

1 **STATE OF OKLAHOMA, CHOCTAW NATION OF OKLAHOMA,**
2 **CHICKASAW NATION, CITY OF OKLAHOMA CITY WATER SETTLEMENT**

3 **AUGUST 2016**

4
5 **PREAMBLE**

6 **WHEREAS**, the State of Oklahoma is a state of the United States of America possessing
7 the sovereign powers and rights of a state;

8 **WHEREAS**, the Chickasaw Nation is a federally recognized American Indian Tribe
9 possessing sovereign powers and rights to self-government under federal law;

10 **WHEREAS**, the Choctaw Nation of Oklahoma is a federally recognized American
11 Indian Tribe possessing sovereign powers and rights to self-government under federal law;

12 **WHEREAS**, the City of Oklahoma City is an Oklahoma municipal corporation and a
13 charter city organized and existing pursuant to the Oklahoma State Constitution;

14 **WHEREAS**, unresolved questions of law relating to tribal water rights and jurisdictional
15 authorities relating thereto have precipitated long-running conflicts in the Settlement Area, in
16 particular within the Kiamichi Basin and with regard to Sardis Lake, which conflicts most
17 recently included *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, and
18 *Oklahoma Water Resources Board v. United States, et al.*; and

19 **WHEREAS**, by entering into the Settlement Agreement, the State, the Nations, and the
20 City resolve disputes relating to Sardis Lake and the Chickasaw Nation’s and Choctaw Nation of
21 Oklahoma’s claims to water and to water rights and agree to proceed as set forth herein.

22 **NOW, THEREFORE**, the parties signatory hereto (“Parties” or, when singular, “Party”)
23 agree and bind themselves as follows:

1 **1. DEFINITIONS**

2 **1.1 1974 Contract** – means the contract approved by the Secretary of the United States
3 Army on April 9, 1974, entered into between the Water Conservation Storage Commission of the
4 State of Oklahoma, predecessor of the Oklahoma Water Resources Board, and the United States
5 through the United States Army Corps of Engineers.

6 **1.2 Adequate Hydrological Model** – means a hydrologic model that satisfies the
7 requirements of Section 5.3.1.2.2.

8 **1.3 Administrative Set-Aside** – means thirty-seven thousand nine hundred eight
9 (37,908) AF of Conservation Storage Capacity for the twenty thousand (20,000) AFY set-aside
10 for use in southeastern Oklahoma, inclusive of the subcontract between the Oklahoma Water
11 Resources Board and the Sardis Lake Water Authority dated October 22, 1999, as specified in
12 OAC § 785:20-5-5(b)(3), as such rule exists as of the Execution Date.

13 **1.4 Advanced Drought Conditions** – means those conditions when: (i) the cumulative
14 amount of stored water in the City Reservoirs is between sixty-five percent (65%) and fifty
15 percent (50%) of the cumulative amount of Live Storage Capacity for the City Reservoirs and
16 (ii) the amounts of water stored in Hefner Reservoir and Draper Reservoir are between sixty-five
17 percent (65%) and fifty percent (50%) of each reservoir’s respective Live Storage Capacity.

18 **1.5 AF** – means acre-feet.

19 **1.6 AFY** – means acre-feet per year.

20 **1.7 Allotment** – means that land within the Settlement Area held by an Allottee subject
21 to a statutory restriction on alienation or held by the United States in trust for the benefit of an
22 Allottee.

1 **1.8 Allottee** – means an enrolled member of the Choctaw Nation of Oklahoma or citizen
2 of the Chickasaw Nation who, or whose estate, holds an interest in an Allotment.

3 **1.9 Amended Permit Application** – means the City of Oklahoma City’s permit
4 application filed with the Oklahoma Water Resources Board, No. 2007-017, as amended
5 pursuant to Section 6.1.

6 **1.10 Amended Storage Contract Transfer Agreement** – means the Storage Contract
7 Transfer Agreement between the Oklahoma City Water Utilities Trust and Oklahoma Water
8 Resources Board, as amended by the City of Oklahoma City, the Oklahoma City Water Utilities
9 Trust, and Oklahoma Water Resources Board to substantially conform with Exhibit 4 and which
10 may be revised as necessary for purposes of conforming to the Settlement Act.

11 **1.11 Atoka and Sardis Conservation Projects Fund** – means the fund established
12 pursuant to Section 6.5.2.1.2.

13 **1.12 Atoka and Sardis Conservation Projects Board** – means the body formed pursuant
14 to Section 6.5.2.1.1.

15 **1.13 Atoka Reservoir** – means the reservoir located approximately four (4) miles
16 northeast of the City of Atoka, whose dam is in Section 30, Township 1 South, Range 12 East of
17 the Indian Meridian in Atoka County, Oklahoma.

18 **1.14 Baseline Lake Levels** – means those Sardis Lake surface elevations specified at
19 Section 6.1.8.1.

20 **1.15 Bypass Requirement** – means fifty (50) cfs of the three hundred (300) cfs flow rate,
21 specified at Section 6.1.5.2 for the City Permit, as measured within reasonable operational
22 constraints, which shall be bypassed at the Point of Diversion when the City of Oklahoma City is
23 diverting water at the Point of Diversion.

1 **1.16 Canton Reservoir** – means the reservoir located on the North Canadian River at river
2 mile 394.3, about two (2) miles north of the Town of Canton in Blaine County, Oklahoma.

3 **1.17 cfs** – means cubic-feet per second.

4 **1.18 Chickasaw Nation** – means the Chickasaw Nation, a federally recognized American
5 Indian Tribe organized by a Constitution its citizens ratified in 1856 and subsequently modified
6 and re-ratified in 1983 and subsequently amended.

7 **1.19 Choctaw Nation of Oklahoma (“Choctaw Nation”)** – means the Choctaw Nation of
8 Oklahoma, a federally recognized American Indian Tribe organized by a Constitution its citizens
9 ratified in 1830 and subsequently modified and re-ratified in 1983.

10 **1.20 City of Oklahoma City (“City”)** – means the City of Oklahoma City, an Oklahoma
11 municipal corporation and a charter city organized and existing pursuant to Oklahoma
12 Constitution Article XVIII, Section 3. References to “City” or “City of Oklahoma City” shall
13 refer to the City or the City and the Oklahoma City Water Utilities Trust acting jointly as
14 applicable to the capacity set forth in the said reference.

15 **1.21 City Diversion Rate** – means the diversion rate specified at Section 6.1.5.1.

16 **1.22 City Permit** – means the final permit, as that term is used in Section 6.2.3.3, issued
17 by the Oklahoma Water Resources Board to the City of Oklahoma City pursuant to the Amended
18 Permit Application, which permit conforms with Section 6.1.

19 **1.23 City Reservoirs** – means Atoka Reservoir, Canton Reservoir, Draper Reservoir,
20 Hefner Reservoir, McGee Creek Reservoir, and Overholser Reservoir; individually, “City
21 Reservoir.”

1 **1.24 City Sardis Storage** – means the Conservation Storage Capacity the City of
2 Oklahoma City will receive pursuant to the Amended Storage Contract Transfer Agreement and
3 use and maintain in accord with Section 6.

4 **1.25 Conservation Storage Capacity** – means the water storage capacity in Sardis Lake
5 stated in Exhibit A of the 1974 Contract: (i) to be between elevations five hundred forty-two
6 (542) feet and five hundred ninety-nine (599) feet MSL in Sardis Lake and (ii) estimated to be
7 two hundred ninety-seven thousand two hundred (297,200) AF of storage.

8 **1.26 Draper Reservoir (“Lake Stanley Draper”)** – means the reservoir whose dam is
9 located in Section 24, Township 10 North, Range 2 West of the Indian Meridian in Cleveland
10 County, Oklahoma.

11 **1.27 Drought Conditions** – means Moderate Drought Conditions, Advanced Drought
12 Conditions, or Extreme Drought Conditions.

13 **1.28 Enactment Date** – means the date on which the Settlement Legislation is an enacted
14 federal public law.

15 **1.29 Enforceability Date** – means the date on which the Secretary of the United States
16 Department of the Interior publishes notice in the Federal Register certifying that the conditions
17 of Section 4 have been satisfied.

18 **1.30 Execution Date** – means the date on which the State of Oklahoma, Chickasaw
19 Nation, Choctaw Nation of Oklahoma, Oklahoma Water Resources Board, City of Oklahoma
20 City, and Oklahoma City Water Utilities Trust shall have signed the Settlement Agreement,
21 which shall be deemed August 17, 2016, once the Settlement Agreement has been executed by
22 the State of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Oklahoma

1 Water Resources Board, the City of Oklahoma City, and the Oklahoma City Water Utilities
2 Trust.

3 **1.31 Expiration Date** – means September 30, 2020, unless extended as allowed by
4 Section 13.3.

5 **1.32 Extreme Drought Conditions** – means those conditions when: (i) the cumulative
6 amount of stored water in the City Reservoirs is less than fifty percent (50%) of the cumulative
7 amount of Live Storage Capacity for the City Reservoirs and (ii) the amounts of water in Hefner
8 Reservoir and Draper Reservoir are less than fifty percent (50%) of each reservoir’s respective
9 Live Storage Capacity.

10 **1.33 Hefner Reservoir** – means the reservoir whose dam is located in Section 23,
11 Township 13 North, Range 4 West of the Indian Meridian in Oklahoma County, Oklahoma.

12 **1.34 Kiamichi Basin Hydrologic Model** – means the surface water hydrologic model for
13 the Kiamichi Basin, inclusive of tributaries thereto, that the State of Oklahoma, the Chickasaw
14 Nation, the Choctaw Nation of Oklahoma, and the City of Oklahoma City developed for
15 purposes of the Settlement Agreement and as referenced in Sections 5.3.1.2.5.6, 5.3.1.2.5.7, and
16 6.2.1. Documentation of the Kiamichi Basin Hydrologic Model will be available at Oklahoma
17 Water Resources Board offices in Oklahoma City, as provided in Section 4.1.7. A summary
18 technical memorandum describing the model is included as Exhibit 3.

19 **1.35 Kiamichi Basin** – means that hydrologic basin designated by the Oklahoma Water
20 Resources Board in the 2012 Update to the Oklahoma Comprehensive Water Plan as subbasins 5
21 and 6, and generally depicted in Exhibit 10.

22 **1.36 Live Storage Capacity** – means the amount of storage capacity in a City Reservoir,
23 as calculated and measured pursuant to Section 6.1.8.3.

1 **1.37 McGee Creek Reservoir** – means the reservoir whose dam is located in Section 7,
2 Township 3 South, Range 14 East of the Indian Meridian in Atoka County, Oklahoma.

3 **1.38 Mean Annual Flow** – means the average annual runoff for a Settlement Area
4 Hydrologic Basin modeled at, or in close proximity to, the basin outflow point utilizing primarily
5 stream flow data from USGS gaging stations.

6 **1.39 Mean Available Flow** – means the Mean Annual Flow of a Settlement Area
7 Hydrologic Basin that remains after subtracting that portion of such flows as are necessary to
8 satisfy permitted appropriative uses, any surface water right developed by either Nation pursuant
9 to Section 7.7, domestic use set aside calculated based on six (6) AFY per one hundred sixty
10 (160) acres within the basin, prior vested rights, any surface water right recognized pursuant to
11 Section 8 (to the extent not already subtracted), pending applications, reservoir yields, and other
12 designated purposes in the Settlement Area Hydrologic Basin, including but not limited to
13 apportionment provisions of interstate stream compacts to which the State of Oklahoma is a
14 party as calculated by any rules developed by any applicable compact commission.

15 **1.40 mgd** – means million-gallons per day.

16 **1.41 MSL** – means mean sea level.

17 **1.42 Moderate Drought Conditions** – means those conditions when: (i) the cumulative
18 amount of stored water in the City Reservoirs is between seventy-five percent (75%) and sixty-
19 five percent (65%) of the cumulative amount of Live Storage Capacity for the City Reservoirs
20 and (ii) the amounts of water stored in Hefner Reservoir and Draper Reservoir are between
21 seventy-five percent (75%) and sixty-five percent (65%) of each reservoir’s respective Live
22 Storage Capacity.

1 **1.43 Nations** – means collectively the Choctaw Nation of Oklahoma and the Chickasaw
2 Nation.

3 **1.44 Non-Trust Land** – means land within the State of Oklahoma held by either the
4 Chickasaw Nation or Choctaw Nation of Oklahoma in fee and in which the United States holds
5 no interest as trustee.

6 **1.45 Oklahoma City Water Utilities Trust (“Trust”)** – means the Oklahoma City Water
7 Utilities Trust, and its successor entities, if any, formerly known as the Oklahoma City
8 Municipal Improvement Authority, a public trust established pursuant to state law with the City
9 of Oklahoma City as its beneficiary. References to “Trust” shall refer to the Oklahoma City
10 Water Utilities Trust acting severally in the said reference.

11 **1.46 Oklahoma Water Resources Board (“OWRB”)** – means a body corporate and
12 politic and an instrumentality, agency, and department of the State of Oklahoma, created by and
13 existing pursuant to Oklahoma law, and its successor entities, if any.

14 **1.47 Out-of-State Use of Settlement Area Waters** – means any use of water or the
15 transfer of any right to use water, including by forbearance agreement, diverted or taken from a
16 location within the Settlement Area for use at a location outside the exterior boundaries of the
17 State of Oklahoma.

18 **1.48 Overholser Reservoir** – means the reservoir whose dam is located in Section 30,
19 Township 12 North, Range 4 West of the Indian Meridian in Oklahoma County, Oklahoma.

20 **1.49 Parallel City Pipeline** – means the second pipeline the City contemplates
21 constructing between Lake Atoka in Atoka County, Oklahoma, and Lake Stanley Draper in
22 Cleveland County, Oklahoma, approximately ninety-six (96) miles in length whose route is
23 identified as generally following an existing pipeline constructed for the same purposes and

1 placed in operation in 1962, and which includes a water diversion structure, pumping station, and
2 pipeline beginning at a point on the Kiamichi River near Moyer's Crossing and following road
3 rights of way, purchased, or existing easements to a terminus point at Lake Atoka in Atoka
4 County, Oklahoma.

5 **1.50 Parties** – means the State of Oklahoma, Chickasaw Nation, Choctaw Nation of
6 Oklahoma, Oklahoma Water Resources Board, City of Oklahoma City, and Oklahoma City
7 Water Utilities Trust as of the Execution Date; and the United States, State of Oklahoma,
8 Chickasaw Nation, Choctaw Nation of Oklahoma, Oklahoma Water Resources Board, City of
9 Oklahoma City, and Oklahoma City Water Utilities Trust as of the Post-Enactment Execution
10 Date.

11 **1.51 Point of Diversion** – means the point of diversion for the City Permit, as defined at
12 Section 6.1.3.

13 **1.52 Post-Enactment Execution Date** – means the date after the Enactment Date on
14 which the Chickasaw Nation and Choctaw Nation of Oklahoma, the Secretary of the United
15 States Department of the Interior on behalf of the United States, the State of Oklahoma, the City
16 of Oklahoma City, and the Oklahoma City Water Utilities Trust have all executed the Settlement
17 Agreement or the Revised Settlement Agreement.

18 **1.53 Revised Settlement Agreement** – means the Settlement Agreement as the same may
19 be revised as necessary for purposes of conforming to the Settlement Act as of the Post-
20 Enactment Execution Date.

21 **1.54 Sardis Lake** – means the reservoir, formerly known as Clayton Lake, whose dam is
22 located in Section 19, Township 2 North, Range 19 East of the Indian Meridian in Pushmataha
23 County, Oklahoma.

1 **1.55 Sardis Lake Release Restrictions** – means those limitations on the City of
2 Oklahoma City’s ability to release water from City Sardis Storage specified at Section 6.1.8.

3 **1.56 Settlement Act** – means the Settlement Legislation upon its enactment into federal
4 law in a form that substantially conforms with Exhibit 2.

5 **1.57 Settlement Agreement** – means this agreement as of the Execution Date or the
6 Revised Settlement Agreement, as applicable.

7 **1.58 Settlement Area** – means that area lying between the South Canadian River and the
8 Oklahoma and Texas state line, the Oklahoma and Arkansas state line, and the 98th Meridian
9 and which generally includes the following counties, or portions thereof, in the State of
10 Oklahoma: Atoka, Bryan, Carter, Choctaw, Coal, Garvin, Grady, McClain, Murray, Haskell,
11 Hughes, Jefferson, Johnston, Latimer, LeFlore, Love, Marshall, McCurtain, Pittsburgh, Pontotoc,
12 Pushmataha, and Stephens, which area is depicted in the attached map, Exhibit 1 (dated August
13 2016).

14 **1.59 Settlement Area Hydrologic Basin(s)** – means the following basins, as denominated
15 in the 2012 Update of the Oklahoma Comprehensive Water Plan: Basins 24, 25, and 26
16 (commonly referred to as the Beaver Creek), Basins 11 and 12 (commonly referred to as the
17 Blue), Basin 9 (commonly referred to as the Clear Boggy), Basins 5 and 6 (commonly referred to
18 as the Kiamichi), Basins 46 and 47 (commonly referred to as the Lower Arkansas), Basins 48,
19 56, and 57 (commonly referred to as the Lower Canadian), Basin 2 (commonly referred to as the
20 Little), Basin 14 (commonly referred to as the Lower Washita), Basin 58 (commonly referred to
21 as the Middle Canadian), Basin 4 (commonly referred to as the Mountain Fork), Basins 15 and
22 16 (commonly referred to as the Middle Washita), Basin 23 (commonly referred to as the Mud
23 Creek), Basins 7 and 8 (commonly referred to as the Muddy Boggy), Basins 44 and 45

1 (commonly referred to as the Poteau), Basins 1, 10, 13, and 21 (commonly referred to as the Red
2 River Mainstem), Basin 3 (commonly referred to as the Upper Little), and Basin 22 (commonly
3 referred to as the Walnut Bayou), which basins are illustrated in the attached map, Exhibit 10,
4 (dated August 2016).

5 **1.60 Settlement Area Waters** – means water located within the Settlement Area.

6 **1.61 Settlement Commission** – means the body established in accord with Section
7 5.3.3.2.

8 **1.62 Settlement Legislation** – means the federal legislation that includes those terms
9 necessary to secure implementation, enforceability, and federal approval of the Settlement
10 Agreement, a copy of which as drafted by the Parties as of the Execution Date is included as
11 Exhibit 2, which exhibit shall be replaced with the Settlement Act prior to the Enforceability
12 Date.

13 **1.63 State of Oklahoma (“State”)** – means the State of Oklahoma, a state of the United
14 States of America, inclusive of its subsidiary agencies.

15 **1.64 Storage Contract Transfer Agreement** – means the agreement entered between the
16 Oklahoma Water Resources Board and the Oklahoma City Water Utilities Trust, dated June 15,
17 2010.

18 **1.65 Technical Committee** – means that committee formed pursuant to Section 5.3.1.2.1.

19 **1.66 Title 82** – means Title 82 of the Oklahoma Statutes or any recodification thereof.

20 **1.67 Trust Land** – means allotted or unallotted land held by the United States in trust for
21 the benefit of either the Chickasaw Nation or the Choctaw Nation of Oklahoma.

22 **1.68 United States** – means the United States of America acting in its capacity as trustee
23 for the Nations, their respective members, citizens, and Allottees, or as specifically stated or

1 limited in any given reference herein, in which case it shall mean the United States of America
2 acting in the capacity as set forth in said reference.

3 **2. WAIVERS AND RELEASES OF CLAIMS AND OBJECTIONS**

4 **2.1 Waiver and Release of Claims and Objections by the Chickasaw Nation, the**
5 **Choctaw Nation of Oklahoma, and the United States Acting in Its Capacity as Trustee for**
6 **Each Nation** – Subject to the retention of rights set forth in Section 2.5 and except to the extent
7 that rights are recognized in the Settlement Agreement or Settlement Act, including recognition
8 of each Nation’s water rights, the Chickasaw Nation and Choctaw Nation, each in its own right
9 and on behalf of its respective citizens and members (except in their capacity as Allottees), and
10 the United States acting in its capacity as trustee for the Chickasaw Nation and Choctaw Nation
11 and the respective citizens and members of each Nation (except in their capacity as Allottees),
12 waive and release:

13 **2.1.1** all of the following claims the Chickasaw Nation, the Choctaw Nation, or the
14 United States acting in its capacity as trustee for either Nation asserted or could have asserted in
15 any proceeding filed or which could have been filed up to or upon the Enforceability Date,
16 including *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v.*
17 *United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:

18 **2.1.1.1** claims to the ownership of water in the State of Oklahoma;

19 **2.1.1.2** claims to water rights and rights to use water diverted or taken from a
20 location within the State of Oklahoma;

21 **2.1.1.3** claims to authority over the allocation and management of water and
22 administration of water rights, including authority over third-party ownership of or rights to use
23 water diverted or taken from a location within the State of Oklahoma and ownership or use of

1 water on Allotments by Allottees or anyone using water on an Allotment with the Allottee's
2 permission;

3 **2.1.1.4** claims that the State lacks authority over the allocation and management
4 of water and administration of water rights, including authority over the ownership of or rights to
5 use water diverted or taken from a location within the State of Oklahoma;

6 **2.1.1.5** any other claim relating to the ownership of water, regulation of water,
7 or authorized diversion, storage, or use of water diverted or taken from a location within the
8 State of Oklahoma, which claim is based on the Chickasaw Nation's or Choctaw Nation's
9 particular status as a federally recognized American Indian tribe possessed of powers of
10 sovereignty and self-government as defined by federal law and pursuant to those treaties to
11 which either is a signatory;

12 **2.1.1.6** claims or defenses asserted or which could have been asserted in
13 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United*
14 *States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication;

15 **2.1.2** all claims for damages, losses or injuries to water rights or water, or claims of
16 interference with, diversion, storage, taking, or use of water (including claims for injury to land
17 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use
18 of water) attributable to any action by the State of Oklahoma, the Oklahoma Water Resources
19 Board, or any water user authorized pursuant to state law to take or use water in the State of
20 Oklahoma, including but not limited to the City of Oklahoma City, that accrued at any time up to
21 and including the Enforceability Date;

1 **2.1.3** all claims and objections relating to the City of Oklahoma City’s Permit
2 Application No. 2007-017, as amended pursuant to the Settlement Agreement and the Settlement
3 Act, and the City Permit, including but not limited to:

4 **2.1.3.1** all claims regarding regulatory control over or Oklahoma Water
5 Resources Board jurisdiction relating to such permit application and permit; and

6 **2.1.3.2** all claims for damages, losses or injuries to water rights or rights to use
7 water, or claims of interference with, diversion, storage, taking, or use of water (including claims
8 for injury to land resulting from such damages, losses, injuries, interference with, diversion,
9 storage, taking, or use of water) attributable to the issuance and lawful exercise of the City
10 Permit;

11 **2.1.4** all claims to regulatory control over the City of Oklahoma City’s Permit Numbers
12 P80-48 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-
13 282D for water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek
14 Reservoir;

15 **2.1.5** all claims that the State lacks regulatory authority over or Oklahoma Water
16 Resources Board jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48
17 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
18 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;

19 **2.1.6** all claims to damages, losses or injuries to water rights or water, or claims of
20 interference with, diversion, storage, taking, or use of water (including claims for injury to land
21 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use
22 of water) attributable to the City of Oklahoma City’s lawful exercise of Permit Numbers P80-48
23 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for

1 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir,
2 that accrued at any time up to and including the Enforceability Date;

3 **2.1.7** all claims and objections relating to approval by the United States Army Corps of
4 Engineers of the assignment of the 1974 Contract pursuant to the Amended Storage Contract
5 Transfer Agreement; and

6 **2.1.8** all claims for damages, losses or injuries to water rights or water, or claims of
7 interference with, diversion, storage, taking, or use of water (including claims for injury to land
8 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use
9 of water) attributable to the lawful exercise of rights pursuant to the Amended Storage Contract
10 Transfer Agreement.

11 **2.2 Waivers and Releases of Claims and Objections by the Chickasaw Nation and**
12 **the Choctaw Nation of Oklahoma Against the United States** – Subject to the retention of
13 rights and claims set forth in Section 2.5 and except to the extent that rights are recognized in the
14 Settlement Agreement or Settlement Act, the Chickasaw Nation and Choctaw Nation, each
15 acting on behalf of itself and its respective citizens and members (except in their capacity as
16 Allottees), shall execute a waiver and release of all claims against the United States (including
17 any agency or employee of the United States) relating to:

18 **2.2.1** all of the following claims the United States acting in its capacity as trustee for
19 either Nation asserted or could have asserted in any proceeding filed or which could have been
20 filed up to or upon the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v.*
21 *Fallin et al.*, CIV 11-927 (W.D. Ok.) or *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.),
22 or any general stream adjudication:
23

1 **2.2.1.1** claims to the ownership of water in the State of Oklahoma;

2 **2.2.1.2** claims to water rights and rights to use water diverted or taken from a
3 location within the State of Oklahoma;

4 **2.2.1.3** claims to authority over the allocation and management of water and
5 administration of water rights, including authority over third-party ownership of or rights to use
6 water diverted or taken from a location within the State of Oklahoma and ownership or use of
7 water on Allotments by Allottees or anyone else using water on an Allotment with the Allottee’s
8 permission;

9 **2.2.1.4** claims that the State lacks authority over the allocation and management
10 of water and administration of water rights, including authority over the ownership of or rights to
11 use water diverted or taken from a location within the State of Oklahoma;

12 **2.2.1.5** any other claim relating to the ownership of water, regulation of water,
13 or authorized diversion, storage, or use of water diverted or taken from a location within the
14 State of Oklahoma, which claim is based on the Chickasaw Nation’s or Choctaw Nation’s
15 particular status as a federally recognized American Indian tribe possessed of powers of
16 sovereignty and self-government as defined by federal law and pursuant to those treaties to
17 which either is a signatory;

18 **2.2.1.6** claims or defenses asserted or which could have been asserted in
19 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United*
20 *States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication;

21 **2.2.2** all claims for damages, losses or injuries to water rights or water, or claims of
22 interference with, diversion, storage, taking, or use of water (including claims for injury to land
23 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use

1 of water) attributable to any action by the State of Oklahoma, the Oklahoma Water Resources
2 Board, or any water user authorized pursuant to state law to take or use water in the State of
3 Oklahoma, including but not limited to the City of Oklahoma City, that accrued at any time up to
4 and including the Enforceability Date;

5 **2.2.3** all claims and objections relating to the City of Oklahoma City’s Permit
6 Application No. 2007-017, as amended pursuant to the Settlement Agreement and the Settlement
7 Act, and the City Permit, including but not limited to:

8 **2.2.3.1** all claims regarding regulatory control over or Oklahoma Water
9 Resources Board jurisdiction relating to such permit application and permit; and

10 **2.2.3.2** all claims for damages, losses or injuries to water rights or rights to use
11 water, or claims of interference with, diversion, storage, taking, or use of water (including claims
12 for injury to land resulting from such damages, losses, injuries, interference with, diversion,
13 storage, taking, or use of water) attributable to the issuance and lawful exercise of the City
14 Permit;

15 **2.2.4** all claims to regulatory control over the City of Oklahoma City’s Permit Numbers
16 P80-48 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-
17 282D for water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek
18 Reservoir;

19 **2.2.5** all claims that the State lacks regulatory authority over or Oklahoma Water
20 Resources Board jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48
21 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
22 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;

1 **2.2.6** all claims to damages, losses or injuries to water rights or water, or claims of
2 interference with, diversion, storage, taking, or use of water (including claims for injury to land
3 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use
4 of water) attributable to the City of Oklahoma City’s lawful exercise of Permit Numbers P80-48
5 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
6 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir,
7 that accrued at any time up to and including the Enforceability Date;

8 **2.2.7** all claims and objections relating to the approval by the United States Army
9 Corps of Engineers of the assignment of the Storage Contract of 1974 pursuant to the Amended
10 Storage Contract Transfer Agreement;

11 **2.2.8** all claims relating to the United States’ litigation, prior to the Enforceability Date,
12 of the Nations’ water rights in the State of Oklahoma; and

13 **2.2.9** all claims relating to the negotiation, execution, or adoption of the Settlement
14 Agreement (including exhibits) or the Settlement Act.

15 **2.3 Tolling of Claims**

16 **2.3.1 In general** – Each applicable period of limitation and time-based equitable
17 defense relating to a claim described in Section 2.1 and 2.2 shall be tolled during the period
18 beginning on the Enactment Date and ending on the occurrence of either the Enforceability Date
19 or the Expiration Date.

20 **2.3.2 Effect** – Nothing in Section 2.3 revives any claim or tolls any period of limitation
21 or time-based equitable defense that expired before the Enactment Date.

22

1 **2.4 Effectiveness of Waivers and Releases**

2 **2.4.1** Nothing herein acknowledges the existence or validity of any claims that are
3 being waived and released.

4 **2.4.2** The waivers and releases of Sections 2.1 and 2.2 will become effective on the
5 Enforceability Date.

6 **2.5 Reservation of Rights and Retention of Claims by the Nations and the United**
7 **States Acting in Its Capacity as Trustee for the Nations** – Notwithstanding the waivers and
8 releases in Section 2.1 and 2.2, each respective Nation on its own behalf and on behalf of its
9 respective members or citizens (except in their capacities as Allottees) and the United States,
10 acting as trustee for each respective Nation, retain:

11 **2.5.1** all claims for enforcement of the Settlement Agreement and the Settlement Act
12 pursuant to the terms of the Settlement Agreement and the Settlement Act;

13 **2.5.2** all rights to use and protect any Nation water right recognized by or established
14 pursuant to Section 7, including the right to assert claims for injuries relating to such right and
15 the right to participate in any stream adjudication, including any *inter se* proceeding;

16 **2.5.3** all claims relating to activities affecting the quality of water that are not waived at
17 Section 2.1.1.5 or 2.2.1.5, including any claims the Nations may have under:

18 **2.5.3.1** the Comprehensive Environmental Response, Compensation, and
19 Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), including for damages to natural resources;

20 **2.5.3.2** the Safe Drinking Water Act (42 U.S.C. § 300f, *et seq.*);

21 **2.5.3.3** the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); and

22 **2.5.3.4** any regulations implementing the Acts described in Section 2.5.3;

1 **2.5.4** all claims relating to damage, loss, or injury resulting from a person's
2 unauthorized diversion, use, or storage of water, including damages, losses, or injuries to land or
3 non-water natural resources associated with any hunting, fishing, gathering, or cultural right; and

4 **2.5.5** all rights, remedies, privileges, immunities, and powers not specifically waived
5 and released pursuant to the Settlement Act or Sections 2.1 or 2.2.

6 **2.6 Nations' Non-Objection to Amended Permit Application** – In return for the
7 bargained-for exchange of benefits in the Settlement Agreement and upon the Enactment Date or
8 the date on which the City has provided written notice pursuant to Section 6.2.2.7, whichever
9 occurs first, the Nations:

10 **2.6.1** Shall not object to the OWRB's proceeding, in accord with state law and subject
11 to the Settlement Agreement, with public notice and hearing on the City's Amended Permit
12 Application;

13 **2.6.2** Shall not seek or support the imposition by the OWRB of any terms and
14 conditions on the storage, release from storage, diversion, and use of water under the City Permit
15 other than terms and conditions consistent with the provisions of Section 6.1; and

16 **2.6.3** Shall not object to the OWRB's issuance of the City Permit, in accord with state
17 law and subject to the Settlement Agreement, that contains terms and conditions consistent with
18 the provisions of Section 6.1.

19 **2.7 Nations' Non-Objection in Other Proceedings** – In return for the bargained-for
20 exchange of benefits in the Settlement Agreement and upon the Enforceability Date, the Nations:

21 **2.7.1** Shall not object to local, state, or federal agencies proceeding, in accord with
22 applicable law and subject to the Settlement Agreement, with any public notice, hearing or
23 procedure for any permits or approvals for the storage, release from storage, diversion, and use

1 of water, including the Parallel Pipeline, that are necessary for the City’s beneficial use and
2 delivery of water to its customers consistent with the provisions of Section 6;

3 **2.7.2** Shall not seek or support the imposition by local, state, or federal agencies of any
4 terms and conditions on any permits or approvals for the storage, release from storage, diversion,
5 and use of water, including the Parallel Pipeline, that are necessary for the City’s beneficial use
6 and delivery of water consistent with the provisions of Section 6 other than terms and conditions
7 consistent with the Settlement Agreement; and

8 **2.7.3** Shall not object to issuance of any local, state, or federal agency permits or
9 approvals, in accord with applicable law and subject to the Settlement Agreement, for the
10 storage, release from storage, diversion, and use of water, including the Parallel Pipeline, that are
11 necessary for the City’s beneficial use and delivery of water consistent with the provisions of
12 Section 6.

13 **3. LIMITED WAIVERS OF SOVEREIGN IMMUNITY AND CONSENTS TO SUIT**

14 **3.1 In General** – The purpose of these limited waivers of sovereign immunity is to
15 induce each Party to enter into the Settlement Agreement and to allow each Party to seek
16 interpretation or enforcement of the rights and obligations arising under or related to the
17 Settlement Agreement or the Settlement Act that each Party may have against each other Party.

18 All Parties understand that no other Party would enter into the Settlement Agreement without the
19 limited waivers provided herein.

20 **3.2 Limited Waivers of Sovereign Immunity and Consents to Suit** – Effective upon
21 and after the Enforceability Date, in the case of any action to interpret or enforce the Settlement
22 Agreement or Settlement Act:

1 **3.2.1** For the exclusive benefit of the State (inclusive of the OWRB), the City, the
2 Trust, the Choctaw Nation, and the United States, the Chickasaw Nation expressly and
3 irrevocably consents to suit and waives its sovereign immunity from suit solely for any action of
4 any kind brought in the United States District Court for the Western District of Oklahoma
5 relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which
6 action is brought by the State and/or the OWRB, the City, the Trust, the Choctaw Nation, or the
7 United States, inclusive of the appellate jurisdiction of the United States Court of Appeals for the
8 Tenth Circuit and the United States Supreme Court.

9 **3.2.2** For the exclusive benefit of the State (inclusive of the OWRB), the City, the
10 Trust, the Chickasaw Nation, and the United States, the Choctaw Nation expressly and
11 irrevocably consents to suit and waives its sovereign immunity from suit solely for any action of
12 any kind brought in the United States District Court for the Western District of Oklahoma
13 relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which
14 action is brought by the State and/or the OWRB, the City, the Trust, the Chickasaw Nation, or
15 the United States, inclusive of the appellate jurisdiction of the United States Court of Appeals for
16 the Tenth Circuit and the United States Supreme Court.

17 **3.2.3** For the exclusive benefit of the City, the Trust, the Choctaw Nation, the
18 Chickasaw Nation, and the United States, the State (inclusive of the OWRB) expressly and
19 irrevocably consents to suit, waives its sovereign immunity from suit, and agrees not to raise the
20 Eleventh Amendment to the United States Constitution or comparable defense to the validity of
21 such consent or waiver solely for any action of any kind brought in the United States District
22 Court for the Western District of Oklahoma relating to interpretation or enforcement of the
23 Settlement Agreement or Settlement Act, which action is brought by the Chickasaw Nation, the

1 Choctaw Nation, the City, the Trust, or the United States, inclusive of the appellate jurisdiction
2 of the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court.

3 **3.2.4** Exclusively for the benefit of an Allottee who files an action pursuant to Sections
4 8.4 or 8.5 in the United States District Court for the Western District of Oklahoma, the OWRB
5 expressly and irrevocably consents to suit, waives its sovereign immunity from suit, and agrees
6 not to raise the Eleventh Amendment to the United States Constitution or comparable defense to
7 the validity of such consent or waiver, inclusive of the appellate jurisdiction of the United States
8 Court of Appeals for the Tenth Circuit and the United States Supreme Court.

9 **3.2.5** For the exclusive benefit of the State (inclusive of the OWRB), the City, the
10 Trust, the Chickasaw Nation, and the Choctaw Nation, the United States expressly and
11 irrevocably consents to suit and waives its sovereign immunity from suit solely for any action of
12 any kind brought in the United States District Court for the Western District of Oklahoma
13 relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which
14 action is brought by the State and/or the OWRB, the City, the Trust, the Chickasaw Nation, or
15 the Choctaw Nation, inclusive of the appellate jurisdiction of the United States Court of Appeals
16 for the Tenth Circuit and the United States Supreme Court.

17 **3.3 No Damages** – Nothing herein authorizes any money judgment against the United
18 States, Nations, or State or otherwise serves as a basis for money damages.

19 **3.4 No Exhaustion; Exclusive Forum** – Each Party further waives and shall not invoke
20 inconvenient forum or any exhaustion doctrine, including the doctrines of tribal exhaustion,
21 exhaustion of administrative remedies, as a prerequisite for any other Party’s bringing an action
22 under Section 10. All parties agree that the United States District Court for the Western District
23 of Oklahoma shall be the exclusive forum for all suits relating to or arising under the Settlement

1 Agreement or the Settlement Act and that no Party shall bring such action in any state, tribal, or
2 other federal court or administrative forum.

3 **3.5 Statutory Waivers and Consents**

4 **3.5.1 United States** – The Settlement Legislation shall provide the United States’
5 express and irrevocable consent to suit and waiver of immunity consistent with the waivers of
6 immunity and consents to suit provided by the Parties, each on their own behalf, in the
7 Settlement Agreement.

8 **3.5.2 Nations** – The Settlement Legislation shall provide for waiver of the Nations’
9 sovereign immunity from suit in a manner and form consistent with the waivers of immunity and
10 consents to suit the Nations provided, each on their own behalf, in the Settlement Agreement.

11 **4. CONDITIONS PRECEDENT TO ENFORCEABILITY**

12 **4.1 In General** – The Settlement Agreement shall become enforceable on the date on
13 which all of the following conditions precedent have been satisfied:

14 **4.1.1 Enactment Date** – federal legislation that includes those terms necessary to
15 secure implementation, enforceability, and federal approval of the Settlement Agreement and
16 substantially conforms with Exhibit 2 is an enacted federal public law;

17 **4.1.2 Post-Enactment Execution Date** – the United States, the Nations, the State, the
18 OWRB, the City, and the Trust have executed the Settlement Agreement or Revised Settlement
19 Agreement;

20 **4.1.3 Execution of Waivers and Releases of Claims** – the United States and the
21 Nations have executed waivers of claims that substantially conform with Exhibits 5 and 6;

1 **4.1.4 Amended Storage Contract Transfer Agreement** – the State, City, and Trust
2 have executed, and the Secretary of the United States Army has approved, an Amended Storage
3 Contract Transfer Agreement that substantially conforms with Exhibit 4;

4 **4.1.5 Modification of September 11, 2009, Court Order** – the State and the United
5 States have obtained, pursuant to a motion and proposed order that substantially conform with
6 Exhibit 7, any modifications to the September 11, 2009, order in *United States v. Oklahoma*
7 *Water Resources Board*, CIV 98-00521 (N.D. Ok.);

8 **4.1.6 City Permit** – the OWRB has issued to the City a final permit, as that term is
9 used in Section 6.2.3.3, that conforms with Section 6.1;

10 **4.1.7 Model Documentation** – the documentation of the Kiamichi Basin Hydrologic
11 Model is on file at the OWRB’s Oklahoma City offices;

12 **4.1.8 Atoka and Sardis Conservation Projects Fund** – the State, City, and Nations
13 have funded the Atoka and Sardis Conservation Projects Fund in accord with Section 6.5.2.1.2;

14 **4.1.9 Dismissal of *Chickasaw Nation and Choctaw Nation v. Fallin, et al.*** – the
15 Nations, the State, and the City have jointly moved for and the court has entered an order of
16 dismissal in *Chickasaw Nation and Choctaw Nation v. Fallin, et al.*, CIV. 11-927 (W.D. Ok.),
17 which motion and order shall substantially conform with Exhibit 8;

18 **4.1.10 Dismissal of *OWRB v. United States, et al.*** – the OWRB has moved for and the
19 court has entered an order of dismissal in *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.),
20 which motion and order shall substantially conform with Exhibit 9;

21 **4.1.11 Notice of Satisfaction of Conditions Precedent** – the State, City, and Nations
22 have jointly notified the Secretary of the United States Department of the Interior that the

1 conditions specified in Sections 4.1.1 through 4.1.10 have been satisfied, which notification shall
2 include documentation sufficient for purposes of certification pursuant to Section 4.2; and

3 **4.1.12 Publication of Certification** – the Secretary of the United States Department of
4 the Interior has published the certification required by Section 4.2.

5 **4.2 Certification** – The Settlement Legislation shall provide that upon completion of all
6 of the conditions specified at Sections 4.1.1 through 4.1.11, the Secretary of the United States
7 Department of the Interior shall publish in the Federal Register a certification stating that such
8 conditions have been satisfied.

9 **5. GENERAL PROVISIONS**

10 **5.1 State Jurisdiction** – The State has and shall exercise, through the OWRB,
11 jurisdiction over the permitting and administration of water and rights to water within the
12 Settlement Area.

13 **5.2 Future OWRB Rulemakings** – If the OWRB proposes a new rule or an amendment
14 to a rule in effect as of the Execution Date that affects the permitting or administration of
15 Settlement Area Waters, the Nations or either Nation may review and comment on the proposed
16 rule or amendment to the OWRB, which comment the Nations or either Nation shall submit in
17 the form and through the process provided by state law. Prior to the OWRB’s finalization of the
18 proposed rule or amendment, the OWRB shall provide the commenting Nation or Nations
19 opportunity to meet and confer with OWRB staff regarding any comments submitted by a Nation
20 or the Nations. Nothing herein expands or limits the rights any Party has for the interpretation or
21 enforcement of the Settlement Agreement pursuant to Section 10 and the Settlement Act.

22

1 **5.3 Permitting, Allocation, and Administration**

2 **5.3.1 In General** – The OWRB shall process all applications submitted to it for permits
3 to appropriate surface water from a Settlement Area Hydrologic Basin filed on or after the
4 Enforceability Date pursuant to state law, consistent with the Settlement Agreement and the
5 Settlement Act. The OWRB shall process the Amended Permit Application pursuant to Section
6 6.2.

7 **5.3.1.1 Basin Classification and Conferral Threshold**

8 **5.3.1.1.1 Water Basin Classifications**

9 **5.3.1.1.1.1 Class A Basins** – For purposes of the Settlement Agreement,
10 Class A Basins are the following Settlement Area Hydrologic Basins, as depicted in Exhibit 10:
11 Basin 23 (commonly referred to as the Mud Creek), Basins 7 and 8 (commonly referred to as the
12 Muddy Boggy), Basins 44 and 45 (commonly referred to as the Poteau), Basins 1, 10, 13, and 21
13 (commonly referred as the Red River Mainstem), Basin 2 (commonly referred to as the Little),
14 Basin 15 (commonly referred to as the Middle Washita), Basin 22 (commonly referred to as the
15 Walnut Bayou), and Basin 57 (commonly referred to as the Lower Canadian).

16 **5.3.1.1.1.2 Class B Basins** – For purposes of the Settlement Agreement,
17 Class B Basins are those Settlement Area Hydrologic Basins that contain surface streams of
18 significant cultural, ecological or recreational values within the Settlement Area, which are the
19 following Settlement Area Hydrologic Basins, as depicted in Exhibit 10: Basins 11 and 12
20 (commonly referred to as the Blue), Basin 9 (commonly referred to as the Clear Boggy), Basins
21 5 and 6 (commonly referred to as the Kiamichi), Basin 14 (commonly referred to as the Lower
22 Washita), Basin 4 (commonly referred to as the Mountain Fork), and Basin 3 (commonly
23 referred to as the Upper Little).

1 **5.3.1.1.1.3 Class C Basins** – Class C Basins are those Settlement Area
2 Hydrologic Basins that lie partially within the Settlement Area, which are the following
3 Settlement Area Hydrologic Basins, as depicted in Exhibit 10: Basins 24, 25, and 26 (commonly
4 referred to as the Beaver Creek), Basins 46 and 47 (commonly referred to as the Lower
5 Arkansas), Basins 48 and 56 (commonly referred to as the Lower Canadian), Basin 58
6 (commonly referred to as the Middle Canadian), and Basin 16 (commonly referred to as the
7 Middle Washita).

8 **5.3.1.1.2 Conferral Threshold** – The process specified at Section 5.3.1.2
9 shall be a precondition to OWRB consideration of those applications that satisfy the following
10 conditions:

11 **5.3.1.1.2.1 Class A Basin** – An application to appropriate water for use at
12 a location outside of the Settlement Area in an amount that is five percent (5%) or more of the
13 Mean Available Flow in a Class A Basin. Applications filed for an appropriation from the same
14 point of diversion for use outside of the Settlement Area filed within any twelve (12) month
15 period which collectively equal or exceed five percent (5%) of the Mean Available Flow shall be
16 subject to the conferral threshold even if individually each application would not exceed five
17 percent (5%) of the Mean Available Flow.

18 **5.3.1.1.2.2 Class B Basin** – An application to appropriate water for use at
19 a location outside of the source basin in an amount that is more than either twenty thousand
20 (20,000) AFY or three percent (3%) of the Mean Available Flow, whichever is less, in a Class B
21 Basin. Applications filed for an appropriation from the same point of diversion for use outside of
22 the source basin filed within any twenty four (24) month period which collectively equal or
23 exceed twenty thousand (20,000) AFY or three percent (3%) of the Mean Available Flow,

1 whichever is less, shall be subject to the conferral threshold even if individually each application
2 would not exceed twenty thousand (20,000) AFY or three percent (3%) of the Mean Available
3 Flow, whichever is less.

4 **5.3.1.1.2.3 Class C Basin** – An application to appropriate water for use at
5 a location outside of the source basin and the Settlement Area in an amount that is ten percent
6 (10%) or more of the Mean Available Flow in a Class C Basin. Applications filed for an
7 appropriation from the same point of diversion for use outside of the Settlement Area filed
8 within any twelve (12) month period which collectively equal or exceed ten percent (10%) of the
9 Mean Available Flow shall be subject to the conferral threshold even if individually each
10 application would not exceed ten percent (10%) of the Mean Available Flow.

11 **5.3.1.1.2.4 No Avoidance** – In processing applications to appropriate
12 water from a Settlement Area Hydrologic Basin, the OWRB shall evaluate and determine
13 whether any applicant has or applicants have structured and submitted an application or
14 applications in a manner to attempt to avoid a conferral threshold specified in Sections
15 5.3.1.1.2.1, 5.3.1.1.2.2, or 5.3.1.1.2.3. If the OWRB determines an application has or applications
16 have been structured and submitted to avoid a conferral threshold, the OWRB shall process the
17 application or applications in such a manner as having satisfied the relevant conferral threshold,
18 even if individually each application would not have done so.

19 **5.3.1.2 Conferral and Modeling**

20 **5.3.1.2.1 Technical Committee** – No later than ninety (90) days from the
21 Enactment Date, the State and the Nations shall establish the Technical Committee. The
22 Technical Committee shall be comprised of two (2) members, one (1) member for the Nations
23 and one (1) member for the State. The City may also appoint one (1) member to the Technical

1 Committee with respect to any work performed pursuant to Section 5.3.1.2 relating to the
2 Kiamichi Basin.

3 **5.3.1.2.1.1 Appointment of Members** – Technical Committee members
4 shall be appointed and serve at the discretion of the appointing entities and must have expertise
5 relevant to the purposes of the Technical Committee. Each appointing entity shall provide notice
6 to the other entities as to who shall serve as its member; for purposes of this Section 5.3.1.2.1.1,
7 the Nations and the City shall provide notice to the OWRB.

8 **5.3.1.2.1.1.1** Failure of any Party to appoint a Technical Committee
9 Member shall not constitute a breach of the Settlement Agreement.

10 **5.3.1.2.1.1.2** Any Party’s failure to appoint a Technical Committee
11 Member shall not preclude or excuse the OWRB from performing its functions under Section
12 5.3.1.2 or 5.3.1.3.

13 **5.3.1.2.1.2 Performance of Modeling Work**

14 **5.3.1.2.1.2.1** Each Party shall support its respective Technical
15 Committee member with such resources and expertise as are necessary and appropriate for the
16 completion of the Technical Committee’s work. Members shall endeavor to achieve consensus
17 regarding work to be performed. Any documentation of the Technical Committee’s work shall be
18 maintained in electronic format at the OWRB as a public record.

19 **5.3.1.2.1.2.2** The OWRB shall provide all members of the Technical
20 Committee full and equal access to any model (including all information relevant to its proper
21 use) that is subject to evaluation, refinement, or development under Section 5.3.1.2.

1 **5.3.1.2.1.2.3** The OWRB and the Technical Committee may use all
2 resources available to them for purposes of evaluating, refining, or developing a model,
3 including but not limited to information from the applicant.

4 **5.3.1.2.2 Adequate Model** – The OWRB may determine a model is
5 adequate for purposes of Sections 5.3.1.2.2, 5.3.1.2.5, and 5.3.1.3 if it includes, at a minimum,
6 the model inputs identified at Section 5.3.1.2.3 and the model has been calibrated for purposes of
7 evaluating the following:

8 **5.3.1.2.2.1** Whether water is available at the proposed point of diversion
9 based on the Mean Available Flow and what may be required for projected beneficial use within
10 the basin and, to the extent applicable pursuant to Section 5.3.1.1.2.2, any water quality,
11 ecological, and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e);
12 and

13 **5.3.1.2.2.2** Whether a proposed use would interfere with existing
14 beneficial uses of water.

15 **5.3.1.2.3 Model Inputs** – An Adequate Hydrologic Model shall include, at a
16 minimum, the following inputs:

17 **5.3.1.2.3.1** Existing water rights in the basin as of the date of the
18 application, including permitted appropriative uses, vested rights, any surface water uses
19 developed by either Nation pursuant to Section 7.7, domestic use set aside calculated based on
20 the OWRB numerical assumption of six (6) AFY per one hundred sixty (160) acres within the
21 basin upstream of the proposed point of diversion and twenty four (24) AFY for each linear mile
22 downstream of the proposed point of diversion, any surface water right recognized pursuant to
23 Section 8, and any pending application;

1 **5.3.1.2.3.2** Quantity of flow necessary to fulfill obligations under
2 apportionment provisions of interstate stream compacts to which the State is a party as calculated
3 by any rules developed by any applicable compact commission;

4 **5.3.1.2.3.3** For those applications that satisfy the conferral threshold
5 provided at Section 5.3.1.1.2.2, the quantity of flow sufficient to satisfy water quality, ecological,
6 and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e) using the
7 United States Geological Survey’s seven (7) day average low flow of the stream with a fifty
8 percent (50%) occurrence probability (seven day, two-year low flow or 7Q2) for the entire
9 period of record and any other basin-specific data.

10 **5.3.1.2.3.4** Projected total in-basin demands using a minimum fifty (50)
11 year time frame and calculated for:

12 **5.3.1.2.3.4.1** Population-based demands using the methodology
13 relied on in the latest update to the Oklahoma Comprehensive Water Plan or a standard
14 methodology that is widely accepted for demographic planning purposes and which is
15 appropriate based on all local considerations regarding water that may be required for in-basin
16 beneficial uses; and

17 **5.3.1.2.3.4.2** Non-population-based demands using information
18 included in and methodology relied on in the latest update to the Oklahoma Comprehensive
19 Water Plan or a standard methodology that is widely accepted for planning purposes and which
20 is appropriate based on all local considerations regarding water that may be required for in-basin
21 beneficial uses.

22 **5.3.1.2.3.5** Measured or synthesized data sufficient to simulate basin
23 hydrology, including reservoir characteristics (*e.g.*, yield, area-capacity, normal storage,

1 authorized purposes, date of construction, evaporation, sedimentation, release schedules and
2 other operational requirements) and seasonal flow variability, using the entire period of record,
3 except for those data which diminish statistical confidence.

4 **5.3.1.2.4 Notice** – Prior to approving a proposed publication notice for a
5 permit application that satisfies any of the conferral thresholds set forth in Section 5.3.1.1.2, the
6 OWRB shall:

7 **5.3.1.2.4.1** notify the Nations and each Technical Committee member in
8 writing of such application, which notice will include a complete copy of the application and a
9 description of any model for the relevant basin that the OWRB previously determined to be an
10 Adequate Hydrologic Model under Section 5.3.1.2.5 and describing updates, if any, to such
11 model since it was determined to be an Adequate Hydrologic Model; and

12 **5.3.1.2.4.2** confer with the Technical Committee regarding any
13 information provided pursuant to Section 5.3.1.2.4.1 and inform the Technical Committee of the
14 OWRB’s preliminary assessment of any available hydrologic models.

15 **5.3.1.2.5 Determination** – The OWRB shall determine whether an
16 Adequate Hydrologic Model is available to it, including models that have been refined or
17 developed under Section 5.3.1.2.5.4. In making such determination, the OWRB shall:

18 **5.3.1.2.5.1** Assess models that the OWRB has access to for the basin from
19 which the waters are proposed to be appropriated, including any model previously determined to
20 be an Adequate Hydrologic Model and any updates thereto.

21 **5.3.1.2.5.2** If the OWRB determines an Adequate Hydrologic Model is
22 available to it, it shall notify the Technical Committee of such determination and then process the
23 application pursuant to Section 5.3.1.3.

1 **5.3.1.2.5.3** If the OWRB determines that an Adequate Hydrologic Model
2 is not available to it, it shall proceed in accord with Section 5.3.1.2.5.4.

3 **5.3.1.2.5.4** If the OWRB determines an Adequate Hydrologic Model is not
4 available to it, the OWRB shall notify the Technical Committee of such determination and direct
5 the Technical Committee either refine an existing hydrologic model or develop a new model so
6 that it is an Adequate Hydrologic Model. The Technical Committee shall complete its model
7 refinement or development work within one hundred and eighty (180) days of the notification
8 pursuant to Section 5.3.1.2.5.2, after which the OWRB may either: (i) give the Technical
9 Committee additional time or (ii) complete the model refinement or development. Once work on
10 the model is completed, the OWRB shall proceed with its determination under Section 5.3.1.2.5.

