To address water resources issues in southeast Oklahoma and to resolve mutually exclusive state-tribal claims to water rights;
- (c) To provide for protection and development of water in southeast Oklahoma by utilizing one set of water quality standards; and
- (d) To provide the framework for the Choctaw Nation, Chickasaw Nation and State of Oklahoma to work together to provide economic development in southeast Oklahoma.

ARTICLE 2. DEFINITIONS

Section 2.1 "Compact area" means that geographical area described in Article 3 of this Compact.

Section 2.2 "Definite stream" means a watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at regular intervals if that is characteristic of the sources of supply in the area.

Section 2.3 "Domestic use" means use of stream water or groundwater by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land and for the irrigation of not exceeding a total of three (3) acres in area for the growing of gardens, orchards and lawns, and for such other purposes, specified by rules of the State for which de minimis amounts are used.

Section 2.4 "Groundwater" means fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream in the Compact area.

Section 2.5 "Ratification date" means the date this Compact is consented to and ratified as described in Section 8.1.

Section 2.6 "State" means the State of Oklahoma.

Section 2.7 "Stream water" means water in a definite stream, and includes but is not limited to water in all lakes, reservoirs, playas, gully plugs and any other impoundments and water as it flows from the mouth of springs if such water becomes stream water, in the Compact area.

Section 2.8 "Tribal Nations" means collectively the Choctaw Nation and Chickasaw Nation.

ARTICLE 3. COMPACT AREA

Section 3.1 The water rights and water quality administration provisions of this Compact are applicable to all stream water and groundwater falling on, flowing in, under, through or bordering all or portions of the following 22 counties within the State: McCurtain, LeFlore, Haskell, Latimer, Pushmataha, Choctaw, Bryan, Atoka, Pittsburg, Hughes (south of medial line of South Canadian River), Coal, Marshall, Johnston, Pontotoc, Garvin, Murray, Carter, Love, McClain and portions of Jefferson, Stephens, Grady east of the 98th Meridian. Nothing in this Compact authorizes the State or Tribal Nations to market or sell groundwater.

ARTICLE 4. WATER RIGHTS ADMINISTRATION

Section 4.1 The Tribal Nations hereby delegate authority for determining and administering all rights to use of stream water and groundwater and the manner and conditions of such use in the Compact area to the State, subject to the terms of this Compact.

Section 4.2 In administering rights to the use of stream water, the State shall utilize the appropriation provisions set forth in Title 82 of the Oklahoma Statutes, Section 105.1 and following, existing as of the ratification date and as may be amended, and in rules of the Oklahoma Water Resources Board existing as of the ratification date and as may be amended.

Section 4.3 In administering rights to the use of groundwater, the State shall utilize the allocation doctrine set forth in Title 82 of the Oklahoma Statutes, Section 1020.1 and following, existing as of the ratification date and as amended, and in rules of the Oklahoma Water Resources Board existing as of the ratification date and as amended. Nothing in this Compact authorizes the State or Tribal Nations to market or sell groundwater.

Section 4.4 Appropriation rights to the use of stream water in the Compact area and allocation rights to the use of groundwater in the Compact area, including but not limited to appropriation rights in Lake Atoka and McGee Creek Reservoir, existing under State law as of the ratification date of this Compact, are hereby recognized and affirmed by the Tribal Nations and the Tribal Nations release claims to such water and water rights. Rights recognized and affirmed pursuant to this Section 4.4 include:

- (a) Vested appropriation rights recognized in administrative proceedings conducted by the Oklahoma Water Resources Board after June 10, 1963;

- (b) Prior rights to the use of groundwater established by compliance with State law in effect prior to July 1, 1973, and recognized in administrative proceedings conducted by the Oklahoma Water Resources Board after July 1, 1973;
- (c) Valid and effective permits issued by the Oklahoma Water Resources Board;
- (d) Domestic use;

Provided, this Section 4.4 shall only become effective upon payment (or entering into a binding commitment to pay) by the City of Oklahoma City or its public trust to the State for payment of storage costs to the United States for Sardis Reservoir and for reimbursement to the State for previous payments made for storage costs at Sardis Reservoir, provided further, that use of water by the City of Oklahoma City from Sardis Reservoir shall be subject to Section 5.1 of this Compact.

