

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

3
4 **PREAMBLE**

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

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

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

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

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

18 **WHEREAS**, for purposes of satisfying Pub. Law 114-322, § 3608(i)(1)(A), 130 Stat.
19 1628, 1810, the parties signatory hereto have met, conferred, and amended the agreement
20 deemed effective August 22, 2016, so that it conforms with the federal legislation enacted to
21 approve, ratify, and confirm the settlement they have negotiated;

1 **WHEREAS**, this Settlement Agreement, which the parties signatory hereto now execute,
2 supersedes and replaces the agreement deemed effective August 22, 2016, in satisfaction of the
3 requirement of Pub. Law 114-322, § 3608(i)(1)(B), 130 Stat. 1628, 1810; and

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

7 **NOW, THEREFORE**, the parties signatory hereto ("Parties" or, when singular, "Party")
8 agree and bind themselves as follows:

9 **1. DEFINITIONS**

10 **1.1 1974 Storage Contract** – means the contract approved by the Secretary of the Army
11 on April 9, 1974, between the Secretary of the Army and the Water Conservation Storage
12 Commission of the State of Oklahoma pursuant to section 301 of the Water Supply Act of 1958,
13 and other applicable federal law.

14 **1.2 2010 Agreement** – means the agreement entered into among the OWRB and the
15 Trust, dated June 15, 2010, relating to the assignment by the State of the 1974 Storage Contract
16 and transfer of rights, title, interests, and obligations under that contract to the Trust, including
17 the interests of the State in the Conservation Storage Capacity and associated repayment
18 obligations to the United States.

19 **1.3 Adequate Hydrological Model** – means a hydrologic model that satisfies the
20 requirements of Section 5.3.1.2.2.

21 **1.4 Administrative Set-Aside** – means thirty-seven thousand nine hundred eight
22 (37,908) AF of Conservation Storage Capacity for the twenty thousand (20,000) AFY set-aside
23 for use in southeastern Oklahoma, inclusive of the subcontract between the Oklahoma Water

Resources Board and the Sardis Lake Water Authority dated October 22, 1999, as specified in OAC § 785:20-5-5(b)(3), as such rule exists as of the Execution Date.

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

1.6 AF – means acre-feet.

1.7 AFY – means acre-feet per year.

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

1.9 Allottee – means an enrolled member of the Choctaw Nation or citizen of the Chickasaw Nation who, or whose estate, holds an interest in an Allotment.

1.10 Amended Permit Application – means the permit application of the City to the OWRB, No. 2007-017, as amended pursuant to Section 6.1.

1.11 Amended Storage Contract Transfer Agreement; Amended Storage Contract – means the 2010 Agreement between the City, the Trust, and the OWRB, as amended, as provided by the Settlement Agreement and the Settlement Act, and included as Exhibit 4.

1.12 Atoka and Sardis Conservation Projects Fund – means the Atoka and Sardis Conservation Projects Fund established, funded, and managed in accordance with Section 6.5.2.1.2.

1 **1.13 Atoka and Sardis Conservation Projects Board** – means the body formed pursuant
2 to Section 6.5.2.1.1.

3 **1.14 Atoka Reservoir** – means the reservoir located approximately four (4) miles
4 northeast of the City of Atoka, whose dam is in Section 30, Township 1 South, Range 12 East of
5 the Indian Meridian in Atoka County, Oklahoma.

6 **1.15 Baseline Lake Levels** – means those Sardis Lake surface elevations specified at
7 Section 6.1.8.1.

8 **1.16 Bypass Requirement** – means fifty (50) cfs of the three hundred (300) cfs flow rate,
9 specified at Section 6.1.5.2 for the City Permit, as measured within reasonable operational
10 constraints, which shall be bypassed at the Point of Diversion when the City is diverting water at
11 the Point of Diversion.

12 **1.17 Canton Reservoir** – means the reservoir located on the North Canadian River at river
13 mile 394.3, about two (2) miles north of the Town of Canton in Blaine County, Oklahoma.

14 **1.18 cfs** – means cubic-feet per second.

15 **1.19 Chickasaw Nation** – means the Chickasaw Nation, a federally recognized American
16 Indian Tribe organized by a Constitution its citizens ratified in 1856 and subsequently modified
17 and re-ratified in 1983 and subsequently amended.

18 **1.20 Choctaw Nation** – means the Choctaw Nation of Oklahoma, a federally recognized
19 American Indian Tribe organized by a Constitution its citizens ratified in 1830 and subsequently
20 modified and re-ratified in 1983.

21 **1.21 City** – means the City of Oklahoma City, or the City and the Trust acting jointly, as
22 applicable.

23 **1.22 City Diversion Rate** – means the diversion rate specified at Section 6.1.5.1.

1 **1.23 City Permit** – means any permit issued to the City by the OWRB pursuant to the
2 Amended Permit Application and consistent with the Settlement Agreement and the Settlement
3 Act.

4 **1.24 City Reservoirs** – means Atoka Reservoir, Canton Reservoir, Draper Reservoir,
5 Hefner Reservoir, McGee Creek Reservoir, and Overholser Reservoir; individually, “City
6 Reservoir.”

7 **1.25 City Sardis Storage** – means the Conservation Storage Capacity the City will receive
8 pursuant to the Amended Storage Contract Transfer Agreement and use and maintain in accord
9 with Section 6.

10 **1.26 Conservation Storage Capacity** – means the total storage space as stated in the 1974
11 Storage Contract in Sardis Lake between elevations five hundred ninety-nine (599) feet above
12 MSL and five hundred forty-two (542) feet above MSL, which is estimated to contain two
13 hundred ninety-seven thousand two hundred (297,200) AF of water after adjustment for
14 sediment deposits, and which may be used for municipal and industrial water supply, fish and
15 wildlife, and recreation.

16 **1.27 Draper Reservoir (“Lake Stanley Draper”)** – means the reservoir whose dam is
17 located in Section 24, Township 10 North, Range 2 West of the Indian Meridian in Cleveland
18 County, Oklahoma.

19 **1.28 Drought Conditions** – means Moderate Drought Conditions, Advanced Drought
20 Conditions, or Extreme Drought Conditions.

21 **1.29 Enactment Date** – means December 16, 2016, which date is when the Settlement Act
22 became a federal public law.

1 **1.30 Enforceability Date** – means the date on which the Secretary of the Interior
2 publishes in the Federal Register a notice certifying that the conditions of Section 4.1 and
3 subsection (i) of the Settlement Act have been satisfied.

4 **1.31 Execution Date** – means the date on which the State (including the OWRB),
5 Chickasaw Nation, Choctaw Nation, City, and Trust shall have signed the Settlement Agreement,
6 which shall be deemed August 22, 2016, once the Settlement Agreement has been executed by
7 the State (including the OWRB), the Chickasaw Nation, the Choctaw Nation, the City, and the
8 Trust.

9 **1.32 Expiration Date** – means September 30, 2020, unless extended as allowed by
10 Section 4.4.

11 **1.33 Extreme Drought Conditions** – means those conditions when: (i) the cumulative
12 amount of stored water in the City Reservoirs is less than fifty percent (50%) of the cumulative
13 amount of Live Storage Capacity for the City Reservoirs and (ii) the amounts of water in Hefner
14 Reservoir and Draper Reservoir are less than fifty percent (50%) of each reservoir's respective
15 Live Storage Capacity.

16 **1.34 Hefner Reservoir** – means the reservoir whose dam is located in Section 23,
17 Township 13 North, Range 4 West of the Indian Meridian in Oklahoma County, Oklahoma.

18 **1.35 Kiamichi Basin Hydrologic Model** – means the surface water hydrologic model for
19 the Kiamichi Basin, inclusive of tributaries thereto, that the State, the Chickasaw Nation, the
20 Choctaw Nation, and the City developed for purposes of the Settlement Agreement and as
21 referenced in Sections 5.3.1.2.5.6, 5.3.1.2.5.7, and 6.2.1. Documentation of the Kiamichi Basin
22 Hydrologic Model will be available at OWRB offices in Oklahoma City, as provided in Section
23 4.1.8. A summary technical memorandum describing the model is included as Exhibit 3.

1 **1.36 Kiamichi Basin** – means that hydrologic basin designated by the OWRB in the 2012
2 Update to the Oklahoma Comprehensive Water Plan as subbasins 5 and 6, and generally
3 depicted in Exhibit 10.

4 **1.37 Live Storage Capacity** – means the amount of storage capacity in a City Reservoir,
5 as calculated and measured pursuant to Section 6.1.8.3.

6 **1.38 McGee Creek Reservoir** – means the reservoir whose dam is located in Section 7,
7 Township 3 South, Range 14 East of the Indian Meridian in Atoka County, Oklahoma.

8 **1.39 Mean Annual Flow** – means the average annual runoff for a Settlement Area
9 Hydrologic Basin modeled at, or in close proximity to, the basin outflow point utilizing primarily
10 stream flow data from USGS gaging stations.

11 **1.40 Mean Available Flow** – means the Mean Annual Flow of a Settlement Area
12 Hydrologic Basin that remains after subtracting that portion of such flows as are necessary to
13 satisfy permitted appropriative uses, any surface water right developed by either Nation pursuant
14 to Section 7.7, domestic use set aside calculated based on six (6) AFY per one hundred sixty
15 (160) acres within the basin, prior vested rights, any surface water right recognized pursuant to
16 Section 8 (to the extent not already subtracted), pending applications, reservoir yields, and other
17 designated purposes in the Settlement Area Hydrologic Basin, including but not limited to
18 apportionment provisions of interstate stream compacts to which the State is a party as calculated
19 by any rules developed by any applicable compact commission.

20 **1.41 mgd** – means million-gallons per day.

21 **1.42 MSL** – means mean sea level.

22 **1.43 Moderate Drought Conditions** – means those conditions when: (i) the cumulative
23 amount of stored water in the City Reservoirs is between seventy-five percent (75%) and sixty-

1 five percent (65%) of the cumulative amount of Live Storage Capacity for the City Reservoirs
2 and (ii) the amounts of water stored in Hefner Reservoir and Draper Reservoir are between
3 seventy-five percent (75%) and sixty-five percent (65%) of each reservoir's respective Live
4 Storage Capacity.

5 **1.44 Nations** – means collectively the Choctaw Nation and the Chickasaw Nation.

6 **1.45 Non-Trust Land** – means land within the State held by either the Chickasaw Nation
7 or Choctaw Nation in fee and in which the United States holds no interest as trustee.

8 **1.46 Oklahoma City Water Utilities Trust (“Trust”)** – means the Oklahoma City Water
9 Utilities Trust, formerly known as the Oklahoma City Municipal Improvement Authority, a
10 public trust established pursuant to state law with the City as the beneficiary. A reference in the
11 Settlement Agreement or the Settlement Act to “Oklahoma City Water Utilities Trust” or “Trust”
12 refers to the Oklahoma City Water Utilities Trust, acting severally.

13 **1.47 Out-of-State Use of Settlement Area Waters** – means any use of water or the
14 transfer of any right to use water, including by forbearance agreement, diverted or taken from a
15 location within the Settlement Area for use at a location outside the exterior boundaries of the
16 State.

17 **1.48 Overholser Reservoir** – means the reservoir whose dam is located in Section 30,
18 Township 12 North, Range 4 West of the Indian Meridian in Oklahoma County, Oklahoma.

19 **1.49 OWRB** – means the Oklahoma Water Resources Board, and its successor entities, if
20 any.

21 **1.50 Parallel City Pipeline** – means the second pipeline the City contemplates
22 constructing between Lake Atoka in Atoka County, Oklahoma, and Lake Stanley Draper in
23 Cleveland County, Oklahoma, approximately ninety-six (96) miles in length whose route is

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

6 **1.51 Parties** – means the State (including the OWRB), Chickasaw Nation, Choctaw
7 Nation, City, and Trust as of the Execution Date; and the United States, State (including the
8 OWRB), Chickasaw Nation, Choctaw Nation, City, and Trust as of the Post-Enactment
9 Execution Date.

10 **1.52 Point of Diversion** – means the point of diversion for the City Permit, as defined at
11 Section 6.1.3.

12 **1.53 Post-Enactment Execution Date** – means the date after the Enactment Date on
13 which the Chickasaw Nation and Choctaw Nation, the Secretary of the Interior on behalf of the
14 United States, the State, the City, and the Trust have all executed the Settlement Agreement.

