

1 Exhibit 7: State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, and City of
2 Oklahoma City Water Settlement

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

7 UNITED STATES OF AMERICA,)
8 Plaintiff)
9)
10 v.)
11)
12 THE STATE OF OKLAHOMA)
13)
14 And)
15)
16 OKLAHOMA WATER RESOURCES BOARD,)
17)
18 Defendants)
19

Civil Action no. 98-CV-00521

MOTION TO AMEND SEPTEMBER 11, 2009, ORDER AND FOR DISMISSAL

20
21 Plaintiff, the United States of America (“United States”) and Defendants, the State of
22 Oklahoma and the Oklahoma Water Resources Board (collectively “State”), respectfully move
23 the Court for an amendment to the stipulated Order entered on September 11, 2009, in the above-
24 referenced case (“Order”) and for dismissal of this action. As grounds for this Motion the State
25 and the United States state as follows:

- 26 1. On July 14, 1998, the United States filed the above-referenced action in this Court
27 seeking past due amounts and enforcement of contractual obligations of the State
28 pursuant to a contract entered into by the United States and the State on April 9, 1974
29 entitled “Contract Between the United States of America and the Water Conservation
30 Storage Commission of the State of Oklahoma for Water Storage Space in Clayton Lake”
31 (“1974 Contract”). The 1974 Contract is attached hereto as Exhibit 1.

- 1 2. The 1974 Contract grants to the State the rights of storage in Sardis Lake (formerly
2 Clayton Lake) comprised of an estimated 297,200 acre-feet of water storage divided into
3 present use storage (141,700 acre-feet) and future use storage (155,500 acre-feet). As
4 consideration for the rights to and use of such storage, the State was obligated to make
5 annual payments (50 consecutive installments) for present use storage capital costs and
6 operation, maintenance and replacement costs associated with such storage as specified
7 in the 1974 Contract. 1974 Contract Article 5. Under the 1974 Contract the State is
8 obligated to pay for future use storage only at such time future use storage is first used.
9 1974 Contract Article 5.
- 10 3. On September 11, 2009, this Court entered the Order pursuant to a stipulation of the
11 United States and the State. The Order provided that the State pay all amounts due and
12 owing pursuant to the 1974 Contract and continue to make payments for present use
13 storage and operation and maintenance associated with capital costs for present use
14 storage in accordance with the Order. The Order provides for a schedule of payments or
15 the right of the State to make on one time lump sum payment of \$27,814,262.49 for past
16 due amounts owing at the time of the Order as well as for all future payments related to
17 present use storage. Payments for operation and maintenance costs associated with
18 present use storage were provided to continue on an annual basis. The Order provides
19 that “[t]he payment for future supply storage must be made as provided in the “[1974]
20 Contract.” 1974 Contract Article 5.
- 21 4. The Court retained jurisdiction over this action for the purpose of enabling any party to
22 apply to the Court for any “such further order, direction, and relief as may be necessary
23 or appropriate for the enforcement of this Consent Order.” Order at ¶ 7.

- 1 5. On June 15, 2010 the Oklahoma Water Resources Board and the Oklahoma City Water
2 Utilities Trust entered into the 2010 Storage Contract Transfer Agreement whereby the
3 Oklahoma Water Resources Board transferred to the Oklahoma City Water Utilities Trust
4 all its rights and interests in, including rights to use, the State's rights to water storage in
5 Sardis Lake, together with all the State's obligations under the 1974 Contract, including
6 all obligations set forth in the 1974 Contract to make the payments set forth in the Order
7 in order to be able to utilize the rights to use the water storage in Sardis Lake. The terms
8 of the 1974 Contract require approval by the Secretary of the Army, United States Army
9 Corps of Engineers, of the 2010 Storage Contract Transfer Agreement before such
10 agreement may have full force and effect.
- 11 6. In accordance with the Order, based on funds provided by the City of Oklahoma City
12 pursuant to the 2010 Storage Contract Transfer Agreement, the OWRB made a lump sum
13 payment to the United States of \$27,814,262.49 for present use storage. Subsequently,
14 based on funds provided by the Oklahoma City Water Utilities Trust pursuant to the 2010
15 Storage Contract Transfer Agreement, the State has continued to make payments for
16 operation, maintenance and replacement associated with present use storage as billed
17 annually by the United States. All amounts due and owing the by the State pursuant to
18 the 1974 Contract and the Order are current. Present use storage payments as required
19 by the 1974 Contract and the Order are paid in full.
- 20 7. In March 2010, the City of Oklahoma City amended Application 2007-017 with the
21 Oklahoma Water Resources Board for an appropriation of 136,000 acre-feet per year of
22 stream water from the Kiamichi River basin, in part to secure stream water rights

1 associated with the water storage in Sardis Lake proposed for transfer to the Oklahoma
2 City Water Utilities Trust under the 2010 Storage Contract Transfer Agreement.

