STATE OF OKLAHOMA, CHOCTAW NATION OF OKLAHOMA,

CHICKASAW NATION, CITY OF OKLAHOMA CITY WATER SETTLEMENT

AUGUST 2016

PREAMBLE

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

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

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

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

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

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

NOW, THEREFORE, the parties signatory hereto (“Parties” or, when singular, “Party”)
agree and bind themselves as follows:
1. DEFINITIONS


1.2 Adequate Hydrological Model – means a hydrologic model that satisfies the requirements of Section 5.3.1.2.2.

1.3 Administrative Set-Aside – means thirty-seven thousand nine hundred eight (37,908) AF of Conservation Storage Capacity for the twenty thousand (20,000) AFY set-aside 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.

1.4 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.

1.5 AF – means acre-feet.

1.6 AFY – means acre-feet per year.

1.7 Allotment – means that 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.
1.8 **Allottee** – means an enrolled member of the Choctaw Nation of Oklahoma or citizen of the Chickasaw Nation who, or whose estate, holds an interest in an Allotment.

1.9 **Amended Permit Application** – means the City of Oklahoma City’s permit application filed with the Oklahoma Water Resources Board, No. 2007-017, as amended pursuant to Section 6.1.

1.10 **Amended Storage Contract Transfer Agreement** – means the Storage Contract Transfer Agreement between the Oklahoma City Water Utilities Trust and Oklahoma Water Resources Board, as amended by the City of Oklahoma City, the Oklahoma City Water Utilities Trust, and Oklahoma Water Resources Board to substantially conform with Exhibit 4 and which may be revised as necessary for purposes of conforming to the Settlement Act.

1.11 **Atoka and Sardis Conservation Projects Fund** – means the fund established pursuant to Section 6.5.2.1.2.

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

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

1.14 **Baseline Lake Levels** – means those Sardis Lake surface elevations specified at Section 6.1.8.1.

1.15 **Bypass Requirement** – means fifty (50) cfs of the three hundred (300) cfs flow rate, specified at Section 6.1.5.2 for the City Permit, as measured within reasonable operational constraints, which shall be bypassed at the Point of Diversion when the City of Oklahoma City is diverting water at the Point of Diversion.
1.16 Canton Reservoir – means the reservoir located on the North Canadian River at river mile 394.3, about two (2) miles north of the Town of Canton in Blaine County, Oklahoma.

1.17 cfs – means cubic-feet per second.

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

1.19 Choctaw Nation of Oklahoma (“Choctaw Nation”) – means the Choctaw Nation of Oklahoma, a federally recognized American Indian Tribe organized by a Constitution its citizens ratified in 1830 and subsequently modified and re-ratified in 1983.

1.20 City of Oklahoma City (“City”) – means the City of Oklahoma City, an Oklahoma municipal corporation and a charter city organized and existing pursuant to Oklahoma Constitution Article XVIII, Section 3. References to “City” or “City of Oklahoma City” shall refer to the City or the City and the Oklahoma City Water Utilities Trust acting jointly as applicable to the capacity set forth in the said reference.

1.21 City Diversion Rate – means the diversion rate specified at Section 6.1.5.1.

1.22 City Permit – means the final permit, as that term is used in Section 6.2.3.3, issued by the Oklahoma Water Resources Board to the City of Oklahoma City pursuant to the Amended Permit Application, which permit conforms with Section 6.1.

1.23 City Reservoirs – means Atoka Reservoir, Canton Reservoir, Draper Reservoir, Hefner Reservoir, McGee Creek Reservoir, and Overholser Reservoir; individually, “City Reservoir.”
1.24 City Sardis Storage – means the Conservation Storage Capacity the City of Oklahoma City will receive pursuant to the Amended Storage Contract Transfer Agreement and use and maintain in accord with Section 6.

1.25 Conservation Storage Capacity – means the water storage capacity in Sardis Lake stated in Exhibit A of the 1974 Contract: (i) to be between elevations five hundred forty-two (542) feet and five hundred ninety-nine (599) feet MSL in Sardis Lake and (ii) estimated to be two hundred ninety-seven thousand two hundred (297,200) AF of storage.

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

1.27 Drought Conditions – means Moderate Drought Conditions, Advanced Drought Conditions, or Extreme Drought Conditions.

1.28 Enactment Date – means the date on which the Settlement Legislation is an enacted federal public law.

1.29 Enforceability Date – means the date on which the Secretary of the United States Department of the Interior publishes notice in the Federal Register certifying that the conditions of Section 4 have been satisfied.

1.30 Execution Date – means the date on which the State of Oklahoma, Chickasaw Nation, Choctaw Nation of Oklahoma, Oklahoma Water Resources Board, City of Oklahoma City, and Oklahoma City Water Utilities Trust shall have signed the Settlement Agreement, which shall be deemed August 17, 2016, once the Settlement Agreement has been executed by the State of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Oklahoma...
1.31 **Expiration Date** – means September 30, 2020, unless extended as allowed by Section 13.3.

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

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

1.34 **Kiamichi Basin Hydrologic Model** – means the surface water hydrologic model for the Kiamichi Basin, inclusive of tributaries thereto, that the State of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, and the City of Oklahoma City developed for purposes of the Settlement Agreement and as referenced in Sections 5.3.1.2.5.6, 5.3.1.2.5.7, and 6.2.1. Documentation of the Kiamichi Basin Hydrologic Model will be available at Oklahoma Water Resources Board offices in Oklahoma City, as provided in Section 4.1.7. A summary technical memorandum describing the model is included as Exhibit 3.

1.35 **Kiamichi Basin** – means that hydrologic basin designated by the Oklahoma Water Resources Board in the 2012 Update to the Oklahoma Comprehensive Water Plan as subbasins 5 and 6, and generally depicted in Exhibit 10.

1.36 **Live Storage Capacity** – means the amount of storage capacity in a City Reservoir, as calculated and measured pursuant to Section 6.1.8.3.
1.37 **McGee Creek Reservoir** – means the reservoir whose dam is located in Section 7, Township 3 South, Range 14 East of the Indian Meridian in Atoka County, Oklahoma.

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

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

1.40 **mgd** – means million-gallons per day.

1.41 **MSL** – means mean sea level.

1.42 **Moderate Drought Conditions** – means those conditions when: (i) the cumulative amount of stored water in the City Reservoirs is between seventy-five percent (75%) and sixty-five percent (65%) 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 seventy-five percent (75%) and sixty-five percent (65%) of each reservoir’s respective Live Storage Capacity.
1.43 **Nations** – means collectively the Choctaw Nation of Oklahoma and the Chickasaw Nation.

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

1.45 **Oklahoma City Water Utilities Trust (“Trust”)** – means the Oklahoma City Water Utilities Trust, and its successor entities, if any, formerly known as the Oklahoma City Municipal Improvement Authority, a public trust established pursuant to state law with the City of Oklahoma City as its beneficiary. References to “Trust” shall refer to the Oklahoma City Water Utilities Trust acting severally in the said reference.

1.46 **Oklahoma Water Resources Board (“OWRB”)** – means a body corporate and politic and an instrumentality, agency, and department of the State of Oklahoma, created by and existing pursuant to Oklahoma law, and its successor entities, if any.

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

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

1.49 **Parallel City Pipeline** – means the second pipeline the City contemplates constructing between Lake Atoka in Atoka County, Oklahoma, and Lake Stanley Draper in Cleveland County, Oklahoma, approximately ninety-six (96) miles in length whose route is identified as generally following an existing pipeline constructed for the same purposes and
placed in operation in 1962, and which includes a water diversion structure, pumping station, and
pipeline beginning at a point on the Kiamichi River near Moyer’s Crossing and following road
rights of way, purchased, or existing easements to a terminus point at Lake Atoka in Atoka
County, Oklahoma.