11 **5.3.1.2.5.5** The OWRB shall exercise its discretion in making
12 determinations under Section 5.3.1.2.5. In making its determinations, OWRB must ensure that a
13 model satisfies the criteria provided at Section 5.3.1.2.2. The OWRB shall provide the Technical
14 Committee with written documentation of its determination.

15 **5.3.1.2.5.6** Subsequent to the Enforceability Date, if the conferral
16 threshold of Section 5.3.1.1.2.2 is satisfied with respect to an application to appropriate water
17 from the Kiamichi Basin, the Kiamichi Basin Hydrologic Model shall be the starting point for
18 OWRB’s determination under Section 5.3.1.2.5.

19 **5.3.1.2.5.7** Once a model is determined adequate under Section 5.3.1.2.5,
20 the OWRB shall use it for purposes of allocation of water and administration of water rights
21 within the relevant basin. The Kiamichi Basin Hydrologic Model, including any updates, shall be
22 used for the allocation of water and administration of water rights in the Kiamichi Basin.

23

1 **5.3.1.3 Permit Application Processing**

2 **5.3.1.3.1 Hydrologic Findings** – In reliance on an Adequate Hydrologic

3 Model, the OWRB will process an application subject to Section 5.3.1.3 under Title 82 and
4 OWRB rules and regulations and make written findings on the following as part of its final
5 decision:

6 **5.3.1.3.1.1** That the applicant’s proposed diversions of water would not
7 interfere with existing water rights in the source basin;

8 **5.3.1.3.1.2** That the applicant’s proposed diversion of water would not
9 interfere with projected future consumptive-use water needs within the source basin; and

10 **5.3.1.3.1.3** For those applications that satisfy the conferral threshold
11 provided at Section 5.3.1.1.2.2 or which have satisfied the requirements of Section 5.3.3, that
12 existing water quality, ecological, and recreational needs evaluated in a manner consistent with
13 OAC § 785:20-5-5(e) would be protected in approving the applicant’s proposed diversion of
14 water.

15 **5.3.1.3.2 Applicant’s Use and Demand Findings** – Using the evidence

16 tendered in administrative proceedings on the application in addition to relevant data included in
17 the most recent update to the Oklahoma Comprehensive Water Plan, OWRB will process the
18 application under Title 82 and OWRB rules and regulations and make written findings on the
19 following as part of its final decision:

20 **5.3.1.3.2.1** That the applicant has demonstrated it has a need for the water
21 requested for appropriation within a reasonable period of time but not longer than seven (7) years
22 or as set forth in a schedule of use that is supported by any findings required by state law; and

1 **5.3.1.3.2.2** That the applicant has demonstrated the works intended for the
2 delivery of the water are feasible and capable of efficient delivery of the water requested for
3 appropriation without committing waste.

4 **5.3.1.3.3 Permit Issuance** – The OWRB may issue a permit if it has made
5 affirmative conclusions supported by the record on each of the findings specified in Sections
6 5.3.1.3.1 and 5.3.1.3.2.

7 **5.3.1.4 No Modification of Rights** – Nothing herein modifies in any way the
8 rights available to any person pursuant to state law to participate in OWRB proceedings and to
9 appeal from decisions based thereon.

10 **5.3.2 Arbuckle-Simpson Groundwater Basin**

11 **5.3.2.1 In General** – The Arbuckle-Simpson Groundwater Basin is located in a
12 region of significant historic, cultural, economic and environmental value to the State and the
13 Nations and has been the subject of substantive engagement and cooperative efforts among the
14 Nations and the OWRB. The Arbuckle-Simpson Groundwater Basin is classified as a sensitive
15 sole source aquifer, and 82 O.S. § 1020.9A requires consideration and protection of the natural
16 flow of springs and streams emanating from the Arbuckle-Simpson Groundwater Basin. OWRB
17 shall administer the Arbuckle-Simpson Groundwater Basin in accord with 82 O.S. §§ 1020.9 and
18 1020.9A, the Settlement Agreement, and the Settlement Act.

19 **5.3.2.2 Maximum Annual Yield and Administration** – The OWRB shall
20 consider all applications for the Arbuckle Simpson Groundwater Basin pursuant to 82 O.S. §§
21 1020.9A and 1020.9 in accord with Section 5.3.2. In accord with Title 82, the OWRB has
22 developed a maximum annual yield (“MAY”) for the Arbuckle Simpson Groundwater Basin, *see*
23 Maximum Annual Yield for the Arbuckle-Simpson Groundwater Basin, Oklahoma Water

1 Resources Board (Findings of Fact, Conclusions of Law, and Board Order, Oct. 23, 2013)
2 (“2013 Order”). OWRB shall administer the Arbuckle Simpson Groundwater Basin in accord
3 with Title 82 and the 2013 Order; *provided that* if a court of competent jurisdiction modifies or
4 otherwise determines the 2013 Order is invalid, OWRB shall develop a new MAY and either
5 issue a new MAY order or modify the 2013 Order in conformance with 82 O.S. §§ 1020.9 and
6 1020.9A and any applicable court order (“MAY Order”), and administer the Arbuckle Simpson
7 Groundwater Basin pursuant to such MAY Order. Any order establishing a MAY for the
8 Arbuckle Simpson Groundwater Basin and OWRB administration thereunder shall ensure that
9 any groundwater permit issued by the OWRB will not reduce the natural flow of water from
10 springs or streams emanating from the Arbuckle Simpson Groundwater Basin.

11 **5.3.2.3 Applications for Groundwater** – The OWRB shall evaluate any
12 regular permit to use groundwater from the Arbuckle-Simpson Groundwater Basin in accord
13 with the MAY Order and shall approve the permit if it finds that:

14 **5.3.2.3.1** The lands owned or leased by the applicant overlie the Arbuckle
15 Simpson Groundwater Basin;

16 **5.3.2.3.2** The use to which the applicant intends to put the water is
17 beneficial;

18 **5.3.2.3.3** The proposed use does not constitute waste as defined in 82 O.S. §
19 1020.15; and

20 **5.3.2.3.4** The proposed use is not likely to degrade or interfere with springs
21 or streams emanating in whole or in part from water originating from the Arbuckle Simpson
22 Groundwater Basin.

23

1 **5.3.3 Out-of-State Use of Settlement Area Waters**

2 **5.3.3.1 In General** – The Parties recognize and agree that, as of the Execution
3 Date, state law prohibits any Out-of-State Use of Settlement Area Waters. Nothing in the
4 Settlement Agreement changes such state law or otherwise permits or authorizes such use. Any
5 Out-of-State Use of Settlement Area Waters shall be in accord with the Settlement Agreement,
6 the Settlement Act, and any state law not inconsistent herewith.

7 **5.3.3.2 Settlement Commission**

8 **5.3.3.2.1 Establishment** – The Settlement Legislation shall establish the
9 Settlement Commission, the duties and authority of which are defined and limited by the
10 Settlement Agreement and the Settlement Act.

11 **5.3.3.2.2 Members** – The Settlement Commission shall be comprised of
12 five (5) members, appointed as follows: (i) one by the Governor of the State; (ii) one by the
13 Attorney General of the State; (iii) one by the Chief of the Choctaw Nation; (iv) one by the
14 Governor of the Chickasaw Nation; and (v) one by agreement of the aforementioned four
15 members. In the event the four aforementioned members cannot agree on a single person, they
16 shall jointly submit a list of no fewer than three (3) names to the Chief Judge for the United
17 States District Court for the Eastern District of Oklahoma, who shall then make the appointment
18 from that list. The initial appointments to the Settlement Commission shall be made within
19 ninety (90) days of the Enforceability Date.

20 **5.3.3.2.3 Member Terms** – Settlement Commission members shall serve at
21 the pleasure of their respective appointing entity. Appointing entities may reimburse their
22 respective appointed members for costs associated with their service on the Settlement
23 Commission, and the fifth member shall have their costs associated with service on the

1 Settlement Commission reimbursed by the State and the Nations. No member shall receive
2 compensation for service on the Settlement Commission. In the event of a Settlement
3 Commission member's removal or resignation, that member's original appointing entity shall
4 name a replacement. The fifth member may be removed or replaced by a majority vote of the
5 other members based on a failure of the member to carry out their duties as a member of the
6 Commission.

7 **5.3.3.2.4 Duties** – The Settlement Commission's duties shall be as follows:

8 **5.3.3.2.4.1 Evaluation** – to evaluate any proposed Out-of-State Use of
9 Settlement Area Waters in accord with Section 5.3.3.3.2;

10 **5.3.3.2.4.2 Report** – to prepare, finalize, and submit a report in accord
11 with Section 5.3.3.3.3, which report shall document the Settlement Commission's evaluation of
12 those matters indicated in Section 5.3.3.3.2 and such other relevant issues presented by the
13 proposed Out-of-State Use of Settlement Area Waters;

14 **5.3.3.2.4.3 Appeals from Denials of Funding for Settlement Area**
15 **Projects** – to hear and decide appeals submitted to it pursuant to Section 5.3.3.5.2.5; and

16 **5.3.3.2.4.4 Internal Procedures** – to establish such procedures as are
17 necessary for purposes of the Settlement Commission's operation and performance of the duties
18 set forth in Section 5.3.3.

19 **5.3.3.3 Proposal Evaluation; Report**

20 **5.3.3.3.1 Proposal** – Any person proposing an Out-of-State Use of
21 Settlement Area Waters shall submit a proposal to the Settlement Commission for evaluation, a
22 copy of which the Settlement Commission shall provide to the OWRB.

1 **5.3.3.3.2 Evaluation** – In performing its evaluation of a proposal, the
2 Settlement Commission may consider all available information, including, at a minimum: (i) the
3 use to which the water will be placed; (ii) the feasibility of the works proposed for delivering
4 water; (iii) the effect of the proposed use on water availability in the source basin and throughout
5 Oklahoma; (iv) the likely environmental and economic impact of the proposed use on the source
6 basin and Oklahoma; and (v) the appropriate valuation to be imposed as a condition of the
7 proposed Out-of-State Use of Settlement Area Waters. To support the Settlement Commission’s
8 performance of its duties under Section 5.3.3, the OWRB shall provide to the Settlement
9 Commission a preliminary technical evaluation of the availability of water in the source basin,
10 including permitted uses, any pending applications, and any other known, projected, or proposed
11 water uses; *provided*, that such preliminary evaluation shall not prejudice or otherwise control
12 any subsequent administrative processing of the proposed Out-of-State Use of Settlement Area
13 Waters by the OWRB.

14 **5.3.3.3.3 Report; Legislative Action** – The Settlement Commission’s
15 evaluation shall be contained in a report that the Settlement Commission shall submit to the
16 Speaker of the Oklahoma House of Representatives and the President *Pro Tem* of the Oklahoma
17 Senate. The Oklahoma Legislature may consider and act on the Settlement Commission’s report
18 as the Legislature deems appropriate.

19 **5.3.3.3.4 Administrative Fees and Costs** – Any person proposing an Out-
20 of-State Use of Settlement Area Waters shall pay those fees and costs associated with the
21 Settlement Commission’s evaluation and preparation of its report. The Nations and State will
22 coordinate to provide additional reasonable administrative support, including funding, to allow
23 the Settlement Commission to fulfill its duties.

1 **5.3.3.4 Applications for a Proposed Out-of-State Use of Settlement Area**

2 **Waters** – No Out-of-State Use of Settlement Area Waters shall be lawful unless and until such
3 use is made pursuant to a validly issued OWRB permit. Once a proposed Out-of-State Use of
4 Settlement Area Waters has been evaluated by the Settlement Commission and authorized by the
5 Oklahoma Legislature, the person proposing such use shall submit to the OWRB an application
6 for a water use permit, which application the OWRB shall process in accord with Section 5.3.1,
7 including Sections 5.3.1.2 and 5.3.1.3, without regard to the amount proposed for appropriation
8 and use. Any Out-of-State Use of Settlement Area Waters permitted by the OWRB shall be
9 subject to State jurisdiction and administered by the OWRB in accord with the permit issued,
10 state law, the Settlement Agreement, and the Settlement Act.

11 **5.3.3.5 Water Preservation Infrastructure Fund**

12 **5.3.3.5.1 Created** – Any monies paid relating to an Out-of-State Use of

13 Settlement Area Waters shall be deposited into the Water Preservation Infrastructure Fund,
14 hereby created. The purpose of the Water Preservation Infrastructure Fund, inclusive of all
15 monies deposited therein, shall be solely and exclusively to provide grants for the construction
16 and maintenance of public water infrastructure throughout Oklahoma, including but not limited
17 to public infrastructure for municipal and rural water supply, irrigation supply, and wastewater
18 projects.

19 **5.3.3.5.2 Administration of Water Preservation Infrastructure Fund**

20 **5.3.3.5.2.1 Allocation and Disbursement** – Monies deposited pursuant to

21 Section 5.3.3.5.1 may only be allocated and disbursed in accord with the Settlement Agreement
22 and the Settlement Act.

1 **5.3.3.5.2.2 Administration of Fund** – The OWRB shall administer the
2 Water Preservation Infrastructure Fund in accord with Section 5.3.3.5, the Settlement Act, and
3 state law.

4 **5.3.3.5.2.3 Consideration of Applications** – The OWRB shall consider
5 applications for funding in the order in which such requests are received, with the exception of
6 applications for funding for public water infrastructure projects located within or serving the
7 Settlement Area which shall be considered prior to all others. In considering such applications
8 for funding from the Water Preservation Infrastructure Fund, the OWRB shall apply the point
9 system and procedures set forth in Exhibit 11.

10 **5.3.3.5.2.4 Settlement Area Projects Priority** – As provided in Section 2
11 of Exhibit 11, applications for funding for public water infrastructure projects located within or
12 serving the Settlement Area shall receive an additional ten (10) points.

13 **5.3.3.5.2.5 Appeal of Denial of Funding for Settlement Area Projects** –
14 If the OWRB denies an application for funding for a public water infrastructure project located
15 within or serving the Settlement Area, the aggrieved applicant may, within thirty (30) days,
16 appeal the OWRB’s decision to the Settlement Commission, which shall determine whether the
17 OWRB correctly applied the criteria of Section 5.3.3.5 (inclusive of Exhibit 11) including
18 preferences for Settlement Area projects. If the Settlement Commission determines that the
19 OWRB properly applied the criteria, the decision of the OWRB shall stand and be final, subject
20 to the applicant’s right to reapply to the OWRB consistent with Exhibit 11. If the Settlement
21 Commission determines the OWRB did not correctly apply the criteria of Section 5.3.3.5
22 (inclusive of Exhibit 11), the application shall be remanded to the OWRB for reconsideration.

1 **6. PROVISIONS RELATING TO PENDING OWRB APPLICATION NO. 2007-017 –**

2 As provided in this Section 6, the Parties have agreed to provisions to enhance water availability
3 for use within the Settlement Area, to support recreation, fish and wildlife needs, and to resolve
4 the Nations’ objections to the OWRB’s consideration of the City’s Amended Permit Application.
5 These provisions include Sardis Lake Release Restrictions, Bypass Flow Requirements, and City
6 water conservation requirements to protect Sardis Lake recreation, fish and wildlife benefits; a
7 set-aside of Conservation Storage Capacity for local use of the Administrative Set-Aside; and the
8 Atoka and Sardis Conservation Projects Board.

9 **6.1 Amended Permit Application** – To facilitate the implementation of provisions
10 referenced above, the City will file with the OWRB within one hundred twenty (120) days after
11 the Execution Date the Amended Permit Application, which shall include the terms and
12 conditions set forth in this Section 6.1:

13 **6.1.1 Scope** – that the permit provide a right: (i) to store Kiamichi Basin water in
14 Sardis Lake consistent with the Amended Storage Contract Transfer Agreement; (ii) to release
15 water from Sardis Lake for delivery to the Point of Diversion; and (iii) to divert and beneficially
16 use water from the Kiamichi Basin.

17 **6.1.2 Amount of Appropriation** – that the permit provide a right to appropriate one
18 hundred fifteen thousand (115,000) AFY and specify that water bypassed in accord with Section
19 6.1.5.2 shall not be counted against the City’s one hundred fifteen thousand (115,000) AFY
20 appropriation; *provided*, that the City’s compliance with the Bypass Requirement of Section
21 6.1.5.2 shall not be grounds for finding any forfeiture of such appropriation.

22 **6.1.3 Point of Diversion** – that the permit specify a point of diversion from the
23 Kiamichi River in the general vicinity of Moyers Crossing in Pushmataha County, Oklahoma.

1 **6.1.4 Sources** – that the permit provide that the sources of water shall be stream water
2 from the Kiamichi River, water released from City Sardis Storage, or any combination thereof.

3 **6.1.5 City Diversion Rate, Bypass Requirement, and Flow Rate** – that the permit
4 provide for:

5 **6.1.5.1** a diversion rate of two hundred fifty (250) cfs;

6 **6.1.5.2** a requirement that the City bypass fifty (50) cfs at the Point of Diversion
7 as a precondition to diverting water; and

8 **6.1.5.3** a flow rate of three hundred (300) cfs, which is the combined amount of
9 the City Diversion Rate and the Bypass Requirement.

10 **6.1.6 Exercise of City Diversion Rate, Bypass Requirement, and Flow Rate** – that
11 the permit provide:

12 **6.1.6.1** that regardless of hydrological conditions, the City may divert water
13 under the City Permit only when the full amount of the Bypass Requirement flows past the Point
14 of Diversion;

15 **6.1.6.2** that the City may divert natural flow to the extent the natural flow
16 exceeds the Bypass Requirement at the Point of Diversion;

17 **6.1.6.3** that the City may divert flows that result from City Sardis Storage
18 releases to the extent that such releases in combination with any natural flow exceed the Bypass
19 Requirement at the Point of Diversion; and

20 **6.1.6.4** that the City provide to the OWRB an accounting of its releases from
21 City Sardis Storage and measurement of its diversions and bypasses at the Point of Diversion.

22 **6.1.7 Purposes** – that the permit provide that the purposes for which water may be
23 beneficially used shall be municipal use by the City, the City’s current and future wholesale and

1 retail water customers and other public water supply entities in Oklahoma, and incidental
2 purposes in Sardis Lake for recreation, fish and wildlife benefits as necessary to exercise the
3 City's one hundred fifteen thousand (115,000) AFY appropriation.

4 **6.1.8 Sardis Lake Release Restrictions** – that the permit provide that the City may not
5 have water released from City Sardis Storage except in conformance with the terms and
6 conditions of this Section 6.1.8, which terms and conditions shall be deemed to satisfy the
7 requirements of OAC § 785:20-5-5(b)(3)(iv) for a lake level management plan; *provided*, that
8 such release restrictions shall not restrict the City's right to divert natural flow from the Kiamichi
9 Basin when the natural flow at the Point of Diversion exceeds fifty (50) cfs.

10 **6.1.8.1 Baseline Lake Levels** – Regardless of whether Drought Conditions exist
11 and notwithstanding any other condition herein, the City, subject to the rights reserved to the
12 United States under Article 1(c) of the 1974 Contract, shall be entitled to have water released
13 from City Sardis Storage as follows:

14 **6.1.8.1.1** From April 1 through August 31, the City may have water released
15 from City Sardis Storage whenever the Sardis Lake surface elevation is at or above 599' MSL;
16 and

17 **6.1.8.1.2** From September 1 through March 31, the City may have water
18 released from City Sardis Storage whenever the Sardis Lake surface elevation is at or above 595'
19 MSL.

20 **6.1.8.2 Drought Withdrawals** – During Drought Conditions, the City may
21 have water released from City Sardis Storage in amounts that cause the Sardis Lake surface
22 elevation to drop below the Baseline Lake Levels in Section 6.1.8.1 only if it is implementing
23 and enforcing the water conservation measures described in Exhibit 12 for all of its retail and

1 wholesale customers, inside and outside of the City’s municipal boundaries. The City Reservoir
2 storage level triggers contained in Exhibit 12 are distinct from and intended to operate
3 independently of the City Reservoir storage level triggers that are contained in the Settlement
4 Agreement’s definitions of Moderate Drought Conditions, Advanced Drought Conditions, and
5 Extreme Drought Conditions. The City may modify the water conservation measures described
6 in Exhibit 12 with the prior written consent of the Nations, which consent shall not be
7 unreasonably withheld, for: (i) procedural modifications that do not increase water use and (ii)
8 changes in irrigation technology that enable different patterns of use without increasing annual
9 irrigation demand. Nothing herein shall preclude the City from implementing water
10 conservation measures more restrictive than those described in Exhibit 12; *provided*, that the
11 Nations shall be given written notice of such measures prior to their implementation.

12 **6.1.8.2.1 Moderate Drought Withdrawals** – When Moderate Drought
13 Conditions exist, the City may have water released from City Sardis Storage from July 5 through
14 August 31 and lower the Sardis Lake surface elevation below the Baseline Lake Levels in
15 Section 6.1.8.1 to the lake level of 597’ MSL.

16 **6.1.8.2.2 Advanced Drought Withdrawals** – When Advanced Drought
17 Conditions exist, the City may have water released from City Sardis Storage and lower the Sardis
18 Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of
19 592’ MSL.

20 **6.1.8.2.3 Extreme Drought Withdrawals** – When Extreme Drought
21 Conditions exist, the City may have water released from City Sardis Storage and lower the Sardis
22 Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of
23 589’ MSL.

1 **6.1.8.2.4 Meet and Confer** – At least thirty (30) days prior to commencing
2 Advanced Drought Withdrawals or Extreme Drought Withdrawals, the City shall provide notice
3 to and offer to meet and confer with OWRB staff and the Nations. If either the OWRB or the
4 Nations desire to meet, then as part of the conferral process: (i) the City will demonstrate that
5 Advanced Drought Conditions or Extreme Drought Conditions exist, as applicable, and the
6 appropriate water conservation measures in Exhibit 12 and water conservation program
7 established pursuant to Section 6.5.1 are in effect; and (ii) the City and OWRB staff and the
8 Nations will consider whether to commence discussions under Section 6.5.7.

9 **6.1.8.3 Calculations and Measurement** – For purposes of Section 6.1.8 and
10 determinations of relative Drought Conditions, as defined in Sections 1.4, 1.32, and 1.42, Live
11 Storage Capacity shall be calculated follows:

12 **6.1.8.3.1 Live Storage Capacity Calculation** – Live Storage Capacity shall
13 be calculated as the volume of City Reservoir storage space between the top of the conservation
14 pool and the specified lower elevation using the elevation-capacity relationship documented in
15 Exhibit 13, as set forth in Table 1, unless otherwise agreed pursuant to Section 6.5.7. The
16 cumulative amount of Live Storage Capacity for the City Reservoirs resulting from this
17 calculation is four hundred seven thousand one hundred five (407,105) AF.

18 **Table 1: City Reservoir Live Storage Capacity and Lake Elevations**

City Reservoir	Top Elev. (MSL)	Lower Elev. (MSL)	Max. Live Stor. Cap. (AF)	75% (MSL)	65% (MSL)	50% (MSL)
Atoka	590.0	550.0	107,940	n/a	n/a	n/a
Canton	1,615.4	1,596.5	68,023	n/a	n/a	n/a
Draper	1,191.0	1,145.0	72,195	1,183.10	1,179.50	1,173.70
Hefner	1,199.0	1,165.0	57,593	1,193.10	1,190.40	1,186.10
McGee	577.1	533.0	88,445	n/a	n/a	n/a
Overholser	1,241.5	1,231.8	12,909	n/a	n/a	n/a
Total			407,105			

19

1 **6.1.8.3.2 Lake Elevation Measurement** – All lake elevations shall be
2 determined in reference to official United States Army Corps of Engineer or United States
3 Geological Survey measurements.

4 **6.1.8.3.3 Accounting** – Accounting for the City Permit shall be in accord
5 with the accounting memorandum included as Exhibit 13.

6 **6.1.9 Schedule of Use** – that the permit provide a schedule of use as set forth in Exhibit
7 14.

8 **6.1.10 Exercise of City Permit** – that the permit provide that the City’s exercise of the
9 City Permit shall be in accord with the City Permit terms, the Settlement Agreement, and the
10 Settlement Act.

11 **6.2 OWRB Review of Amended Permit Application**

12 **6.2.1 Evaluation of Application** – The OWRB shall evaluate the evidence submitted
13 by the City and otherwise tendered by any interested party in the administrative proceeding held
14 on the Amended Permit Application and use the Kiamichi Basin Hydrologic Model, as it exists
15 as of the Execution Date, to determine pursuant to the applicable provisions of Title 785 of the
16 Oklahoma Administrative Code and Title 82 whether the City Permit shall be issued. No permit
17 may be issued that does not include those terms and conditions stated in Section 6.1.

18 **6.2.2 Timing**

19 **6.2.2.1 Commencement of OWRB Process; Issuance of Notice** – No later
20 than thirty (30) days from the Enactment Date, the OWRB staff shall issue to the City a notice
21 for publication (“Notice”) of the Amended Permit Application, which the City shall cause to be
22 published in accord with Section 6.2.2 and OAC § 785:20-5-1.

1 **6.2.2.2 Contents of Notice; Timing and Schedule for Hearing** – In addition to
2 any requirements of state law, the Notice shall set a schedule for consideration of the Amended
3 Permit Application. The schedule shall provide that: (i) any protest to the Amended Permit
4 Application must be filed within thirty (30) days of the date of last publication of Notice; and (ii)
5 in the event the Amended Permit Application is protested, a hearing shall be conducted and
6 concluded no later than one hundred eighty (180) days from the date of last publication of
7 Notice.

8 **6.2.2.3 Conduct of Hearing; Protests** – The hearing shall be conducted by a
9 hearing examiner. Pursuant to state law, protests shall be limited to the elements of OAC §
10 785:20-5-4 and the applicable factors of OAC § 785:20-5-5.

11 **6.2.2.4 Hearing Examiner Proposed Final Order; Presentation; Exceptions** –
12 The hearing examiner shall prepare a proposed Final Order which shall be presented to the Board
13 within forty-five (45) days of the conclusion of the hearing if the Amended Permit Application is
14 protested. In the event the Amended Permit Application is not protested, the OWRB staff shall
15 present a proposed Final Order to the Board within forty-five (45) days of the date of last
16 publication of Notice. The proposed Final Order shall be presented and any exceptions to the
17 proposed Final Order filed in accord with OAC § 785:4-9-1.

18 **6.2.2.5 Final Order of OWRB** – The Board shall consider the proposed Final
19 Order and any exceptions thereto and issue a Final Order within thirty (30) days of the filing of
20 any exceptions in the manner prescribed by OAC § 785:4-9-2. Appeals from the OWRB’s Final
21 Order shall be in accord with state law. The Parties may agree in writing that the condition of
22 Section 4.1.6 shall be deemed satisfied, notwithstanding such appeal. If the Parties agree that the

1 condition of Section 4.1.6 shall be deemed satisfied, then each will be deemed to have waived
2 any right it may have under Section 6.2.3.

3 **6.2.2.6 Timelines Not to Be Extended** – Unless the State, the Nations, and the
4 City agree or it is otherwise ordered by a court of competent jurisdiction, the timelines set forth
5 in Section 6.2.2 shall not be subject to extension and the State shall allocate sufficient resources
6 to allow all time requirements to be met.

7 **6.2.2.7 Pre-Enactment Date Review** – If the Settlement Legislation has been
8 introduced but the Enactment Date has not occurred by September 30, 2018, notwithstanding the
9 Parties’ best efforts to secure its enactment, the process set forth in Sections 6.2.2.1 through
10 6.2.2.5 shall commence at the City’s discretion, upon written notice to the OWRB and the
11 Nations.

12 **6.2.2.8 Effective Only on Enforceability Date** – No permit the OWRB may
13 issue to the City based on the Amended Permit Application will have any force or effect and the
14 City shall exercise no rights thereunder prior to the Enforceability Date, and any permit the
15 OWRB may issue to the City based on the Amended Permit Application shall include a
16 condition implementing this limitation.

17 **6.2.3 Permit Conformance**

18 **6.2.3.1 Process for Addressing Non-Conformance** – If the OWRB issues a
19 final permit and the City or either Nation asserts the final permit does not conform with the terms
20 and conditions of Section 6.1, then the Party or Parties asserting such non-conformance shall: (i)
21 within ten (10) days of the issuance of the final permit, provide notice to the other Parties of such
22 assertion and (ii) seek to convene a meeting of the Parties to discuss such assertion and seek to

1 resolve any disagreements relating to non-conformance and/or necessary modifications to the
2 final permit in order to ensure conformance.

3 **6.2.3.2 Remedy for Non-Conformance** – In the event the Parties can neither
4 agree that the final permit conforms to Section 6.1 nor to modifications thereto that would
5 resolve assertions of non-conformance, then: (i) the Parties will be unable to satisfy the
6 condition precedent specified at Section 4.1.6, which circumstance will automatically activate
7 the Expiration Date; and (ii) the City at its sole discretion may resubmit to the OWRB, and the
8 OWRB shall be deemed to have accepted, OWRB Permit Application No. 2007-017 without the
9 City’s having waived the priority date and proposed appropriate amounts of its initial permit
10 application (Application No. 2007-017).

11 **6.2.3.3 Final Permit** – For purposes of Section 6.2.3, a permit shall be
12 considered final and not subject to further appeal if: (i) any and all appeals from the OWRB’s
13 issuance of the permit have been exhausted or (ii) the time has expired for any person to seek
14 appellate review of the permit issued by the OWRB.

15 **6.3 Surrender** – Notwithstanding the possible cancellation or reduction in the future of
16 the City Permit that could result by operation of state law, the City Permit shall be deemed
17 surrendered in accord with 82 O.S. § 105.19 and OAC § 785:20-9-3(H) without any further
18 action by the OWRB or City if the City by 2043 does not construct the Parallel City Pipeline and
19 divert under the City Permit an amount equal to what the schedule of use specifies for 2040, *see*
20 Exhibit 14; *provided*, that this deadline shall be tolled and extended for the duration of: (i) any
21 court injunction that delays or halts the City’s construction of the Parallel City Pipeline, which
22 injunction is entered as part of any litigation challenging the issuance of environmental permits,
23 rights of way, or easements necessary for the Parallel City Pipeline; or (ii) any delay in excess of

1 three (3) years from the City’s initiation of legal action(s) to secure any Bureau of Indian Affairs’
2 approval necessary for the purpose of acquiring easements or rights-of-way for the Parallel City
3 Pipeline; *provided*, that the City shall diligently initiate and pursue such legal action(s).
4 Regardless of any surrender, cancellation, or reduction of the City Permit pursuant to this Section
5 6.3, any use of Conservation Storage Capacity transferred to the City pursuant to the Amended
6 Storage Contract Transfer Agreement, except for the storage for the Administrative Set-Aside,
7 shall remain subject to the Sardis Lake Release Restrictions set forth at Section 6.1.8.

8 **6.4 Administration of City Permit**

9 **6.4.1** Water released from City Sardis Storage for delivery to the Point of Diversion
10 will not be considered or administered as part of the natural flow of Jack Fork Creek or the
11 Kiamichi River subject to or available for diversion or appropriation by others. The City shall
12 not be obligated to release water from City Sardis Storage to maintain the Bypass Requirement
13 when it is not diverting water at the Point of Diversion. The City shall bear any and all
14 conveyance losses from the Sardis Lake outlet structure to the Point of Diversion.

15 **6.4.2** The City shall have independent standing to bring a judicial action to enforce the
16 provisions of Section 6.4.1 as against third party water users, regardless of whether prior
17 administrative relief was sought from the OWRB and regardless of whether the OWRB is a party
18 to or consents to said judicial proceeding.

19 **6.5 Additional Provisions**

20 **6.5.1 Water Conservation Program** – Within three (3) years of the Enforceability
21 Date, the City will administratively approve a water conservation program appropriate for its
22 water utility that generally follows American Water Works Association Water Conservation
23 Standards. Following the approval, the City will periodically review and, as appropriate for its

1 water utility, update its water conservation program to conform with changes in American Water
2 Works Association Water Conservation Standards. The City and the Trust will implement the
3 conservation program as approved and thereafter updated by the City.

4 **6.5.2 Atoka and Sardis Conservation Projects Board and Fund**

5 **6.5.2.1 Establishment**

6 **6.5.2.1.1 Projects Board** – No later than ninety (90) days from the
7 Enactment Date, the State, the Chickasaw Nation, the Choctaw Nation, and the City shall each
8 appoint a representative to the Atoka and Sardis Conservation Projects Board. Each member
9 shall serve at the pleasure of its appointing entity. Failure to appoint a member shall not
10 constitute a breach of the Settlement Agreement nor shall it preclude the Board from performing
11 its duties, as specified herein. Each appointing entity may reimburse from its own funds its
12 respective appointed member for costs associated with their service, but each member shall
13 otherwise serve without compensation.

14 **6.5.2.1.2 Projects Fund**

15 **6.5.2.1.2.1 Contributions** – Upon the Enactment Date and subject to an
16 escrow agreement implementing the requirements of Section 6.5.2.1.2, the State, Nations, and
17 City shall each contribute to a ten million dollar (\$10,000,000) fund, with: (i) the City
18 contributing five million dollars (\$5,000,000), of which two million five hundred thousand
19 dollars (\$2,500,000) would have been monies otherwise due to the State under the terms of the
20 Storage Contract Transfer Agreement; and (ii) the Nations contributing five million dollars
21 (\$5,000,000), with the Choctaw Nation paying seventy-five percent (75%) and the Chickasaw
22 Nation paying twenty-five percent (25%) of such amount. The Atoka and Sardis Conservation
23 Projects Board shall authorize expenditures from the Atoka and Sardis Conservation Projects

1 Fund solely for purposes of scoping, designing, implementing, operating, and maintaining
2 projects to enhance recreational use or habitat for fish and wildlife at Atoka or Sardis Lake
3 and/or to mitigate environmental impacts at Atoka or Sardis Lake.

4 **6.5.2.1.2.2 Interest-Bearing Account; Administration by Oklahoma**

5 **City Water Utilities Trust** – Subject to a fiduciary obligation owed to each of the Parties
6 represented on the Atoka and Sardis Conservation Projects Board, the Oklahoma City Water
7 Utilities Trust shall deposit the monies specified in Section 6.5.2.1.2.1 into a restricted interest-
8 bearing account in accord with the procedures and contracts applicable to other similarly held
9 Oklahoma City Water Utilities Trust funds, with five million (\$5,000,000) allocated to Atoka
10 Lake conservation projects and five million (\$5,000,000) allocated to Sardis Lake conservation
11 projects, and it shall cause allocation of any interest earned on principal to be made in proportion
12 to the balance of unexpended monies allocated to projects for the two lakes. The Oklahoma City
13 Water Utilities Trust will be responsible to each of the Parties represented on the Atoka and
14 Sardis Conservation Projects Board for the proper administration, accounting, and expenditure of
15 all monies in this account. The Oklahoma City Water Utilities Trust will provide to the Atoka
16 and Sardis Conservation Projects Board a quarterly report of all claims, receipts, and
17 expenditures from this account.

18 **6.5.2.1.2.3 Grants and Donations** – Subject to the same conditions that

19 otherwise apply pursuant to Section 6.5.2.1, the Oklahoma City Water Utilities Trust may accept
20 grants and donations of monies for deposit in the fund described in Section 6.5.2.1.2.2 and may,
21 further, accept donations of goods or services for the benefit of any project authorized by the
22 Atoka and Sardis Conservation Projects Board. Any such grant or donation will be in addition to
23 the contributions specified in Section 6.5.2.1.2.1 and not in lieu thereof.

1 **6.5.2.1.2.4 Withdrawal, Expenditure, and Obligation of Account** – The
2 Oklahoma City Water Utilities Trust may make no withdrawal or expenditure from or otherwise
3 obligate any monies in the account described in Section 6.5.2.1.2.2 unless and until directed to
4 do so by a resolution of the Atoka and Sardis Conservation Projects Board that has been
5 approved by consensus of its members, and the Atoka and Sardis Conservation Projects Board
6 shall authorize expenditures from the Atoka and Sardis Conservation Projects Fund solely for
7 purposes of scoping, designing, implementing, operating, and maintaining projects to enhance
8 recreational use or habitat for fish and wildlife at Atoka or Sardis Lake and/or to mitigate
9 environmental impacts at Atoka or Sardis Lake.

10 **6.5.2.2 Duties** – The Atoka and Sardis Conservation Projects Board’s duties
11 shall be as follows:

12 **6.5.2.2.1 Identification and Analysis of Need** – direct and supervise the
13 identification and analysis of conservation needs and projects appropriate to the purposes
14 described in Section 6.5.2.1.2.4;

15 **6.5.2.2.2 Project Directions** – direct the scoping, design, and
16 implementation of projects appropriate to the purposes described in Section 6.5.2.1.2.4; and

17 **6.5.2.2.3 Internal Procedures** – to establish such procedures as are
18 necessary for purposes of the Atoka and Sardis Conservation Project Board’s operation and
19 performance of the duties set forth in Section 6.5.2.

20 **6.5.2.3 Public Comment** – When developing project designs or
21 implementation, operation, and maintenance plans, the Atoka and Sardis Conservation Projects
22 Board will:

1 **6.5.2.3.1** early in its project or plan development process, hold a public
2 meeting in Atoka or Pushmataha County for purposes of presenting proposed project or plan
3 goals and soliciting public input thereon;

4 **6.5.2.3.2** prior to finalizing any proposed design or plan, publish details of
5 developed proposals online for a period not less than forty five (45) days and thereafter receive
6 and consider public comments submitted during that period; and

7 **6.5.2.3.3** not sooner than forty five (45) days after the close of the comment
8 period, finalize and publish details of finalized designs and plans online.

9 **6.5.2.4 Project Administration** – Subject to availability of funds in the account
10 described in Section 6.5.2.1.2.2 and the Atoka and Sardis Conservation Projects Board’s
11 beneficial interest therein, the Oklahoma City Water Utilities Trust shall administer all projects
12 (including project operation, maintenance, and repair throughout the useful life of the project)
13 that the Atoka and Sardis Conservation Projects Board authorizes and approves, entering into
14 such contracts as are necessary and appropriate for such purposes. The Atoka and Sardis
15 Conservation Projects Board’s authorization and approval of projects shall be in the same
16 manner and subject to the same restrictions specified in Section 6.5.2.1.2.4. The Oklahoma City
17 Water Utilities Trust will provide to the Atoka and Sardis Conservation Projects Board a
18 quarterly report of all project work, including incurred and anticipated costs.

19 **6.5.3 Scope of Sardis Lake Release Restrictions** – The effect of the Sardis Lake
20 Release Restrictions imposed on the City Permit by Section 6.1.8 is to limit to one hundred
21 thousand sixteen six hundred sixteen (116,616) AF the amount of Conservation Storage Capacity
22 the City may store water in and release water from for purposes of diverting up to one hundred
23 fifteen thousand (115,000) AFY at the Point of Diversion. The Sardis Lake Release Restrictions

1 shall not apply to the use of thirty-seven thousand nine hundred eight (37,908) AF of
 2 Conservation Storage Capacity reserved for purposes of the twenty thousand (20,000) AFY
 3 Administrative Set Aside. The remaining one hundred forty-two thousand six hundred seventy-
 4 six (142,676) AF of Conservation Storage Capacity shall be limited to maintenance of lake levels
 5 in support of recreation, fish and wildlife benefits, and no yield from Sardis Lake in excess of the
 6 City’s one hundred fifteen thousand (115,000) AFY and the twenty thousand (20,000) AFY set
 7 aside by OAC § 785:20-5-5(b)(3) will be available for contract or appropriation by any person.

8 **Table 2: Effect and Scope of Sardis Lake Release Restrictions on Conservation Storage Capacity**

Storage	Conservation Storage Capacity (AF)	Conservation Storage Capacity (Percent of Total)	Subject to Sardis Release Restrictions
Lake Level Maintenance (Recreation, Fish and Wildlife)	142,676	48%	n/a
Administrative Set-Aside	37,908	13%	No
City Use	116,616	39%	Yes
Total	297,200	100%	n/a

9

10 **6.5.4 Infrastructure Corridor** – The City shall reserve capacity in the Parallel City
 11 Pipeline for use by the Chickasaw Nation or its assignee. The reserve capacity shall be sufficient
 12 to convey five thousand (5,000) AFY with an average demand of six (6) mgd and a maximum
 13 future peak demand of twelve (12) mgd. Water conveyed through such reserve capacity shall be
 14 supported by a water use permit obtained from the OWRB pursuant to state law. The Chickasaw
 15 Nation or its assignee may negotiate and contract with the City on appropriate and reasonable
 16 terms for the use of such reserve capacity, but the City shall not require the payment of anything
 17 more than capital repayment and the operation, maintenance, and replacement costs in proportion
 18 to actual use of such reserve capacity under such contract. Nothing herein precludes the City
 19 from agreeing to negotiate and contract for the use of additional amounts of water transmission
 20 infrastructure capacity.

1 **6.5.5 Right-of-Way** – The Chickasaw Nation agrees to convey an easement to the City,
2 which easement shall be as depicted in Exhibit 15, and the Chickasaw Nation and the City shall
3 cooperate and coordinate on the submission of an application for approval of such conveyance
4 by the Department of the Interior, in accord with federal law and process. Upon approval by the
5 Department of the Interior, the City shall duly record the easement. In exchange for such
6 conveyance, the City shall pay to the Chickasaw Nation the value of past unauthorized use and
7 consideration for future use of the lands burdened by such easement, which value shall be based
8 on an appraisal secured by the City and Nations and approved by the United States Bureau of
9 Indian Affairs.

10 **6.5.6 Unused Permit or Storage Rights** – For purposes of ensuring reasonable
11 availability to Settlement Area users of water under the City Permit or storage from City Sardis
12 Storage, and exclusive of the storage rights available to users in southeastern Oklahoma pursuant
13 to the Administrative Set-Aside, the Parties agree as follows:

14 **6.5.6.1** The City may subcontract its rights to City Sardis Storage, but any
15 subcontracted right, inclusive of direct diversions from Sardis Lake, shall be subject to the Sardis
16 Lake Release Restrictions of Section 6.1.8.

17 **6.5.6.2** In the event that: (i) prior to the later of 2043 or the date that is tolled
18 and extended as provided in Section 6.3, the City has not yet constructed the Parallel City
19 Pipeline or has not yet diverted water under the City Permit in an amount equal to what the
20 schedule of use specifies for 2040, *see* Exhibit 14; or (ii) the City’s Permit has been surrendered
21 pursuant to Section 6.3, the City shall not, subject to Section 6.5.6.4, unreasonably deny water
22 users within the Settlement Area access to unexercised City Sardis Storage, pursuant to short-

1 term contracts of no more than ten (10) years. The City shall charge for such access to City
2 Sardis Storage no more than a *pro rata* reimbursement of its own storage contract costs.

3 **6.5.6.3** In the event the City has timely constructed the Parallel City Pipeline
4 and diverted water under the City Permit in an amount equal to what the schedule of use
5 specifies for 2040, *see* Exhibit 14, then the City shall not, subject to Section 6.5.6.4,
6 unreasonably deny water users within the Settlement Area access to the City’s unexercised City
7 Sardis Storage and/or the City’s unexercised right to use water under the City Permit, if any,
8 pursuant to short-term contracts of no more than ten (10) years. The City shall charge for such
9 access and/or use, including any implicated City infrastructure, no more than a *pro rata* share of
10 costs associated with the acquisition, impoundment, transportation, and storage, which amounts
11 shall be calculated in accord with the cost of service and rate design principles published by the
12 American Water Works Association and Water Research Foundation or comparable successor
13 entity.

14 **6.5.6.4** The City may require short-term contracts entered pursuant to Sections
15 6.5.6.2 or 6.5.6.3 to specify how the water user will avoid long-term reliance on City Sardis
16 Storage and/or the City Permit.

17 **6.5.6.5** Any person or entity that enters a short-term contract with the City
18 pursuant to Section 6.5.6.2 for the use of City Sardis Storage must obtain a water use permit
19 from the OWRB prior to the commencement of any use of water in conjunction with such
20 storage.

21 **6.5.6.6** Any person or entity that enters a short-term contract with the City
22 pursuant to Sections 6.5.6.3 for the use of water under the City Permit must obtain a water use

1 permit from the OWRB prior to the commencement of such use if such use would involve a
2 purpose of use, place of use, or point of diversion not authorized by the City Permit.

3 **6.5.7 Future Technical Discussions** – In order to equitably preserve the mutual
4 benefits of Section 6.1 or otherwise pursuant to Section 6.1.8.2.4, the Nations, City, and OWRB
5 may negotiate technical mechanisms to:

6 **6.5.7.1** allow for flexibility in the measurement, accounting, and timing of water
7 stored or available for storage in the City Reservoirs under Sections 1.4, 1.32, and 1.42; and

8 **6.5.7.2** take into account potential benefits to the City and Nations from use of
9 reclaimed water by the City and/or adjustments to water quality mixing zones in the City
10 Reservoirs due to increased sedimentation.

11 **7. NATIONS USE OF WATER** – Subject to the State’s right to enforce the Settlement
12 Agreement and the Settlement Act, the Nations have the right to use and to develop the right to
13 use water as provided in this Section 7.

14 **7.1 In General** – Nothing herein precludes either Nation from obtaining a permit to use
15 water pursuant to and in accord with state law, and neither Nation shall have any less right under
16 the Settlement Agreement and the Settlement Act than what any person has pursuant to state law
17 with respect to the use of water without a permit, including the drilling and use of wells for
18 domestic purposes.

19 **7.2 Existing Uses by Permit** – The Nations shall possess and may exercise all existing
20 uses by permit identified in this Section 7.2, which uses shall be in accord with state law and the
21 identified permits. Administration and enforcement of these identified permitted uses shall be in
22 accord with state law.

Table 5: Chickasaw Nation – Existing Uses Without Permit

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CN-1 ¹ (77354, 77898, 84381, and 122089)	WinStar (CTUA)	<u>Use Location:</u> Public Water Supply system <u>Well locations:</u> E SE SW of Sec. 19, T9S, R2EI	Trust	Love	750.0	4	Three at 750' and one at 690'	Antlers	Public supply
CN-2 ² (n/a)	WinStar (golf course)	<u>Use Location:</u> N NW SW of Sec. 29, T9S, R2EI and E E of Sec. 30, T9S, R2EI and S S of Sec. 20, T9S, R2EI <u>Well Locations:</u> W W NW of Sec. 29, T9S, R2EI	Non- trust	Love	330.0	4	All at 50' or less	Alluvium and terrace of the Red River	Irrigation
CN-3 (non-irr. ag. 122341; others n/a)	Chickasaw Farms	<u>Use Location:</u> N NW of Sec. 7, T1S, R2RI and N N of Sec. 12, T1S, R2EI <u>Well Locations:</u> NE SW of Sec. 6, T1S, R2EI and NE NE of Sec 12, T1S, R2EI	Non- trust	Murray	260.0	9	One at 40' and eight unknown	Washita	One for non- irrigation agriculture and eight for irrigation
CN-4 (n/a)	Chickasaw Nation Dry Cleaning	<u>Use and Well Location:</u> NE of Sec. 9, T1N, R 1EI	Trust	Garvin	10.0	1	Unknown	Washita	Commercial
CN-5 (n/a)	Golden Tract	<u>Use and Well Locations:</u> NE SW of Sec. 3, T4S, R6EI	Non- trust	Johnston	Domestic	1	Unknown	Antlers	Domestic
CN-6 (136049)	Connerville Senior Site	<u>Use and Well Location:</u> SW SW NW of Sec. 25, T1S, R6EI	Trust	Johnston	Domestic	1	260'	Arbuckle-Simpson	Domestic
CN-7 (n/a)	Johnston White House	<u>Use and Well Location:</u> NW SW; S SW NW of Sec. 14, T4S, R7EI	Trust	Johnston	Domestic	1	Unknown	Antlers	Domestic
CN-8 (n/a)	Burney Institute	<u>Use and Well Location:</u> NE SW NE of Sec. 4, T7S, R4EI	Trust	Marshall	Domestic	1	Unknown	Antlers	Domestic

¹ To the extent the uses of CN-1 are redundant of uses pursuant to OWRB Permits Nos. 2005-554 or 2005-553, the permits will govern.

² To the extent the uses of CN-2 are redundant of uses pursuant to OWRB Permit No. 2005-520, the permit will govern.

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CN-9 (103638 and 103650)	Artesian Hotel	<u>Use and Well Locations:</u> SE SE SE of Sec. 34, T1N, R3E1	Trust	Murray	Domestic	2	One at 850' and one at 595'	Arbuckle-Simpson	Domestic
CN-10 (n/a)	Chigley Mansion	<u>Use and Well Locations:</u> S SE SW of Sec. 32, T1N, R2E1	Trust	Murray	Domestic	2	Unknown	Washita	Domestic
CN-11 (13541)	Chickasaw Farms	<u>Use and Well Location:</u> SW NE NE of Sec. 1, T1S, R1E1	Non-trust	Murray	Domestic	1	215'	Washita	Domestic
CN-12	Red Springs Cemetery	<u>Use and Well Location:</u> NE SE SE of Sec. 17, T3N, R8E1	Trust	Pontotoc	Domestic	1	47.5'	Unidentified	Domestic

1

2 **7.4.2 Choctaw Nation** – The Choctaw Nation’s existing uses without permit are
3 identified in Table 6.

4

Table 6: Choctaw Nation – Existing Water Uses Without Permit

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CNO-1	Licksillet Ranch	<u>Well Locations:</u> One at SE SE Sec. 20, T8S, R23E1; one at NW SE, Sec. 29, T8S, R23E1; one at NW SW, Sec. 29, T8S, R23E1; and one at SE NE, Sec. 19, T8S, R23E1 <u>Use Locations:</u> Secs. 19-21, 24-25, 28-30, 32, T10S, R26E1; and Sec. 8, T10S, R24E1; and Sec. 15, T10S, R25E1	Non-trust	McCurtain	300.0	4	All at 400'	Woodbine bedrock	Irrigation, stock
CNO-2 (32877)	4 Star Ranch	<u>Well and Use Location:</u> Sec. 31, T6S, R19E1, Secs. 5 and 6, T7S, R19E1	Non-trust	Pushmataha	15.0	1	125'	Kiamichi bedrock	Irrigation, stock
CNO-3	Sawyer Ranch	<u>Well and Use Locations:</u> Sec. 31, T6S, R19E1	Non-trust	McCurtain	150.0	3	All at 275'	Woodbine bedrock	Irrigation, stock

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CNO-4 ³	Tom Ranch	<u>Well and Use Locations:</u> Secs. 3, 5, 8-10, 15, and 16, T10S, R26EI; Sec. 15 R25EI; and Sec. 15, T10S, R26EI	Non-trust	McCurtain	250.0	1	Unknown	Woodbine bedrock	Irrigation, stock
CNO-5	Grant Tract	<u>Well and Use Location:</u> Sec. 10, T10S, R25EI	Non-trust	McCurtain	25.0	1	Unknown	Woodbine bedrock	Irrigation, stock

1

2 **7.5 Changes to Existing Uses Without Permit**

3 **7.5.1 Non-Trust Land** – Any change in the amount of water, well location, place of
4 use, or purpose of use for any right to use water that is recognized under Section 7.4 as located
5 on Non-Trust Land shall be applied for, evaluated, and processed pursuant to state law and shall
6 thereafter be administered and enforced in accord with state law.

7 **7.5.2 Trust Land** – With respect to any right to use water recognized under Section 7.4
8 which is located on Trust Land, either Nation may change the well location, place of use, or
9 purpose of use of such right so long as the new well location and/or new place of use is also
10 located on Trust Land and over the same source aquifer. No less than sixty (60) days prior to
11 making such change, the Nation taking such action will provide the OWRB with written notice
12 that identifies the use number and location of the subject right, a legal description of the new
13 well location and/or new place of use, and/or a description of the new purpose of use, as
14 applicable. Any change of a right recognized under Section 7.4 from Trust Lands to Non-Trust
15 Lands must be applied for, evaluated, and processed pursuant to state law and shall thereafter be
16 administered and enforced in accord with state law. Any increase in the amount of water used on

³ To the extent the uses of CN0-4 are redundant of uses pursuant to OWRB Permit No. 1952-450, the permit will govern.

1 Trust Land beyond what is recognized under Section 7.4 shall be made in accord with Section
2 7.6.2.

3 **7.6 Future Development of Groundwater Use**

4 **7.6.1 Non-Trust Land** – Any additional taking of groundwater underlying Non-Trust
5 Land by either Nation, other than what is identified in Sections 7.2 or 7.4 or otherwise provided
6 for in Section 7.1, must be applied for, evaluated, and processed pursuant to state law and shall
7 thereafter be administered and enforced in accord with state law.

8 **7.6.2 Trust Land Non-Domestic Use Wells** – Subject to Section 7.6 and in accord
9 with the Settlement Agreement and the Settlement Act, the Nations have the right to take and use
10 groundwater underlying any Trust Lands within the Settlement Area in an amount not to exceed
11 the equal proportionate share established pursuant to state law for the underlying source aquifer;
12 *provided*, that acreage dedicated to a use of groundwater under Section 7.6 shall not be used for
13 purposes of any state law permit or existing use recognized pursuant to Section 7 to take and use
14 groundwater from the same source aquifer. The Nation proposing to take and use groundwater
15 shall:

16 **7.6.2.1** Employ a state-licensed water well driller and require such driller to
17 comply with state well drilling and construction rules, including the filing of a completion report
18 with the OWRB;

19 **7.6.2.2** Locate the well(s) in accord with state well spacing requirements and/or
20 spring or stream setbacks;

21 **7.6.2.3** Provide the following information to the OWRB at least sixty (60) days
22 prior to commencing any drilling for such purpose: (i) the well location; (ii) the acreage
23 overlying the source aquifer that is dedicated to such use; (iii) the amounts annually to be

1 withdrawn from such well(s); (iv) the location at which such water is to be placed in use; and (v)
2 the use to which the withdrawn water is to be placed.

