

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

OKLAHOMA WATER RESOURCES BOARD	)	
Plaintiff,	)	
	)	
v.	)	CIV-
	)	
UNITED STATES OF AMERICA, <i>et al.</i>	)	
Defendants.	)	
	)	

**NOTICE OF REMOVAL TO THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

The United States of America, through its undersigned attorneys, respectfully  
represents the following:

1. The United States of America; United States Department of the Interior; United States Bureau of Reclamation, an agency of the U.S. Department of the Interior; United States Army Corps of Engineers; the United States on behalf of the Choctaw Nation of Oklahoma, a federally recognized Indian tribe; the United States on behalf of the Chickasaw Nation, a federally recognized Indian tribe; the United States on behalf of individual members of the Choctaw Nation of Oklahoma; and the United States on behalf of individual members of the Chickasaw Nation are named respondents in a civil action pending in the Oklahoma Supreme Court styled *Oklahoma Water Resources Board v. United States of America, et al.*, Case No. 110375. Pursuant to 28 U.S.C. § 1446 and Local Civil Rule 81.2, attached are copies of all process, pleadings, and orders served

upon the above-named federal respondents in this action and a copy of the state court docket sheet:

**Exhibit 1** – Notice of Original Jurisdiction Supreme Court Proceeding (filed in the Oklahoma Supreme Court on February 10, 2012 and served by mail on the Attorney General of the United States and the U.S. Attorney's Office, Western District of Oklahoma);

**Exhibit 2** – Application to Assume Original Jurisdiction and attached Petition of the Oklahoma Water Resources Board for a General Stream Adjudication in the Kiamichi, Muddy Boggy and Clear Boggy Basin Stream Systems;

**Exhibit 3** – Brief in Support of Application to Assume Original Jurisdiction;

**Exhibit 4** – Order granting Petitioner's Application to Assume Original Jurisdiction (entered February 23, 2012); and

**Exhibit 5** – Docket Sheet from the Oklahoma Supreme Court (as of March 12, 2012).

2. This action is removable to this Court pursuant to 28 U.S.C. § 1442(a)(1) as it is an action against the United States of America and certain of its agencies. As the Oklahoma Water Resources Board (the "Board") correctly states in its Petition (pages 8, 16, 18) and Brief (page 5), the rights of the federal parties to waters in the three stream systems are based in federal law. The Petition (pages 7-16) and Brief (pages 5-6) also recognize that whether the United States has waived its sovereign immunity from suit pursuant to the McCarran Amendment, 43 U.S.C. § 666, is a question of federal law. The Brief explains (pages 2-4) that the Board filed the Petition in response to the claimed right of the Chickasaw Nation and Choctaw Nation of Oklahoma to regulate the water within their Treaty Territory, and specifically in response to the action the Nations filed in this

Court against the Governor of Oklahoma, the Board's Members and Executive Director, the City of Oklahoma and the Oklahoma City Water Utility Trust. *Chickasaw Nation, et al. v. Fallin, et al.*, No. CIV-11-927-W (W.D. Okla. filed Aug. 18, 2011). In this previously filed case in this Court, the Nations assert rights based on treaties with the United States and federal statutes, and seek a declaration that the Board does not have the unilateral right to remove water from the Nations' Treaty Territory, among other declaratory and injunctive relief. The question whether the Oklahoma Supreme Court action satisfies the requirements of the McCarran Amendment has also been presented to this Court in the pending action.<sup>1/</sup> The Board's Petition and Brief do not reveal any reason for initiating a general stream adjudication of the Kiamichi, Muddy Boggy and Clear Boggy basins (such as a water shortage) apart from the Board's desire to resolve the Nations' federal law-based claims, and thus suggest that the state-law legal questions and associated factual questions typically presented in a general stream adjudication could be avoided by resolution of the Nations' claims presented in its action in this Court. Removal will facilitate resolution of the common federal questions underlying both actions, thereby conserving judicial resources.

3. The removal of this action is timely under 28 U.S.C. § 1446(b).

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<sup>1/</sup> 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, Dkt. No. 67 (filed Feb. 10, 2012), at 19; Plaintiff Chickasaw and Choctaw Nations' Motion for Partial Summary Judgment, Dkt. No. 72 (filed Feb. 14, 2012), at 58-68.

The United States gives notice that the above-referenced action, now pending in the Oklahoma Supreme Court, is hereby removed to this Court.

Respectfully submitted,

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DATED March 12, 2012  
DJ No. 90-6-2-01039

## CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2012, this document is being submitted as an initiating document pursuant to *Electronic Filing Policies & Procedures Manual*, § II.A.2. (Feb. 7, 2012), to the following new cases email address:

newcases@okwd.uscourts.gov.

and that all initiating documents are attached as separate .pdf files.