1.50 Parties – means the State of Oklahoma, Chickasaw Nation, Choctaw Nation of
Oklahoma, Oklahoma Water Resources Board, City of Oklahoma City, and Oklahoma City
Water Utilities Trust as of the Execution Date; and the United States, State of Oklahoma,
Chickasaw Nation, Choctaw Nation of Oklahoma, Oklahoma Water Resources Board, City of
Oklahoma City, and Oklahoma City Water Utilities Trust as of the Post-Enactment Execution
Date.

1.51 Point of Diversion – means the point of diversion for the City Permit, as defined at
Section 6.1.3.

1.52 Post-Enactment Execution Date – means the date after the Enactment Date on
which the Chickasaw Nation and Choctaw Nation of Oklahoma, the Secretary of the United
States Department of the Interior on behalf of the United States, the State of Oklahoma, the City
of Oklahoma City, and the Oklahoma City Water Utilities Trust have all executed the Settlement
Agreement or the Revised Settlement Agreement.

1.53 Revised Settlement Agreement – means the Settlement Agreement as the same may
be revised as necessary for purposes of conforming to the Settlement Act as of the Post-
Enactment Execution Date.

1.54 Sardis Lake – means the reservoir, formerly known as Clayton Lake, whose dam is
located in Section 19, Township 2 North, Range 19 East of the Indian Meridian in Pushmataha
County, Oklahoma.
1.55 Sardis Lake Release Restrictions – means those limitations on the City of Oklahoma City’s ability to release water from City Sardis Storage specified at Section 6.1.8.

1.56 Settlement Act – means the Settlement Legislation upon its enactment into federal law in a form that substantially conforms with Exhibit 2.

1.57 Settlement Agreement – means this agreement as of the Execution Date or the Revised Settlement Agreement, as applicable.

1.58 Settlement Area – means that area lying between the South Canadian River and the Oklahoma and Texas state line, the Oklahoma and Arkansas state line, and the 98th Meridian and which generally includes the following counties, or portions thereof, in the State of Oklahoma: Atoka, Bryan, Carter, Choctaw, Coal, Garvin, Grady, McClain, Murray, Haskell, Hughes, Jefferson, Johnston, Latimer, LeFlore, Love, Marshall, McCurtain, Pittsburgh, Pontotoc, Pushmataha, and Stephens, which area is depicted in the attached map, Exhibit 1 (dated August 2016).

1.59 Settlement Area Hydrologic Basin(s) – means the following basins, as denominated in the 2012 Update of the Oklahoma Comprehensive Water Plan: Basins 24, 25, and 26 (commonly referred to as the Beaver Creek), 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), Basins 46 and 47 (commonly referred to as the Lower Arkansas), Basins 48, 56, and 57 (commonly referred to as the Lower Canadian), Basin 2 (commonly referred to as the Little), Basin 14 (commonly referred to as the Lower Washita), Basin 58 (commonly referred to as the Middle Canadian), Basin 4 (commonly referred to as the Mountain Fork), Basins 15 and 16 (commonly referred to as the Middle Washita), 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 to as the Red River Mainstem), Basin 3 (commonly referred to as the Upper Little), and Basin 22 (commonly referred to as the Walnut Bayou), which basins are illustrated in the attached map, Exhibit 10, (dated August 2016).

1.60 Settlement Area Waters – means water located within the Settlement Area.

1.61 Settlement Commission – means the body established in accord with Section 5.3.3.2.

1.62 Settlement Legislation – means the federal legislation that includes those terms necessary to secure implementation, enforceability, and federal approval of the Settlement Agreement, a copy of which as drafted by the Parties as of the Execution Date is included as Exhibit 2, which exhibit shall be replaced with the Settlement Act prior to the Enforceability Date.


1.64 Storage Contract Transfer Agreement – means the agreement entered between the Oklahoma Water Resources Board and the Oklahoma City Water Utilities Trust, dated June 15, 2010.

1.65 Technical Committee – means that committee formed pursuant to Section 5.3.1.2.1.

1.66 Title 82 – means Title 82 of the Oklahoma Statutes or any recodification thereof.

1.67 Trust Land – means allotted or unallotted land held by the United States in trust for the benefit of either the Chickasaw Nation or the Choctaw Nation of Oklahoma.

1.68 United States – means the United States of America acting in its capacity as trustee for the Nations, their respective members, citizens, and Allottees, or as specifically stated or
limited in any given reference herein, in which case it shall mean 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 and Objections by the Chickasaw Nation, the Choctaw Nation of Oklahoma, and the United States Acting in Its Capacity as Trustee for Each Nation – Subject to the retention of rights set forth in Section 2.5 and except to the extent that rights are recognized in the Settlement Agreement or Settlement Act, including recognition of each Nation’s water rights, the Chickasaw Nation and Choctaw Nation, each in its own right and on behalf of its respective citizens and members (except in their capacity as Allottees), and the United States acting in its capacity as trustee for the Chickasaw Nation and Choctaw Nation and the respective citizens and members of each Nation (except in their capacity as Allottees), waive and release:

2.1.1 all of the following claims the Chickasaw Nation, the Choctaw Nation, or the United States acting in its capacity as trustee for either 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:

2.1.1.1 claims to the ownership of water in the State of Oklahoma;

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

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 of Oklahoma and ownership or use of
water on Allotments by Allottees or anyone using water on an Allotment with the Allottee’s permission;

2.1.1.4 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;

2.1.1.5 any other claim relating to the ownership of water, regulation of water, 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 or Choctaw 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 either is a signatory;

2.1.1.6 claims or defenses asserted or 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;

2.1.2 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;
2.1.3 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:

2.1.3.1 all claims regarding regulatory control over or Oklahoma Water Resources Board jurisdiction relating to such permit application and permit; and

2.1.3.2 all claims for damages, losses or injuries to water rights or rights to use 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 the issuance and lawful exercise of the City Permit;

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

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

2.1.6 all claims to 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 the City of Oklahoma City’s lawful exercise of Permit Numbers P80-48 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir, that accrued at any time up to and including the Enforceability Date;

2.1.7 all claims and objections relating to approval by the United States Army Corps of Engineers of the assignment of the 1974 Contract pursuant to the Amended Storage Contract Transfer Agreement; and

2.1.8 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 the lawful exercise of rights pursuant to the Amended Storage Contract Transfer Agreement.

2.2 Waivers and Releases of Claims and Objections by the Chickasaw Nation and the Choctaw Nation of Oklahoma Against the United States – Subject to the retention of rights and claims set forth in Section 2.5 and except to the extent that rights are recognized in the Settlement Agreement or Settlement Act, the Chickasaw Nation and Choctaw Nation, each acting on behalf of itself and its respective citizens and members (except in their capacity as Allottees), shall execute a waiver and release of all claims against the United States (including any agency or employee of the United States) relating to:

2.2.1 all of the following claims the United States acting in its capacity as trustee for either 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.) or OWRB v. United States, et al. CIV 12-275 (W.D. Ok.), or any general stream adjudication:
2.2.1.1 claims to the ownership of water in the State of Oklahoma;

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

2.2.1.3 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 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;

2.2.1.4 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;

2.2.1.5 any other claim relating to the ownership of water, regulation of water, 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 or Choctaw 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 either is a signatory;

2.2.1.6 claims or defenses asserted or 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;

2.2.2 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;

2.2.3 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:

2.2.3.1 all claims regarding regulatory control over or Oklahoma Water
Resources Board jurisdiction relating to such permit application and permit; and

2.2.3.2 all claims for damages, losses or injuries to water rights or rights to use
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 the issuance and lawful exercise of the City
Permit;

2.2.4 all claims to regulatory control over the City of Oklahoma City’s Permit Numbers
P80-48 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-
282D for water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek
Reservoir;

2.2.5 all claims that the State lacks regulatory authority over or Oklahoma Water
Resources Board jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48
and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;
2.2.6 all claims to 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 the City of Oklahoma City’s lawful exercise of Permit Numbers P80-48
and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for
water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir,
that accrued at any time up to and including the Enforceability Date;

2.2.7 all claims and objections relating to the approval by the United States Army
Corps of Engineers of the assignment of the Storage Contract of 1974 pursuant to the Amended
Storage Contract Transfer Agreement;

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

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

2.3 Tolling of Claims

2.3.1 In general – Each applicable period of limitation and time-based equitable
defense relating to a claim described in Section 2.1 and 2.2 shall be tolled during the period
beginning on the Enactment Date and ending on the occurrence of either the Enforceability Date
or the Expiration Date.