3 **7.6.3 Trust Land Domestic Wells** – Subject to Section 7.6 and in accord with the
4 Settlement Agreement and the Settlement Act, the Nations shall have no less right to take
5 groundwater from Trust Land for domestic use than what any person has pursuant to state law. In
6 drilling any such well, the Nations will employ a state-licensed water well driller, require such
7 driller to comply with state well drilling and construction rules, and within thirty (30) days of
8 drilling such well, cause a well completion report to be filed with the OWRB.

9 **7.7 Future Development of Surface Water Uses**

10 **7.7.1 Non-Trust Land** – Any appropriation of surface water from a point of diversion
11 on Non-Trust Land by either Nation must be applied for, evaluated, and processed pursuant to
12 state law and shall thereafter be administered and enforced in accord with state law.

13 **7.7.2 Trust Land** – Subject to Section 7.7 and in accord with the Settlement
14 Agreement and the Settlement Act, each Nation has the right to appropriate surface water within
15 the Settlement Area for use on Trust Lands, which lands would constitute riparian land under
16 state law. The maximum amount of water which either Nation may appropriate for use on
17 riparian Trust Lands under Section 7.7 in any individual Settlement Area Hydrologic Basin shall
18 be five hundred (500) AFY.

19 **7.7.3** In the event either Nation intends to develop surface water on Trust Lands
20 pursuant to Section 7.7, that Nation shall provide notice to the OWRB of the intent to appropriate
21 water. The notice shall be in writing and specify: (i) the location and acreage of the riparian
22 Trust Lands where the water will be used; (ii) the amount of water subject to the appropriation;

1 (iii) the basin and stream from which the water would be appropriated; (iv) the use to which the
2 water will be placed; and (v) the point of diversion.

3 **7.7.4** Following notice to the OWRB and in advance of any appropriation, the Nation
4 intending to appropriate the water and the OWRB shall meet and, using the model then available
5 for the source basin, evaluate whether: (i) water is available at the point of diversion based on an
6 evaluation of Mean Available Flow and, to the extent applicable, any water quality, ecological,
7 and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e); and (ii) the
8 intended use would interfere with existing beneficial uses of water.

9 **7.7.4.1** If following the evaluation the OWRB and the Nations agree that water
10 is available for the appropriation from the stream, the Nation may proceed with the appropriation
11 as noticed or as modified by agreement as between the Nation and OWRB. The priority date for
12 the water developed under Section 7.7 shall be the date of the notice of intent to appropriate. The
13 Nation shall provide notice to the OWRB when the works related to the appropriation are
14 complete and when beneficial use of the water has commenced. In the event the Nation does not
15 develop the works or place any water to beneficial use within seven (7) years of a notice of intent
16 to appropriate provided pursuant to Section 7.7.3, any unused water shall revert to the public and
17 the Nation's right to develop the water pursuant to the notice shall terminate, subject to the right
18 to refile a notice of intent to appropriate. The Nation's appropriation and use of water shall
19 remain subject to the OWRB's right to file an action pursuant to Section 10 to enforce the
20 prohibition against waste or interference in Section 7.8.2 and to administer the right in priority, if
21 necessary.

22 **7.7.4.2** If the Nation and OWRB agree that water is not available for the
23 appropriation from the stream, the Nation shall not proceed with the noticed appropriation.

1 **7.7.4.3** If the Nation and OWRB disagree as to water availability, the Nation
2 may proceed with its noticed appropriation subject to the OWRB’s right to file an action
3 pursuant to Section 10 to seek a determination of availability and/or enforce the prohibition
4 against waste or interference in Section 7.8.2.

5 **7.7.5** A Nation making an appropriation pursuant to Section 7.7 may make changes to
6 the place and purpose or point of diversion of the appropriation, but only within the tract of
7 riparian Trust Land for which the appropriation was originally made and only after written notice
8 to the OWRB at least sixty (60) days prior to such changes. No appropriation made under
9 Section 7.7 may be transferred for purposes of use on another parcel of land without a permit
10 from the OWRB. No increase in the amount of water appropriated shall occur without first
11 satisfying the requirements of Sections 7.7.3 and 7.7.4.

12 **7.7.6 Choctaw Nation Development of Impoundment** – In addition to the Choctaw
13 Nation’s right to appropriate surface water pursuant to Sections 7.7.1 and 7.7.2, the Choctaw
14 Nation may develop an impoundment consistent with the Oklahoma Scenic Rivers Act, 82 O.S.
15 § 896.1, *et seq.* This single impoundment may be located on lands within the Settlement Area
16 and held or controlled by the Choctaw Nation within one of the following Settlement Area
17 Hydrologic Basins: Muddy Boggy, Lower Canadian, Lower Arkansas, Poteau, Kiamichi, Upper
18 Little, or Mountain Fork. The Choctaw Impoundment shall be subject to the following
19 limitations:

20 **7.7.6.1** The Choctaw Impoundment shall not exceed one hundred fifty (150)
21 acres in surface extent nor impound more than one thousand five hundred (1,500) AF.

22 **7.7.6.2** Subject to a water availability determination made consistent with
23 Section 7.7.4, the right to develop the impoundment shall include an initial right to divert up to

1 one thousand five hundred (1,500) AF to fill the impoundment and the right thereafter to offset
2 the evaporative losses in an amount not to exceed five hundred (500) AFY.

3 **7.7.6.3** If the Choctaw Nation chooses to develop the Choctaw Impoundment, it
4 shall provide notice to the OWRB one hundred eighty (180) days prior to commencing
5 construction of the impoundment, which notice shall include plan and design specifications
6 prepared by a registered engineer relating to the design, performance, and safety standards of the
7 dam, which shall, at a minimum, conform to the design, performance and safety standards of
8 OAC § 785 Chapter 25, or updates thereto.

9 **7.8 General Conditions**

10 **7.8.1 Annual Reporting** – Each Nation shall, by March 15 of each year, provide a
11 report to the OWRB indicating the amount of groundwater taken or surface water appropriated
12 and placed to beneficial use in the preceding calendar year, the well location or point of
13 diversion, the purpose of use, and the acreage on which the use occurred.

14 **7.8.2 Prohibition Against Waste and Interference** – No right recognized and
15 provided for herein, nor any change in such the use of such right, authorizes either Nation to
16 appropriate water in a manner that would commit waste or interfere with existing water rights.
17 Determinations of waste or interference shall be based on state law.

18 **7.8.3 OWRB Verification** – Upon reasonable notice, the Nations shall provide the
19 OWRB with access to Non-Trust Lands, Trust Lands, and the lands on which the Choctaw
20 Impoundment is constructed for purposes of OWRB’s verification of appropriations, uses, and
21 dam safety requirements for purposes of ensuring compliance with Section 7. The Nations shall
22 have the opportunity to be represented during any on-site verification.

23

1 **8. ALLOTTEE RIGHTS**

2 **8.1 In General** – Pursuant to the Atoka Agreement as ratified by Congress, Act of June
3 28, 1898, § 29, 30 Stat. 495, 505, and as amended by the act of July 1, 1902, ch. 1362, 32 Stat.
4 641, the Nations issued patents to their respective tribal members and citizens and thereby
5 conveyed to individual Choctaws and Chickasaws all right, title, and interest in and to land that
6 was possessed by the Nations, excepting certain mineral rights.

7 **8.1.1 No Regulatory Authority** – When title passed from the Nations to their
8 respective tribal members and citizens, the Nations did not convey and those individuals did not
9 receive any right of regulatory or sovereign authority, including with respect to water.

10 **8.1.2 Waiver and Delegation by Nations** – In addition to the waivers provided at
11 Sections 2.1.1.3 and 2.1.1.4, the Nations permanently delegate to the State any regulatory
12 authority each may possess over water and water rights on Allotments, which the State shall
13 exercise in accord with Section 8.

14 **8.2 Allottee Rights to Use of Water on an Allotment** – Allottees may use water on an
15 Allotment as set forth in Section 8.

16 **8.2.1 Surface Water Use** – Allottees may divert and use on his Allotment six (6) AFY
17 of surface water per one hundred sixty (160) acres of their Allotment, to be used solely for
18 domestic uses on an Allotment that constitutes riparian land under state law as of the Enactment
19 Date. Such use shall be subject to all rights and protections of state law as of the Enactment Date,
20 including all protections against loss for non-use. An Allottee may divert water under this
21 Section 8.2.1 without a permit or any other authorization from the OWRB.

22 **8.2.2 Groundwater Use** – Allottees may drill wells on their respective Allotments to
23 take and use five (5) AFY of groundwater for domestic uses on their Allotment or any greater

1 amount allowed under state law. Such use shall be subject to all rights and protections of state
2 law as of the Enactment Date, including all protections against loss for non-use. An Allottee may
3 drill wells and use groundwater under this Section 8.2.2 without a permit or any other
4 authorization from the OWRB.

5 **8.2.3 Future Changes in State Law** – If state law changes to limit use of water to an
6 amount less than the amounts specified in Sections 8.2.1 and 8.2.2, an Allottee retains the rights
7 to use water in accord with those Sections, subject to Section 8.4.3. Prior to taking any action to
8 limit an individual’s use of water, the OWRB must give the individual an opportunity to
9 demonstrate that he or she qualifies as an Allottee and that he or she is using water on his or her
10 Allotment pursuant to and in accord with the Settlement Agreement and the Settlement Act.

11 **8.3 Allottee Options for Additional Water** – To use an amount of water in excess of the
12 amounts provided in Section 8.2, an Allottee must either invoke the process set forth in Section
13 8.4 or apply to the OWRB for a permit pursuant to and in accord with state law.

14 **8.4 Determination in Federal District Court** – In lieu of applying to OWRB for a
15 permit to use more water than allowed under Section 8.2, an Allottee may, after written notice to
16 the OWRB, file an action in the United States District Court for the Western District of
17 Oklahoma for determination of the Allottee’s water rights. The Settlement Legislation shall
18 provide for such cause of action and shall require the Allottee to:

19 **8.4.1** join the OWRB as a party; and

20 **8.4.2** publish notice in a newspaper of general circulation within the Settlement Area
21 Hydrologic Basin in which his or her Allotment is located for two (2) consecutive weeks, with
22 first publication appearing within thirty (30) days of the Allottee’s having filed the action.

1 **8.4.3 Determination Final** – If an Allottee elects to have his or her rights determined
2 pursuant to Section 8.4, such determination shall be final as to any rights under federal law and
3 in lieu of any rights to use water on an Allotment as provided in Section 8.2. Nothing herein
4 precludes an Allottee from applying to the OWRB for water rights pursuant to state law or to
5 utilize any rights allowed by state law that do not require a permit from the OWRB.

6 **8.5 OWRB Administration and Enforcement** – Once an Allottee exercises any right
7 under Section 8.2, or has rights determined under Section 8.4, the OWRB shall have jurisdiction
8 to administer those rights. An Allottee may challenge OWRB administration of rights
9 determined under Section 8.4 in the United States District Court for the Western District of
10 Oklahoma.

11 **8.6 Prior Existing State-Law Rights** – Water rights held by an Allottee as of the
12 Enforceability Date pursuant to a permit issued by the OWRB shall continue to be governed by
13 the terms of that permit and applicable state law and regulation.

14 **9. WATER PLANNING IN SETTLEMENT AREA**

15 **9.1 In General**

16 **9.1.1 Oklahoma Comprehensive Water Plan** – In addition to the OWRB’s other
17 regulatory and administrative responsibilities under state law, 82 O.S. § 1086.2 authorizes,
18 empowers, and directs the OWRB to serve as the State’s lead water planning agency, to conduct
19 technical studies in support of ongoing water planning work, and to prepare and publish an
20 update to the Oklahoma Comprehensive Water Plan each decade.

21 **9.1.2 Common Interest** – The State and Nations have a common interest in the long-
22 term sustainability of Settlement Area Waters and supporting water planning with sound science,
23 best available information, and stakeholder input. The State and Nations recognize the value

1 inherent in communicating and coordinating on technical studies and other planning efforts
2 related to Settlement Area Waters. Nothing in Section 9 creates any enforcement right under
3 Section 10.

4 **9.2 Communication and Coordination**

5 **9.2.1 Annual Planning Meeting** – For purposes of supporting the effective
6 coordination of planning efforts relating to the management, protection, conservation,
7 development, and utilization of Settlement Area Waters, OWRB staff and representatives of the
8 Nations will meet annually for:

9 **9.2.1.1** Presentations regarding work the State and each Nation has conducted
10 the prior year relating to technical studies and other water planning efforts within the Settlement
11 Area and discussions of ongoing efforts to update the Oklahoma Comprehensive Water Plan;

12 **9.2.1.2** Presentations regarding work plans and goals the State and each Nation
13 has for the coming year or years relating to technical studies and other water planning efforts
14 within the Settlement Area, including any anticipated federal funding sources for such efforts;

15 **9.2.1.3** Discussion of opportunities for coordination in the interests of efficiency
16 and effectiveness in: (i) water planning efforts and (ii) the application for and use of federal
17 funding; and

18 **9.2.1.4** Designation of appropriate staff-level lines of communication for the
19 coming year.

20 **9.2.2 Notification** – To facilitate effective communication, coordination, and efficient
21 use of resources between annual planning meetings, the Nations will provide timely notice to the
22 OWRB of any additional plans to undertake specific studies, other planning efforts, or federal

1 funding applications, and OWRB staff and representatives of the Nations may meet to discuss
2 potential coordination of efforts in accord with the prior annual planning meeting.

3 **10. ENFORCEMENT OF SETTLEMENT AGREEMENT; VENUE AND**
4 **JURISDICTION**

5 **10.1 In General**

6 **10.1.1** The Settlement Legislation shall provide a federal cause of action for and federal
7 jurisdiction over claims brought by a Party or Parties seeking declaratory or equitable relief for
8 the interpretation or enforcement of the terms of the Settlement Agreement, the Amended
9 Storage Contract Transfer Agreement, and the Settlement Act. No action shall be authorized for
10 money damages against any Party. Neither the Settlement Commission established by the
11 Settlement Act in accord with Section 5.3.3.2 nor the Atoka and Sardis Conservation Projects
12 Board established pursuant to Section 6.5.2.1.1 may sue or be sued, and neither shall be
13 considered a proper or necessary party for any purpose in any action, including actions to
14 interpret or enforce the terms of the Settlement Agreement, the Amended Storage Contract
15 Transfer Agreement, or the Settlement Act.

16 **10.1.2** Venue and jurisdiction for all causes of action relating to the Settlement
17 Agreement, the Amended Storage Contract Transfer Agreement, or the Settlement Act shall be
18 in the United States District Court for the Western District of Oklahoma. No action may be
19 brought in any other state, tribal, or federal court or administrative forum for any purpose
20 relating to the enforcement or the interpretation of the Settlement Agreement, the Amended
21 Storage Contract Transfer Agreement, or Settlement Act.

1 **10.2 Notice and Conference** – The following shall be a prerequisite to any Party’s filing
2 suit to interpret or enforce the Settlement Agreement, the Settlement Act, or the Amended
3 Storage Contract Transfer Agreement pursuant to Section 10:

4 **10.2.1** Any party asserting noncompliance or seeking interpretation of the Settlement
5 Agreement, Settlement Act, or Amended Storage Contract Transfer Agreement shall first serve
6 written notice on the Party or Parties alleged to be in breach of the Settlement Agreement or
7 violation of the Settlement Act;

8 **10.2.2** The notice shall identify the specific provision of the Settlement Agreement,
9 Settlement Act, or Amended Storage Contract Transfer Agreement alleged to have been violated
10 or in dispute and shall specify in detail the asserting Party’s contention and any factual basis for
11 the claim;

12 **10.2.3** Representatives of the Party alleging a breach or violation and the Party or Parties
13 alleged to be in breach or violation shall meet within thirty (30) days of receipt of notice in an
14 effort to resolve the dispute. If the matter is not resolved to the satisfaction of the Party alleging
15 breach within ninety (90) days of the original notice, such Party may take any appropriate action
16 for interpretation or enforcement consistent with the Settlement Agreement and the Settlement
17 Act.

18 **11. GENERAL COMMITMENTS**

19 **11.1** The State, the Nations, and the City shall take any and all actions necessary to support
20 all terms and conditions of the Settlement Agreement, take all necessary actions to satisfy all
21 conditions precedent to the enforceability of the Settlement Agreement, and undertake all actions
22 necessary to fulfill all obligations set forth herein, whether those obligations arise prior to or after
23 the Enforceability Date. Such support and actions include but are not limited to the following:

1 **11.1.1** Nations non-objection consistent with Section 2.6 to the conditions relating to the
2 City’s Amended Permit as set forth in Section 6;

3 **11.1.2** OWRB staff support for the conditions relating to the City’s Amended Permit as
4 set forth in Section 6;

5 **11.1.3** State, Nations, and City support to pursue and obtain enactment of the Settlement
6 Legislation; and

7 **11.1.4** Cooperation among the State, Nations, and City to work with the United States in
8 conforming the Settlement Agreement to the Settlement Act, as may be necessary, in a timely
9 manner.

10 **11.1.5** To the extent OWRB may be required to take action prior to the Enforceability
11 Date which implicates the Settlement Agreement, the OWRB shall work with the Nations and
12 the City to ensure that the integrity of the Settlement Agreement and the benefits it secures to the
13 Parties are maintained and secured from the Execution Date through the Enforceability Date and
14 thereafter.

15 **11.2 Binding Effect** – Execution of the Settlement Agreement by all Parties signifies that
16 all provisions of the Settlement Agreement have been approved by each signatory Party, that
17 each person signing had the lawful authority to do so on behalf of the Party designated, and that
18 each Party is bound by all provisions of the Settlement Agreement according to its terms and the
19 Settlement Act.

20 **12. NOTICE**

21 **12.1** Unless otherwise specified by any Party in writing sent to all other Parties, all notice
22 required to be given under the Settlement Agreement shall be written and given as follows:
23

1 **12.1.1 To the State**

2 The Governor of the State of Oklahoma
3 2300 N. Lincoln Boulevard, Room 212
4 Oklahoma City, Oklahoma 73105

5 The Attorney General of the State of Oklahoma
6 313 NE 21st Street
7 Oklahoma City, Oklahoma 73105

8 **12.1.2 To the Choctaw Nation of Oklahoma**

9 The Chief of the Choctaw Nation of Oklahoma
10 P.O. Box 1210
11 Durant, Oklahoma 74702

12 The General Counsel of the Choctaw Nation of Oklahoma
13 P.O. Box 1210
14 Durant, Oklahoma 74702

15 **12.1.3 To the Chickasaw Nation**

16 The Governor of the Chickasaw Nation
17 P.O. Box 1548
18 Ada, Oklahoma 74821

19 The General Counsel of the Chickasaw Nation
20 P.O. Box 1548
21 Ada, Oklahoma 74821

22 **12.1.4 To the OWRB**

23 The Executive Director of the Oklahoma Water Resources Board
24 3800 N. Classen Boulevard
25 Oklahoma City, Oklahoma 73118

26 The General Counsel for the Oklahoma Water Resources Board
27 3800 N. Classen Boulevard
28 Oklahoma City, Oklahoma 73118

29 **12.1.5 To the City**

30 The Mayor of the City of Oklahoma City
31 200 N. Walker Avenue
32 Oklahoma City, Oklahoma 73102

1 The City Manager of the City of Oklahoma City
2 200 N. Walker Avenue
3 Oklahoma City, Oklahoma 73102

4 The Municipal Counselor for the City of Oklahoma City
5 200 N. Walker Avenue
6 Oklahoma City, Oklahoma 73102

7 **12.1.6 To the Trust**

8 The General Manager of the Oklahoma City Water Utilities Trust
9 420 W. Main Street, Suite 500
10 Oklahoma City, Oklahoma 73102

11 **12.1.7 To the United States**

12 The Secretary of the United States Department of the Interior
13 1849 C Street NW
14 Washington, DC 20240

15 **13. EXPIRATION DATE**

16 **13.1** The following shall apply if: (i) the Secretary does not publish a certification in
17 accord with Section 4.2 on or before September 30, 2020, or on or before the date that is
18 otherwise established by written agreement as provided by Section 13; or (ii) the Parties are
19 unable to resolve an assertion of non-conformance raised pursuant to Section 6.2.3:

20 **13.1.1** The Settlement Agreement shall be null and void, except for Section 13 and any
21 provisions of the Settlement Agreement that are necessary to effectuate Section 13 (but only for
22 purposes of effectuating Section 13) and, except with respect to Section 13, the State, the
23 Nations, the City, the Trust, and the United States shall not be bound by any obligations or
24 benefit from any rights recognized thereunder.

25 **13.1.2** The waivers and releases of Section 2.1 and 2.2 and Exhibits 5 and 6 shall not
26 become effective.

1 **13.1.3** The waivers of sovereign immunity and consents to suit provided in Section 3
2 shall not become effective.

3 **13.1.4** If the City Permit has been issued, it shall be null and void. The City may re-
4 submit to the OWRB, and the OWRB shall be deemed to have accepted, the OWRB Permit
5 Application No. 2007-017 without having waived the priority date and appropriate amounts of
6 its initial permit application.

7 **13.1.5** The Amended Storage Contract shall be null and void notwithstanding any
8 execution or approval thereof, and the Storage Contract Transfer Agreement shall be deemed to
9 be in full force and effect as between the State and the Trust.

10 **13.1.6** If the Atoka and Sardis Conservation Projects Fund has been established and
11 funded, the funds shall be returned to the respective funding Parties with accrued interest, if any.

12 **13.2** The occurrence of the Expiration Date shall not, in any way, prejudice:

13 **13.2.1** any argument or suit that the Nations may bring to contest the City's pursuit of
14 OWRB Permit Application No. 2007-017 or any modified version thereof or to contest the
15 Storage Contract Transfer Agreement;

16 **13.2.2** any argument, defense, or suit the State may bring or assert with regard to the
17 Nations' claims to water or over water in the Settlement Area; or

18 **13.2.3** any argument, defense or suit the City may bring or assert with regard to the
19 Nations' claims to water or over water in the Settlement Area relating to OWRB Permit
20 Application No. 2007-017 or any modified version thereof or to contest the Storage Contract
21 Transfer Agreement.

22 **13.3** The Expiration Date may be extended by the Parties if:

23 **13.3.1** prior to the Enactment Date, all Parties agree to such extension in writing; or

1 **13.3.2** after the Enactment Date, all Parties agree to such extension in writing and such
2 extension is in accord with the Settlement Act.

3 **14. EFFECT OF SETTLEMENT AGREEMENT**

4 **14.1 Effect of Settlement Agreement** – The Settlement Agreement shall bind the United
5 States as trustee for the Nations, the State, the Nations, and the OWRB as to the claims and rights
6 of the Nations in any general stream adjudication that may in the future be filed in the State of
7 Oklahoma.

8 **14.2** By entering the Settlement Agreement, the United States does not concede that the
9 State and the OWRB had jurisdiction over water or rights on Trust Lands or Allotments prior to
10 the Enactment Date.

11 **14.3** Nothing in the Settlement Agreement:

12 **14.3.1** affects the authority of each respective Nation to manage and regulate the exercise,
13 on Trust Land consistent with the Settlement Agreement and the Settlement Act, of its water rights
14 recognized by or established pursuant to Section 7;

15 **14.3.2** affects the ability of the United States, acting as sovereign, to take actions
16 authorized by law, including any laws relating to health, safety, or the environment, including:

17 **14.3.2.1** the Comprehensive Environmental Response, Compensation, and
18 Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*);

19 **14.3.2.2** the Safe Drinking Water Act (42 U.S.C. § 300f, *et seq.*);

20 **14.3.2.3** the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); and

21 **14.3.2.4** any regulations implementing the Acts described in Section 14.3.2;

22 **14.3.3** affects the ability of the United States to raise defenses based on 43 U.S.C. § 666(a);
23 and

1 **14.3.4** affects any rights, claims, or defenses the United States may have with respect to
2 the use of water on federal lands in the Settlement Area that are not Trust Lands or Allotments.

3 **15. EXECUTION OF AGREEMENT; COUNTERPARTS**

4 **15.1** The Parties may execute the Settlement Agreement in several counterparts, each of
5 which shall be deemed an original and all of which shall constitute one and the same instrument
6 and shall not become effective unless and until counterparts have been signed by all of the Parties
7 and delivered to the other Parties; it being understood that all Parties need not sign the same
8 counterparts.

9 **15.2** The exchange of copies of the Settlement Agreement and of signature pages by
10 transmission of electronic facsimile, regardless of format, shall constitute effective execution and
11 delivery of the Settlement Agreement as to the Parties and may be used in lieu of the original
12 Settlement Agreement for all purposes. Signatures of the Parties transmitted by facsimile or
13 electronic record shall be deemed to be their original signatures for all purposes.

14 **16. DISCLAIMER** – The Settlement Agreement applies only to the claims and rights of the
15 Nations, and nothing in the Settlement Agreement shall be construed in any way to quantify,
16 establish, or in any way serve as precedent regarding the land and water rights, claims, or
17 entitlements to water of any American Indian tribe other than the Nations, including any other
18 American Indian tribe in the State of Oklahoma.

19 **17. SIGNATURES**

20 UNITED STATES OF AMERICA
21

22
23
24
25 ON POST-ENACTMENT DATE
26 Sally Jewell, Secretary
27 United States Department of the Interior
28

Date: _____

STATE OF OKLAHOMA

Mary Fallin
Mary Fallin, Governor

Date: 12/12/2016

E. Scott Pruitt
E. Scott Pruitt, Attorney General

Date: 12/7/2016

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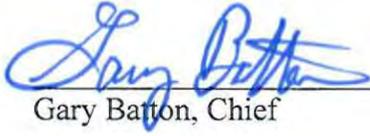
CHICKASAW NATION

Bill Anoatubby
Bill Anoatubby, Governor

Date: AUG 15 2016

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CHOCTAW NATION OF OKLAHOMA



Gary Patton, Chief

Date: 8-17-16

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OKLAHOMA WATER RESOURCES BOARD

Linda Lambert

Linda Lambert, Chair

Date: August 12, 2016



Attestation:

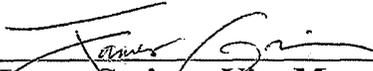
Jason Hitch

Jason Hitch, Secretary

Date: August 12, 2016

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CITY OF OKLAHOMA CITY



James Greiner, Vice Mayor

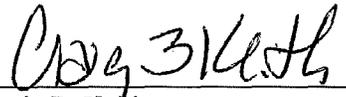
Date: 8-16-16

ATTEST:


City Clerk



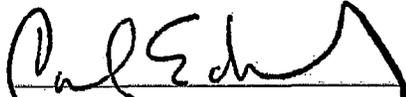
REVIEWED for form and legality.



Craig B. Keith
Assistant Municipal Counselor

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OKLAHOMA CITY WATER UTILITIES TRUST



Carl E. Edwards, Jr., Vice Chair

Date: 8-16-16

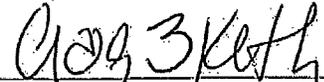
ATTEST:



Secretary



REVIEWED for form and legality.



Craig B. Keith, General Counsel and
Assistant Municipal Counselor

**State of Oklahoma, Choctaw Nation of Oklahoma,
Chickasaw Nation, City of Oklahoma City Water Settlement
August 2016**

Exhibit List

1. Settlement Area Map
2. Settlement Legislation (draft, to be replaced with Settlement Act prior to Enforcement Date)
3. Kiamichi Basin model – summary technical memorandum
4. Amended Storage Contract Transfer Agreement (draft)
5. Chickasaw Nation waivers (draft)
6. Choctaw Nation of Oklahoma waivers (draft)
7. Motion and Order, *United States v. Oklahoma Water Resources Board* (draft)
8. Motion and Order, *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.* (draft)
9. Motion and Order, *Oklahoma Water Resources Board v. United States, et al.* (draft)
10. Settlement Area Hydrologic Basin Map
11. Water Preservation Infrastructure Fund priority system and formula
12. City of Oklahoma City Conservation Measures
13. Lake Level Release Restriction Accounting Memorandum
14. City of Oklahoma City Schedule of Use
15. Right of Way Survey and Terms (draft)

1 Exhibit 2: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
2 City Water Settlement
3

4 An Act

5 This Act may be cited as

6 “The State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma City
7 Water Settlement Act.”

8 SEC. 1. SHORT TITLE; TABLE OF CONTENTS

9 (a) SHORT TITLE.— This title may be cited as the “State of Oklahoma, Choctaw Nation of
10 Oklahoma, Chickasaw Nation, City of Oklahoma City Water Settlement Act.”

11 (b) TABLE OF CONTENTS.— The table of contents of this Act is as follows—

12 Sec. 1. Short Title; Table of Contents

13 Sec. 2. Purposes

14 Sec. 3. Definitions

15 Sec. 4. Approval of the Settlement Agreement

16 Sec. 5. Approval of the Amended Storage Contract Transfer Agreement and 1974 Contract

17 Sec. 6. Settlement Area Waters

18 Sec. 7. City of Oklahoma City Permit for Appropriation of Stream Water from the Kiamichi
19 River

20 Sec. 8. Settlement Commission

21 Sec. 9. Waivers and Releases of Claims

22 Sec. 10. Enforceability Date

23 Sec. 11. Jurisdiction; Waivers of Immunity for Interpretation and Enforcement

24 Sec. 12. Additional Provisions

25 Sec. 13 Disclaimer
26

1 SEC. 2. PURPOSES

2 The purposes of this Act are—

3 (1) to permanently resolve and settle those claims to Settlement Area Waters of the Choctaw
4 Nation of Oklahoma and the Chickasaw Nation as set forth in the Settlement Agreement and this Act,
5 including all claims or defenses in and to *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927
6 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), or any future stream adjudication in
7 the State of Oklahoma; and

8 (2) to approve, ratify, and confirm the State of Oklahoma, Choctaw Nation of Oklahoma,
9 Chickasaw Nation, City of Oklahoma City Water Settlement (“Settlement Agreement”); and

10 (3) to authorize and direct the Secretary to execute the Settlement Agreement and to perform
11 all obligations of the Secretary under the Settlement Agreement and this Act; and

12 (4) to approve, ratify, and confirm the Amended Storage Contract Transfer Agreement
13 among the State of Oklahoma, the City of Oklahoma City, and the Oklahoma City Water Utilities Trust;
14 and

15 (5) to authorize and direct the Secretary of the Army to approve the Amended Storage
16 Contract Transfer Agreement and for the United States Army Corps of Engineers to perform all
17 obligations under the 1974 Contract, the Amended Storage Contract Transfer Agreement, and this Act;
18 and

19 (6) to authorize all actions necessary for the United States to meet its obligations under the
20 Settlement Agreement, the Amended Storage Contract Transfer Agreement, and this Act.

21 SEC. 3. DEFINITIONS

22 In this Act—

23 (1) 1974 STORAGE CONTRACT.— means the contract approved by the Secretary of the
24 United States Army on April 9, 1974, between the United States Army Corps of Engineers and the Water
25 Conservation Storage Commission of the State of Oklahoma, predecessor to the Oklahoma Water

1 Resources Board, pursuant to the Water Supply Act of 1958 (Pub. L. No. 85-500, § 301, 72 Stat. 297,
2 319), as amended, and other applicable federal law.

3 (2) ADMINISTRATIVE SET-ASIDE SUBCONTRACTS.— means the subcontracts the City
4 will issue for the use of Conservation Storage Capacity in Sardis Lake as provided by Section 4 of the
5 Amended Storage Contract Transfer Agreement.

6 (3) ALLOTMENT.— means that land within the Settlement Area held by an Allottee subject
7 to a statutory restriction on alienation or held by the United States in trust for the benefit of an Allottee.

8 (4) ALLOTTEE.— means an enrolled member of the Choctaw Nation of Oklahoma or citizen
9 of the Chickasaw Nation who, or whose estate, holds an interest in an Allotment.

10 (5) AMENDED PERMIT APPLICATION.— means the City’s permit application to the
11 OWRB, No. 2007-017, as amended as provided by the Settlement Agreement.

12 (6) AMENDED STORAGE CONTRACT TRANSFER AGREEMENT.— means the 2010
13 Storage Contract Transfer Agreement between the City, Trust, and OWRB, as amended, as provided by
14 the Settlement Agreement and this Act.

15 (7) ATOKA AND SARDIS CONSERVATION PROJECTS FUND.— means that fund
16 established, funded and managed as set forth in Section 6.5.2 of the Settlement Agreement.

17 (8) CHICKASAW NATION.— means the Chickasaw Nation, a federally recognized
18 American Indian Tribe organized by a Constitution its citizens ratified in 1856 and subsequently modified
19 and re-ratified in 1983 and subsequently amended.

20 (9) CHOCTAW NATION OF OKLAHOMA (“CHOCTAW NATION”).— means the
21 Choctaw Nation of Oklahoma, a federally recognized American Indian Tribe organized by a Constitution
22 its members ratified in 1830 and subsequently modified and re-ratified in 1983 and subsequently
23 amended.

24 (10) CITY OF OKLAHOMA CITY (“CITY”).— means the City of Oklahoma City, an
25 Oklahoma municipal corporation and a charter city organized and existing pursuant to Oklahoma
26 Constitution Article XVIII, Section 3. References to “City” shall refer to the City or the City and the

1 Oklahoma City Water Utilities Trust acting jointly as applicable to the capacity set forth in the said
2 reference.

3 (11) CITY PERMIT.— means any permit issued to the City by the OWRB pursuant to the
4 Amended Permit Application and consistent with the Settlement Agreement.

5 (12) CONSERVATION STORAGE CAPACITY.— means the total storage capacity as
6 designated by the 1974 Contract in Sardis Lake between elevations 599.0 feet above mean sea level and
7 542.0 feet above mean sea level, which is estimated to contain 297,200 acre-feet of water after adjustment
8 for sediment deposits, and which may be used for municipal and industrial water supply, fish and wildlife,
9 and recreation.

10 (13) ENACTMENT DATE.— means the date of enactment of this Act.

11 (14) ENFORCEABILITY DATE .— means the date on which the Secretary publishes notice in
12 the Federal Register certifying that the conditions of section 10 of this Act have been satisfied.

13 (15) FUTURE USE STORAGE.— means that portion of the Conservation Storage Capacity
14 that was designated by the 1974 Contract as being available for future use for municipal and industrial
15 water supply, which portion equals 52.322 percent, or an estimated 155,500 acre-feet, of the total
16 Conservation Storage Capacity in Sardis Lake.

17 (16) KIAMICHI BASIN HYDROLOGIC MODEL.— means the surface water hydrologic
18 model for the Kiamichi Basin, inclusive of tributaries thereto, that the Nations, the State, and the City
19 developed for purposes of the Settlement Agreement, documentation of which is to be made available by
20 the OWRB at its offices in Oklahoma City.

21 (17) NATIONS.— means collectively the Choctaw Nation of Oklahoma and the Chickasaw
22 Nation.

23 (18) OKLAHOMA CITY WATER UTILITIES TRUST (“TRUST”).— means the Oklahoma
24 City Water Utilities Trust, and its successor entities, if any, formerly known as the Oklahoma City
25 Municipal Improvement Authority, a public trust established pursuant to state law with the City of

1 Oklahoma City as its beneficiary. References to “Trust” shall refer to the Oklahoma City Water Utilities
2 Trust acting severally in the said reference.

3 (19) OKLAHOMA WATER RESOURCES BOARD (“OWRB”).— means a body corporate
4 and politic and an instrumentality, agency, and department of the State of Oklahoma, created by and
5 existing pursuant to Oklahoma law, and its successor entities, if any.

6 (20) SARDIS LAKE.— means the reservoir, formerly known as Clayton Lake, whose dam is
7 located in Section 19, Township 2 North, Range 19 East of the Indian Meridian in Pushmataha County,
8 Oklahoma, the construction, operation, and maintenance of which was authorized by the Flood Control
9 Act of 1962.

10 (21) SECRETARY.— means the Secretary of the United States Department of the Interior.

11 (22) SECRETARY OF THE ARMY.— means the Secretary of the United States Army.

12 (23) SETTLEMENT AGREEMENT.— means the settlement agreement as approved by the
13 Choctaw Nation of Oklahoma, Chickasaw Nation, State of Oklahoma, City, and Trust effective August
14 17, 2016, as revised to conform with this Act, as applicable.

15 (24) SETTLEMENT AREA.— means that area lying between the South Canadian River and
16 Arkansas River and the Oklahoma and Texas state line, the Oklahoma and Arkansas state line, and the
17 98th Meridian and which generally includes the following counties, or portions thereof, in the State of
18 Oklahoma: Atoka, Bryan, Carter, Choctaw, Coal, Garvin, Grady, McClain, Murray, Haskell, Hughes,
19 Jefferson, Johnston, Latimer, LeFlore, Love, Marshall, McCurtain, Pittsburgh, Pontotoc, Pushmataha, and
20 Stephens, which area is depicted in Exhibit 1 to the Settlement Agreement.

21 (25) SETTLEMENT AREA WATERS.— means those waters which are located within the
22 Settlement Area and any of the following basins, as denominated in the 2012 Update of the Oklahoma
23 Comprehensive Water Plan: Beaver Creek (24, 25, and 26), Blue (11 and 12), Clear Boggy (9), Kiamichi
24 (5 and 6), Lower Arkansas (46 and 47), Lower Canadian (48, 56, 57, and 58), Lower Little (2), Lower
25 Washita (14), Mountain Fork (4), Middle Washita (15 and 16), Mud Creek (23), Muddy Boggy (7 and 8),

1 Poteau (44 and 45), Red River Mainstem (1, 10, 13, and 21), Upper Little (3), Walnut Bayou (22), which
2 basins are illustrated in Exhibit 10 to the Settlement Agreement.

3 (26) STATE OF OKLAHOMA (“STATE”).— means the State of Oklahoma, a state of the
4 United States of America, inclusive of its subsidiary agencies.

5 (27) STORAGE CONTRACT TRANSFER AGREEMENT (“2010 AGREEMENT”).— means
6 the agreement entered into by the OWRB and the Trust, dated June 15, 2010, relating to the State’s
7 assignment of the 1974 Contract and transfer of rights, title, interests, and obligations thereunder to the
8 Trust, including the State’s interests in the Conservation Storage Capacity and associated repayment
9 obligations to the United States.

10 (28) UNITED STATES.— means the United States of America acting in its capacity as trustee
11 for the Nations, their respective members, citizens, and Allottees, or as specifically stated or limited in
12 any given reference herein, in which case it shall mean the United States of America acting in the
13 capacity as set forth in said reference.

14 SEC. 4. APPROVAL OF THE SETTLEMENT AGREEMENT

15 (a) RATIFICATION.—

16 (1) IN GENERAL.— Except as modified by this Act, and to the extent the Settlement
17 Agreement does not conflict with this Act, the Settlement Agreement is authorized, ratified, and
18 confirmed.

19 (2) AMENDMENTS.— If amendments are executed to make the Settlement Agreement
20 consistent with this Act, those amendments are also authorized, ratified, and confirmed to the extent such
21 amendments are consistent with this Act.

22 (b) EXECUTION OF SETTLEMENT AGREEMENT.— To the extent the Settlement Agreement
23 does not conflict with this Act, the Secretary is directed to and shall promptly execute the Settlement
24 Agreement, including all exhibits to or parts of the Settlement Agreement requiring the signature of the
25 Secretary and any amendments necessary to make the Settlement Agreement consistent with this Act.

1 Execution of the Settlement Agreement by the Secretary under this section shall not constitute a major
2 federal action under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).

3 SEC. 5. APPROVAL OF THE AMENDED STORAGE CONTRACT TRANSFER AGREEMENT AND
4 1974 CONTRACT

5 (a) RATIFICATION.— Except to the extent any provision of the Amended Storage Contract
6 Transfer Agreement conflicts with any provision of this Act, the Amended Storage Contract Transfer
7 Agreement is authorized, ratified, and confirmed. To the extent the Amended Storage Contract Transfer
8 Agreement, as authorized, ratified, and confirmed, modifies or amends the 1974 Contract, such
9 modifications or amendments to the 1974 Contract are also authorized, ratified, and confirmed.

10 (b) AMENDMENTS.— To the extent amendments are executed to make the Amended Storage
11 Contract Transfer Agreement consistent with this Act, such amendments are also authorized, ratified, and
12 confirmed.

13 (c) APPROVAL BY THE SECRETARY OF THE ARMY.— The Secretary of the Army shall
14 approve the Amended Storage Contract Transfer Agreement after its execution by the State and the City.

15 (d) MODIFICATION OF SEPTEMBER 11, 2009 ORDER IN UNITED STATES V. OKLAHOMA
16 WATER RESOURCES BOARD, CIV 98-00521 (N.D. OK.).— The Secretary of the Army, through
17 counsel, shall cooperate and work with the State of Oklahoma to file any motion and proposed order to
18 modify or amend the September 11, 2009, Order of the United States District Court for the Northern
19 District of Oklahoma as may be necessary to conform the September 11, 2009, Order to the Amended
20 Storage Contract Transfer Agreement, the Settlement Agreement, and this Act.

21 (e) CONSERVATION STORAGE CAPACITY.— The allocation of the use of the Conservation
22 Storage Capacity in Sardis Lake for Administrative Set-Aside Subcontracts, City water supply, and fish
23 and wildlife and recreation as provided by the Amended Storage Contract Transfer Agreement is
24 authorized, ratified and approved.

1 (f) WAIVERS AND AUTHORIZATIONS.— Notwithstanding any requirement of the Water Supply
2 Act of 1958 (Pub. L. No. 85-500, § 301, 72 Stat. 297, 319), the Flood Control Act of 1962 (Pub. L. No.
3 87-874, § 203, 76 Stat. 1173, 1187), the 1974 Storage Contract, or any other provision of law, the entirety
4 of any repayment obligations, inclusive of interest, relating to that portion of Conservation Storage
5 Capacity allocated by the 1974 Contract to Future Use Storage in Sardis Lake is waived and shall be
6 deemed non-reimbursable, and any obligation of the State and, upon execution and approval of the
7 Amended Storage Contract Transfer Agreement, of the City and Trust under the 1974 Contract regarding
8 capital costs and any operation, maintenance and replacement costs and interest otherwise attributable to
9 Future Use Storage in Sardis Lake is waived and shall be non-reimbursable.

10 (g) CONSISTENT WITH AUTHORIZED PURPOSES; NO MAJOR OPERATIONAL
11 CHANGE.— The Amended Storage Contract Transfer Agreement, the Secretary’s approval of the
12 Amended Storage Contract Transfer Agreement pursuant to this Act, and the waiver of any Future Use
13 Storage repayment obligation as provided by section 5(f) of this Act—

14 (1) are deemed consistent with the authorized purposes for Sardis Lake as contemplated by the
15 Flood Control Act of 1962 (Pub. L. No. 87-874, § 203, 76 Stat. 1173, 1187), as amended;

16 (2) shall not constitute a reallocation of Sardis Lake storage, and to the extent the Amended
17 Storage Contract Transfer Agreement, the Secretary of the Army’s approval thereof, or the waiver of any
18 Future Use Storage repayment obligation could be so construed, any such reallocation is hereby
19 authorized, ratified, and approved without any further action by the United States Army Corps of
20 Engineers; and

21 (3) do not affect the purposes for which Sardis Lake was authorized, surveyed, planned, and
22 constructed as contemplated by the Flood Control Act of 1962 (Pub. L. No. 87-874, § 203, 76 Stat. 1173,
23 1187), as amended, and shall not constitute a “major structural or operational change” under 43 U.S.C. §
24 390b(e), and to the extent the Amended Storage Contract Transfer Agreement, the Secretary of the
25 Army’s approval thereof, or the waiver of any Future Use Storage Repayment obligation could be so
26 construed, such change is authorized, ratified, and approved.

1 (h) NO FURTHER AUTHORIZATION REQUIRED.— This Act shall be deemed sufficient and
2 complete authorization, without further study or analysis, for the Secretary of the Army to approve the
3 Amended Storage Contract Transfer Agreement and, thereafter, for the United States Army Corps of
4 Engineers to manage storage in Sardis Lake pursuant to and in accord with the 1974 Contract, the
5 Amended Storage Contract Transfer Agreement, the Settlement Agreement, and this Act.

6 SEC. 6. SETTLEMENT AREA WATERS

7 (a) PERMITTING, ALLOCATION, AND ADMINISTRATION OF SETTLEMENT AREA
8 WATERS PURSUANT TO THE SETTLEMENT AGREEMENT.— Upon the Enforceability Date and
9 thereafter, Settlement Area Waters shall be permitted, allocated and administered by the OWRB in accord
10 with the Settlement Agreement and this Act.

11 (b) SETTLEMENT AREA WATERS: CHOCTAW NATION AND CHICKASAW NATION.—
12 Upon the Enforceability Date and thereafter, the Nations shall have the right to use and to develop the
13 right to use Settlement Area Waters solely in accordance with the Settlement Agreement and this Act.

14 (c) SETTLEMENT AREA WATERS: ALLOTTEES.—

15 (1) IN GENERAL.— Pursuant to the Atoka Agreement as ratified by Congress, Act of June
16 28, 1898, § 29, 30 Stat. 495, 505, and as amended by the act of July 1, 1902, ch. 1362, 32 Stat. 641, the
17 Nations issued patents to their respective tribal members and citizens and thereby conveyed to individual
18 Choctaws and Chickasaws, all right, title, and interest in and to land that was possessed by the Nations,
19 excepting certain mineral rights.

20 (i) NO REGULATORY AUTHORITY.— When title passed from the Nations to
21 their respective tribal members and citizens, the Nations did not convey and those individuals did not
22 receive any right of regulatory or sovereign authority including with respect to water.

23 (ii) WAIVER AND DELEGATION BY NATIONS.— In addition to the waivers
24 provided in the Settlement Agreement and authorized to be executed by section 9 of this Act, the Nations,
25 on their own behalf, permanently delegate to the State any regulatory authority each may possess over

1 water rights on Allotments, which the State shall exercise in accord with the Settlement Agreement and
2 this Act.

3 (2) RIGHT TO USE WATER.— Allottees may use water on an Allotment as set forth in the
4 Settlement Agreement and this Act.

5 (i) SURFACE WATER USE.— Allottees may divert and use on his Allotment six
6 acre-feet per year of surface water per 160 acres of their Allotment, to be used solely for domestic uses on
7 an Allotment that constitutes riparian land under applicable state law as of the Enactment Date. Such use
8 shall be subject to all rights and protections of state law as of the Enactment Date, including all
9 protections against loss for non-use. An Allottee may divert water under this section without a permit or
10 any other authorization from the OWRB.

11 (ii) GROUNDWATER USE. — Allottees may drill wells on their respective
12 Allotments to take and use five acre-feet per year for domestic uses on their Allotment or any greater
13 amount allowed under state law. Such use shall be subject to all rights and protections of state law as of
14 the Enactment Date, including all protections against loss for non-use. An Allottee may drill wells and
15 use water under this section without a permit or any other authorization from the OWRB.

16 (iii) FUTURE CHANGES IN STATE LAW.— If state law changes to limit use of
17 water to an amount less than the amounts specified in sections 6(c)(2)(i) and 6(c)(2)(ii), an Allottee
18 retains the rights to use water in accord with those sections subject to sections 6(c)(5) and 6(c)(6). Prior to
19 taking any action to limit an individual’s use of water, the OWRB must give the individual an opportunity
20 to demonstrate that he or she qualifies as an Allottee and that he or she is using water on his or her
21 Allotment pursuant to and in accord with the Settlement Agreement and this Act.

22 (3) ALLOTTEE OPTIONS FOR ADDITIONAL WATER.— To use an amount of water in
23 excess of the amounts provided in section 6(c)(2), an Allottee must either invoke the process set forth in
24 section 6(c)(4) or apply to the OWRB for a permit pursuant to and in accord with state law.

25 (4) DETERMINATION IN FEDERAL DISTRICT COURT.— In lieu of applying to OWRB
26 for a permit to use more water than allowed under section 6(c)(2) an Allottee may, after written notice to

1 the OWRB, file an action in the United States District Court for the Western District of Oklahoma for
2 determination of the Allottee's right to water. For purposes of this section, jurisdiction shall lie in the
3 United States District Court for the Western District of Oklahoma and the waivers of immunity provided
4 in section 11(b)(1) and section 11(b)(2) shall apply. An Allottee filing an action pursuant to this section
5 shall:

- 6 (i) join the OWRB as a party; and
- 7 (ii) publish notice in a newspaper of general circulation within the Settlement Area
8 Hydrologic Basin for two consecutive weeks, with first publication appearing within thirty (30) days of
9 the Allottee's having filed the action.

10 (5) DETERMINATION FINAL.— If an Allottee elects to have his or her rights determined
11 pursuant to section 6(c)(4), such determination shall be final as to any rights under federal law and in lieu
12 of any rights to use water on an Allotment as provided in section 6(c)(2). Nothing herein precludes an
13 Allottee from applying to the OWRB for water rights pursuant to state law or utilize any rights allowed
14 by state law that do not require a permit from the OWRB.

15 (6) OWRB ADMINISTRATION AND ENFORCEMENT.— Once an Allottee exercises any
16 right under section 6(c)(2) or has rights determined under section 6(c)(4), the OWRB shall have
17 jurisdiction to administer those rights. An Allottee may challenge OWRB administration of rights
18 determined under section 6(c)(4), in the United States District Court for the Western District of
19 Oklahoma.

20 (7) PRIOR EXISTING STATE-LAW RIGHTS.— Water rights held by an Allottee as of the
21 Enforcement Date pursuant to a permit issued by the OWRB shall continue to be governed by the terms
22 of that permit and applicable state law and regulation.

23

1 SEC. 7. CITY OF OKLAHOMA CITY PERMIT FOR APPROPRIATION OF STREAM WATER
2 FROM THE KIAMICHI RIVER

3 (a) IN GENERAL.— The City Permit shall be processed, evaluated, issued, and administered
4 consistent with and in accordance with the Settlement Agreement and this Act.

5 SEC. 8. SETTLEMENT COMMISSION

6 (a) ESTABLISHMENT.— There is hereby established the Settlement Commission.

7 (b) MEMBERS.— The Settlement Commission shall be comprised of five (5) members, appointed as
8 follows: (i) one by the Governor of the State; (ii) one by the Attorney General of the State; (iii) one by
9 the Chief of the Choctaw Nation; (iv) one by the Governor of the Chickasaw Nation; and (v) one by
10 agreement of the aforementioned four members. In the event the four aforementioned members cannot
11 agree on a single person, they shall jointly submit a list of no fewer than three (3) names to the Chief
12 Judge for the United States District Court for the Eastern District of Oklahoma, who shall then make the
13 appointment from that list. The initial appointments to the Settlement Commission shall be made within
14 sixty (60) days of the Enforceability Date.

15 (c) MEMBER TERMS.— Each Settlement Commission member shall serve at the pleasure of his or
16 her appointing entity. Appointing entities may reimburse their appointed members for costs associated
17 with their service but otherwise members shall serve without compensation. In the event of a Settlement
18 Commission member's removal or resignation, that member's original appointing entity shall name his or
19 her replacement. The fifth member may be removed or replaced by a majority vote of the other members
20 based on a failure of the member to carry out his or her duties as a member of the Commission.

21 (d) DUTIES.— The duties and authority of the Settlement Commission are specifically set forth in
22 the Settlement Agreement, and the Settlement Commission shall not possess or exercise any duty or
23 authority not stated therein.

24

1 SEC. 9. WAIVERS AND RELEASES OF CLAIMS

2 (a) CLAIMS BY THE NATIONS AND THE UNITED STATES AS TRUSTEE FOR EACH
3 NATION.— Subject to the retention of rights and claims provided in section 9(e) and except to the extent
4 that rights are recognized in the Settlement Agreement or Settlement Act, including recognition of each
5 Nation’s water rights, the Chickasaw Nation and Choctaw Nation, each in its own right and on behalf of
6 itself and its respective citizens and members (except in their capacities as Allottees), and the United
7 States acting in its capacity as trustee for the Chickasaw Nation and Choctaw Nation and the respective
8 citizens and members of each Nation (except in their capacities as Allottees), are authorized to execute a
9 waiver and release of:

10 (1) all of the following claims the Chickasaw Nation, the Choctaw Nation, or the United States
11 acting in its capacity as trustee for either Nation asserted or which could have asserted in any proceeding
12 filed or which could have been filed up to or upon the Enforceability Date, including *Chickasaw Nation*,
13 *Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.) or *OWRB v. United States, et al.* CIV 12-275
14 (W.D. Ok.), or any general stream adjudication:

- 15 (i) claims to the ownership of water in the State of Oklahoma;
- 16 (ii) claims to water rights and rights to use water diverted or taken from a location
17 within the State of Oklahoma;
- 18 (iii) claims to authority over the allocation and management of water and
19 administration of water rights, including authority over third-party ownership of or rights to use water
20 diverted or taken from a location within the State of Oklahoma and ownership or use of water on
21 Allotments by Allottees or anyone else using water on an Allotment with the Allottee’s permission;
- 22 (iv) claims that the State lacks authority over the allocation and management of water
23 and administration of water rights, including authority over the ownership of or rights to use water
24 diverted or taken from a location within the State of Oklahoma;

1 (v) any other claim relating to the ownership of water, regulation of water, or
2 authorized diversion, storage, or use of water diverted or taken from a location within the State of
3 Oklahoma, which claim is based on the Chickasaw Nation's or Choctaw Nation's particular status as a
4 federally recognized American Indian tribe possessed of powers of sovereignty and self-government as
5 defined by federal law and pursuant to those treaties to which either is a signatory;

6 (vi) claims or defenses asserted or which could have been asserted in *Chickasaw*
7 *Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-
8 275 (W.D. Ok.), or any general stream adjudication;

9 (2) all claims for damages, losses or injuries to water rights or water, or claims of interference
10 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
11 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any
12 action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized
13 pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City
14 of Oklahoma City, that accrued at any time up to and including the Enforceability Date;

15 (3) all claims and objections relating to the City of Oklahoma City's Permit Application No.
16 2007-017, as amended pursuant to the Settlement Agreement and the Settlement Act, and the City Permit,
17 including but not limited to:

18 (i) all claims regarding regulatory control over or Oklahoma Water Resources Board
19 jurisdiction relating to such permit application and permit; and

20 (ii) all claims for damages, losses or injuries to water rights or rights to use water, or
21 claims of interference with, diversion, storage, taking, or use of water (including claims for injury to land
22 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use of
23 water) attributable to the issuance and lawful exercise of the City Permit;

24 (4) all claims to regulatory control over the City of Oklahoma City's Permit Numbers P80-48
25 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
26 rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;

1 (5) all claims that the State lacks regulatory authority over or Oklahoma Water Resources
2 Board jurisdiction relating to Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy
3 River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River, including
4 McGee Creek, for McGee Creek Reservoir;

5 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
6 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
7 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
8 lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy River for
9 Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River, including McGee Creek,
10 for McGee Creek Reservoir, that accrued at any time up to and including the Enforceability Date;

11 (7) all claims and objections relating to the approval by the U.S. Army Corps of Engineers of
12 the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract Transfer
13 Agreement.

