

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

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

Plaintiffs,)

vs.)

Case No. CIV-11-927-W

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

(2) RUDOLF JOHN HERRMANN,)

(3) TOM BUCHANAN,)

(4) LINDA LAMBERT,)

(5) FORD DRUMMOND,)

(6) ED FITE,)

(7) MARILYN FEAVER,)

(8) KENNETH K. KNOWLES,)

(9) RICHARD SEVENOAKS, and)

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

Oklahoma Water Resources Board;)

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

his official capacity;)

(12) CITY OF OKLAHOMA CITY, an)

Oklahoma municipal corporation;)

(13) OKLAHOMA CITY WATER UTILITY)

TRUST, a public trust for the benefit of the City of)

Oklahoma City,)

)

Defendants.)

**OPENING BRIEF IN SUPPORT OF THE OKLAHOMA WATER RESOURCES
BOARD'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1),
12(b)(7), and 19**

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INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(7), and 19,¹ Defendants Rudolf John Herrmann, Tom Buchanan, Linda Lambert, Ford Drummond, Ed Fite, Marilyn Feaver, Kenneth K. Knowles, Richard Sevenoaks, Joe Taron, Members of the Oklahoma Water Resources Board (“OWRB”), and J. D. Strong, Executive Director of the OWRB (collectively “OWRB Defendants”), submit this Brief in Support of Motion to Dismiss the Second Amended Complaint (“Complaint”) [Doc. No. 62] of the Choctaw Nation of Oklahoma and Chickasaw Nation (“Tribes”).

The Tribes’ Claims

The Tribes’ Complaint asserts that they have federally protected water rights in the Basins within what they term their former “Treaty Territory,” *see* Complaint, ¶¶ 87(b)(i)-(ii); regulatory authority over those rights, *id.* ¶ 87(a); and that those rights entitle the Tribes to seek to enjoin state permit proceedings, *id.* ¶¶ 96, 97, veto authorization of use of water from the alleged “Treaty Territory” outside that territory, *id.* ¶¶ 87(c), 90-91, and invalidate a June 2010 Transfer Agreement entered into between OWRB and the City of Oklahoma City and its Water Trust (collectively, “City/Trust”), *id.* ¶¶ 90, 93. The Tribes’ claimed “Treaty Territory water resources” allegedly lie within the Kiamichi Basin, the Clear Boggy Basin, and “all or part of 29 other surface water systems,” *id.* ¶ 38, including three federal reservoirs, Sardis Reservoir, Hugo Reservoir, and McGee Creek Lake. *Id.*

¹ Defendant Governor Mary Fallin has filed a separate Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), and the OWRB Defendants also join in that Motion.

Summary of the Argument

The Tribes' Complaint must be dismissed for two reasons. First, the Tribes assert claims against the OWRB Defendants, yet the OWRB Defendants are immune from suit because the relief the Tribes seek establishes that the State "is the real, substantial party in interest." *Virginia Office of Protection & Advocacy v. Stewart*, 131 S. Ct. 1632, 1638, ___ U.S. ___, ___ (2011) (quoted authority omitted). Thus the exception under *Ex Parte Young*, 209 U.S. 123 (1908), does not apply, and the OWRB Defendants' immunity from suit remains intact. *Virginia Office of Protection & Advocacy*, 131 S. Ct. at 1639-40. The Complaint must be dismissed under Rule 12(b)(1). *See* Point I, *infra*.

Second, the United States and OWRB are parties to federal contracts challenged by the Tribes' Complaint, which makes them necessary, or required, and indispensable parties to this lawsuit.² Without bringing these contracting parties before the Court, there is an absolute bar to the Tribes' seeking judicial relief that implicates and conflicts with statutorily authorized federal contracts. The Tribes' inability to join these sovereigns means the Complaint must be dismissed under Rules 19 and 12(b)(7) for failure to join indispensable parties. *See* Point II, *infra*.

² As discussed *infra*, the Tribes' Complaint threatens federal contracts entered into by the Army Corps of Engineers ("Corps") and the Bureau of Reclamation ("Bureau") on the United States' behalf. Thus the United States, the Corps, and the Bureau (collectively the "United States") are necessary parties who are immune from suit. *See Dalrymple v. Grand River Dam Auth.*, 145 F.3d 1180, 1186 (10th Cir. 1998).

ARGUMENTS AND AUTHORITIES

I. The OWRB Defendants Are Immune from Suit.

The Complaint must be dismissed pursuant to Federal Rule of Procedure 12(b)(1) because the OWRB Defendants' immunity from suit has not been waived. As an arm of the state, OWRB and its individual members are entitled to Eleventh Amendment immunity, including immunity from suit brought by Indian tribes. *See Blatchford v. Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775, 782 (1991). The State has not waived its immunity from suit, nor has Congress abrogated the State's immunity. Thus, the OWRB Defendants can only be sued pursuant to the *Ex Parte Young* doctrine, which is an exception to Eleventh Amendment immunity for suits against state officials seeking to enjoin alleged on-going violations of federal law. As recently clarified by the Supreme Court, when considering whether *Ex Parte Young* applies, "a court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002).

The Supreme Court, however, also has clarified that the *Ex Parte Young* doctrine is limited to the "precise situation" where "a federal court commands a state official to do nothing more than refrain from violating federal law." *Virginia Office of Protection & Advocacy*, 131 S. Ct. at 1638 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984)). The doctrine does not apply "when the state is the real, substantial party in interest." *Id.* (quoted authority omitted). Thus, the "general criterion for

determining when a suit is in fact against the sovereign is the effect of the relief sought.” *Id.* at 1639.

The State, and more specifically OWRB, is “the real, substantial party in interest” because the relief the Tribes seek “would expend itself on the public treasury or domain, or interfere with public administration.” *Id.* Although the Supreme Court’s guidance in *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 267-69 (1997), has been narrowed, the Court’s discussion of the effect of the relief sought by the tribe in that case establishes that, consistent with recent Supreme Court case law, the Tribes’ Complaint “is in fact against the sovereign.” *Virginia Office of Protection & Advocacy*, 131 S. Ct. at 1639.

As in *Coeur d’Alene*, the declaratory and injunctive relief sought by the Tribes would have the effect of “extinguish[ing] . . . the State’s control over a vast reach of . . . waters long deemed by the State to be an integral part of its territory.” 521 U.S. at 282. As the Complaint’s claims for relief make clear, the Tribes seek to shift “substantially all benefits of ownership and control . . . from the State to the Tribe.” *Id.* (“The suit seeks, in effect, a determination that the [waters] in question are not even within the regulatory jurisdiction of the State.”). The effect of the relief sought against the State is clear—the Tribes seek “to bar the State’s principal officers from exercising their governmental powers and authority over the disputed . . . waters.” *Id.* As in *Coeur d’Alene*, the Tribes’ Complaint names all of the members of OWRB, in whom the power to regulate and control the use of waters in the State is vested. “Not only would the relief block all attempts by these officials to exercise jurisdiction over [the waters of the Basins] but also would divest the State of its sovereign control over [those waters.]” *Id.* at 283. Just as in

Coeur d'Alene, a determination that the Tribes' requested relief would "caus[e] little or no offense to [Oklahoma's] sovereign authority and its standing in the Union would be to ignore the realities of the relief the Tribe[s] demand." *Id.* at 282. Thus, the Complaint must be dismissed because "the state is the real, substantial party in interest," and *Ex Parte Young* does not apply. *Id.* (quoted authority omitted).

Additionally, as described more fully in Point II.B, *infra*, the relief sought by the Tribes is not only "prospective." Instead, the Tribes seek a declaration that would invalidate a century of Oklahoma water regulatory actions and fundamental provisions of the 1974 Contract governing Sardis Lake, entered into by the United States and OWRB years ago. Given that the Tribes are essentially seeking relief from alleged past wrongs, the *Ex Parte Young* doctrine does not apply.

