

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) CHICKASAW NATION and)
(2) CHOCTAW NATION OF OKLAHOMA,)

Plaintiffs,)

vs.)

Case No. CIV-11-927-W

(1) MARY FALLIN, in the official capacity)
as Governor of the State of Oklahoma;)

(2) RUDOLF JOHN HERRMANN,)

(3) TOM BUCHANAN,)

(4) LINDA LAMBERT,)

(5) FORD DRUMMOND,)

(6) ED FITE,)

(7) MARILYN FEAVER,)

(8) KENNETH K. KNOWLES,)

(9) RICHARD SEVENOAKS, and)

(10) JOE TARON, each in her or his official)
capacity as a member of the)

Oklahoma Water Resources Board;)

(11) J. D. STRONG, Executive Director of)
the Oklahoma Water Resources Board in)
his official capacity;)

(12) CITY OF OKLAHOMA CITY, an)
Oklahoma municipal corporation;)

(13) OKLAHOMA CITY WATER UTILITY)
TRUST, a public trust for the benefit of the City of)

Oklahoma City,)
)
)

Defendants.)

**DEFENDANT GOVERNOR MARY FALLIN'S
MOTION TO DISMISS SECOND AMENDED COMPLAINT
FOR LACK OF JURISDICTION PURSUANT TO FED. R. CIV. P. 12(b)(1)
OR, ALTERNATIVELY, ON ABSTENTION GROUNDS.**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendant Mary Fallin, Governor of the State of Oklahoma, moves the Court to dismiss the Second Amended Complaint (“Complaint”) [Doc. No. 62] of the Choctaw Nation of Oklahoma and Chickasaw Nation (“Tribes”). As grounds for this Motion, Defendant Governor Fallin states:

1. The Tribes lack standing to assert the claims alleged in the Complaint.
2. The claims alleged in the Complaint are not ripe for this Court’s review.
3. Because the Tribes lack standing and their claims are not ripe for review, this Court lacks subject matter jurisdiction under Article III of the United States Constitution and otherwise.
4. Even if this Court were to conclude it had jurisdiction, the Court should dismiss this case pursuant to the abstention doctrine of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

WHEREFORE, Governor Fallin requests the Court dismiss the Complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), and, even if this Court concludes that it has jurisdiction, dismiss the action under the federal courts’ abstention doctrine.

Respectfully submitted,

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Counsel for Governor Mary Fallin

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2012, a true and complete copy of the within and foregoing **DEFENDANT GOVERNOR MARY FALLIN'S MOTION TO DISMISS SECOND AMENDED COMPLAINT FOR LACK OF JURISDICTION PURSUANT TO FED. R. CIV. P. 12(B)(1) or ALTERNATIVELY, ON ABSTENTION GROUNDS** was electronically transmitted to the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants.

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