2.3.2 Effect – Nothing in Section 2.3 revives any claim or tolls any period of limitation
or time-based equitable defense that expired before the Enactment Date.
2.4 Effectiveness of Waivers and Releases

2.4.1 Nothing herein acknowledges the existence or validity of any claims that are
being waived and released.

2.4.2 The waivers and releases of Sections 2.1 and 2.2 will become effective on the
Enforceability Date.

2.5 Reservation of Rights and Retention of Claims by the Nations and the United
States Acting in Its Capacity as Trustee for the Nations – Notwithstanding the waivers and
releases in Section 2.1 and 2.2, each respective Nation on its own behalf and on behalf of its
respective members or citizens (except in their capacities as Allottees) and the United States,
acting as trustee for each respective Nation, retain:

2.5.1 all claims for enforcement of the Settlement Agreement and the Settlement Act
pursuant to the terms of the Settlement Agreement and the Settlement Act;

2.5.2 all rights to use and protect any Nation water right recognized by or established
pursuant to Section 7, including the right to assert claims for injuries relating to such right and
the right to participate in any stream adjudication, including any inter se proceeding;

2.5.3 all claims relating to activities affecting the quality of water that are not waived at
Section 2.1.1.5 or 2.2.1.5, including any claims the Nations may have under:

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

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

2.5.3.3 the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.); and

2.5.3.4 any regulations implementing the Acts described in Section 2.5.3;
2.5.4 all claims relating to damage, loss, or injury resulting from a person’s unauthorized diversion, use, or storage of water, including damages, losses, or injuries to land or non-water natural resources associated with any hunting, fishing, gathering, or cultural right; and

2.5.5 all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to the Settlement Act or Sections 2.1 or 2.2.

2.6 Nations’ Non-Objection to Amended Permit Application – In return for the bargained-for exchange of benefits in the Settlement Agreement and upon the Enactment Date or the date on which the City has provided written notice pursuant to Section 6.2.2.7, whichever occurs first, the Nations:

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

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

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

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

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

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

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

3. LIMITED WAIVERS OF SOVEREIGN IMMUNITY AND CONSENTS TO SUIT

3.1 In General – The purpose of these limited waivers of sovereign immunity is to
induce each Party to enter into the Settlement Agreement and to allow each Party to seek
interpretation or enforcement of the rights and obligations arising under or related to the
Settlement Agreement or the Settlement Act that each Party may have against each other Party.
All Parties understand that no other Party would enter into the Settlement Agreement without the
limited waivers provided herein.

3.2 Limited Waivers of Sovereign Immunity and Consents to Suit – Effective upon
and after the Enforceability Date, in the case of any action to interpret or enforce the Settlement
Agreement or Settlement Act:
3.2.1 For the exclusive benefit of the State (inclusive of the OWRB), the City, the
Trust, the Choctaw Nation, and the United States, the Chickasaw Nation expressly and
irrevocably consents to suit and waives its sovereign immunity from suit 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 State and/or the OWRB, the City, the Trust, the Choctaw Nation, or the
United States, inclusive of the appellate jurisdiction of the United States Court of Appeals for the
Tenth Circuit and the United States Supreme Court.

3.2.2 For the exclusive benefit of the State (inclusive of the OWRB), the City, the
Trust, the Chickasaw Nation, and the United States, the Choctaw Nation expressly and
irrevocably consents to suit and waives its sovereign immunity from suit 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 State and/or the OWRB, the City, the Trust, the Chickasaw Nation, or the
United States, inclusive of the appellate jurisdiction of the United States Court of Appeals for
the Tenth Circuit and the United States Supreme Court.

3.2.3 For the exclusive benefit of the City, the Trust, the Choctaw Nation, the
Chickasaw Nation, and the United States, the State (inclusive of 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 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

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3.2.4 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, inclusive of the appellate jurisdiction of the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court.

3.2.5 For the exclusive benefit of the State (inclusive of the OWRB), the City, the Trust, the Chickasaw Nation, and the Choctaw Nation, the United States expressly and irrevocably consents to suit and waives its sovereign immunity from suit 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 State and/or the OWRB, the City, the Trust, the Chickasaw Nation, or the Choctaw Nation, inclusive of the appellate jurisdiction of the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court.

3.3 No Damages – Nothing herein authorizes any money judgment against the United States, Nations, or State or otherwise serves as a basis for money damages.

3.4 No Exhaustion; Exclusive Forum – Each Party further waives and shall not invoke inconvenient forum or any exhaustion doctrine, including the doctrines of tribal exhaustion, exhaustion of administrative remedies, as a prerequisite for any other Party’s bringing an action under Section 10. All parties agree that the United States District Court for the Western District of Oklahoma shall be the exclusive forum for all suits relating to or arising under the Settlement.
Agreement or the Settlement Act and that no Party shall bring such action in any state, tribal, or other federal court or administrative forum.

3.5 Statutory Waivers and Consents

3.5.1 United States — The Settlement Legislation shall provide the United States’ express and irrevocable consent to suit and waiver of immunity consistent with the waivers of immunity and consents to suit provided by the Parties, each on their own behalf, in the Settlement Agreement.

3.5.2 Nations — The Settlement Legislation shall provide for waiver of the Nations’ sovereign immunity from suit in a manner and form consistent with the waivers of immunity and consents to suit the Nations provided, each on their own behalf, in the Settlement Agreement.

4. CONDITIONS PRECEDENT TO ENFORCEABILITY

4.1 In General — The Settlement Agreement shall become enforceable on the date on which all of the following conditions precedent have been satisfied:

4.1.1 Enactment Date — federal legislation that includes those terms necessary to secure implementation, enforceability, and federal approval of the Settlement Agreement and substantially conforms with Exhibit 2 is an enacted federal public law;

4.1.2 Post-Enactment Execution Date — the United States, the Nations, the State, the OWRB, the City, and the Trust have executed the Settlement Agreement or Revised Settlement Agreement;

4.1.3 Execution of Waivers and Releases of Claims — the United States and the Nations have executed waivers of claims that substantially conform with Exhibits 5 and 6;
4.1.4 Amended Storage Contract Transfer Agreement – the State, City, and Trust have executed, and the Secretary of the United States Army has approved, an Amended Storage Contract Transfer Agreement that substantially conforms with Exhibit 4;

4.1.5 Modification of September 11, 2009, Court Order – the State and the United States have obtained, pursuant to a motion and proposed order that substantially conform with Exhibit 7, any modifications to the September 11, 2009, order in *United States v. Oklahoma Water Resources Board*, CIV 98-00521 (N.D. Ok.);

4.1.6 City Permit – the OWRB has issued to the City a final permit, as that term is used in Section 6.2.3.3, that conforms with Section 6.1;

4.1.7 Model Documentation – the documentation of the Kiamichi Basin Hydrologic Model is on file at the OWRB’s Oklahoma City offices;

4.1.8 Atoka and Sardis Conservation Projects Fund – the State, City, and Nations have funded the Atoka and Sardis Conservation Projects Fund in accord with Section 6.5.2.1.2;

4.1.9 Dismissal of *Chickasaw Nation and Choctaw Nation v. Fallin, et al.* – the Nations, the State, and the City have jointly moved for and the court has entered an order of dismissal in *Chickasaw Nation and Choctaw Nation v. Fallin, et al.*, CIV. 11-927 (W.D. Ok.), which motion and order shall substantially conform with Exhibit 8;

4.1.10 Dismissal of *OWRB v. United States, et al.* – the OWRB has moved for and the court has entered an order of dismissal in *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.), which motion and order shall substantially conform with Exhibit 9;

4.1.11 Notice of Satisfaction of Conditions Precedent – the State, City, and Nations have jointly notified the Secretary of the United States Department of the Interior that 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 4.2; and

4.1.12 Publication of Certification – the Secretary of the United States Department of
the Interior has published the certification required by Section 4.2.