The Tribes have not mitigated the fundamental effect of their claims through the ambiguous and severely qualified disclaimer inserted in the Complaint, that, although they deny "the Board's authority to issue permits, [they] will not challenge *any current use* of water pursuant to any existing permits." Complaint, ¶ 99(c)(1) (emphasis added). This backhanded assurance merely underscores the Tribes' effort to unseat Oklahoma from any regulatory role and to leave at risk Oklahomans, whose permits may be invalidated and have only the Tribes' word they "will not challenge any current use" under permits that its claims would invalidate as against all others and even as to permitted rights not currently in use. Clearly all OWRB permits and all water use are threatened. Nor do the Tenth Circuit's decisions in *Osage Nation v. ex rel. Oklahoma Tax Comm'n*, 260 Fed. Appx. 13, 15 (10th Cir. 2007), and *Crowe & Dunlevy P.C. v.*

Stidham, 640 F.3d 1140, 1154 (10th Cir. 2011), or Judge DiGiusti's decision in *Wells Fargo Bank v. Maynahonah*, 2011 WL 3876519, No. CV -11-648-D (W.D. Okla. 2011), support a waiver here. In those cases, the relief requested, while it related to prior official actions, was only prospective in effect. Here, the Tribes seek remedies that will unsettle a longstanding permitting regime and previously existing water and contract rights.³

Finally, the rationale underlying the *Ex Parte Young* doctrine will not be furthered here. As the Supreme Court has noted, *Ex Parte Young*'s limited exception to the sovereign immunity bar is "accepted as necessary to permit the federal courts to vindicate federal rights." *Virginia Office of Protection & Advocacy*, 131 S. Ct. at 1638. "The doctrine strikes a delicate balance by ensuring on the one hand that states enjoy sovereign immunity preserved for them by the Eleventh Amendment while, on the other hand, 'giving recognition to the need to prevent violations of federal law.'" *Osage Nation*, 260 Fed. Appx. at 20 (citing *Coeur d'Alene*, 521 U.S. at 269). The federal remedy is simply not needed here because the OWRB has recently initiated a state court adjudication, consistent with the McCarran Amendment, 43 U.S.C. § 666, which provides a congressionally authorized mechanism to vindicate any federal rights the Tribes may have. *Cf. Seminole Tribe v. Fla.*, 517 U.S. 44, 74 (1996)) ("where Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily

³ Given the Tribes' long delay in seeking to oust State regulation, and Oklahomans' century-long reliance on State water resource regulation, "standards of federal Indian law and federal equity practice" preclude the Tribes from advancing its claims here. *See City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 199 (2005) (equitable considerations of laches, acquiescence and impossibility barred the Oneida Tribe's claim that it could exercise sovereign control over lands within the boundaries of the tribe's former reservation and avoid payment of city property taxes).

created right, a court should hesitate before casting aside those limitations and permitting an action against a state officer based upon *Ex Parte Young*.”). The waiver of immunity under *Ex Parte Young* should not be “accepted as necessary” given the ready availability of a Congressionally sanctioned remedy for the federal rights. *Ex Parte Young* does not apply, and the Tribes’ Complaint must be dismissed under Rule 12(b)(1).

II. The United States and OWRB Are Necessary and Indispensable Parties under Rule 19.

By asserting regulatory control over and a right to use the water resources within the so-called Treaty Territory, the Tribes necessarily challenge the validity of long-standing contracts between the United States and OWRB. As parties to the challenged contracts, the United States and OWRB are necessary parties to an action intended to establish water use and regulatory rights. The Tribes’ Complaint also challenges the June 2010 Transfer Agreement to which the OWRB is a party, threatening the interests of OWRB under the agreement. The United States and OWRB are immune from suit and cannot be joined. Hence, Rule 19 requires the Court to dismiss because, in equity and good conscience, this action cannot proceed in the absence of the United States and OWRB.

Rule 19(a) requires that a party be joined if “the court cannot accord complete relief among existing parties,” *or* the absent party “claims an interest relating to the subject of the action” and a judgment rendered in the party’s absence may “as a practical matter impair or impede the person’s ability to protect the interest; or leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent

obligations because of the interest.” Under Rule 19(b), “[i]f a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” In making this determination, courts consider 1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; 2) the extent to which any prejudice could be lessened; 3) whether a judgment rendered in the person's absence would be adequate; and 4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

The Supreme Court has recently clarified the proper Rule 19 analysis in this context, *i.e.*, when the absent party is a sovereign entity. *See Philippines v. Pimentel*, 553 U.S. 851 (2008). When, as here, “sovereign immunity is asserted, and the claims of the sovereign are not frivolous, *dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign.*” *Id.* at 867 (emphasis added); *see also Northern Arapahoe Tribe v. Harnsberger*, 660 F. Supp. 2d 1264, 1280 (D. Wyo. 2009) (when sovereign immunity is asserted by an absent party, “the discretion otherwise afforded this Court in balancing the equities under Rule 19(b) is to a great degree circumscribed, and the scale is already heavily tipped in favor of dismissal”).

A. The Tribes' claims challenge federal statutes and contracts regarding federally created and controlled water projects and threaten the United States' interests.

The Tribes' Complaint does not name the United States even though 1) the Tribes assert that the United States holds the Tribes' water resources in trust, *see* Complaint ¶¶ 36, 41, and 2) the United States claims an interest in the water resources and storage projects at issue because the United States, pursuant to specific congressional authorization, constructed the federal reservoirs at issue in the Complaint, and has entered into contracts with state and local administrative agencies in accordance with the congressional authorization. The United States thus has a direct interest in the issues raised in the Tribes' Complaint. The Tribes' claims to own and regulate the waters of the alleged "Treaty Territory" would disrupt water use and regulatory regimes contemplated by the statutory authority and implementing contracts for the projects to which the United States is a party. These contracts, and the United States' interests, are described in turn.

1. Sardis Reservoir (Kiamichi Basin)

The Sardis Reservoir was constructed by the Corps pursuant to the Flood Control Act of 1962, Pub. Law 87-874, 76 Stat. 1173. The construction of Sardis Reservoir was authorized "substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 145." *Id.* In Senate Document 145, the Secretary of the Army recommended the construction of Clayton Lake, later renamed Sardis Reservoir, "in the headwaters of the Kiamichi River for flood control, water supply, recreation, and fish and wildlife purposes." *See* Senate Doc. 145, xi, 87th Cong.,

2d Session (1962). Congress further explained that the “Kiamichi River Basin offers an excellent potential source of future water supply for the central Oklahoma-north Texas region.” *Id.* at 15. The report also stated that “[t]he metropolitan centers of Oklahoma City, Dallas, and Forth Worth northwest and southeast, respectively, of the Kiamichi River Basin, are going to need additional water supplies to sustain the anticipated growth.” *Id.* at 204.

Under the Flood Control Act, the Corps was authorized to and did enter into “written partnership agreement[s]” with State and local interests for repayment of construction costs in return for storage capacity within the reservoir. *See* 42 U.S.C. § 1962d-5b(a)(1). Pursuant to this legislative grant of authority, in 1974 the Corps entered into an agreement with the Water Conservation Storage Commission of the State of Oklahoma to build the Sardis Reservoir.⁴ 1974 Contract attached as Exhibit 1. In the 1974 Contract, the Corps agreed to construct Sardis Reservoir for present and future water supply storage, and OWRB, the “User” under the Contract, agreed to repay the Corps in fifty consecutive annual payments and to pay future operating costs of the lake. 1974 Contract at 4.