3 8. On August 18, 2011, the Chickasaw Nation and the Choctaw Nation of Oklahoma filed
4 suit in the United States District Court for the Western District of Oklahoma, *Chickasaw*
5 *Nation and Choctaw Nation v. Fallin et al.*, CIV 11-927, against the State, the City of
6 Oklahoma City and the Oklahoma City Water Utilities Trust, claiming among other
7 things that the 2010 Storage Contract Transfer Agreement should not be approved by the
8 Secretary of the Army and that the OWRB lacks authority to act on any application for
9 stream water from the Kiamichi River basin inclusive of rights of storage in Sardis Lake.

10 9. *Chickasaw Nation and Choctaw Nation v. Fallin et al.* was stayed by order of the Court
11 on March 27, 2012, to allow settlement negotiations to proceed as among the Choctaw
12 Nation of Oklahoma, the Chickasaw Nation (collectively “the Nations”), the State of
13 Oklahoma (Governor Mary Fallin and the OWRB) (collectively “State”), the City of
14 Oklahoma City (“City”), and the United States to resolve the issues raised by that case as
15 well as a related case, *OWRB v. United States, et al.*, CIV 12-275 (W.D. Ok.). Settlement
16 negotiations proceeded thereafter and upon request of the State, the Nations, the City, and
17 the United States, the Honorable Judge Lee West extended the stay in both cases multiple
18 times to allow settlement discussions to progress.

19 10. After almost five years of negotiation, the State of Oklahoma, the Chickasaw Nation,
20 Choctaw Nation of Oklahoma, the City of Oklahoma City, and the Oklahoma City Water
21 Utilities Trust, entered into a Settlement Agreement in 2016 that resolved complex
22 disputes regarding water, water rights, the regulation and administration of water in the
23 Settlement Area, and objections to the State’s assignment of the 1974 Contract to the City

1 of Oklahoma City, inclusive of all claims raised in *Chickasaw Nation and Choctaw*
2 *Nation of Oklahoma v. Fallin, et al.*, CIV 11-927, and *OWRB v. United States, et al.*, 12-
3 275. That Settlement Agreement was enacted into federal law on _____ as [insert
4 Settlement Act citation] (“Settlement Act”) and executed by the United States on
5 _____. A copy of the Settlement Agreement and Settlement Act are attached
6 hereto as Exhibits 2 and 3.

7 11. Pursuant to the Settlement Agreement and the Settlement Act, the City of Oklahoma City
8 agreed to Sardis Lake Release Restrictions that allow the City to have water released for
9 water supply purposes in a manner that also protects lake levels for fish and wildlife and
10 recreation. The Sardis Lake Release Restrictions will preclude the City from calling for
11 releases for water supply from that portion of the Sardis Lake water storage associated
12 with future use storage.

13 12. As a result of the Sardis Lake Release Restrictions and the effect of those restrictions, and
14 other aspects of the Settlement Agreement and the Settlement Act, the State, the City of
15 Oklahoma City and the Oklahoma City Water Utilities Trust entered into an Amended
16 Storage Contract Transfer Agreement which was approved by the [cite to Settlement
17 Act], has been executed by the State, City and Trust and approved by the Secretary of the
18 Army. Pursuant to the Amended Storage Contract Transfer Agreement as approved by
19 the Settlement Act, the City has assumed all the obligations of the State to make any
20 payments due and owing under the 1974 Contract and therefore the Order, provided, that
21 all capital costs, interest and operation, maintenance and replacement costs associated
22 with future use storage are forgiven, waived and deemed non-reimbursable by the

1 Settlement Act. A copy of the executed and approved Amended Storage Contract
2 Transfer Agreement is attached hereto as Exhibit 4.

3 13. Since the effect of the Settlement Agreement was to restrict releases by the City from
4 Sardis Lake and preclude the City from releasing the water supply from Sardis Lake
5 associated with future use storage, the parties to the Settlement Agreement agreed that, in
6 consideration for the Sardis Lake Release Restrictions and resulting benefit to the parties
7 relating to lake levels to support fish, wildlife, and recreation, the debt under the 1974
8 Contract associated with future use storage should be forgiven, waived, and deemed non-
9 reimbursable. The Settlement Act deems the future use storage debt under the 1974
10 Contract forgiven, waived and non-reimbursable. Accordingly, any obligation of the
11 State, and thereafter the City and Trust under the Amended Storage Contract Transfer
12 Agreement, with regard to capital costs, or any operation, maintenance or replacement
13 costs and interest otherwise attributable to future use storage in Sardis Lake, is forgiven,
14 waived and non-reimbursable.

15 14. The Settlement Agreement and the Settlement Act provide that exclusive jurisdiction for
16 the interpretation or enforcement of the Settlement Agreement, the Settlement Act and
17 the Amended Storage Contract Transfer Agreement is the United States District Court for
18 the Western District of Oklahoma.

19 15. Based on (1) the payments made by the State, the City and the Trust for all present use
20 storage; (2) the approval of the Amended Storage Contract Transfer Agreement by the
21 Settlement Act; (3) the execution of the Amended Storage Contract Transfer Agreement
22 by the State and City and its approval by the Secretary of the Army; (4) the obligations
23 under the Amended Storage Contract Transfer Agreement for the City to continue to

1 make annual operation and maintenance payments related to present use storage as billed
2 by the United States pursuant to the 1974 Contract; and (5) the waiver of all future use
3 storage debt, the Order should be amended and this action dismissed.