Section 4.5 (a) Rules of the Oklahoma Water Resources Board relating to the use of stream water and groundwater existing as of the ratification date of this Compact shall be used in the Compact area in the administration of stream water and groundwater rights, provided such rules may be amended as set forth in this Section 4.5. The Tribal Nations shall be afforded at least thirty (30) days prior to consideration by the Oklahoma Water Resources Board to review and provide comment on proposed amendments to rules relating to use of stream water and groundwater in the Compact area and concerning applications for regular permits to use stream water and regular and temporary permits to use groundwater from any source in the Compact area.

(b) The Oklahoma Water Resources Board shall deny an application for a regular permit to use stream water from the Compact area in other areas of the State or in areas out of the State if it concludes that the proposed use would not comply with this Compact or would not comply

with rules of the Board. If proposed findings, conclusions and order of the Oklahoma Water Resources Board indicate that an application filed after the ratification date of this Compact seeking to use water from any source in the Compact area should be approved contrary to the position of either Tribal Nation that the amount requested in the application, if approved, would be in violation of the Oklahoma Water Resources Board rules or would be or would cause a breach of any water marketing contracts made pursuant to this Compact, or would otherwise infringe on tribal sovereignty relating to tribally owned trust land or restricted allotments, or that disapproval of the amount requested is necessary to protect tribal political integrity or tribal economic security relating to tribally owned trust land or restricted allotments, the affected Tribal Nation may, within ten (10) days after receipt of a copy of the proposed findings, conclusions and order, submit the matter to arbitration pursuant to Section 7.8 of this Compact, concurrently notifying the Oklahoma Water Resources Board in writing of its submittal to arbitration. The arbitration must be completed as expeditiously as possible but in no case more than ninety (90) days after submittal of the matter to arbitration, or the Oklahoma Water Resources Board may consider the proposed findings, conclusions and order without further delay.

(c) The Oklahoma Water Resources Board shall accept petitions from the Tribal Nations to adopt a rule or amend a rule relating to use of water in the Compact area.

(d) If both Tribal Nations claim that disapproval of a proposed rule submitted for review is necessary to protect tribal political integrity or tribal economic security or would otherwise infringe on tribal sovereignty, or that a proposed rule will allow approval of an application for use of stream water in the Compact area in quantities in excess of an applicant's present or future needs, or if the Oklahoma Water Resources Board does not propose a rule as requested by the

Tribal Nations pursuant to subsection (c) of this Section, the Tribal Nations may submit the matter to arbitration. Arbitration must be initiated within twenty (20) days after receipt a copy of the proposed rule or notice that the Tribal Nations' petition made pursuant to subsection (b) will not be recommended. Concurrent with its submittal to arbitration, the Tribal Nations must notify the Oklahoma Water Resources Board in writing of its submittal. Arbitration proceedings shall be conducted pursuant to Section 7.8 to determine whether the adoption or failure to recommend adoption as the case may be of the proposed rule would violate the rights of the Tribal Nations under this Section 4.5.

ARTICLE 5. CORNERSTONE PRINCIPLES AND PREFERENCES FOR USE OF WATER FROM COMPACT AREA

Section 5.1 The following cornerstone principles shall be utilized in addressing water resources development in the Compact area:

- (a) Future use of water by local citizens and entities shall be the highest priority and shall be protected by implementing stream system of origin protection provisions of state law existing as of the ratification date and as may be amended and in setting aside a sufficient amount of water from water supply reservoirs in the Compact area;
- (b) The present and future needs for water by all Oklahomans shall be considered the next highest priority;
- (c) Appropriate lake level management plans and release policies, developed by the Oklahoma Department of Wildlife Conservation, shall be implemented for the use of water from Compact area reservoirs from which water is used out of the Compact area, and shall include flexibility for adjustments due to future sedimentation;
- (d) Financing opportunities for water and wastewater infrastructure and related economic development projects within the Compact area shall be optimized, with

appropriate priorities given to water and wastewater infrastructure projects within the stream system of origin;

(e) Obligations of the State, Tribal Nations or municipal trusts to the United States for repayment of construction and maintenance costs of the water supply storage in the Compact area shall be addressed;

(f) The integrity of the rivers in the Compact area shall be protected; and

(g) Wildlife management and waterfowl areas adjacent to reservoirs from which water supply is used out of the Compact area shall be protected and appropriate mitigation measures will be implemented for such areas where necessary to address uses of water.