Although the Corps delegated certain rights and interests to the OWRB, the Corps retained important rights and interests, including the rights to “operate and maintain the Project,” *id.* Art. 3, maintain a minimum downstream release through the gates of the dam, Article 1(b)(c), and, to “take such measures as may be necessary in the operation of

⁴ The Water Conservation Storage Commission was sunsetted by the Oklahoma Legislature in 1979 and, “all existing obligations of the Oklahoma Water Conservation Storage Commission [were] assumed by the [OWRB].” 82 O.S. § 1085.38.

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.” *Id.* The Contract also specifically vests authority in the Corps to approve any assignments of the 1974 Contract. *See* Article 10.

The Tribes’ claims to regulatory authority and right to use the waters of Sardis Reservoir threaten the United States’ rights to use and prescribe the regulatory regime for water in Sardis Reservoir, as well as the United States’ interests in the 1974 Contract governing the management of the Reservoir.

2. Hugo Reservoir (Kiamichi Basin)

Consistent with the federal plan to develop the Kiamichi Basin, Hugo Reservoir was authorized by the Flood Control Act of 1946 for flood control, water supply, water quality, recreation, and fish and wildlife uses. Pub. L. 79-526, 60 Stat. 641. The Corps began construction of Hugo Reservoir in 1967, and construction was completed in 1974. The Corps continues to operate Hugo Reservoir.

As with its 1974 Contract with the OWRB, the United States has interests in its contract with the Hugo Municipal Authority and interests in the project itself. Pursuant to the Flood Control Act, the Corps entered into a water storage supply contract with the Hugo Municipal Water Authority in 1972, which was approved in 1974. *See* Hugo Contract attached as Exhibit 2. The Hugo Municipal Authority is an Oklahoma public water trust formed for the benefit of the City of Hugo, Oklahoma. The United States’ contract with the Authority provides that the Authority has the right to utilize a fixed percentage of the storage space in the project “to impound water for water quality control

and present and anticipated future demand or need for municipal and industrial water supply.” Hugo Contract, Art. 1(b)(1). The Hugo Contract also provides the Hugo Municipal Authority with the “right to withdraw water from the lake.” *Id.* Art. 1(b)(2). The United States reserved to itself the “right to maintain downstream releases to meet established water requirements . . . and the rights to take such measures as may be necessary in the operation of the Project to preserve life or property.” *Id.* Art. 1(c). The contract provides that the Authority must acquire water rights under state law, and it further vests in the Authority “sole responsibility” over the “regulation of the use of water withdrawn or released.” *Id.* Art. 2. By asserting regulatory control over and the right to use water resources within the Kiamichi Basin, which includes the Hugo Reservoir, the Tribes’ claims necessarily threaten the United States’ interest in effectuating its agreement with the Hugo Municipal Authority.⁵

B. By challenging the 1974 Contract, the Tribes’ Complaint threatens the OWRB’s interests.

The Tribes’ Complaint seeks to circumvent the need to name the OWRB itself by purporting to bring claims against the OWRB Defendants. As discussed under Point I, above, the Tribes’ Complaint seeks relief that is, fundamentally, against the State. Thus, the Tribes’ Complaint is barred by sovereign immunity. The fact that the Tribes’ Complaint is essentially against the State is further demonstrated by OWRB’s interests,

⁵ Although the Tribes do not specifically challenge the withdrawal of water from McGee Creek Lake, the Tribes’ alleged “Treaty Territory” includes the Clear Boggy Basin, which includes McGee Creek and, consequently, McGee Creek Lake. The Tribes’ claims, therefore, also threaten the United States’ interest in effectuating the statutes and federal contracts governing the administration of the McGee Lake, a project of the Bureau. *See* Pub. L. 94-423 § 705(d).

which are threatened by the Tribes' Complaint, specifically OWRB's interest in the 1974 Contract regarding water storage at Sardis Reservoir, and OWRB's interest in the June 2010 Transfer Agreement with the Water Trust.

1. OWRB's interest in the 1974 Contract.

The OWRB is a contracting party to the 1974 Contract, and its interests in that contract are threatened by the Tribes' Complaint. The 1974 Contract states: "[R]egulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User." 1974 Contract, Article 2. Although the 1974 Contract does not purport to grant OWRB (the "User") water rights, the Contract does authorize OWRB to "withdraw water from the lake" subject to certain rights reserved to the United States. *See id.* Art. 1(b)(2), (c). And OWRB is "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." *Id.* Art. 3.

2. OWRB's interest in the 2010 Transfer Agreement.

Under the 1974 Contract, OWRB may assign its rights. Consistent with this authorization, in June 2010, OWRB agreed to "transfer its rights to use the conservation storage capacity together with all its obligations under the 1974 Contract to [the Trust]." *See* June 2010 Transfer Agreement, p. 3, attached as Exhibit 3. In return, the Trust agreed to assume OWRB's payment obligations to the United States. *Id.* Additionally, OWRB agreed that the Trust would "be able to utilize the rights to use the conservation storage capacity in Sardis Reservoir." *Id.* The Tribes' request that this Court invalidate

the June 2010 Transfer Agreement and enjoin any further action on the June 2010 Transfer Agreement thus directly threatens OWRB's interests in effectuating assignment of the 1974 Contract. The Transfer Agreement cannot be invalidated without destroying OWRB's rights under the Agreement. Yet, OWRB is not, and cannot be made, a party to this case.

C. The United States and the OWRB claim interests relating to the subject of the action but cannot be sued and are thus indispensable parties.

The Tribes cannot seek judicial relief that implicates and conflicts with statutorily authorized federal contracts without bringing the contracting parties before the Court. Yet, the Tribes have not and indeed cannot join the contracting parties because of their sovereign immunity from suit. Thus, the Tribes' Complaint must be dismissed under Rules 19 and 12(b)(7).

1. The Tribes have failed to join necessary or required parties.

Rule 19(a) requires that a party be joined if "the court cannot accord complete relief among existing parties," *or* the absent party "claims an interest relating to the subject of the action" and a judgment rendered in the party's absence may "as a practical matter impair or impede the person's ability to protect the interest; or leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. P. 19(a). Here, the United States and the OWRB are necessary or "required" parties because they "claim[] an interest relating to the subject of the action," *i.e.*, the rights and obligations created by federal

authorizations, and a judgment rendered in their absence may “as a practical matter impair or impede the person's ability to protect the interest.” Fed. R. Civ. P. 19(a)(B)(i).

a. The federal and state parties to the federal construction and operation contracts are necessary.

The United States and OWRB are necessary parties because the Tribes’ Complaint challenges decisions made by the United States pursuant to federal statutes that are reflected in federal contracts described in Points II.A & B, *supra*. It is black letter law that contracting parties are necessary. *See Navajo Tribe of Indians v. New Mexico*, 809 F.2d 1455, 1472 (10th Cir. 1987) (“[A]ll parties to an instrument must be present, else it may not be canceled.”); *Paiute-Shoshone Indians v. City of Los Angeles*, 2007 U.S. Dist. LEXIS 10590, *57 (E.D. Calif. 2007) (United States necessary and indispensable because the “central issue is the legality of the United States’ actions.” (quoted authority omitted)).

b. The OWRB, as a party to the June 2010 Transfer Agreement, and the United States, as an intended beneficiary, are both necessary.

The OWRB is a necessary, or “required,” party to the Tribes’ challenge to the validity of the 2010 Transfer Agreement because OWRB is a party to the 2010 Transfer Agreement. A decision regarding the validity of that contract in OWRB’s absence will be prejudicial to OWRB’s interests. The United States also has an interest in the Tribe’s challenge to the 2010 Transfer Agreement because that agreement (i) provides that the Water Trust will make the substantial payments to the United States required under the 1974 Contract, and (ii) is contingent upon the Corps’ approval. A decision by this Court

regarding the validity of the 2010 Transfer Agreement, in the absence of the United States is clearly prejudicial to the Corps' interests.

