

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.)

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

Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(7), and 19, 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”), move the Court to dismiss the Second Amended Complaint (“Complaint”) [Doc. No. 62] of the Choctaw Nation of Oklahoma and Chickasaw Nation (“Tribes”). As grounds for this motion, OWRB Defendants state:

1. The Tribes’ claims against the OWRB Defendants are barred by the sovereign immunity of the State of Oklahoma and the Eleventh Amendment to the Constitution of the United States and must be dismissed under Fed. R. Civ. P. 12(b)(1).

2. The United States and OWRB are necessary, or required, and indispensable parties to this action that cannot be joined. Therefore, in equity and good conscience, the Complaint must be dismissed under Fed. R. Civ. P. 19 and 12(b)(7)

WHEREFORE, the OWRB Defendants request the Court dismiss the Complaint under Fed. P. Civ. P. 12(b)(1), and 12(b)(7), and 19.

Respectfully submitted,

**OKLAHOMA OFFICE OF THE
ATTORNEY GENERAL**

By: *s/Patrick R. Wyrick*
Patrick R. Wyrick, OBA #21873
SOLICITOR GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
Phone: (405) 522-4393
Patrick.Wyrick@oag.ok.gov

Neal Leader
SENIOR ASSISTANT ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
Phone: (405) 522-4393
Neal.Leader@oag.ok.gov

**MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.**

By: *s/Lynn H. Slade*
Lynn H. Slade (NM Bar No. 25011)
Maria O'Brien (NM Bar No. 7231)
William C. Scott (NM Bar No. 3225)
Bank of America Centre
500 4th Street NW, Suite 1000
Albuquerque, NM 87102
Phone: (505) 848-1800
Lynn.slade@modrall.com
wscott@modrall.com
mobrien@modrall.com

Counsel for OWRB Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of February, 2012, a true and complete copy of the within and foregoing **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.

Michael Burrage, OBA#1350
WHITTEN BURRAGE
1215 Classen Drive
Oklahoma City, OK 73103
mburrage@whittenburrage.com

Bob Rabon, OBA#7373
RABON, WOLF & RABON
402 E. Jackson (Hwy 70)
Hugo, OK 74743
Bob.rabon@sbcglobal.net

Stephen H. Greetham, OBA#21510
Chickasaw Nation Div. of Commerce
Office of the General Counsel
2020 Lonnie Abbott Blvd.
Ada, OK 74820
StephenGreetham@chickasaw.net

Douglas B. L. Endreson
SONOSKY, CHAMBERS, SACHSE, ENDRESON &
PERRY, LLP
1425 K. Street NW
Suite 600
Washington, DC 20005
dendreson@sonosky.com

Craig B. Keith
Assistant Municipal Counselor
200 N. Walker, Suite #400
Oklahoma City, OK 73102
Craig.keith@okc.gov

Brian Nazareus
Ryley Carlock & Applewhite
1999 Broadway, Suite 1800
Denver, CO 80202
bnazareus@rcalaw.com

s/Lynn H. Slade
Lynn H. Slade