15 **1.54 Sardis Lake** – means the reservoir, formerly known as Clayton Lake, whose dam is
16 located in Section 19, Township 2 North, Range 19 East of the Indian Meridian, Pushmataha
17 County, Oklahoma, the construction, operation, and maintenance of which was authorized by
18 section 203 of the Flood Control Act of 1962 (Public Law 87-874; 76 Stat. 1187).

19 **1.55 Sardis Lake Release Restrictions** – means those limitations on the City's ability to
20 release water from City Sardis Storage specified at Section 6.1.8.

21 **1.56 Settlement Act** – means Pub. Law 114-322, § 3608, 130 Stat. 1628, 1796-1814,
22 included as Exhibit 2.

1 **1.57 Settlement Agreement** – means the settlement agreement as approved by the
2 Nations, the State, the City, and the Trust effective August 22, 2016, as revised to conform with
3 the Settlement Act, as applicable.

4 **1.58 Settlement Area** – means –

5 **1.58.1** the area lying between -

6 **1.58.1.1** the South Canadian River and Arkansas River to the north;

7 **1.58.1.2** the Oklahoma-Texas state line to the south;

8 **1.58.1.3** the Oklahoma-Arkansas state line to the east; and

9 **1.58.1.4** the 98th Meridian to the west; and

10 **1.58.2** the area depicted in Exhibit 1 (dated August 2016) and generally including the
11 following counties, or portions of, in the State:

12 **1.58.2.1** Atoka.

13 **1.58.2.2** Bryan.

14 **1.58.2.3** Carter.

15 **1.58.2.4** Choctaw.

16 **1.58.2.5** Coal.

17 **1.58.2.6** Garvin.

18 **1.58.2.7** Grady.

19 **1.58.2.8** McClain.

20 **1.58.2.9** Murray.

21 **1.58.2.10** Haskell.

22 **1.58.2.11** Hughes.

23 **1.58.2.12** Jefferson.

- 1 **1.58.2.13** Johnston.
- 2 **1.58.2.14** Latimer.
- 3 **1.58.2.15** LeFlore.
- 4 **1.58.2.16** Love.
- 5 **1.58.2.17** Marshall.
- 6 **1.58.2.18** McCurtain.
- 7 **1.58.2.19** Pittsburgh.
- 8 **1.58.2.20** Pontotoc.
- 9 **1.58.2.21** Pushmataha.
- 10 **1.58.2.22** Stephens.

11 **1.59 Settlement Area Hydrologic Basin(s)** – basins depicted in Exhibit 10 (dated August
12 2016), including any of the following basins as denominated in the 2012 Update of the
13 Oklahoma Comprehensive Water Plan:

- 14 **1.59.1** Beaver Creek (24, 25, and 26).
- 15 **1.59.2** Blue (11 and 12).
- 16 **1.59.3** Clear Boggy (9).
- 17 **1.59.4** Kiamichi (5 and 6).
- 18 **1.59.5** Little (2).
- 19 **1.59.6** Lower Arkansas (46 and 47).
- 20 **1.59.7** Lower Canadian (48, 56, and 57).
- 21 **1.59.8** Lower Washita (14).
- 22 **1.59.9** Middle Canadian (58).
- 23 **1.59.10** Mountain Fork (4).

1 **1.59.11** Middle Washita (15 and 16).

2 **1.59.12** Mud Creek (23).

3 **1.59.13** Muddy Boggy (7 and 8).

4 **1.59.14** Poteau (44 and 45).

5 **1.59.15** Red River Mainstem (1, 10, 13, and 21).

6 **1.59.16** Upper Little (3).

7 **1.59.17** Walnut Bayou (22).

8 **1.60 Settlement Area Waters – Means**

9 **1.60.1** Groundwater located within the Settlement Area; and

10 **1.60.2** Surface waters located within both—

11 **1.60.2.1** a Settlement Area Hydrologic Basin, and

12 **1.60.2.2** the Settlement Area.

13 **1.61 Settlement Commission** – means the body established in accord with Section 5.3.3.2
14 and subsection (g) of the Settlement Act.

15 **1.62 State** – means the State of Oklahoma, inclusive of its subsidiary agencies (including
16 the OWRB).

17 **1.63 Technical Committee** – means that committee formed pursuant to Section 5.3.1.2.1.

18 **1.64 Title 82** – means Title 82 of the Oklahoma Statutes or any recodification thereof.

19 **1.65 Trust Land** – means allotted or unallotted land held by the United States in trust for
20 the benefit of either the Chickasaw Nation or the Choctaw Nation.

21 **1.66 United States** – means the United States of America acting in its capacity as trustee
22 for the Nations, their respective members, citizens, and Allottees, or as specifically stated or

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

2. WAIVERS AND RELEASES OF CLAIMS AND OBJECTIONS

2.1 Waiver and Release of Claims by the Nations and the United States as Trustee for the Nations – Subject to the retention of rights and claims provided in Section 2.5 and paragraph (h)(3) of the Settlement Act, and except to the extent that rights are recognized in the Settlement Agreement or Settlement Act, the Nations, each in its own right and on behalf of itself and its respective citizens and members (but not individuals in their capacities as Allottees), and the United States, acting as trustee for the Nations (but not individuals in their capacities as Allottees), waive and release:

2.1.1 all of the following claims asserted or which could have been asserted in any proceeding filed or that could have been filed during the period ending on the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication, relating to:

2.1.1.1 claims to the ownership of water in the State;

2.1.1.2 claims to water rights and rights to use water diverted or taken from a location within the State;

2.1.1.3 claims to authority over the allocation and management of water and administration of water rights, including authority over third-party ownership of or rights to use water diverted or taken from a location within the State and ownership or use of water on Allotments by Allottees or any other person using water on an Allotment with the permission of an Allottee;

1 **2.1.1.4** claims that the State lacks authority over the allocation and management
2 of water and administration of water rights, including authority over the ownership of or rights to
3 use water diverted or taken from a location within the State;

4 **2.1.1.5** any other claim relating to the ownership of water, regulation of water,
5 or authorized diversion, storage, or use of water diverted or taken from a location within the
6 State, which claim is based on the Chickasaw Nation's or the Choctaw Nation's unique
7 sovereign status and rights as defined by federal law and alleged to arise from treaties to which
8 they are signatories, including but not limited to the Treaty of Dancing Rabbit Creek, Act of
9 Sept. 30, 1830, 7 Stat. 333, Treaty of Doaksville, Act of Jan. 17, 1837, 11 Stat. 573, and the
10 related March 23, 1842, patent to the Choctaw Nation; and

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

14 **2.1.2** all claims for damages, losses or injuries to water rights or water, or claims of
15 interference with, diversion, storage, taking, or use of water (including claims for injury to
16 land resulting from the damages, losses, injuries, interference with, diversion, storage, taking,
17 or use of water) attributable to any action by the State, the OWRB, or any water user
18 authorized pursuant to state law to take or use water in the State, including the City, that
19 accrued during the period ending on the Enforceability Date;

20 **2.1.3** all claims and objections relating to the Amended Permit Application and the
21 City Permit, including:

22 **2.1.3.1** all claims regarding regulatory control over or OWRB jurisdiction
23 relating to the permit application and permit; and

1 **2.1.3.2** all claims for damages, losses or injuries to water rights or rights to use
2 water, or claims of interference with, diversion, storage, taking, or use of water (including claims
3 for injury to land resulting from the damages, losses, injuries, interference with, diversion,
4 storage, taking, or use of water) attributable to the issuance and lawful exercise of the City
5 Permit;

6 **2.1.4** all claims to regulatory control over the Permit Numbers P80-48 and 54-613 of
7 the City for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
8 water rights from the Muddy Boggy River, including McGee Creek, for the McGee Creek
9 Reservoir;

10 **2.1.5** all claims that the State lacks regulatory authority over or OWRB jurisdiction
11 relating to Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy River
12 for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River, including
13 McGee Creek, for the McGee Creek Reservoir;

14 **2.1.6** all claims to damages, losses or injuries to water rights or water, or claims of
15 interference with, diversion, storage, taking, or use of water (including claims for injury to
16 land resulting from such damages, losses, injuries, interference with, diversion, storage,
17 taking, or use of water) attributable to the lawful exercise of Permit Numbers P80-48 and 54-
18 613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
19 water rights from the Muddy Boggy River, including McGee Creek, for the McGee Creek
20 Reservoir, that accrued during the period ending on the Enforceability Date;

21 **2.1.7** all claims and objections relating to the approval by the Secretary of the Army
22 of the assignment of the 1974 Storage Contract pursuant to the Amended Storage Contract;
23 and

1 **2.1.8** all claims for damages, losses, or injuries to water rights or water, or claims of
2 interference with, diversion, storage, taking, or use of water (including claims for injury to
3 land resulting from such damages, losses, injuries, interference with, diversion, storage,
4 taking, or use of water) attributable to the lawful exercise of rights pursuant to the Amended
5 Storage Contract.

6 **2.2 Waivers and Releases of Claims by the Nations Against the United States –**

7 Subject to the retention of rights and claims provided in Section 2.5 and paragraph (h)(3) of the
8 Settlement Act, and except to the extent that rights are recognized in the Settlement Agreement
9 or the Settlement Act, the Nations waive and release all claims against the United States
10 (including any agency or employee of the United States) relating to:

11 **2.2.1** all of the following claims asserted or which could have been asserted in any
12 proceeding filed or that could have been filed by the United States as a trustee during the
13 period ending on the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v.*
14 *Fallin et al.*, CIV 11-927 (W.D. Ok.) or *OWRB v. United States, et al.* CIV 12-275 (W.D.
15 Ok.), or any general stream adjudication relating to:

16 **2.2.1.1** claims to the ownership of water in the State;

17 **2.2.1.2** claims to water rights and rights to use water diverted or taken from a
18 location within the State;

19 **2.2.1.3** claims to authority over the allocation and management of water and
20 administration of water rights, including authority over third-party ownership of or rights to use
21 water diverted or taken from a location within the State and ownership or use of water on
22 Allotments by Allottees or any other person using water on an Allotment with the permission of
23 an Allottee;

1 **2.2.1.4** claims that the State lacks authority over the allocation and management
2 of water and administration of water rights, including authority over the ownership of or rights to
3 use water diverted or taken from a location within the State;

4 **2.2.1.5** any other claim relating to the ownership of water, regulation of water,
5 or authorized diversion, storage, or use of water diverted or taken from a location within the
6 State, which claim is based on the Chickasaw Nation's or the Choctaw Nation's unique
7 sovereign status and rights as defined by federal law and alleged to arise from treaties to which
8 they are signatories, including but not limited to the Treaty of Dancing Rabbit Creek, Act of
9 Sept. 30, 1830, 7 Stat. 333, Treaty of Doaksville, Act of Jan. 17, 1837, 11 Stat. 573, and the
10 related March 23, 1842, patent to the Choctaw Nation; and

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

14 **2.2.2** all claims for damages, losses or injuries to water rights or water, or claims of
15 interference with, diversion, storage, taking, or use of water (including claims for injury to
16 land resulting from the damages, losses, injuries, interference with, diversion, storage, taking,
17 or use of water) attributable to any action by the State, the OWRB, or any water user
18 authorized pursuant to state law to take or use water in the State, including but not limited to
19 the City, that accrued during the period ending on the Enforceability Date;

20 **2.2.3** all claims and objections relating to the Amended Permit Application, and the
21 City Permit, including:

22 **2.2.3.1** all claims regarding regulatory control over or OWRB jurisdiction
23 relating to the permit application and permit; and

1 **2.2.3.2** all claims for damages, losses or injuries to water rights or rights to use
2 water, or claims of interference with, diversion, storage, taking, or use of water (including claims
3 for injury to land resulting from the damages, losses, injuries, interference with, diversion,
4 storage, taking, or use of water) attributable to the issuance and lawful exercise of the City
5 Permit;

6 **2.2.4** all claims to regulatory control over the Permit Numbers P80-48 and 54-613
7 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
8 rights from the Muddy Boggy River, including McGee Creek, for the McGee Creek
9 Reservoir;

10 **2.2.5** all claims that the State lacks regulatory authority over or OWRB jurisdiction
11 relating to Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy River
12 for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River, including
13 McGee Creek, for the McGee Creek Reservoir;

14 **2.2.6** all claims to damages, losses or injuries to water rights or water, or claims of
15 interference with, diversion, storage, taking, or use of water (including claims for injury to
16 land resulting from the damages, losses, injuries, interference with, diversion, storage, taking,
17 or use of water) attributable to the lawful exercise of Permit Numbers P80-48 and 54-613 for
18 water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water rights
19 from the Muddy Boggy River, including McGee Creek, for the McGee Creek Reservoir, that
20 accrued during the period ending on the Enforceability Date;

21 **2.2.7** all claims and objections relating to the approval by the Secretary of the Army
22 of the assignment of the 1974 Storage Contract pursuant to the Amended Storage Contract;

1 **2.2.8** all claims relating to litigation by the United States, prior to the Enforceability
2 Date, of the water rights of the Nations in the State of Oklahoma; and

3 **2.2.9** all claims relating to the negotiation, execution, or adoption of the Settlement
4 Agreement (including exhibits) or the Settlement Act.