2. This case cannot proceed in equity and good conscience in the absence of the United States or the OWRB.

The United States and the OWRB are immune from suit and cannot be joined. This case cannot proceed in equity and good conscience in their absence and thus those parties are indispensable. Courts construing Rule 19 in similar contexts have concluded that contracting parties are necessary *and* indispensable. For example, the Tenth Circuit recognized that contracting parties are both necessary and indispensable parties when a third party challenges the underlying contract. In *Tewa Tesuque v. Morton*, 498 F.2d 240, 242 (10th Cir. 1974), members of the Tesuque Pueblo, an Indian tribe, brought suit against federal officials for approving a contract entered into between the Pueblo and a development company ("Sangre"). The plaintiffs named the development company as a defendant, but did not name the Pueblo. In concluding that the Pueblo was an indispensable party, the Tenth Circuit first explained that, "[a]s lessor of the lease agreement entered into with Sangre, the Pueblo certainly will be affected if the lease is cancelled." *Id.* at 242. The court concluded the Pueblo would be prejudiced by a judgment in its absence: "If the lease is cancelled [the Pueblo] would lose its rental income to be derived therefrom, together with employment opportunities for its members." *Id.*

The Tenth Circuit concluded that the prejudice to the absent party could not be lessened if the lease was cancelled, that its relief would not be adequate because "it may

very likely invite additional lawsuits.” and that the plaintiff had an alternate remedy, bringing suit in tribal court. *Id.* at 243. Here, both absent sovereigns are parties to contracts that the Tribes’ Complaint implicitly or explicitly challenges, who will all be prejudiced by a decision in their absence, and all the sovereigns will be present in the state court adjudication. Thus, consistent with *Tewa Tesuque*, the absent sovereigns are indispensable, and the Complaint must be dismissed.

Courts also have concluded that, when the validity of the United States’ actions is challenged, the United States is a necessary party, and, under the circumstances here, is indispensable. The Tenth Circuit, in *Navajo Tribe*, 809 F.2d at 1473, concluded that the United States was an indispensable party in an action where the Navajo Nation (“Nation”) sought to establish its title to certain unallotted lands. The Nation sought to “cancel and set aside all patents, grants, assignments, leases, and other conveyances made or done pursuant to [relevant acts and executive orders].” *Id.* at 1471 (quoted authority omitted). The court held that the Nation’s “claims against the remaining defendants are, in reality, *challenges to the validity* of the transactions by which the United States assumed title to the subject land.” *Id.*

Relying on *Tewa Tesuque*, the *Navajo Tribe* court reiterated: “It is a fundamental principle of law that an instrument may not be cancelled by a Court unless the parties to the instrument are before the court.” *Navajo Tribe*, 809 F.2d at 1472 (citation omitted). The Tenth Circuit upheld the district court’s determination that the United States was indispensable because: 1) the claims against the non-federal defendants rested on documents of title derived from the United States; 2) the Nation sought to cancel all such

documents; 3) parties to an instrument must be present before the court before the instrument can be cancelled; and 4) the validity of a deed or patent issued by the United States cannot be questioned in a suit by a third party against the grantee. *Id.*

The court then concluded that the factors under former Rule 19(b) were met. Prejudice to the United States was clear: “A finding in the Government’s absence that title to the reservation created by [the executive orders] is vested in the Tribe when the United States claims title to much of that land undoubtedly prejudices the latter’s interests.” *Id.* Prejudice to the United States could not be lessened or avoided because title to the reservation lands “must be decided entirely or not at all.” *Id.* The court further found that a judgment rendered in the United States’ absence would not be adequate given the large land holdings claimed by the United States. *Id.* at 1472-73. Although the court conceded that, if the case was dismissed, the Nation would have no remedy, it concluded that the lack of remedy did not preclude a finding of indispensability. *Id.* at 1473.

Application of Rule 19’s four factors and relevant case law to the Tribes’ Complaint compels the conclusion that the absent parties’ interests will be affected by a judgment rendered by this Court, and consequently, the United States and the OWRB are indispensable. Here, the absent sovereigns’ claims “are not frivolous” and thus “dismissal of the action must be ordered.” *Pimentel*, 553 U.S. at 867. Before addressing Rule 19(b)’s first three factors, this brief addresses Rule 19(b)’s fourth factor, availability of an alternative remedy, because that factor is especially compelling here given the fact

that OWRB has initiated a general stream adjudication in state court. Thus, the Tribes' claims can and should be decided in an alternate forum.

a. OWRB's recently initiated general stream adjudication is an adequate remedy.

The Tribes have an adequate alternative remedy—the general stream adjudication initiated by the OWRB. The adjudication petition names, among others, the United States, on behalf of the Tribes. The Tribes may also intervene in the adjudication, if they so choose. *See Sierra Club v. Yeutter*, 911 F.2d 1405, 1418-19 (10th Cir. 1990). The general stream adjudication will determine the relative rights of all of the claimants in the Basins, including any rights of the Tribes. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

This remedy is adequate and has Congress' imprimatur. *See McCarran Amendment*, 43 U.S.C. § 666. Importantly, OWRB has initiated the state court adjudication and the United States' immunity from suit poses no bar to the state general stream adjudication because the McCarran Amendment provides a waiver of the United States' sovereign immunity. Thus, the absent sovereign entities are parties to the general stream adjudication.

b. The absent sovereigns will be prejudiced by a decision in their absence.

With respect to Rule 19's first factor, the United States and the OWRB will be prejudiced by a decision rendered in their absence. As discussed above, the Tribes' Complaint calls into question the validity of the United States' actions and the numerous contracts, spanning nearly 40 years, questions which cannot be decided in the contracting

parties' absence. *Tewa Tesuque*, 498 F.2d at 242. Here, one of the "key issue[s]" is whether congressional authorization, and subsequent contracts, allowing state and local entities to use and regulate water resources are valid. *Paiute-Shoshone Indians*, 2007 U.S. Dist. LEXIS 10590, *44. Consequently, a "central issue [raised by the Tribes' Complaint is] the legality of the United States' actions." *Id.* at *57 (quoted authority omitted). Regardless of how this Court would decide this issue, the United States is indispensable because "the government's liability cannot be tried behind its back." *Nichols v. Rysavy*, 809 F.2d 1317, 1333 (8th Cir. 1987) (quoted authority omitted).

In this same vein, OWRB will be prejudiced by a decision in OWRB's absence. The Tribes' Complaint expressly and impliedly challenges OWRB's ability to use and regulate waters in Sardis Reservoir. *See Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 747 (8th Cir. 2001) ("when the government claims an interest in land that squarely conflicts with the interest of a Tribe, the government's presence in litigation is nearly always required to assure the proper and effective adjudication of the dispute"). However, the 1974 Contract authorizes OWRB to withdraw water from Sardis Reservoir, and to regulate the use of that water. In addition, OWRB, as signatory to the June 2010 Transfer Agreement, is clearly necessary and indispensable to the Tribes' challenge to that agreement. Essentially, the Tribes' Complaint seeks to prevent OWRB from transferring its rights under the 1974 Contract to the Water Trust under which the Trust agreed to make substantial payments that OWRB otherwise must pay. If the Transfer Agreement is cancelled by this Court, the OWRB would lose the benefits of that

agreement. Thus, the OWRB's interests unquestionably will be prejudiced by a decision by this Court in its absence.