4.2 Certification – The Settlement Legislation shall provide that upon completion of all
of the conditions specified at Sections 4.1.1 through 4.1.11, the Secretary of the United States
Department of the Interior shall publish in the Federal Register a certification stating that such
conditions have been satisfied.

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.

5.2 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 10 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 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).

5.3.1.1.2 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).
5.3.1.1.3 **Class C Basins** – Class C Basins are those Settlement Area Hydrologic Basins that lie partially within the Settlement Area, which are the following Settlement Area Hydrologic Basins, as depicted in Exhibit 10: Basins 24, 25, and 26 (commonly referred to as the Beaver Creek), Basins 46 and 47 (commonly referred to as the Lower Arkansas), Basins 48 and 56 (commonly referred to as the Lower Canadian), Basin 58 (commonly referred to as the Middle Canadian), and Basin 16 (commonly referred to as the Middle Washita).

5.3.1.1.2 **Conferral Threshold** – The process specified at Section 5.3.1.2 shall be a precondition to OWRB consideration of those applications that satisfy the following conditions:

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

5.3.1.1.2.2 **Class B Basin** – An application to appropriate water for use at a location outside of the source basin in an amount that is more than either twenty thousand (20,000) AFY or three percent (3%) of the Mean Available Flow, whichever is less, in a Class B Basin. Applications filed for an appropriation from the same point of diversion for use outside of the source basin filed within any twenty four (24) month period which collectively equal or exceed twenty thousand (20,000) AFY or three percent (3%) of the Mean Available Flow,
whichever is less, shall be subject to the conferral threshold even if individually each application would not exceed twenty thousand (20,000) AFY or three percent (3%) of the Mean Available Flow, whichever is less.

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

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

5.3.1.2 Conferral and Modeling

5.3.1.2.1 Technical Committee – No later than ninety (90) days from the Enactment Date, the State and the Nations shall establish the Technical Committee. The Technical Committee shall be comprised of two (2) members, one (1) member for the Nations 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.
5.3.1.2.1.2.3 The OWRB and the Technical Committee may use all resources available to them for purposes of evaluating, refining, or developing a model, including but not limited to information from the applicant.

5.3.1.2.2 Adequate Model – The OWRB may determine a model is 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, the model inputs identified at Section 5.3.1.2.3 and the model has been calibrated for purposes of evaluating the following:

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

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

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

5.3.1.2.3.1 Existing water rights in the basin as of the date of the application, including permitted appropriative uses, vested rights, any surface water uses developed by either Nation pursuant to Section 7.7, domestic use set aside calculated based on the OWRB numerical assumption of six (6) AFY per one hundred sixty (160) acres within the basin upstream of the proposed point of diversion and twenty four (24) AFY for each linear mile downstream of the proposed point of diversion, any surface water right recognized pursuant to Section 8, and any pending application;
5.3.1.2.3.2 Quantity of flow necessary to fulfill obligations under apportionment provisions of interstate stream compacts to which the State is a party as calculated by any rules developed by any applicable compact commission;

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

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

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

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

5.3.1.2.3.5 Measured or synthesized data sufficient to simulate basin hydrology, including reservoir characteristics (e.g., yield, area-capacity, normal storage,
authorized purposes, date of construction, evaporation, sedimentation, release schedules and
other operational requirements) and seasonal flow variability, using the entire period of record,
except for those data which diminish statistical confidence.

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

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

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

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

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

5.3.1.2.5.2 If the OWRB determines an Adequate Hydrologic Model is available to it, it shall notify the Technical Committee of such determination and then process the application pursuant to Section 5.3.1.3.
5.3.1.2.5.3 If the OWRB determines that an Adequate Hydrologic Model is not available to it, it shall proceed in accord with Section 5.3.1.2.5.4.

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

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

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

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

5.3.1.3.1 Hydrologic Findings – In reliance on an Adequate Hydrologic Model, the OWRB will process an application subject to Section 5.3.1.3 under Title 82 and OWRB rules and regulations and make written findings on the following as part of its final decision:

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

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

5.3.1.3.1.3 For those applications that satisfy the conferral threshold provided at Section 5.3.1.2.2 or which have satisfied the requirements of Section 5.3.3, that existing water quality, ecological, and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e) would be protected in approving the applicant’s proposed diversion of water.

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

5.3.1.3.2.1 That the applicant has demonstrated it has a need for the water requested for appropriation within a reasonable period of time but not longer than seven (7) years or as set forth in a schedule of use that is supported by any findings required by state law; and
5.3.1.3.2 That the applicant has demonstrated the works intended for the delivery of the water are feasible and capable of efficient delivery of the water requested for appropriation without committing waste.

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

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

5.3.2 Arbuckle-Simpson Groundwater Basin

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

5.3.2.2 Maximum Annual Yield and Administration – The OWRB shall consider all applications for the Arbuckle Simpson Groundwater Basin pursuant to 82 O.S. §§ 1020.9A and 1020.9 in accord with Section 5.3.2. In accord with Title 82, the OWRB has developed a maximum annual yield (“MAY”) for the Arbuckle Simpson Groundwater Basin, see Maximum Annual Yield for the Arbuckle-Simpson Groundwater Basin, Oklahoma Water
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.
5.3.3 Out-of-State Use of Settlement Area Waters

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

5.3.3.2 Settlement Commission

5.3.3.2.1 Establishment – The Settlement Legislation shall establish the Settlement Commission, the duties and authority of which are defined and limited by the Settlement Agreement and the Settlement Act.

5.3.3.2.2 Members – The Settlement Commission shall be comprised of five (5) members, appointed as follows: (i) one by the Governor of the State; (ii) one by the Attorney General of the State; (iii) one by the Chief of the Choctaw Nation; (iv) one by the Governor of the Chickasaw Nation; and (v) one by agreement of the aforementioned four members. In the event the four aforementioned members cannot agree on a single person, they shall jointly submit a list of no fewer than three (3) names to the Chief Judge for the United States District Court for the Eastern District of Oklahoma, who shall then make the appointment from that list. The initial appointments to the Settlement Commission shall be made within ninety (90) days of the Enforceability Date.

5.3.3.2.3 Member Terms – Settlement Commission members shall serve at the pleasure of their respective appointing entity. Appointing entities may reimburse their respective appointed members for costs associated with their service on the Settlement Commission, and the fifth member shall have their costs associated with service on the
Settlement Commission reimbursed by the State and the Nations. No member shall receive compensation for service on the Settlement Commission. In the event of a Settlement Commission member’s removal or resignation, that member’s original appointing entity shall name a replacement. The fifth member may be removed or replaced by a majority vote of the other members based on a failure of the member to carry out their duties as a member of the Commission.