14 (8) all claims for damages, losses or injuries to water rights or water, or claims of interference
15 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
16 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
17 lawful exercise of rights pursuant to the Amended Storage Contract Transfer Agreement.

18 (b) WAIVERS AND RELEASES OF CLAIMS BY THE CHICKASAW NATION AND THE
19 CHOCTAW NATION OF OKLAHOMA AGAINST THE UNITED STATES – Subject to the retention
20 of rights and claims provided in section 9(e) and except to the extent that rights are recognized in the
21 Settlement Agreement or Settlement Act, the Chickasaw Nation and Choctaw Nation of Oklahoma, each
22 acting on behalf of itself and its respective citizens and members (except in their capacity as Allottees), is
23 authorized to execute a waiver and release of all claims against the United States (including any agency or
24 employee of the United States) relating to:

25 (1) All of the following claims the United States acting in its capacity as trustee for either
26 Nation asserted or could have asserted in any proceeding filed or which could have been filed up to or

1 upon the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927
2 (W.D. Ok.) or *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:
3 (i) claims to the ownership of water in the State of Oklahoma;
4 (ii) claims to water rights and rights to use water diverted or taken from a location within the
5 State of Oklahoma;
6 (iii) claims to authority over the allocation and management of water and administration of
7 water rights, including authority over third-party ownership of or rights to use water diverted or taken
8 from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees
9 or anyone else using water on an Allotment with the Allottee's permission;
10 (iv) claims that the State lacks authority over the allocation and management of water and
11 administration of water rights, including authority over the ownership of or rights to use water diverted or
12 taken from a location within the State of Oklahoma;
13 (v) any other claim relating to the ownership of water, regulation of water, or authorized
14 diversion, storage, or use of water diverted or taken from a location within the State of Oklahoma, which
15 claim is based on the Chickasaw Nation's or Choctaw Nation's particular status as a federally recognized
16 American Indian tribe possessed of powers of sovereignty and self-government as defined by federal law
17 and pursuant to those treaties to which either is a signatory;
18 (vi) claims or defenses asserted or which could have been asserted in *Chickasaw Nation,*
19 *Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275
20 (W.D. Ok.), or any general stream adjudication;
21 (2) claims for damages, losses or injuries to water rights or water, or claims of interference
22 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
23 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any
24 action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized
25 pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City
26 of Oklahoma City, that accrued at any time up to and including the Enforceability Date;

1 (3) claims and objections relating to the City of Oklahoma City’s Permit Application No.
2 2007-017, as amended pursuant to the Settlement Agreement and the Settlement Act, and the City Permit,
3 including but not limited to:

- 4 i. claims regarding regulatory control over or Oklahoma Water Resources Board jurisdiction
5 relating to such permit application and permit; and
- 6 ii. claims for damages, losses or injuries to water rights or rights to use water, or claims of
7 interference with, diversion, storage, taking, or use of water (including claims for injury to land resulting
8 from such damages, losses, injuries, interference with, diversion, storage, taking, or use of water)
9 attributable to the issuance and lawful exercise of the City Permit;

10 (4) all claims to regulatory control over the City of Oklahoma City’s Permit Numbers P80-48
11 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
12 rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;

13 (5) all claims that the State lacks regulatory authority over or Oklahoma Water Resources
14 Board jurisdiction relating to Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy
15 River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River, including
16 McGee Creek, for McGee Creek Reservoir;

17 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
18 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
19 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
20 lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy River for
21 Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River, including McGee Creek,
22 for McGee Creek Reservoir, that accrued at any time up to and including the Enforceability Date;

23 (7) all claims and objections relating to the approval by the U.S. Army Corps of Engineers of
24 the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract Transfer
25 Agreement;

1 (8) all claims relating to the United States' litigation, prior to the Enforceability Date, of the
2 Nations' water rights in the State of Oklahoma; and

3 (9) all claims relating to the negotiation, execution, or adoption of the Settlement Agreement
4 (including exhibits) or this Act.

5 (c) Tolling of Claims

6 (1) In General – Each applicable period of limitation and time-based equitable defense relating
7 to a claim described in this Section 9 shall be tolled during the period beginning on the Enactment Date
8 and ending on the occurrence of either the Enforceability Date or the Expiration Date.

9 (2) Effect – Nothing in this section 9(c) revives any claim or tolls any period of limitation or
10 time-based equitable defense that expired before the Enactment Date.

11 (d) EFFECTIVENESS OF WAIVER AND RELEASES.— The waivers and releases of this section
12 shall become effective on the Enforceability Date.

13 (e) RETENTION AND RESERVATION OF CLAIMS.—

14 (1) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY NATIONS AND
15 THE UNITED STATES.—

16 (i) IN GENERAL.— Notwithstanding the waiver and releases of claims authorized
17 under section 9(a) and 9(b), the Nations on behalf of themselves and their respective members and
18 citizens (except in their capacities as Allottees), and the United States, acting as trustee for the Nations
19 and their respective citizens and members, shall retain the following —

20 (A) all claims for enforcement of the Settlement Agreement and Settlement
21 Act;

22 (B) all rights to use and protect any Nation water right recognized by or
23 established pursuant the Settlement Agreement, including the right to assert claims for injuries relating to
24 such rights and the right to participate in any stream adjudication, including any *inter se* proceeding;

25 (C) all claims relating to activities affecting the quality of water that are not
26 waived at section 9(a)(v) or 9(b)(v) including any claims the Nations may have under—

- 1 (I) the Comprehensive Environmental Response, Compensation,
2 and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), including for damages to natural resources;
- 3 (II) the Safe Drinking Water Act (42 U.S.C. § 300f et seq.);
- 4 (III) the Federal Water Pollution Control Act (33 U.S.C. § 1251 et
5 seq.); and
- 6 (IV) any regulations implementing the Acts described in this section;
- 7 (D) all claims relating to damage, loss, or injury resulting from a person’s
8 unauthorized diversion, use, or storage of water, including damages, losses, or injuries to land or non-
9 water natural resources associated with any hunting, fishing, gathering, or cultural right;
- 10 (E) all rights, remedies, privileges, immunities, and powers not specifically
11 waived and released pursuant to this Act or the Settlement Agreement.

12 SEC. 10. ENFORCEABILITY DATE

13 (a) IN GENERAL.—The Settlement Agreement shall take effect and be enforceable on the date on
14 which the Secretary publishes in the Federal Register a certification that—

15 (1) to the extent the Settlement Agreement conflicts with this Act, the Settlement Agreement
16 has been revised to conform with this Act; and

17 (2) the Settlement Agreement, as so revised, has been executed by the Secretary, the Nations,
18 the State of Oklahoma, the City and the Trust; and

19 (3) to the extent the Amended Storage Contract Transfer Agreement conflicts with this Act, the
20 Amended Storage Contract Transfer Agreement has been revised to conform with this Act; and

21 (4) the Amended Storage Contract Transfer Agreement, as revised to conform with this Act,
22 has been—

23 (i) executed by the State, the City and the Trust; and

24 (ii) approved by the Secretary of the Army; and

1 (5) an order has been entered in *United States v. Oklahoma Water Resources Board*, Civ. 98-C-
2 521-E with any necessary modifications to the September 11, 2009, Order entered in that case, as
3 provided in the Settlement Agreement; and

4 (6) orders of dismissal have been entered in *Chickasaw Nation, Choctaw Nation v. Fallin et*
5 *al.*, Civ 11-297 (W.D. Ok.) and *OWRB v. United States, et al.* Civ 12-275 (W.D. Ok.) as provided in the
6 Settlement Agreement; and

7 (7) the OWRB has issued the City Permit; and

8 (8) the final documentation of the Kiamichi Basin Hydrologic model is on file at the OWRB's
9 Oklahoma City offices; and

10 (9) the Atoka and Sardis Conservation Projects Fund has been funded as provided in the
11 Settlement Agreement.

12 (b) EXPIRATION DATE.— If the Secretary fails to publish a statement of findings under paragraph
13 (a) by not later than September 30, 2020, or such alternative later date as is agreed to by the Secretary, the
14 Nations, the State, the City, and the Trust, the following shall apply—

15 (1) This Act, except for this section and any provisions of this Act that are necessary to
16 effectuate this section (but only for purposes of effectuating this section) are repealed effective September
17 30, 2020, or the extended date;

18 (2) The waivers and releases of claims shall not become effective;

19 (3) The limited waivers of sovereign immunity shall not become effective;

20 (4) The Settlement Agreement shall be null and void, except for Section 13 and any provisions
21 of the Settlement Agreement that are necessary to effectuate Section 13 and, except with respect to
22 Section 13, the State, the Nations, the City, the Trust, and the United States shall not be bound by any
23 obligations or benefit from any rights recognized thereunder;

24 (5) If the City Permit has been issued, it shall be null and void. The City may re-submit to the
25 OWRB, and the OWRB shall be deemed to have accepted, the OWRB Permit Application No. 2007-017
26 without having waived its original application priority date and appropriate amounts.

1 (6) If the Amended Storage Contract Transfer Agreement has been executed or approved, it
2 shall be null and void, and the Storage Contract Transfer Agreement shall be deemed to be in full force
3 and effect as between the State and the Trust.

4 (7) If the Atoka and Sardis Conservation Projects Fund has been established and funded, the
5 funds shall be returned to the respective funding parties with accrued interest if any.

6 (c) NO PREJUDICE.— The occurrence of the Expiration Date shall not in any way prejudice—

7 (1) any argument or suit that the Nations’ may bring to contest the City’s pursuit of OWRB
8 Permit Application No. 2007-017 or any modified version thereof or to contest the 2010 Storage Contract
9 Transfer Agreement;

10 (2) any argument, defense, or suit the State may bring or assert with regard to the Nations’
11 claims to water or over water in the Settlement Area; or

12 (3) any argument, defense or suit the City may bring or assert with regard to the Nations’
13 claims to water or over water in the Settlement Area relating to OWRB Permit Application No. 2007-017
14 or any modified version thereof or to contest the 2010 Storage Contract Transfer Agreement.

15 (d) EXTENSION.— The Expiration Date may be extended in writing if the Nations, the State, the
16 United States and the City all agree that an extension is warranted.

17 SEC. 11. JURISDICTION; WAIVERS OF IMMUNITY FOR INTERPRETATION AND
18 ENFORCEMENT

19 (a) JURISDICTION.—

20 (1) IN GENERAL.— The United States District Court for the Western District of Oklahoma
21 shall have exclusive jurisdiction for all purposes and for all causes of action relating to the interpretation
22 or enforcement of the Settlement Agreement, the Amended Storage Contract Transfer Agreement, or
23 interpretation or enforcement of this Act including all actions filed by an Allottee pursuant to section
24 6(c)(4). The Choctaw Nation, the Chickasaw Nation, the State of Oklahoma, the City, the Trust, and the
25 United States shall each have the right to bring an action pursuant to this section for the purposes set forth

1 herein. No action may be brought in any other state, tribal or federal court or administrative forum for any
2 purpose relating to the Settlement Agreement, Amended Storage Contract Transfer Agreement, or this
3 Act. Nothing in this Act authorizes any money judgment or otherwise allows the payment of monies by
4 the United States, Nations, State, City, or Trust.

5 (2) NOTICE AND CONFERENCE.— It shall be a prerequisite to the jurisdiction provided for
6 in this section that any party seeking to interpret or enforce the Settlement Agreement shall comply with
7 the following:

8 (3) Any party asserting noncompliance or seeking interpretation of the Settlement Agreement
9 or this Act shall first serve written notice on the party or parties alleged to be in breach of the Settlement
10 Agreement or violation of this Act;

11 (4) The notice shall identify the specific Settlement Agreement or statutory provision alleged
12 to have been violated or in dispute and shall specify in detail the asserting party's contention and any
13 factual basis for the claim;

14 (5) Representatives of the party alleging a breach or violation and the party or parties alleged to
15 be in breach or violation shall meet within thirty (30) days of receipt of notice in an effort to resolve the
16 dispute. If the matter is not resolved to the satisfaction of the party alleging breach within ninety (90)
17 days of the original notice, such party may take any appropriate action for interpretation or enforcement
18 consistent with the Settlement Agreement and this section.

19 (b) LIMITED WAIVERS OF SOVEREIGN IMMUNITY

20 (1) IN GENERAL.— The United States, the Nations, or all may be joined in an action, for
21 which their immunity has been waived below, filed in the United States District Court for the Western
22 District of Oklahoma.

23 (2) UNITED STATES IMMUNITY.— Any claim by the United States to sovereign immunity
24 from suit is irrevocably waived for any action brought by the State, the Chickasaw Nation, the Choctaw
25 Nation, the City, the Trust, or (solely for purposes of actions brought pursuant to section 6(c)(4)) an
26 Allottee in the Western District of Oklahoma relating to interpretation or enforcement of the Settlement

1 Agreement or this Act, inclusive of the appellate jurisdiction of the United States Court of Appeals for the
2 Tenth Circuit and the United States Supreme Court.

3 (3) CHICKASAW NATION IMMUNITY.— For the exclusive benefit of the State (inclusive
4 of the OWRB), the City, the Trust, the Choctaw Nation, and the United States, the Chickasaw Nation’s
5 sovereign immunity from suit is waived solely for any action brought in the Western District of
6 Oklahoma relating to interpretation or enforcement of the Settlement Agreement or this Act, which action
7 is brought by the State or the OWRB, the City, the Trust, the Choctaw Nation, or the United States,
8 inclusive of the appellate jurisdiction of the United States Court of Appeals for the Tenth Circuit and the
9 United States Supreme Court.

10 (4) CHOCTAW NATION IMMUNITY.— For the exclusive benefit of the State (inclusive of
11 the OWRB), the City, the Trust, the Chickasaw Nation, and the United States, the Choctaw Nation
12 expressly and irrevocably consents to suit and waives its sovereign immunity from suit solely for any
13 action brought in the Western District of Oklahoma relating to interpretation or enforcement of the
14 Settlement Agreement or this Act, which action is brought by the State or the OWRB, the City, the Trust,
15 the Chickasaw Nation, or the United States, inclusive of the appellate jurisdiction of the United States
16 Court of Appeals for the Tenth Circuit and the United States Supreme Court.

17 SEC. 12 ADDITIONAL PROVISIONS

18 (a) AGREEMENT.— As provided in the Settlement Agreement, the Chickasaw Nation agrees to
19 convey an easement to the City, which easement shall be as depicted in Exhibit 15 to the Settlement
20 Agreement, and the Chickasaw Nation and City shall cooperate and coordinate on the submission of an
21 application for approval of such conveyance by the Department of the Interior, in accord with federal law
22 and process. Upon approval by the Department of the Interior, the City shall duly record the easement. In
23 exchange for such conveyance, the City shall pay to the Chickasaw Nation the value of past unauthorized
24 use and consideration for future use of the lands burdened by such easement, which value shall be based

1 on an appraisal secured by the City and Nations and approved by the United States Bureau of Indian
2 Affairs.

3 (b) LIMITATION ON LIABILITY.— With respect to the Atoka and Sardis Conservation Projects
4 Fund and the Water Preservation Infrastructure Fund of the Settlement Agreement established pursuant to
5 Section 6.5.2.1.2 of the Settlement Agreement, the United States has no right or trust or other obligation:
6 (i) to monitor, administer, or account for, in any manner, any of the proceeds contributed to such funds by
7 either Nation, any other party to the Settlement Agreement, or any other person; (ii) to review or approve
8 any expenditure from the fund; or (iii) to contribute to such funds.

9 SEC. 13. DISCLAIMER

10 This Settlement Agreement applies only to the claims and rights of the Nations, and nothing in
11 this Act or the Settlement Agreement shall be construed in any way to quantify, establish, or in any way
12 serve as precedent regarding the land and water rights, claims or entitlements to water of any American
13 Indian tribe other than the Nations, including any other American Indian tribe in the State of Oklahoma.

Exhibit 3: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma City Water Settlement



Memorandum

To: File
From: Kirk Westphal, P.E.
Jenny Bywater, P.E.
Date: August 2016
Subject: Kiamichi Basin Hydrologic Model Summary

This memorandum documents the model initially built by CDM Smith on behalf of the City of Oklahoma City and the Oklahoma City Water Utilities Trust (collectively, “Oklahoma City”) to help understand the hydrology and water availability within the Kiamichi River Basin. The model subsequently served as the foundation for the consensus hydrological model Oklahoma City, the State of Oklahoma, the Choctaw Nation of Oklahoma, and the Chickasaw Nation collaboratively developed for purposes of settlement negotiations and future water rights administration in the Kiamichi Basin.

Overview of Model

A simulation model was developed using the STELLA (Systems Thinking Experimental Learning Laboratory with Animation) modeling interface. The version of the model this memorandum is based on is *Kiamichi-Atoka Simulation Model_V47.stmx*. It was developed for use with STELLA version 10.1.

STELLA is a graphical system simulation package that allows users to model physical flow systems with operational or planning-level resolution. The rules-based software allows users to develop on-screen control interfaces that facilitate adjustments of system variables for alternatives and sensitivity analyses. The model uses a combination of future water demands and historical hydrological patterns to evaluate various water management strategies and estimate the reliability of satisfying multiple water needs under a wide range of conditions.

Figure 1-1 shows a schematic of the main physical elements included within the model. The reservoirs simulated explicitly are—Sardis, Hugo, McGee Creek, Atoka, and Stanley Draper. Precipitation, runoff, and evaporation are incorporated into each reservoir. The Kiamichi River is modeled by a series of flow segments.

The model is run on a monthly time step covering the hydrologic period of record from 1926 through 1971 (the record that is unaffected by the presence of Sardis Lake, which was constructed in 1972, and which includes the major droughts of record in Southeast Oklahoma). During a model run, the model determines the percentage of historical hydrologic years in which water would have been available in certain amounts for various consumptive and non-consumptive uses.

Data Sources

The following are the main data sources used as inputs into the model:

- **Kiamichi River Streamflow:** The USGS streamflow gage at Belzoni (Gage ID: 07336500) was used over other gages since it has a significant timespan (1925 – 1972) covering a wide range of hydrologic conditions including the drought of record. Its records were also not influenced by Sardis Lake operations since the reservoir was operational after 1972 and thus the record represents the natural river conditions. In order to estimate natural flows at locations throughout the basin, the flow record from the Belzoni gage was transposed using drainage area ratios.
 - The subwatershed draining into Sardis Lake is 20 percent of the drainage area measured at the Belzoni gage.
 - Hugo Reservoir is downstream of the Belzoni gage and the subwatershed represented by the Belzoni gage is 83 percent of the total drainage into Hugo Reservoir.
- **Inflow into Atoka Reservoir and McGee Creek Reservoir:** The flow record for the Belzoni gage was also transposed to generate estimates of inflows into Atoka and McGee Creek Reservoirs since available records for those reservoirs were not as extensive as the USGS data in the Kiamichi River Basin, nor did they include the effects of the drought of record. The assumption of hydrologic similarity between the basins was verified through testing the firm yield calculated with the estimated flows and comparing to the published values of 71,800 AFY for McGee Creek Reservoir and 92,067 AFY for Atoka Reservoir in the 2003 Water Master Plan.
 - Inflow into Atoka Reservoir was estimated as 54 percent of the Belzoni gage flow.
 - Inflow into McGee Creek Reservoir was estimated as 60 percent of the Belzoni gage flow.
- **Precipitation and Evaporation:** Rain falling directly on the reservoirs was accounted for based on average monthly historic precipitation for the Southeast Oklahoma region multiplied by the surface area of the reservoir. On average, annual rainfall during the period of record was 47.8 inches. Evaporation rates from reservoir surfaces were based on average monthly values from Broken Arrow Reservoir found in NOAA Technical Report NWS 34 and did not vary in the model year to year. The annual average evaporation was 43.4 inches.
- **Reservoir Storage:** Reservoir storage was determined either from the USACE or OWRB provided data (ultimately, the model relied on the USACE data for Sardis Lake). Stage-Area-Volume tables were input into the model, based on provided records and interpolated where necessary. **Table 1-1** provides the maximum and minimum elevation as well as the total storage that could be physically accessed for the main reservoirs. Potential sedimentation is not considered and the analysis assumes that the physical capacities remain constant throughout the simulation.

Table 1-1: Modeled Reservoir Storage Volumes and Pool Elevations

Reservoir	Max Pool Elevation (ft)	Min Reservoir Elevation for Physical Accessibility* (ft)	Total Storage Volume Above Minimum Elevation** (AF)
Sardis	599	542	274,000
Atoka	590	550	103,000 (107,940)
McGee Creek	577.1	533	88,437 (88,445)
Stanley Draper	1191	1145	72,500 (72,195)
Hugo	410.2	390	200,000

*The model can constrain available storage at the user's discretion for testing management alternatives.

** Values listed represent values used in the model to support model simulations during settlement negotiations. Values in parentheses reflect final values in the settlement agreement. The differences between the numbers have no appreciable impact on simulation results, conclusions, or interpretations of results. The model, (version as noted above in this memorandum), has been updated with the numbers per the final settlement agreement.

- Permitted local water rights within the Kiamichi River Basin, McGee Creek Reservoir, and Atoka Reservoir from the 2009 Regional Raw Water Supply Study are accounted for in the model and held in reserve even if they have not been historically exercised. The rights included are listed in **Table 1-2**.

Table 1-2: Modeled Local Water Needs

Location	Annual Water Needs (AFY)
Atoka Local	2,315
Hugo Local	62,029 (plus 90 mgd required release)
Kiamichi River Local	9,700
McGee Local	20,000 (rights senior to OKC)
Sardis Local	20,000

- A domestic use set aside of 6 AFY for each 160 acres in the upstream drainage area is accounted for within the model. Above Sardis Lake 6,600 AFY is reserved for this set aside by being subtracted from the runoff entering the reservoir. At Moyers another 20,720 AFY is reserved from the natural streamflow in the Kiamichi River.
- No seepage from the reservoirs or river bed is explicitly accounted for within the model. This assumption was verified through a literature search and an analysis of USGS streamflow records that indicated no significant seepage.

Operational Considerations

- The model includes a user-defined bypass flow requirement at a simulated point of withdrawal from the basin. This was configured in accordance with the values specified in the settlement agreement.
- The model allows the specification of monthly peaking factors and maximum flow for future withdrawals from the basin. These were configured in accordance with the values specified in the settlement agreement.
- The model includes rules that restrict withdrawals from the basin based on monthly variable lake elevation levels at Sardis Lake, as well as the relative drawdown levels of

other Oklahoma City reservoir levels. These operating rules were incorporated into the model in accordance with the values specified in the settlement agreement.

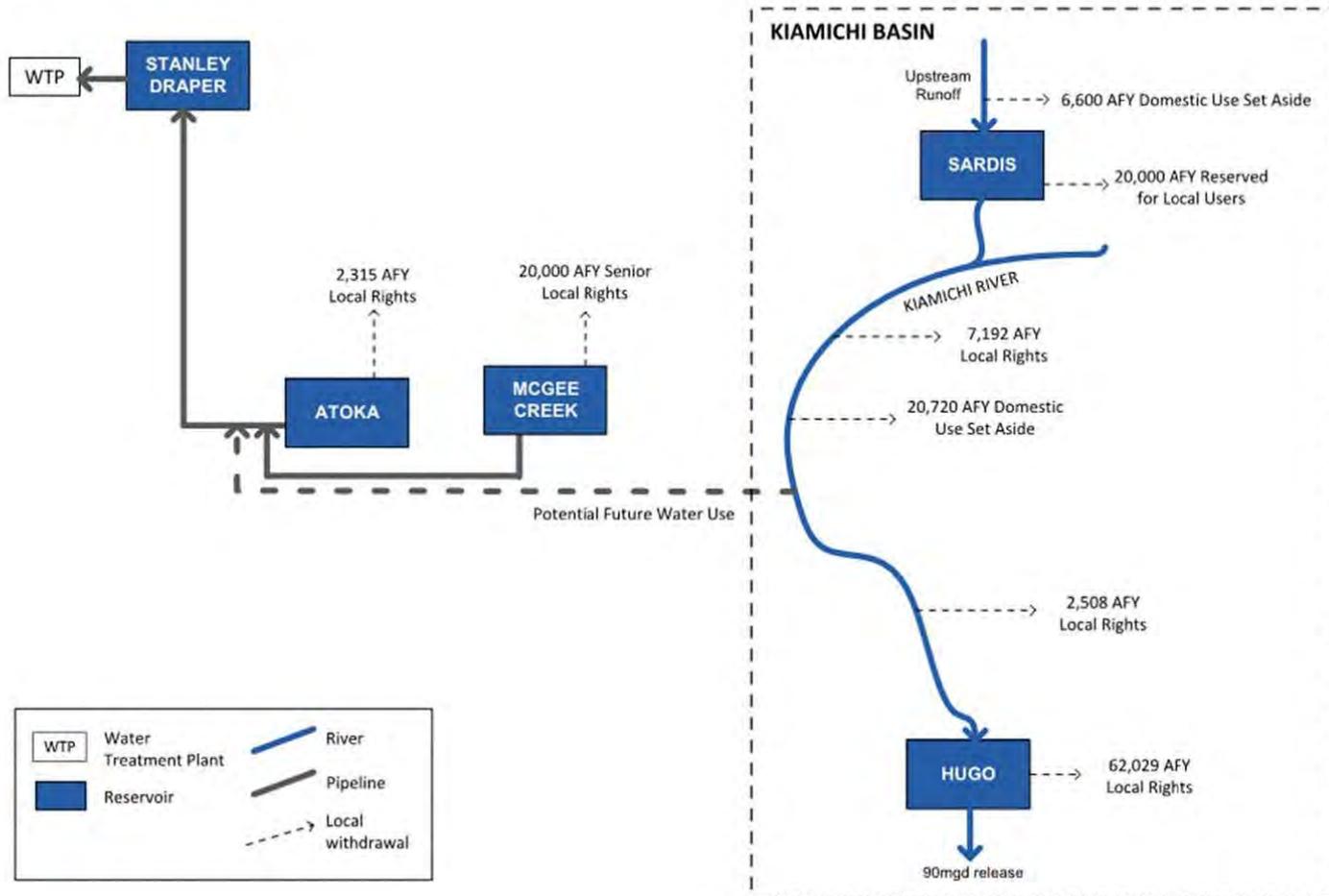


Figure 1-1: Model Schematic

1 Exhibit 4: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City
2 of Oklahoma City Water Settlement
3

4 **AMENDED STORAGE CONTRACT TRANSFER AGREEMENT**
5 **AMONG**
6 **CITY OF OKLAHOMA CITY,**
7 **OKLAHOMA CITY WATER UTILITIES TRUST,**
8 **AND**
9 **STATE OF OKLAHOMA WATER RESOURCES BOARD**
10

11 This Agreement, originally entered on the 15th day of June, 2010, as amended this
12 ___ day of _____, _____, is entered into by and among the City of Oklahoma
13 City, the Oklahoma City Water Utilities Trust, and the Oklahoma Water Resources Board,
14 and approved by the Secretary of the Army.

15 **RECITALS**

16 WHEREAS, the Flood Control Act of 1962 (Public Law 87-874, 87th Congress),
17 authorized the construction and operation of Clayton Lake, subsequently renamed Sardis
18 Lake, substantially in accordance with the recommendations of the Chief of Engineers of
19 the United States Army Corps of Engineers in Senate Document No. 145, Eighty-Seventh
20 Congress; and

21 WHEREAS, in Senate Document No. 145 the Chief of Engineers of the United
22 States Army Corps of Engineers recommended the construction and operation of Sardis
23 Lake for flood control, water supply, fish and wildlife, and recreation purposes; and

24 WHEREAS, the Water Conservation Storage Commission of the State of
25 Oklahoma entered into a contract that was approved by the Secretary of the United States
26 Army on April 9, 1974, with the United States through the United States Army Corps of

1 Engineers to obtain the right to use the Conservation Storage Capacity of Sardis Lake,
2 which was estimated as 297,200 acre-feet and divided into Present Use Storage (141,700
3 acre-feet or 47.678% of total Conservation Storage Capacity) and Future Use Storage
4 (155,500 acre-feet or 52.322% of total Conservation Storage Capacity), and repay the
5 construction costs and operation, maintenance and replacement costs allocated to water
6 supply storage; and

7 WHEREAS, the Water Conservation Storage Commission was sunsetted by the
8 Oklahoma Legislature in 1979 and, pursuant to 1979 Okla. Sess. Laws, ch. 247, § 8,
9 codified at 82 O.S. § 1085.38 the rights, authority, and obligations of the Water
10 Conservation Storage Commission were transferred to the Oklahoma Water Resources
11 Board; and

12 WHEREAS, the United States Army Corps of Engineers began construction of
13 Sardis Lake in 1974, and construction was completed and the reservoir was deemed
14 operational on January 6, 1983; and

15 WHEREAS, on September 11, 2009, a stipulated Order was entered in the *United*
16 *States v. State of Oklahoma and Oklahoma Water Resources Board*, United States District
17 Court for the Northern District of Oklahoma, CV-98-00521, wherein the State of
18 Oklahoma agreed to bring current past due payments for the Present Use Storage and to
19 make all subsequent payments for operation and maintenance and replacement costs
20 relating to Present Use Storage and for Future Use Storage in accordance with the 1974
21 Contract; and

1 WHEREAS, on June 15, 2010, the Oklahoma Water Resources Board and the
2 Oklahoma City Water Utilities Trust entered into the 2010 Storage Contract Transfer
3 Agreement whereby the Oklahoma Water Resources Board transferred to the Oklahoma
4 City Water Utilities Trust all its rights and interests in, including rights to use, the
5 Conservation Storage Capacity in Sardis Lake, together with all its obligations under the
6 1974 Contract, and assumed the obligations set forth in the 1974 Contract to make the
7 payments set forth in the September 2009 Order in order to be able to utilize the rights to
8 use the Conservation Storage Capacity in Sardis Lake; and

9 WHEREAS, in March 2010, the City of Oklahoma City amended Application
10 2007-017 with the Oklahoma Water Resources Board for an appropriation of 136,000
11 acre-feet per year of stream water from the Kiamichi River basin, in part to secure stream
12 water rights associated with the Conservation Storage Capacity proposed for transfer to the
13 Oklahoma City Water Utilities Trust under the 2010 Storage Contract Transfer Agreement;
14 and

15 WHEREAS, in 2011 the Oklahoma Department of Wildlife Conservation issued a
16 report that proposed management of lake levels in Sardis Lake to benefit fish and wildlife
17 and recreation purposes; and

18 WHEREAS, the City of Oklahoma City, the Oklahoma City Water Utilities Trust,
19 the State of Oklahoma, the Chickasaw Nation, and Choctaw Nation of Oklahoma have
20 entered a Settlement Agreement that resolves complex disputes regarding water, water
21 rights, the regulation and administration of water in the Settlement Area, and objections to
22 the State's assignment of the 1974 Contract to the City of Oklahoma City, inclusive of all

1 claims raised in *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, CIV
2 11-927 (W.D. Ok.), and *OWRB v. United States, et al.*, CIV 12-275 (W.D. Ok.), which
3 Settlement Agreement has been approved and executed by the United States pursuant to
4 the Settlement Act.

5 WHEREAS, pursuant to the Settlement Agreement and the Settlement Act, the
6 City of Oklahoma City has agreed to Sardis Lake Release Restrictions which allow the
7 City to have water released for water supply purposes in a manner that also protects lake
8 levels for fish and wildlife and recreation, and such restrictions are generally based on the
9 2011 report by the Oklahoma Department of Wildlife Conservation; and

10 WHEREAS, the City of Oklahoma City's right to have water released from
11 Conservation Storage Capacity in Sardis Lake in accordance with the Sardis Lake Release
12 Restrictions will benefit fish and wildlife and recreation uses in Sardis Lake and will
13 facilitate the use of Conservation Storage Capacity in Sardis Lake for the authorized
14 purposes of water supply, fish and wildlife, and recreation; and

15 WHEREAS, the Sardis Lake Release Restrictions will preclude the City from
16 calling for releases for water supply from that portion of the Sardis Lake Conservation
17 Storage Capacity associated with Future Use Storage; and

18 WHEREAS, the parties to the Settlement Agreement have agreed that, in
19 consideration for the Sardis Lake Release Restrictions and resulting benefits to the parties
20 relating to lake levels that support fish, wildlife, and recreation, the Settlement Act
21 provides that Future Use Storage debt, inclusive of all capital costs, interest, and associated

1 operation, maintenance, and replacement costs will be forgiven, waived, and deemed
2 non-reimbursable; and

3 WHEREAS, in accordance with the Settlement Agreement and the Settlement Act,
4 and consistent with implementation of the Sardis Lake Release Restrictions, the City of
5 Oklahoma City has agreed to amend Application No. 2007-017 to reduce the amount of
6 stream water from the Kiamichi River basin it is applying for therein from 136,000 acre
7 feet per year to 115,000 acre feet per year; and

8 WHEREAS, due to such limitations, modifications, and other provisions of the
9 Settlement Agreement and the Settlement Act, the Oklahoma Water Resources Board, the
10 City of Oklahoma City, and the Oklahoma City Water Utilities Trust are hereby amending
11 the 2010 Storage Contract Transfer Agreement.

12 NOW, THEREFORE, in consideration of the foregoing recitals and the mutual
13 covenants set forth below, IT IS AGREED by and between the City of Oklahoma City, the
14 Oklahoma City Water Utilities Trust, and the Oklahoma Water Resources Board as
15 follows:

16 **1. DEFINITIONS**

17 **1.1 1974 Contract** – means the contract approved by the Secretary of the
18 United States Army on April 9, 1974, entered into between the Water Conservation
19 Storage Commission of the State of Oklahoma, predecessor of the Oklahoma Water
20 Resources Board, and the United States through the United States Army Corps of
21 Engineers, a copy of which is attached as Exhibit 1.

1 **1.2 2010 Storage Contract Transfer Agreement** – means the June 15, 2010,
2 agreement entered between the Oklahoma Water Resources Board, the City of Oklahoma
3 City, and the Oklahoma City Water Utilities Trust, a copy of which is attached hereto as
4 Exhibit 2.

5 **1.3 Acre-foot** – means the unit of measurement for water equal to 325,851
6 gallons, U.S. Standard Liquid Measure.

7 **1.4 Administrative Set-Aside** – means thirty-seven thousand nine hundred
8 eight (37,908) acre-feet of Conservation Storage Capacity for the twenty thousand
9 (20,000) acre-feet of water per year from water supply storage at Sardis Lake that is
10 set-aside for beneficial use in southeastern Oklahoma, inclusive of the SLWA Subcontract,
11 as specified in the provisions of OAC § 785:20-5-5(b)(3) as it exists as of the Settlement
12 Agreement’s Execution Date.

13 **1.5 Administrative Set-Aside Subcontracts** – means the subcontracts for
14 users of the Administrative Set-Aside for the use of up to 37,908 acre-feet of Conservation
15 Storage Capacity for water supply storage for beneficial use within one or more of the
16 following counties in the State of Oklahoma : LeFlore, McCurtain, Pushmataha, Latimer,
17 Haskell, Choctaw, Pittsburg, Coal, Atoka, and Bryan.

18 **1.6 Amended Permit Application** – means the City of Oklahoma City’s
19 permit application filed with the OWRB, No. 2007-017, as amended pursuant to Section
20 6.1 of the Settlement Agreement.

21 **1.7 OAPA** – means the Oklahoma Administrative Procedures Act codified at
22 75 O.S. §§ 250 through 323.

1 **1.8 City of Oklahoma City (“City”)** – means the City of Oklahoma City, an
2 Oklahoma municipal corporation and a charter city organized and existing pursuant to
3 Oklahoma Constitution Article XVIII, Section 3. References to “City” shall refer to the
4 City or the City and the Oklahoma City Water Utilities Trust acting jointly as applicable to
5 the capacity set forth in said reference.

6 **1.9 City Permit** – means a permit issued to the City of Oklahoma City by the
7 Oklahoma Water Resources Board pursuant to the Amended Permit Application, which
8 permit conforms to Section 6.1 of the Settlement Agreement.

9 **1.10 Conservation Storage Capacity** – means the water storage space in Sardis
10 Lake described in Exhibit A of the 1974 Contract to be an estimated 297,200 acre feet of
11 storage between elevations 542 feet and 599 feet mean sea level in Sardis Lake.

12 **1.11 Future Use Storage** – means that portion of the Conservation Storage
13 Capacity in Sardis Lake designated in the 1974 Contract as being available for future use
14 for municipal and industrial supply, which portion equals 52.322%, or an estimated
15 155,500 acre feet, of the total Conservation Storage Capacity in Sardis Lake.

16 **1.12 MSL** – means mean sea level.

17 **1.13 Oklahoma City Water Utilities Trust (“Trust”)** – means the Oklahoma
18 City Water Utilities Trust, formerly known as the Oklahoma City Municipal Improvement
19 Authority, a public trust established pursuant to Oklahoma law with the City of Oklahoma
20 City as its beneficiary. References to “Trust” shall refer to the Oklahoma City Water
21 Utilities Trust acting severally in said reference.

1 **1.14 Oklahoma Water Resources Board (“OWRB”)** – means a body
2 corporate and politic and an instrumentality, agency, and department of the State of
3 Oklahoma, created by and existing under the laws of the State of Oklahoma, and its
4 successor entities, if any.

5 **1.15 Parties** – means the City of Oklahoma City, the Oklahoma City Water
6 Utilities Trust, and the Oklahoma Water Resources Board.

7 **1.16 Present Use Storage** – means that portion of the Conservation Storage
8 Capacity in Sardis Lake designated in the 1974 Contract as being for present use for
9 municipal and industrial purposes, which portion equals 47.678%, or an estimated 141,700
10 acre feet, of the total Conservation Storage Capacity in Sardis Lake.

11 **1.17 Sardis Lake** – means the reservoir, formerly known as Clayton Lake,
12 whose dam is located in Section 19, Township 2 North, Range 19 East of the Indian
13 Meridian, in Pushmataha County, Oklahoma.

14 **1.18 Sardis Lake Release Restrictions** – means the limitations on the City of
15 Oklahoma City’s ability to release water from Sardis Lake specified at Section 6.1.8 of the
16 Settlement Agreement.

17 **1.19 Secretary** – means the Secretary of the Army or his or her designee for
18 purposes of approval of this Agreement.

19 **1.20 September 2009 Order** – means the stipulated Order entered in the *United*
20 *States v. State of Oklahoma and Oklahoma Water Resources Board*, United States District
21 Court for the Northern District of Oklahoma, CV-98-00521, a copy of which is attached
22 hereto as Exhibit 3.

1 **1.21 Settlement Agreement** – means the State of Oklahoma, Choctaw Nation of
2 Oklahoma, Chickasaw Nation, and City of Oklahoma City Water Settlement upon
3 execution by the United States.

4 **1.22 Settlement Act** – means [insert citation].

5 **1.23 SLWA Subcontract** – means the Subcontract for Use of Water Supply
6 Storage, Easement, License and Intake Structure at Sardis Lake between Oklahoma Water
7 Resources Board and Sardis Lake Water Authority, dated October 22, 1999, a copy of
8 which is attached hereto as Exhibit 4.

9 **1.24 Title 82** – means Title 82 of the Oklahoma Statutes or any recodification
10 thereof.

11 **1.25 USACE** – means the United States Army Corps of Engineers.

12 **2. ASSIGNMENT AND TRANSFER OF THE 1974 CONTRACT;**
13 **ASSUMPTION OF OBLIGATIONS AND PAYMENTS UNDER THE 1974**
14 **CONTRACT**

15
16 **2.1 Assignment and Transfer of 1974 Contract** – Subject to the provisions of
17 this Agreement, the OWRB transfers and assigns all of its rights, interests, and obligations
18 in the 1974 Contract and grants and conveys all right, title, and interest of the OWRB in the
19 1974 Contract to the Trust. The OWRB represents that it has not made any other transfers
20 or assignments of the rights under the 1974 Contract except for the SLWA Subcontract.

21 **2.2 Trust’s Assumption of Obligations; Payments under the 1974 Contract**

22 **2.2.1 Assumption of Obligations under 1974 Contract** – The Trust
23 assumes and accepts responsibility for all obligations of the State and OWRB under the
24 1974 Contract, as may be modified by the Settlement Act, including but not limited to

1 those relating to costs of operation and maintenance. The Trust also accepts the transfer of
 2 the 1974 Contract under this Agreement subject to the terms of the SLWA Subcontract
 3 entered into by the OWRB.

4 **2.2.2 OCWUT's June 16, 2010 Payments** – The OWRB acknowledges:

5 (i) that on June 16, 2010, the Trust paid the OWRB a lump sum payment of \$27,814,262.49
 6 for the arrearage and balance due for Present Use Storage under the 1974 Contract as
 7 agreed to by the United States in the September 2009 Order and (ii) that the OWRB has
 8 paid directly to the United States that amount as provided by and in accordance with the
 9 September 2009 Order.

10 **2.2.3 OCWUT's Payments after June 16, 2010** -- The OWRB

11 acknowledges that the Trust has made the following payments in satisfaction of (i) the
 12 annual joint-use operation and maintenance costs billed annually in arrears based on actual
 13 operation and maintenance expenses of the USACE as specified in Article 3 and Article
 14 5(c) of the 1974 Contract or (ii) major capital replacement costs billed by the USACE
 15 pursuant to Article 5(b) of the 1974 Contract:

DATE OF PAYMENT	AMOUNT	DESCRIPTION
January 19, 2011	\$143,680.16	Billing for O&M Portion of Conservation Storage Capacity for Jan 2010-Jan 2011
January 18, 2012	\$166,795.55	Billing for O&M Portion of Conservation Storage Capacity for Jan 2011-Jan 2012
June 7, 2012	\$871,876.94	Sardis Area Billing - Replace Embankment Guardrail
February 19, 2013	\$124,512.90	Billing for O&M Portion of Conservation Storage Capacity for Jan 2012-Jan 2013
January 21, 2014	\$203,658.40	Billing for O&M Portion of Conservation Storage Capacity for Jan 2013-Jan 2014

January 8, 2015	\$140,600.43	Billing for O&M Portion of Conservation Storage Capacity for Jan 2014-Jan 2015
January 12, 2016	\$229,945.65	Billing for O&M Portion of Conservation Storage Capacity for Jan 2015 – Jan 2016

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2.2.4 Additional OCWUT Payment Obligations – In addition to the

payments required by Section 2.3, the Trust assumes all responsibility to make other payments due to the USACE under the 1974 Contract, including but not limited to (i) the annual joint-use operation and maintenance costs billed annually in arrears based on actual operation and maintenance expenses of the USACE as specified in Article 3 and Article 5(c) of the 1974 Contract, (ii) any major capital replacement costs billed by the USACE pursuant to Article 5(b) of the 1974 Contract, and (iii) Future Use Storage costs pursuant to Article 5(a)(3) of the 1974 Contract; provided, however, that all capital costs, interest, and operation, maintenance, and replacement costs associated with Future Use Storage shall be forgiven, waived, and deemed non-reimbursable, pursuant to and consistent with the Settlement Agreement and the Settlement Act the City’s payment of such costs and interest to the OWRB or to the USACE through the OWRB shall not be necessary or required.

2.3 Trust Payments to and on behalf of OWRB after Secretarial Approval

– On or before the date which is thirty (30) days after the Secretary approves the assignment and transfer of the 1974 Contract to the Trust by executing this Agreement, the Trust shall pay to the OWRB the amount of \$12,500,000.00, as reimbursement for the costs heretofore paid by the State and OWRB, for deposit by the OWRB into the Community Water Infrastructure Development Revolving Fund or such other fund as

1 otherwise specified by OWRB. The Trust shall deposit \$2,500,000.00 (which otherwise
2 would have been due and owing to the State under the terms of the 2010 Storage Contract
3 Transfer Agreement) into the Atoka and Sardis Conservation Projects Fund established
4 pursuant to Section 6.5.2.1 of the Settlement Agreement as the State's contribution to the
5 fund.

6 **3. ALLOCATION OF CONSERVATION STORAGE CAPACITY**

7 **3.1 In General** – Subject to the provisions of this Agreement, the Trust holds
8 all right, title, and interest in the Conservation Storage Capacity that was contracted to the
9 OWRB under the 1974 Contract, including the associated rights to divert or withdraw
10 water from Sardis Lake, order releases through the outlet works, and construct all such
11 works, plants, pipelines, and appliances as necessary or convenient, subject to USACE
12 approval as to design and location, for the purpose of diversion, withdrawals, or releases.
13 Notwithstanding the allocations under this Section 3 of Conservation Storage Capacity, the
14 City has and shall retain title to the entire 297,200 acre feet of Conservation Storage
15 Capacity that was contracted to the OWRB under the 1974 Contract.

16 **3.2 Administrative Set-Aside Subcontracts** – The City's use of Conservation
17 Storage Capacity for any purpose shall be subject to the use of Conservation Storage
18 Capacity by holders of Administrative Set-Aside Subcontracts, including the SLWA
19 Subcontract, in accordance with Section 4. The use of Conservation Storage Capacity by
20 holders of Administrative Set-Aside Contracts shall not be subject to the Sardis Lake
21 Release Restrictions. Holders of Administrative Set-Aside Subcontracts with a valid
22 stream water permit from the OWRB shall be entitled to withdraw or release water from

1 Sardis Lake when lake levels are between the top of the Conservation Storage Capacity
2 (elevation 599 feet MSL) and the bottom of the Conservation Storage Capacity (elevation
3 542 feet MSL).

4 **3.3 City Releases for Water Supply** – The City’s use of Conservation Storage
5 Capacity for water supply purposes shall be subject to the Sardis Lake Release
6 Restrictions. The Sardis Lake Release Restrictions have the operational effect of limiting
7 OCWUT’s releases from Sardis Lake to water stored between elevation 599 feet MSL and
8 589 feet MSL, which storage space is estimated to contain 116,616 acre feet out of the total
9 297,200 acre feet of estimated Conservation Storage Capacity.

10 **3.4 City Maintenance of Lake Levels for Fish, Wildlife, and Recreation** –
11 The amount of Conservation Storage Capacity remaining after allocations of storage
12 capacity for Administrative Set-Aside Contracts and the City’s water supply is 142,676
13 acre-feet. In order to effectuate the City’s use of Conservation Storage Capacity and allow
14 for releases for municipal water supply by the City pursuant to Section 3.3, the Settlement
15 Agreement, and the Settlement Act, the City’s use of the 142,676 acre-feet of Conservation
16 Storage Capacity shall be limited to maintaining lake levels for the benefit of fish and
17 wildlife and recreational purposes, consistent with the authorized purposes for Sardis Lake.

18 3.5 The allocation of Conservation Storage Capacity pursuant to Sections 3.1
19 through 3.4 is summarized in **Table 1**, below:

20 **Table 1: Effect and Scope of Sardis Lake Release Restrictions**

Storage	Conservation Storage Capacity (Acre-Feet)	Conservation Storage Capacity (Percent of Total)	Subject to Lake Level Restrictions
Lake Level Maintenance (Recreation, Fish and Wildlife)	142,676	48%	n/a

Storage	Conservation Storage Capacity (Acre-Feet)	Conservation Storage Capacity (Percent of Total)	Subject to Lake Level Restrictions
Local Use (Administrative Set-Aside)	37,908	13%	No
City Use	116,616	39%	Yes
Total	297,200	100%	n/a

1

2 **4. COORDINATION AND ADMINISTRATION OF ADMINISTRATIVE**
3 **SET-ASIDE SUBCONTRACTS**

4

5 **4.1 OWRB Coordination and Administration** – The OWRB will coordinate
6 and manage Administrative Set-Aside Contracts, the holders of which shall be
7 subcontractors of the Trust. The Trust and the subcontractor shall be parties to any
8 Administrative Set-Aside Subcontract, and all subcontracts shall contain those terms
9 provided in a standard form agreed to by the City and State. The subcontracts shall not,
10 collectively, authorize the use of Conservation Storage Capacity in excess of that amount
11 necessary to yield 20,000 acre-feet per year of water from Sardis Lake, which amount of
12 Conservation Storage Capacity is estimated to be 37,908 acre feet of storage space in
13 Sardis Lake. Nothing herein enlarges the annual yield of the Administrative Set-Aside
14 beyond 20,000 acre-feet of water per year. Conservation Storage Capacity that is subject
15 to an Administrative Set-Aside Subcontract shall not be available for use by the City.

16 **4.2 Storage and Delivery Losses** – Holders of Administrative Set-Aside
17 Subcontracts shall bear any loss of water associated with the storage and delivery of water
18 from storage in Sardis Lake to their point of diversion, and such loss shall not be allocated
19 to the City.

20 **4.3 Cost for Use of Storage Pursuant to Administrative Set-Aside**
21 **Contracts** – For the use of storage by a user pursuant to an Administrative Set-Aside

1 Subcontract, including but not limited to the SLWA Subcontract, the Trust shall charge not
2 more than the proportionate cost of the operation, maintenance, and replacement for the
3 amount of Conservation Storage Capacity authorized for use by the user (i.e., user's
4 pro-rata portion of the 37,908 acre feet of Conservation Storage Capacity in Sardis Lake
5 associated with the Administrative Set-Aside). The user must pay its proportionate share
6 of such operation, maintenance, and replacement costs as a condition to withdrawing or
7 releasing water from Sardis Lake storage. Holders of Administrative Set-Aside
8 Subcontracts shall not be considered retail or wholesale customers of the City for purposes
9 of Section 5.2; provided, that such holders who use City infrastructure or facilities for the
10 withdrawal or delivery of water shall be responsible to pay costs associated with such use
11 in accordance with Section 5.2.

12 **4.4 OWRB Permits** – The use of the water subject to the Administrative
13 Set-Aside shall be as authorized by stream water appropriation permits issued by the
14 OWRB under the Stream Water Act. The OWRB will not issue stream water appropriation
15 permits for more than a cumulative total of 20,000 acre-feet of water per year from Sardis
16 Lake for the Administrative Set-Aside, inclusive of the SLWA Subcontract.

17 **5. ADDITIONAL PROVISIONS FOR CITY WATER STORAGE AND USE**

18 **5.1 Other Conditions on the City's Use of Storage** – The City will comply
19 with the Sardis Lake Release Restrictions and all other conditions of the City Permit.

20 **5.2 Pass-through Water Storage Costs** – The City may charge and collect
21 from its retail and wholesale customers a fee for storage of water in Sardis Lake which
22 includes all costs to acquire, impound, transport, store, and otherwise provide for the ready

1 availability of this raw water supply, which shall be accounted for in accord with generally
2 accepted accounting principles. Cost of service and rate design principles published by the
3 American Water Works Association and Water Research Foundation shall be used to guide
4 the development of equitable fees and charges applied to each person and entity benefitting
5 from these water supplies, functions, or systems.

6 **5.3 City Right to Use Water from Sardis Lake** – This Agreement in and of
7 itself does not establish a right for the City to use water from Sardis Lake storage or the
8 Kiamichi River basin. The City must obtain the City Permit prior to using water from
9 Conservation Storage Capacity.

10 **5.4 Unused City Permit or Storage Contract Rights** – Pursuant to the terms
11 of Section 6.5.6 of the Settlement Agreement, the City may enter into: (i) short-term
12 contracts for Conservation Storage Capacity in Sardis Lake that is not used by the City, and
13 (ii) short-term contracts for City Permit water use rights in Sardis Lake.

14 **6. WATER QUALITY; STATE AND OWRB AUTHORITY OVER WATER**

15 **6.1 No Warranty as to Quality** – Water taken by the City under this
16 Agreement shall be raw and untreated. The OWRB does not make any express or implied
17 warranty regarding the quality of the water which may be taken by the City under this
18 Agreement, and the OWRB shall not have any responsibility to treat the water or otherwise
19 put it in a condition of any particular quality.

20 **6.2 State Authority Over Water** – Nothing herein affects the State’s
21 jurisdiction and authority over water in the State. Without limiting the generality of the
22 foregoing, the use of stream water stored in Sardis Lake hereunder shall continue to be

1 subject to the jurisdiction and authority of the OWRB to determine applications for
2 appropriation permits to use stream water as provided in Title 82, Title 785 of the
3 Oklahoma Administrative Code, and including but not limited to OAC § 785:20-5-5(b)(3)
4 as it exists at the time of the execution of this Agreement.

5 **7. ADDITIONAL PROVISIONS**

6 **7.1 Execution, Approval, and Enforceability** – This Agreement shall be
7 executed by the Parties and approved by the Secretary of Army as soon as practical after
8 the enactment of the Settlement Act and shall be enforceable on the Settlement
9 Agreement’s Enforceability Date.

10 **7.2 2010 Storage Contract Transfer Agreement** – This Agreement amends,
11 supersedes, and replaces the 2010 Storage Contract Transfer Agreement, the terms of
12 which shall no longer be in force and effect upon the Settlement
13 Agreement’s Enforceability Date; provided, that if the Enforceability Date does not occur,
14 the 2010 Storage Contract Transfer Agreement shall remain in full force and effect.