The United States is also indispensable to the Tribes' challenge to the June 2010 Transfer Agreement. The Tribes seek a declaration that the June 2010 Transfer Agreement is contrary to federal law. The Trust undertakes in the Transfer Agreement to make the "User's" payments to the Corps, and the Corps has taken the position that its approval is required. A decision by this Court regarding the validity of the June 2010 Agreement, in the absence of the Corps, would be prejudicial to its interests in determining the propriety of the assignment and could lead to inconsistent results if this Court and the Corps reached different conclusions.

The Tribes seek, in effect, to have the United States "reinstated" as trustee of water rights which for many decades have not been treated as federally protected. Such an imposition of trust duties would be inconsistent with the United States' past actions. If the Tribes prevail the State and its agencies or other local entities would be ousted from regulatory functions and the Tribes or "the United States would be reinstated as trustee over the [water resources] with the concomitant presumption of fiduciary responsibility, and could also be subject to claims for damages by the present owners." *Nichols*, 809 F.2d at 1333. Such a conclusion would be prejudicial to the United States and OWRB and cannot be reached in their absence. *See Tewa Tesuque*, 498 F.2d at 242 (Pueblo would be prejudiced by a judgment in its absence because "[i]f the lease is cancelled it would lose its income to be derived therefrom").

c. This Court cannot minimize the prejudice to the absent sovereigns.

There is no way to lessen the prejudice to the absent parties. The Tribes' Complaint raises "all or nothing" challenges to Oklahoma's regulation of water within the alleged "Treaty Territory." The Tribes' ability to regulate and use the water resources in the "Treaty Territory" is an outcome that "must be decided entirely or not at all." *Wyandotte Nation v. Unified Gov't Wyandotte Cnty.*, 222 F.R.D. 490, 504 (D. Kan. 2003) (quoted authority omitted). Accordingly, this Court cannot fashion a remedy to reduce the risk of prejudice to the United States or OWRB.

d. A judgment rendered in the sovereigns' absence will be inadequate.

A judgment entered in these parties' absence will also be inadequate. As the case law makes clear, this factor "is not intended to address the adequacy of the judgment from the plaintiff's point of view. . . . Rather, the factor is intended to address the adequacy of the dispute's resolution." *United Keetoowah Band of Okla. v. Kempthorne*, 630 F. Supp. 2d 1296, 1304 (E.D. Okla. 2009). Here, a judgment will not be adequate because a judgment rendered in the absence of the United States or the OWRB may invite additional litigation. *See Tewa Tesuque*, 498 F.2d at 243.

For example, if the Court were to conclude that the United States improperly authorized the OWRB or the Hugo Municipal Authority to use and regulate water resources in the purported "Treaty Territory," the Tribes arguably have a breach of trust claim against the United States. If, on the other hand, the Court were to conclude that the Hugo Municipal Authority lacks the ability to use and regulate the water in Hugo Lake, it may seek recourse against the United States. Similarly, if the Court were to conclude that

OWRB lacks the ability to use and regulate water in Sardis Reservoir, OWRB may seek recourse against the United States.

To the extent that the Tribes, the United States, or the OWRB claim regulatory authority over water resources within the Tribes' former "Treaty Territory," those claims are based on documents of title derived from the United States. *See Navajo Tribe*, 809 F.2d at 1472. By asserting regulatory control over the water resources in the alleged Treaty Territory, the Tribes implicitly seek to cancel all or portions of those agreements; however, the parties to an instrument must be present before the court before the instrument can be cancelled. *Id.* And, where, as here, OWRB and the Tribes are asserting "competing claims" to regulatory authority over and use of water resources, the OWRB is a necessary and indispensable party. *Spirit Lake Tribe*, 262 F.3d at 747.

CONCLUSION

At its core, the Tribes' Complaint seeks to upset jurisdictional and regulatory authorities that underlie the creation and operation of the very bodies of water the Tribes seek to regulate. The Tribes therefore have not demonstrated a valid waiver of the OWRB Defendants' sovereign immunity, and the Tribes' Complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(1). Moreover, rights of sovereigns, the United States and OWRB, including their rights in statutorily authorized contracts to which they are parties, would be adversely affected by the relief the Complaint requests. As the Supreme Court recently reaffirmed: "A case may not proceed when a required-entity sovereign is not amenable to suit." *Pimentel*, 553 U.S. at 867. Thus, the Complaint must be dismissed under Federal Rules of Civil Procedure 19 and 12(b)(7).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2012, a true and complete copy of the within and foregoing **OPENING BRIEF IN SUPPORT OF THE OKLAHOMA WATER RESOURCES BOARD'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1), 12(b)(7), AND 19** was electronically transmitted to the Clerk of the Court using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants.

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

CHICKASAW NATION and)
CHOCTAW NATION OF OKLAHOMA,)
)
Plaintiffs,)
)
vs.)
)
MARY FALLIN, in the official capacity)
as Governor of the State of Oklahoma; et al.)

Case No. CIV-11-927-W

**EXHIBITS TO BRIEF IN SUPPORT OF THE OKLAHOMA WATER
RESOURCES BOARD'S MOTION TO DISMISS PURSUANT TO FED. R. CIV.
P. 12(b)(1), 12(b)(7), and 19**

- EXHIBIT 1** 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, dated February 16, 1974

- EXHIBIT 2** Contract between the United States of America and Hugo Municipal Authority for Water Supply Storage Space in Hugo Lake, dated October 30, 1972

- EXHIBIT 3** Storage Contract Transfer Agreement between Oklahoma City Water Utilities Trust and State of Oklahoma Water Resources Board, dated June 15, 2010

EXHIBIT 1

**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, dated February 16, 1974**

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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.

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OKLA. WATER RESOURCES BOARD

CONTRACTOR'S COPY

EXHIBIT 1

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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(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.

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(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

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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
m.E
Lee*

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.

DACW56-74-C-0134

(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 De Sylva
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 Okla-
 homa, named as User herein; that Lloyd E. Church
 who signed this contract on behalf of the User was then Chairman
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

Contract No. **DACW56-74EC0134**

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		155,500	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	<u>103,000</u>
	<u>\$ 7,292,000</u>

Interest during construction (\$7,292,000 x 4.012% x 1/2 of 4-year construction period)	<u>585,000</u>
TOTAL INVESTMENT - INITIAL USE	<u><u>\$ 7,877,000</u></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)	= <u>633,000</u>
TOTAL INVESTMENT - FUTURE USE	<u><u>\$ 8,522,000</u></u>

TOTAL INVESTMENT - INITIAL & FUTURE USE	<u><u>\$16,399,000</u></u>
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Contract No. **DACW56-74EC0134****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	<u>61,850</u>	<u>66,750</u>	<u>128,600</u>	<u>141,600</u>	<u>270,200</u>
<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	<u>1,220</u>	<u>480</u>	<u>1,700</u>	<u>2,300</u>	<u>4,000</u>

(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.