5 **2.3 Tolling of Claims** - Each applicable period of limitation and time-based equitable
6 defense relating to a claim described in Section 2.1 and 2.2 and subsection (h) of the Settlement
7 Act shall be tolled during the period beginning on the Enactment Date and ending on the earlier
8 of the Enforceability Date or the Expiration Date under paragraph (i)(2) of the Settlement Act.

9 **2.4 Effectiveness of Waivers and Releases** - The waivers and releases under Sections
10 2.1 and 2.2 and subsection (h) of the Settlement Act take effect on the Enforceability Date.

11 **2.5 Retention and Reservation of Claims by the Nations and the United States—**
12 Notwithstanding the waiver and releases of claims in Section 2.1 and 2.2 and paragraphs (h)(1)
13 and (h)(2) of the Settlement Act, the Nations and the United States, acting as trustee, retain:

14 **2.5.1** all claims for enforcement of the Settlement Agreement and the Settlement
15 Act;

16 **2.5.2** all rights to use and protect any water right of the Nations recognized by or
17 established pursuant to the Settlement Agreement, including the right to assert claims for
18 injuries relating to the rights and the right to participate in any general stream adjudication,
19 including any *inter se* proceeding;

20 **2.5.3** all claims under:

21 **2.5.3.1** the Comprehensive Environmental Response, Compensation, and
22 Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), including for damages to natural resources;

23 **2.5.3.2** the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*);

1 **2.5.3.3** the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); and
2 **2.5.3.4** any regulations implementing the Acts described in Sections 2.5.3.1
3 through 2.5.3.3 and subclauses (h)(3)(A)(iii)(I) through (III) of the Settlement Act;

4 **2.5.4** all claims relating to damage, loss, or injury resulting from an unauthorized
5 diversion, use, or storage of water, including damages, losses, or injuries to land or nonwater
6 natural resources associated with any hunting, fishing, gathering, or cultural right; and

7 **2.5.5** all rights, remedies, privileges, immunities, and powers not specifically waived
8 and released pursuant to the Settlement Act or the Settlement Agreement.

9 **2.6 Nations' Non-Objection to Amended Permit Application** – In return for the
10 bargained-for exchange of benefits in the Settlement Agreement and upon the Enactment Date,
11 the Nations:

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

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

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

21 **2.7 Nations' Non-Objection in Other Proceedings** – In return for the bargained-for
22 exchange of benefits in the Settlement Agreement and upon the Enforceability Date, the Nations:

1 **2.7.1** Shall not object to local, state, or federal agencies proceeding, in accord with
2 applicable law and subject to the Settlement Agreement, with any public notice, hearing or
3 procedure for any permits or approvals for the storage, release from storage, diversion, and
4 use of water, including the Parallel Pipeline, that are necessary for the City’s beneficial use
5 and delivery of water to its customers consistent with the provisions of Section 6;

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

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

16 **3. JURISDICTION, WAIVERS OF SOVEREIGN IMMUNITY FOR**
17 **INTERPRETATION AND ENFORCEMENT**

18 **3.1 Jurisdiction –**

19 **3.1.1 In General. –**

20 **3.1.1.1 Exclusive Jurisdiction -** The United States District Court for the
21 Western District of Oklahoma shall have exclusive jurisdiction for all purposes and for all
22 causes of action relating to the interpretation and enforcement of the Settlement Agreement,
23 the Amended Storage Contract, or interpretation or enforcement of the Settlement Act,

1 including all actions filed by an Allottee pursuant to subparagraph (e)(6)(B) of the Settlement
2 Act.

3 **3.1.1.2 Right to Bring Action** – The Choctaw Nation, the Chickasaw Nation,
4 the State, the City, the Trust, and the United States shall each have the right to bring an action
5 pursuant to the Settlement Act.

6 **3.1.1.3 No Action in Other Courts; No Exhaustion** – No action may be
7 brought in any other Federal, Tribal, or State court or administrative forum for any purpose
8 relating to the Settlement Agreement, Amended Storage Contract, or the Settlement Act. Each
9 Party further waives and shall not invoke inconvenient forum or any exhaustion doctrine,
10 including the doctrines of tribal exhaustion, or exhaustion of administrative remedies, as a
11 prerequisite for any Party’s bringing an action under this Section 3.

12 **3.1.1.4 No Monetary Judgment** – Nothing in this Section 3 or the Settlement
13 Act authorizes any money judgment or otherwise allows the payment of funds by the United
14 States, the Nations, the State (including the OWRB), the City, or the Trust.

15 **3.1.1.5 Limitation** - Neither the Settlement Commission established by the
16 Settlement Act in accord with Section 5.3.3.2 nor the Atoka and Sardis Conservation Projects
17 Board established pursuant to Section 6.5.2.1.1 may sue or be sued, and neither shall be
18 considered a proper or necessary party for any purpose in any action, including actions to
19 interpret or enforce the terms of the Settlement Agreement, the Amended Storage Contract, or
20 the Settlement Act.

21 **3.1.2 Notice and Conference** – Any entity seeking to interpret or enforce the
22 Settlement Agreement shall comply with the following:

1 **3.1.2.1** Any party asserting noncompliance or seeking interpretation of the
2 Settlement Agreement or the Settlement Act shall first serve written notice on the Party alleged
3 to be in breach of the Settlement Agreement or violation of the Settlement Act.

4 **3.1.2.2** The notice under 3.1.2.1 and clause (j)(1)(B)(i) of the Settlement Act
5 shall identify the specific provision of the Settlement Agreement or the Settlement Act alleged
6 to have been violated or in dispute and shall specify in detail the contention of the Party
7 asserting the claim and any factual basis for the claim.

8 **3.1.2.3** Representatives of the Party alleging a breach or violation and the Party
9 alleged to be in breach or violation shall meet not later than thirty (30) days after receipt of
10 notice under 3.1.2.1 and clause (j)(1)(B)(i) of the Settlement Act in an effort to resolve the
11 dispute.

12 **3.1.2.4** If the matter is not resolved to the satisfaction of the Party alleging
13 breach not later than ninety (90) days after the original notice under 3.1.2.1 and clause
14 (j)(1)(B)(i) of the Settlement Act, the Party may take any appropriate enforcement action
15 consistent with the Settlement Agreement and subsection (j) of the Settlement Act.

16 **3.2 Limited Waivers of Sovereign Immunity** – Effective upon and after the
17 Enforceability Date, in the case of any action to interpret or enforce the Settlement Agreement or
18 Settlement Act:

19 **3.2.1 United States Immunity.** – Pursuant to subparagraph (j)(2)(B) of the
20 Settlement Act, any claim by the United States to sovereign immunity from suit is irrevocably
21 waived for any action brought by the State, the Chickasaw Nation, the Choctaw Nation, the
22 City, or the Trust in the United States District Court for the Western District of Oklahoma
23 relating to interpretation or enforcement of the Settlement Agreement or the Settlement Act,

1 including of the appellate jurisdiction of the United States Court of Appeals for the Tenth
2 Circuit and the Supreme Court of the United States.

3 **3.2.2 Chickasaw Nation Immunity.** – For the exclusive benefit of the State
4 (including the OWRB), the City, the Trust, the Choctaw Nation, and the United States, and in
5 addition to the waiver in § 3680(j)(2)(C) of the Settlement Act, the Chickasaw Nation
6 expressly and irrevocably consents to suit and waives sovereign immunity from suit solely for
7 any action brought in the United States District Court for the Western District of Oklahoma
8 relating to interpretation or enforcement of the Settlement Agreement or the Settlement Act, if
9 the action is brought by the State, the OWRB, the City, the Trust, the Choctaw Nation, or the
10 United States, including the appellate jurisdiction of the United States Court of Appeals for
11 the Tenth Circuit and the Supreme Court of the United States.

12 **3.2.3 Choctaw Nation Immunity.** – For the exclusive benefit of the State (including
13 the OWRB), the City, the Trust, the Chickasaw Nation, and the United States, the Choctaw
14 Nation expressly and irrevocably consents to suit and waives sovereign immunity from suit
15 solely for any action brought in the United States District Court for the Western District of
16 Oklahoma relating to interpretation or enforcement of the Settlement Agreement or the
17 Settlement Act, if the action is brought by the State, the OWRB, the City, the Trust, the
18 Chickasaw Nation, or the United States, including the appellate jurisdiction of the United
19 States Court of Appeals for the Tenth Circuit and the Supreme Court of the United States.

20 **3.2.4 State Immunity.** – For the exclusive benefit of the City, the Trust, the
21 Choctaw Nation, the Chickasaw Nation, and the United States, the State (including the
22 OWRB) expressly and irrevocably consents to suit, waives its sovereign immunity from suit,
23 and agrees not to raise the Eleventh Amendment to the United States Constitution or

comparable defense to the validity of such consent or waiver solely for any action of any kind brought in the United States District Court for the Western District of Oklahoma relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which action is brought by the Chickasaw Nation, the Choctaw Nation, the City, the Trust, or the United States, including the appellate jurisdiction of the United States Court of Appeals for the Tenth Circuit and the Supreme Court of the United States.

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

4. ENFORCEABILITY DATE

4.1 In General – The Settlement Agreement shall take effect and be enforceable on the date on which the Secretary of the Interior publishes in the Federal Register a certification that:

4.1.1 Conformance of Settlement Agreement – to the extent the Settlement Agreement conflicts with the Settlement Act, the Settlement Agreement has been amended to conform with the Settlement Act;

4.1.2 Execution of Settlement Agreement – the Settlement Agreement, as amended, has been executed by the Secretary of the Interior, the Nations, the Governor and the Attorney General of the State, the OWRB, the City, and the Trust;

1 **4.1.3 Execution of Waivers and Releases of Claims** – the United States and the
2 Chickasaw Nation have executed the waivers of claims stated in Exhibit 5, and the United
3 States and the Choctaw Nation have executed the waivers of claims stated in Exhibit 6;

4 **4.1.4 Conformance of Amended Storage Contract** – to the extent the Amended
5 Storage Contract conflicts with the Settlement Act, the Amended Storage Contract has been
6 amended to conform with the Settlement Act;

7 **4.1.5 Execution and Approval of Amended Storage Contract**– the Amended
8 Storage Contract, as amended to conform with the Settlement Act, has been—

9 **4.1.5.1** executed by the State, the City, and the Trust; and

10 **4.1.5.2** approved by the Secretary of the Army;

11 **4.1.6 Modification of September 11, 2009, Court Order** – an order has been
12 entered in *United States v. Oklahoma Water Resources Board*, CIV 98-C-521-E (N.D. Ok.),
13 with any modifications to the order dated September 11, 2009, as necessary to conform the
14 order to the Amended Storage Contract, the Settlement Agreement, and the Settlement Act,
15 and as provided in the Settlement Agreement and the Settlement Act; the motion and
16 proposed form of order for these purposes is included as Exhibit 7;

17 **4.1.7 City Permit** – the OWRB has issued the City Permit;

18 **4.1.8 Model Documentation** – the final documentation of the Kiamichi Basin
19 Hydrologic Model is on file at the Oklahoma City offices of the OWRB;

20 **4.1.9 Atoka and Sardis Conservation Projects Fund** – the Atoka and Sardis
21 Conservation Projects Fund has been funded as provided in Section 6.5.2.1.2; and

22 **4.1.10 Orders of Dismissal** –orders of dismissal have been entered in *Chickasaw*
23 *Nation, Choctaw Nation v. Fallin, et al.*, CIV. 11-927 (W.D. Ok.), and *OWRB v. United*

1 *States, et al.* CIV 12-275 (W.D. Ok.), as provided in the Settlement Agreement; the proposed
2 forms of orders for these purposes are included as Exhibit 8 and Exhibit 9, respectively.