15 **7.3 Environmental Compliance** – To release or divert any water for the
16 Conservation Storage Capacity or to divert water from the Kiamichi River in accord with
17 the City Permit, the City shall be responsible for compliance with any applicable
18 requirements of local, state, or federal laws and regulations, including but not limited to the
19 National Environmental Policy Act (42 U.S.C. § 4341, et seq.), the Fish and Wildlife
20 Coordination Act (16 U.S.C. § 661-666c), the Endangered Species Act of 1973 (16 U.S.C.
21 § 1531, et seq.), the federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.),
22 provisions of Title 29 of the Oklahoma Statutes regarding fish and wildlife, Oklahoma

1 Water Quality Standards (OAC § 785:45-1-1, et seq.), or other applicable environmental
2 laws and regulations.

3 **7.4 Amendment** – This Agreement may be amended at any time upon such
4 terms and conditions as the OWRB, the City, and the Trust mutually agree and execute in
5 writing; provided, that no amendment shall in any way affect or relieve the City, the Trust,
6 the OWRB, or the State of any obligation or limitation established by the Settlement
7 Agreement and/or Settlement Act.

8 **7.5 Addresses and Notice** – Unless otherwise provided herein, any notice,
9 communication, request, reply or advice (herein severally and collectively, for
10 convenience, called “Notice”) herein provided or permitted to be given, made, or accepted
11 by any party to any other party must be in writing and may be given or be served by
12 depositing the same in the United States mail postpaid and registered or certified and
13 addressed to the party to be notified, with return receipt requested, or by delivering the
14 same to an officer of such party, addressed to the party to be notified. Notice deposited in
15 the mail in the manner described above shall be conclusively deemed to be effective, unless
16 otherwise stated herein, from and after the expiration of three days after it is so deposited.
17 Notice given in any other manner shall be effective only if and when received by the party
18 to be notified. For the purposes of Notice, the addresses of the Parties shall, until changed
19 as hereinafter provided, be as follows:

20 If to the Trust, to: Oklahoma City Water Utilities Trust
21 General Manager
22 420 W. Main Street, 5th Floor
23 Oklahoma City, Oklahoma 73102
24
25
26

1 If to the City, to: The City of Oklahoma City
2 City Clerk
3 200 N. Walker Avenue, 2nd Floor
4 Oklahoma City, Oklahoma 73102

5
6 If to OWRB, to: Oklahoma Water Resources Board
7 Executive Director
8 3800 North Classen Boulevard
9 Oklahoma City, Oklahoma 73118

10
11 The Parties shall have the right from time to time and at any time to change their respective
12 addresses and each shall have the right to specify as its address any other address by at least
13 fifteen (15) days written notice to the other parties hereto.

14 **7.7 State or Federal Laws, Rules, Orders or Regulations** – This Agreement
15 is subject to all applicable Federal laws, the laws of the State of Oklahoma, and any
16 applicable permits, ordinances, rules, orders and regulations of any local, state or federal
17 governmental authority having jurisdiction; but nothing contained herein shall be
18 construed as a waiver of any right to question or contest any such laws, permits,
19 ordinances, rules, orders, or regulations in any forum having jurisdiction.

20 **7.8 Remedies Upon Default** – Any right or remedy on any default hereunder
21 shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or
22 in equity in accordance with applicable law. No waiver or waivers of any breach or default
23 (or any breaches or defaults) by any party hereto or of performance by any other party of
24 any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall
25 any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches
26 or defaults of any kind, character or description, under any circumstance.

1 **7.9 Severability** – In the event that any one or more of the sections,
2 subsections, provisions, clauses, or words of this Agreement or the application thereof to
3 any situation or circumstance should be, or should be held to be, for any reason, invalid or
4 unconstitutional, under the laws or constitutions of the State of Oklahoma or the United
5 States of America, or in contravention of any such laws or constitutions, then such
6 invalidity, unconstitutionality, or contravention shall not affect any other sections,
7 subsections, provisions, clauses, or words of this Agreement or the application thereof to
8 any other situation or circumstance, and it is intended that this Agreement shall be
9 severable and shall be construed and applied as if any such invalid or unconstitutional
10 section, subsection, provision, clause, or word had not been included herein, and the rights
11 and obligations of the Parties hereto shall be construed and remain in force accordingly.

12 **7.10 No Extrinsic Evidence** – This Agreement constitutes the entire agreement
13 between the Parties hereto relating to the subject matter covered herein, and cancels,
14 supersedes, and replaces all previous negotiations, proposals, and agreements, whether oral
15 or written, between the Parties relating to the subject matter covered herein.

16 **7.11 Mediation** – Except as otherwise provided in this Section, as a condition
17 precedent to the filing of any lawsuit, the Parties to this Agreement agree to submit any
18 dispute to mandatory but non-binding mediation. Each party to such mediation shall bear
19 its respective cost of participation and all common costs for facilitating the mediation effort
20 shall be shared equally. Mediation must be completed within sixty (60) days after the
21 dispute is submitted to mediation. Notwithstanding other provisions in this Section, the
22 parties agree that in the event of an emergency evidenced by a written declaration approved

1 by the governing body of the party seeking to avoid mediation and when injunctive relief is
2 needed immediately, mediation shall not be required.

3 **7.12 Jurisdiction and Venue; Waiver of Sovereign Immunity** – Any
4 proceeding for interpretation or enforcement of this Agreement shall be brought in the
5 United States District Court for the Western District of Oklahoma. For the exclusive
6 benefit of the City and the Trust, the OWRB expressly and irrevocably consents to suit,
7 waives its sovereign immunity from suit, and agrees not to raise the Eleventh Amendment
8 to the United States Constitution or comparable defense to the validity of such consent or
9 waiver solely for any action brought in the Western District of Oklahoma relating to
10 interpretation or enforcement of this Agreement, which action is brought by the City or the
11 Trust, inclusive of the appellate jurisdiction of the United States Court of Appeals for the
12 Tenth Circuit and the United States Supreme Court. Nothing herein authorizes the award of
13 any money damages against the State, the City, or the Trust.

14 **7.13 Assignability and Successor Interest** – With prior written notice by the
15 assigning party to the non-assigning party: (i) the City and the Trust may assign or
16 otherwise transfer their rights hereunder to a duly formed successor or to the City of
17 Oklahoma City; and (ii) the OWRB may assign or otherwise transfer its rights hereunder to
18 a duly formed successor agency or entity or to the State of Oklahoma; provided, that any
19 assignment or transfer by the OWRB or the City and Trust shall include all obligations and
20 limitations imposed by this Agreement, the Settlement Agreement, and/or the Settlement
21 Act.

1 **7.14 Interpretation** – For purposes of interpretation of this Agreement, none of
2 the Parties shall be considered to have been the drafter of this Agreement.

3 **7.15 Modification of 2009 Order** – To the extent necessary to effectuate this
4 Agreement, the Settlement Agreement, and the Settlement Act the Parties shall cooperate
5 to submit any necessary motions or other pleadings to the United States District Court for
6 the Northern District of Oklahoma to modify the 2009 Order.

7 IN WITNESS WHEREOF, the Parties hereto acting under authority of their
8 respective governing bodies have caused this Agreement to be duly executed in several
9 counterparts, each of which shall constitute an original.

10

11 **OKLAHOMA WATER RESOURCES BOARD**

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_DRAFT_____

Date: _____

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Linda Lambert, Chair

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Attestation: _DRAFT_____

Date: _____

23

Jason Hitch, Secretary

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Reviewed for form and legality,

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_DRAFT_____

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Robert Singletary, Counsel

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1 **CITY OF OKLAHOMA CITY**

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5 _DRAFT _____

Date: _____

6 Mick Cornett, Mayor

7

8

9 **OKLAHOMA CITY WATER UTILITY TRUST**

10

11

12

13 _DRAFT _____

Date: _____

14 Pete White, Chair

15

16 Reviewed for form and legality,

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20 _____

21 Brian M. Nazareus, Counsel

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23

1 **SECRETARIAL APPROVAL** – Through the execution of this Agreement by the
2 representative of the Secretary of the Army, the Secretary of the Army (i) approves the
3 assignment and transfer of the 1974 Contract in accordance with the terms of this
4 Agreement and the Settlement Act; (ii) the USACE recognizes such assignment and
5 transfer as approved in accord with the terms of this Agreement and the Settlement Act,
6 including that the City’s uses of Conservation Storage Capacity for maintenance of lake
7 levels and for municipal water supply are authorized purposes for Sardis Lake storage and
8 that the Sardis Lake Release Restrictions shall not constitute a reallocation; and (iii) the
9 USACE acknowledges that the payments described in Sections 2.2.2 and 2.2.3 have been
10 made.

11

12 [SIGNATURE BLOCK FOR REPRESENTATIVE OF SECRETARY OF THE ARMY]

DACW56-74-C-0134

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
THE WATER CONSERVATION STORAGE COMMISSION
OF
THE STATE OF OKLAHOMA
FOR
WATER STORAGE SPACE IN CLAYTON LAKE

THIS CONTRACT, entered into this 16 day of FEB,
1974, by and between THE UNITED STATES OF AMERICA (hereinafter
called the "Government") represented by the Contracting Officer
executing this contract, and THE WATER CONSERVATION STORAGE COM-
MISSION OF THE STATE OF OKLAHOMA (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1962 (Public Law 87-874,
87th Congress), authorized the construction, operation, and
maintenance of the Clayton Lake on Kiamichi River, Oklahoma,
(hereinafter called the "Project"); and

WHEREAS, the User desires to contract with the Government
for the use of storage included in the Project for municipal
and industrial water supply, and for payment of the cost there-
of in accordance with the provisions of the water supply Act
of 1958, as amended (43 USC 390b-f); and

WHEREAS, the User is empowered so to contract with the
Government and is vested with all necessary powers for accom-
plishment of the purposes of this contract, including those
required by Section 221 of the Flood Control Act of 1970 (42
USC 1962d-5b);

NOW, THEREFORE, the Government and the User agree as fol-
lows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the
directions of Federal law and any limitations imposed thereby,
shall design and construct the Project so as to include therein
space for the storage of water by the User.

RECEIVED

CONTRACTOR'S COPY

APR 29 1974

OKLA. WATER RESOURCES BOARD

2601, 3

(b) Rights of User.

(1) The User shall have the right to utilize an undivided 100 percent (estimated to contain 297,200 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 599.0 feet above mean sea level and 542.0 feet above mean sea level, which total storage space is estimated to contain 297,200 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply. 47.678 percent (an estimated 141,700 acre-feet) of the space which User has a right to utilize is for present use water storage and 52.322 percent (an estimated 155,500 acre-feet) is for future use water storage.

(2) The User shall have the right to withdraw water from the lake, or to order releases to be made by the Government through the outlet works, in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appliances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 USC 2669. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges herein granted.

(c) Rights Reserved. The Government reserves the right to maintain at all times a minimum downstream release of 4 cubic feet per second through the gates or spillway of the dam. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life or property, including the right not to make downstream releases during such periods of time as is deemed necessary in its sole discretion, to inspect, maintain, or repair the Project.

(d) Quality or Availability of Water. The User recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with state laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawal and Releases. The User agrees to furnish and install, without cost of the Government, suitable meters or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

(a) Project Investment Costs.

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, which, as shown in Exhibit "A" attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during construction, allocated to the water storage right acquired by the User under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the basis set forth in the Water Supply Act of 1958, as amended. Such interest rate at the time of negotiation of this contract is 4.012 percent. The User shall repay:

100 percent of the construction cost of specific water supply facilities, estimated at	\$ 103,000
66.22 percent of the total Project joint-use construction costs, estimated at	15,078,000
Interest during construction, estimated at	<u>1,218,000</u>
Total estimated amount of Project investment costs allocated to water supply	\$16,399,000

(2) The Project investment costs allocated to the storage space indicated in Article 1(b)(1) as being provided for present demand is currently estimated at \$7,877,000, on the basis of the cost presented in Exhibit "A". The amount of the Project investment costs allocated to the storage for present demand shall be paid in 50 consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer that the Project is completed and operational for water supply purposes. Annual installments thereafter will be due and payable on the anniversary date of the first payment. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 50 years.

(3) The amount of the Project investment costs allocated to the remaining portion of the storage space, that provided for future use, is currently estimated at \$8,522,000 on the basis of the costs presented in Exhibit "A". No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the date the Project is operational for water supply purposes, unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the date the Project is operational for water supply purposes until the time when such storage is first used. The User may at its option pay the interest as it becomes due or allow the interest to accumulate until the storage is used. If the latter option is exercised, the interest will be compounded annually and added to the principal amount. When any portion of the storage for future water supply is used, payment of both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project in not to exceed 50 consecutive annual installments beginning within 30 days after the date of first use of such portion.

(4) An estimated schedule of annual payments for the storage provided for present demand is attached as Exhibit "B" of this contract. The annual payments as provided therein shall be made until the actual construction costs of the Project are determined. When the actual construction costs of the Project are determined, the annual payments due thereafter will be adjusted to reflect any increase or decrease in the actual cost, including interest during construction, from the estimated amounts shown in Exhibit "A". Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when

use of such storage is started, and if based on estimated costs will be subject to revision when actual costs are known.

(5) If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually at the applicable rate until paid. The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue (31 to 60 days after the anniversary date), one month's interest shall be charged. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by User.

(6) The User shall have the right at any time it so elects to prepay the indebtedness under this Article 5(a), in whole or in part, with accrued interest thereon to the date of such prepayment.

(b) Major Capital Replacement Costs. The User will be required to pay 100 percent of the costs for any major capital replacement of specific water supply facilities. In addition, the User shall pay to the Government up to 67.69 percent of the costs of joint-use major capital replacement items. The required repayment for joint-use costs will be commensurate with the User's percentage of storage space presently in use. Payment shall be paid either in lump sum or annually with interest on the unpaid balance. If paid annually, the first payment shall be made with the first annual payment on the Project investment costs becoming due after the date said major capital replacement costs are incurred.

(c) Annual Operation and Maintenance Costs. The User will be required to pay the annual experienced operation and maintenance costs of specific water supply facilities. In addition, the User shall pay 34.109 percent of the annual experienced joint-use operation and maintenance costs of the Project until such time as the storage for future water supply is used. As the storage provided for future water supply demands is used, the share of the annual experienced joint-use operation and maintenance costs, which the User will be required to pay in addition

to the operation and maintenance costs of the specific water supply facilities, will be increased commensurate with the percentage of the water supply storage being used, up to a total of 71.54 percent of such costs.

ARTICLE 6 - Construction Cost Adjustments. All construction cost dollar amounts in this contract, including those in the appendices, are tentative only, based on the Government's best estimates. They will be adjusted upward or downward by the Contracting Officer when final construction costs become known, and the contract will be modified to reflect the adjustments.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5(a) herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 USC 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The User shall continue payment of annual operation and maintenance costs allocated to water supply.

(b) The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the Contracting Officer. Repayment arrangements including schedules will be in writing and will be made a part of this contract.

(c) Upon completion of payments by the User as provided in Article 5(a) hereof, the Contracting Officer shall redetermine the storage space for municipal and industrial water supply, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the Project as may be necessary due to sedimentation. Such findings, and the storage space allocated to municipal and industrial water supply, shall be defined and described in an exhibit which will be made a part of this contract. Following the same principle, such reallocation of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the User under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the

Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

(1) continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) terms which will protect the public interest; and

(3) effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The User shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the facilities and appurtenances thereto owned and operated by the User, provided, that this shall not be construed as obligating the User to hold and save the Government harmless from damages or liability resulting from the sole negligence of the Government or its officers, agents, or employees and not involving negligence on the part of User or its officers, agents, or employees. The User shall also hold and save the Government free from all water-rights claims resulting from construction and operation of the Project.

ARTICLE 10 - Assignment. The User shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefits.

ARTICLE 12 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee

excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 USC 276a et seq.); the Contract Work Hours and Safety Standards Act (40 USC 327-333); and Title 29, Code of Federal Regulations, Part 3.

(b) The User furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 USC 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

(c) The parties agree that this contract is not an obligation for which the full faith and credit of the State of Oklahoma is pledged. Nothing herein shall be construed as legally obligating the Oklahoma Legislature to make any appropriation of funds.

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O. B. S. - J. G. D.

ARTICLE 15 - Definitions.

(a) Joint-use costs - The costs of features used for any two or more project purposes.

(b) Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.

(c) Specific costs - The costs of project features normally serving only one particular project purpose.

(d) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to User for water storage.

ARTICLE 16 - Approval. This contract is subject to the written approval of the Secretary of the Army, and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

APPROVED:

THE UNITED STATES OF AMERICA

Howard H. Callaway
Secretary of the Army

By John G. Driskill
JOHN G. DRISKILL
Colonel, Corps of Engineers
District Engineer
Contracting Officer

DATE: 9 APR 1974

THE WATER CONSERVATION STORAGE
COMMISSION OF THE STATE OF
OKLAHOMA

SEAL

By Lloyd E. Church, D.D.S.
Chairman Lloyd E. Church, D.D.S.

ATTEST:

By O. B. Saunders
O. B. Saunders, Secretary

It is my opinion that this contract is within the authority of the contracting agency and in reaching this conclusion I have considered the effect of Section 221 of the Flood Control Act of 1970 (42 USC 1962d-5b).

Carlyle D. Phillips
ATTORNEY GENERAL
STATE OF OKLAHOMA

CERTIFICATE

BACW56-74-C-0134

I, O. B. Saunders, hereby certify that I am the Secretary, of the Water Conservation Storage Commission of the State of Oklahoma, named as User herein; that Lloyd E. Church, who signed this contract on behalf of the User was then Chairman of said Water Conservation Storage Commission; that said contract was duly signed for and on behalf of said User by authority of its governing body, and is within the scope of its legal powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand the seal of the Water Conservation Storage Commission of the State of Oklahoma, this 16 day of Feb, 1974.

(Seal)

O. B. Saunders
O. B. Saunders

EXHIBIT A

I - RESERVOIR STORAGE

<u>Feature</u>	<u>Elevation</u> (ft MSL)	<u>Usable</u> <u>Storage</u> (1) (ac ft)	<u>Percent of</u> <u>Conservation</u> <u>and Water</u> <u>Supply Storage</u>
Flood Control	607.0-599.0	127,300	
Conservation Storage	599.0-542.0	297,200	100.00
Water Supply		297,200	100.00
Oklahoma Water Conservation Storage Commission			
Initial		141,700	47.678
Future		<u>155,500</u>	52.322
Total		424,500	

(1) Storage remaining after 100 years sedimentation.

II - ALLOCATION OF ESTIMATED FIRST COST (2)

Flood Control	\$ 6,861,000
Water Supply:	
Storage	15,078,000
Conduit	103,000
Recreation & Fish and Wildlife	<u>4,260,000</u>
Total	\$26,302,000

(2) First cost includes \$102,000 for the present value of future recreation facilities. Total first cost of Project is \$26,200,000

Contract No. DACW56-74-C-0134

EXHIBIT A (CONT)

III - COSTS TO BE REPAID BY THE USER
FOR WATER SUPPLY

INITIAL USE:

Cost of 141,700 acre-feet of water supply storage
(47.678% x \$15,078,000) = \$ 7,189,000
Outlet works specific to water supply = 103,000
\$ 7,292,000

Interest during construction (\$7,292,000 x
4.012% x 1/2 of 4-year construction period) = 585,000
TOTAL INVESTMENT - INITIAL USE = \$ 7,877,000

FUTURE USE:

Cost of 155,500 acre-feet of water supply storage
(52.322% x \$15,078,00) = \$ 7,889,000

Interest during construction (\$7,889,000 x
4.012% x 1/2 of 4-year construction period) = 633,000
TOTAL INVESTMENT - FUTURE USE = \$ 8,522,000

TOTAL INVESTMENT - INITIAL & FUTURE USE = \$16,399,000

EXHIBIT A (CONT)

**IV - ALLOCATION OF ESTIMATED ANNUAL OPERATION,
MAINTENANCE AND MAJOR REPLACEMENT COSTS**

<u>Item</u>	<u>Present</u> \$	<u>Future</u>	<u>Sub- total</u> \$	<u>FC, REC, F&WL</u>	<u>Total</u> \$
<u>Operation & Maintenance:</u>					
Specific Cost	1,000	0	1,000	90,800	91,800
Joint-Use Cost	<u>60,850</u> (3)	<u>66,750</u> (4)	<u>127,600</u>	<u>50,800</u>	<u>178,400</u>
Total	61,850	66,750	128,600	141,600	270,200
<u>Major Replacement:</u>					
Specific Cost	800	0	800	1,900	2,700
Joint-Use Cost	<u>420</u> (3)	<u>480</u> (4)	<u>900</u>	<u>400</u>	<u>1,300</u>
Total	1,220	480	1,700	2,300	4,000

(3) Based on 47.678 percent of joint-use cost allocated to water supply.
 (4) Based on 52.322 percent of joint-use cost allocated to water supply.

EXHIBIT A (CONT)

V - ANNUAL COSTS TO USER FOR
INITIAL USE OF WATER SUPPLY STORAGE SPACE

Interest and amortization (5)	$0.044847 \times \$7,877,000$	=	\$353,257
Operation and Maintenance (6)			
Joint-Use			
$47.678\% \times 71.54\%$	= $34.109\% \times \$178,400$	=	60,850
Specific Facilities			
$100\% \times \$1,000$		=	<u>1,000</u>
Major Replacement (Estimated) (7)			
Joint-Use			
$47.678\% \times 67.69\%$	= $32.273\% \times \$1,300$	=	420
Specific Facilities			
$100\% \times \$800$		=	<u>800</u>
TOTAL ESTIMATED ANNUAL COST		=	<u><u>\$416,327</u></u>

(5) Based on 50 payment, 49 with interest.

(6) The first payment shall be due and payable on the date specified in Article 5a(2). Payment due prior to availability of actual experienced cost will be as shown.

(7) Major replacement cost are payable only when incurred.

Contract No.
EXHIBIT B

DACW56-74-C-0134

AMORTIZATION SCHEDULE

TOTAL COST..... 7577000.
NUMBER OF PAYMENTS..... 50
INTEREST RATE, PERCENT..... 4.012

ANNUAL PYMT NO.	AMOUNT OF PAYMENT	APPLICATION		BALANCE
		INTEREST	ALLOC COST	ALLOC COST
	\$	\$	\$	\$
				7577000.00
1	353257.00		353257.00	7523743.00
2	353257.00	301352.57	51404.43	7472335.57
3	353257.00	299790.22	53466.78	7418871.79
4	353257.00	297645.14	55611.86	7363259.93
5	353257.00	295413.99	57843.01	7305416.92
6	353257.00	293093.33	60163.67	7245253.25
7	353257.00	290679.56	62577.44	7182675.31
8	353257.00	288163.95	65033.05	7117557.76
9	353257.00	285557.62	67699.33	7049853.33
10	353257.00	282841.52	70415.43	6979472.90
11	353257.00	280016.45	73240.55	6906232.35
12	353257.00	277073.04	76173.96	6830053.39
13	353257.00	274021.74	79205.26	6750848.13
14	353257.00	270842.32	82414.16	6668433.95
15	353257.00	267536.37	85720.63	6582633.32
16	353257.00	264097.25	89109.75	6493523.57
17	353257.00	260520.17	92730.33	6400786.74
18	353257.00	256809.56	96487.44	6304299.50
19	353257.00	252929.69	100327.31	6204001.99
20	353257.00	248904.56	104352.44	6099649.55
21	353257.00	244717.24	108509.06	5991110.49
22	353257.00	240363.35	112893.65	5878216.84
23	353257.00	235834.06	117422.94	5760793.90
24	353257.00	231123.05	122133.95	5638659.95
25	353257.00	226223.04	127033.96	5511625.99
26	353257.00	221126.43	132130.57	5379495.42
27	353257.00	215825.36	137431.64	5242063.78
28	353257.00	210311.60	142945.40	5099118.38
29	353257.00	204576.63	148630.37	4950433.01
30	353257.00	198611.57	154645.43	4795792.58
31	353257.00	192407.20	160849.80	4634942.78
32	353257.00	185953.90	167303.10	4467639.68
33	353257.00	179241.70	174015.30	4293624.38
34	353257.00	172260.21	180996.79	4112627.59
35	353257.00	164993.62	188253.38	3924369.21

EXHIBIT B (Cont)

DACW56-74=C=0.134

TOTAL COST.....				7877000.
NUMBER OF PAYMENTS.....				50
INTEREST RATE, PERCENT.....				4.012

ANNUAL	AMOUNT OF	APPLICATION		BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST	ALLOC COST

	\$	\$	\$	\$
36	353257.00	157445.69	195311.31	3723557.90
37	353257.00	149539.74	203667.26	3524390.64
38	353257.00	141413.61	211333.39	3313052.25
39	353257.00	132919.66	220337.34	3092714.91
40	353257.00	124079.72	229177.23	2863537.63
41	353257.00	114835.13	238371.37	2625165.76
42	353257.00	105321.65	247935.35	2377230.41
43	353257.00	95374.45	257632.52	2119347.39
44	353257.00	85023.24	263223.76	1851119.13
45	353257.00	74266.90	273990.10	1572129.03
46	353257.00	63073.32	290133.13	1231945.35
47	353257.00	51431.67	301325.33	900120.52
48	353257.00	39322.44	313934.56	666135.96
49	353257.00	26727.33	328529.62	332306.34
50	353233.35	13627.01	339656.34	0.00

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION
(hereinafter called "Applicant-Recipient")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 Code of Federal Regulations Part 300, issued as Department of Defense Directive 5500.11, 28 December 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by the Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the

Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant-Recipient.

Sections IV and VII of Department of Defense Directive 5500.11 setting forth prohibited discriminatory actions and compliance information is on the reverse hereof.

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION

Dated 2-16-74

(Applicant-Recipient)

By Lloyd E. Kline

SECTIONS IV AND VII DEPARTMENT OF DEFENSE DIRECTIVE 5500.11

IV. POLICY

A. GENERAL. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

B. SPECIFIC DISCRIMINATORY ACTIONS PROHIBITED.

1. A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

a. Deny an individual any service, financial aid, or other benefit provided under the program;

b. Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

c. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

d. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by other receiving any service, financial aid, or other benefit under the program;

e. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

f. Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

3. As used in this Section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

4. The enumeration of specific forms of prohibited discrimination in this Subsection does not limit the generality of the prohibition in Subsection IV, A. of this Section.

VII. Compliance Information

A. Cooperation and Assistance. Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

B. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. In the case of any program under which a primary recipient extends Federal assistance to any other recipient, such other recipient shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.

C. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

D. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

**STORAGE CONTRACT TRANSFER AGREEMENT
BETWEEN
OKLAHOMA CITY WATER UTILITIES TRUST
AND
STATE OF OKLAHOMA WATER RESOURCES BOARD**

This Storage Contract Transfer Agreement, dated for convenience of reference this 15 day of June, 2010, is entered into by and between the Oklahoma City Water Utilities Trust ("OCWUT"), a public trust for the benefit of the City of Oklahoma City ("City"), and the Oklahoma Water Resources Board ("OWRB"), an agency of the State of Oklahoma (the "State").

RECITALS

WHEREAS, the Water Conservation Storage Commission of the State of Oklahoma entered into a contract on February 16, 1974, with the United States through the United States Army Corps of Engineers ("USACE"), to repay 100% of the water supply storage costs associated with the construction of Clayton Lake, subsequently renamed Sardis Reservoir, pursuant to the contract (herein "1974 Contract," a copy of which is attach hereto and incorporated herein); and

WHEREAS, construction of Sardis Reservoir began in 1974; and

WHEREAS, the Water Conservation Storage Commission was sunsetted by the Oklahoma Legislature in 1979 and, pursuant to 1979 Okla. Sess. Laws, ch. 247, § 8, codified at 82 O.S. § 1085.38, the obligations of the Water Conservation Storage Commission were transferred to the OWRB; and

WHEREAS, construction of Sardis Reservoir was completed by the USACE and the reservoir was deemed operational on January 6, 1983; and

WHEREAS, the 1974 Contract authorizes the use of 100% of the conservation storage capacity for water supply, and further divides and designates the storage capacity into present use storage which is equivalent to 47.678% of the total conservation storage volume, and future use storage which is 52.322% of total conservation storage volume; and

WHEREAS, the OWRB, under provisions of 82 O.S. §1085.2(2), has authority to make such contracts as in the judgment of the OWRB are necessary or convenient to the exercise of any of the powers conferred upon it by law; and

WHEREAS, on or about September 3, 2009, a final Order ("September 2009 Order", a copy of which is attached hereto and incorporated herein) was entered in United States v. State of Oklahoma and Oklahoma Water Resources Board, United States District Court for the Northern District of Oklahoma, CV-98-00521, wherein the State of Oklahoma agreed to bring past due payments for the present use storage up to date by making an initial payment upon filing the Order, and to make five annual payments of \$5,266,775.92 each beginning on or before July 1, 2010, through July 1, 2014 and thereafter to make the remaining annual payments to pay off the present use storage costs, or in the alternative, to pay off the present use storage costs with one lump sum payment of \$27,814,262.49 on or before July 1, 2010; and

WHEREAS, the City is an Oklahoma municipal corporation and OCWUT is a public trust created for the benefit of the City under the laws of Oklahoma and OCWUT is authorized to enter into such contracts as necessary for its purposes, including contracts for water supply storage; and

WHEREAS, the City of Oklahoma City and the OCWUT provide raw and treated water to southeast and central Oklahoma; and

WHEREAS, the City and OCWUT desire to acquire the rights to use the conservation storage capacity now held by the State of Oklahoma as reflected in the 1974 Contract, and to appropriate and utilize waters of the Kiamichi River basin, including waters in Sardis Reservoir, for the future water supply of the City of Oklahoma City and other public water supply entities in Oklahoma; and

WHEREAS, the OWRB and OCWUT desire to enter into a Storage Contract Transfer Agreement (hereinafter "Agreement") whereby, among other things, the OWRB will transfer its rights to use the conservation storage capacity together with all its obligations under the 1974 Contract to OCWUT, and OCWUT will assume the repayment obligations set forth in the 1974 Contract subject to the provisions thereof, pay the payments set forth in the September 2009 Order, and be able to utilize the rights to use the conservation storage capacity in Sardis Reservoir, all pursuant to and as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth below, IT IS AGREED by and between the Oklahoma City Water Utilities Trust and the Oklahoma Water Resources Board as follows:

ARTICLE I - DEFINITIONS

Section 1.1. Defined Terms. The following terms and expressions as used in this Agreement, unless the context clearly shows otherwise, shall have the following meanings:

1. "Acre-foot" means the unit of measurement for water equal to 325,851 gallons, U.S. Standard Liquid Measure.
2. "APA" means the Administrative Procedures Act codified at 75 O.S. §§ 250 through 323.

3. "Dependable Yield" means the amount of water in acre-feet that is expected to be available in every year except a specified percentage of years.

4. "Future Use Storage" means that portion of water supply storage in Sardis Reservoir designated in the 1974 Contract as being for future use, which portion equals 52.322% of the total Water Supply Storage designated in Sardis Reservoir.

5. "Permit" means an appropriation permit to be issued by the OWRB to the City authorizing appropriation and use of stream water upon certain terms and conditions, as set forth in Section 2.7 below.

6. "Present Use Storage" means that portion of water supply storage in Sardis Reservoir designated in the 1974 Contract as being for present use, which portion equals 47.678% of the total Water Supply Storage designated in Sardis Reservoir.

7. "Sardis Reservoir" means the reservoir constructed under the authority of the USACE with the dam in Pushmataha County and located in southeast Oklahoma in the area described in Exhibit A attached hereto.

8. "Stream Water Use Act" means the statutes codified at 82 O.S. §§ 105.1 through 105.32.

9. "Water Supply Storage" means that capacity of Sardis Reservoir designated by the USACE authorized to be used to store water for conservation purposes, including water supply, between elevations 542 feet and 599 feet mean sea level.

10. "Water Year" means the twelve-month period beginning January 1 and ending December 31.

ARTICLE II

GENERAL TERMS AND CONDITIONS OF THE TRANSACTION

Section 2.1. Assignment of 1974 Contract; Transfer. Subject to the provisions of Sections 2.2 through 2.7 hereof, the OWRB hereby transfers all of its rights and obligations in the 1974 Contract and does hereby grant, bargain, sell, and convey all right, title and interest of the OWRB in the 1974 Contract to OCWUT. The OWRB states that it has not made any other transfers or assignments of the rights under the 1974 Contract less and except the Subcontract for Use of Water Supply Storage, Easement, License and In take Structure at Sardis Lake between Oklahoma Water Resources Board and Sardis Lake Water Authority (herein "Subcontract").

Section 2.2. USACE Approval. The transfer of the 1974 Contract rights and obligations contemplated by this Agreement requires approval by the USACE under Article 10 of the 1974 Contract. The USACE approval is not a condition precedent to the effectiveness of this Agreement between the OWRB and OCWUT, and OCWUT assumes all responsibility and costs to obtain USACE approval under Article 10 of the 1974 Contract. The OWRB agrees to support OCWUT in obtaining any approval required from USACE. OCWUT will make the payments described in Section 2.5 (a), (b)(i), and (c) regardless of whether the USACE approves the transfer of the 1974 Contract.

Section 2.3. OCWUT's Contract Rights Subject to Preexisting Subcontracts and Administrative Set-aside. OCWUT shall take the transfer of the 1974 Contract under this Agreement subject to the Subcontract entered into by the OWRB. Additionally, the City and OCWUT acknowledge and agree that the administrative set-aside of 20,000 acre-feet of water per year from Sardis Lake storage for beneficial use in southeastern Oklahoma inclusive of the water from storage subject of the Subcontract, as specified in provisions of OWRB rule 785:20-5-5(b)(3), as it exists at the time of the making of this Agreement, shall apply to and limit the water storage in Sardis Lake by the City and OCWUT.

Section 2.4. State and OWRB Authority Over Water. The plenary jurisdiction and authority of the State over water in the State pursuant to State and Federal law, including but not limited to water in Sardis Reservoir and the Kiamichi River and its tributaries, shall not be affected by the transfer of storage rights and obligations under this Agreement. Without limiting the generality of the foregoing, the use of stream water stored in Sardis Reservoir hereunder shall continue to be subject to the jurisdiction and authority of the OWRB to determine applications for appropriation permits to use stream water as provided in title 82 of the Oklahoma Statutes, title 785 of the Oklahoma Administrative Code, and including but not limited to Section 785:20-5-5(b)(3) as it exists at the time of the making of this Agreement, providing to the effect that 20,000 acre feet is not available for stream water use appropriation in certain instances of applications for appropriation from water supply storage at Sardis Reservoir, and other applicable law. In addition, all rights to the use of water in Sardis Reservoir in existence at the time of this Agreement shall not be affected by the transfer under this Agreement. Provided however, nothing in this Agreement shall preclude or prevent OCWUT or successor trust from charging and collecting a fee for water storage, operation, and maintenance costs.

Section 2.5. Assumption of Obligations; Payments.

a. Assumption of Obligations Under 1974 Contract. OCWUT hereby assumes and accepts responsibility for all obligations of the State and OWRB under the 1974 Contract, including but not limited to those relating to costs of operation and maintenance and costs of storage for future water supply use. The provisions of this Section 2.5 shall not be construed to warrant, guarantee or pre-judge that the application for a permit to appropriate as described in Section 2.7 below will be approved and that a permit will be issued as requested.

Without limiting the generality of the foregoing, OCWUT shall make the payments as provided in this Section 2.5.

b. Payments on or before July 1, 2010 and after USACE approval.

i. On or before July 1, 2010, OCWUT shall pay to the OWRB, and the OWRB will immediately thereafter pay to the United States of America/USACE or the OCWUT shall pay directly to the United States of America/USACE, the amount due as provided by and in accordance with the September 2009 Order. The lump sum payment alternative amount shall represent the arrearage and balance due for storage for present water supply use under the 1974 Contract as agreed by the United States/USACE pursuant to the September 2009 Order.

ii. On or before the date which is thirty (30) days after USACE approves the transfer of the 1974 Contract to OCWUT, OCWUT shall pay to the OWRB the amount of \$15,000,000.00, as reimbursement for the costs heretofore paid by the State and OWRB, for deposit into the Community Water Infrastructure Development Revolving Fund or such other fund as otherwise specified by OWRB.

c. Ongoing payments under 1974 Contract. In addition to the payments to be made as specified in Section 2.5(b) above, the OCWUT acknowledges and agrees that OCWUT assumes all responsibility to make other payments due to the USACE, including but not limited to (i) the annual joint-use operation and maintenance costs billed annually in arrears based on actual operation and maintenance expenses of the USACE as specified in Article 3 and Article 5(c) of the 1974 Contract, (ii) any major capital replacement costs billed by the USACE pursuant to Article 5(b) of the 1974 Contract, and (iii) future use storage costs pursuant to Article 5(a)(3) of the 1974 Contract.

Section 2.6. Water Storage and Use.

a. General description of use of storage. The OCWUT intends to establish a long-term water supply source from the Kiamichi River Basin as a supplemental source to the existing McGee Creek Reservoir and Atoka Reservoir sources. Among other things, this will include making application for and obtaining an appropriation Permit from the OWRB as set forth in Section 2.7 below. Subject to the terms and conditions of such Permit, water from Sardis Lake or from the flow of the Kiamichi River, or from a combination thereof, will be conveyed by pipeline from a point of diversion within the Kiamichi River Basin to be determined by OCWUT. OCWUT may supply the water to other public water supply entities within and throughout the State of Oklahoma, including but not limited to southeast and central Oklahoma. As the water use needs of the OCWUT and other public water supply entities develop, the OCWUT will analyze the necessity of infrastructure additions and improvements, such as additional pipelines, pumps and terminal storage, to convey and store water from the Kiamichi River Basin. The 1974 Contract hereby transferred authorizes the "User" to construct works, plants, pipelines and appliances on lands owned by the USACE subject to approval of the USACE, and it is the intent of the parties to this agreement that the OCWUT be considered as the "User" under the 1974 Contract.

b. Cost for use of storage for administrative set-aside. For use of storage for any of the 20,000 acre-feet of water specified in the OWRB rule 785:20-5-5(b)(3) as the local use administrative set-aside from Sardis Lake storage including the Subcontract, OCWUT shall charge not more than the proportionate cost of the storage, operation maintenance and replacement for the yield of amount of water authorized to be used by the local user inclusive of the Subcontract. The local use of the water subject to the administrative set-aside shall be as

authorized by appropriation permits issued by the OWRB. The OWRB will not issue permits for more than a cumulative total of 20,000 acre-feet of consumptive use of water from Sardis Lake storage, inclusive of the Subcontract, without written consent of the City or OCWUT.

c. Other conditions on use of storage. The OCWUT and City will comply with provisions of OWRB rule 785:20-5-5(b)(3) regarding use of water from Sardis Lake storage. The OCWUT and City agree that water from Sardis Lake storage may be sold for use, or may otherwise be used, within the State of Oklahoma.

d. Water storage costs. Subject to Section 2.6(b) above, the OCWUT may charge and collect a fee for storage of water in Sardis Reservoir which includes all costs to acquire, impound, transport, store, and otherwise provide for the ready availability of this raw water supply which shall be accounted for in accord with generally accepted accounting principles. Cost of service and rate design principles published by the American Water Works Association and Water Research Foundation shall be used to guide the development of equitable fees and charges applied to each person and entity benefitting from these water supplies, functions, or systems.

Section 2.7. Water Use Permit.

a. Introduction. This Agreement in and of itself provides no authority to the City or OCWUT to use water from Sardis Reservoir storage or the Kiamichi River Basin. To be authorized to use any water from the Water Supply Storage in Sardis Reservoir, the City or OCWUT must obtain a permit from the OWRB as provided by the laws of the State, provided that the OWRB acknowledges that the City filed application #2007-017 to appropriate 136,000 acre-feet per year with the sources of water being Sardis Lake water supply storage and flows from the Kiamichi River basin area upstream from Hugo Lake dam. The administrative

proceeding on such an application is and shall be independent of this Agreement and the parties' performance of this Agreement.

b. Administrative proceeding. Before using any water from the Water Supply Storage, the OWRB must issue any necessary stream water use permit to appropriate based on the application filed by the City. The application shall be processed and determined by the OWRB in an administrative proceeding subject to and as provided in the Stream Water Use Act, the APA, other applicable statutes and court decisions, and applicable rules of the OWRB in the Oklahoma Administrative Code.

ARTICLE III

WATER QUALITY

Section 3.1. General Water Quality. It is understood and agreed that as of the date of execution of this Agreement, the water usually flowing in, through and impounded in the Kiamichi River basin, including Sardis Reservoir, is of good to high quality and to the knowledge of the OWRB, the City and OCWUT is usually sufficient for a raw water supply for municipal, industrial and other beneficial uses as contemplated by the City and OCWUT. The OWRB agrees to cooperate and to coordinate efforts to maintain water quality of the waters of the Kiamichi River basin, including water in Sardis Reservoir. The OCWUT and the City agree to comply with applicable water quality laws lawfully adopted by government entities of competent jurisdiction.

Section 3.2. No Warranty as to Quality. Water taken by the OCWUT under this Agreement shall be raw and untreated. The OWRB does not make any express or implied warranty regarding the quality of the water which may be taken by OCWUT under this Agreement, and the OWRB shall not have any responsibility to treat the water or otherwise put it in a condition of any particular quality.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. Effective Date. This Agreement shall become effective on and after the date of proper execution by the parties.

Section 4.2. Environmental Compliance. To release or divert any water for the Water Supply Storage or to divert water from any location on the Kiamichi River upstream from Hugo Lake dam, OCWUT shall be responsible for compliance with any applicable requirements of local, state or federal laws and regulations, including but not limited to the National Environmental Policy Act (42 U.S.C. 4341 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), provisions of Title 29 of the Oklahoma Statutes regarding fish and wildlife, Oklahoma Water Quality Standards (Title 785:45-1-1 et seq., Oklahoma Administrative Code), or other applicable environmental laws and regulations.

Section 4.3. Storage rights created through federal law. This Agreement transfers only the rights to storage on lands owned by the USACE as described in the 1974 Contract and as provided in federal laws authorizing the construction of Sardis Lake and use of water supply storage in reservoirs constructed by USACE. This Agreement does not affect other rights to land, storage or water.

Section 4.4. Modification. This Agreement may be amended at any time upon such terms and conditions as the parties mutually agree and execute in writing. No oral statement of any person shall modify or otherwise affect the terms or conditions stated in this Agreement.

Section 4.5. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for

convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, addressed to the party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to OCWUT, to: Oklahoma City Water Utilities Trust

General Manager, Marsha Slaughter

420 W. Main Street, 5th Floor

Oklahoma City, Oklahoma 73102

If to OWRB, to: Oklahoma Water Resources Board

J.D. Strong, Interim Executive Director

3800 North Classen Boulevard

Oklahoma City, Oklahoma 73118

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days written notice to the other parties hereto.

Section 4.6. State or Federal Laws, Rules, Orders or Regulations. This Agreement is subject to all applicable Federal laws, the laws of the State of Oklahoma, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal governmental

authority having or asserting jurisdiction; but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 4.7. Remedies Upon Default. Any right or remedy on any default hereunder shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity in accordance with applicable law. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstance.

Section 4.8. Severability. The parties hereto specifically agree that in the event that any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application thereof to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Oklahoma or the United States of America, or in contravention of any such laws or constitutions, then such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application thereof to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

Section 4.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter covered herein, and cancels,

supersedes and replaces all previous negotiations, proposals, and agreements, whether oral or written, between the parties relating to the subject matter covered herein.

Section 4.10. Mediation. Except as otherwise provided in this Section, as a condition precedent to the filing of any lawsuit, the parties to this Agreement agree to submit any dispute to mandatory but non-binding mediation. Each party to such mediation shall bear its respective cost of participation and all common costs for facilitating the mediation effort shall be shared equally. Mediation must be completed within sixty (60) days after the dispute is submitted to mediation. Notwithstanding other provisions in this Section, the parties agree that in the event of an emergency evidenced by a written declaration approved by the governing body of the party seeking to avoid mediation and when injunctive relief is needed immediately, mediation shall not be required.

Section 4.11. Jurisdiction and Venue for Litigation. The parties agree that any proceeding for enforcement of this Agreement shall be brought in the District Court in and for Oklahoma County.

Section 4.12. Assignability and Successor Interest. The rights and obligations of the OCWUT under this Agreement may be assigned or the rights hereunder otherwise transferred by the OCWUT to a duly formed successor trust or to the City of Oklahoma City, provided that no obligations of the OCWUT set forth in this Agreement shall be affected by any such assignment or transfer. The rights and obligations of the OWRB under this Agreement may be assigned or the rights hereunder otherwise transferred by OWRB from the OWRB to a duly formed successor agency or entity, or to the State of Oklahoma, provided that no obligations of the OWRB set forth in this Agreement shall be affected by any such assignment or transfer.

Section 4.13. Interpretation. For purposes of interpretation of this Agreement, neither the OWRB, OCWUT, State of Oklahoma nor City of Oklahoma City shall be considered to have been the drafter of this Agreement.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original.

For the OKLAHOMA CITY WATER UTILITIES TRUST

Pete White

Pete White, Chairman

Date 06/15/10

ATTEST:

Frances Kersey

Frances Kersey, Secretary

(SEAL)



For the CITY OF OKLAHOMA CITY

Mick Cornett

Mick Cornett, Mayor

Date 06/15/10

ATTEST:

Frances Kersey

Frances Kersey, City Clerk

(SEAL)



Reviewed for form and legality.

1104-3K1 H

Assistant Municipal Counselor

For the OKLAHOMA WATER RESOURCES BOARD

Rudolf J. Herrmann

5-11-2010

Rudolf J. Herrmann, Chairman

Date



Linda P. Lambert

Linda P. Lambert, Secretary

Reviewed for form and legality.

Dean Cook

General Counsel

EXHIBIT A

All or part of Sections 1, 2, 11, 12, 13, 14, 15 and 22, all in T 2 N, R 17 E1M, Pushmataha County;

All or part of Section 21, T 2 N, R 17 E1M, Pittsburg County;

All or part of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23 and 24, all in T 2 N, R 18 E1M, Pushmataha County;

All or part of Sections 4, 5, 6, 7, 8, 17, 18, 19 and 20, all in T 2 N, R 19 E1M, Pushmataha County;

All or part of Sections 35 and 36 in T 3 N, R 17 E1M, Latimer County;

All or part of Sections 23, 25, 26, 27, 34, 35 and 36, all in T 3 N, R 18 E1M, Latimer County;

and

All or part of Sections 22, 23, 27, 28, 29, 31, 32 and 33, all in T 3 N, R 19 E1M, Latimer County.

DACW56-74-C-0134

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
THE WATER CONSERVATION STORAGE COMMISSION
OF
THE STATE OF OKLAHOMA
FOR
WATER STORAGE SPACE IN CLAYTON LAKE

THIS CONTRACT, entered into this 16 day of FEB, 1974, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Contracting Officer executing this contract, and THE WATER CONSERVATION STORAGE COMMISSION OF THE STATE OF OKLAHOMA (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1962 (Public Law 87-874, 87th Congress), authorized the construction, operation, and maintenance of the Clayton Lake on Kiamichi River, Oklahoma, (hereinafter called the "Project"); and

WHEREAS, the User desires to contract with the Government for the use of storage included in the Project for municipal and industrial water supply, and for payment of the cost thereof in accordance with the provisions of the water supply act of 1958, as amended (43 USC 390b-f); and

WHEREAS, the User is empowered so to contract with the Government and is vested with all necessary powers for accomplishment of the purposes of this contract, including those required by Section 221 of the Flood Control Act of 1970 (42 USC 1962d-5b);

NOW, THEREFORE, the Government and the User agree as follows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the directions of Federal law and any limitations imposed thereby, shall design and construct the Project so as to include therein space for the storage of water by the User.

RECEIVED

APR 29 1974

OKLA. WATER RESOURCES BOARD

CONTRACTOR'S COPY

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(b) Rights of User.

(1) The User shall have the right to utilize an undivided 100 percent (estimated to contain 297,200 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 599.0 feet above mean sea level and 542.0 feet above mean sea level, which total storage space is estimated to contain 297,200 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply. 47.678 percent (an estimated 141,700 acre-feet) of the space which User has a right to utilize is for present use water storage and 52.322 percent (an estimated 155,500 acre-feet) is for future use water storage.

(2) The User shall have the right to withdraw water from the lake, or to order releases to be made by the Government through the outlet works, in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appliances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 USC 2669. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges herein granted.

(c) Rights Reserved. The Government reserves the right to maintain at all times a minimum downstream release of 4 cubic feet per second through the gates or spillway of the dam. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life or property, including the right not to make downstream releases during such periods of time as is deemed necessary in its sole discretion, to inspect, maintain, or repair the Project.

(d) Quality or Availability of Water. The User recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with state laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawal and Releases. The User agrees to furnish and install, without cost of the Government, suitable meters or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

(a) Project Investment Costs.

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, which, as shown in Exhibit "A" attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during construction, allocated to the water storage right acquired by the User under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the basis set forth in the Water Supply Act of 1958, as amended. Such interest rate at the time of negotiation of this contract is 4.012 percent. The User shall repay:

100 percent of the construction cost of specific water supply facilities, estimated at	\$ 103,000
66.22 percent of the total Project joint-use construction costs, estimated at	15,078,000
Interest during construction, estimated at	<u>1,218,000</u>
Total estimated amount of Project investment costs allocated to water supply	\$16,399,000

(2) The Project investment costs allocated to the storage space indicated in Article 1(h)(1) as being provided for present demand is currently estimated at \$7,877,000, on the basis of the cost presented in Exhibit "A". The amount of the Project investment costs allocated to the storage for present demand shall be paid in 50 consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer that the Project is completed and operational for water supply purposes. Annual installments thereafter will be due and payable on the anniversary date of the first payment. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 50 years.

(3) The amount of the Project investment costs allocated to the remaining portion of the storage space, that provided for future use, is currently estimated at \$8,522,000 on the basis of the costs presented in Exhibit "A". No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the date the Project is operational for water supply purposes, unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the date the Project is operational for water supply purposes until the time when such storage is first used. The User may at its option pay the interest as it becomes due or allow the interest to accumulate until the storage is used. If the latter option is exercised, the interest will be compounded annually and added to the principal amount. When any portion of the storage for future water supply is used, payment of both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project in not to exceed 50 consecutive annual installments beginning within 30 days after the date of first use of such portion.

(4) An estimated schedule of annual payments for the storage provided for present demand is attached as Exhibit "B" of this contract. The annual payments as provided therein shall be made until the actual construction costs of the Project are determined. When the actual construction costs of the Project are determined, the annual payments due thereafter will be adjusted to reflect any increase or decrease in the actual cost, including interest during construction, from the estimated amounts shown in Exhibit "A". Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when

use of such storage is started, and if based on estimated costs will be subject to revision when actual costs are known.

(5) If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually at the applicable rate until paid. The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue (31 to 60 days after the anniversary date), one month's interest shall be charged. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by User.

(6) The User shall have the right at any time it so elects to prepay the indebtedness under this Article 5(a), in whole or in part, with accrued interest thereon to the date of such prepayment.

(b) Major Capital Replacement Costs. The User will be required to pay 100 percent of the costs for any major capital replacement of specific water supply facilities. In addition, the User shall pay to the Government up to 67.69 percent of the costs of joint-use major capital replacement items. The required repayment for joint-use costs will be commensurate with the User's percentage of storage space presently in use. Payment shall be paid either in lump sum or annually with interest on the unpaid balance. If paid annually, the first payment shall be made with the first annual payment on the Project investment costs becoming due after the date said major capital replacement costs are incurred.

(c) Annual Operation and Maintenance Costs. The User will be required to pay the annual experienced operation and maintenance costs of specific water supply facilities. In addition, the User shall pay 34.109 percent of the annual experienced joint-use operation and maintenance costs of the Project until such time as the storage for future water supply is used. As the storage provided for future water supply demands is used, the share of the annual experienced joint-use operation and maintenance costs, which the User will be required to pay in addition

to the operation and maintenance costs of the specific water supply facilities, will be increased commensurate with the percentage of the water supply storage being used, up to a total of 71.54 percent of such costs.

ARTICLE 6 - Construction Cost Adjustments. All construction cost dollar amounts in this contract, including those in the appendices, are tentative only, based on the Government's best estimates. They will be adjusted upward or downward by the Contracting Officer when final construction costs become known, and the contract will be modified to reflect the adjustments.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5(a) herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 USC 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The User shall continue payment of annual operation and maintenance costs allocated to water supply.

(b) The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the Contracting Officer. Repayment arrangements including schedules will be in writing and will be made a part of this contract.

(c) Upon completion of payments by the User as provided in Article 5(a) hereof, the Contracting Officer shall redetermine the storage space for municipal and industrial water supply, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the Project as may be necessary due to sedimentation. Such findings, and the storage space allocated to municipal and industrial water supply, shall be defined and described in an exhibit which will be made a part of this contract. Following the same principle, such reallocation of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the User under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the

Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

(1) continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) terms which will protect the public interest; and

(3) effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The User shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the facilities and appurtenances thereto owned and operated by the User, provided, that this shall not be construed as obligating the User to hold and save the Government harmless from damages or liability resulting from the sole negligence of the Government or its officers, agents, or employees and not involving negligence on the part of User or its officers, agents, or employees. The User shall also hold and save the Government free from all water-rights claims resulting from construction and operation of the Project.

ARTICLE 10 - Assignment. The User shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefits.

ARTICLE 12 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee

excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 USC 276a et seq.); the Contract Work Hours and Safety Standards Act (40 USC 327-333); and Title 29, Code of Federal Regulations, Part 3.

(b) The User furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 USC 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

(c) The parties agree that this contract is not an obligation for which the full faith and credit of the State of Oklahoma is pledged. Nothing herein shall be construed as legally obligating the Oklahoma Legislature to make any appropriation of funds.

D. B. S. - J. G. D.

D. B. S. - J. G. D.

ARTICLE 15 - Definitions.

(a) Joint-use costs - The costs of features used for any two or more project purposes.