Contract No. DACW56-74-C-0134

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% x 71.54%	= 34.109% x \$178,400	=	60,850
Specific Facilities			
100% x \$1,000		=	1,000
Major Replacement (Estimated) (7)			
Joint-Use			
47.678% x 67.69%	= 32.273% x \$1,300	=	420
Specific Facilities			
100% x \$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 PAYMT NO.	AMOUNT OF PAYMENT	APPLICATION		BALANCE
		INTEREST	AMOUNT COST	AMOUNT COST
	\$	\$	\$	\$
				7877000.00
1	353257.00		353257.00	7523743.00
2	353257.00	301852.57	51404.43	7472338.57
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	288168.95	65088.05	7117587.76
9	353257.00	285557.62	67699.38	7049888.38
10	353257.00	282841.52	70415.43	6979472.90
11	353257.00	280016.45	73240.55	6906232.35
12	353257.00	277078.04	76173.96	6830053.39
13	353257.00	274021.74	79235.86	6750818.13
14	353257.00	270842.82	82414.18	6668403.95
15	353257.00	267536.37	85720.63	6582683.32
16	353257.00	264097.25	89159.75	6493523.57
17	353257.00	260520.17	92730.33	6400786.74
18	353257.00	256809.56	96457.44	6304329.30
19	353257.00	252929.69	100327.31	6204001.99
20	353257.00	248904.56	104352.44	6099649.55
21	353257.00	244717.94	108537.06	5991113.49
22	353257.00	240363.85	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	164998.62	188258.38	3924369.21

EXHIBIT B (Cont)

DACW56-7.4=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	149589.74	203667.26	3524390.64
38	353257.00	141418.61	211536.39	3313052.25
39	353257.00	132919.66	220337.34	3092714.91
40	353257.00	124079.72	229177.23	2863537.63
41	353257.00	114855.13	238371.37	2625165.76
42	353257.00	105321.65	247935.35	2377230.41
43	353257.00	95374.48	257632.52	2119347.39
44	353257.00	85023.24	268223.76	1851119.13
45	353257.00	74266.90	278990.10	1572129.03
46	353257.00	63073.32	290183.13	1231945.35
47	353257.00	51451.67	301525.33	900120.52
48	353257.00	39322.44	313934.56	666185.96
49	353257.00	26727.33	328529.62	332000.34
50	353232.35	13627.01	339656.34	0.00

DACW56-74=C=0128

**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 assigns, 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.

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

CHICKASAW NATION and)
CHOCTAW NATION OF OKLAHOMA,)
Plaintiffs,)
vs.)
MARY FALLIN, in the official capacity)
as Governor of the State of Oklahoma; et al.)

Case No. CIV-11-927-W

**EXHIBITS TO BRIEF IN SUPPORT OF THE OKLAHOMA WATER
RESOURCES BOARD'S MOTION TO DISMISS PURSUANT TO FED. R. CIV.
P. 12(b)(1), 12(b)(7), and 19**

- EXHIBIT 1** 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, dated February 16, 1974
- EXHIBIT 2** Contract between the United States of America and Hugo Municipal Authority for Water Supply Storage Space in Hugo Lake, dated October 30, 1972
- EXHIBIT 3** Storage Contract Transfer Agreement between Oklahoma City Water Utilities Trust and State of Oklahoma Water Resources Board, dated June 15, 2010

EXHIBIT 2

**Contract between the United States of America and Hugo Municipal Authority for Water Supply
Storage Space in Hugo Lake, dated October 30, 1972**

DACW56-73-C-0070

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
HUGO MUNICIPAL AUTHORITY
FOR
WATER SUPPLY STORAGE SPACE IN HUGO LAKE

THIS CONTRACT, entered into this 30th day of October, 1972, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Contracting Officer executing this contract, and Hugo Municipal Authority, Oklahoma, (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1946 (Public Law 79-526, 85th Congress 2nd Session), authorized the construction, operation, and maintenance of the Hugo Reservoir 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.

(b) Rights of User.

(1) The User shall have the right to utilize an undivided 16.889 percent (estimated to contain 20,520 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 404.5 feet above mean sea level and 390.0 feet above mean sea level, which total storage space is estimated to contain 121,500 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for water quality control and present and anticipated

EXHIBIT 2

DACW56-73-C-0070

future demand or need for municipal and industrial water supply. 7.992 percent (an estimated 1,640 acre-feet) of the space which User has a right to utilize is for present use water storage and 92.008 percent (an estimated 18,880 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. The User may, on the date the project is complete and operational for water supply purposes, commence using 1,640 acre-feet of the storage space and may, thereafter, commence using all or any of the remaining storage space at any time after giving the Contracting Officer 30 days notice in writing, specifying the amount and date of usage.

(c) Rights Reserved. The Government reserves the right to maintain downstream releases to meet established water requirements 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.

(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.

D
13 Dec 72

BT
5 Dec 72

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 Withdrawals and Releases. The User agrees to furnish and install, without cost to 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, for providing a 48-inch water supply conduit and 20,520 acre-feet of water supply storage space in the Project. 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. For the Project, this interest rate is 3.225 percent. The User shall repay:

100% of the construction cost of specific water supply facilities, estimated to be	\$ 28,000
3.44 percent of the total Project joint-use construction costs, estimated at	\$1,020,800
Interest during construction, estimated at	<u>\$ 67,700</u>
Total estimated amount of Project investment costs to be paid under this contract	\$1,116,500

(2) The Project investment costs allocated to the storage space indicated in Article 1(b)(1) as being provided for present demand and conduit is currently estimated at \$116,700, on the basis of the cost presented in Exhibit "A". The amount of the Project investment costs allocated to the storage for present demand and conduit 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 complete and operational for water supply purposes. Annual installments thereafter will be due and payable on the anniversary date the first payment is due. 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 \$999,800 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 this 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, commencing with the next anniversary of the payment date stipulated in Article 5a(2), 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.

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(4) An estimated schedule of annual payments for the storage provided for present demand and the conduit is attached as Exhibit "B" of this contract. The annual payments as provided therein shall be made until 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 costs, 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 rate provided above 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 0.554 percent of the costs of joint-use major capital replacement items, when incurred, until such time as the storage for future water supply is used. As the storage provided for future water supply is used, the share of the annual experienced joint-use major capital replacement costs, which the User will be required to pay will be increased commensurate with the percentage of the water supply storage being used, up to a total of 6.929 percent of such costs. 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 shall pay 100 percent of the annual experienced operation and maintenance costs of specific water supply facilities. In addition, the User shall pay 0.552 percent of the annual experienced joint-use operation and maintenance costs of the Project until such time as the storage for future water supply

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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 6.908 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 absolution 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 features or appurtenances owned and operated by the User, or any interruption of service due to repairs, construction, operation, and maintenance of the Project by the Government, 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.

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 of 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); and 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.

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.

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(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: 22 OCT 1974

THE UNITED STATES OF AMERICA

Howard H. Callaway
Secretary of the Army

By William E. Read
WILLIAM E. READ
Colonel, CE
District Engineer
Contracting Officer

DATE: _____

HUGO MUNICIPAL AUTHORITY

By L. C. D. Johnson

ATTEST:

By L. C. D. Johnson

(Seal)

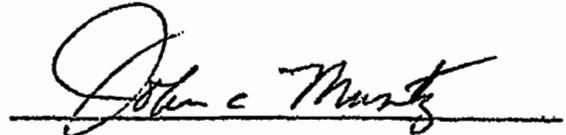
TECHNICAL
BY L. C. D. Johnson 11/7/74

Audit Branch Review
By E. K. Y.
Date 11-7-75

REVIEWED FOR LEGAL SUFFICIENCY
By [Signature] 11/7/74

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It is my opinion that this contract is within the authority of the contracting entity and in reaching this conclusion I have considered Section 221 of the Flood Control Act of 1970 (42 USC 1962d-5b).



Attorney for
The Hugo Municipal Authority

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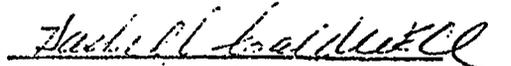
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CERTIFICATE

I, Haskell Caldwell, hereby certify that I am the
Secretary of the Hugo Municipal Authority, Oklahoma,
named as User herein; that Gene Thomson, who signed this contract
on behalf of the User was then Chairman,
of said Hugo Municipal Authority, Oklahoma; 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 and the seal of
the Hugo Municipal Authority, Oklahoma, this 30th day of October, 1972.

(SEAL)


Haskell Caldwell, Secretary

Contract No.

