

1 Exhibit 5: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma
2 City Water Settlement
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4 **WAIVERS AND RELEASES OF CLAIMS**
5 **BY THE CHICKASAW NATION AND THE UNITED STATES**
6

7 Subject to the retention of rights set forth in the Settlement Agreement, **Section 2.5**, and the
8 Settlement Act and except to the extent that rights are recognized in the Settlement Agreement or
9 Settlement Act, including recognition of the Chickasaw Nation’s water rights, the Chickasaw Nation, in
10 its own right and on behalf of its citizens (except in their capacity as Allottees), and the United States
11 acting in its capacity as trustee for the Chickasaw Nation and its citizens (except in their capacity as
12 Allottees), waive and release:
13

14 (1) all of the following claims the Chickasaw Nation asserted or could have asserted in any
15 proceeding filed or which could have been filed up to or upon the Enforceability Date, including
16 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et*
17 *al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:
18

19 (a) claims to the ownership of water in the State of Oklahoma;
20

21 (b) claims to water rights and rights to use water diverted or taken from a location within
22 the State of Oklahoma;
23

24 (c) claims to authority over the allocation and management of water and administration of
25 water rights, including authority over third-party ownership of or rights to use water diverted or taken
26 from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees
27 or anyone else using water on an Allotment with the Allottee’s permission;
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29 (d) claims that the State lacks authority over the allocation and management of water and
30 administration of water rights, including authority over the ownership of or rights to use water diverted or
31 taken from a location within the State of Oklahoma;
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33 (e) any other claim relating to the ownership of water, regulation of water, or authorized
34 diversion, storage, or use of water diverted or taken from a location within the State of Oklahoma, which
35 claim is based on the Chickasaw Nation’s particular status as a federally recognized American Indian
36 tribe possessed of powers of sovereignty and self-government as defined by federal law and pursuant to
37 those treaties to which it is a signatory;
38

39 (f) claims or defenses asserted and which could have been asserted in *Chickasaw Nation,*
40 *Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United States, et al.* CIV 12-275
41 (W.D. Ok.), or any general stream adjudication;
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43 (2) all claims for damages, losses or injuries to water rights or water, or claims of interference
44 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
45 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any
46 action by the State of Oklahoma, the Oklahoma Water Resources Board, or any water user authorized
47 pursuant to state law to take or use water in the State of Oklahoma, including but not limited to the City
48 of Oklahoma City, that accrued at any time up to and including the Enforceability Date;
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1 (3) all claims and objections relating to the City of Oklahoma City’s Permit Application No.
2 2007-017, as amended pursuant to the Settlement Agreement and the Settlement Act, and the City Permit,
3 including but not limited to:
4

5 (a) all claims regarding regulatory control over or Oklahoma Water Resources Board
6 jurisdiction relating to such permit application and permit; and
7

8 (b) all claims for damages, losses or injuries to water rights or rights to use water, or claims
9 of interference with, diversion, storage, taking, or use of water (including claims for injury to land
10 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use of
11 water) attributable to the issuance and lawful exercise of the City Permit;
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13 (4) all claims to regulatory control over the City of Oklahoma City’s Permit Numbers P80-48
14 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for water
15 rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;
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17 (5) all claims that the State lacks regulatory authority over or Oklahoma Water Resources Board
18 jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48 and 54-613 for water rights
19 from the Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy
20 River, including McGee Creek, for McGee Creek Reservoir;
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22 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
23 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
24 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
25 City of Oklahoma City’s lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the
26 Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River,
27 including McGee Creek, for McGee Creek Reservoir, that accrued at any time up to and including the
28 Enforceability Date;
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30 (7) all claims and objections relating to approval by the United States Army Corps of Engineers
31 of the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract Transfer
32 Agreement; and
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34 (8) all claims for damages, losses or injuries to water rights or water, or claims of interference
35 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
36 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
37 lawful exercise of rights pursuant to the Amended Storage Contract Transfer Agreement.
38

39 **FOR THE UNITED STATES OF AMERICA**
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43 By: DRAFT Date: _____
44 Sally Jewell, Secretary
45 U.S. Department of the Interior
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1 **FOR THE CHICKASAW NATION**

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5 By: _DRAFT _____ Date: _____

6 Bill Anoatubby, Governor

7 Chickasaw Nation

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**WAIVERS AND RELEASES OF CLAIMS
BY THE CHICKASAW NATION AGAINST THE UNITED STATES**

Subject to the retention of rights set forth in the Settlement Agreement, **Section 2.5**, and the Settlement Act and except to the extent that rights are recognized in the Settlement Agreement or Settlement Act, including recognition of the Chickasaw Nation's water rights, the Chickasaw Nation, in its own right and on behalf of its citizens (except in their capacity as Allottees), and the United States acting in its capacity as trustee for the Chickasaw Nation and its citizens (except in their capacity as Allottees), waive and release:

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

(a) claims to the ownership of water in the State of Oklahoma;

(b) claims to water rights and rights to use water diverted or taken from a location within the State of Oklahoma;

(c) claims to authority over the allocation and management of water and administration of water rights, including authority over third-party ownership of or rights to use water diverted or taken from a location within the State of Oklahoma and ownership or use of water on Allotments by Allottees or anyone else using water on an Allotment with the Allottee's permission;

(d) claims that the State lacks authority over the allocation and management of water and administration of water rights, including authority over the ownership of or rights to use water diverted or taken from a location within the State of Oklahoma;

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

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

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

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

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

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

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

18 (6) all claims to damages, losses or injuries to water rights or water, or claims of interference
19 with, diversion, storage, taking, or use of water (including claims for injury to land resulting from such
20 damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to the
21 City of Oklahoma City's lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the
22 Muddy Boggy River for Atoka Reservoir and P73-282D for water rights from the Muddy Boggy River,
23 including McGee Creek, for McGee Creek Reservoir, that accrued at any time up to and including the
24 Enforceability Date;
25

26 (7) all claims and objections relating to the approval by the United States Army Corps of
27 Engineers of the assignment of the Storage Contract of 1974 pursuant to the Amended Storage Contract
28 Transfer Agreement;
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30 (8) all claims relating to the United States' litigation, prior to the Enforceability Date, of the
31 Nations' water rights in the State of Oklahoma; and
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33 (9) all claims relating to the negotiation, execution, or adoption of the Settlement Agreement
34 (including exhibits) or the Settlement Act.
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36 **FOR THE CHICKASAW NATION**
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40 By: DRAFT Date: _____
41 Bill Anoatubby, Governor
42 Chickasaw Nation