Section 5.2 Preferences in considering applications for permits to use stream water from the Compact area set forth in the statutes of the State regarding use of stream water shall be followed.

Section 5.3 For use of water from the Compact area out of the State, the following provisions shall apply:

(a) The out of state use of water must be authorized by the Governor and Tribal Nations and approved by the Oklahoma Legislature. All agreements for out of state water use shall be for a limited term as provided in the agreement. All agreements for out of state water use shall contain a provision that forever bars such out of state user from claiming in any forum downstream dependency, preference or priority in any manner or circumstances, including but not limited to drought conditions or circumstances, emergencies or public health and safety concerns, which would have the effect of altering, extending or voiding the term limit, increasing quantities or any other provisions

of the agreement or which would allow the out of state user to continue use of water without a written agreement adopted in accordance with this Section 5.3(a). All agreements for out of state water use shall explicitly provide for escalation provisions relating to price of the water, that groundwater will not be used as a supply, that water from Oklahoma will not be used solely or primarily for recreation, fish and wildlife benefits out of state, that the agreement cannot be materially amended without approval of the Oklahoma Legislature and Tribal Nations, and the specific circumstances under which the amount of water made available to the out of state user may be reduced or diversions suspended, taking into account the reduced water availability from basin where the water originates due to drought;

(b) All revenues from use of water out of state use shall be deposited and utilized as specified in Section 5.3(c) and (d) of this Compact. Net proceeds shall mean all revenues deposited less expenditures made pursuant to Section 5.3(d) below and shall be divided one-half (50%) to the State, thirty-seven and one-half percent (37 1/2%) to the Choctaw Nation, twelve and one-half percent (12 1/2%) to the Chickasaw Nation, and distributed accordingly by the Compact Commission.

(c) The State's portion of net revenues shall be utilized in the Compact area pursuant to a program established by the State Legislature for economic development, including but not limited to water and wastewater infrastructure, wherein a public trust for the benefit of the State is created with ex officio membership and members appointed by the Governor with advice and consent of the State Senate from persons residing in the Compact area having expertise in planning and financing of economic development projects and which trust will establish rules that recognize project funding priorities for

the basin of origin in the Compact area. The Tribal Nations shall use their respective portion of net proceeds only for economic development, education, tribal government programs, social service programs, road programs, tribal infrastructure development, health care, senior citizens programs, youth programs, housing programs, acquisition and management of real property, culturally relevant programs, and other similar programs.

(d) Gross proceeds means all revenues received, whether in lump sum or on a periodic basis, from any water marketing contract authorized pursuant to Section 5.3(a). Gross proceeds shall be deposited in a fund to be established by the Southeast Oklahoma State-Tribal Water Compact Commission and distributed pursuant to provisions of this Compact. Gross proceeds shall not be considered funds of the State or funds of either Tribal Nation and shall not be subject to appropriation by the State or Tribal Nations.

(e) Gross proceeds shall be used by the Compact Commission for the following expenditures:

- (1) costs and expenses for compact administration as approved by the Compact Commission; and
- (2) if, after appropriate review and approval by all necessary governmental entities, including but not limited to the State and Tribal Nations, it is determined in the future to allow or cause any new water storage facilities to be built in the Compact area, the costs of acquiring and maintaining other water storage and conveyance facilities in the Compact area, including but not limited to land acquisition, easements, pipelines, canals, pumps and other appurtenances as necessary pursuant to proposals for use of water out of state approved by the

Governor of the State, appropriate officials of the Tribal Nations, Oklahoma
Legislature;

provided that the balance of proceeds remaining after use as provided in paragraphs (1)
and (2) shall be distributed to the State and Tribe Nations according to subsection (b) of
this Section.

ARTICLE 6. WATER QUALITY MONITORING AND WATER QUALITY STANDARDS

Section 6.1 (a) The State's Oklahoma Water Quality Standards shall apply within
the Compact area except to waters on lands for which either Tribal Nation is approved for
treatment as a state pursuant to Title 33, United States Code, Section 1377(e) to adopt water
quality standards and adopts such standards of its own pursuant to Title 33, United States Code,
Section 1313 and this Article. The Tribal Nation so approved may adopt the State's water quality
standards as the water quality standards applicable only to waters within tribally owned trust
lands, restricted allotments or other lands as specifically authorized by Congress under Title 33,
United States Code Sections 1377(e) and 1313, as amended, or the Tribal Nation so approved
may establish their own water quality standards applicable only to waters within tribally owned
trust lands, restricted allotments or other lands as specifically authorized by Congress pursuant to
Title 33, United States Code, Section 1313, as amended, subject to the terms of this Compact.