EXHIBIT A

DACW56-73-C-0070

 I - RESERVOIR STORAGE

<u>Feature</u>	<u>Elevation</u> (ft. msl)	<u>Usable</u> <u>Storage*</u> (ac.ft.)	<u>Percent of</u> <u>Conservation</u> <u>Storage</u>
Flood Control	437.5-404.5	808,300	
Conservation Storage	404.5-390.0	121,500	100.00
Water Supply		(47,600)	(39.177)
Hugo Municipal Authority		(20,520)	(16.889)
Initial (3.445% of water supply storage or 7.992% of User's space)		(1,640)	(1.350)
Future (39.664% of water supply storage or 92.008% of User's space)		(18,880)	(15.539)
Other (56.891% of water supply storage)		(27,080)	(22.288)
Water Quality Control		<u>(73,900)</u>	(60.823)
Total		929,800	

*Storage remaining after 100 years' sedimentation.

EXHIBIT A (CONT)

Contract No.

DACW56-73-C-0070

II - ALLOCATION OF ESTIMATED FIRST COST (1)

Flood Control	\$19,272,000
Water Supply:	
Storage	2,368,000
Conduit	28,000
Water Quality Control	5,042,000
Recreation	5,215,000
Fish and Wildlife	262,000
Total	\$32,187,000

(1) Excludes \$1,310,000 for relocation of roads above replacement-in-kind standards and includes \$97,000 for present values of future recreation facilities. Total first cost of Project is \$33,400,000. Total estimated Project joint-use construction cost is \$29,672,000.

III - COSTS TO BE REPAYED BY THE USER
FOR WATER SUPPLY

Initial Use:	
Cost of 1,640 acre-feet of water supply storage (3.445% x \$2,368,000)	\$ 81,600
Conduit	28,000
Subtotal	109,600
Interest during construction (\$109,600 x 3.225% x 1/2 of 4-year construction period)	\$ 7,100
Total <u>Initial Use</u>	\$ 116,700
Future Use:	
Cost of 18,380 acre-feet of water supply storage (39.664% x \$2,368,000)	\$ 939,200
Interest during construction (\$939,200 x 3.225% x 1/2 of 4-year construction period)	\$ 60,600
Total <u>Future Use</u>	\$ 999,800
Total <u>Initial and Future Use</u>	\$1,116,500

Contract No.

EXHIBIT A (CONT)

DACW56-73-C-007

**II - ALLOCATION OF ESTIMATED ANNUAL OPERATION,
MAINTENANCE AND MAJOR REPLACEMENT COSTS**

WATER SUPPLY

<u>Item</u>	Hugo Municipal Authority				<u>Sub- total</u>	<u>FC, WQC REC, F&WL</u>	<u>Total</u>
	<u>Initial</u>	<u>Future</u>	<u>Sub- total</u>	<u>Other</u>			
	\$		\$	\$	\$		\$
<u>Operation & Maintenance:</u>							
Specific Cost	1,100	0	1,100	0	1,100	43,200	44,300
Joint-Use Cost	603(2)	5,941(3)	7,544	9,956	17,500	91,700	109,200
Total	1,703	6,941	8,644	9,956	18,600	134,900	153,500
<u>Major Replacement:</u>							
Specific Cost	0	0	0	0	0	1,500	1,500
Joint-Use Cost	31(2)	357(3)	388	512	900	4,700	5,600
Total	31	357	388	512	900	6,200	7,100

(2) Based on 3.445 percent of joint-use cost allocated to water supply.

(3) Based on 39.664 percent of joint-use cost allocated to water supply.

Contract No.

DACW56-73-C-00

EXHIBIT A (CONT)

V - ANNUAL CHARGES TO USER FOR INITIAL USE
OF WATER SUPPLY STORAGE SPACE AND CONDUIT

Interest and amortization of cost of water supply feature (4) \$4,583

100 percent of the specific costs of operation and maintenance for water supply plus 0.552 percent of the actual joint-use cost of operation and maintenance cost for the preceding fiscal year; computed as follows:

Specific water supply items, 100 percent estimated annual amount 1,100

Joint-use items $\frac{603}{109,200} \times 100 = 0.552\%$. Estimated annual amount. 603

0.554 percent of the joint-use cost of major replacements and sedimentation resurveys, when incurred, computed as follows:

$\frac{31}{5,600} \times 100 = 0.554\%$. Estimated annual amount 31

Total 6,317

(4) Computation of Annual Payment for Interest and Amortization.
(Based on 50 payments, 49 of which bear interest on the unpaid balance.)

$$D = \left(\frac{R}{1 + \frac{i}{(1+i)^{n-1}}} \right)$$

WHEREIN:

D = annual payment = \$116,700
R = amount to be repaid = \$116,700
i = interest rate = 3.225 percent
n = number of payments = 50

OR:

$$D = \frac{\$116,700}{1 + \frac{.03225}{(1 + .03225)^{49-1}}}$$

which = \$116,700 x 0.039275 = \$4,583

Contract No. DACW56-73-C-0070

EXHIBIT B

HUGO MUNICIPAL AUTHORITY
AMORTIZATION SCHEDULE

TOTAL COST..... 116700,
NUMBER OF PAYMENTS..... 50,
INTEREST RATE PERCENT..... 3.225

ANNUAL	AMOUNT OF	APPLICATION	BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST
	\$	\$	\$
			116700.00
1	4583.00	4583.00	112117.00
2	4583.00	3615.77	111149.73
3	4583.00	3584.58	110151.35
4	4583.00	3552.38	109120.73
5	4583.00	3519.14	108056.88
6	4583.00	3484.83	106958.71
7	4583.00	3449.42	105825.13
8	4583.00	3412.86	104654.99
9	4583.00	3375.12	103447.11
10	4583.00	3336.17	102200.28
11	4583.00	3295.96	100913.24
12	4583.00	3254.45	99584.69
13	4583.00	3211.61	98213.30
14	4583.00	3167.38	96797.68
15	4583.00	3121.73	95336.41
16	4583.00	3074.60	93828.00
17	4583.00	3025.95	92270.96
18	4583.00	2975.74	90663.70
19	4583.00	2923.90	89004.60
20	4583.00	2870.40	87292.00
21	4583.00	2815.17	85524.16
22	4583.00	2758.15	83699.32
23	4583.00	2699.30	81815.62
24	4583.00	2638.55	79871.18
25	4583.00	2575.85	77864.02
26	4583.00	2511.11	75792.14
27	4583.00	2444.30	73653.43
28	4583.00	2375.32	71445.76
29	4583.00	2304.13	69166.88
30	4583.00	2230.63	66814.51
31	4583.00	2154.77	64386.28
32	4583.00	2076.46	61879.74
33	4583.00	1995.62	59292.36
34	4583.00	1912.18	56621.54
35	4583.00	1826.04	53864.58

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EXHIBIT B (CONT)

TOTAL COST..... 116700.
 NUMBER OF PAYMENTS..... 50.
 INTEREST RATE, PERCENT..... 3.225

ANNUAL	AMOUNT OF	APPLICATION	BALANCE
PYMT NO.	PAYMENT	INTEREST	ALLOC COST
	\$	\$	\$
36	4583.00	1737.13	51018.72
37	4583.00	1645.35	48081.07
38	4583.00	1550.61	45048.68
39	4583.00	1452.82	41918.50
40	4583.00	1351.87	38687.38
41	4583.00	1247.67	35352.04
42	4583.00	1140.10	31909.15
43	4583.00	1029.07	28355.22
44	4583.00	914.46	24686.67
45	4583.00	796.15	20899.82
46	4583.00	674.02	16990.84
47	4583.00	547.95	12955.79
48	4583.00	417.82	8790.62
49	4583.00	283.50	4491.11
50	4635.95	144.84	0.00

EXHIBIT C

DACW56-73-C-0070

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

HUGO MUNICIPAL AUTHORITY, OKLAHOMA

(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 this 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.