(b) Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.

(c) Specific costs - The costs of project features normally serving only one particular project purpose.

(d) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to User for water storage.

ARTICLE 16 - Approval. This contract is subject to the written approval of the Secretary of the Army, and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

APPROVED:

THE UNITED STATES OF AMERICA

Howard H. Callaway
Secretary of the Army

By John G. Driskill
JOHN G. DRISKILL,
Colonel, Corps of Engineers
District Engineer
Contracting Officer

DATE: 9 APR 1974

THE WATER CONSERVATION STORAGE
COMMISSION OF THE STATE OF
OKLAHOMA

SEAL

By Lloyd E. Church, D.D.S.
Chairman Lloyd E. Church, D.D.S.

ATTEST:

By O. B. Saunders
O. B. Saunders, Secretary

It is my opinion that this contract is within the authority of the contracting agency and in reaching this conclusion I have considered the effect of Section 221 of the Flood Control Act of 1970 (42 USC 1962d-5b).

Perry Deery
ATTORNEY GENERAL
STATE OF OKLAHOMA

CERTIFICATE

BACW56-74-C-0134

I, O. B. Saunders, hereby certify that I am the Secretary, of the Water Conservation Storage Commission of the State of Oklahoma, named as User herein; that Lloyd E. Church, who signed this contract on behalf of the User was then Chairman of said Water Conservation Storage Commission; that said contract was duly signed for and on behalf of said User by authority of its governing body, and is within the scope of its legal powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand the seal of the Water Conservation Storage Commission of the State of Oklahoma, this 16 day of Feb, 1974.

(Seal)

O. B. Saunders
O. B. Saunders

EXHIBIT A

I - RESERVOIR STORAGE

<u>Feature</u>	<u>Elevation (ft MSL)</u>	<u>Usable Storage(1) (ac ft)</u>	<u>Percent of Conservation and Water Supply Storage</u>
Flood Control	607.0-599.0	127,300	
Conservation Storage	599.0-542.0	297,200	100.00
Water Supply		297,200	100.00
Oklahoma Water Conservation Storage Commission			
Initial		141,700	47.678
Future		<u>155,500</u>	52.322
Total		424,500	

(1) Storage remaining after 100 years sedimentation.

II - ALLOCATION OF ESTIMATED FIRST COST (2)

Flood Control	\$ 6,861,000
Water Supply:	
Storage	15,078,000
Conduit	103,000
Recreation & Fish and Wildlife	<u>4,260,000</u>
Total	\$26,302,000

(2) First cost includes \$102,000 for the present value of future recreation facilities. Total first cost of Project is \$26,200,000

EXHIBIT A (CONT)

III - COSTS TO BE REPAID BY THE USER
FOR WATER SUPPLY

INITIAL USE:

Cost of 141,700 acre-feet of water supply storage (47.678% x \$15,078,000)	= \$ 7,189,000
Outlet works specific to water supply	103,000
	<u>\$ 7,292,000</u>

Interest during construction (\$7,292,000 x 4.012% x 1/2 of 4-year construction period)	585,000
TOTAL INVESTMENT - INITIAL USE	<u>\$ 7,877,000</u>

FUTURE USE:

Cost of 155,500 acre-feet of water supply storage (52.322% x \$15,078,000)	= \$ 7,889,000
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Interest during construction (\$7,889,000 x 4.012% x 1/2 of 4-year construction period)	= 633,000
TOTAL INVESTMENT - FUTURE USE	<u>\$ 8,522,000</u>

TOTAL INVESTMENT - INITIAL & FUTURE USE	<u>\$16,399,000</u>
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Contract No. DACW36-74EC-0134

EXHIBIT A (CONT)

IV - ALLOCATION OF ESTIMATED ANNUAL OPERATION,
MAINTENANCE AND MAJOR REPLACEMENT COSTS

<u>Item</u>	<u>Present</u> \$	<u>Future</u>	<u>Sub- total</u> \$	<u>FC, REC, F&WL</u>	<u>Total</u> \$
<u>Operation & Maintenance:</u>					
Specific Cost	1,000	0	1,000	90,800	91,800
Joint-Use Cost	<u>60,650</u> (3)	<u>66,750</u> (4)	<u>127,600</u>	<u>50,800</u>	<u>178,400</u>
Total	61,650	66,750	128,600	141,600	270,200
<u>Major Replacement:</u>					
Specific Cost	800	0	800	1,900	2,700
Joint-Use Cost	<u>420</u> (3)	<u>480</u> (4)	<u>900</u>	<u>400</u>	<u>1,300</u>
Total	1,220	480	1,700	2,300	4,000

(3) Based on 47.678 percent of joint-use cost allocated to water supply.

(4) Based on 52.322 percent of joint-use cost allocated to water supply.

EXHIBIT A (CONT)

 V - ANNUAL COSTS TO USER FOR
 INITIAL USE OF WATER SUPPLY STORAGE SPACE

Interest and amortization (5)	$0.044847 \times \$7,877,000$	=	\$353,257
Operation and Maintenance (6)			
Joint-Use			
$47.678\% \times 71.54\%$	=	$34.109\% \times \$178,400$	= 60,850
Specific Facilities			
$100\% \times \$1,000$		=	1,000
Major Replacement (Estimated) (7)			
Joint-Use			
$47.678\% \times 67.69\%$	=	$32.273\% \times \$1,300$	= 420
Specific Facilities			
$100\% \times \$800$		=	<u>800</u>
TOTAL ESTIMATED ANNUAL COST		=	<u>\$416,327</u>

(5) Based on 50 payment, 49 with interest.

(6) The first payment shall be due and payable on the date specified in Article 5a(2). Payment due prior to availability of actual experienced cost will be as shown.

(7) Major replacement cost are payable only when incurred.

Contract No.
EXHIBIT B

DACW56-74-C-0134

AMORTIZATION SCHEDULE

TOTAL COST.....		7577000.		
NUMBER OF PAYMENTS.....		50		
INTEREST RATE, PERCENT.....		4.012		
ANNUAL	AMOUNT OF	APPLICATION		BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST	ALLOC COST
	\$	\$	\$	\$
				7577000.00
1	353257.00		353257.00	7521674.00
2	353257.00	301852.57	51404.43	7472339.57
3	353257.00	299790.22	53466.78	7416871.79
4	353257.00	297645.14	55611.86	7363259.93
5	353257.00	295413.99	57843.01	7305416.92
6	353257.00	293093.33	60163.67	7245253.25
7	353257.00	290679.56	62577.44	7182675.31
8	353257.00	288163.95	65033.05	7117507.76
9	353257.00	285557.62	67699.38	7049839.38
10	353257.00	282841.50	70415.48	6979472.90
11	353257.00	280016.45	73220.55	6906232.35
12	353257.00	277073.04	76173.96	6830058.39
13	353257.00	274021.74	79235.08	6750813.13
14	353257.00	270842.82	82414.16	6668403.75
15	353257.00	267536.37	85720.63	6582633.32
16	353257.00	264097.20	89167.75	6493365.57
17	353257.00	260520.17	92730.63	6400736.74
18	353257.00	256809.25	96437.44	6304837.00
19	353257.00	252929.69	100327.31	6204801.79
20	353257.00	248904.56	104352.44	6099649.55
21	353257.00	244717.74	108557.00	5991110.47
22	353257.00	240363.35	112973.65	5878216.84
23	353257.00	235834.06	117422.94	5760793.90
24	353257.00	231123.05	122133.95	5638659.95
25	353257.00	226223.04	127033.96	5511625.79
26	353257.00	221126.43	132130.57	5379495.42
27	353257.00	215825.36	137431.64	5242063.76
28	353257.00	210311.60	142945.40	5099118.33
29	353257.00	204576.63	148630.37	4950433.01
30	353257.00	198611.57	154645.43	4795772.59
31	353257.00	192407.20	160849.80	4634942.76
32	353257.00	185953.90	167303.10	4467639.66
33	353257.00	179241.70	174015.30	4293624.36
34	353257.00	172260.21	180996.79	4112627.59
35	353257.00	164998.62	188253.38	3924362.01

EXHIBIT B (Cont)

DACW56-7.4=C=0134

TOTAL COST.....			7577000.	
NUMBER OF PAYMENTS.....			50	
INTEREST RATE, PERCENT.....			4.012	

ANNUAL	AMOUNT OF	APPLICATION		BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST	ALLOC COST
	\$	\$	\$	\$
36	353257.00	157445.69	195311.31	3725557.90
37	353257.00	149539.74	203267.26	3524390.64
38	353257.00	141413.61	211339.39	3313052.25
39	353257.00	132919.66	220337.34	3092714.91
40	353257.00	124079.72	229177.28	2863537.63
41	353257.00	114856.13	238371.37	2625166.78
42	353257.00	105321.65	247935.35	2377230.41
43	353257.00	95374.45	257992.52	2119347.89
44	353257.00	85023.24	268223.76	1851119.13
45	353257.00	74266.90	278990.10	1572129.03
46	353257.00	63073.32	290133.13	1281945.35
47	353257.00	51431.67	301525.33	980120.32
48	353257.00	39322.44	313934.56	666185.96
49	353257.00	26727.00	327329.64	339000.34
50	353232.35	13627.01	339656.34	0.00

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE
UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

OKLAHOMA WATER CONSERVATION STORAGE COMMISSION
(hereinafter called "Applicant-Recipient")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 Code of Federal Regulations Part 300, issued as Department of Defense Directive 5500.11, 28 December 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by the Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the

Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant-Recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant-Recipient.

Sections IV and VII of Department of Defense Directive 5500.11 setting forth prohibited discriminatory actions and compliance information is on the reverse hereof.

OKLAHOMA WATER CONSERVATION STORAGE
COMMISSION

Dated

2-16-74

(Applicant-Recipient)

By

Lloyd G. Kinnick, Jr.

SECTIONS IV AND VII DEPARTMENT OF DEFENSE DIRECTIVE 5500.11

IV. POLICY

A. GENERAL. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this Directive applies.

B. SPECIFIC DISCRIMINATORY ACTIONS PROHIBITED.

1. A recipient under any program to which this Directive applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

a. Deny an individual any service, financial aid, or other benefit provided under the program;

b. Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

c. Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

d. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

e. Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

f. Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

3. As used in this Section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

4. The enumeration of specific forms of prohibited discrimination in this Subsection does not limit the generality of the prohibition in Subsection IV. A. of this Section.

VII. Compliance Information

A. Cooperation and Assistance. Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Directive and shall provide assistance and guidance to recipients to help them comply voluntarily with this Directive.

B. Compliance Reports. Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Directive. In the case of any program under which a primary recipient extends Federal assistance to any other recipient, such other recipient shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this Directive.

C. Access to Sources of Information. Each recipient shall permit access by the responsible Department official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Directive. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

D. Information to Beneficiaries and Participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Directive and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Directive.

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

UNITED STATES OF AMERICA,	}	
	}	
Plaintiff,	}	
	}	
v.	}	Civil Action No. 98-CV-00521
	}	
THE STATE OF OKLAHOMA	}	
And	}	
OKLAHOMA WATER RESOURCES BOARD,	}	
	}	
Defendants.	}	

ORDER

On this the 3rd day of September, 2009, Plaintiff, the United States of America (hereinafter "Plaintiff" or the "United States"), and Defendants, the State of Oklahoma and Oklahoma Water Resources Board (hereinafter "Oklahoma"), present the Court with this Order. All parties request that this Order be accepted and entered as the Order of the Court in resolution of the Motion by the United States to Enforce the Judgment heretofore filed in this case on December 18, 2008.

The Court, being fully informed as to the particulars in this Order, hereby finds that this Order does represent an agreed resolution of the dispute between the United States and Oklahoma regarding satisfaction of the Judgment entered in this case on May 19, 2005, and that such Order is fair, equitable, and just and in

the public interest and as such is now approved and adopted as an Order of this Court.

This Order sets forth the times and amounts of payments to be made under the Contract between the United States and the State in 1974. This Schedule is approved and adopted by the Court and

THEREFORE, the Court hereby **ORDERS** the following:

1. The provisions of this Order shall apply to and be binding upon the Plaintiff, the United States of America, and the Defendants, the State of Oklahoma and the Oklahoma Water Resources Board (OWRB).

2. The undersigned representatives of the Plaintiff have represented that they have been fully authorized to enter into this Order and to execute and legally bind the United States. The Defendants also represent that they are fully authorized to enter into this Order and to execute and legally bind the State of Oklahoma and OWRB.

3. The State of Oklahoma is currently past due in payments due under the Contract of February 16, 1974 between the State and the United States, and due under the Judgment previously issued in this case, in the amount of \$ 21,783,809.49. In order to satisfy this past indebtedness, the State shall make the following payments:

(A) On or before September 1, 2009, The State of Oklahoma shall pay to the United States \$2,687,384.68 as the initial installment on amounts now past due under the Contract.

(B) On or before July 1, 2010 and thereafter annually for four additional years until and including July 1, 2014, the State of Oklahoma shall pay to the United States each such year \$5,266,775.92 (which represents a \$4 Million payment toward the past due indebtedness, an annual payment due each year under the Contract of \$923,515.19 for present use water supply storage, Operation and Maintenance Costs (O&M) due under the contract of \$147,200, and \$196,060.73 in accrued interest).

(C) From July 1, 2015 until the contract is paid in full under its terms, the State shall make an annual payment no later than July 1st of each year of \$939,575.92 (which represents a \$923,515.19 payment in principal plus interest of \$16,060 .73) for present use water supply storage, and pay annual O&M costs as determined under the Contract in January of each such year.

4. It is further provided that on or before July 1, 2010 in lieu of the payments specified in subparagraphs 3(B) and 3(C) above, the State will have the option to pay the then current outstanding indebtedness, interest due thereon, and the obligation to pay for all present use water supply storage, by paying the sum of \$27,814,262.49. If this option is exercised, the State shall

continue to pay annual O&M costs as determined under the Contract.

5. In addition to the payments required by Paragraphs 3 and 4 above, the State of Oklahoma shall pay as required by the Contract for future use water supply storage space investment costs when billed by the United States. As of July 31, 2009, the United States estimates that those costs are currently \$38,202,796.83. The State shall also pay interest on that amount which shall accrue until such payment is made. The payment for future water supply storage must be made as provided in the Contract. Annual operation and maintenance costs on such future water supply storage will continue to be due after the future use water supply investment costs are paid in full.

6. The State shall also pay its proportionate share under the Contract of joint use repair, rehabilitation and replacement costs needed to insure the continued operation of the Sardis Lake project at the times specified in the Contract.

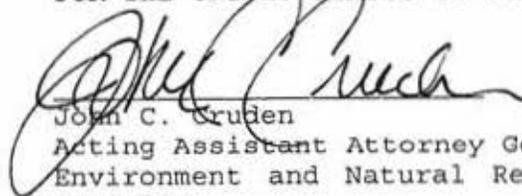
7. This Court will retain Jurisdiction for the purpose of enabling the United States or either of defendants to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the enforcement of this Consent Order.

8. Contract DACW56-74-C-0134 shall remain in full force and effect subject only to the specific provisions of this Order. This Order is not intended to and shall not be interpreted as amending or modifying the terms of that Contract. No modification shall be made to this Consent Decree without written approval by all parties and the Court. No oral modification of this Consent Decree shall be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Order.

9. This Order shall remain in effect as long as the Water Supply Storage Contract remains in effect.

10. The Undersigned Parties have given their approval to this Agreement and request this Honorable Court to enter it as an Order of the Court.

FOR THE UNITED STATES OF AMERICA:



John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources
Division



FRED R. DISHEROON
Special Litigation Counsel

Environment and Natural
Resources Division

U. S. Department of Justice
P.O. Box 7397
Ben Franklin Station
Washington, D.C. 20044
(202)616-9649
Fax (202)305-0274

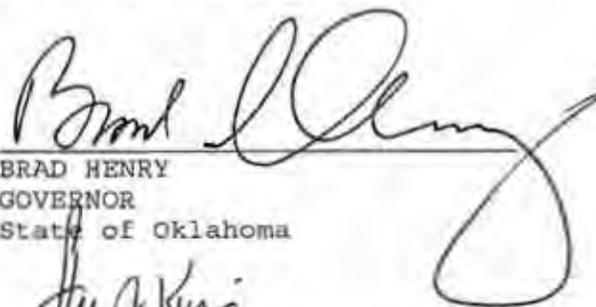
THOMAS SCOTT WOODWARD
Acting United States Attorney
Northern District of Oklahoma
PHIL PINNELL, OBA #7169
Assistant United States Attorney

110 West 7th Street, Suite 300
Tulsa, Oklahoma 74119
(918) 382-2700
Fax (918) 560-7948

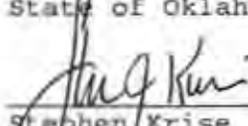
OF COUNSEL:

John Roselle, Jr.
Kay Hoover, OBA#10343
U.S. Army Corp of Engineers
1645 S. 101st E. Avenue
Tulsa, OK 74128
(918) 669-7178
Fax (918) 669-7576

FOR THE STATE OF OKLAHOMA:



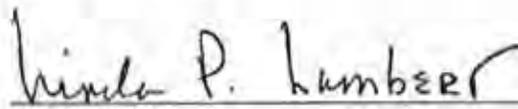
BRAD HENRY
GOVERNOR
State of Oklahoma



Stephen Krise
Assistant Attorney General
Oklahoma Attorney General's Office
313 N. E. 21st Street
Oklahoma City, OK 73105
(405) 521-4274
Fax (405) 528-1867

FOR THE OKLAHOMA WATER RESOURCES BOARD:


CHAIRMAN
RUDY HERRMANN


SECRETARY
LINDA LAMBERT

Upon Motion of All Parties, the foregoing Order is hereby adopted by the Court and entered as an Order of this Court on this the 11th day of September, 2009.

A handwritten signature in black ink, appearing to read "James H. Payne", with a long horizontal line extending to the right.

James H. Payne
United States District Judge
Northern District of Oklahoma

SUBCONTRACT FOR USE OF WATER SUPPLY STORAGE,
EASEMENT, LICENSE AND INTAKE STRUCTURE
AT SARDIS LAKE
BETWEEN
OKLAHOMA WATER RESOURCES BOARD
AND
SARDIS LAKE WATER AUTHORITY

THIS SUBCONTRACT, dated for convenience this 22th day of October, 1999, but effective on the date the last signatory executes the same, by and between the Oklahoma Water Resources Board (hereinafter "Board") and the Sardis Lake Water Authority (hereinafter "Authority"):

WITNESSETH:

In consideration of the mutual covenants set forth herein, the Board and Authority agree as follows:

1. The Board will allow the Authority to utilize the following in and around Sardis Reservoir:
 - (a) Storage sufficient to yield up to 6,000 acre-feet of water based on a 98% dependability, which storage amount is 10,350 acre-feet (equivalent to 1,725 acre-feet of storage to yield 1,000 acre-feet of water per year);
 - (b) Easement and license obtained by the Board from the U. S. Army Corps of engineers for the location of water lines on property owned by the U. S. Army Corps of Engineers; and
 - (c) Intake structure constructed by the U. S. Army Corps of Engineers and located on the Buffalo Creek arm of the lake, or similar intake structure constructed by Authority.

2. For use of the storage, easement and license and intake structure, the Authority agrees to pay the Board as follows:

(a) Construction costs payment- For each 1,000 acre-feet of water yield to be utilized by the Authority, the Authority will pay a pro rata amount of actual construction costs per 1,000 acre-feet of water yield paid by the Board. The payment shall be made as soon as possible after the Authority closes its financing with Rural Development. Provided that if the cost of the intake structure is removed from inclusion in the cost of Sardis Reservoir allocated to water supply, then in that event the percentage of the Corps' invoice that is required to be paid by the Authority, to the extent allowed by law, shall be reduced or refunded.

(b) Operation and maintenance- For each 1,000 acre-feet of yield to be utilized, the Authority also agrees to pay each year 0.456% of the operation and maintenance costs associated with the use of water supply storage, which based on FY-98 operation and maintenance costs of \$394,478.00, would amount to \$1,799.00 for FY-98. The Board will invoice the Authority for the operation and maintenance costs after the U. S. Army Corps of Engineers submits an invoice including such costs to the Board, and the operation and maintenance costs shall be due within 30 days after the date of such invoice.

(c) Point of Delivery and Obligation To Pay- If the intake structure is or becomes inoperable or it is otherwise determined by the Authority that water cannot be withdrawn from the intake structure, the Authority acknowledges that its obligation to pay the Board under this contract remains valid and that another point of delivery may be utilized for delivery of the water, provided that the obligation to pay the Board shall be suspended for the period that the Authority is unable to withdraw water from that intake structure.

3. This subcontract is subject to the 1974 contract between the State of Oklahoma Water Conservation Storage Commission and the United States. If it is determined by a court of competent jurisdiction that the 1974 contract is illegal, invalid or unenforceable, or the Board otherwise loses rights to water supply storage in Sardis Reservoir, then obligations of Authority to make payments to the Board under this contract shall be terminated.

IN WITNESS WHEREOF, this subcontract was executed on the dates specified.

OKLAHOMA WATER RESOURCES BOARD

SARDIS LAKE WATER AUTHORITY


Lonnie Farmer, Chairman 11-16-99
Date


Roy O'Bryan, Chairman 10-22-99
Date

ATTEST:

ATTEST:


Grady Grandsiaff, Secretary 11-16-99
Date


Donna Aldinger 10-22-99
Name Title Date

1 Exhibit 5: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
2 City Water Settlement
3

4 **WAIVERS AND RELEASES OF CLAIMS**
5 **BY THE CHICKASAW NATION AND THE UNITED STATES**
6

7 Subject to the retention of rights set forth in the Settlement Agreement, **Section 2.5**, and the
8 Settlement Act and except to the extent that rights are recognized in the Settlement Agreement or
9 Settlement Act, including recognition of the Chickasaw Nation's water rights, the Chickasaw Nation, in
10 its own right and on behalf of its citizens (except in their capacity as Allottees), and the United States
11 acting in its capacity as trustee for the Chickasaw Nation and its citizens (except in their capacity as
12 Allottees), waive and release:
13

14 (1) all of the following claims the Chickasaw Nation asserted or could have asserted in any
15 proceeding filed or which could have been filed up to or upon the Enforceability Date, including
16 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et*
17 *al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:
18

19 (a) claims to the ownership of water in the State of Oklahoma;
20

21 (b) claims to water rights and rights to use water diverted or taken from a location within
22 the State of Oklahoma;
23

24 (c) claims to authority over the allocation and management of water and administration of
25 water rights, including authority over third-party ownership of or rights to use water diverted or taken
26 from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees
27 or anyone else using water on an Allotment with the Allottee's permission;
28

29 (d) claims that the State lacks authority over the allocation and management of water and
30 administration of water rights, including authority over the ownership of or rights to use water diverted or
31 taken from a location within the State of Oklahoma;
32

33 (e) any other claim relating to the ownership of water, regulation of water, or authorized
34 diversion, storage, or use of water diverted or taken from a location within the State of Oklahoma, which
35 claim is based on the Chickasaw Nation's particular status as a federally recognized American Indian
36 tribe possessed of powers of sovereignty and self-government as defined by federal law and pursuant to
37 those treaties to which it is a signatory;
38

39 (f) claims or defenses asserted and which could have been asserted in *Chickasaw Nation,*
40 *Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275
41 (W.D. Ok.), or any general stream adjudication;
42

43 (2) all claims for damages, losses or injuries to water rights or water, or claims of interference
44 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
45 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any
46 action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized
47 pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City
48 of Oklahoma City, that accrued at any time up to and including the Enforceability Date;
49

1 (3) all claims and objections relating to the City of Oklahoma City’s Permit Application No.
2 2007-017, as amended pursuant to the Settlement Agreement and the Settlement Act, and the City Permit,
3 including but not limited to:
4

5 (a) all claims regarding regulatory control over or Oklahoma Water Resources Board
6 jurisdiction relating to such permit application and permit; and
7

8 (b) all claims for damages, losses or injuries to water rights or rights to use water, or claims
9 of interference with, diversion, storage, taking, or use of water (including claims for injury to land
10 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use of
11 water) attributable to the issuance and lawful exercise of the City Permit;
12

13 (4) all claims to regulatory control over the City of Oklahoma City’s Permit Numbers P80-48
14 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
15 rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;
16

17 (5) all claims that the State lacks regulatory authority over or Oklahoma Water Resources Board
18 jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48 and 54-613 for water rights
19 from the Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy
20 River, including McGee Creek, for McGee Creek Reservoir;
21

22 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
23 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
24 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
25 City of Oklahoma City’s lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the
26 Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River,
27 including McGee Creek, for McGee Creek Reservoir, that accrued at any time up to and including the
28 Enforceability Date;
29

30 (7) all claims and objections relating to approval by the United States Army Corps of Engineers
31 of the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract Transfer
32 Agreement; and
33

34 (8) all claims for damages, losses or injuries to water rights or water, or claims of interference
35 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
36 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
37 lawful exercise of rights pursuant to the Amended Storage Contract Transfer Agreement.
38

39 **FOR THE UNITED STATES OF AMERICA**
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43 By: DRAFT Date: _____
44 Sally Jewell, Secretary
45 U.S. Department of the Interior
46
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48
49

1 **FOR THE CHICKASAW NATION**

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5 By: _DRAFT_____ Date: _____

6 Bill Anoatubby, Governor

7 Chickasaw Nation

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**WAIVERS AND RELEASES OF CLAIMS
BY THE CHICKASAW NATION AGAINST THE UNITED STATES**

Subject to the retention of rights set forth in the Settlement Agreement, **Section 2.5**, and the Settlement Act and except to the extent that rights are recognized in the Settlement Agreement or Settlement Act, including recognition of the Chickasaw Nation’s water rights, the Chickasaw Nation, in its own right and on behalf of its citizens (except in their capacity as Allottees), and the United States acting in its capacity as trustee for the Chickasaw Nation and its citizens (except in their capacity as Allottees), waive and release:

(1) all of the following claims the United States acting in its capacity as trustee for the Chickasaw Nation asserted or could have asserted in any proceeding filed or which could have been filed up to or upon the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:

(a) claims to the ownership of water in the State of Oklahoma;

(b) claims to water rights and rights to use water diverted or taken from a location within the State of Oklahoma;

(c) claims to authority over the allocation and management of water and administration of water rights, including authority over third-party ownership of or rights to use water diverted or taken from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees or anyone else using water on an Allotment with the Allottee’s permission;

(d) claims that the State lacks authority over the allocation and management of water and administration of water rights, including authority over the ownership of or rights to use water diverted or taken from a location within the State of Oklahoma;

(e) any other claim relating to the ownership, regulation, or authorized diversion, storage, or use of water diverted or taken from a location within the State of Oklahoma, which claim is based on the Chickasaw Nation’s particular status as a federally recognized American Indian tribe possessed of powers of sovereignty and self-government as defined by federal law and pursuant to those treaties to which it is a signatory;

(f) claims or defenses asserted and which could have been asserted in *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication;

(2) all claims for damages, losses or injuries to water rights or water, or claims of interference with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City of Oklahoma City, that accrued at any time up to and including the Enforceability Date;

(3) all claims and objections relating to the City of Oklahoma City’s Permit Application No. 2007-017, as amended pursuant to the Settlement Agreement and the Settlement Act, and the City Permit, including but not limited to:

1 (a) all claims regarding regulatory control over or Oklahoma Water Resources Board
2 jurisdiction relating to such permit application and permit; and
3

4 (b) all claims for damages, losses or injuries to water rights or rights to use water, or claims
5 of interference with, diversion, storage, taking, or use of water (including claims for injury to land
6 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use of
7 water) attributable to the issuance and lawful exercise of the City Permit;
8

9 (4) all claims to regulatory control over the City of Oklahoma City's Permit Numbers P80-48
10 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
11 rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;
12

13 (5) all claims that the State lacks regulatory authority over or Oklahoma Water Resources Board
14 jurisdiction relating to the City of Oklahoma City's Permit Numbers P80-48 and 54-613 for water rights
15 from the Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy
16 River, including McGee Creek, for McGee Creek Reservoir;
17

18 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
19 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
20 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
21 City of Oklahoma City's lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the
22 Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River,
23 including McGee Creek, for McGee Creek Reservoir, that accrued at any time up to and including the
24 Enforceability Date;
25

26 (7) all claims and objections relating to the approval by the United States Army Corps of
27 Engineers of the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract
28 Transfer Agreement;
29

30 (8) all claims relating to the United States' litigation, prior to the Enforceability Date, of the
31 Nations' water rights in the State of Oklahoma; and
32

33 (9) all claims relating to the negotiation, execution, or adoption of the Settlement Agreement
34 (including exhibits) or the Settlement Act.
35

36 **FOR THE CHICKASAW NATION**
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39

40 By: DRAFT Date: _____
41 Bill Anoatubby, Governor
42 Chickasaw Nation

1 Exhibit 6: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
2 City Water Settlement
3

4 **WAIVERS AND RELEASES OF CLAIMS**
5 **BY THE CHOCTAW NATION OF OKLAHOMA AND THE UNITED STATES**
6

7 Subject to the retention of rights set forth in the Settlement Agreement, **Section 2.5** except in their
8 capacity as Allottees, and the Settlement Act and except to the extent that rights are recognized in the
9 Settlement Agreement or Settlement Act, including recognition of the Choctaw Nation of Oklahoma's
10 water rights, the Choctaw Nation of Oklahoma, in its own right and on behalf of its members (except in
11 their capacity as Allottees), and the United States acting in its capacity as trustee for the Choctaw Nation
12 of Oklahoma and its members (except in their capacity as Allottees), waive and release:
13

14 (1) all of the following claims the Choctaw Nation of Oklahoma asserted or could have asserted
15 in any proceeding filed or which could have been filed up to or upon the Enforceability Date, including
16 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et*
17 *al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:
18

19 (a) claims to the ownership of water in the State of Oklahoma;
20

21 (b) claims to water rights and rights to use water diverted or taken from a location within
22 the State of Oklahoma;
23

24 (c) claims to authority over the allocation and management of water and administration of
25 water rights, including authority over third-party ownership of or rights to use water diverted or taken
26 from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees
27 or anyone else using water on an Allotment with the Allottee's permission;
28

29 (d) claims that the State lacks authority over the allocation and management of water and
30 administration of water rights, including authority over the ownership of or rights to use water diverted or
31 taken from a location within the State of Oklahoma;
32

33 (e) any other claim relating to the ownership of water, regulation of water, or authorized
34 diversion, storage, or use of water diverted or taken from a location within the State of Oklahoma, which
35 claim is based on the Choctaw Nation of Oklahoma's particular status as a federally recognized American
36 Indian tribe possessed of powers of sovereignty and self-government as defined by federal law and
37 pursuant to those treaties to which it is a signatory;
38

39 (f) claims or defenses asserted and which could have been asserted in *Chickasaw Nation,*
40 *Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275
41 (W.D. Ok.), or any general stream adjudication;
42

43 (2) all claims for damages, losses or injuries to water rights or water, or claims of interference
44 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
45 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any
46 action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized
47 pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City
48 of Oklahoma City, that accrued at any time up to and including the Enforceability Date;
49

1 **FOR THE CHOCTAW NATION OF OKLAHOMA**

2

3

4

5 By: _DRAFT_____ Date: _____

6 Gary Batton, Chief

7 Choctaw Nation of Oklahoma

8

9

1
2 **WAIVERS AND RELEASES OF CLAIMS**
3 **BY THE CHOCTAW NATION OF OKLAHOMA AGAINST THE UNITED STATES**

4 Subject to the retention of rights set forth in the Settlement Agreement, **Section 2.5**, and the
5 Settlement Act and except to the extent that rights are recognized in the Settlement Agreement or
6 Settlement Act, including recognition of the Choctaw Nation of Oklahoma's water rights, the Choctaw
7 Nation of Oklahoma, in its own right and on behalf of its members (except in their capacity as Allottees),
8 and the United States acting in its capacity as trustee for the Choctaw Nation of Oklahoma and its
9 members (except in their capacity as Allottees), waive and release:

10
11 (1) all of the following claims the United States acting in its capacity as trustee for the Choctaw
12 Nation of Oklahoma asserted or could have asserted in any proceeding filed or which could have been
13 filed up to or upon the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v. Fallin et al.*,
14 CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream
15 adjudication:

16
17 (a) claims to the ownership of water in the State of Oklahoma;

18
19 (b) claims to water rights and rights to use water diverted or taken from a location within
20 the State of Oklahoma;

21
22 (c) claims to authority over the allocation and management of water and administration of
23 water rights, including authority over third-party ownership of or rights to use water diverted or taken
24 from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees
25 or anyone else using water on an Allotment with the Allottee's permission;

26
27 (d) claims that the State lacks authority over the allocation and management of water and
28 administration of water rights, including authority over the ownership of or rights to use water diverted or
29 taken from a location within the State of Oklahoma;

30
31 (e) any other claim relating to the ownership, regulation, or authorized diversion, storage, or
32 use of water diverted or taken from a location within the State of Oklahoma, which claim is based on the
33 Choctaw Nation of Oklahoma's particular status as a federally recognized American Indian tribe
34 possessed of powers of sovereignty and self-government as defined by federal law and pursuant to those
35 treaties to which it is a signatory;

36
37 (f) claims or defenses asserted and which could have been asserted in *Chickasaw Nation,*
38 *Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275
39 (W.D. Ok.), or any general stream adjudication;

40
41 (2) all claims for damages, losses or injuries to water rights or water, or claims of interference
42 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
43 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any
44 action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized
45 pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City
46 of Oklahoma City, that accrued at any time up to and including the Enforceability Date;

47
48 (3) all claims and objections relating to the City of Oklahoma City's Permit Application No.
49 2007-017, as amended pursuant to the Settlement Agreement and the Settlement Act, and the City Permit,
50 including but not limited to:

1 (a) all claims regarding regulatory control over or Oklahoma Water Resources Board
2 jurisdiction relating to such permit application and permit; and
3

4 (b) all claims for damages, losses or injuries to water rights or rights to use water, or claims
5 of interference with, diversion, storage, taking, or use of water (including claims for injury to land
6 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use of
7 water) attributable to the issuance and lawful exercise of the City Permit;
8

9 (4) all claims to regulatory control over the City of Oklahoma City's Permit Numbers P80-48
10 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
11 rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;
12

13 (5) all claims that the State lacks regulatory authority over or Oklahoma Water Resources Board
14 jurisdiction relating to the City of Oklahoma City's Permit Numbers P80-48 and 54-613 for water rights
15 from the Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy
16 River, including McGee Creek, for McGee Creek Reservoir;
17

18 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
19 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
20 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
21 City of Oklahoma City's lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the
22 Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River,
23 including McGee Creek, for McGee Creek Reservoir, that accrued at any time up to and including the
24 Enforceability Date;
25

26 (7) all claims and objections relating to the approval by the United States Army Corps of
27 Engineers of the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract
28 Transfer Agreement;
29

30 (8) all claims relating to the United States' litigation, prior to the Enforceability Date, of the
31 Nations' water rights in the State of Oklahoma; and
32

33 (9) all claims relating to the negotiation, execution, or adoption of the Settlement Agreement
34 (including exhibits) or the Settlement Act.
35

36 **FOR THE CHOCTAW NATION OF OKLAHOMA**
37
38
39

40 By: DRAFT Date: _____
41 Gary Batton, Chief
42 Choctaw Nation of Oklahoma

1 Exhibit 7: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, and City of
2 Oklahoma City Water Settlement

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

7 UNITED STATES OF AMERICA,)
8 Plaintiff)
9)
10 v.)
11)
12 THE STATE OF OKLAHOMA)
13)
14 And)
15)
16 OKLAHOMA WATER RESOURCES BOARD,)
17)
18 Defendants)

Civil Action no. 98-CV-00521

19

MOTION TO AMEND SEPTEMBER 11, 2009, ORDER AND FOR DISMISSAL

20
21 Plaintiff, the United States of America (“United States”) and Defendants, the State of
22 Oklahoma and the Oklahoma Water Resources Board (collectively “State”), respectfully move
23 the Court for an amendment to the stipulated Order entered on September 11, 2009, in the above-
24 referenced case (“Order”) and for dismissal of this action. As grounds for this Motion the State
25 and the United States state as follows:

- 26 1. On July 14, 1998, the United States filed the above-referenced action in this Court
27 seeking past due amounts and enforcement of contractual obligations of the State
28 pursuant to a contract entered into by the United States and the State on April 9, 1974
29 entitled “Contract Between the United States of America and the Water Conservation
30 Storage Commission of the State of Oklahoma for Water Storage Space in Clayton Lake”
31 (“1974 Contract”). The 1974 Contract is attached hereto as Exhibit 1.

- 1 2. The 1974 Contract grants to the State the rights of storage in Sardis Lake (formerly
2 Clayton Lake) comprised of an estimated 297,200 acre-feet of water storage divided into
3 present use storage (141,700 acre-feet) and future use storage (155,500 acre-feet). As
4 consideration for the rights to and use of such storage, the State was obligated to make
5 annual payments (50 consecutive installments) for present use storage capital costs and
6 operation, maintenance and replacement costs associated with such storage as specified
7 in the 1974 Contract. 1974 Contract Article 5. Under the 1974 Contract the State is
8 obligated to pay for future use storage only at such time future use storage is first used.
9 1974 Contract Article 5.
- 10 3. On September 11, 2009, this Court entered the Order pursuant to a stipulation of the
11 United States and the State. The Order provided that the State pay all amounts due and
12 owing pursuant to the 1974 Contract and continue to make payments for present use
13 storage and operation and maintenance associated with capital costs for present use
14 storage in accordance with the Order. The Order provides for a schedule of payments or
15 the right of the State to make on one time lump sum payment of \$27,814,262.49 for past
16 due amounts owing at the time of the Order as well as for all future payments related to
17 present use storage. Payments for operation and maintenance costs associated with
18 present use storage were provided to continue on an annual basis. The Order provides
19 that “[t]he payment for future supply storage must be made as provided in the “[1974]
20 Contract.” 1974 Contract Article 5.
- 21 4. The Court retained jurisdiction over this action for the purpose of enabling any party to
22 apply to the Court for any “such further order, direction, and relief as may be necessary
23 or appropriate for the enforcement of this Consent Order.” Order at ¶ 7.

- 1 5. On June 15, 2010 the Oklahoma Water Resources Board and the Oklahoma City Water
2 Utilities Trust entered into the 2010 Storage Contract Transfer Agreement whereby the
3 Oklahoma Water Resources Board transferred to the Oklahoma City Water Utilities Trust
4 all its rights and interests in, including rights to use, the State's rights to water storage in
5 Sardis Lake, together with all the State's obligations under the 1974 Contract, including
6 all obligations set forth in the 1974 Contract to make the payments set forth in the Order
7 in order to be able to utilize the rights to use the water storage in Sardis Lake. The terms
8 of the 1974 Contract require approval by the Secretary of the Army, United States Army
9 Corps of Engineers, of the 2010 Storage Contract Transfer Agreement before such
10 agreement may have full force and effect.
- 11 6. In accordance with the Order, based on funds provided by the City of Oklahoma City
12 pursuant to the 2010 Storage Contract Transfer Agreement, the OWRB made a lump sum
13 payment to the United States of \$27,814,262.49 for present use storage. Subsequently,
14 based on funds provided by the Oklahoma City Water Utilities Trust pursuant to the 2010
15 Storage Contract Transfer Agreement, the State has continued to make payments for
16 operation, maintenance and replacement associated with present use storage as billed
17 annually by the United States. All amounts due and owing the by the State pursuant to
18 the 1974 Contract and the Order are current. Present use storage payments as required
19 by the 1974 Contract and the Order are paid in full.
- 20 7. In March 2010, the City of Oklahoma City amended Application 2007-017 with the
21 Oklahoma Water Resources Board for an appropriation of 136,000 acre-feet per year of
22 stream water from the Kiamichi River basin, in part to secure stream water rights

1 associated with the water storage in Sardis Lake proposed for transfer to the Oklahoma
2 City Water Utilities Trust under the 2010 Storage Contract Transfer Agreement.

3 8. On August 18, 2011, the Chickasaw Nation and the Choctaw Nation of Oklahoma filed
4 suit in the United States District Court for the Western District of Oklahoma, *Chickasaw*
5 *Nation and Choctaw Nation v. Fallin et al.*, CIV 11-927, against the State, the City of
6 Oklahoma City and the Oklahoma City Water Utilities Trust, claiming among other
7 things that the 2010 Storage Contract Transfer Agreement should not be approved by the
8 Secretary of the Army and that the OWRB lacks authority to act on any application for
9 stream water from the Kiamichi River basin inclusive of rights of storage in Sardis Lake.

10 9. *Chickasaw Nation and Choctaw Nation v. Fallin et al.* was stayed by order of the Court
11 on March 27, 2012, to allow settlement negotiations to proceed as among the Choctaw
12 Nation of Oklahoma, the Chickasaw Nation (collectively “the Nations”), the State of
13 Oklahoma (Governor Mary Fallin and the OWRB) (collectively “State”), the City of
14 Oklahoma City (“City”), and the United States to resolve the issues raised by that case as
15 well as a related case, *OWRB v. United States, et al.*, CIV 12-275 (W.D. Ok.). Settlement
16 negotiations proceeded thereafter and upon request of the State, the Nations, the City, and
17 the United States, the Honorable Judge Lee West extended the stay in both cases multiple
18 times to allow settlement discussions to progress.

19 10. After almost five years of negotiation, the State of Oklahoma, the Chickasaw Nation,
20 Choctaw Nation of Oklahoma, the City of Oklahoma City, and the Oklahoma City Water
21 Utilities Trust, entered into a Settlement Agreement in 2016 that resolved complex
22 disputes regarding water, water rights, the regulation and administration of water in the
23 Settlement Area, and objections to the State’s assignment of the 1974 Contract to the City

1 of Oklahoma City, inclusive of all claims raised in *Chickasaw Nation and Choctaw*
2 *Nation of Oklahoma v. Fallin, et al.*, CIV 11-927, and *OWRB v. United States, et al.*, 12-
3 275. That Settlement Agreement was enacted into federal law on _____ as [insert
4 Settlement Act citation] (“Settlement Act”) and executed by the United States on
5 _____. A copy of the Settlement Agreement and Settlement Act are attached
6 hereto as Exhibits 2 and 3.

7 11. Pursuant to the Settlement Agreement and the Settlement Act, the City of Oklahoma City
8 agreed to Sardis Lake Release Restrictions that allow the City to have water released for
9 water supply purposes in a manner that also protects lake levels for fish and wildlife and
10 recreation. The Sardis Lake Release Restrictions will preclude the City from calling for
11 releases for water supply from that portion of the Sardis Lake water storage associated
12 with future use storage.

13 12. As a result of the Sardis Lake Release Restrictions and the effect of those restrictions, and
14 other aspects of the Settlement Agreement and the Settlement Act, the State, the City of
15 Oklahoma City and the Oklahoma City Water Utilities Trust entered into an Amended
16 Storage Contract Transfer Agreement which was approved by the [cite to Settlement
17 Act], has been executed by the State, City and Trust and approved by the Secretary of the
18 Army. Pursuant to the Amended Storage Contract Transfer Agreement as approved by
19 the Settlement Act, the City has assumed all the obligations of the State to make any
20 payments due and owing under the 1974 Contract and therefore the Order, provided, that
21 all capital costs, interest and operation, maintenance and replacement costs associated
22 with future use storage are forgiven, waived and deemed non-reimbursable by the

1 Settlement Act. A copy of the executed and approved Amended Storage Contract
2 Transfer Agreement is attached hereto as Exhibit 4.

3 13. Since the effect of the Settlement Agreement was to restrict releases by the City from
4 Sardis Lake and preclude the City from releasing the water supply from Sardis Lake
5 associated with future use storage, the parties to the Settlement Agreement agreed that, in
6 consideration for the Sardis Lake Release Restrictions and resulting benefit to the parties
7 relating to lake levels to support fish, wildlife, and recreation, the debt under the 1974
8 Contract associated with future use storage should be forgiven, waived, and deemed non-
9 reimbursable. The Settlement Act deems the future use storage debt under the 1974
10 Contract forgiven, waived and non-reimbursable. Accordingly, any obligation of the
11 State, and thereafter the City and Trust under the Amended Storage Contract Transfer
12 Agreement, with regard to capital costs, or any operation, maintenance or replacement
13 costs and interest otherwise attributable to future use storage in Sardis Lake, is forgiven,
14 waived and non-reimbursable.

15 14. The Settlement Agreement and the Settlement Act provide that exclusive jurisdiction for
16 the interpretation or enforcement of the Settlement Agreement, the Settlement Act and
17 the Amended Storage Contract Transfer Agreement is the United States District Court for
18 the Western District of Oklahoma.

19 15. Based on (1) the payments made by the State, the City and the Trust for all present use
20 storage; (2) the approval of the Amended Storage Contract Transfer Agreement by the
21 Settlement Act; (3) the execution of the Amended Storage Contract Transfer Agreement
22 by the State and City and its approval by the Secretary of the Army; (4) the obligations
23 under the Amended Storage Contract Transfer Agreement for the City to continue to

1 make annual operation and maintenance payments related to present use storage as billed
2 by the United States pursuant to the 1974 Contract; and (5) the waiver of all future use
3 storage debt, the Order should be amended and this action dismissed.

4 16. An order should be entered to amend the Order to reflect (1) the transfer of the
5 ownership of all rights and obligations under the 1974 Contract to the City pursuant to
6 the Amended Storage Contract Transfer Agreement and the continuing obligations of the
7 City to make payments for operation, maintenance and replacement costs as provided
8 therein; (2) the payment in full of all debt associated with present use storage; (3) the
9 waiver of the future use storage debt by the Settlement Act; (4) that the action filed by the
10 United States in this matter is now dismissed; and (5) that any further actions relating to
11 the 1974 Contract should be filed in and heard by the United States District Court for the
12 Western District of Oklahoma.

13 17. A proposed order is submitted with this Motion.

14 WHEREFORE, for the reasons set forth herein the United States and the State request the
15 Court amend the Order consistent with the proposed order submitted herewith and dismiss this
16 action accordingly.

17 Date: _____

Respectfully submitted,

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State of Oklahoma and Counsel for OWRB

FOR THE UNITED STATES OF AMERICA

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5 DRAFT
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7 Assistant Attorney General
8 Environment and Natural Resources Division
9

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11 DRAFT
12 _____
13 James J. DuBois
14 Special Litigation Counsel
15 Environment and Natural Resources Division
16

17
18 DRAFT
19 _____
20 United States Attorney
Northern District of Oklahoma

1 3. The United States, the State of Oklahoma, and the Oklahoma Water Resources Board
2 (collectively “State”) have now moved this Court for an amendment of the September 11,
3 2009, Order and a request for dismissal of the action on the basis that events since 2009
4 require amendment of the September 11, 2009, Order and dismissal of this action.

5 4. The basis for the amendment and dismissal of the action are:

6 (a) the State, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the City of
7 Oklahoma City, and the United States entered into the State of Oklahoma, the Choctaw
8 Nation of Oklahoma and the Chickasaw Nation Settlement (“Settlement Agreement”)
9 resolving complex disputes regarding water, water rights, the regulation and
10 administration of water in the Settlement Area, and objections to the State’s assignment
11 of the 1974 Contract to the City of Oklahoma City, inclusive of all claims raised in
12 *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, CIV 11-927, and
13 *OWRB v. United States, et al.*, 12-275. The Settlement Agreement was approved in [title
14 Settlement Act] (“Settlement Act”) and executed by the United States on _____.

15 (b) the State has transferred all its rights and obligations under the 1974 Contract
16 to the City of Oklahoma City pursuant to an Amended Storage Contract Transfer
17 Agreement which contract has been approved by the Settlement Act, executed by the
18 parties thereto and approved by the Secretary of the Army;

19 (c) the State and the City have paid in full the present use storage debt under the
20 1974 Contract;

21 (d) the Settlement Act has waived and deemed non-reimbursable all future use
22 debt inclusive of capital costs, operation, maintenance and replacement costs and interest
23 associated with future use storage as to both the State and the City;

1 (e) all operation and maintenance payments associated with present use storage
2 will continue to be governed by the 1974 Contract and be obligations of the City pursuant
3 to the Amended Storage Contract Transfer Agreement and all payments relating to
4 present use storage operation and maintenance are current;

5 (f) the Settlement Act establishes the United States District Court for the Western
6 District of Oklahoma as the exclusive forum for interpretation and enforcement of the
7 Settlement Act, the Settlement Agreement and the Amended Storage Contract Transfer
8 Agreement.

9 (g) there remains no basis for the Court's continuing jurisdiction and the Order
10 should be amended and this action dismissed.

11 IT IS HEREBY ORDERED that motion be and hereby is GRANTED, and IT IS
12 FURTHER ORDERED:

13 (1) The September 11, 2009, Order is amended and superseded by the terms of this Order.

14 (2) This action is dismissed.

15 (3) Any further actions relating to the 1974 Contract should be filed in and heard by the
16 United States District Court for the Western District of Oklahoma.

17
18 DRAFT
19 JAMES H. PAYNE
20 United States District Judge
21 Northern District of Oklahoma

1 Exhibit 8: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
2 City Water Settlement
3

4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE WESTERN DISTRICT OF OKLAHOMA**
6

7 CHICKASAW NATION and)
8 CHOCTAW NATION OF OKLAHOMA,)
9)
10 Plaintiffs,)
11)
12 vs.)
13)
14 Mary Fallin, in her official capacity as)
15 Governor of the State of Oklahoma, *et al.*)
16)
17 Defendants.)
18 _____)
19

Case No. CIV-11-927

20 **JOINT MOTION BY PLAINTIFFS AND ALL DEFENDANTS FOR DISMISSAL**
21 **WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(2)**

22 The Choctaw Nation of Oklahoma, the Chickasaw Nation (collectively, “the Nations”),
23 and all defendants named in the Second Amended Complaint (Doc. 62) (collectively with the
24 Nations, the “Moving Parties”) respectfully move this Court to order the dismissal of the
25 Nations’ claims against all defendants named in the Second Amended Complaint (Doc. 62)
26 pursuant to Fed. R. Civ. Pr. 41(a)(2).

- 27 1. As grounds for this Motion, the Moving Parties state as follows: This case was stayed by
28 order of the Court on March 27, 2012, along with a concurrent stay entered in *Oklahoma*
29 *Water Resources Board v. United States, et al.*, Case No. CIV-12-275 (W.D. Ok.)
30 (hereinafter, “Case No. CIV-12-275”) to allow settlement negotiations to proceed as
31 among the Nations, the State of Oklahoma (Governor Mary Fallin and the Oklahoma
32 Water Resources Board) (collectively, “State”), the City of Oklahoma City (“City”), and
33 the United States to resolve the issues raised by the respective actions. Settlement
34 negotiations proceeded thereafter and upon request of the State, the Nations, the City, and

1 the United States, the Court has extended the stay in both cases multiple times to allow
2 settlement discussions to progress.

3 2. After almost five years of negotiations, the State, the Nations, the United States, and the
4 City reached a settlement that was executed by the State, the Nations and the City in
5 August 2016, enacted into federal law on _____ as [insert Settlement Act citation], and
6 executed by the United States on _____ 2017.

7 3. Pursuant to [insert Settlement Act citation], approving the State of Oklahoma, Choctaw
8 Nation of Oklahoma, Chickasaw Nation, and City of Oklahoma City Water Settlement
9 (“Settlement Agreement”), and Fed. R. Civ. Pr. 41(a)(2), the Moving Parties respectfully
10 move this court to order the dismissal of the Nations’ claims against all defendants named
11 in the Second Amended Complaint (Doc. 62), which order shall be with prejudice
12 effective as of the Enforceability Date as defined in the Settlement Act and the Settlement
13 Agreement unless either the Plaintiffs or the Defendants notify the Court that the
14 Enforceability Date has not occurred and move to vacate the order of dismissal on that
15 basis. The Moving Parties shall provide notice to the Court of the occurrence of the
16 Enforceability Date within sixty (60) days of the Enforceability Date.

17 4. The Moving Parties are concurrently filing a similar motion in Case No. CIV-12-275 and
18 respectfully request that this Court grant the relief requested in each or deny both.

19 5. A proposed draft order is provided for the Court’s consideration.

20 WHEREFORE, for the reasons set forth herein and as, the motion should be granted.

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Date: _____

Respectfully submitted,

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Counsel for Chickasaw Nation

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*On the Complaint for the Chickasaw Nation and
Choctaw Nation*

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& SISK, P.A.

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***Counsel for Governor Mary Fallin,
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***Counsel for Defendants City of Oklahoma City,
and Oklahoma City Water Utilities Trust***

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of court will transmit a Notice of Electronic Filing to the following ECF registrants:

I hereby certify that on the ___ day of _____, 2017, I served the attached document by e-mail on the following, who are not registered participants of the ECF System.

DRAFT

Michael Burrage

1 ENTERED this _____ day of _____, 2017.

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DRAFT

LEE R. WEST
UNITED STATES DISTRICT JUDGE

1 Exhibit 9: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
2 City Water Settlement
3

4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE WESTERN DISTRICT OF OKLAHOMA**
6

7 OKLAHOMA WATER RESOURCES)
8 BOARD,)
9)
10 Plaintiff,)
11)
12 vs.)
13)
14 UNITED STATES OF AMERICA, *et al.*,)
15)
16)
17 Defendants.)
18 _____)
19)

Case No. CIV-12-275

20 **PLAINTIFF’S MOTION FOR DISMISSAL**

21 Pursuant to **[insert Settlement Act citation]** (hereinafter the “Settlement Act”),
22 approving the State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of
23 Oklahoma City Water Settlement (“Settlement Agreement”), and Fed. R. Civ. Pr. 41(a)(2), the
24 Oklahoma Water Resources Board (“OWRB” or “Plaintiff”) respectfully moves this Court to
25 order the dismissal of this action: (1) without prejudice as to the rights and claims of the United
26 States as trustee for the Choctaw Nation of Oklahoma and the Chickasaw Nation (hereinafter
27 “United States”), subject to the conditions set forth below and in the proposed order
28 accompanying this Motion; and (2) without prejudice as to all other parties. Plaintiff requests the
29 dismissal become effective on the Enforceability Date as defined in the Settlement Act and
30 Settlement Agreement subject to the conditions set forth herein and in the proposed order unless
31 the OWRB notifies the Court that the Enforceability Date has not occurred and moves to vacate
32 the order of dismissal on that basis. Plaintiff shall provide notice to the Court of the occurrence

1 of the Enforceability Date within sixty (60) days of the Enforceability Date. As grounds for this
2 Motion, the OWRB states as follows:

3 1. This case was stayed by order of the Court on March 27, 2012, along with a concurrent
4 stay entered in *Choctaw Nation of Oklahoma and Chickasaw Nation v. Fallin et al.*, CIV
5 11-927, to allow settlement negotiations to proceed as among the Choctaw Nation of
6 Oklahoma, the Chickasaw Nation (collectively “the Nations”), the State of Oklahoma
7 (Governor Mary Fallin and the OWRB) (collectively “State”), the City of Oklahoma City
8 (“City”), and the United States to resolve the issues raised by the respective actions.