(b) (1) Representatives of the Oklahoma Water Resources Board shall consult with
representatives designated by the Tribal Nations before adopting amendments to
Oklahoma's Water Quality Standards or rules on implementation of Oklahoma's Water
Quality Standards for the Compact area. In addition to the procedural requirements under
the Oklahoma Administrative Procedures Act, a notice of rulemaking intent and initial
draft of any changes to Oklahoma's Water Quality Standards or rules on implementation

of Oklahoma's Water Quality Standards applicable in the Compact area proposed to be adopted by the Oklahoma Water Resources Board shall be submitted to the Tribal Nations for review.

(2) Representatives of the Tribal Nation authorized pursuant to Title 33, United States Code, Sections 1377(e) and 1313 to adopt water quality standards shall consult with representatives designated by the Oklahoma Water Resources Board before initiating action to adopt or amend water quality standards or water quality standards implementation rules applicable to water on only tribally owned trust land, restricted allotments and other lands as specifically authorized by Congress authorized pursuant to Title 33, United States Code, Sections 1377(e) and 1313, as amended, shall prior to adoption submit any proposed standards or revisions to the Oklahoma Water Resources Board for review.

(3) If a proposed water quality standards rule or rule on implementation of water quality standards submitted by the State or Tribal Nations prior to adoption is changed when adopted, the changes will not become effective until the procedures set out in this Section 6.1 are followed.

(c) If either Tribal Nation files, within twenty (20) days after receipt of a final draft of a proposed water quality standard revision from the Oklahoma Water Resources Board, a written claim supported with clear and convincing evidence that a specific proposed revision would violate tribal political integrity or economic security, would cause a breach of any water marketing agreements made pursuant to this Compact, or would otherwise infringe on tribal sovereignty, the Oklahoma Water Resources Board shall consider the claim and supporting evidence. The Oklahoma Water Resources Board shall notify the Tribal Nation with five (5)

days after making the determination whether to proceed toward adoption of the final draft of the proposed water quality standard. Within ten (10) days after receipt of the written determination to proceed from the Oklahoma Water Resources Board, the Tribal Nation may with the Compact Commission a written claim that disapproval of the final draft water quality standard revision submitted is necessary to protect tribal political integrity or economic security, or is necessary to avoid causing a breach of any water marketing contracts made pursuant to this Compact, or approval would otherwise infringe on tribal sovereignty. The claim shall then be submitted to arbitration pursuant to Section 7.8 of this Compact. The Tribal Nation shall have the burden of proving its claim by clear and convincing evidence. If the arbitrator rules in favor of the Tribal Nation, then the Oklahoma Water Resources Board shall not adopt the proposed water quality standard. If the arbitrator rules against the Tribal Nation, then the proposed water quality standard may be adopted by the Oklahoma Water Resources Board.

(d) If the State claims, within ten (10) days after receipt of a final draft of a proposed water quality standard, implementation or revision thereof from either Tribal Nation, supported with clear and convincing evidence that the proposal will negatively impact waters or use thereof on land that is not tribally owned trust land, restricted allotments or other lands as specifically authorized by Congress under Title 33, United States Code Sections 1377(e) and 1313, as amended, or otherwise will cause an economic hardship in areas outside tribally owned trust land, restricted allotments or other lands as specifically authorized by Congress under Title 33, United States Code Sections 1377(e) and 1313, as amended, an arbitrator chosen pursuant to Section 7.8 of this Compact must disapprove the proposed water quality standard, implementation rule or revision thereof upon finding that the proposal if it became effective would negatively impact waters or use thereof on land that is not tribally owned trust land,

restricted allotments or other lands as specifically authorized by Congress under Title 33, United States Code Sections 1377(e) and 1313, as amended, or otherwise would cause an economic hardship in areas outside tribally owned trust land, restricted allotments or other lands as specifically authorized by Congress under Title 33, United States Code Sections 1377(e) and 1313, as amended.

Section 6.2 The State shall make its beneficial use monitoring program and other monitoring data available to the Tribal Nations and the Tribal Nations shall make its monitoring data available to the State.