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

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

5.3.3.2.4.2 Report – to prepare, finalize, and submit a report in accord with Section 5.3.3.3, which report shall document the Settlement Commission’s evaluation of those matters indicated in Section 5.3.3.2 and such other relevant issues presented by the proposed Out-of-State Use of Settlement Area Waters;

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

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

5.3.3.3 Proposal Evaluation; Report

5.3.3.3.1 Proposal – Any person proposing an Out-of-State Use of Settlement Area Waters shall submit a proposal to the Settlement Commission for evaluation, a copy of which the Settlement Commission shall provide to the OWRB.
5.3.3.2 Evaluation – In performing its evaluation of a proposal, the Settlement Commission may consider all available information, including, at a minimum: (i) the use to which the water will be placed; (ii) the feasibility of the works proposed for delivering water; (iii) the effect of the proposed use on water availability in the source basin and throughout Oklahoma; (iv) the likely environmental and economic impact of the proposed use on the source basin and Oklahoma; and (v) the appropriate valuation to be imposed as a condition of the proposed Out-of-State Use of Settlement Area Waters. To support the Settlement Commission’s performance of its duties under Section 5.3.3, the OWRB shall provide to the Settlement Commission a preliminary technical evaluation of the availability of water in the source basin, including permitted uses, any pending applications, and any other known, projected, or proposed water uses; provided, that such preliminary evaluation shall not prejudge or otherwise control any subsequent administrative processing of the proposed Out-of-State Use of Settlement Area Waters by the OWRB.

5.3.3.3 Report; Legislative Action – The Settlement Commission’s evaluation shall be contained in a report that the Settlement Commission shall submit to the Speaker of the Oklahoma House of Representatives and the President Pro Tem of the Oklahoma Senate. The Oklahoma Legislature may consider and act on the Settlement Commission’s report as the Legislature deems appropriate.

5.3.3.4 Administrative Fees and Costs – Any person proposing an Out-of-State Use of Settlement Area Waters shall pay those fees and costs associated with the Settlement Commission’s evaluation and preparation of its report. The Nations and State will coordinate to provide additional reasonable administrative support, including funding, to allow the Settlement Commission to fulfill its duties.
5.3.4 Applications for a Proposed Out-of-State Use of Settlement Area Waters

No Out-of-State Use of Settlement Area Waters shall be lawful unless and until such 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.

5.3.5 Water Preservation Infrastructure Fund

5.3.5.1 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.

5.3.5.2 Administration of Water Preservation Infrastructure Fund

5.3.5.2.1 Allocation and Disbursement – Monies deposited pursuant to Section 5.3.5.1 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.

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

5.3.3.5.2.4 Settlement Area Projects Priority – As provided in Section 2 of Exhibit 11, applications for funding for public water infrastructure projects located within or serving the Settlement Area shall receive an additional ten (10) points.

5.3.3.5.2.5 Appeal of Denial of Funding for Settlement Area Projects – If the OWRB denies an application for funding for a public water infrastructure project located within or serving the Settlement Area, the aggrieved applicant may, within thirty (30) days, appeal the OWRB’s decision to the Settlement Commission, which shall determine whether the OWRB correctly applied the criteria of Section 5.3.3.5 (inclusive of Exhibit 11) including preferences for Settlement Area projects. If the Settlement Commission determines that the OWRB properly applied the criteria, the decision of the OWRB shall stand and be final, subject to the applicant’s right to reapply to the OWRB consistent with Exhibit 11. If the Settlement Commission determines the OWRB did not correctly apply the criteria of Section 5.3.3.5 (inclusive of Exhibit 11), the application shall be remanded to the OWRB for reconsideration.
6. PROVISIONS RELATING TO PENDING OWRB APPLICATION NO. 2007-017 –

As provided in this Section 6, the Parties have agreed to provisions to enhance water availability for use within the Settlement Area, to support recreation, fish and wildlife needs, and to resolve the Nations’ objections to the OWRB’s consideration of the City’s Amended Permit Application. These provisions include Sardis Lake Release Restrictions, Bypass Flow Requirements, and City water conservation requirements to protect Sardis Lake recreation, fish and wildlife benefits; a set-aside of Conservation Storage Capacity for local use of the Administrative Set-Aside; and the Atoka and Sardis Conservation Projects Board.

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

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

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

6.1.3 Point of Diversion – that the permit specify a point of diversion from the Kiamichi River in the general vicinity of Moyers Crossing in Pushmataha County, Oklahoma.
6.1.4 Sources – that the permit provide that the sources of water shall be stream water from the Kiamichi River, water released from City Sardis Storage, or any combination thereof.

6.1.5 City Diversion Rate, Bypass Requirement, and Flow Rate – that the permit provide for:

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

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

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

6.1.6 Exercise of City Diversion Rate, Bypass Requirement, and Flow Rate – that the permit provide:

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

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

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

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

6.1.7 Purposes – that the permit provide that the purposes for which water may be beneficially used shall be municipal use by the City, the City’s current and future wholesale 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 1.4, 1.32, and 1.42, 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>
<thead>
<tr>
<th>City Reservoir</th>
<th>Top Elev. (MSL)</th>
<th>Lower Elev. (MSL)</th>
<th>Max. Live Stor. Cap. (AF)</th>
<th>75% (MSL)</th>
<th>65% (MSL)</th>
<th>50% (MSL)</th>
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<td>Atoka</td>
<td>590.0</td>
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<td><strong>Total</strong></td>
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<td></td>
<td><strong>407,105</strong></td>
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</table>
6.1.8.2 **Lake Elevation Measurement** – All lake elevations shall be determined in reference to official United States Army Corps of Engineer or United States Geological Survey measurements.

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

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

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

6.2 **OWRB Review of Amended Permit Application**

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

6.2.2 **Timing**

6.2.2.1 **Commencement of OWRB Process; Issuance of Notice** – No later than thirty (30) days from the Enactment Date, the OWRB staff shall issue to the City a notice for publication (“Notice”) of the Amended Permit Application, which the City shall cause to be published in accord with Section 6.2.2 and OAC § 785:20-5-1.
6.2.2.2 Contents of Notice; Timing and Schedule for Hearing – In addition to any requirements of state law, the Notice shall set a schedule for consideration of the Amended Permit Application. The schedule shall provide that: (i) any protest to the Amended Permit Application must be filed within thirty (30) days of the date of last publication of Notice; and (ii) in the event the Amended Permit Application is protested, a hearing shall be conducted and concluded no later than one hundred eighty (180) days from the date of last publication of Notice.

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

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

6.2.2.5 Final Order of OWRB – The Board shall consider the proposed Final Order and any exceptions thereto and issue a Final Order within thirty (30) days of the filing of any exceptions in the manner prescribed by OAC § 785:4-9-2. Appeals from the OWRB’s Final Order shall be in accord with state law. The Parties may agree in writing that the condition of Section 4.1.6 shall be deemed satisfied, notwithstanding such appeal. If the Parties agree that the
condition of Section 4.1.6 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 Pre-Enactment Date Review – If the Settlement Legislation has been introduced but the Enactment Date has not occurred by September 30, 2018, notwithstanding the Parties’ best efforts to secure its enactment, the process set forth in Sections 6.2.2.1 through 6.2.2.5 shall commence at the City’s discretion, upon written notice to the OWRB and the Nations.

6.2.2.8 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 4.1.6, which circumstance will automatically activate
the Expiration Date; and (ii) the City at its sole discretion may resubmit to the OWRB, and the
OWRB shall be deemed to have accepted, OWRB Permit Application No. 2007-017 without the
City’s having waived the priority date and proposed appropriative amounts of its initial permit
application (Application No. 2007-017).