I hereby certify that on March 12, 2012, I served the attached document by hand on the following:

Michael Richie, Clerk of the Oklahoma Supreme Court  
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I hereby certify that on March 12, 2012, I served the attached document by Federal Express and email on the following, who entered appearances in the Oklahoma Supreme Court action:

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I hereby certify that on March 13, 2012, I will serve the attached document by U.S. mail on the parties listed on the attached mailing list compiled by counsel for the Oklahoma Water Resources Board (and identified by them as pages 2-9 of Exhibit "A"), who are not known registered participants of the ECF System:

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Mary Gabrielle Sprague

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Attn: Danny Johnson  
P.O. Box 360  
Tupelo, OK 74572-0360  
(1962-062) (1978-592)

Chapman Family Revocable Trust  
4400 N 3813 Rd.  
Calvin, OK 74531-5216  
(1965-618)

Allen Public Works Authority  
Attn: Doug Stinson  
P.O. Box 402  
Allen, OK 74825-0402  
(1966-692) (1989-533)

Atoka County Rural Water District #3  
P.O. Box 10  
Caney, OK 74533-0010  
(1970-025) (1995-588)

Harold Merriman  
7361 E 144 Rd.  
Atwood, OK 74827  
(1974-062) (1977-544)

Lyndle Ellis  
c/o Hughes County Rural Water District #6  
P.O. Box 327  
Allen, OK 74825-0327  
(1980-544)

Susie M. Humphries  
HC 79 Box 152  
Hugo, OK 74743  
(1980-690)

Frezell Calvin  
Goodland Route 1  
Hugo, OK 74743  
(1981-613)

Oklahoma State University  
Attn: James Vaughan  
P.O. Box 128  
Lane, OK 74555-0128  
(1985-527)

Stonewall Public Works Authority  
Attn: Dustin Andersen  
P.O. Box 217  
Stonewall, OK 74871-0217  
(1954-162) (1967-167)

Mrs. Winifred Borders  
RR 4 Box 490  
Allen, OK 74825  
(1965-614A)

Lee Harrington  
601 S. County Line Rd.  
Allen, OK 74825-8184  
(1966-277) (1995-633)

Hughes County Rural Water District #2  
Attn: Vivan Moody  
P.O. Box 47  
Stuart, OK 74570-0047  
(1967-663) (1981-811)

Greg & Ines Turpin  
4930 NS 3775  
Allen, OK 74825  
(1970-097) (1997-591)

Caddo Public Works Authority  
Attn: Stacy Eastwood  
P.O. Box 105  
Caddo, OK 74729-0105  
(1975-749)

Clyde D. Lacey  
11108 Leaning Elm Rd.  
Oklahoma City, OK 73120  
(1980-629)

Albert & Kathryn Holloway  
1276 N. 4160 Rd.  
Hugo, OK 74743  
(1980-690)

Coalgate Public Works Authority  
3 S. Main Street  
Coalgate, OK 74538-2838  
(1983-560)

Town of Boswell  
P.O. Box 478  
Boswell, OK 74727-0478  
(1986-519)

Wingard Water Corporation  
10371 County Road 1620  
Fitzhugh, OK 74843-2549  
(1986-573)

Johnny Stinnet  
P.O. Box 36  
Tupelo, OK 74572  
(1987-550)

G.O. Philpot  
1909 Woodland Dr.  
Ada, OK 74820-4457  
(1989-544)

Charles Wayne Borders  
c/o Hughes County RWD #6  
P.O. Box 327  
Allen, OK 74825-0327  
(1991-604) (1991-605B)

Robinson Bros Pork Inc.  
7832 E. 131 Rd.  
Holdenville, OK 74848-1674  
(1993-552)

Tyson Foods Inc.  
Attn: Lori Ramsey  
201 Kingsberry Rd.  
Holdenville, OK 74848-9201  
(1993-581)

Helen Smith  
1417 Williams Drive  
Oklahoma City, OK 73119  
(1994-517)

Gerald Clifford Wilson  
8159 E 1515 Rd.  
Calvin, OK 74531-5096  
(1994-536)

GHB Farms Inc.  
P.O. Box 828  
Holdenville, OK 74848-0828  
(1994-538)

The Town of Soper  
Attn: Charles Trapp  
P.O. Box 30  
Soper, OK 74759-0030  
(1997-562)

Choctaw Co. Rural Water District #1  
Attn: Donna Holton  
P.O. Box 16  
Grant, OK 74738-0016  
(1997-629)

Roy & Shirley Mobbs  
585 E. Prairie Rd.  
Atoka, OK 74525-7017  
(2001-578)

David Mobbs  
1291 S. Highway 109A  
Boswell, OK 74727-2015  
(2002-559)

Doyle & Selma Foreman  
432 Spring St.  
Santa Cruz, CA 95060-2026  
(2003-589)

Donald & Sherley Zaicek  
Attn: Jody Zaicek  
5208 Montrose Cir.  
Norman, OK 73072-3854  
(2004-502)

Southeastern Oklahoma Land Co.  
P.O. Box 787  
Antlers, OK 74523  
(2005-577)

Bryan County RWS and SWM District No. 6  
Attn: Eddie Ervin  
206 Buffalo Street  
Caddo, OK 74729  
(2005-585)

Will Grote  
P.O. Box 7  
Bennington, OK 74723-0007  
(2007-565)

G Hump Ltd.  
P.O. Box 7  
Bennington, OK 74723-0007  
(2007-566)

Mungle Corporation  
358 S. Mungle Rd.  
Atoka, OK 74525-4054  
(2009-547)

Bromide Public Works Authority  
Attn: Ernest Mayo  
P.O. Box 127  
Bromide, OK 74530-0127  
(2010-502)

Jack and John Johnson  
HC 71 Box 9  
Soper, OK 74759  
(1975-787)

Mr. & Mrs. Robert Ballard  
P.O. Box 303  
Sherman, TX 75091-0303  
(1980-629)

W7 Land Co.  
8159 E 1515 Rd.  
Calvin, OK 74531  
(1994-517)

Dennis Harden  
7760B E 153 Rd.  
Calvin, OK 74531  
(1994-517)