Section 6.3 If the Tribal Nations do not adopt their own water quality standards, implementation rules or use support assessment protocols for tribally trust lands, restricted allotments or other lands as specifically authorized by Congress under Title 33, United States Code Sections 1377(e) and 1313, as amended, the Tribal Nations agree to use and enforce Oklahoma Water Quality Standards, Water Quality Standards implementation rules, and use support assessment protocols promulgated by the State in any other programs specifically authorized by the United States Environmental Protection Agency to be administered by the Tribal Nations pursuant to Title 33, United States Code, Section 1377(e).

Section 6.4 The State and the Tribal Nations shall support each other's efforts to obtain funding for monitoring and other activities related to water quality standards, implementation of water quality programs and protection of water quality.

Section 6.5 The provisions of this Article do not grant authority not otherwise provided by law. The provisions of this Article are subject to other applicable Federal law, including but not limited to the provisions of Title 33, United States Code, Section 1377(e) and 1313.

ARTICLE 7. COMPACT COMMISSION ESTABLISHMENT, ADMINISTRATION, AND ARBITRATION

Section 7.1 There is hereby created an intergovernmental cooperative agency to be known as the "Southeast Oklahoma State-Tribal Intergovernmental Compact Commission". The Commission shall be composed of eight commissioners. Four Commissioners shall represent the State, and four commissioners shall represent the Tribal Nations.

Section 7.2 The Choctaw Nation shall be represented on the Compact Commission by the Chief of the Choctaw Nation, Assistant Chief of the Choctaw Nation and a Commissioner appointed by the Chief of the Choctaw Nation. The Chickasaw Nation shall be represented by the Governor of the Chickasaw Nation. Representatives of the Tribal Nations may designate alternates to attend the Commission meetings.

Section 7.3 The four commissioners representing the State shall be selected as provided by the Oklahoma Legislature, all of whom shall reside in the Compact area. All such Commissioners shall be appointed by the Governor, subject to confirmation by the Senate, to four-year staggered terms, with the first Commissioners being appointed for two and four year terms as designated by the Governor.

Section 7.4 A majority of the Commissioners from the State and a majority of the Commissioners from the Tribal Nations must be present to constitute a quorum. In taking any Commission action, the State shall have a single vote representing the majority opinion of the Commissioners from the State and the Tribal Nations together shall have a single vote representing the majority opinion of the Commissioners from the Tribal Nations.

Section 7.5 The expenses of the State Commissioners shall be paid by the State and expenses of the Commissioners of the Tribal Nations shall be borne by the Tribal Nation that the Commissioner represents. Expenses of the Commission shall be paid from the "Southeast

Oklahoma State-Tribal Intergovernmental Compact Commission Fund" consisting of all funds received by the Commission from out of state water marketing proceeds under authority of this Compact and deposited in one or more banks qualifying for the deposit of public funds by the State. Disbursements shall be made from the Fund in such manner as may be authorized by the Commission and consistent with the provisions of this Compact. All receipts and disbursements of the Fund shall be audited by a qualified independent public accountant at regular intervals and following government accepted accounting procedures, and the report of such audits shall be included in and become part of the annual report of the Commission. The State and Tribal Nations shall each have the right to make its own audit of the accounts of the Commission at any reasonable time. The Commission shall not pledge the credit of the State of Oklahoma or either Tribal Nation and shall not incur any obligations prior to the availability of funds adequate to meet the same.

Section 7.6 The duties of the Commission include the following:

- (a) Adopt rules governing its operations. The procedures for adoption of rules by the Commission shall be consistent with the provisions of this Compact and set forth in rules of the Commission and the Oklahoma Administrative Procedures Act, and proposed rules shall be submitted to the Tribal Nations for approval within forty-five days;
- (b) Establish Committees as deemed appropriate to assist the Commission in its duties;
- (c) Make recommendations for changes to state laws and rules and to laws and rules of the Tribal Nations;
- (d) Provide funding for studies, cost share and cost match opportunities, water quantity gaging and monitoring, and water quality assessments, including but not limited

to reimbursement of previous expenditures by the State or Tribal Nations for such items as approved by the Commission, provided that nothing in this paragraph is intended to conflict with any authority of the Tribal Nations or State with respect to use of funds distributed pursuant to Section 5.3(b) of this Compact;