3 **4.2 Expiration Date**—If the Secretary of the Interior fails to publish a statement of
4 findings under 4.1 and paragraph (i)(1) of the Settlement Act by not later than September 30,
5 2020, or such alternative later date as is agreed to by the Secretary of the Interior, the Nations,
6 the State, the City, and the Trust under 4.4 and paragraph (i)(4) of the Settlement Act, the
7 following shall apply:

8 **4.2.1** The Settlement Act, except for subsection (i) of the Settlement Act and any
9 provisions of the Settlement Act that are necessary to carry out subsection (i) of the
10 Settlement Act (but only for purposes of carrying out subsection (i) of the Settlement Act), are
11 not effective beginning on September 30, 2020, or the alternative date.

12 **4.2.2** The waivers and releases of claims, and the limited waivers of sovereign
13 immunity, shall not become effective.

14 **4.2.3** The Settlement Agreement shall be null and void, except for this Section 4.2
15 and any provisions of the Settlement Agreement that are necessary to carry out this Section
16 4.2 and paragraph (i)(2) of the Settlement Act.

17 **4.2.4** Except with respect to this Section 4.2 and paragraph (i)(2) of the Settlement
18 Act, the State, the Nations, the City, the Trust, and the United States shall not be bound by any
19 obligations or benefit from any rights recognized under the Settlement Agreement.

20 **4.2.5** If the City Permit has been issued, the permit shall be null and void, except that
21 the City may resubmit to the OWRB, and the OWRB shall be considered to have accepted,
22 OWRB Permit Application No. 2007-017 without having waived the original application
23 priority date and appropriative quantities.

1 **4.2.6** If the Amended Storage Contract has been executed or approved, the Contract
2 shall be null and void, and the 2010 Agreement shall be considered to be in force and effect as
3 between the State and the Trust.

4 **4.2.7** If the Atoka and Sardis Conservation Projects Fund has been established and
5 funded, the funds shall be returned to the respective funding Parties with any accrued interest.

6 **4.3 No Prejudice--**The occurrence of the Expiration Date under 4.2 and paragraph
7 (i)(2) of the Settlement Act shall not in any way prejudice:

8 **4.3.1** any argument or suit that the Nations may bring to contest—

9 **4.3.1.1** the pursuit by the City of OWRB Permit Application No. 2007-017, or a
10 modified version; or

11 **4.3.1.2** the 2010 Agreement;

12 **4.3.2** any argument, defense, or suit the State may bring or assert with regard to the
13 claims of the Nations to water or over water in the Settlement Area; or

14 **4.3.3** any argument, defense or suit the City may bring or assert—

15 **4.3.3.1** with regard to the claims of the Nations to water or over water in the
16 Settlement Area relating to OWRB Permit Application No. 2007-017, or a modified version; or

17 **4.3.3.2** to contest the 2010 Agreement.

18 **4.4 Extension--**The Expiration Date under 4.2 and paragraph (i)(2) of the Settlement Act
19 may be extended in writing if the Nations, the State, the OWRB, the United States, and the City
20 agree that an extension is warranted.

21 **4.5 Notice of Satisfaction of Conditions Precedent** – The State, City, and Nations shall
22 jointly notify the Secretary of the Interior when the conditions specified in Sections 4.1.1 through

4.1.10 have been satisfied, which notification shall include documentation sufficient for purposes of certification pursuant to Section 4.1.

5. GENERAL PROVISIONS

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

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

5.1.2 Beginning on the Enforceability Date, Settlement Area Waters shall be permitted, allocated, and administered by the OWRB in accordance with this Settlement Agreement and the Settlement Act.

5.2 Future OWRB Rulemakings – If the OWRB proposes a new rule or an amendment to a rule in effect as of the Execution Date that affects the permitting or administration of Settlement Area Waters, the Nations or either Nation may review and comment on the proposed rule or amendment to the OWRB, which comment the Nations or either Nation shall submit in the form and through the process provided by state law. Prior to the OWRB’s finalization of the proposed rule or amendment, the OWRB shall provide the commenting Nation or Nations opportunity to meet and confer with OWRB staff regarding any comments submitted by a Nation or the Nations. Nothing herein expands or limits the rights any Party has for the interpretation or enforcement of the Settlement Agreement pursuant to Section 3 and the Settlement Act.

5.3 Permitting, Allocation, and Administration

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

5.3.1.1 Basin Classification and Conferral Threshold

5.3.1.1.1 Water Basin Classifications

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

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

1 **5.3.1.1.1.3 Class C Basins** – Class C Basins are those Settlement Area

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

8 **5.3.1.1.2 Conferral Threshold** – The process specified at Section 5.3.1.2

9 shall be a precondition to OWRB consideration of those applications that satisfy the following
10 conditions:

11 **5.3.1.1.2.1 Class A Basin** – An application to appropriate water for use at

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

18 **5.3.1.1.2.2 Class B Basin** – An application to appropriate water for use at

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

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

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

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

19 **5.3.1.2 Conferral and Modeling**

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

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

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

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

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

5.3.1.2.1.2 Performance of Modeling Work

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **5.3.1.3 Permit Application Processing**

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

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

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

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

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

15 **5.3.1.3.2 Applicant’s Use and Demand Findings** – Using the evidence
16 tendered in administrative proceedings on the application in addition to relevant data included in
17 the most recent update to the Oklahoma Comprehensive Water Plan, OWRB will process the
18 application under Title 82 and OWRB rules and regulations and make written findings on the
19 following as part of its final decision:

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

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

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

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

10 **5.3.2 Arbuckle-Simpson Groundwater Basin**

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

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

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

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

5.3.2.3.1 The lands owned or leased by the applicant overlie the Arbuckle-Simpson Groundwater Basin;

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

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

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

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

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

7 **5.3.3.2 Settlement Commission**

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

11 **5.3.3.2.2 Members –**

12 **5.3.3.2.2.1 In General** – The Settlement Commission shall be comprised
13 of five (5) members, appointed as follows:

- 14 **5.3.3.2.2.1.1** One (1) by the Governor of the State.
- 15 **5.3.3.2.2.1.2** One (1) by the Attorney General of the State.
- 16 **5.3.3.2.2.1.3** One (1) by the Chief of the Choctaw Nation.
- 17 **5.3.3.2.2.1.4** One (1) by the Governor of the Chickasaw Nation.
- 18 **5.3.3.2.2.1.5** One (1) by agreement of the members described in
19 5.3.3.2.2.1.1 through 5.3.3.2.2.1.4 and clauses (g)(2)(A)(i) through (g)(2)(A)(iv) of the
20 Settlement Act.

21 **5.3.3.2.2.2 Jointly Appointed Member** – If the members described in
22 Sections 5.3.3.2.2.1.1 through 5.3.3.2.2.1.4 and clauses (g)(2)(A)(i) through (g)(2)(A)(iv) of the

Settlement Act do not agree on a member appointed pursuant to Section 5.3.3.2.2.1.5 and clause (g)(2)(A)(v) of the Settlement Act:

5.3.3.2.2.2.1 the members shall submit to the Chief Judge for the United States District Court for the Eastern District of Oklahoma, a list of not less than three (3) persons; and

5.3.3.2.2.2.2 from the list under Section 5.3.3.2.2.2.1 and clause (g)(2)(B)(i) of the Settlement Act, the Chief Judge shall make the appointment.

5.3.3.2.2.3 Initial Appointments – The initial appointments to the Settlement Commission shall be made not later than ninety (90) days after the Enforceability Date.

5.3.3.2.3 Member Terms –

5.3.3.2.3.1 In General – Each Settlement Commission member shall serve at the pleasure of the appointing authority.

5.3.3.2.3.2 Compensation – A member of the Settlement Commission shall serve without compensation, but an appointing authority may reimburse the member appointed by the entity for costs associated with service on the Settlement Commission. The fifth member shall have their costs associated with service on the Settlement Commission reimbursed by the State and the Nations.

5.3.3.2.3.3 Vacancies – If a member of the Settlement Commission is removed or resigns, the appointing authority shall appoint the replacement member.

5.3.3.2.3.4 Jointly Appointed Member – The member of the Settlement Commission described in Section 5.3.3.2.2.1.5 and clause (g)(2)(A)(v) of the Settlement Act may

1 be removed or replaced by a majority vote of the Settlement Commission based on a failure of
2 the member to carry out the duties of the member.

3 **5.3.3.2.4 Duties** – The Settlement Commission’s duties shall be as follows:

4 **5.3.3.2.4.1 Evaluation** – to evaluate any proposed Out-of-State Use of
5 Settlement Area Waters in accord with Section 5.3.3.3.2;

6 **5.3.3.2.4.2 Report** – to prepare, finalize, and submit a report in accord
7 with Section 5.3.3.3.3, which report shall document the Settlement Commission’s evaluation of
8 those matters indicated in Section 5.3.3.3.2 and such other relevant issues presented by the
9 proposed Out-of-State Use of Settlement Area Waters;

10 **5.3.3.2.4.3 Appeals from Denials of Funding for Settlement Area**
11 **Projects** – to hear and decide appeals submitted to it pursuant to Section 5.3.3.5.2.5; and

12 **5.3.3.2.4.4 Internal Procedures** – to establish such procedures as are
13 necessary for purposes of the Settlement Commission’s operation and performance of the duties
14 set forth in Section 5.3.3.

15 **5.3.3.2.4.5 Limitation** – The Settlement Commission shall not possess or
16 exercise any duty or authority not stated in the Settlement Agreement.

17 **5.3.3.3 Proposal Evaluation; Report**

18 **5.3.3.3.1 Proposal** – Any person proposing an Out-of-State Use of
19 Settlement Area Waters shall submit a proposal to the Settlement Commission for evaluation, a
20 copy of which the Settlement Commission shall provide to the OWRB.

21 **5.3.3.3.2 Evaluation** – In performing its evaluation of a proposal, the
22 Settlement Commission may consider all available information, including, at a minimum: (i) the
23 use to which the water will be placed; (ii) the feasibility of the works proposed for delivering

1 water; (iii) the effect of the proposed use on water availability in the source basin and throughout
2 Oklahoma; (iv) the likely environmental and economic impact of the proposed use on the source
3 basin and Oklahoma; and (v) the appropriate valuation to be imposed as a condition of the
4 proposed Out-of-State Use of Settlement Area Waters. To support the Settlement Commission's
5 performance of its duties under Section 5.3.3, the OWRB shall provide to the Settlement
6 Commission a preliminary technical evaluation of the availability of water in the source basin,
7 including permitted uses, any pending applications, and any other known, projected, or proposed
8 water uses; *provided*, that such preliminary evaluation shall not prejudice or otherwise control
9 any subsequent administrative processing of the proposed Out-of-State Use of Settlement Area
10 Waters by the OWRB.

11 **5.3.3.3.3 Report; Legislative Action** – The Settlement Commission's
12 evaluation shall be contained in a report that the Settlement Commission shall submit to the
13 Speaker of the Oklahoma House of Representatives and the President *Pro Tem* of the Oklahoma
14 Senate. The Oklahoma Legislature may consider and act on the Settlement Commission's report
15 as the Legislature deems appropriate.

16 **5.3.3.3.4 Administrative Fees and Costs** – Any person proposing an Out-
17 of-State Use of Settlement Area Waters shall pay those fees and costs associated with the
18 Settlement Commission's evaluation and preparation of its report. The Nations and State will
19 coordinate to provide additional reasonable administrative support, including funding, to allow
20 the Settlement Commission to fulfill its duties.

21 **5.3.3.4 Applications for a Proposed Out-of-State Use of Settlement Area**
22 **Waters** – No Out-of-State Use of Settlement Area Waters shall be lawful unless and until such
23 use is made pursuant to a validly issued OWRB permit. Once a proposed Out-of-State Use of

Settlement Area Waters has been evaluated by the Settlement Commission and authorized by the Oklahoma Legislature, the person proposing such use shall submit to the OWRB an application for a water use permit, which application the OWRB shall process in accord with Section 5.3.1, including Sections 5.3.1.2 and 5.3.1.3, without regard to the amount proposed for appropriation and use. Any Out-of-State Use of Settlement Area Waters permitted by the OWRB shall be subject to State jurisdiction and administered by the OWRB in accord with the permit issued, state law, the Settlement Agreement, and the Settlement Act.