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

6.3 Surrender – Notwithstanding the possible cancellation or reduction in the future of
the City Permit that could result by operation of state law, the City Permit shall be deemed
surrendered in accord with 82 O.S. § 105.19 and OAC § 785:20-9-3(H) without any further
action by the OWRB or City if the City by 2043 does not construct the Parallel City Pipeline and
divert under the City Permit an amount equal to what the schedule of use specifies for 2040, see
Exhibit 14; provided, that this deadline shall be tolled and extended for the duration of: (i) any
court injunction that delays or halts the City’s construction of the Parallel City Pipeline, which
injunction is entered as part of any litigation challenging the issuance of environmental permits,
rights of way, or easements necessary for the Parallel City Pipeline; or (ii) any delay in excess of

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three (3) years from the City’s initiation of legal action(s) to secure any Bureau of Indian Affairs’ approval necessary for the purpose of acquiring easements or rights-of-way for the Parallel City Pipeline; provided, that the City shall diligently initiate and pursue such legal action(s).

Regardless of any surrender, cancellation, or reduction of the City Permit pursuant to this Section 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.

6.5.2 Atoka and Sardis Conservation Projects Board and Fund

6.5.2.1 Establishment

6.5.2.1.1 Projects Board – No later than ninety (90) days from the
Enactment Date, the State, the Chickasaw Nation, the Choctaw Nation, and the City shall each
appoint a representative to the Atoka and Sardis Conservation Projects Board. Each member
shall serve at the pleasure of its appointing entity. Failure to appoint a member shall not
constitute a breach of the Settlement Agreement nor shall it preclude the Board from performing
its duties, as specified herein. Each appointing entity may reimburse from its own funds its
respective appointed member for costs associated with their service, but each member shall
otherwise serve without compensation.

6.5.2.1.2 Projects Fund

6.5.2.1.2.1 Contributions – Upon the Enactment Date and subject to an
escrow agreement implementing the requirements of Section 6.5.2.1.2, the State, Nations, and
City shall each contribute to a ten million dollar ($10,000,000) fund, with: (i) the City
contributing five million dollars ($5,000,000), of which two million five hundred thousand
dollars ($2,500,000) would have been monies otherwise due to the State under the terms of the
Storage Contract Transfer Agreement; and (ii) the Nations contributing five million dollars
($5,000,000), with the Choctaw Nation paying seventy-five percent (75%) and the Chickasaw
Nation paying twenty-five percent (25%) of such amount. The Atoka and Sardis Conservation
Projects Board shall authorize expenditures from the Atoka and Sardis Conservation Projects

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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.

6.5.2.1.2.2 Interest-Bearing Account; Administration by Oklahoma City Water Utilities Trust

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

6.5.2.1.2.3 Grants and Donations

Subject to the same conditions that otherwise apply pursuant to Section 6.5.2.1, the Oklahoma City Water Utilities Trust may accept grants and donations of monies for deposit in the fund described in Section 6.5.2.1.2.2 and may, further, accept donations of goods or services for the benefit of any project authorized by the Atoka and Sardis Conservation Projects Board. Any such grant or donation will be in addition to the contributions specified in Section 6.5.2.1.2.1 and not in lieu thereof.
6.5.2.1.2.4 Withdrawal, Expenditure, and Obligation of Account – The

Oklahoma City Water Utilities Trust may make no withdrawal or expenditure from or otherwise obligate any monies in the account described in Section 6.5.2.1.2.2 unless and until directed to 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;

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

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

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

6.5.3 Scope of Sardis Lake Release Restrictions – The effect of the Sardis Lake
Release Restrictions imposed on the City Permit by Section 6.1.8 is to limit to one hundred
thousand sixteen six hundred sixteen (116,616) AF the amount of Conservation Storage Capacity
the City may store water in and release water from for purposes of diverting up to one hundred
fifteen thousand (115,000) AFY at the Point of Diversion. The Sardis Lake Release Restrictions
shall not apply to the use of thirty-seven thousand nine hundred eight (37,908) AF of Conservation Storage Capacity reserved for purposes of the twenty thousand (20,000) AFY Administrative Set Aside. The 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

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

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.
6.5.5 **Right-of-Way** – The Chickasaw Nation agrees to convey an easement to the City, which easement shall be as depicted in Exhibit 15, and the Chickasaw Nation and the City shall cooperate and coordinate on the submission of an application for approval of such conveyance by the Department of the Interior, in accord with federal law and process. Upon approval by the Department of the Interior, the City shall duly record the easement. In exchange for such conveyance, the City shall pay to the Chickasaw Nation the value of past unauthorized use and consideration for future use of the lands burdened by such easement, which value shall be based on an appraisal secured by the City and Nations and approved by the United States Bureau of Indian Affairs.

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

6.5.6.1 The City may subcontract its rights to City Sardis Storage, but any subcontracted right, inclusive of direct diversions from Sardis Lake, shall be subject to the Sardis 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.

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

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

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

6.5.7.1 allow for flexibility in the measurement, accounting, and timing of water stored or available for storage in the City Reservoirs under Sections 1.4, 1.32, and 1.42; and

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

7. **NATIONS USE OF WATER** – Subject to the State’s right to enforce the Settlement Agreement and the Settlement Act, the Nations have the right to use and to develop the right to use water as provided in this Section 7.

7.1 **In General** – Nothing herein precludes either Nation from obtaining a permit to use water pursuant to and in accord with state law, and neither Nation shall have any less right under the Settlement Agreement and the Settlement Act than what any person has pursuant to state law with respect to the use of water without a permit, including the drilling and use of wells for domestic purposes.

7.2 **Existing Uses by Permit** – The Nations shall possess and may exercise all existing uses by permit identified in this Section 7.2, which uses shall be in accord with state law and the identified permits. Administration and enforcement of these identified permitted uses shall be in accord with state law.
7.2.1 Chickasaw Nation – The Chickasaw Nation’s existing uses by permit are identified in Table 3.

Table 3: Chickasaw Nation – Existing Water Use by Permit

<table>
<thead>
<tr>
<th>Permit No.</th>
<th>Property</th>
<th>Location</th>
<th>Land Status</th>
<th>County</th>
<th>Amount (AFY)</th>
<th>No. of Wells</th>
<th>Depth</th>
<th>Source</th>
<th>Purpose of Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-554</td>
<td>WinStar (CTUA)</td>
<td>Use Location: Public water supply system&lt;br&gt;Well Locations: Three in SW NW NW of Sec. 29, T9S, R2EI</td>
<td>Trust</td>
<td>Love</td>
<td>680.4</td>
<td>3</td>
<td>750</td>
<td>Antlers</td>
<td>Public supply</td>
</tr>
<tr>
<td>2005-553</td>
<td>WinStar (CTUA)</td>
<td>Use Location: Public water supply system&lt;br&gt;Well Locations: Two in NW NE SE of Sec. 19, T9S, R2EI, and one in SW NE SE of Sec. 19, T9S, R2EI</td>
<td>Trust</td>
<td>Love</td>
<td>464.1</td>
<td>3</td>
<td>750</td>
<td>Antlers</td>
<td>Public supply</td>
</tr>
<tr>
<td>2005-520</td>
<td>WinStar (golf course)</td>
<td>Use Location: N NW SW of Sec. 29, T9S, R2EI and EE of Sec. 30, T9S, R2EI&lt;br&gt;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</td>
<td>Non-trust</td>
<td>Love</td>
<td>440.0</td>
<td>4</td>
<td>50</td>
<td>Alluvium and terrace deposits of the Red River</td>
<td>Irrigation</td>
</tr>
<tr>
<td>1989-544</td>
<td>Chickasaw Nation Medical Center (G.O. Philpot, prior owner)</td>
<td>Use and Well Locations: One in the NW NW SW and one in the SW SE NW of Sec. 14, T3N, R6EI</td>
<td>Trust</td>
<td>Pontotoc</td>
<td>509.0</td>
<td>2</td>
<td>Unknown</td>
<td>Boggy Formation, Wewoka Formation, Holdenville Shale, Delaware Shale</td>
<td>Agriculture</td>
</tr>
<tr>
<td>1984-623</td>
<td>Chickasaw Children's Village and Texoma Gaming Center (W.E. Culbertson, prior owner)</td>
<td>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</td>
<td>Trust</td>
<td>Marshall</td>
<td>1176.0</td>
<td>3</td>
<td>One at 628', one at 168', and one unknown</td>
<td>Antlers</td>
<td>Public supply</td>
</tr>
</tbody>
</table>
7.2.2 Choctaw Nation – The Choctaw Nation’s existing uses by permit are identified in Table 4.