Dated October 30, 1972

Hugo Municipal Authority

(Applicant-Recipient)

ATTEST: Harold L. Caldwell

By

[Signature]

(SEAL)

EXHIBIT 3

Storage Contract Transfer Agreement between Oklahoma City Water Utilities Trust and State of Oklahoma Water Resources Board, dated June 15, 2010

**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 15th 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.

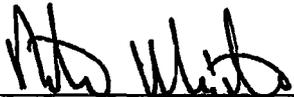
Section 4.11. Jurisdiction and Venue for Litigation. The parties agree that any proceeding for enforcement of this Agreement shall be brought in the District Court in and for Oklahoma County.

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.

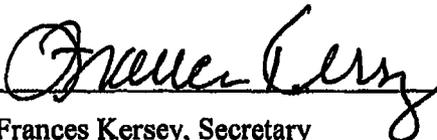
Section 4.13. Interpretation. For purposes of interpretation of this Agreement, neither the OWRB, OCWUT, State of Oklahoma nor City of Oklahoma City shall be considered to have been the drafter of this Agreement.

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, Chairman Date 06/15/10

ATTEST:

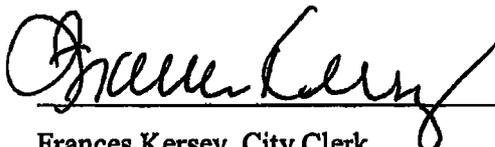

Frances Kersey, Secretary
(SEAL)

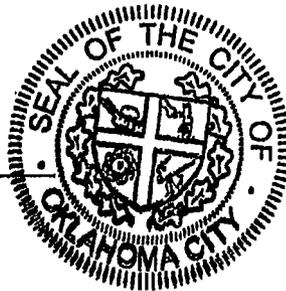


For the CITY OF OKLAHOMA CITY

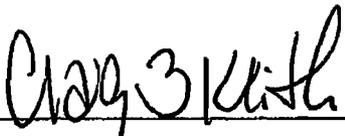

Mick Cornett, Mayor Date 06/15/10

ATTEST:


Frances Kersey, City Clerk
(SEAL)



Reviewed for form and legality.


Assistant Municipal Counselor

For the OKLAHOMA WATER RESOURCES BOARD

Rudolf J. Herrmann

6-11-2010

Rudolf J. Herrmann, Chairman

Date



Lambert

Cinda 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 EIM, Pushmataha County;

All or part of Section 21, T 2 N, R 17 EIM, 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 EIM, Pushmataha County;

All or part of Sections 4, 5, 6, 7, 8, 17, 18, 19 and 20, all in T 2 N, R 19 EIM, Pushmataha County;

All or part of Sections 35 and 36 in T 3 N, R 17 EIM, Latimer County;

All or part of Sections 23, 25, 26, 27, 34, 35 and 36, all in T 3 N, R 18 EIM, Latimer County;

and

All or part of Sections 22, 23, 27, 28, 29, 31, 32 and 33, all in T 3 N, R 19 EIM, 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

CONTRACTOR'S COPY

APR 29 1974

OKLA. WATER RESOURCES BOARD

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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(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.

DACW56-74-C-0134

(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

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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.

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(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.

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.

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(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 De Sylva
ATTORNEY GENERAL
STATE OF OKLAHOMA

BACW56-74-C-0134

CERTIFICATE

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

Contract No. **DACW56-74EC-0134****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

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
	<u>\$ 7,292,000</u>

Interest during construction (\$7,292,000 x 4.012% x 1/2 of 4-year construction period)	<u>585,000</u>
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
---	----------------

Interest during construction (\$7,889,000 x 4.012% x 1/2 of 4-year construction period)	= <u>633,000</u>
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. **DACW36-74EC0134****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	<u>61,850</u>	<u>66,750</u>	<u>128,600</u>	<u>141,600</u>	<u>270,200</u>
<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	<u>1,220</u>	<u>480</u>	<u>1,700</u>	<u>2,300</u>	<u>4,000</u>

(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.

Contract No. DACW56-74-C-0134

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

PAYMT NO.	AMOUNT OF	APPLICATION		BALANCE
	PAYMENT	INTEREST	PRINCIPAL COST	PRINCIPAL COST
	\$	\$	\$	\$
1	353257.00		353257.00	7877000.00
2	353257.00	301852.57	51404.43	7523743.00
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	288168.95	65038.05	7117507.76
9	353257.00	285557.62	67699.38	7049808.33
10	353257.00	282841.52	70415.43	6979472.90
11	353257.00	280016.45	73230.55	6906232.35
12	353257.00	277078.04	76173.96	6830058.39
13	353257.00	274021.74	79235.26	6750823.13
14	353257.00	270842.82	82414.16	6668408.95
15	353257.00	267536.37	85720.63	6582688.32
16	353257.00	264097.25	89157.75	6493530.57
17	353257.00	260520.17	92730.83	6400799.74
18	353257.00	256809.56	96457.44	6304342.30
19	353257.00	252929.69	100327.31	6204014.99
20	353257.00	248904.56	104352.44	6099662.55
21	353257.00	244717.94	108537.06	5991125.49
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	132133.57	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	164998.62	188255.38	3924369.21

EXHIBIT B (Cont)

DACW56 - 7.4 = 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	141418.61	211635.39	3313052.25
39	353257.00	132919.66	220337.34	3092714.91
40	353257.00	124079.72	229177.23	2863537.63
41	353257.00	114935.13	238371.37	2625165.76
42	353257.00	105321.65	247935.35	2377230.41
43	353257.00	95374.43	257632.52	2119347.39
44	353257.00	85023.24	267223.76	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	666185.96
49	353257.00	26727.33	326529.02	337350.34
50	353230.35	13627.01	339656.34	0.00

DACW56-74=C=0128

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. Kinard L-215

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.

Linda G. Darnell

From: okwd_ecf_notice@okwd.uscourts.gov
Sent: Friday, February 10, 2012 1:39 PM
To: okwdecf@okwd.uscourts.gov
Subject: Activity in Case 5:11-cv-00927-W Chickasaw Nation et al v. Fallin et al Brief

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U.S. District Court

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered by Slade, Lynn on 2/10/2012 at 2:39 PM CST and filed on 2/10/2012

Case Name: Chickasaw Nation et al v. Fallin et al
Case Number: 5:11-cv-00927-W
Filer: Joe Taron
Richard Sevenoaks
Rudolf John Herrmann
Ford Drummond
Ed Fite
Kenneth K Knowles
Linda Lambert
Tom Buchanan
Marilyn Feaver
JD Strong

Document Number: 67

Docket Text:

BRIEF IN SUPPORT (Opening) of Motion to Dismiss Pursuant to Fed. R. CIV. P. 12(b)(1), 12(b)(7) and 19 by Tom Buchanan, Ford Drummond, Marilyn Feaver, Ed Fite, Rudolf John Herrmann, Kenneth K Knowles, Linda Lambert, Richard Sevenoaks, JD Strong, Joe Taron. (Attachments: # (1) Exhibit Exhibit Index, # (2) Exhibit 1, # (3) Exhibit 2, # (4) Exhibit 3)(Slade, Lynn)

5:11-cv-00927-W Notice has been electronically mailed to:

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5:11-cv-00927-W Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1041971380 [Date=2/10/2012] [FileNumber=2187745-0]
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Document description:Exhibit Exhibit Index

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Document description:Exhibit 1

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Document description:Exhibit 2

Original filename:n/a

Electronic document Stamp:

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