(e) Acquire, operate and maintain infrastructure, easements and rights-of-way only as necessary and appropriate for storage and conveyance of water to satisfy an agreement or agreements for use of water, provided that such infrastructure, easements and right-of-way shall be jointly owned by the State and Tribal Nations, provided further, that the State and Tribal Nations agree that such ownership rights shall be assigned to the Commission as necessary for purposes of financing of infrastructure needed to provide water for an agreement or agreements for use of water out of state, and provided further that the exercise of eminent domain by the Commission shall only be as authorized by the Oklahoma Legislature;

(f) Administer and enforce any agreements for use of water out of state from any source within the Compact area which are approved by the State and Tribal Nations pursuant to this Compact, and to sue and be sued with respect to any such agreements;

(g) Borrow money, issue bonds and create indebtedness as necessary to provide infrastructure and appurtenances necessary to supply water for any agreement for use of water out of state, provided that proposed bond issues shall be subject to review and approval by the State Executive and Legislative Bond Oversight Commissions pursuant to the Oklahoma Bond Oversight and Reform Act as may be amended; and provided further that no such bonds or indebtedness shall pledge the full faith and credit or taxing

power of the State or the Tribal Nations, but all such bonds or indebtedness shall be paid only from the revenues from providing water; and

(k) Contract with the State, Tribal Nations or agencies of the State or Tribal Nations as in its judgment may be necessary for the performance of its functions under this Compact; provided that the Commission shall not grant the power of eminent domain to any person or entity.

Section 7.7 The State and Tribal Nations agree that the Oklahoma Open Meeting Law found in Section 301 and following of Title 25 of the Oklahoma Statutes, as may be amended, Oklahoma Administrative Procedures Act found in Section 250 and following of Title 75 of the Oklahoma Statutes, as may be amended, and the Oklahoma Open Records Act found in Section 24A.1 and following of Title 51 of the Oklahoma Statutes, as may be amended, shall apply to the Southeast Oklahoma State-Tribal Intergovernmental Compact Commission.

Section 7.8 Wherever arbitration is referenced in this Compact, the following provisions apply:

(a) The arbitrator shall be chosen and the proceedings shall be expedited and governed by the rules of the American Arbitration Association, provided that the arbitration proceedings must be completed within ninety (90) days unless an extension is otherwise agreed by the Compact Commission.

(b) Expenses of the arbitration shall be borne equally by the parties to the arbitration; and

(c) The arbitrator may approve a request of the Tribal Nation or State as the case may be only if the arbitrator makes a specific finding that the grounds for submitting the matter to arbitration are supported by a preponderance of the evidence.

ARTICLE 8. CONSTRUCTION OF COMPACT; APPROVAL AND RATIFICATION PROCEDURE

Section 8.1 This Compact shall become binding and obligatory when it shall have been ratified by an act of the Oklahoma Legislature, an act of the Choctaw Nation Tribal Council, an act of the Chickasaw Nation Tribal Council, and the approval of the Secretary of Interior or consent of the Congress of the United States if deemed necessary pursuant to a determination from the Secretary of Interior, whichever date is the latest. Upon ratification of this Compact by the Tribal Nations and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both Tribal Nations, the State, and Congress or Secretary of Interior, whichever originally approved the Compact. The State and Tribal Nations agree that any party to this Compact may request that it be amended, and such request shall be considered by all parties.

Section 8.2 Ratification of this Compact by an act of the Oklahoma Legislature alone shall not constitute approval by the Oklahoma Legislature that is required by Section 1085.2 of Title 82 of the Oklahoma Statutes for out-of-state use of water from the Compact area. Any and each such out-of-state use of water from the Compact area shall require a separate agreement entered into by the Governor and Tribal Nations and approved by the Oklahoma Legislature and Secretary of Interior or his designee.

Section 8.3 The Tribal Nations and the State agree to defend the provisions of this Compact from all challenges and attacks in any proceedings challenging the validity of this Compact, provided all expenses and attorney fees of such defense approved by the State and Tribal Nations shall be paid from funds available to the Compact Commission or if no such funds are available to the Compact Commission, the Tribal Nations and State agree, to the extent allowed by Tribal law and laws of the State respectively, to share equally in the cost of defending

the provisions of the Compact and shall be reimbursed from funds that become available to the Compact Commission.