5.3.3.5 Water Preservation Infrastructure Fund

5.3.3.5.1 Created – Any monies paid relating to an Out-of-State Use of Settlement Area Waters shall be deposited into the Water Preservation Infrastructure Fund, hereby created. The purpose of the Water Preservation Infrastructure Fund, inclusive of all monies deposited therein, shall be solely and exclusively to provide grants for the construction and maintenance of public water infrastructure throughout Oklahoma, including but not limited to public infrastructure for municipal and rural water supply, irrigation supply, and wastewater projects.

5.3.3.5.2 Administration of Water Preservation Infrastructure Fund

5.3.3.5.2.1 Allocation and Disbursement – Monies deposited pursuant to Section 5.3.3.5.1 may only be allocated and disbursed in accord with the Settlement Agreement and the Settlement Act.

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

1 **5.3.3.5.2.3 Consideration of Applications** – The OWRB shall consider

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

7 **5.3.3.5.2.4 Settlement Area Projects Priority** – As provided in Section 2

8 of Exhibit 11, applications for funding for public water infrastructure projects located within or
9 serving the Settlement Area shall receive an additional ten (10) points.

10 **5.3.3.5.2.5 Appeal of Denial of Funding for Settlement Area Projects** –

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

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

21 As provided in this Section 6, the Parties have agreed to provisions to enhance water availability
22 for use within the Settlement Area, to support recreation, fish and wildlife needs, and to resolve
23 the Nations’ objections to the OWRB’s consideration of the City’s Amended Permit Application.

1 These provisions include Sardis Lake Release Restrictions, Bypass Flow Requirements, and City
2 water conservation requirements to protect Sardis Lake recreation, fish and wildlife benefits; a
3 set-aside of Conservation Storage Capacity for local use of the Administrative Set-Aside; and the
4 Atoka and Sardis Conservation Projects Board.

5 **6.1 Amended Permit Application** – To facilitate the implementation of provisions
6 referenced above, the City will file with the OWRB within one hundred twenty (120) days after
7 the Execution Date the Amended Permit Application, which shall include the terms and
8 conditions set forth in this Section 6.1:

9 **6.1.1 Scope** – that the permit provide a right: (i) to store Kiamichi Basin water in
10 Sardis Lake consistent with the Amended Storage Contract; (ii) to release water from Sardis
11 Lake for delivery to the Point of Diversion; and (iii) to divert and beneficially use water from
12 the Kiamichi Basin.

13 **6.1.2 Amount of Appropriation** – that the permit provide a right to appropriate one
14 hundred fifteen thousand (115,000) AFY and specify that water bypassed in accord with
15 Section 6.1.5.2 shall not be counted against the City’s one hundred fifteen thousand (115,000)
16 AFY appropriation; *provided*, that the City’s compliance with the Bypass Requirement of
17 Section 6.1.5.2 shall not be grounds for finding any forfeiture of such appropriation.

18 **6.1.3 Point of Diversion** – that the permit specify a point of diversion from the
19 Kiamichi River in the general vicinity of Moyers Crossing in Pushmataha County, Oklahoma.

20 **6.1.4 Sources** – that the permit provide that the sources of water shall be stream
21 water from the Kiamichi River, water released from City Sardis Storage, or any combination
22 thereof.

1 **6.1.5 City Diversion Rate, Bypass Requirement, and Flow Rate** – that the permit

2 provide for:

3 **6.1.5.1** a diversion rate of two hundred fifty (250) cfs;

4 **6.1.5.2** a requirement that the City bypass fifty (50) cfs at the Point of Diversion
5 as a precondition to diverting water; and

6 **6.1.5.3** a flow rate of three hundred (300) cfs, which is the combined amount of
7 the City Diversion Rate and the Bypass Requirement.

8 **6.1.6 Exercise of City Diversion Rate, Bypass Requirement, and Flow Rate** –

9 that the permit provide:

10 **6.1.6.1** that regardless of hydrological conditions, the City may divert water
11 under the City Permit only when the full amount of the Bypass Requirement flows past the Point
12 of Diversion;

13 **6.1.6.2** that the City may divert natural flow to the extent the natural flow
14 exceeds the Bypass Requirement at the Point of Diversion;

15 **6.1.6.3** that the City may divert flows that result from City Sardis Storage
16 releases to the extent that such releases in combination with any natural flow exceed the Bypass
17 Requirement at the Point of Diversion; and

18 **6.1.6.4** that the City provide to the OWRB an accounting of its releases from
19 City Sardis Storage and measurement of its diversions and bypasses at the Point of Diversion.

20 **6.1.7 Purposes** – that the permit provide that the purposes for which water may be
21 beneficially used shall be municipal use by the City, the City’s current and future wholesale
22 and retail water customers and other public water supply entities in Oklahoma, and incidental

purposes in Sardis Lake for recreation, fish and wildlife benefits as necessary to exercise the City's one hundred fifteen thousand (115,000) AFY appropriation.

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

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

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

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

6.1.8.2 Drought Withdrawals – During Drought Conditions, the City may have water released from City Sardis Storage in amounts that cause the Sardis Lake surface elevation to drop below the Baseline Lake Levels in Section 6.1.8.1 only if it is implementing and enforcing the water conservation measures described in Exhibit 12 for all of its retail and wholesale customers, inside and outside of the City's municipal boundaries. The City Reservoir

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

6.1.8.2.1 Moderate Drought Withdrawals – When Moderate Drought

Conditions exist, the City may have water released from City Sardis Storage from July 5 through August 31 and lower the Sardis Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of 597' MSL.

6.1.8.2.2 Advanced Drought Withdrawals – When Advanced Drought

Conditions exist, the City may have water released from City Sardis Storage and lower the Sardis Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of 592' MSL.

6.1.8.2.3 Extreme Drought Withdrawals – When Extreme Drought

Conditions exist, the City may have water released from City Sardis Storage and lower the Sardis Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of 589' MSL.

6.1.8.2.4 Meet and Confer – At least thirty (30) days prior to commencing

Advanced Drought Withdrawals or Extreme Drought Withdrawals, the City shall provide notice to and offer to meet and confer with OWRB staff and the Nations. If either the OWRB or the Nations desire to meet, then as part of the conferral process: (i) the City will demonstrate that Advanced Drought Conditions or Extreme Drought Conditions exist, as applicable, and the appropriate water conservation measures in Exhibit 12 and water conservation program established pursuant to Section 6.5.1 are in effect; and (ii) the City and OWRB staff and the Nations will consider whether to commence discussions under Section 6.5.7.

6.1.8.3 Calculations and Measurement – For purposes of Section 6.1.8 and

determinations of relative Drought Conditions, as defined in Sections 1.5, 1.33, and 1.43, Live Storage Capacity shall be calculated follows:

6.1.8.3.1 Live Storage Capacity Calculation – Live Storage Capacity shall

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

Table 1: City Reservoir Live Storage Capacity and Lake Elevations

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

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

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

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

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

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

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

19 **6.2.2 Timing**

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

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

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

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

18 **6.2.2.5 Final Order of OWRB** – The Board shall consider the proposed Final
19 Order and any exceptions thereto and issue a Final Order within thirty (30) days of the filing of
20 any exceptions in the manner prescribed by OAC § 785:4-9-2. Appeals from the OWRB's Final
21 Order shall be in accord with state law. The Parties may agree in writing that the condition of
22 Section 4.1.7 and subparagraph (i)(1)(G) of the Settlement Act, shall be deemed satisfied,
23 notwithstanding such appeal. If the Parties agree that the condition of Section 4.1.7 and

subparagraph (i)(1)(G) of the Settlement Act, shall be deemed satisfied, then each will be deemed to have waived any right it may have under Section 6.2.3.

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

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

6.2.3 Permit Conformance

6.2.3.1 Process for Addressing Non-Conformance – If the OWRB issues a final permit and the City or either Nation asserts the final permit does not conform with the terms and conditions of Section 6.1, then the Party or Parties asserting such non-conformance shall: (i) within ten (10) days of the issuance of the final permit, provide notice to the other Parties of such assertion and (ii) seek to convene a meeting of the Parties to discuss such assertion and seek to resolve any disagreements relating to non-conformance and/or necessary modifications to the final permit in order to ensure conformance.

6.2.3.2 Remedy for Non-Conformance – In the event the Parties can neither agree that the final permit conforms to Section 6.1 nor to modifications thereto that would resolve assertions of non-conformance, then: (i) the Parties will be unable to satisfy the condition precedent specified at Section 4.1.7, which circumstance will automatically activate

1 the Expiration Date; and (ii) the City at its sole discretion may resubmit to the OWRB, and the
2 OWRB shall be deemed to have accepted, OWRB Permit Application No. 2007-017 without the
3 City's having waived the priority date and proposed appropriate amounts of its initial permit
4 application (Application No. 2007-017).

5 **6.2.3.3 Final Permit** – For purposes of Section 6.2.3, a permit shall be
6 considered final and not subject to further appeal if: (i) any and all appeals from the OWRB's
7 issuance of the permit have been exhausted or (ii) the time has expired for any person to seek
8 appellate review of the permit issued by the OWRB.

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

21 Regardless of any surrender, cancellation, or reduction of the City Permit pursuant to this Section
22 6.3, any use of Conservation Storage Capacity transferred to the City pursuant to the Amended

Storage Contract Transfer Agreement, except for the storage for the Administrative Set-Aside, shall remain subject to the Sardis Lake Release Restrictions set forth at Section 6.1.8.

6.4 Administration of City Permit

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

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

6.5 Additional Provisions

6.5.1 Water Conservation Program – Within three (3) years of the Enforceability Date, the City will administratively approve a water conservation program appropriate for its water utility that generally follows American Water Works Association Water Conservation Standards. Following the approval, the City will periodically review and, as appropriate for its water utility, update its water conservation program to conform with changes in American Water Works Association Water Conservation Standards. The City and the Trust will implement the conservation program as approved and thereafter updated by the City.

1 **6.5.2 Atoka and Sardis Conservation Projects Board and Fund**

2 **6.5.2.1 Establishment**

3 **6.5.2.1.1 Projects Board** – No later than ninety (90) days from the

4 Enactment Date, the State, the Chickasaw Nation, the Choctaw Nation, and the City shall each
5 appoint a representative to the Atoka and Sardis Conservation Projects Board. Each member
6 shall serve at the pleasure of its appointing entity. Failure to appoint a member shall not
7 constitute a breach of the Settlement Agreement nor shall it preclude the Board from performing
8 its duties, as specified herein. Each appointing entity may reimburse from its own funds its
9 respective appointed member for costs associated with their service, but each member shall
10 otherwise serve without compensation.

11 **6.5.2.1.2 Projects Fund**

12 **6.5.2.1.2.1 Contributions** – Upon the Enactment Date and subject to an

13 escrow agreement implementing the requirements of Section 6.5.2.1.2, the State, Nations, and
14 City shall each contribute to a ten million dollar (\$10,000,000) fund, with: (i) the City
15 contributing five million dollars (\$5,000,000), of which two million five hundred thousand
16 dollars (\$2,500,000) would have been monies otherwise due to the State under the terms of the
17 Storage Contract Transfer Agreement; and (ii) the Nations contributing five million dollars
18 (\$5,000,000), with the Choctaw Nation paying seventy-five percent (75%) and the Chickasaw
19 Nation paying twenty-five percent (25%) of such amount. The Atoka and Sardis Conservation
20 Projects Board shall authorize expenditures from the Atoka and Sardis Conservation Projects
21 Fund solely for purposes of scoping, designing, implementing, operating, and maintaining
22 projects to enhance recreational use or habitat for fish and wildlife at Atoka or Sardis Lake
23 and/or to mitigate environmental impacts at Atoka or Sardis Lake.

1 **6.5.2.1.2.2 Interest-Bearing Account; Administration by Oklahoma**

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

14 **6.5.2.1.2.3 Grants and Donations** – Subject to the same conditions that

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

20 **6.5.2.1.2.4 Withdrawal, Expenditure, and Obligation of Account** – The

21 Oklahoma City Water Utilities Trust may make no withdrawal or expenditure from or otherwise
22 obligate any monies in the account described in Section 6.5.2.1.2.2 unless and until directed to
23 do so by a resolution of the Atoka and Sardis Conservation Projects Board that has been

approved by consensus of its members, and the Atoka and Sardis Conservation Projects Board shall authorize expenditures from the Atoka and Sardis Conservation Projects Fund solely for purposes of scoping, designing, implementing, operating, and maintaining projects to enhance recreational use or habitat for fish and wildlife at Atoka or Sardis Lake and/or to mitigate environmental impacts at Atoka or Sardis Lake.