Table 4: Choctaw Nation – Existing Water Use by Permit

<table>
<thead>
<tr>
<th>Permit No.</th>
<th>Property</th>
<th>Location</th>
<th>Land Status</th>
<th>County</th>
<th>Amount (AFY)</th>
<th>No. of Wells</th>
<th>Depth</th>
<th>Source</th>
<th>Purpose of Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999-21</td>
<td>Silverado Golf Course</td>
<td>Diversion Location: SE NW NW, Sec. 3, T6S, R9E1</td>
<td>Non-trust</td>
<td>Bryan</td>
<td>250.0</td>
<td>n/a</td>
<td>n/a</td>
<td>Blue River</td>
<td>Irrigation</td>
</tr>
<tr>
<td>1952-450</td>
<td>Tom Ranch</td>
<td>Well and Use Location: SW, Sec. 9, T10S, R26E1</td>
<td>Non-trust</td>
<td>McCurtain</td>
<td>158.0</td>
<td>1</td>
<td>Unknown</td>
<td>Alluvium and terrace deposits of the Red River</td>
<td>Irrigation</td>
</tr>
<tr>
<td>1940-82</td>
<td>Jones Academy</td>
<td>Diversion and Use Location: Sec. 28, T5N, R17E1</td>
<td>Trust</td>
<td>Pittsburgh</td>
<td>24.0</td>
<td>n/a</td>
<td>n/a</td>
<td>Lower Canadian River to Lake Eufala</td>
<td>Irrigation, pond</td>
</tr>
</tbody>
</table>

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

7.4 Existing Uses Without Permit – Each Nation shall have the right to the uses of water without permit for so long as such uses are limited to the amounts, well location, places of use, and purposes of use identified in Sections 7.4.1 or 7.4.2, respectively, or otherwise in accord with Section 0.

7.4.1 Chickasaw Nation – The Chickasaw Nation’s existing uses without permit are identified in Table 5.
<table>
<thead>
<tr>
<th>Use No. (Well Id.)</th>
<th>Property</th>
<th>Location</th>
<th>Land Status</th>
<th>County</th>
<th>Amount (AFY)</th>
<th>No. of Wells</th>
<th>Depth</th>
<th>Source</th>
<th>Purpose of Use</th>
</tr>
</thead>
</table>
| CN-1<sup>1</sup> (77354, 77898, 84381, and 122089) | WinStar (CTUA) | Use Location: Public Water Supply system
Well locations: E SE SW of Sec. 19, T9S, R2E1 | Trust | Love | 750.0 | 4 | Three at 750' and one at 690' | Antlers | Public supply |
| CN-2<sup>2</sup> (n/a) | WinStar (golf course) | Use Location: N NW SW of Sec. 29, T9S, R2E1 and E E of Sec. 30, T9S, R2E1 and S S of Sec. 20, T9S, R2E1
Well Locations: W W NW of Sec. 29, T9S, R2E1 | Non-trust | Love | 330.0 | 4 | All at 50' or less | Alluvium and terrace of the Red River | Irrigation |
| CN-3 | Chickasaw Farms | Use Location: N NW of Sec. 7, T1S, R2EI and N N of Sec. 12, T1S, R2E1
Well Locations: NE SW of Sec. 6, T1S, R2EI and NE NE of Sec 12, T1S, R2E1 | 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, R1E1 | Trust | Garvin | 10.0 | 1 | Unknown | Washita | Commercial |
| CN-5 | Golden Tract | Use and Well Locations: NE SW of Sec. 3, T4S, R6E1 | 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, R6E1 | Trust | Johnston | Domestic | 1 | 260' | Arbuckle-Simpson | Domestic |
| CN-7 | Johnston White House | Use and Well Location: NW SW; S SW NW of Sec. 14, T4S, R7E1 | Trust | Johnston | Domestic | 1 | Unknown | Antlers | Domestic |
| CN-8 | Burney Institute | Use and Well Location: NE SW NE of Sec. 4, T7S, R4E1 | Trust | Marshall | Domestic | 1 | Unknown | Antlers | Domestic |

<sup>1</sup> 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.

<sup>2</sup> To the extent the uses of CN-2 are redundant of uses pursuant to OWRB Permit No. 2005-520, the permit will govern.
<table>
<thead>
<tr>
<th>Use No. (Well Id.)</th>
<th>Property</th>
<th>Location</th>
<th>Land Status</th>
<th>County</th>
<th>Amount (AFY)</th>
<th>No. of Wells</th>
<th>Depth</th>
<th>Source</th>
<th>Purpose of Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>CN-9 (103638 and 103650)</td>
<td>Artesian Hotel</td>
<td>Use and Well Locations: SE SE SE of Sec. 34, T1N, R3E1</td>
<td>Trust</td>
<td>Murray</td>
<td>Domestic</td>
<td>2</td>
<td>One at 850' and one at 595'</td>
<td>Arbuckle-Simpson</td>
<td>Domestic</td>
</tr>
<tr>
<td>CN-10 (n/a)</td>
<td>Chigley Mansion</td>
<td>Use and Well Locations: S SE SW of Sec. 32, T1N, R2E1</td>
<td>Trust</td>
<td>Murray</td>
<td>Domestic</td>
<td>2</td>
<td>Unknown</td>
<td>Washita</td>
<td>Domestic</td>
</tr>
<tr>
<td>CN-11 (13541)</td>
<td>Chickasaw Farms</td>
<td>Use and Well Location: SW NE NE of Sec. 1, T1S, R1E1</td>
<td>Non-trust</td>
<td>Murray</td>
<td>Domestic</td>
<td>1</td>
<td>215'</td>
<td>Washita</td>
<td>Domestic</td>
</tr>
<tr>
<td>CN-12</td>
<td>Red Springs Cemetery</td>
<td>Use and Well Location: NE SE SE of Sec. 17, T3N, R8E1</td>
<td>Trust</td>
<td>Pontotoc</td>
<td>Domestic</td>
<td>1</td>
<td>47.5'</td>
<td>Unidentified</td>
<td>Domestic</td>
</tr>
</tbody>
</table>