**ARTICLE 9. LIMITED WAIVER OF SOVEREIGN IMMUNITY
AND CONSENT TO BE SUED**

Section 9.1 Upon ratification of this Compact, the State of Oklahoma and the Choctaw Nation and the Chickasaw Nation on their own behalf and on behalf of all agencies, trusts and corporations of the State, Choctaw Nation and Chickasaw Nation respectively which are necessary parties to litigation hereby expressly and mutually waive their respective sovereign immunities and immunities from suit to each other, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States and failure to exhaust administrative remedies except the review, consultation and arbitration provisions in this Compact, and only for the purposes of enforcement of this Compact and enforcement of any binding arbitration decision, and the State and Tribal Nations hereby expressly and mutually agree and consent to be sued in any appropriate United States District Court. Such waivers of sovereign immunities by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees, and such waivers of sovereign immunities by the Tribal Nations and State shall not extend to any State court or Tribal Nations court or to any persons or entities that are not a party to this Compact. The State and Tribal Nations will not assert sovereign immunity on behalf of the Compact Commission. The State and Tribal Nations agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Commission shall be as provided by Congress. It is further agreed that if the United States District Court determines that it has no jurisdiction over a controversy presented by the State or Tribal Nations, the parties agree to follow the alternative dispute resolution procedures of the American Arbitration Association, that the expenses of the

arbitration shall be borne equally by the parties to the arbitration, and that the decision of the arbitrator shall be subject to an enforcement action, including but not limited to an action for injunctive relief, in any United States District Court, or if such court denies jurisdiction, then any court of competent jurisdiction.

ARTICLE 10 - DISCLAIMERS AND RESERVATIONS

Section 10.1 Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of other Indian tribes.

Section 10.2 Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe other than the Choctaw Nation and Chickasaw Nation regarding its boundaries or property interests.

Section 10.3 Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any federal agency or federal lands other than those of the Choctaw Nation and Chickasaw Nation.

Section 10.4 Nothing in this Compact shall be so construed or interpreted:

- (a) As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
- (b) To preclude the acquisition or exercise of a right to the use of water by any member of the Choctaw Nation or Chickasaw Nation outside the Compact area by purchase of such right or by acquisition of land, or by application to the State.
- (c) To determine the relative rights between persons using water under the authority of the State or the Tribe;

- (d) To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact, except that none of the parties may hereafter judicially challenge any other parties' claim of right to exercise of dominion over the waters in the Compact area as herein provided;
- (e) To authorize the taking of a water right which is vested under state or federal law;
- (f) To create or deny substantive rights through headings or captions used in this Compact;
- (g) To preclude or to discourage the Tribal Nations from acquiring, by contracting or by other means, water rights from any existing or future federal storage facilities outside the Compact area;
- (h) To address or prejudge whether, in any interstate apportionment, any water rights of the Tribal Nations shall be counted as part of the waters apportioned to the State under the Red River Compact or Arkansas-Oklahoma Arkansas River Compact;
- (i) To prohibit the Tribal Nations, or the United States on behalf of the Tribal Nations, from participating in any general stream adjudication initiated under Section 105.6 of Title 82 of the Oklahoma Statutes or objecting to any claims to riparian rights to use stream water for nondomestic purposes;
- (j) To constitute a waiver of sovereign immunity by the Tribal Nations, State, or United States, except as is expressly set forth in this Compact; and
- (k) Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribal Nations, or the Tribal Nations themselves, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Tribal Nations in the enjoyment of any water right recognized under this Compact.

Section 10.5 The parties expressly reserve all rights not granted, recognized, delegated or relinquished in this Compact.

Section 10.6 For purposes of interpretation of this Compact, neither the State nor the Tribal Nations shall be deemed to have been the drafter of this Compact. Rules of contract or statutory construction that would resolve ambiguities relating to this Compact in favor of the Tribal Nations do not apply.

Section 10.7 This Compact shall not be deemed to indicate any intent or willingness on the part of the State to enter into any other or similar compact with any other Indian tribe with respect to any other area of the State.

ARTICLE 11 - LEGISLATION

The State and Tribal Nations agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Oklahoma, the Choctaw Nation and the Chickasaw Nation have signed this Compact on the _____ day of _____, 200__ .

Greg Pyle, Chief, Choctaw Nation

Bill Anoatubby, Governor, Chickasaw Nation

Frank Keating, Governor, State of Oklahoma