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

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

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

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

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

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

1 **6.5.2.3.2** prior to finalizing any proposed design or plan, publish details of
2 developed proposals online for a period not less than forty-five (45) days and thereafter receive
3 and consider public comments submitted during that period; and

4 **6.5.2.3.3** not sooner than forty-five (45) days after the close of the comment
5 period, finalize and publish details of finalized designs and plans online.

6 **6.5.2.4 Project Administration** – Subject to availability of funds in the account
7 described in Section 6.5.2.1.2.2 and the Atoka and Sardis Conservation Projects Board’s
8 beneficial interest therein, the Oklahoma City Water Utilities Trust shall administer all projects
9 (including project operation, maintenance, and repair throughout the useful life of the project)
10 that the Atoka and Sardis Conservation Projects Board authorizes and approves, entering into
11 such contracts as are necessary and appropriate for such purposes. The Atoka and Sardis
12 Conservation Projects Board’s authorization and approval of projects shall be in the same
13 manner and subject to the same restrictions specified in Section 6.5.2.1.2.4. The Oklahoma City
14 Water Utilities Trust will provide to the Atoka and Sardis Conservation Projects Board a
15 quarterly report of all project work, including incurred and anticipated costs.

16 **6.5.3 Scope of Sardis Lake Release Restrictions** – The effect of the Sardis Lake
17 Release Restrictions imposed on the City Permit by Section 6.1.8 is to limit to an estimated
18 one hundred thousand sixteen six hundred sixteen (116,616) AF the amount of Conservation
19 Storage Capacity the City may store water in and release water from for purposes of diverting
20 up to one hundred fifteen thousand (115,000) AFY at the Point of Diversion. The Sardis Lake
21 Release Restrictions shall not apply to the use of the estimated thirty-seven thousand nine
22 hundred eight (37,908) AF of Conservation Storage Capacity reserved for purposes of the
23 twenty thousand (20,000) AFY set aside by OAC § 785:20-5-5(b)(3). The estimated

remaining one hundred forty-two thousand six hundred seventy-six (142,676) AF of Conservation Storage Capacity shall be limited to maintenance of lake levels in support of recreation, fish and wildlife benefits, and no yield from Sardis Lake in excess of the City's one hundred fifteen thousand (115,000) AFY and the twenty thousand (20,000) AFY set aside by OAC § 785:20-5-5(b)(3) will be available for contract or appropriation by any person.

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

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

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

1 **6.5.5 Right-of-Way –**

2 **6.5.5.1 In General** –The Chickasaw Nation agrees to convey an easement to the
3 City, which easement shall be as described and depicted in Exhibit 15.

4 **6.5.5.2 Application** - The Chickasaw Nation and the City shall cooperate and
5 coordinate on the submission of an application for approval by the Secretary of the Interior of
6 the conveyance under Section 6.5.5.1 and clause (h)(3)(B)(i) of the Settlement Act, in
7 accordance with applicable federal law.

8 **6.5.5.3 Recording** - On approval by the Secretary of the Interior of the
9 conveyance of the easement under 6.5.5.1 and clause (h)(3)(B)(i) of the Settlement Act, the
10 City shall record the easement.

11 **6.5.5.4 Consideration** - In exchange for conveyance of the easement under
12 Section 6.5.5.1 and clause (h)(3)(B)(i) of the Settlement Act, the City shall pay to the
13 Chickasaw Nation the value of past unauthorized use and consideration for future use of the
14 land burdened by the easement, based on an appraisal secured by the City and Nations and
15 approved by the Secretary of the Interior.

16 **6.5.6 Unused Permit or Storage Rights** – For purposes of ensuring reasonable
17 availability to Settlement Area users of water under the City Permit or storage from City
18 Sardis Storage, and exclusive of the storage rights available to users in southeastern
19 Oklahoma pursuant to the Administrative Set-Aside, the Parties agree as follows:

20 **6.5.6.1** The City may subcontract its rights to City Sardis Storage, but any
21 subcontracted right, inclusive of direct diversions from Sardis Lake, shall be subject to the Sardis
22 Lake Release Restrictions of Section 6.1.8.

6.5.6.2

In the event that: (i) prior to the later of 2043 or the date that is tolled and extended as provided in Section 6.3, the City has not yet constructed the Parallel City Pipeline or has not yet diverted water under the City Permit in an amount equal to what the schedule of use specifies for 2040, *see* Exhibit 14; or (ii) the City's Permit has been surrendered pursuant to Section 6.3, the City shall not, subject to Section 6.5.6.4, unreasonably deny water users within the Settlement Area access to unexercised City Sardis Storage, pursuant to short-term contracts of no more than ten (10) years. The City shall charge for such access to City Sardis Storage no more than a *pro rata* reimbursement of its own storage contract costs.

6.5.6.3

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

6.5.6.4

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

1 **6.5.6.5** Any person or entity that enters a short-term contract with the City
2 pursuant to Section 6.5.6.2 for the use of City Sardis Storage must obtain a water use permit
3 from the OWRB prior to the commencement of any use of water in conjunction with such
4 storage.

5 **6.5.6.6** Any person or entity that enters a short-term contract with the City
6 pursuant to Sections 6.5.6.3 for the use of water under the City Permit must obtain a water use
7 permit from the OWRB prior to the commencement of such use if such use would involve a
8 purpose of use, place of use, or point of diversion not authorized by the City Permit.

9 **6.5.7 Future Technical Discussions** – In order to equitably preserve the mutual
10 benefits of Section 6.1 or otherwise pursuant to Section 6.1.8.2.4, the Nations, City, and
11 OWRB may negotiate technical mechanisms to:

12 **6.5.7.1** allow for flexibility in the measurement, accounting, and timing of water
13 stored or available for storage in the City Reservoirs under Sections 1.5, 1.33, and 1.43; and

14 **6.5.7.2** take into account potential benefits to the City and Nations from use of
15 reclaimed water by the City and/or adjustments to water quality mixing zones in the City
16 Reservoirs due to increased sedimentation.

17 **7. NATIONS USE OF WATER** –Beginning on the Enforceability Date, the Nations shall
18 have the right to use and to develop the right to use Settlement Area Waters only in accordance
19 with this Settlement Agreement and the Settlement Act.

20 **7.1 In General** – Nothing herein precludes either Nation from obtaining a permit to use
21 water pursuant to and in accord with state law, and neither Nation shall have any less right under
22 the Settlement Agreement and the Settlement Act than what any person has pursuant to state law

1 with respect to the use of water without a permit, including the drilling and use of wells for
2 domestic purposes.

3 **7.2 Existing Uses by Permit** – The Nations shall possess and may exercise all existing
4 uses by permit identified in this Section 7.2, which uses shall be in accord with state law and the
5 identified permits. Administration and enforcement of these identified permitted uses shall be in
6 accord with state law.

7 **7.2.1 Chickasaw Nation** – The Chickasaw Nation’s existing uses by permit are
8 identified in Table 3.

9 **Table 3: Chickasaw Nation – Existing Water Use by Permit**

Permit No.	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
2005-554	WinStar (CTUA)	Use Location: Public water supply system Well Locations: Three in SW NW NW of Sec. 29, T9S, R2EI	Trust	Love	680.4	3	750	Antlers	Public supply
2005-553	WinStar (CTUA)	Use Location: Public water supply system Well Locations: Two in NW NE SE of Sec. 19, T9S, R2EI, and one in SW NE SE of Sec. 19, T9S, R2EI	Trust	Love	464.1	3	750	Antlers	Public supply
2005-520	WinStar (golf course)	Use Location: N NW SW of Sec. 29, T9S, R2EI and EE of Sec. 30, T9S, R2EI Well Locations: Two in the NW SW NW, one in the SW SW NW, and one in the SE SW NW of Sec. 29, T9S, R2EI	Non-Trust	Love	440.0	4	50	Alluvium and terrace deposits of the Red River	Irrigation
1989-544	Chickasaw Nation Medical Center (G.O. Philpot, prior owner)	Use and Well Locations: One in the NW NW SW and one in the SW SE NW	Trust	Pontotoc	509.0	2	Unknown	Boggy Formation, Wewoka Formation, Holdenville	Agriculture

Permit No.	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
		of Sec. 14, T3N, R6EI						Shale, Delaware Shale	
1984-623	Chickasaw Children's Village and Texoma Gaming Center (W.E. Culbertson, prior owner)	Use and Well Locations: One in the SE NE SW of Sec. 28, T6S, R6EI, one in the SW SW NW and one in the SE SW SW of Sec. 27, T6S, R6EI	Trust	Marshall	1176.0	3	One at 628', one at 168', and one unknown	Antlers	Public supply

1

2 **7.2.2 Choctaw Nation**– The Choctaw Nation’s existing uses by permit are identified
3 in Table 4.

4 **Table 4: Choctaw Nation– Existing Water Use by Permit**

Permit No.	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
1999-21	Silverado Golf Course	Diversion Location: SE NW NW, Sec. 3, T6S, R9EI Use Location: Sec.4, T6S, R9EI	Non-Trust	Bryan	250.0	n/a	n/a	Blue River	Irrigation
1952-450	Tom Ranch	Well and Use Locations: SW, Sec. 9, T10S, R26EI	Non-Trust	McCurtain	158.0	1	Unknown	Alluvium and terrace deposits of the Red River	Irrigation

5

6 **7.3 Changes to Existing Uses by Permit** – Any changes to an existing use by permit
7 shall be made pursuant to state law.

8 **7.4 Existing Uses Without Permit** – Each Nation shall have the right to the uses of
9 water without permit for so long as such uses are limited to the amounts, well location, places of
10 use, and purposes of use identified in Sections 7.4.1 or 7.4.2, respectively, or otherwise in accord
11 with Section 7.

7.4.1 Chickasaw Nation – The Chickasaw Nation’s existing uses without permit are

identified in Table 5.

Table 5: Chickasaw Nation – Existing Uses Without Permit

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

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

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

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
		Sec. 14, T4S, R7EI							
CN-8 (n/a)	Burney Institute	Use and Well Location: NE SW NE of Sec. 4, T7S, R4EI	Trust	Marshall	Domestic	1	Unknown	Antlers	Domestic
CN-9 (103638 and 103650)	Artesian Hotel	Use and Well Locations: SE SE SE of Sec. 34, T1N, R3EI	Trust	Murray	Domestic	2	One at 850' and one at 595'	Arbuckle-Simpson	Domestic
CN-10 (n/a)	Chigley Mansion	Use and Well Locations: S SE SW of Sec. 32, T1N, R2EI	Trust	Murray	Domestic	2	Unknown	Washita	Domestic
CN-11 (13541)	Chickasaw Farms	Use and Well Location: SW NE NE of Sec. 1, T1S, R1EI	Non- Trust	Murray	Domestic	1	215'	Washita	Domestic
CN-12	Red Springs Cemetery	Use and Well Location: NE SE SE of Sec. 17, T3N, R8EI	Trust	Pontotoc	Domestic	1	47.5'	Unidentified	Domestic

1

2 **7.4.2 Choctaw Nation**– The Choctaw Nation’s existing uses without permit are

3 identified in Table 6.