9 Settlement negotiations proceeded thereafter, and upon request of the State, the Nations,
10 the City, and the United States, the Court has extended the stay in both cases multiple
11 times to allow settlement discussions to progress.

12 2. After almost five years of negotiations, the State, the Nations, the United States, and the
13 City reached a settlement that was executed by the State, the Nations and the City in
14 August 2016, enacted into federal law on _____ as [insert Settlement Act citation], and
15 executed by the United States on _____ 2017.

16 3. The Settlement Agreement and the Settlement Act settle and determine the water rights
17 and rights to water of the Nations in the State of Oklahoma. The Settlement Agreement
18 and the Settlement Act constitute a final determination of the Nations’ rights to water and
19 water rights in the State of Oklahoma and are binding on the State, the United States, and
20 the Nations. Accordingly, notwithstanding the dismissal of the instant action without
21 prejudice as to the State and the United States, the Settlement Agreement shall be binding
22 on the United States and the Nations in any future stream adjudication in the State of
23 Oklahoma as to the water rights and rights to water of the Nations.

1 4. Dismissal of the instant action should be without prejudice as to all other parties.

2 WHEREFORE, for the reasons set for herein, OWRB requests dismissal of the instant
3 action without prejudice as to the United States as trustee for the Choctaw Nation of Oklahoma
4 and the Chickasaw Nation, subject to the conditions set forth herein; and without prejudice as to
5 all other parties.

6
7 Date: _____

Respectfully submitted,

8 OKLAHOMA OFFICE OF THE ATTORNEY
9 GENERAL

10
11
12 DRAFT

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26
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***Counsel for Governor Mary Fallin,
State of Oklahoma and Counsel for OWRB***

CERTIFICATE OF SERVICE

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I hereby certify that on the ___ day of _____, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of court will transmit a Notice of Electronic Filing to the following ECF registrants:

1
2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE WESTERN DISTRICT OF OKLAHOMA**
4

5 OKLAHOMA WATER RESOURCES)
6 BOARD,)
7)
8 Plaintiff,)
9)
10 vs.)
11)
12 UNITED STATES OF AMERICA, *et al.*,)
13)
14)
15 Defendants.)
16 _____)
17)

Case No. CIV-12-275

18 **ORDER GRANTING PLAINTIFF’S MOTION FOR DISMISSAL**

19 Upon review of the record and consideration of the Plaintiff Oklahoma Water Resource
20 Board’s Motion for Dismissal Pursuant to Fed. R. Civ. P. 41(a)(2), the Court FINDS as follows:

- 21 1. This case was stayed by order of the Court on March 27, 2012, along with a concurrent
22 stay entered in *Choctaw Nation of Oklahoma and Chickasaw Nation v. Fallin et al.*, CIV
23 11-927, to allow settlement negotiations to proceed as among the Choctaw Nation of
24 Oklahoma, the Chickasaw Nation (collectively “the Nations”), the State of Oklahoma
25 (Governor Mary Fallin and the OWRB) (collectively “State”), the City of Oklahoma City
26 (“City”), and the United States to resolve the issues raised by the respective actions.
27 Settlement negotiations proceeded thereafter and upon request of the State, the Nations,
28 the City, and the United States, the Court has extended the stay in both cases multiple
29 times to allow settlement discussions to progress.
- 30 2. After almost five years of negotiations, the State, the Nations, the United States, and the
31 City entered in to State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation,
32 City of Oklahoma City Water Settlement (“Settlement Agreement”), which was approved

1 by Congress and enacted into federal law in [insert Settlement Act citation] (“Settlement
2 Act”).

3 3. The Settlement Agreement and the Settlement Act settle and determine the water rights
4 and rights to water of the Nations in the State of Oklahoma. The Settlement Agreement
5 and the Settlement Act constitute a final determination of the Nations’ rights to water and
6 water rights in the State of Oklahoma and are binding on the State, the United States, and
7 the Nations. Accordingly, notwithstanding the dismissal of the instant action without
8 prejudice as to the State and the United States, the Settlement Agreement shall be binding
9 on the United States and the Nations in any future stream adjudication in the State of
10 Oklahoma as to the water rights and rights to water of the Nations.

11 4. The dismissal of the instant action should be without prejudice as to all other parties.

12 5. Plaintiff requests that dismissal of the instant action shall be effective as of the
13 Enforceability Date as defined in the Settlement Act and the Settlement Agreement
14 unless the Plaintiff notifies the Court that the Enforceability Date has not occurred and
15 moves to vacate the order of dismissal on that basis.

16 IT IS HEREBY ORDERED that the motion be and hereby is GRANTED pursuant to the
17 terms of this ORDER:

18 1. Effective on the Enforceability Date as defined in the Settlement Act and Settlement
19 Agreement, the above-captioned action is dismissed without prejudice as to the United
20 States as trustee for the Nations, the Nations’ claims, and the State subject to the
21 conditions set forth herein;

22 2. The Settlement Agreement and the Settlement Act settle and determine the water rights
23 and rights to water of the Nations in the State of Oklahoma. The Settlement Agreement

1 and the Settlement Act constitute a final determination of the Nations' rights to water and
2 water rights in the State of Oklahoma and are binding on the State, the United States, and
3 the Nations. Accordingly, notwithstanding the dismissal of the instant action without
4 prejudice as to the State and the United States, the Settlement Agreement shall be binding
5 on the United States and the Nations in any future stream adjudication in the State of
6 Oklahoma as to the water rights and rights to water of the Nations;

7 3. Effective on the Enforceability Date as defined in the Settlement Act and Settlement
8 Agreement, the above-captioned action is dismissed without prejudice as to all other
9 parties;

10 4. Dismissal shall be without further action of the Court or notice to the parties, unless the
11 Plaintiff notifies the Court through a motion to vacate the order of dismissal that the
12 Enforcement Date has not occurred; and

13 5. Within thirty (30) days of the Secretary of the United States Department of the Interior's
14 publishing in the Federal Register a Certification stating that the conditions precedent to
15 the Settlement Agreement's Enforceability Date, the OWRB shall file a notice with the
16 Court that includes a copy of the Certification.

17 ENTERED this _____ day of_____, 2017

18
19 DRAFT
20 LEE R. WEST
21 UNITED STATES DISTRICT JUDGE

Settlement Area Hydrologic Basins



Exhibit 10 - State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma City Water Settlement

4 **Water Preservation Infrastructure Fund Grant Point System and Procedures**

5 **1. Point System.** The point system shall be based on a mathematical equation that rates the
6 proposed project in accordance with the requirements of this section by means of a formula
7 awarding points for each criterion used in the evaluation.
8

9 **(a) Point Scale.** The maximum points total shall be 75. OWRB staff shall submit to he
10 OWRB Board only those applications receiving 23 points or more on the 75 point scale.
11 Applications OWRB staff determine to have 22 or fewer points shall not be submitted to the
12 OWRB Board for its consideration, and the OWRB staff shall issue notice to the applicant so
13 indicating.
14

15 **(b) Applications Considered Annually.** The OWRB staff shall evaluate and the OWRB
16 Board shall consider applications for Water Preservation Infrastructure grants annually as
17 provided herein.
18

19 **(c) Order of Consideration.** The OWRB Board shall consider applications in order of
20 points received, from highest to lowest, but with applications from the Settlement Area
21 considered first. If the OWRB Board determines that any applicant cannot promptly proceed
22 with a proposed project due to delays, including those caused by legal, engineering or feasibility
23 issues, or availability of other required or necessary funding sources, the OWRB Board may pass
24 over consideration of such application and proceed to the next application. Applications which
25 are bypassed shall retain their ratings and remain eligible for further consideration.
26

27 **(d) Separate Applications.** Total points will be calculated and awarded for individual
28 projects. An applicant must complete a separate application for each project for which grant
29 funds are requested.
30

31 **2. Point Formula for Eligible Projects** – The formula shall be as follows:
32

33 **(a) Formula.** $T = L + WR + I + MHI + FP + N + AR + BP + OB + PG$, where:
34

35 **(1)** T = Total Points
36

37 **(2)** L = Location of Project
38

39 **(3)** WR = Water and Sewer Rate Structure
40

41 **(4)** I = Indebtedness per Customer
42

43 **(5)** MHI = Median Household Income
44

45 **(6)** FP = Applicant's Ability to Finance Project
46

- 1 (7) N = Need
- 2
- 3 (8) AR = Amount of grant requested
- 4
- 5 (9) BP = Project benefit to other systems
- 6
- 7 (10) OB = Overall benefits
- 8
- 9 (11) PG = Previous grant assistance

10 **(b) Explanation.** Each of these criteria is explained below:

11 **(1) Location of Project (L).** Projects located wholly or partially within the
12 Settlement Area shall be given 10 priority points.

13 **(2) Water and Sewer Rate Structure (WR).**

14 **(A)** For systems providing water service only, points are calculated
15 according to the same scale set forth in OAC Section 785:50-7-5(b)(2)(B)(i) in effect on the
16 Execution Date.

17 **(B)** For systems providing both water and sewer services, points are
18 calculated according to the same scale set forth in OAC Section 785:50-7-5(b)(2)(B)(ii) in effect
19 on the Execution Date.

20 **(C)** For systems providing sewer service only, points are calculated
21 according to the same scale set forth in OAC Section 785:50-7-5(b)(2)(B)(iii) in effect on the
22 Execution Date.

23 **(D)** 3 points will be deducted from the total of the Water and Sewer
24 Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard
25 to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per
26 1000 gallons for customers using larger amounts of water. No points will be added or subtracted
27 for systems using a fixed rate per 1,000 gallons rate. Entities who dedicate sales tax for water
28 and/or sewer improvements will be awarded 1 additional point. Under this category the
29 maximum number of points is 13 and the minimum is -3 points.

30 **(3) Indebtedness per customer (I).** The indebtedness per customer ranking is
31 calculated by taking the applicant's monthly requirements for debt service on debt incurred for
32 water and/or sewer system purposes and dividing it by the number of customers served. The
33 indebtedness per customer shall be adjusted annually based on the CPI for All Urban Consumers
34 specific to Water, Sewer and Trash Collection.

35 **(A)** If the indebtedness per customer is \$20.00 or greater, the applicant
36 shall be given 10 points.

- 1 **(B)** If the indebtedness per customer is \$17.50 to \$19.99, the applicant
2 shall be given 9 points.
3
- 4 **(C)** If the indebtedness per customer is \$16.00 to \$17.49, the applicant
5 shall be given 8 points.
6
- 7 **(D)** If the indebtedness per customer is \$14.50 to \$15.99, the applicant
8 shall be given 7 points.
9
- 10 **(E)** If the indebtedness per customer is \$13.00 to \$14.49, the applicant
11 shall be given 6 points.
12
- 13 **(F)** If the indebtedness per customer is \$11.50 to \$12.99, the applicant
14 shall be given 5 points.
15
- 16 **(G)** If the indebtedness per customer is \$10.00 to \$11.49, the applicant
17 shall be given 4 points.
18
- 19 **(H)** If the indebtedness per customer is \$8.50 to \$9.99, the applicant
20 shall be given 3 points.
21
- 22 **(I)** If the indebtedness per customer is \$7.00 to \$8.49, the applicant
23 shall be given 2 points.
24
- 25 **(J)** If the indebtedness per customer is \$5.50 to \$6.99, the applicant
26 shall be given 1 point.
27
- 28 **(K)** If the indebtedness per customer is less than \$5.50, the applicant
29 shall be given 0 points.
30

31 **(4) Median household income (MHI).** The Median Household Income is
32 calculated according to the most current United States Decennial Census or American
33 Community Survey data available.
34

35 **(A)** The county median figure for Median Household Income will be
36 used in cases where data for the applicant's service area is not available.
37

38 **(B)** Points for the Median Household Income criterion are awarded
39 according to the scale set forth in OAC Section 785:50-7-5(b)(2)(E)(ii) in effect on the Execution
40 Date. The Median Household Income per customer shall be adjusted annually based on the
41 relevant CPI for All Urban Consumers.
42
43

1 **(5) Ability to finance project (FP).**

2
3 **(A)** The maximum points possible under this criterion is 12.

4
5 **(B)** The Ability to Finance Project ranking gives a standardized
6 account of the amount the existing water/sewer rates would have to be raised in order for the
7 applicant to finance the project through a loan without assistance from the State. A standard
8 interest rate and term of 5% for 25 years is assumed which can be adjusted based on the
9 prevailing applicable interest rate as determined by OWRB staff. The cost per customer per
10 month is calculated using the following formula: $FP = AR (0.1102)/(12)(C)$, where:

11 **(I)** FP = Estimate of the amount monthly water/sewer rates
12 would have to be raised to finance the amount of grant requested for the project

13 **(II)** AR = Amount of grant requested

14 **(III)** 0.1102 = Annual rate factor for a 25 year loan at 5%.

15 **(IV)** 12 = Number of months per year.

16 **(V)** C = Number of customers.

17 **(C)** Points in the Ability to Finance Project ranking, based upon the
18 cost per customer per month calculated as set forth in Section 2(b)(5), above, are awarded as
19 follows:

20 **(I)** If the FP is \$10.00 or greater, the applicant shall be given
21 12 points.

22 **(II)** If the FP is \$8.00 to \$9.99, the applicant shall be given 11
23 points.

24 **(III)** If the FP is \$6.00 to \$7.99, the applicant shall be given 10
25 points.

26 **(IV)** If the FP is \$5.00 to \$5.99, the applicant shall be given 9
27 points.

28 **(V)** If the FP is \$4.00 to \$4.99, the applicant shall be given 8
29 points.

30 **(VI)** If the FP is \$3.00 to \$3.99, the applicant shall be given 7
31 points.

32 **(VII)** If the FP is \$2.00 to \$2.99, the applicant shall be given 6
33 points.

34 **(VIII)** If the FP is \$1.75 to \$1.99, the applicant shall be given 5
35 points.

36 **(IX)** If the FP is \$1.50 to \$1.74, the applicant shall be given 4
37 points.

38 **(X)** If the FP is \$1.25 to \$1.49, the applicant shall be given 3
39 points.

1 (XI) If the FP is \$1.00 to \$1.24, the applicant shall be given 2
2 points.

3 (XII) If the FP is \$0.75 to \$0.99, the applicant shall be given 1
4 point.

5 (XIII) If the FP is less than \$0.75, the applicant shall be given 0
6 points.

7 (6) **Need (N).** An applicant who is subject to an enforcement order issued by a
8 governmental agency with environmental jurisdiction shall be given 5 priority points for a
9 proposed project which will remedy the violation out of which the order arose if the availability
10 of such funds would timely support such remedy.

11
12 (7) **Amount of Grant Requested (AR).** Points under this category for
13 amount of grant requested are determined as follows:

14
15 (A) If the AR is 100% or more of available funds, the applicant shall
16 be given -5 points.

17
18 (B) If the AR is 90-99% of available funds, the applicant shall be given
19 -4 points.

20
21 (C) If the AR is 80-89% of available funds, the applicant shall be given
22 -3 points.

23
24 (D) If the AR is 70-79% of available funds, the applicant shall be given
25 -2 points.

26
27 (E) If the AR is 60-69% of available funds, the applicant shall be given
28 -1 point.

29
30 (F) If the AR is 50-59% of available funds, the applicant shall be given
31 0 points.

32
33 (G) If the AR is 40-49% of available funds, the applicant shall be given
34 1 point.

35
36 (H) If the AR is 30-39% of available funds, the applicant shall be given
37 2 points.

38
39 (I) If the AR is 20-29% of available funds, the applicant shall be given
40 3 points.

41
42 (J) If the AR is 10-19% of available funds, the applicant shall be given
43 4 points.

44
45

1 (K) If the AR is less than 10% of available funds, the applicant shall be
2 given 5 points.

3
4 (8) **Project Benefit to other Systems (BP).** If the applicant's project will
5 benefit other adjacent systems as well as applicant's or result in or lead to consolidation of
6 systems, an additional 5 points will be included in the total of priority points assigned to the
7 application.

8
9 (9) **Overall Benefit (OB).** If the applicant's project will benefit or further the
10 goals and recommendations of the latest version of the Oklahoma Comprehensive Water Plan, an
11 additional 5 points will be included in the total of points assigned to the application.

12
13 (10) **Previous Grant Assistance (PG).** For purposes of this Section 2(b)(10), a
14 political subdivision and all its public trusts and similar subordinate entities together shall be
15 treated as one and the same qualified entity; provided, that rural water or sewer districts shall not
16 be construed to be subordinate entities of counties unless the effect would be to make multiple
17 grants to substantially the same entity and/or service area. If an applicant has received one (1) or
18 more Water Preservation Infrastructure grants from the OWRB Board in the ten (10) years
19 preceding the current grant cycle, which grant was not voluntarily abandoned and any disbursed
20 funds returned by the applicant to the OWRB, points shall be deducted from the application
21 according to all of the following provisions that apply. No points shall be deducted if an
22 applicant has received a Water Preservation Infrastructure grant more than ten years preceding
23 the current grant cycle:

24
25 (A) If the applicant has received one (1) Water Preservation
26 Infrastructure grant in the immediately preceding annual grant cycle, the application will be
27 given -8 points.

28
29 (B) If the applicant has received more than one (1) Water Preservation
30 Infrastructure grant in the immediately preceding annual grant cycle, the application will be
31 given -10 points for each Water Preservation Infrastructure grant so received.

32
33 (C) If the applicant has received one (1) Water Preservation
34 Infrastructure grant in the preceding ten years, the application will be given -5 points.

35
36 (D) If the applicant has received two (2) Water Preservation
37 Infrastructure grants in the preceding ten years, the application will be given -8 points.

38
39 (E) If the applicant has received three (3) Water Preservation
40 Infrastructure grants in the preceding ten years, the application will be given -10 points.

41
42 (F) If the applicant has received four (4) Water Preservation
43 Infrastructure grants in the preceding ten years, application will be given -12 points.

44
45 (G) If the applicant has received five (5) or more Water Preservation
46 Infrastructure grants in the preceding ten years, the application will be given -14 points.

1
2 **3. Procedures**
3

4 **(a) General Procedures.** The general procedure to be followed for grants under the
5 Water Preservation Fund Grant program will be as follows:
6

7 **(1) Pre-Application Conference.**
8

9 **(A)** All potential applicants are encouraged to contact the OWRB staff
10 for purposes of making arrangements for participating in a pre-application conference among
11 OWRB staff, applicant (or representative), applicant's legal, financial, and engineering
12 advisors, and such other persons whose attendance and participation may be deemed
13 appropriate and beneficial.
14

15 **(B)** At the pre-application conference, preliminary matters respecting
16 the applicant, the proposed project and the application for assistance may be generally discussed
17 in an effort to familiarize all concerned parties with the Water Preservation Infrastructure grant
18 program and application requirements and procedures.
19

20 **(2) Application.**
21

22 **(A)** In all instances, applications must be written and in a form
23 which meets the requirements of OAC Section 785:50-5.
24

25 **(B)** All applications must have a verification form signed and notarized
26 by the applicant representative, and must have the signature of an attorney representing the
27 applicant.
28

29 **(3) Preliminary Review.** Upon receipt of the application by OWRB,
30 the submitted application shall be given preliminary review by OWRB staff for an initial
31 determination of project eligibility and for completeness and accuracy of all required and
32 necessary information. If OWRB staff finds an application to be materially incomplete or
33 inaccurate, staff shall notify the applicant by letter stating the deficiency. An applicant shall
34 file all documentation and information required by OWRB staff within thirty (30) days after the
35 date of the letter describing the deficiency, or the application shall be deemed denied;
36 provided, that nothing herein extends the deadline specified at Section 3(d).
37

38 **(4) Final review.** Subsequent to preliminary review and based upon the
39 determination of project eligibility and the adequacy of information submitted, the application
40 shall thereafter be reviewed by OWRB staff in accordance with this Exhibit 11 for
41 recommendation to the Board.
42

43 **(5) Submittal to Board.** Upon completion of OWRB staff review, the
44 submitted application (with staff recommendations, if any) shall be placed upon the Board's
45 agenda at the meeting set to consider applications from the Water Preservation Infrastructure
46 Funds. All applicants shall be provided the OWRB staff recommendations relevant to their

1 respective application in advance of the Board meeting set to consider the staff
2 recommendations.
3

4 **(b) General Consideration.** In the review and consideration of applications for grants
5 under the Water Preservation Infrastructure grant program, the Board shall follow the point
6 system set forth this Exhibit 11. The Board also shall give consideration to the following
7 criteria for application funding and approval:
8

9 **(1) Compliance with Laws.** The application and proposed project must
10 be found to be in compliance with all applicable federal, state, and local laws and
11 regulations, and applicant must possess all necessary and incidental legal rights and privileges
12 necessary for project commencement and operation.
13

14 **(2) Eligibility.** The applicant must propose a project for public water
15 infrastructure which shall include but not be limited to projects relating to drinking water,
16 irrigation water supply, and wastewater projects.
17

18 **(3) Local Need, Support, and Priority.** The project must be found to be
19 needed in the area to be served and must be found to be sufficient, as proposed, to serve such
20 needs. The Board shall consider the project’s relative needs in relation to the needs of other
21 proposed projects which have applied for funding in the current grant cycle and the extent of
22 local support, interest, and commitment in and to the proposed project.
23

24 **(4) Availability of other assistance.** The Board shall consider the
25 feasibility and availability of alternative sources of revenue which could be obtained and
26 utilized by applicant for project financing.
27

28 **(5) Economic Feasibility.** The Board shall consider the overall economic
29 viability and feasibility of the project as a whole.
30

31 **(6) Project Feasibility.** The Board shall consider, based on the engineering
32 data submitted and otherwise available whether the proposed project appears to be feasible and
33 must determine as a prerequisite to application approval and funding that the project is cost
34 effective.
35

36 **(7) Water Preservation Infrastructure Fund Grant Amount;
37 Availability of Funds.** In sizing a Water Preservation Infrastructure grant, the Board
38 shall take into consideration the availability of Water Preservation Infrastructure funds in the
39 current grant cycle. Grants to projects in the Settlement Area shall not receive more than 75% of
40 the available grant funding in any one grant cycle; provided, that in the event that no eligible
41 applications are received for projects in areas outside of the Settlement Area within the relevant
42 grant cycle, this restriction shall not apply.
43
44

1 **(c) Board Action.**

2
3 **(1)** After reviewing and considering the submitted application in
4 conformance with this Section, the Board may:

5
6 **(A)** Approve and fund the application as submitted, in whole or in part,
7 and thereby authorize such further action as may be necessary to effectuate the disbursement of
8 funds.

9
10 **(B)** Deny the application, in whole or in part, based upon any
11 criteria of this Section which may be applicable.

12
13 **(C)** Approve and fund the application, in whole or in part, such
14 approval being conditioned and contingent upon the existence of adequate and available grant
15 funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding
16 and necessary material, information, documents, verifications, or other authorization.

17
18 **(2)** Upon approval of an application, the Board may authorize the
19 execution of all necessary grant documents and instruments by the Chairman of the Board, or
20 other designated Board member, and may accordingly authorize and provide for disbursements
21 and may authorize such further or additional action as may be necessary to complete and
22 implement the approved transaction.

23
24 **(3)** The OWRB shall issue written notice to the applicant of the Board's final
25 action.

26
27 **(d) Deadline for Applications; Eligible Project Costs**

28
29 **(1)** To be considered for and receive funding from funds available for Water
30 Preservation Infrastructure grants in any given grant cycle, an application must be completed
31 in accord with this Exhibit 11 and on any prescribed application form. Completed applications
32 must be filed and received by the Board on or before 5:00 p.m. the first business day of
33 September of that grant cycle. Any application not properly completed and filed shall not be
34 considered for or funded from funds that may become available during that grant cycle. Each
35 grant cycle shall end on the final business day of August.

36
37 **(2)** A Water Preservation Infrastructure grant application submitted for
38 consideration in a prior grant cycle that was not approved for funding out of funds made
39 available in that prior grant cycle shall expire and be deemed denied.

40
41 **(3)** For purposes of evaluating, approving, and funding an application
42 for a Water Preservation Infrastructure grant, categories of project costs which are eligible for
43 assistance shall, in addition to those project costs described in OAC Section 785:50-3-1 in effect
44 on the Execution Date, include:

1 (A) Architecture and/or engineering fees related to the project;
2 provided, that in order for these costs to be eligible for award, applicants shall provide
3 documentation that all construction funding is available. If construction funding is not available
4 the request for these costs will be placed in a “pending” status until such time as the construction
5 funding is available. If, however, an Engineering Report is a requirement of an enforcement
6 order issued by a governmental agency with environmental jurisdiction, an applicant under such
7 enforcement order may be awarded a grant to cover the engineering costs without construction
8 funding being available.

9
10 (B) Fees for soil testing.

11
12 (C) Fees for surveying.

13
14 (D) Payments to contractor(s) for construction of the improvements.

15
16 (E) Legal fees and expenses of counsel for the applicant which are
17 related to the project.

18
19 (F) Services of full-time or part-time inspector.

20
21 (G) Administrative expenses shall not be eligible project costs.

22
23 (e) **Disbursement of Funds.**

24
25 (1) **Action Following Board Approval and Prior to Disbursement of**
26 **Funding.**

27
28 (A) **Notification of Approval.** Upon approval of an application, the
29 Board shall furnish to the applicant a written notice of grant approval. The notice shall
30 advise the applicant that the grant application has been formally and officially approved by the
31 Board and that the grant funds approved shall be made available to the applicant by the Board
32 for such purposes and upon such other terms and conditions as the Board may require.

33
34 (B) **Bid Filing.** Within ninety (90) days following the date of the
35 written notice of approval, the applicant shall file with the Board a bid for work necessary to
36 initiate work necessary for the proposed project. Where determined necessary and
37 appropriate, the Board or its staff may permit additional time to file such a bid; provided, that
38 notwithstanding any approval of additional time, if such a bid is not filed within one (1) year
39 following the date of Board approval of the application, then the Board's approval shall expire
40 and no funds shall be released; provided further, that if an acceptable bid for completion has not
41 been filed due to circumstances that lay outside the applicant’s control, the applicant may
42 request, and the Board may approve or deny, a one-time extension of time not to exceed six
43 (6) months to file an acceptable bid; provided finally, that in the event of such expiration the
44 applicant may file a new application which shall be subject to due consideration on its own
45 merits.

1 (C) **Additional Conditions Prior to Disbursement of Grant Funds.**

2
3 (I) Applicant shall establish, in such manner as is acceptable
4 to the Board or staff, a special and separate federally insured account in and through which the
5 grant proceeds shall be administered and accounted for by the applicant.
6

7 (II) Unless otherwise provided and approved by the Board,
8 the applicant shall submit to the Board all plans, specifications and engineering reports for
9 the project for staff approval, all of which shall be complete and in sufficient detail as would be
10 required for submission of the project to a contractor for bidding or contracting the project.
11 If not previously provided, applicant shall provide Board with a written and verified statement
12 setting forth:

13
14 i. the amount of funds necessary for release and
15 disbursement at closing, which funds are needed for initial commencement of the project; and
16

17 ii. information reflecting the reasonable availability of
18 and/or a commitment from all other revenue or funding sources needed to finance and complete
19 the project.
20

21 (III) The applicant, the Board, and all other necessary parties,
22 shall have executed all necessary and incidental instruments and documents, including but
23 not limited to a grant agreement.
24

25 (2) **Board Action on Request for Increase in Approved Amount.** If prior
26 to disbursement of the grant monies to the applicant, the project bids exceed the engineer's
27 estimates or it otherwise develops that the Water Preservation Infrastructure grant amount
28 approved by the Board, when combined with any other sources of funding, will be insufficient
29 to complete the approved project, then the applicant may file a written request:
30

31 (A) to amend the scope of the approved project in a manner
32 consistent with Section 3(e)(3); or
33

34 (B) decline funding and withdraw its application for the current grant
35 cycle and request that the Board reconsider the application with an increased Water
36 Preservation Infrastructure grant amount during the following grant cycle. The request for
37 an increased Water Preservation Infrastructure grant amount shall be treated as a new
38 application on its own merits; provided, the original application shall not be counted for
39 purposes of the previous grant assistance portion of the priority point determination.
40

41 (3) **Board Action on Request for Change in Scope of Approved Project.**
42 If prior to disbursement of the grant monies to the applicant, the applicant wishes to change
43 the scope of the project from that approved by the Board, then the applicant may file a written
44 request for approval of such a change. If Board staff determines that the change is reasonably
45 and in all material aspects within the scope of the project description approved by the Board,
46 then the staff shall be authorized to approve such requested change. If Board staff

1 determines that the change is not in all material respects within the scope of the project
2 description approved by the Board, then such a request shall be presented to the Board for
3 action; provided, that the Board shall not approve a change in scope of project if the change,
4 if considered as part of the original application, would have resulted in a lower priority point
5 determination on the application.
6

7 **(4) Disbursement of funding to applicant; action following disbursement.**
8

9 **(A) Disbursement Contingent on Completion of Conditions; Reduction from Approved Amount.** At the time and upon compliance by the applicant with
10 the applicable requirements in Section 3(e)(1), the Board may disburse the approved amount of
11 grant funds to the applicant for the approved project.
12
13

14 **(B) Disbursement in Whole or in Part; Timing.** As the Board
15 may direct, grant funds may be disbursed to the applicant in installments or in lump sum and/or
16 prior to, during, or upon completion of the project. Such disbursements shall rest with the
17 Board's assessment of what is appropriate under the project circumstances presented.
18

19 **(C) Post-Disbursement Requests for Increases in Funding Amount.** If after disbursement of the grant monies to the applicant it develops that the applicant
20 needs more money for the project than the Water Preservation Infrastructure grant
21 amount disbursed by the Board, then any request for additional Water Preservation
22 Infrastructure grant money shall follow the rules in this Exhibit 11 governing, and shall be
23 treated as, a new application on its own merits.
24
25

26 **(D) Post-disbursement requests for changes in scope of approved project.** If after disbursement of the grant monies to the applicant it develops that the
27 applicant wishes to change the scope of the project from that approved by the Board, then the
28 applicant may file a written request for approval of such a change. If the applicant successfully
29 demonstrates reasonably unforeseeable or extraordinary circumstances that in the Board's
30 judgment and sound discretion represent a better utilization of Water Preservation
31 Infrastructure grant funds by the applicant to serve the public interest and welfare, then the
32 Board shall approve the change in project scope. If the applicant does not make such a
33 demonstration, then the Board shall deny the request and the applicant shall either proceed
34 with the project as approved or abandon the project and return the grant monies to the Board
35 within thirty (30) days after the date of the Board's action.
36
37

38 **(5) Post-Disbursement Action Regarding Unexpended Funding.** If
39 following completion of the project it develops that the applicant needed less money for the
40 project than disbursed by the Board, the applicant shall return the unexpended amount to the
41 Board.
42

43 **(6) Additional requirements.** The Board may impose additional reasonable
44 and necessary conditions or requirements for the disbursement to the applicant or expenditure
45 by the applicant of Water Preservation Infrastructure grant funds, all as may be deemed
46 appropriate by the Board.

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4. OWRB Administrative Fee. To offset the administrative costs of processing and administering the Water Preservation Infrastructure Fund, each year the OWRB shall be authorized to draw one-half of one percent (0.5%) of the amount of funds awarded from the Water Preservation Infrastructure Fund in that grant cycle.

5. Amendments. The evaluative factors and process of this Exhibit 11 (but not the preferences afforded Settlement Area projects) may, from time to time, need to be adjusted to address changed economic or other unforeseen circumstances to ensure the fair and efficient evaluation, processing, and administration of grant applications and grants. In the event OWRB staff determines that such adjustments are warranted, the OWRB shall notify the Nations and provide copies of any proposed amendments. In the event the Nations agree that the proposed amendments are appropriate to further the fair and efficient evaluation, processing, and administration of grant applications and grants, the OWRB may implement the agreed upon amendment. In no event may the provisions of Section 5.3.3.5 of the Settlement Agreement or the preferences of Section 1(c) and 2(b)(1) of this Exhibit 11 be changed.

**OKLAHOMA CITY EXISTING
WATER CONSERVATION MEASURES**

Water Conservation Measure	Trigger
<p>Mandatory Odd/Even Lawn Watering. All lawn watering systems using sprinkler devices (hand watering shall be permitted any day) shall be limited to odd/even lawn watering based on location address. Odd number addresses water lawns and landscaping on odd number calendar days. Even number addresses water lawns on even number calendar days. This applies to all customer classifications: single family residences, duplexes, triplexes, homeowner association general properties, commercial, industrial, governmental, etc.</p>	<p align="center">Required at all times.</p>
<p>Fixed Two (2) Day a Week Lawn Watering. In addition to all voluntary indoor water conservation efforts, outdoor lawn watering systems using sprinkler devices (hand watering shall be permitted any day) shall be limited to fixed two (2) day per week lawn watering. Odd number single family residences water lawns and landscaping on Saturdays and Wednesdays. Even number single family residences water lawns and landscaping on Sundays and Thursdays. All other customer classifications (single family residences, duplexes, triplexes, homeowner association general properties, commercial, industrial, governmental, etc.) water lawns and landscaping Tuesdays and Fridays.</p>	<p align="center">Cumulative Live Storage in City Reservoirs is fifty (50) percent or less full.*</p>
<p>Fixed One (1) Day a Week Lawn Watering. In addition to all voluntary indoor water conservation efforts, outdoor lawn watering systems using sprinkler devices (hand watering shall be permitted any day) shall be limited to fixed one (1) day per week lawn watering. Single family residences ending in 1 or 3 shall water lawns and landscaping on Saturdays. Single family residences with addresses ending in 5, 7, or 9 shall water lawns and landscaping</p>	<p align="center">Cumulative Live Storage in City Reservoirs is forty-five (45) percent or less full.</p>

<p>on Wednesdays. Single family residences with addresses ending in 0 or 2 shall water lawns and landscaping on Sundays. Duplexes, triplexes, and homeowner association general properties shall water on Tuesdays. Commercial, industrial, government, etc., shall water lawns and landscaping on Fridays</p>	
<p>Hand Watering Garden and Flower Beds Only; Commercial Car Washes with Recycling Operations Only. In addition to voluntary indoor water conservation efforts, individual water customers at all service locations, regardless of street address, may continue to hand water garden and flower beds only. This applies to all customer classifications (single family residences, duplexes, triplexes, homeowner association general properties, golf courses, commercial, industrial, government, etc.) except commercial car washes. Only commercial car washes that utilize water recycling systems will be permitted to operate.</p>	<p>Cumulative Live Storage in City Reservoirs is forty (40) percent or less full.</p>
<p>Ban All Outdoor Watering. Individual water customers at all service locations, regardless of street address, are prohibited from all outdoor watering and/or washing of vehicles. This applies to all customer classifications: single family residences, duplexes, triplexes, homeowner association general properties, golf courses, commercial, industrial, government, etc.</p>	<p>Cumulative Live Storage in City Reservoirs is thirty-five (35) percent or less full.</p>

Exhibit 13: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
City Water Settlement

Lake Level Release Restriction

Accounting Memorandum

August 8, 2016



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Abbreviations

AF	acre-feet
AFY	acre-feet per year
cfs	cubic feet per second
City	City of Oklahoma City
Nations	Chickasaw Nation and the Choctaw Nation of Oklahoma
State	State of Oklahoma
USGS	United States Geological Survey
YTD	year-to-date

1 Introduction

This documentation provides a description of the draft Sardis Lake accounting that will be implemented as part of the Settlement Agreement between the Chickasaw Nation and the Choctaw Nation of Oklahoma (“Nations”), the State of Oklahoma (“State”), and the City of Oklahoma City (“City”). This documentation incorporates the terms contained in the November 24, 2015 Draft Settlement Agreement (“Draft Settlement Agreement”).

The accounting has been developed as an Excel workbook. Although there are hyperlinks within the accounting workbook to the USGS website for current and historical reservoir elevations, it does not require the use of macros or links to external spreadsheets and will be able to be run on any computer that has Microsoft Excel.

This documentation describes the various features of the accounting. Detailed explanations of the formulas used in the spreadsheet can be found within the documentation contained within the Excel workbook. This documentation serves as a description of the features and functions of the workbook and the data and rules that have been used to govern the accounting.

2 Dashboard

The Dashboard is a page in the accounting workbook that directs you to other pages in the workbook. Each button in the Dashboard is linked to a page in the workbook. The pages in the workbook are described in the following sections. Each page has a button that will take the user back to the Dashboard and is illustrated in **Figure 1**.

3 Accounting Explanations and Definitions

The Accounting Explanations page provides documentation on the function of each page; where data should be entered for the accounting, as well as descriptions of the formulas, where applicable. Much of the information contained in the Accounting Explanations is described in greater detail in this report. The Definitions page describes the key terms used in the accounting:

Table 1. Accounting definitions

Inactive Storage	Storage below the lowest elevation at which water can be released from the lake
Inaccessible Storage	Storage below the lowest elevation at which water can be released or diverted without hydraulic or water quality limitations
Live Storage	Storage space between the top of the conservation pool and the specified lower elevation
Flood Pool	Storage above the flood elevation
Administrative set-aside Account	20,000 AFY set-aside in Sardis Lake for non-Oklahoma City uses
Available City Live Storage	Live storage available for Oklahoma City. Currently this is equal to Live storage.

4 City Water Supply Reservoirs Map and Current Storage Link

The City Water Supply Reservoirs and Current Storage page contains a map of the City's water supply reservoirs. All of the water supply reservoirs except for Canton Lake and McGee Creek Reservoir are owned by the City. Canton Lake is an Army Corps of Engineers reservoir that releases water for downstream diversion by the City to two of its terminal water supply reservoirs (Hefner and Overholser). McGee Creek Reservoir is a water supply and flood control reservoir owned and operated by the Bureau of Reclamation.

Each reservoir has a hyperlink to a page within the accounting for each reservoir as shown in **Figure 2**. The page for each reservoir includes a schematic of the storage pools in the reservoir and a hyperlink that will take the user externally to the United States Geological Survey (USGS) website that has the current and historical reservoir elevation.

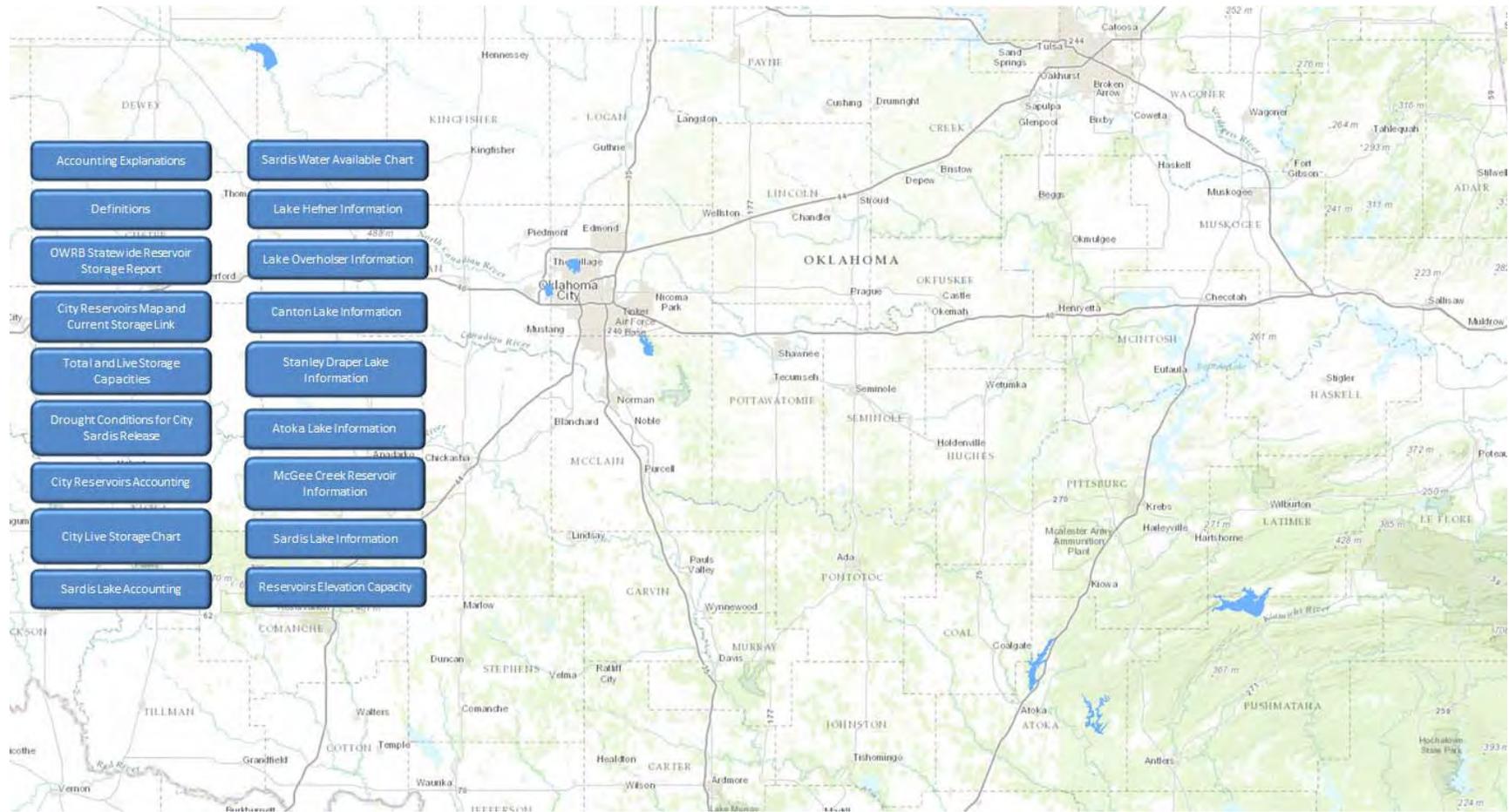


Figure 1. Example map with Dashboard hyperlinks

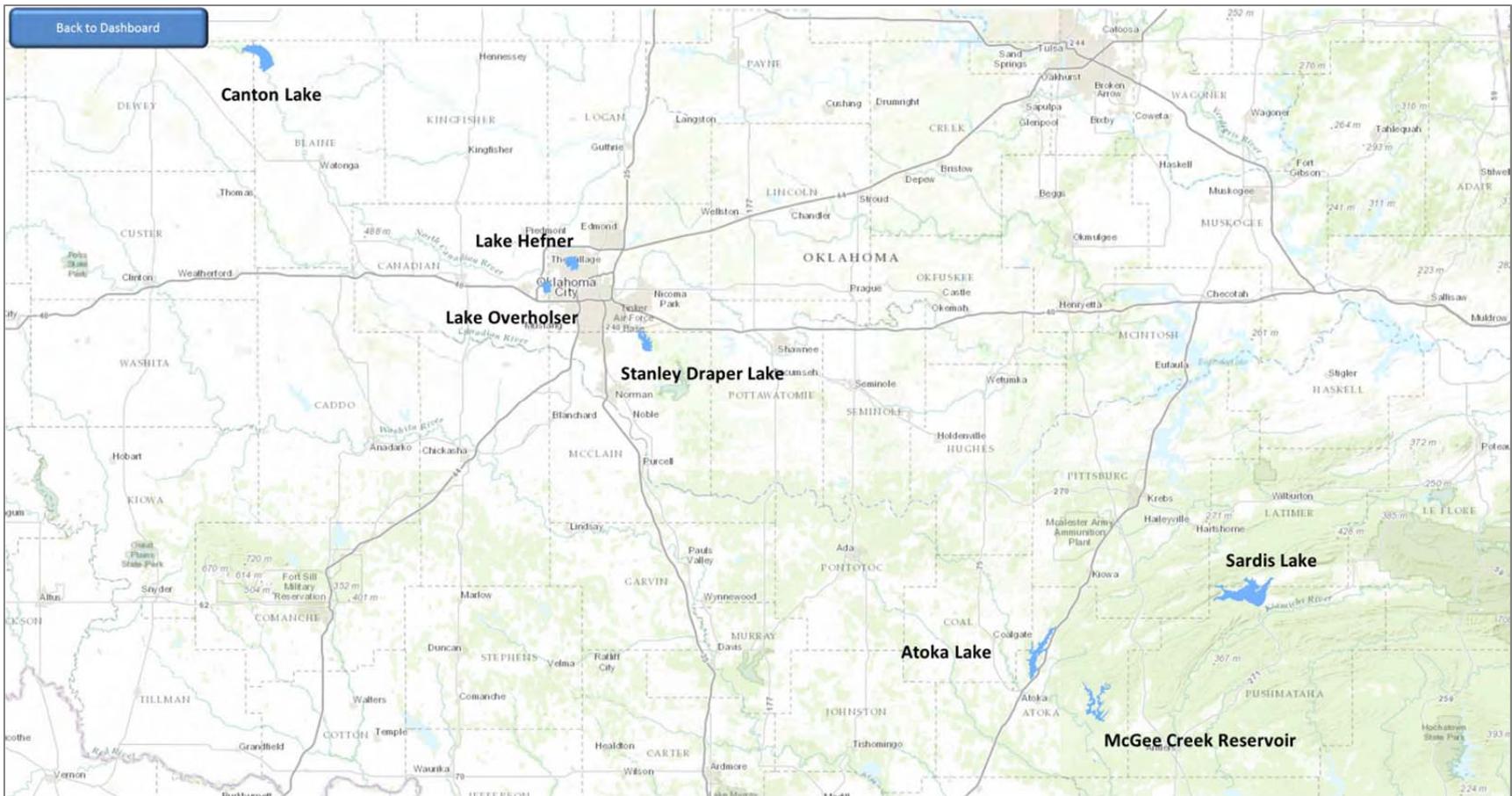


Figure 2. Example map with USGS website current storage hyperlink

5 Total and Live Storage

Live storage is defined in 6.1.8.3 of the Draft Settlement Agreement as

“... the volume of City Reservoir storage space between the top of the conservation pool and a negotiated lower elevation using the elevation-capacity relationship...”

Live storage does not include any temporary storage in the flood control pool of any reservoir or storage above the spillway at Atoka Reservoir.

The dead pool infrastructure limitations are based on hydraulic capacity and water quality issues that limit the ability of the City to adequately treat water stored in the bottom of the reservoirs, as described in this section.

The City has analyzed the availability of storage in each reservoir, as shown in **Table 2**. These are updated storage volumes based on the data from the Oklahoma Water Resources Board, which recently (late 1990s and early 2000s) completed bathymetric surveys for the lakes, except Canton. Note that the Canton volume remains the same. There are a number of factors that determine the live storage and dead pool for each reservoir. The inactive pool is storage below the lowest elevation at which water can be released from the lake or diverted from the lake based on existing infrastructure. The inaccessible pool is water that cannot be withdrawn due to hydraulic or water quality limitations. The combination of the inactive and inaccessible pool for each reservoir determines the dead pool for that individual reservoir. The live storage and dead pools are described in the description of each reservoir.

Table 2. Oklahoma City current total and live storage capacities. Canton Lake’s live storage has been reduced by 30% to account for transit loss in the North Canadian River.

	Revised full elevation and capacity		Inactive and inaccessible pool elevation and capacity		Live Storage (AF)
	Elevation (ft)	Storage (AF)	Elevation (ft)	Storage (AF)	
Canton Lake	1615.4	111,353	1596.5	14,177	68,023
Lake Overholser	1241.5	13,514	1231.8	605	12,909
Lake Hefner	1199.0	69,894	1165.0	12,301	57,593
North Canadian subtotal		194,761		27,083	138,525
Stanley Draper Lake	1191.0	87,155	1145.0	14,960	72,195
Atoka Reservoir	590.0	109,819	550.0	1,879	107,940
McGee Creek Reservoir	577.1	99,492	533.0	11,047	88,445
Southeast OK subtotal		296,466		27,812	268,580
Total		491,227		54,895	407,105

5.1 Canton Lake

- Canton is located on the North Canadian River to the northwest of the City
- Canton is owned and operated by the Army Corps of Engineers but the City retains the storage rights
- Canton is the only reservoir not directly connected to the City's water system and water is released to the North Canadian River for downstream delivery to Lake Overholser or Lake Hefner
- Water released from Canton into the North Canadian River travels a significant distance to the diversion point and due to the characteristics of the North Canadian River experiences a 30 percent transit loss due to seepage from the River
- The 30 percent loss is based on deliveries made during the wetter fall and winter months
- Transit loss would be significantly greater if releases were made during the summer or drought years
- The City applies a 30 percent loss to water stored in the conservation pool to determine available live storage
- Canton has one outlet at elevation 1,596.5 ft.
- There is 14,177 acre-feet (AF) of storage below this outlet that is inactive storage
- Since the intakes from Canton Lake are not directly connected to the City's treatment system, the reservation of storage for a water quality pool is not necessary
- There are occurrences where water is temporarily stored in the flood control pool, for subsequent release as downstream conditions allow. The determination of live pool storage stops at the conservation pool. Any water temporarily stored above elevation 1615.4 in the flood control pool is not included in the live pool storage.
- Total live storage in Canton is 68,023 AF

The schematic of the outlets, storage pools, and storage volumes for Canton Lake is shown in **Figure 3**.

Canton Lake

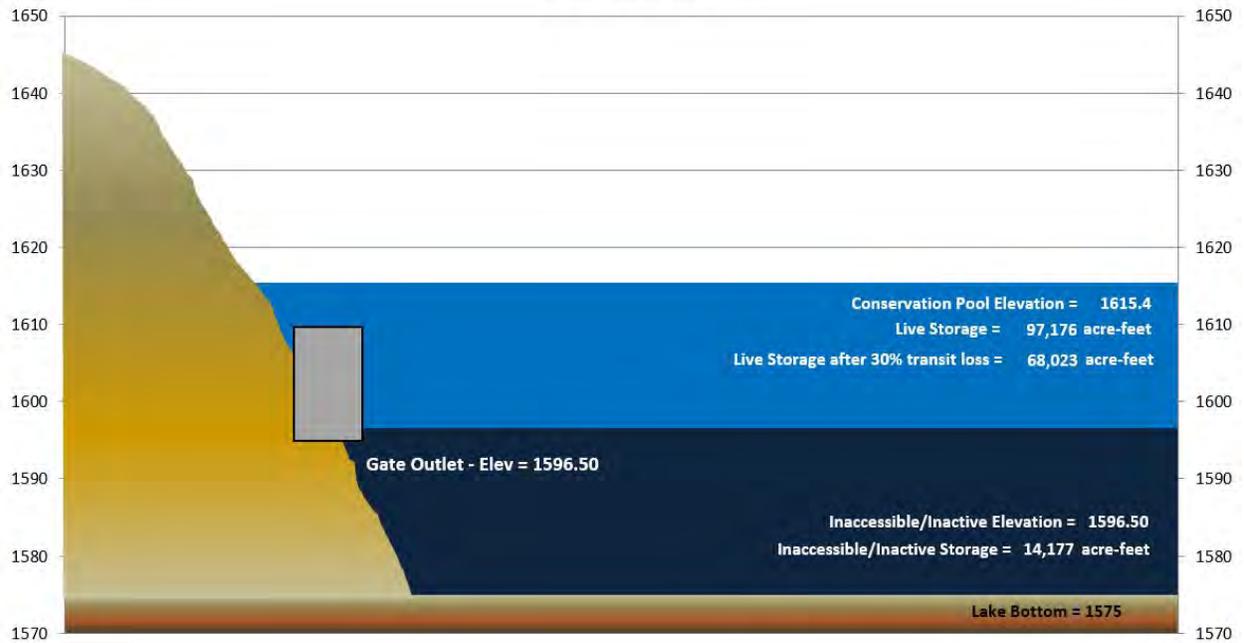


Figure 3. Canton Lake storage schematic.

5.2 Lake Overholser

- Lake Overholser is one of the City's three terminal water supply reservoirs.
- Overholser is fed from the North Canadian River system by impounding water at the Overholser Dam.
- Water is stored by the dam until it reaches an elevation that causes it to overflow the rollover dam on the northeast corner of the lake.
- Water is diverted from the lake through an intake structure that feeds a 54-inch gravity line that runs to the Overholser Water Treatment Plant.
- The lake is silted in to elevation 1,228.6 ft.
- Gates 2 and 3 are silted in and below the current lake bottom
- Gate 1 is the only operable gate at elevation 1,231.7 ft.
- There is 385 AF of storage that is not silted in below Gate 1
- The accessible level for water in the lake was determined based on physical access conditions and water quality impacts to treatment
- The inaccessible elevation at 1,231.75 ft., for an additional 220 AF of inaccessible storage
- Total inactive and inaccessible storage is 605 AF of dead pool
- Total live storage is calculated at 12,909 AF

The schematic of the outlets, storage pools, and storage volumes for Lake Overholser is shown in **Figure 4**.