4 16. An order should be entered to amend the Order to reflect (1) the transfer of the
5 ownership of all rights and obligations under the 1974 Contract to the City pursuant to
6 the Amended Storage Contract Transfer Agreement and the continuing obligations of the
7 City to make payments for operation, maintenance and replacement costs as provided
8 therein; (2) the payment in full of all debt associated with present use storage; (3) the
9 waiver of the future use storage debt by the Settlement Act; (4) that the action filed by the
10 United States in this matter is now dismissed; and (5) that any further actions relating to
11 the 1974 Contract should be filed in and heard by the United States District Court for the
12 Western District of Oklahoma.

13 17. A proposed order is submitted with this Motion.

14 WHEREFORE, for the reasons set forth herein the United States and the State request the
15 Court amend the Order consistent with the proposed order submitted herewith and dismiss this
16 action accordingly.

17 Date: _____

Respectfully submitted,

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1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF OKLAHOMA**
3

4 UNITED STATES OF AMERICA,)
5 Plaintiff)
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7 v.)
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9 THE STATE OF OKLAHOMA)
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11 And)
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13 OKLAHOMA WATER RESOURCES BOARD,)
14)
15 Defendants)
16

Civil Action no. 98-CV-00521

17 **ORDER AMENDING SEPTEMBER 11, 2009, ORDER AND DISMISSING CASE**

18 Upon review of the record and consideration of the Motion to Amend September 11,
19 2009 Order and for Dismissal the Court FINDS as follows:

- 20 1. On September 11, 2009 this Court entered a stipulated Order resolving a motion by the
21 United States to enforce judgment in the above-captioned matter (“September 11, 2009,
22 Order”). The September 11, 2009, Order addressed enforcement of a judgment as against
23 the State with regard to a “Contract Between the United States of America and the Water
24 Conservation Storage Commission of the State of Oklahoma for Water Storage Space in
25 Clayton Lake” (“1974 Contract”), and specified payment amounts and schedules for
26 payment with regard to present use storage, operation and maintenance, and future use
27 storage.
- 28 2. Pursuant to the September 11, 2009, Order the Court retained jurisdiction to allow the
29 parties to apply to the Court at any time for any further order, direction, and relief as may
30 be necessary or appropriate for the enforcement of the September 11, 2009, Order.

1 3. The United States, the State of Oklahoma, and the Oklahoma Water Resources Board
2 (collectively “State”) have now moved this Court for an amendment of the September 11,
3 2009, Order and a request for dismissal of the action on the basis that events since 2009
4 require amendment of the September 11, 2009, Order and dismissal of this action.

5 4. The basis for the amendment and dismissal of the action are:

6 (a) the State, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the City of
7 Oklahoma City, and the United States entered into the State of Oklahoma, the Choctaw
8 Nation of Oklahoma and the Chickasaw Nation Settlement (“Settlement Agreement”)
9 resolving complex disputes regarding water, water rights, the regulation and
10 administration of water in the Settlement Area, and objections to the State’s assignment
11 of the 1974 Contract to the City of Oklahoma City, inclusive of all claims raised in
12 *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, CIV 11-927, and
13 *OWRB v. United States, et al.*, 12-275. The Settlement Agreement was approved in [title
14 Settlement Act] (“Settlement Act”) and executed by the United States on _____.

15 (b) the State has transferred all its rights and obligations under the 1974 Contract
16 to the City of Oklahoma City pursuant to an Amended Storage Contract Transfer
17 Agreement which contract has been approved by the Settlement Act, executed by the
18 parties thereto and approved by the Secretary of the Army;

19 (c) the State and the City have paid in full the present use storage debt under the
20 1974 Contract;

21 (d) the Settlement Act has waived and deemed non-reimbursable all future use
22 debt inclusive of capital costs, operation, maintenance and replacement costs and interest
23 associated with future use storage as to both the State and the City;

1 (e) all operation and maintenance payments associated with present use storage
2 will continue to be governed by the 1974 Contract and be obligations of the City pursuant
3 to the Amended Storage Contract Transfer Agreement and all payments relating to
4 present use storage operation and maintenance are current;

5 (f) the Settlement Act establishes the United States District Court for the Western
6 District of Oklahoma as the exclusive forum for interpretation and enforcement of the
7 Settlement Act, the Settlement Agreement and the Amended Storage Contract Transfer
8 Agreement.

9 (g) there remains no basis for the Court's continuing jurisdiction and the Order
10 should be amended and this action dismissed.

11 IT IS HEREBY ORDERED that motion be and hereby is GRANTED, and IT IS
12 FURTHER ORDERED:

13 (1) The September 11, 2009, Order is amended and superseded by the terms of this Order.

14 (2) This action is dismissed.

15 (3) Any further actions relating to the 1974 Contract should be filed in and heard by the
16 United States District Court for the Western District of Oklahoma.

17
18 DRAFT
19 JAMES H. PAYNE
20 United States District Judge
21 Northern District of Oklahoma