4 **Table 6: Choctaw Nation– Existing Water Uses Without Permit**

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CNO-1	Licksillet Ranch (named Idabel Ranch as of 2020)	Well Locations: One, in the NW SW of Sec. 21, one in the NE SE of Sec. 29; one in the SW SW of Sec. 29, one in the NE NE of Sec. 29, one in the NW NE of Sec. 30, and one in the E1/2 NW SE and W1/2 NE SE of Sec. 19, all in T8S, R23EI. Use Locations: Secs. 19-21, 28 to 32 of T8S, R23EI; and Secs. 24 and 25 of T8S, R22EI	Non- Trust	McCurtain	300.0	6	All at 400'	Woodbine bedrock	Irrigation, stock

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CNO-2 (32877)	4 Star Ranch (named Tuskahoma Ranch East as of 2020)	Well Locations: In T2N, R20E1, one in the SW-SW of Sec. 7, and one in the SW- NW of Sec. 18. Use Location: Sec. 7, 17, and 18 of T2N, R20E1; and Sec. 13 of T2N R19E1.	Non- Trust	Pushmataha	15.0	2	125'	Kiamichi bedrock	Irrigation, stock
CNO-3	Sawyer Ranch	Well Locations: One in the NE SW of Sec. 31, T6S, R19E1. In T7S, R19E1, one in the NE NW of Sec.7 and one in the SE NW of Sec. 6. Use locations: Secs. 5 and 6 of T7S, R19E1, and Sec. 31 of, T6S, R19E1.	Non- Trust	McCurtain	150.0	3	All at 275'	Woodbine bedrock	Irrigation, stock
CNO-4 ³	Tom Ranch	Well Location: NW SE of Section 8 in T10S, R26E1. Use Locations: Secs. 3, 5, 6, 8- 10, 15, and 16, T10S, R26E1; Sec. 15 of T10S, R25E1	Non- Trust	McCurtain	250.0	1	Unknown	Woodbine bedrock	Irrigation, stock
CNO-5	Grant Tract (named Harris Ranch as of 2020)	Well Location: The NE SE of Sec. 3 in T10S, R25E1. Use Locations: Secs. 3 and 10 of T10S R25E1.	Non- Trust	McCurtain	25.0	1	Unknown	Woodbine bedrock	Irrigation, stock

1

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

7.5 Changes to Existing Uses Without Permit

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

7.5.2 Trust Land – With respect to any right to use water recognized under Section 7.4 which is located on Trust Land, either Nation may change the well location, place of use, or purpose of use of such right so long as the new well location and/or new place of use is also located on Trust Land and over the same source aquifer. No less than sixty (60) days prior to making such change, the Nation taking such action will provide the OWRB with written notice that identifies the use number and location of the subject right, a legal description of the new well location and/or new place of use, and/or a description of the new purpose of use, as applicable. Any change of a right recognized under Section 7.4 from Trust Lands to Non-Trust Lands must be applied for, evaluated, and processed pursuant to state law and shall thereafter be administered and enforced in accord with state law. Any increase in the amount of water used on Trust Land beyond what is recognized under Section 7.4 shall be made in accord with Section 7.6.2.

7.6 Future Development of Groundwater Use

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

1 **7.6.2 Trust Land Non-Domestic Use Wells** – Subject to Section 7.6 and in accord
2 with the Settlement Agreement and the Settlement Act, the Nations have the right to take and
3 use groundwater underlying any Trust Lands within the Settlement Area in an amount not to
4 exceed the equal proportionate share established pursuant to state law for the underlying
5 source aquifer; *provided*, that acreage dedicated to a use of groundwater under Section 7.6
6 shall not be used for purposes of any state law permit or existing use recognized pursuant to
7 Section 7 to take and use groundwater from the same source aquifer. The Nation proposing to
8 take and use groundwater shall:

9 **7.6.2.1** Employ a state-licensed water well driller and require such driller to
10 comply with state well drilling and construction rules, including the filing of a completion report
11 with the OWRB;

12 **7.6.2.2** Locate the well(s) in accord with state well spacing requirements and/or
13 spring or stream setbacks;

14 **7.6.2.3** Provide the following information to the OWRB at least sixty (60) days
15 prior to commencing any drilling for such purpose: (i) the well location; (ii) the acreage
16 overlying the source aquifer that is dedicated to such use; (iii) the amounts annually to be
17 withdrawn from such well(s); (iv) the location at which such water is to be placed in use; and (v)
18 the use to which the withdrawn water is to be placed.

19 **7.6.3 Trust Land Domestic Wells** – Subject to Section 7.6 and in accord with the
20 Settlement Agreement and the Settlement Act, the Nations shall have no less right to take
21 groundwater from Trust Land for domestic use than what any person has pursuant to state
22 law. In drilling any such well, the Nations will employ a state-licensed water well driller,

1 require such driller to comply with state well drilling and construction rules, and within thirty
2 (30) days of drilling such well, cause a well completion report to be filed with the OWRB.

3 **7.7 Future Development of Surface Water Uses**

4 **7.7.1 Non-Trust Land** – Any appropriation of surface water from a point of
5 diversion on Non-Trust Land by either Nation must be applied for, evaluated, and processed
6 pursuant to state law and shall thereafter be administered and enforced in accord with state
7 law.

8 **7.7.2 Trust Land** – Subject to Section 7.7 and in accord with the Settlement
9 Agreement and the Settlement Act, each Nation has the right to appropriate surface water
10 within the Settlement Area for use on Trust Lands, which lands would constitute riparian land
11 under state law. The maximum amount of water which either Nation may appropriate for use
12 on riparian Trust Lands under Section 7.7 in any individual Settlement Area Hydrologic Basin
13 shall be five hundred (500) AFY.

14 **7.7.3** In the event either Nation intends to develop surface water on Trust Lands
15 pursuant to Section 7.7, that Nation shall provide notice to the OWRB of the intent to
16 appropriate water. The notice shall be in writing and specify: (i) the location and acreage of
17 the riparian Trust Lands where the water will be used; (ii) the amount of water subject to the
18 appropriation; (iii) the basin and stream from which the water would be appropriated; (iv) the
19 use to which the water will be placed; and (v) the point of diversion.

20 **7.7.4** Following notice to the OWRB and in advance of any appropriation, the
21 Nation intending to appropriate the water and the OWRB shall meet and, using the model then
22 available for the source basin, evaluate whether: (i) water is available at the point of diversion
23 based on an evaluation of Mean Available Flow and, to the extent applicable, any water

quality, ecological, and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e); and (ii) the intended use would interfere with existing beneficial uses of water.

7.7.4.1 If following the evaluation the OWRB and the Nations agree that water is available for the appropriation from the stream, the Nation may proceed with the appropriation as noticed or as modified by agreement as between the Nation and OWRB. The priority date for the water developed under Section 7.7 shall be the date of the notice of intent to appropriate. The Nation shall provide notice to the OWRB when the works related to the appropriation are complete and when beneficial use of the water has commenced. In the event the Nation does not develop the works or place any water to beneficial use within seven (7) years of a notice of intent to appropriate provided pursuant to Section 7.7.3, any unused water shall revert to the public and the Nation's right to develop the water pursuant to the notice shall terminate, subject to the right to refile a notice of intent to appropriate. The Nation's appropriation and use of water shall remain subject to the OWRB's right to file an action pursuant to Section 3 to enforce the prohibition against waste or interference in Section 7.8.2 and to administer the right in priority, if necessary.

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

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

7.7.5 A Nation making an appropriation pursuant to Section 7.7 may make changes to the place and purpose or point of diversion of the appropriation, but only within the tract of

1 riparian Trust Land for which the appropriation was originally made and only after written
2 notice to the OWRB at least sixty (60) days prior to such changes. No appropriation made
3 under Section 7.7 may be transferred for purposes of use on another parcel of land without a
4 permit from the OWRB. No increase in the amount of water appropriated shall occur without
5 first satisfying the requirements of Sections 7.7.3 and 7.7.4.

6 **7.7.6 Choctaw Nation Development of Impoundment** – In addition to the
7 Choctaw Nation’s right to appropriate surface water pursuant to Sections 7.7.1 and 7.7.2, the
8 Choctaw Nation may develop an impoundment consistent with the Oklahoma Scenic Rivers
9 Act, 82 O.S. § 896.1, *et seq.* This single impoundment may be located on lands within the
10 Settlement Area and held or controlled by the Choctaw Nation within one of the following
11 Settlement Area Hydrologic Basins: Muddy Boggy, Lower Canadian, Lower Arkansas,
12 Poteau, Kiamichi, Upper Little, or Mountain Fork. The Choctaw Impoundment shall be
13 subject to the following limitations:

14 **7.7.6.1** The Choctaw Impoundment shall not exceed one hundred fifty (150)
15 acres in surface extent nor impound more than one thousand five hundred (1,500) AF.

16 **7.7.6.2** Subject to a water availability determination made consistent with
17 Section 7.7.4, the right to develop the impoundment shall include an initial right to divert up to
18 one thousand five hundred (1,500) AF to fill the impoundment and the right thereafter to offset
19 the evaporative losses in an amount not to exceed five hundred (500) AFY.

20 **7.7.6.3** If the Choctaw Nation chooses to develop the Choctaw Impoundment, it
21 shall provide notice to the OWRB one hundred eighty (180) days prior to commencing
22 construction of the impoundment, which notice shall include plan and design specifications
23 prepared by a registered engineer relating to the design, performance, and safety standards of the

1 dam, which shall, at a minimum, conform to the design, performance and safety standards of
2 OAC § 785 Chapter 25, or updates thereto.

3 **7.8 General Conditions**

4 **7.8.1 Annual Reporting** – Each Nation shall, by March 15 of each year, provide a
5 report to the OWRB indicating the amount of groundwater taken or surface water
6 appropriated and placed to beneficial use in the preceding calendar year, the well location or
7 point of diversion, the purpose of use, and the acreage on which the use occurred.

8 **7.8.2 Prohibition Against Waste and Interference** – No right recognized and
9 provided for herein, nor any change in such the use of such right, authorizes either Nation to
10 appropriate water in a manner that would commit waste or interfere with existing water rights.
11 Determinations of waste or interference shall be based on state law.

12 **7.8.3 OWRB Verification** – Upon reasonable notice, the Nations shall provide the
13 OWRB with access to Non-Trust Lands, Trust Lands, and the lands on which the Choctaw
14 Impoundment is constructed for purposes of OWRB’s verification of appropriations, uses, and
15 dam safety requirements for purposes of ensuring compliance with Section 7. The Nations
16 shall have the opportunity to be represented during any on-site verification.

17 **8. ALLOTTEE RIGHTS**

18 **8.1 In General** – Pursuant to the Atoka Agreement as ratified by section 29 of the Act of
19 June 28, 1898 (30 Stat. 505, chapter 517) (as modified by the Act of July 1, 1902 (32 Stat. 641,
20 chapter 1362)), the Nations issued patents to their respective tribal members and citizens and
21 thereby conveyed to individual Choctaws and Chickasaws all right, title, and interest in and to
22 land that was possessed by the Nations, other than certain mineral rights.

1 **8.1.1 No Regulatory Authority** – When title passed from the Nations to their
2 respective tribal members and citizens, the Nations did not convey and those individuals did
3 not receive any right of regulatory or sovereign authority, including with respect to water.

4 **8.1.2 Waiver and Delegation by Nations** – In addition to the waivers under
5 subsection (h) of the Settlement Act and Sections 2.1.1.3 and 2.1.1.4, the Nations, on their
6 own behalf, permanently delegate to the State any regulatory authority each Nation may
7 possess over water rights on Allotments, which the State shall exercise in accordance with this
8 Section 8 and subsection (e) of the Settlement Act.

9 **8.2 Allottee Rights to Use of Water on an Allotment** – An Allottee may use water on
10 an Allotment in accordance with Section 8 and subsection (e) of the Settlement Act.

11 **8.2.1 Surface Water Use** –

12 **8.2.1.1 In General** – An Allottee may divert and use, on the Allotment of the
13 Allottee, six (6) AFY of surface water per one hundred sixty (160) acres, to be used solely for
14 domestic uses on an Allotment that constitutes riparian land under applicable state law as of the
15 Enactment Date.

16 **8.2.1.2 Effect of State Law** – The use of surface water described in this Section
17 8.2.1 and clause (e)(5)(B)(i) of the Settlement Act shall be subject to all rights and protections
18 of state law, as of the Enactment Date, including all protections against loss for non-use.

19 **8.2.1.3 No Permit Required** – An Allottee may divert water under this Section
20 8.2.1 and paragraph (e)(5) of the Settlement Act without a permit or any other authorization
21 from the OWRB.

1 **8.2.2 Groundwater Use –**

2 **8.2.2.1 In General** – An Allottee may drill wells on the Allotment of the
3 Allottee to take and use for domestic uses the greater of—

4 **8.2.2.1.1** five (5) AFY; or

5 **8.2.2.1.2** any greater quantity allowed under state law.

6 **8.2.2.2 Effect of State Law** – The groundwater use described in this Section
7 8.2.2 and clause (e)(5)(C)(i) of the Settlement Act shall be subject to all rights and protections
8 of state law, as of the Enactment Date, including all protections against loss for non-use.

9 **8.2.2.3 No Permit Required** – An Allottee may drill wells and use water under
10 this Section 8.2.2 and subparagraph (e)(5)(C) of the Settlement Act without a permit or any
11 other authorization from the OWRB.