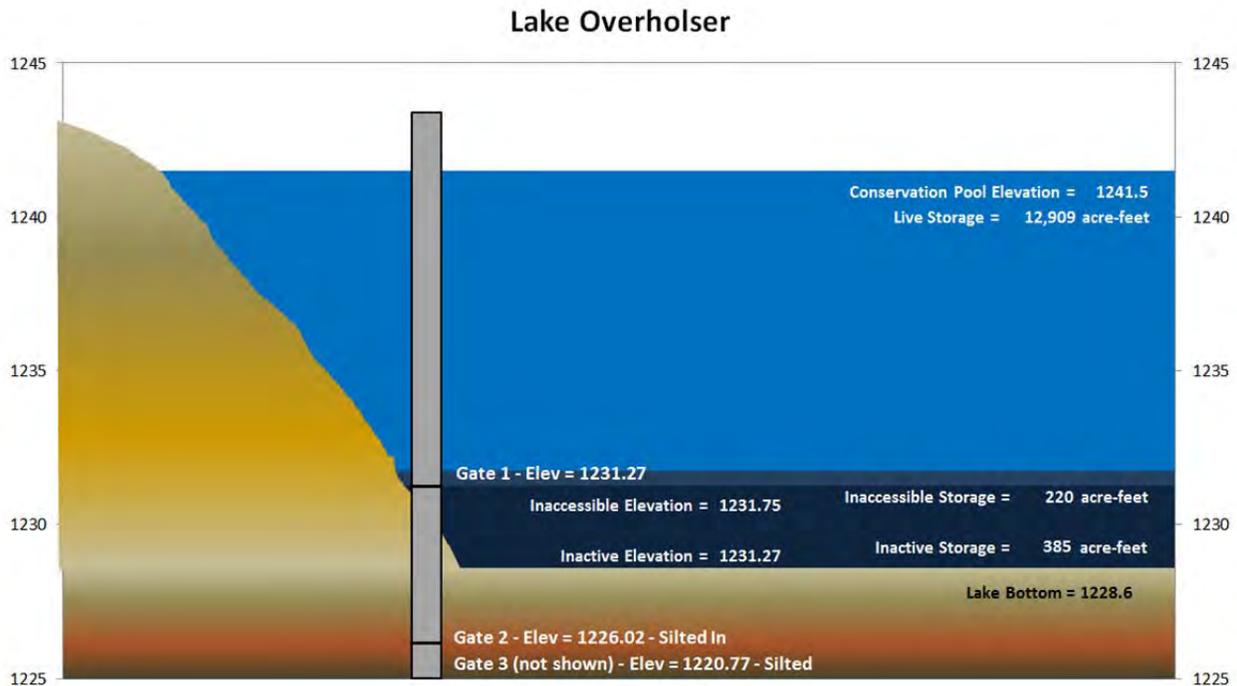


Figure 3. Lake Overholser storage schematic

5.3 Lake Hefner

- Lake Hefner is one of the City's three terminal water supply reservoirs.
- Water is diverted from the North Canadian River system through the man-made Hefner Canal (also known as Bluff Creek Canal). Water is diverted to the canal by impounding water at the Overholser Dam back to the Hefner Canal where it generally runs northeast to Lake Hefner
- Water released from Hefner flows via pipeline directly to the Hefner Water Treatment Plant
- Inactive pool is below elevation 1,148.00 ft. that contains 2,322 AF
- Gate 5 is likely inaccessible due to sedimentation
- The inaccessible level, or the water unusable above the inactive level, was determined based on experiences from the Lake Stanley Draper where water quality was significantly degraded impacting treatment at the water plant, increasing chemical costs and creating additional residuals from the treatment process
- Inaccessible elevation is at 1,165.00 ft. halfway between Gates 3 and 4 and represents 9,979 AF of storage space
- Inactive and inaccessible storage is 12,301 AF of dead pool
- Total live storage is calculated at 57,593 AF

The schematic of the outlets, storage pools, and storage volumes for Lake Hefner is shown in **Figure 5**.

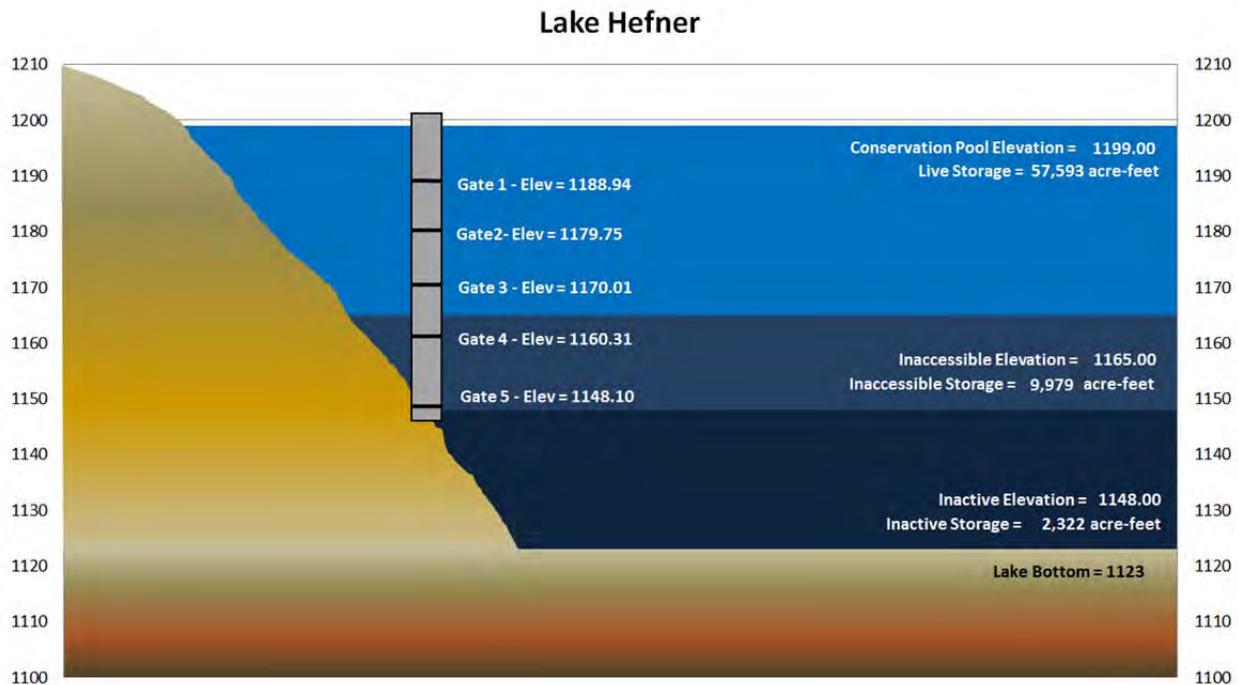


Figure 5. Lake Hefner storage schematic

5.4 Stanley Draper Lake

- Lake Stanley Draper Lake is a terminal water supply reservoir with essentially no watershed
- The significant majority of water in the lake is from the Atoka Pipeline diverting water from Lake Atoka and the McGee Creek Reservoir (first via the McGee Creek pipeline).
- Water released from Draper flows via pipeline directly to the Draper Water Treatment Plant
- Stanley Draper has five outlet gates
- Gate 5 is the bottom gate at elevation 1,123.5 ft.
- There is 2,971 AF of inactive storage below Gates 5
- Based on experiences in 2011 where turbidity for the raw water spiked when the lake was at its lowest levels since construction (approximately elevation 1158 feet), an estimate was made of the lowest level the lake that could still receive sufficient treatment while keeping the Draper plant running
- The inaccessible elevation of 1,145.0 ft. was set using the water quality criteria developed after 2011 and is halfway between Gates 3 and 4 and represents 11,989 AF of storage space
- Total inactive and inaccessible storage is 14,960 AF of dead pool
- Total live storage is 72,195 AF

The schematic of the outlets, storage pools, and storage volumes for Stanley Draper Lake is shown in **Figure 6**.

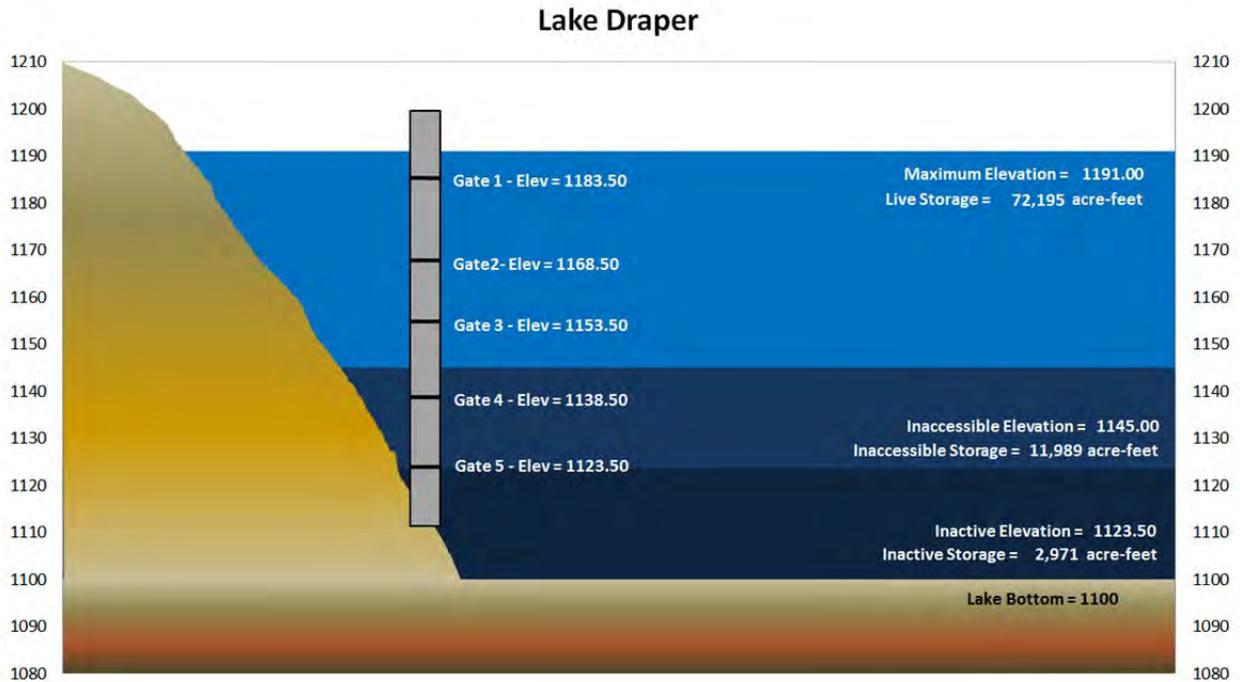


Figure 6. Stanley Draper Lake storage schematic

5.5 Lake Atoka

- Water impounded at Lake Atoka is conveyed to Stanley Draper Lake via the Atoka Pipeline
- The lake also provides temporary storage of water from the McGee Creek Reservoir until it is pumped and conveyed via the Atoka Pipeline
- The Atoka pipeline has six pump stations
- Atoka has five outlet gates
- Gate 5 is the bottom gate at elevation 540.0 ft.
- There is 100 AF of inactive storage below Gate 5
- Gate 4 was assumed to be the lowest gate from which water could be diverted from the lake while still maintaining sufficient water quality.
- The inaccessible elevation is below Gate 4 at elevation 550.0 ft. and represents 1,779 AF of storage space
- Total inactive and inaccessible storage is 1,879 AF of dead pool
- Water temporarily stored above elevation 590.0 ft., which is the top of the spillway, is not included as part of the calculation for live storage.
- Total live storage in Atoka is 107,940 AF

The schematic of the outlets, storage pools, and storage volumes for Lake Atoka is shown in **Figure 7**.

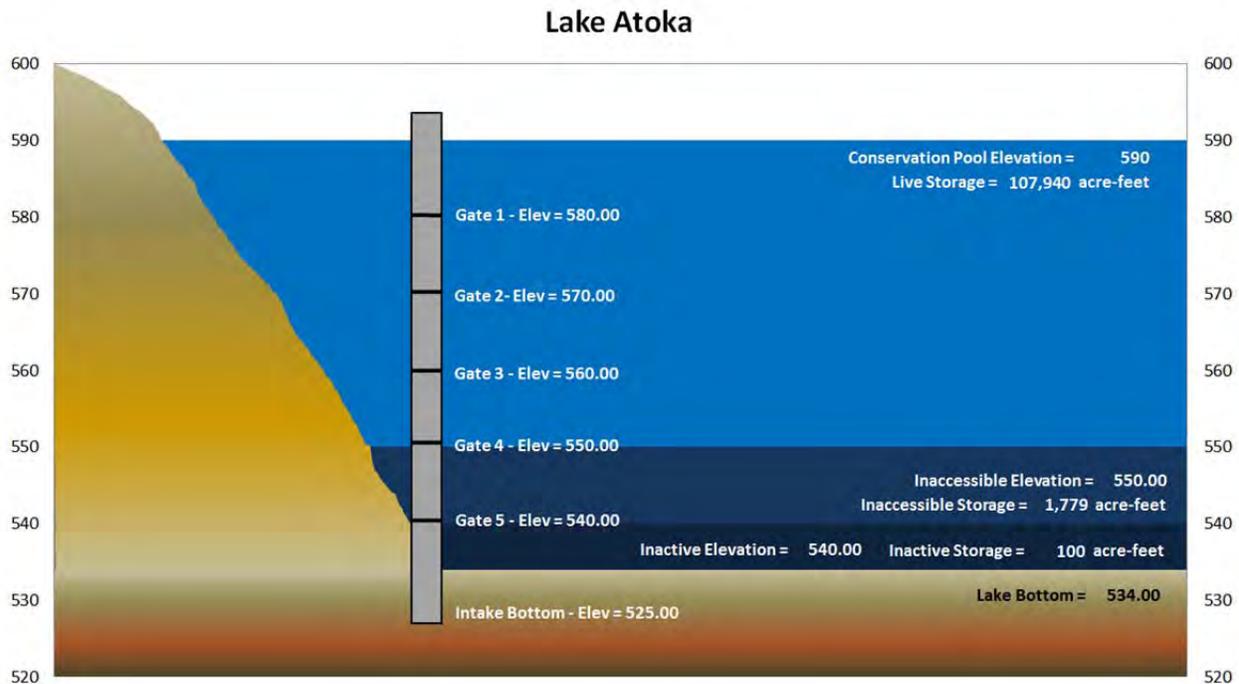


Figure 7. Lake Atoka storage schematic

5.6 McGee Creek Reservoir

- McGee Creek Reservoir is a water supply and flood control reservoir constructed, owned and operated by the Bureau of Reclamation
- Water is conveyed to the Atoka Reservoir by the McGee Creek pipeline and then to the City by the Atoka Pipeline
- McGee Creek has three outlet gates
- Gate 3 is the bottom gate at elevation 501.6 ft.
- The regulatory inactive pool is set at elevation 515 ft. which corresponds to 2,196 AF.
- The inaccessible elevation is below Gate 2 at elevation 533 ft. and represents 8,851 AF of storage space.
- Total inactive and inaccessible storage is 11,047 AF of dead pool
- The Bureau controls downstream releases from McGee Creek Reservoir. The City only controls its pumped releases.
- Any water temporarily stored above elevation 577.1 ft. in the flood control pool is not included in the live pool storage.
- Total live storage is 88,445 AF
- Oklahoma City has a permit for 40,000 AF of yield from McGee Creek Reservoir. Other entities have permits for 20,000 AF of yield. Additional analysis may be needed in accounting spreadsheet to reflect this allocation.

The schematic of the outlets, storage pools, and storage volumes for McGee Creek Reservoir is shown in **Figure 8**.

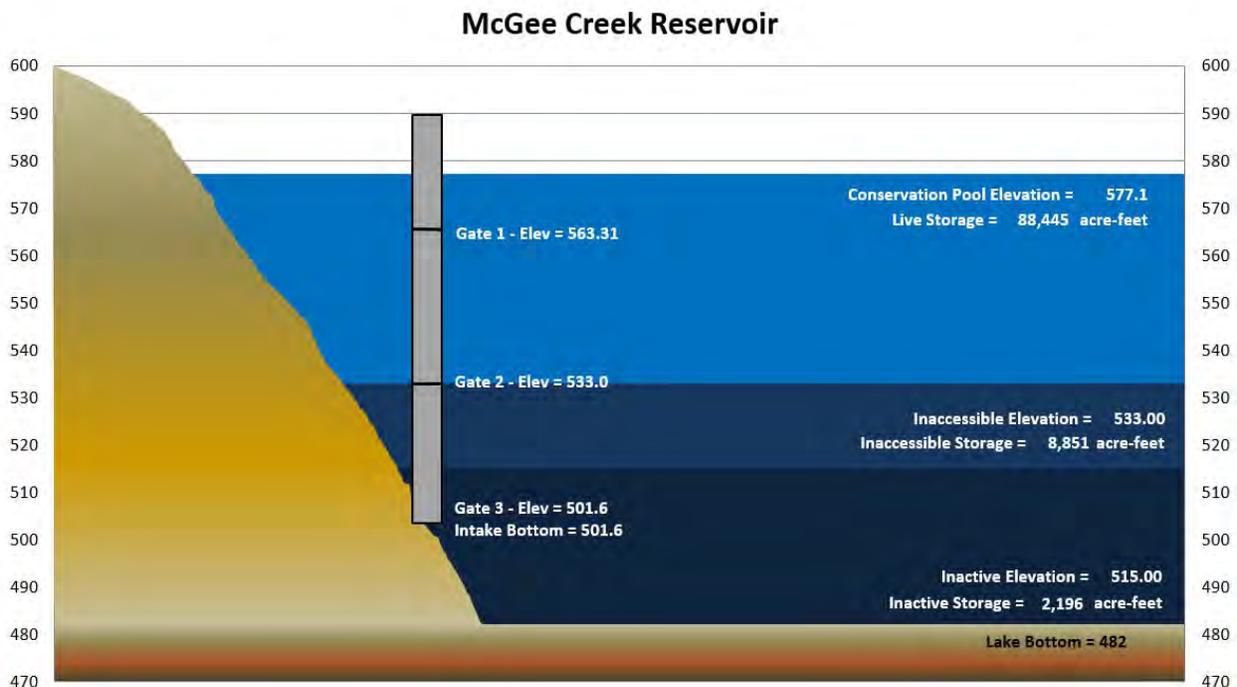


Figure 8. McGee Creek Reservoir storage schematic

6 Drought Conditions Under Settlement Agreement for Sardis Lake Release

At certain system-wide live storage conditions, as defined in the Settlement Agreement, the City is able to release different volumes of water from Sardis Lake, based on the date. The drought conditions are defined as baseline, moderate, advanced, or extreme. In general, the more extreme the drought and the lower the live storage level of the six City water supply reservoirs, the more water the City can release from Sardis Lake. However, there are minimum reservoir elevation levels for Sardis Lake that must be maintained regardless of the total City storage and/or the applicable drought condition. In the accounting, the tab “City reservoirs accounting” determines the drought condition for each day. It should be noted that in addition to the system-wide live storage criteria, Lake Hefner and Draper Lake also must individually meet the drought conditions. The different date and associated drought conditions are found in the accounting tab “Drought conditions” and shown in **Table 3**.

Table 3. Drought conditions and applicable release condition

Date	Percent of Live Storage*	Applicable Release Condition	Minimum Lake Elevation for Release, ft MSL
Apr 1 - Aug 31	N/A	Baseline	599
Sept 1 - Mar 31	N/A	Baseline	595
Jul 5 - Aug 31	<75	Moderate	597
Jan 1 - Dec 31	<65	Advanced	592
Jan 1 - Dec 31	<50	Extreme	589

* In addition to the system-wide live storage criteria, Lake Hefner and Draper Lake also must individually meet the drought conditions

7 City Reservoirs Accounting

The “City reservoirs accounting” tab tracks the storage details of the six City water supply reservoirs (Canton Lake, Lake Overholser, Lake Hefner, Stanley Draper Lake, Atoka Lake, and McGee Creek Reservoir). The elevation, total storage, live storage, and percent fill are tracked with daily accounting.

In order to determine a storage volume, a gage height reading is used in a lookup with elevation capacity tables that have been developed for each reservoir (see **Figure 9**).

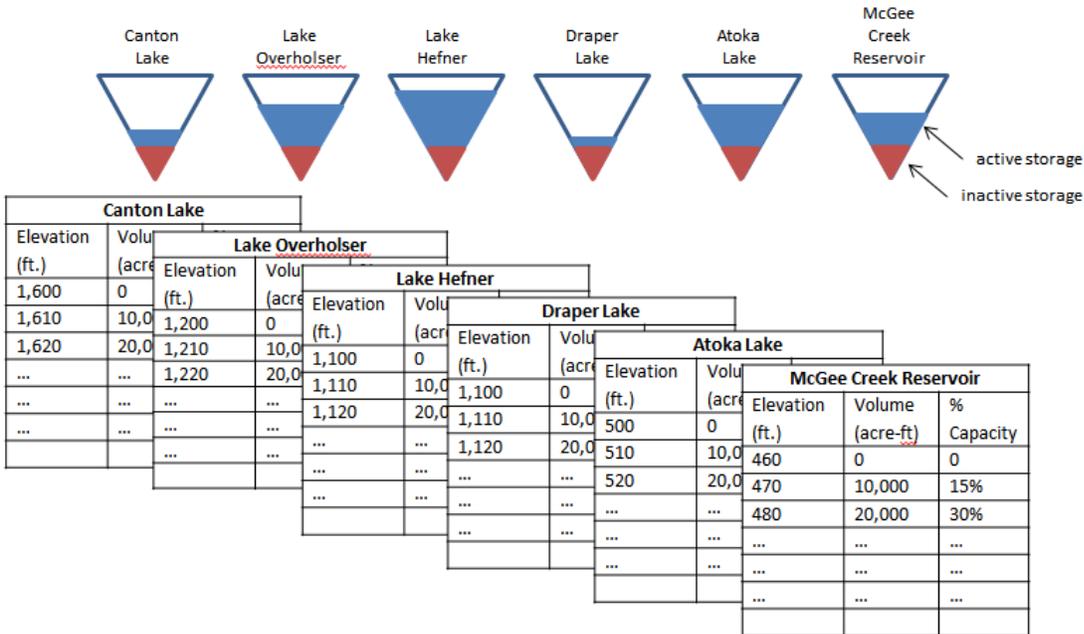


Figure 4. Example of the City reservoirs accounting tab

Of this storage, some is live storage and some is inactive and/or inaccessible (dead pool). Inactive and inaccessible storage varies for each reservoir and is explained in Section 5. Additionally, as noted, there is a 30 percent transit loss from Canton Lake to the City’s intakes, so live storage is reduced by 30 percent. In determining the percent fill of the reservoir, only the live storage and live storage capacity of the reservoir is considered.

Once the Available City Live Storage of each reservoir is determined, the percent of total live storage for the entire system is determined. This value, along with the individual percent of live storage for Draper and Hefner, is used to determine the drought condition.

8 Year-to-Date City Storage Chart

The daily total available City live storage in each of the City’s water supply reservoirs and total percentage of live storage is shown in a chart on the “YTD (Year-to-Date) City storage chart” tab. An example of this chart is shown on **Figure 10**. This figure includes actual data for the 2015 calendar year.

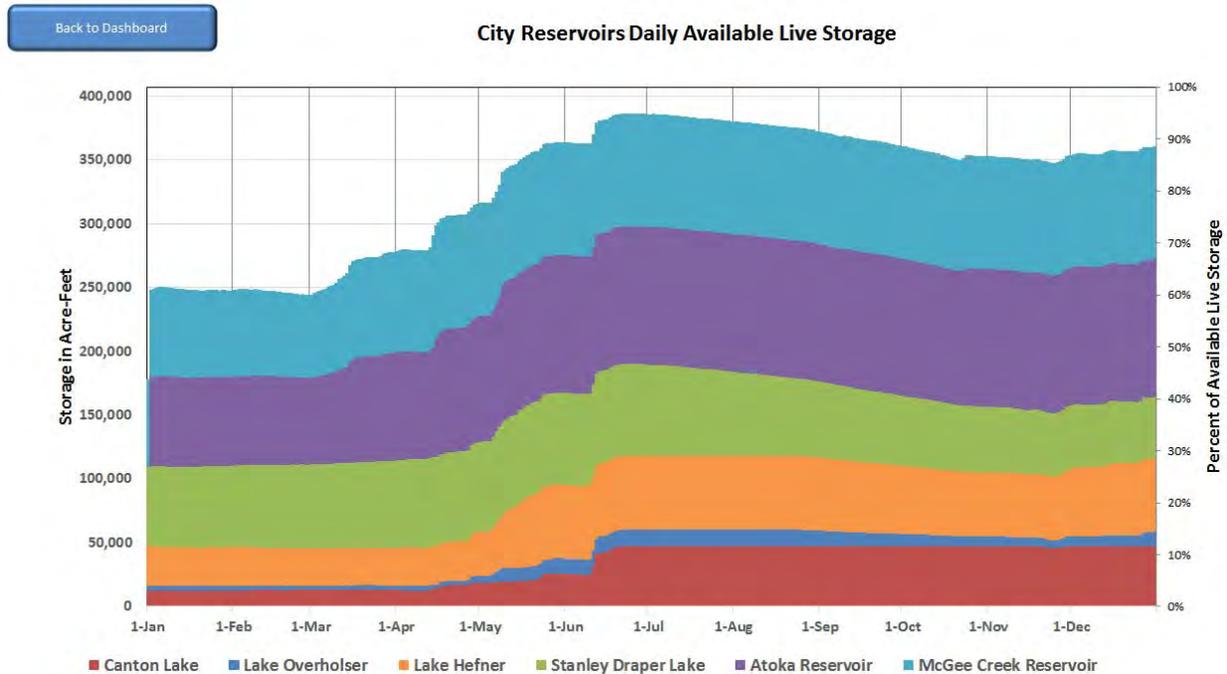


Figure 5. YTD City storage chart for 2015

9 Sardis Lake Accounting

The accounting tab “Sardis Lake accounting” details the storage level, inflows and releases, drought condition, and water available for City release for Sardis Lake.

First, the daily gage reading is used to estimate the overall storage volume of the lake. The Sardis elevation capacity table that we used is based on a 2010 Lidar Survey merged with 1983 bathymetry. These sources and methods are described in a June 14, 2013 document prepared by Joseph Large of the Army Corps of Engineers, although this memo does not describe the source of the 2010 Lidar survey. There are several other elevation-capacity tables described in this document and an alternate table can be used, if it is determined that one of the other tables represents the best data available. The elevation-capacity table that is used provides a lake volume at one-foot intervals; however, the gage reading is measured and reported to the hundredth of a foot by USGS. Therefore, a linear interpolation between the one-foot readings on the elevation capacity table is performed to most accurately estimate the volume of the lake.

All releases from the reservoir are input to the accounting. The total release from the reservoir is measured and reported daily by the Army Corps of Engineers and can be found at <http://www.swt-wc.usace.army.mil/SARDcharts.html>. This release can be broken into a federal release (combination of any flood release and the 4 cfs Federal Release as allowed by the Feb. 16, 1974 “Contract Between the United States of America and The Water Conservation Storage Commission of the State of Oklahoma for Water

Storage Space in Clayton Lake”), Administrative release, and City release. The City release must be less than the daily “Water Available for City Release” as calculated in the accounting based on the drought condition.

This accounting sheet shows the current drought condition, associated minimum reservoir elevation and lake volume for that drought condition, and the current conservation storage above the minimum level (if any) established based on the current drought condition. The volume above the minimum volume for the current drought condition is the maximum water available for the City to release. Any temporary storage in the flood pool is not included in this calculation.

The cumulative annual release is tracked for each account. The City is permitted to divert a maximum of 115,000 AF per year at Moyers Crossing. Releases from Sardis Lake to Moyers Crossing experience a transit loss which is calculated as part of the accounting, but does not impact the City’s ability to divert 115,000 AF per year at Moyers Crossing. The cumulative annual diversion at Moyers Crossing is tracked to ensure that the City’s diversions do not exceed 115,000 AF. Additionally, the Administrative set-aside account is permitted to either withdraw or release 20,000 AFY from Sardis Lake and subsequently divert such released water from the Kiamichi River. Releases and withdrawals from the Administrative set-aside account are not subject to the drought condition restrictions.

Other values associated with Sardis Lake are also tracked in this tab, such as the flow in the Kiamichi River below the City’s diversion at Moyers Crossing. These values will be input by the user. A minimum flow of 50 cubic feet per second (cfs) must be maintained below the City’s diversion at Moyers Crossing at times when the City is diverting water at Moyers Crossing.

10 Sardis Water Available Chart

The tab “Sardis Water Available Chart” shows the minimum Sardis Lake storage volume for the daily drought condition (calculated based on the minimum elevation), the current Sardis Lake storage, and the available water between the two elevations. It is possible that if the available water was released from Sardis Lake and stored in one of the six City water supply reservoirs, the increase of live storage in the City water supply reservoirs would lessen the severity of the drought condition and alter the minimum elevation and storage of Sardis Lake.

An example of the chart is shown in **Figure 11** using actual 2012 City and Sardis reservoirs storage and calculating the daily applicable drought condition. The red line shows the minimum storage allowed for the City’s release that day. This is determined by the applicable drought condition on that day. The green line shows the total live storage in Sardis. If the green line (total live storage) is above the red line (minimum storage), the City is allowed to release water. The blue bars represent the maximum volume of water that could be withdrawn by the City on that specific day and represents the volume of water between the green and red lines. The City doesn’t have control of flood storage so the volume of water in the lake is based on water in the conservation pool only. This chart does not show the daily water availability for the City to divert at Moyers, only the City’s allowable release from Sardis. It is possible that there was adequate flow for the City to divert at Moyers Crossing and meet the minimum 50 cfs downstream flow requirements without a release from Sardis.

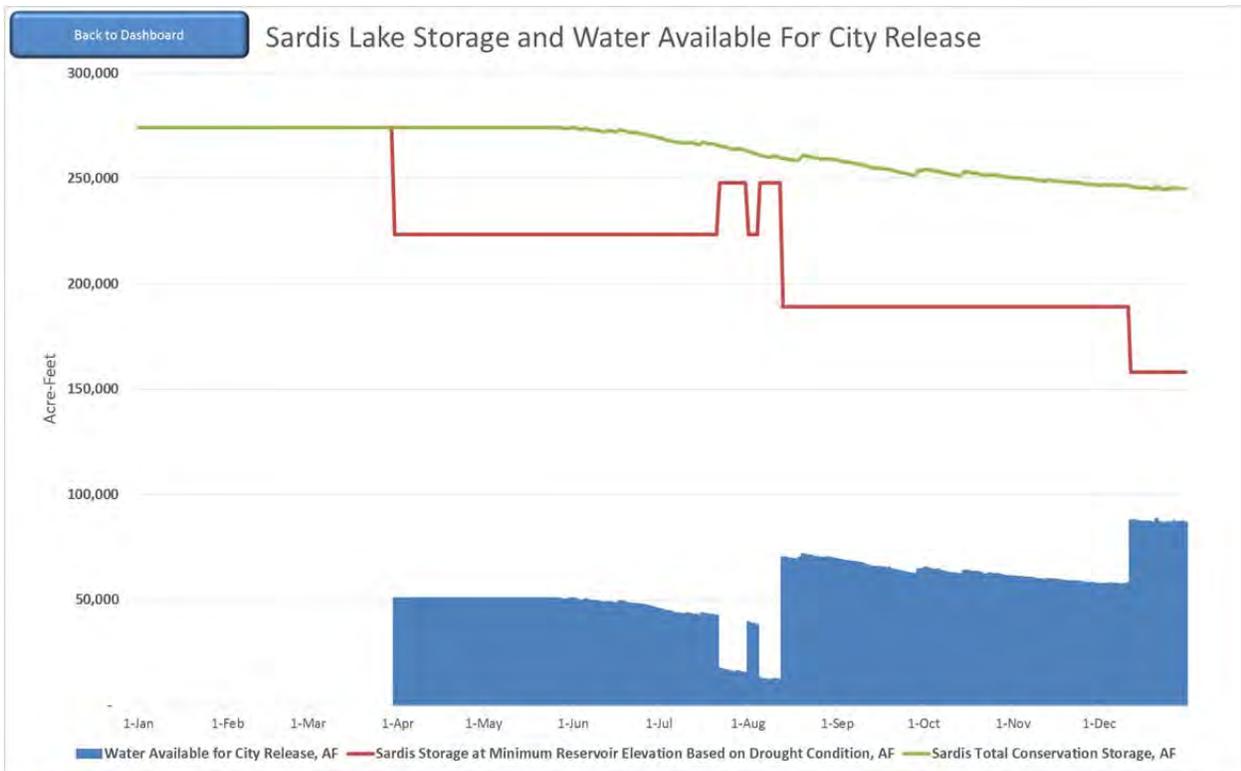


Figure 11. Example Sardis Lake water available chart from 2012

Exhibit 14: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
City Water Settlement

**CITY OF OKLAHOMA CITY SCHEDULE OF BENEFICIAL USE
FOR AMENDED PERMIT APPLICATION 2007-2017**

THROUGH END OF YEAR	PERCENT OF TOTAL AUTHORIZED PUT TO BENEFICIAL USE	ACRE-FEET TOTAL AUTHORIZED PUT TO BENEFICIAL USE
2020	0%	0 acre-feet
2030	0%	0 acre-feet
2035	7%	8,000 acre-feet
2040	20%	23,000 acre-feet
2045	35%	44,000 acre-feet
2050	50%	57,000 acre-feet
2055	66%	76,000 acre-feet
2060	83%	95,000 acre-feet
2065	100%	115,000 acre-feet

Exhibit 15: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
City Water Settlement

File No.
Allottee:
Parcel No.

AFTER RECORDING RETURN TO:
City of Oklahoma City
Office of City Clerk
200 N. Walker Ave.
Oklahoma City, OK 73102

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
CHICKASAW AGENCY

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America, acting by and through the Superintendent, Bureau of Indian Affairs, Department of the Interior, Chickasaw Agency, Ada, Oklahoma, hereinafter referred to as "Grantor" pursuant to the provisions of _____

in consideration of \$ _____
and other good and valuable consideration, the receipt of which is acknowledged, does hereby grant to THE CITY OF OKLAHOMA CITY, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", an easement for right-of-way for the following:

EASEMENT PURPOSES.

- a) For the permanent right to construct, reconstruct, maintain, repair, modify, expand, replace, remove, monitor, and operate public utility water pipelines within the Easement Area for the transportation of water and for public utility water pipeline purposes and to construct improvements related thereto, including but not limited to all the usual and customary associated facilities, connections and appurtenances thereto.
- b) for the permanent right to use, cross over, and through Grantor's property as a means of access, ingress and egress between the Easement Area and any other adjoining easement area involved in the Atoka Pipeline System.
- c) all right, title and interest in and to any soil, earthen material, fixture, and appurtenances within the boundaries of the Easement Area, incidentally removed during the use of this Easement.
- d) the right to monitor by electronic and other means, including but not limited to the use of drones, other aerial or electronic monitoring, video or satellite, as well as other means of monitoring the Easement Area and surrounding areas of

the Grantor's property, whether on, above or below the surface, at all times during the term of this Easement, all subject to the terms and conditions set forth herein.

Said easement shall be over, under, across, and through the restricted interest in the following described land located in the County of Coal, State of Oklahoma, referred to as "Easement Area":

100 foot wide across the North half of the Southwest Quarter (SW/4) of Section Thirteen (13), Township One (1) North, Range Nine (9) East of the Indian Meridian, same being 50 feet on either side of the following described center line: Beginning at a point on the East line of the North half of the Southwest Quarter (SW/4) of said Section Thirteen (13), said point being North 00°58'09" West 480 feet from the Southeast corner of said North half of Southwest Quarter (SW/4); THENCE North 47°03'33" West, a distance of 1199.27 feet to a point on the North line of the North half of the Southwest Quarter (SW/4), said point being South 88°42'10" West, 864 feet from the Northeast corner of the North half of the Southwest Quarter (SW/4).

CULTURAL FINDINGS.

- a. Should any previously unrecorded and/or previously undetected cultural material be discovered during any construction operation on the Easement Area, all work shall be stopped in the immediate area of the exposed resources, which shall then be clearly marked. Grantee may proceed with its work outside of that immediate area, but shall suspend work within the marked area. In such an event, the Grantee will immediately notify the BIA and the Chickasaw Tribe to arrange for an immediate on-site inspection to determine the significance and disposition of the cultural remains identified, and verify if, in fact, they are cultural remains.
- b. If it is determined that the material found is in fact cultural material, then the BIA and the Chickasaw Tribe shall give Grantee written notice within ten (10) calendar days of the exact location to be protected, the nature or description of the cultural finding (e.g., burial site, other...), and how they intend to proceed and appropriate disposition. Absent written objection from the USA or the Tribe to the Grantee prior thereto, Grantee may resume work after thirty (30) calendar days after such notice to the BIA and the Chickasaw Tribe of the discovery of the material.
- c. Grantee will make a reasonable effort to protect the items discovered or hire a competent company to remove and then relocate the items to a location approved by the BIA or Chickasaw Tribe.

TERM OF EASEMENT. The Easement described herein is intended to be permanent, except and unless it permanently ceases to be used for the purposes described herein, and shall remain in full force and effect provided that said Easement shall be terminable in whole or in part by the

Grantee for any of the following causes upon 30 days written notice and failure to correct the basis for termination:

- a. Failure to comply with any term or condition of the grant or the applicable regulations.
- b. A non-use of the Easement for any consecutive two-year period (for the purpose for which it was granted), except and unless such use was interrupted under circumstances where Grantee intends and demonstrates its intent to resume and continue the use of the Easement for the purposes defined herein. Such period of non-use may be extended in the event a longer period of time is reasonably required in order to re-establish the use for the purposes described herein if such use was interrupted as a result of natural disaster, force majeure, acts of God, acts of war, terrorism or vandalism, provided that in good faith Grantee takes reasonable measures of due diligence and continues to pursue same to do those things necessary to reconstruct and/or re-establish the improvements to be able to function as the improvements did prior to the interruption, and resume the use of the Easement for the purposes described herein.
- c. A complete abandonment of the Easement, as evidenced by the written notice by Grantee to Grantor as to same.
- d. Any attempts of the Grantee to convey to another entity or person any right or claim to utilize the subject Easement or rights hereunder for any purpose separate and distinct from the purposes described herein, without the prior written consent of Grantor.

The terms and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the Grantor and of the Grantee.

IN WITNESS WHEREOF, GRANTOR has executed this grant of easement on this _____ day of _____, 20_____.

UNITED STATES OF AMERICA

By: DRAFT
Superintendent, Chickasaw Agency,
Eastern Oklahoma Region,
Bureau of Indian Affairs,
Department of Interior

SCALE: 1" = 1000'

ATOKA WATER LINE EASEMENT

SHEET 1 OF 3

LEGAL DESCRIPTION
PORTION OF N/2 OF SW/4 OF SECTION 13,
TOWNSHIP 1 NORTH, RANGE 9 EAST, INDIAN MERIDIAN, COAL COUNTY, OKLAHOMA

BROOKS LAND SURVEYING AND MAPPING, INC.

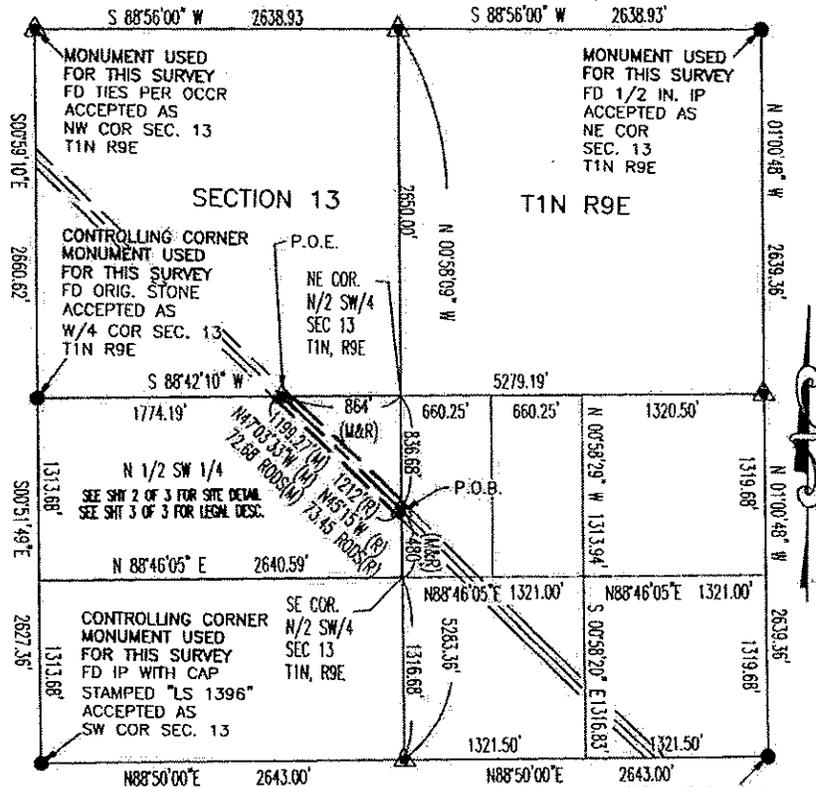
811 LAKE SHORE DRIVE
PHONE: (580) 745-9190

DURANT, OKLAHOMA 74701
FAX: (580) 745-9109

BASIS OF BEARINGS:

BEARINGS SHOWN HEREON ARE BASED UPON
THE WEST LINE OF THE SW/4 OF SECTION 13,
T1N, R9E, I.M. AS HAVING A TRUE BEARING OF
S00°15'49"E DERIVED FROM GPS OBSERVATIONS.

OKLAHOMA CERTIFICATE OF AUTHORIZATION NO. 4450
EXPIRES: JUNE 30, 2016
DATE OF LAST SITE VISIT: 06/29/2015



LEGEND:

- FD MONUMENT AS SHOWN SET 3/8" IRON PIN W/CAP STAMPED "BROOKS CA 4450"
- ▲ MEASURED BEARING AND DISTANCES AS SHOWN
- (M) RECORD BEARING AND DISTANCES PER EASEMENT NO. 46 FILED IN BOOK 255 PG. 73, RECORDS OF COAL COUNTY



I, WM. ALAN BROOKS, PLS 1593, PROFESSIONAL LAND SURVEYOR OF THE STATE OF OKLAHOMA, CERTIFIES THAT THE ABOVE PLAT SHOWS THE LOCATION OF A PUBLIC RIGHT-OF-WAY AS DESCRIBED ON SHEET 3 OF 3 AND THAT THE PLAT WAS PREPARED UNDER MY DIRECTION AND THAT SAID RIGHT-OF-WAY IS LOCATED AS SHOWN THIS 27TH DAY OF AUGUST, 2015.

AND THAT THIS MAP HAS BEEN PREPARED TO BE FILED FOR THE APPROVAL OF THE SECRETARY OF THE INTERIOR OR HIS DULY AUTHORIZED REPRESENTATIVE.
PREPARED UNDER THE SUPERVISION OF:

Wm. Alan Brooks 8/10/2015
DATE
WM. ALAN BROOKS
P.L.S. NO. 1593
REG. EXP. 09/30/15
BLSM JN: 15-039

STATE OF OKLAHOMA

SS

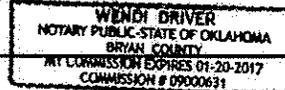
COUNTY OF BRYAN

Before me, the undersigned, a notary public in and for said county and state on the 10th day of September, 2015, personally appeared Wm. Alan Brooks

to me known to be the identical person who the name of the maker thereof to the foregoing instrument as its president, and duly acknowledged to me that he executed the same as his free and voluntary act and deed of such partnership for the uses and purposes therein set forth. Given under my hand and seal the day and year last written above.

My Commission Expires: 01-20-2017
Date

Notary Public



SCALE: 1" = 400'

SHEET 2 OF 3

ATOKA WATER LINE EASEMENT

LEGAL DESCRIPTION

PORTION OF N/2 OF SW/4 OF SECTION 13,
TOWNSHIP 1 NORTH, RANGE 9 EAST, INDIAN MERIDIAN, COAL COUNTY, OKLAHOMA

BROOKS LAND SURVEYING AND MAPPING, INC.

811 LAKE SHORE DRIVE
PHONE: (580) 745-9190

DURANT, OKLAHOMA 74701
FAX: (580) 745-9109

OKLAHOMA CERTIFICATE OF AUTHORIZATION NO. 4450
EXPIRES: JUNE 30, 2016

DATE OF LAST SITE VISIT: 06/29/2015

BASIS OF BEARINGS:

BEARINGS SHOWN HEREON ARE BASED UPON
THE WEST LINE OF THE SW/4 OF SECTION 13,
T1N, R9E, I.M. AS HAVING A TRUE BEARING OF
500°15'49"E DERIVED FROM GPS OBSERVATIONS.

LEGEND:

- FD MONUMENT AS SHOWN
- ▲ SET 3/8" IRON PIN W/CAP
STAMPED "BROOKS CA 4450"
- (M) MEASURED BEARING AND
DISTANCES AS SHOWN
- (R) RECORD BEARING AND
DISTANCES PER EASEMENT NO. 46
FILED IN BOOK 255 PG. 73,
RECORDS OF COAL COUNTY

CONTROLLING CORNER
MONUMENT USED
FOR THIS SURVEY
FD ORIG. STONE
ACCEPTED AS
W/4 COR SEC. 13
T1N R9E



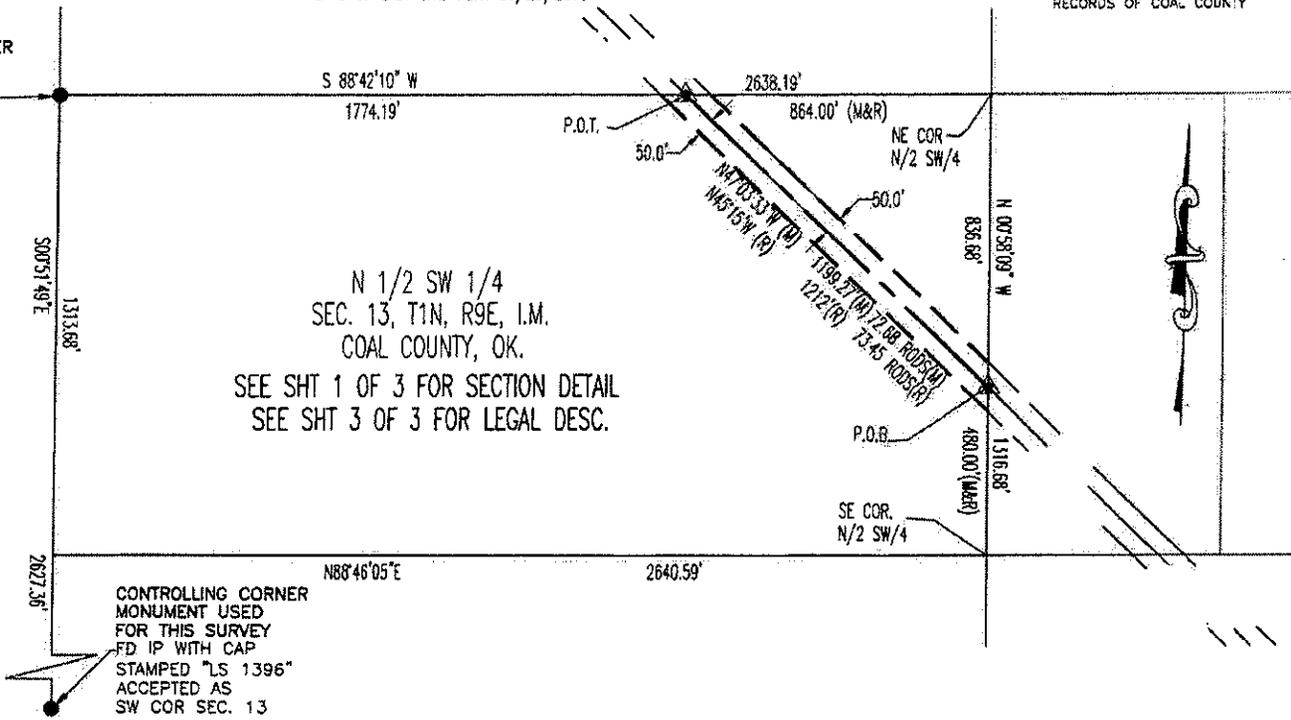
I, WM. ALAN BROOKS, PLS 1593, PROFESSIONAL LAND
SURVEYOR OF THE STATE OF OKLAHOMA, CERTIFIES THAT
THE ABOVE PLAT SHOWS THE LOCATION OF A PUBLIC
RIGHT-OF-WAY AS DESCRIBED ON SHEET 3 OF 3 AND
THAT THE PLAT WAS PREPARED UNDER MY DIRECTION AND
THAT SAID RIGHT-OF-WAY IS LOCATED AS SHOWN THIS
27TH DAY OF AUGUST, 2015.

AND THAT THIS MAP HAS BEEN PREPARED TO BE FILED
FOR THE APPROVAL OF THE SECRETARY OF THE INTERIOR
OR HIS DULY AUTHORIZED REPRESENTATIVE.

PREPARED UNDER THE SUPERVISION OF:

Wm. Alan Brooks 8/27/2015
DATE

WM. ALAN BROOKS
P.L.S. NO. 1593
REG. EXP. 09/30/15
BLSM JN: 15-039



N 1/2 SW 1/4
SEC. 13, T1N, R9E, I.M.
COAL COUNTY, OK.
SEE SHT 1 OF 3 FOR SECTION DETAIL
SEE SHT 3 OF 3 FOR LEGAL DESC.

CONTROLLING CORNER
MONUMENT USED
FOR THIS SURVEY
FD IP WITH CAP
STAMPED "LS 1396"
ACCEPTED AS
SW COR SEC. 13

ATOKA WATER LINE EASEMENT

SHEET 3 OF 3

LEGAL DESCRIPTION
PORTION OF N/2 OF SW/4 OF SECTION 13,
TOWNSHIP 1 NORTH, RANGE 9 EAST, INDIAN MERIDIAN, COAL COUNTY, OKLAHOMA

BROOKS LAND SURVEYING AND MAPPING, INC.

811 LAKE SHORE DRIVE
PHONE: (580) 745-9190

DURANT, OKLAHOMA 74701
FAX: (580) 745-9109

OKLAHOMA CERTIFICATE OF AUTHORIZATION NO. 4450
EXPIRES: JUNE 30, 2016
DATE OF LAST SITE VISIT: 06/29/2015

RECORD LEGAL DESCRIPTION:

EASEMENT NO. 46 PER EASEMENT DEED FILED IN BOOK 255 PAGE 73,
RECORDS OF COAL COUNTY, OKLAHOMA

A PERMANENT EASEMENT 100 FOOT WIDE ACROSS N1/2 SW1/4 OF SECTION 13,
TOWNSHIP 1 NORTH, RANGE 9 EAST, SAME BEING 50 FEET ON EITHER SIDE OF
THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT ON THE EAST LINE OF THE N1/2 SW1/4 OF SAID SECTION 13,
SAID POINT BEING 480 FEET NORTH OF THE SOUTHEAST CORNER OF THE N1/2 SW1/4
OF SAID SECTION 13;
THENCE NORTH 45°15' WEST, A DISTANCE OF 1212 FEET TO A POINT ON THE NORTH LINE
OF THE N1/2 SW1/4 OF SAID SECTION 13, SAID POINT BEING 864 FEET WEST OF THE
NORTHEAST CORNER OF THE N1/2 SW1/4 OF SAID SECTION 13.

MEASURED LEGAL DESCRIPTION:

A PERMANENT EASEMENT 100 FOOT WIDE ACROSS N1/2 SW1/4 OF SECTION 13,
TOWNSHIP 1 NORTH, RANGE 9 EAST, SAME BEING 50 FEET ON EITHER SIDE OF
THE FOLLOWING DESCRIBED CENTER LINE:

BEGINNING AT A POINT ON THE EAST LINE OF THE N1/2 SW1/4 OF SAID SECTION 13,
SAID POINT BEING NORTH 00°58'09" WEST 480 FEET FROM THE SOUTHEAST CORNER OF
SAID N1/2 SW1/4 OF SAID SECTION 13;
THENCE NORTH 47°03'33" WEST, A DISTANCE OF 1199.27 FEET TO A POINT ON THE
NORTH LINE OF THE N1/2 SW1/4 OF SAID SECTION 13, SAID POINT BEING
SOUTH 88°42'10" WEST, 864 FEET FROM THE NORTHEAST CORNER OF THE N1/2 SW1/4
OF SAID SECTION 13.

THE SIDELINES OF SAID TRACT TO BE SHORTENED OR LENGTHENED SO AS TO COMMENCE
ON SAID EAST LINE OF N1/2 SW1/4 OF SAID SECTION 13, AND TERMINATE ON SAID
NORTH LINE OF SAID N1/2 SW1/4;

SAID EASEMENT CONTAINS 119,927 S.F. OR 2.75 ACRES MORE OR LESS.
SAID EASEMENT HAS A TOTAL LENGTH OF 72.68 RODS;

THE BASIS OF BEARINGS OF ABOVE EASEMENT IS THE WEST LINE OF SAID SW1/4 OF
SECTION 13, TOWNSHIP 1 NORTH, RANGE 9 EAST HAVING A TRUE BEARING OF
SOUTH 00°51'49" EAST AS DERIVED FROM GPS OBSERVATIONS;

THE ABOVE DESCRIPTION PREPARED BY BROOKS LAND SURVEYING AND MAPPING, INC.
UNDER THE SUPERVISION OF WM. ALAN BROOKS, PLS 1593 MEETS THE MINIMUM STANDARDS
FOR LEGAL DESCRIPTIONS AS ADOPTED BY THE OKLAHOMA BOARD OF LICENSURE FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS.

SEE SH1 1 OF 3 FOR SECTION DETAIL
SEE SH1 2 OF 3 FOR SITE DETAIL

Wm. Alan Brooks 8/29/2015
WM. ALAN BROOKS
P.L.S. NO. 1593
REC. EXP. 06/30/15
BLSM JK: 15-039