12 **8.2.3 Future Changes in State Law –**

13 **8.2.3.1 In General** – If state law changes to limit use of water to a quantity that
14 is less than the applicable quantity specified in Section 8.2.1 or 8.2.2 and subparagraph
15 (e)(5)(B) or (e)(5)(C) of the Settlement Act, as applicable, an Allottee shall retain the right to
16 use water in accord with those Sections and subparagraphs, subject to Section 8.4.4 and clause
17 (e)(6)(B)(iv) and paragraph (e)(7) of the Settlement Act.

18 **8.2.3.2 Opportunity to be heard** – Prior to taking any action to limit the use of
19 water by an individual, the OWRB shall provide to the individual an opportunity to
20 demonstrate that the individual is:

21 **8.2.3.2.1** an Allottee; and

22 **8.2.3.2.2** using water on the Allotment pursuant to and in accordance with
23 the Settlement Agreement and the Settlement Act.

1 **8.3 Allottee Options for Additional Water –**

2 **8.3.1 In General** – To use a quantity of water in excess of the quantities provided
3 under Section 8.2 and paragraph (e)(5) of the Settlement Act, an Allottee shall—

4 **8.3.1.1** file an action under Section 8.4 and subparagraph (e)(6)(B) of the
5 Settlement Act; or

6 **8.3.1.2** apply to the OWRB for a permit pursuant to, and in accordance with,
7 state law.

8 **8.4 Determination in Federal District Court**

9 **8.4.1.1 In General** – In lieu of applying to OWRB for a permit to use more
10 water than is allowed under Section 8.2 and paragraph (e)(5) of the Settlement Act, an Allottee
11 may file an action in the United States District Court for the Western District of Oklahoma for
12 determination of the right to water of the Allottee. At least ninety (90) days prior to filing such
13 an action, the Allottee shall provide written notice of the suit to the United States and the
14 OWRB. For the United States, notice shall be provided to the Solicitor’s Office, Department of
15 the Interior, Washington, D.C., and to the Office of the Regional Director of the Muskogee
16 Region, Bureau of Indian Affairs, Department of the Interior.

17 **8.4.2 Jurisdiction** – For purposes of this Section 8.4 and subparagraph (e)(6)(B) of
18 the Settlement Act:

19 **8.4.2.1** the United States District Court for the Western District of Oklahoma
20 shall have jurisdiction; and

21 **8.4.2.2** as part of the complaint, the Allottee shall include certification of the
22 pre-filing notice to the United States and OWRB required by Section 8.4.1.1 and clause
23 (e)(6)(B)(i) of the Settlement Act. If such certification is not included with the complaint, the

1 complaint will be deemed filed ninety (90) days after such certification is complete and filed
2 with the court. Within sixty (60) days after the complaint is filed or deemed filed or within
3 such extended time as the District Court in its discretion may permit, the United States may
4 appear or intervene. After such appearance, intervention or the expiration of the said sixty (60)
5 days or any extension thereof, the proceedings and judgment in such action shall bind the
6 United States and the parties thereto without regard to whether the United States elects to
7 appear or intervene in such action.

8 **8.4.3 Requirements** – An Allottee filing an action pursuant to this Section and
9 subparagraph (e)(6)(B) of the Settlement Act shall:

10 **8.4.3.1** join the OWRB as a party; and

11 **8.4.3.2** publish notice in a newspaper of general circulation within the
12 Settlement Area Hydrologic Basin in which the Allotment is located for two (2) consecutive
13 weeks, with the first publication appearing not later than thirty (30) days after the date on
14 which the action is filed.

15 **8.4.4 Determination Final** –

16 **8.4.4.1 In General** – Subject to Section 8.4.2.4.2 and subclause (e)(6)(B)(ii)(II)
17 of the Settlement Act, if an Allottee elects to have the rights of the Allottee determined
18 pursuant to Section 8.4 and subparagraph (e)(6)(B) of the Settlement Act, the determination
19 shall be final as to any rights under federal law and in lieu of any rights to use water on an
20 Allotment as provided in Section 8.2 and paragraph (e)(5) of the Settlement Act.

21 **8.4.4.2 Reservation of Rights** – Section 8.4.4 and subclause (e)(6)(B)(iv)(I) of
22 the Settlement Act shall not preclude an Allottee from:

23 **8.4.4.2.1** applying to the OWRB for water rights pursuant to state law; or

1 **8.4.4.2.2** using any rights allowed by state law that do not require a permit
2 from the OWRB.

3 **8.5 OWRB Administration and Enforcement –**

4 **8.5.1 In General** – If an Allottee exercises any right under Section 8.2 and
5 paragraph (e)(5) of the Settlement Act or has rights determined under Section 8.4 and
6 subparagraph (e)(6)(B) of the Settlement Act, the OWRB shall have jurisdiction to administer
7 those rights.

8 **8.5.2 Challenges** – An Allottee may challenge OWRB administration of rights
9 determined under Section 8.4 and subparagraph (e)(6)(B) of the Settlement Act in the United
10 States District Court for the Western District of Oklahoma.

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

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

15 **9.1 In General**

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

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

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

9.2 Communication and Coordination

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

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

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

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

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

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

may meet to discuss potential coordination of efforts in accord with the prior annual planning meeting.

10. GENERAL COMMITMENTS

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

10.1.1 Nations' non-objection consistent with Section 2.6 to the conditions relating to the City's Amended Permit as set forth in Section 6; and

10.1.2 OWRB staff support for the conditions relating to the City's Amended Permit as set forth in Section 6.

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

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

1 **11. NOTICE**

2 **11.1** Unless otherwise specified by any Party in writing sent to all other Parties, all notice
3 required to be given under the Settlement Agreement shall be written and given as follows:

4 **11.1.1** To the State

5 The Governor of the State of Oklahoma
6 2300 N. Lincoln Boulevard, Room 212
7 Oklahoma City, Oklahoma 73105

8 The Attorney General of the State of Oklahoma
9 313 NE 21st Street
10 Oklahoma City, Oklahoma 73105

11 **11.1.2** To the Choctaw Nation

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

15 The General Counsel of the Choctaw Nation of Oklahoma
16 P.O. Box 1210
17 Durant, Oklahoma 74702

18 **11.1.3** To the Chickasaw Nation

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

22 The General Counsel of the Chickasaw Nation
23 P.O. Box 1548
24 Ada, Oklahoma 74821

25 **11.1.4** To the OWRB

26 The Executive Director of the Oklahoma Water Resources Board
27 3800 N. Classen Boulevard
28 Oklahoma City, Oklahoma 73118

29 The General Counsel for the Oklahoma Water Resources Board
30 3800 N. Classen Boulevard
31 Oklahoma City, Oklahoma 73118

1 **11.1.5 To the City**

2 The Mayor of the City of Oklahoma City
3 200 N. Walker Avenue
4 Oklahoma City, Oklahoma 73102

5 The City Manager of the City of Oklahoma City
6 200 N. Walker Avenue
7 Oklahoma City, Oklahoma 73102

8 The Municipal Counselor for the City of Oklahoma City
9 200 N. Walker Avenue
10 Oklahoma City, Oklahoma 73102

11 **11.1.6 To the Trust**

12 The General Manager of the Oklahoma City Water Utilities Trust
13 420 W. Main Street, Suite 500
14 Oklahoma City, Oklahoma 73102

15 **11.1.7 To the United States**

16 The Secretary of the United States Department of the Interior
17 1849 C Street NW
18 Washington, DC 20240

19 **12. DISCLAIMER**

20 **12.1 No Precedent** – The Settlement Agreement applies only to the claims and rights of
21 the Nations, and nothing in the Settlement Act or the Settlement Agreement shall be construed in
22 any way to quantify, establish, or serve as precedent regarding the land and water rights, claims,
23 or entitlements to water of any American Indian Tribe other than the Nations, including any
24 other American Indian Tribe in the State.

25 **12.2 Limitation** – Nothing in the Settlement Agreement or Settlement Act:

26 **12.2.1** affects the ability of the United States, acting as sovereign, to take actions
27 authorized by law, including any laws relating to health, safety, or the environment, including:

1 **12.2.1.1** the Comprehensive Environmental Response, Compensation, and
2 Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*);

3 **12.2.1.2** the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*);

4 **12.2.1.3** the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); and

5 **12.2.1.4** any regulations implementing the Acts described in Section 12.2.1 and
6 paragraph (k)(3) of the Settlement Act;

7 **12.2.2** affects the ability of the United States to raise defenses based on 43 U.S.C. §
8 666(a);

9 **12.2.3** affects any rights, claims, or defenses the United States may have with respect
10 to the use of water on federal lands in the Settlement Area that are not Trust Lands or
11 Allotments; and

12 **12.2.4** affects the authority of each respective Nation to manage and regulate the
13 exercise, on Trust Land consistent with the Settlement Agreement and the Settlement Act, of
14 its water rights recognized by or established pursuant to Section 7.

15 **13. EFFECT OF SETTLEMENT AGREEMENT** - The Settlement Agreement shall bind
16 the United States as trustee for the Nations, the State (including the OWRB), and the Nations as to
17 the claims and rights of the Nations in any general stream adjudication that may in the future be
18 filed in the State of Oklahoma.

19 **14. EXECUTION OF AGREEMENT; COUNTERPARTS**

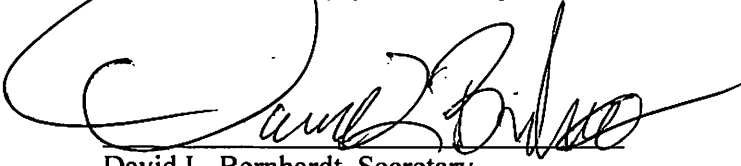
20 **14.1** The Parties may execute the Settlement Agreement in several counterparts, each of
21 which shall be deemed an original and all of which shall constitute one and the same instrument
22 and shall not become effective unless and until counterparts have been signed by all of the Parties

1 and delivered to the other Parties; it being understood that all Parties need not sign the same
2 counterparts.

3 **14.2** The exchange of copies of the Settlement Agreement and of signature pages by
4 transmission of electronic facsimile, regardless of format, shall constitute effective execution and
5 delivery of the Settlement Agreement as to the Parties and may be used in lieu of the original
6 Settlement Agreement for all purposes. Signatures of the Parties transmitted by facsimile or
7 electronic record shall be deemed to be their original signatures for all purposes.

1 **15. SIGNATURES**


2
3 UNITED STATES OF AMERICA

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6
7 

8 David L. Bernhardt, Secretary
9 United States Department of the Interior
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Date: 1/15/21

1 STATE OF OKLAHOMA
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6 Kevin Stitt, Governor
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Date: 12/15/20

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9 _____
10 Mike J. Hunter, Attorney General
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Date: 12/15/2020

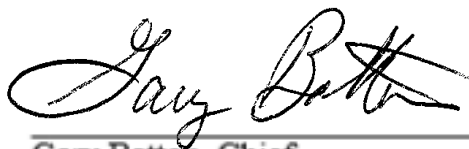
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CHICKASAW NATION


Bill Anoatubby, Governor

Date: December 16, 2020

1 **CHOCTAW NATION OF OKLAHOMA**
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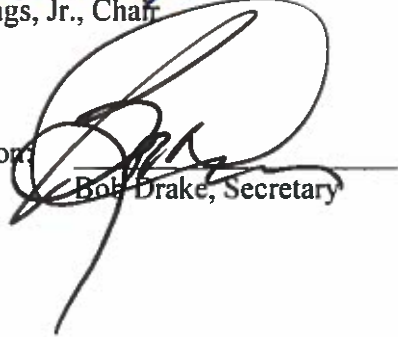
6 _____
7 Gary Batton, Chief

Date: December 22, 2020

OKLAHOMA WATER RESOURCES BOARD


Robert L. Stallings, Jr., Chair

Date: 12/17/20

Attestation: 
Bob Drake, Secretary

Date: 12/19/2020

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CITY OF OKLAHOMA CITY

David Holt Date: 12-16-2020
David Holt, Mayor

Chance Lersey
City Clerk



Reviewed for form and legality.

Craig Keith
Assistant Municipal Counselor

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OKLAHOMA CITY WATER UTILITIES TRUST

JDC

James D Couch, Chairman

Date: 12-16-2020

Mae Kerv...

Secretary