7.4.2 Choctaw Nation – The Choctaw Nation’s existing uses without permit are identified in Table 6.

Table 6: Choctaw Nation – Existing Water Uses Without Permit

<table>
<thead>
<tr>
<th>Use No. (Well Id.)</th>
<th>Property</th>
<th>Location</th>
<th>Land Status</th>
<th>County</th>
<th>Amount (AFY)</th>
<th>No. of Wells</th>
<th>Depth</th>
<th>Source</th>
<th>Purpose of Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>CNO-1</td>
<td>Lickskillet Ranch</td>
<td>Well Locations: One at SE SE Sec. 20, T8S, R23E1; one at NW SE, Sec. 29, T8S, R23E1; one at NW SW, Sec. 29, T8S, R23E1; and one at SE NE, Sec. 19, T8S, R23E1 Use Locations: Secs. 19-21, 24-25, 28-30, 32, T10S, R26E1; and Sec. 8, T10S, R24E1; and Sec. 15, T10S, R25E1</td>
<td>Non-trust</td>
<td>McCurtain</td>
<td>300.0</td>
<td>4</td>
<td>All at 400'</td>
<td>Woodbine bedrock</td>
<td>Irrigation, stock</td>
</tr>
<tr>
<td>CNO-2 (32877)</td>
<td>4 Star Ranch</td>
<td>Well and Use Location: Sec. 31, T6S, R19E1, Secs. 5 and 6, T7S, R19E1</td>
<td>Non-trust</td>
<td>Pushmataha</td>
<td>15.0</td>
<td>1</td>
<td>125'</td>
<td>Kiamichi bedrock</td>
<td>Irrigation, stock</td>
</tr>
<tr>
<td>CNO-3</td>
<td>Sawyer Ranch</td>
<td>Well and Use Locations: Sec. 31, T6S, R19E1</td>
<td>Non-trust</td>
<td>McCurtain</td>
<td>150.0</td>
<td>3</td>
<td>All at 275'</td>
<td>Woodbine bedrock</td>
<td>Irrigation, stock</td>
</tr>
<tr>
<td>Use No. (Well Id.)</td>
<td>Property</td>
<td>Location</td>
<td>Land Status</td>
<td>County</td>
<td>Amount (AFY)</td>
<td>No. of Wells</td>
<td>Depth</td>
<td>Source</td>
<td>Purpose of Use</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------</td>
<td>----------</td>
<td>-------------</td>
<td>--------</td>
<td>--------------</td>
<td>--------------</td>
<td>-------</td>
<td>--------</td>
<td>----------------</td>
</tr>
<tr>
<td>CNO-43</td>
<td>Tom Ranch</td>
<td>Well and Use Locations: Secs. 3, 5, 8-10, 15, and 16, T10S, R26E1; Sec. 15 R25E1; and Sec. 15, T10S, R26E1</td>
<td>Non-trust</td>
<td>McCurtain</td>
<td>250.0</td>
<td>1</td>
<td>Unknown</td>
<td>Woodbine bedrock</td>
<td>Irrigation, stock</td>
</tr>
<tr>
<td>CNO-5</td>
<td>Grant Tract</td>
<td>Well and Use Location: Sec. 10, T10S, R25E1</td>
<td>Non-trust</td>
<td>McCurtain</td>
<td>25.0</td>
<td>1</td>
<td>Unknown</td>
<td>Woodbine bedrock</td>
<td>Irrigation, stock</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

7.6.3 Trust Land Domestic Wells – Subject to Section 7.6 and in accord with the Settlement Agreement and the Settlement Act, the Nations shall have no less right to take groundwater from Trust Land for domestic use than what any person has pursuant to state law. In drilling any such well, the Nations will employ a state-licensed water well driller, require such driller to comply with state well drilling and construction rules, and within thirty (30) days of drilling such well, cause a well completion report to be filed with the OWRB.

7.7 Future Development of Surface Water Uses

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

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

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

7.7.4 Following notice to the OWRB and in advance of any appropriation, the Nation intending to appropriate the water and the OWRB shall meet and, using the model then available for the source basin, evaluate whether: (i) water is available at the point of diversion 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 10 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 10 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 riparian Trust Land for which the appropriation was originally made and only after written notice to the OWRB at least sixty (60) days prior to such changes. No appropriation made under Section 7.7 may be transferred for purposes of use on another parcel of land without a permit from the OWRB. No increase in the amount of water appropriated shall occur without first satisfying the requirements of Sections 7.7.3 and 7.7.4.

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

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

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

7.7.6.3 If the Choctaw Nation chooses to develop the Choctaw Impoundment, it
shall provide notice to the OWRB one hundred eighty (180) days prior to commencing
construction of the impoundment, which notice shall include plan and design specifications
prepared by a registered engineer relating to the design, performance, and safety standards of the
dam, which shall, at a minimum, conform to the design, performance and safety standards of
OAC § 785 Chapter 25, or updates thereto.

7.8 General Conditions

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

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

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

8.1 **In General** – Pursuant to the Atoka Agreement as ratified by Congress, Act of June 28, 1898, § 29, 30 Stat. 495, 505, and as amended by the act of July 1, 1902, ch. 1362, 32 Stat. 641, the Nations issued patents to their respective tribal members and citizens and thereby conveyed to individual Choctaws and Chickasaws all right, title, and interest in and to land that was possessed by the Nations, excepting certain mineral rights.

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

8.1.2 **Waiver and Delegation by Nations** – In addition to the waivers provided at Sections 2.1.1.3 and 2.1.1.4, the Nations permanently delegate to the State any regulatory authority each may possess over water and water rights on Allotments, which the State shall exercise in accord with Section 8.

8.2 **Allottee Rights to Use of Water on an Allotment** – Allottees may use water on an Allotment as set forth in Section 8.

8.2.1 **Surface Water Use** – Allottees may divert and use on his Allotment six (6) AFY of surface water per one hundred sixty (160) acres of their Allotment, to be used solely for domestic uses on an Allotment that constitutes riparian land under state law as of the Enactment Date. Such use shall be subject to all rights and protections of state law as of the Enactment Date, including all protections against loss for non-use. An Allottee may divert water under this Section 8.2.1 without a permit or any other authorization from the OWRB.

8.2.2 **Groundwater Use** – Allottees may drill wells on their respective Allotments to take and use five (5) AFY of groundwater for domestic uses on their Allotment or any greater
amount allowed under state law. Such use shall be subject to all rights and protections of state
law as of the Enactment Date, including all protections against loss for non-use. An Allottee may
drill wells and use groundwater under this Section 8.2.2 without a permit or any other
authorization from the OWRB.

8.2.3 Future Changes in State Law – If state law changes to limit use of water to an
amount less than the amounts specified in Sections 8.2.1 and 8.2.2, an Allottee retains the rights
to use water in accord with those Sections, subject to Section 8.4.3. Prior to taking any action to
limit an individual’s use of water, the OWRB must give the individual an opportunity to
demonstrate that he or she qualifies as an Allottee and that he or she is using water on his or her
Allotment pursuant to and in accord with the Settlement Agreement and the Settlement Act.

8.3 Allottee Options for Additional Water – To use an amount of water in excess of the
amounts provided in Section 8.2, an Allottee must either invoke the process set forth in Section
8.4 or apply to the OWRB for a permit pursuant to and in accord with state law.

8.4 Determination in Federal District Court – In lieu of applying to OWRB for a
permit to use more water than allowed under Section 8.2, an Allottee may, after written notice to
the OWRB, file an action in the United States District Court for the Western District of
Oklahoma for determination of the Allottee’s water rights. The Settlement Legislation shall
provide for such cause of action and shall require the Allottee to:

8.4.1 join the OWRB as a party; and

8.4.2 publish notice in a newspaper of general circulation within the Settlement Area
Hydrologic Basin in which his or her Allotment is located for two (2) consecutive weeks, with
first publication appearing within thirty (30) days of the Allottee’s having filed the action.
8.4.3 **Determination Final** – If an Allottee elects to have his or her rights determined pursuant to Section 8.4, such determination shall be final as to any rights under federal law and in lieu of any rights to use water on an Allotment as provided in Section 8.2. Nothing herein precludes an Allottee from applying to the OWRB for water rights pursuant to state law or to utilize any rights allowed by state law that do not require a permit from the OWRB.

8.5 **OWRB Administration and Enforcement** – Once an Allottee exercises any right under Section 8.2, or has rights determined under Section 8.4, the OWRB shall have jurisdiction to administer those rights. An Allottee may challenge OWRB administration of rights determined under Section 8.4 in the United States District Court for the Western District of Oklahoma.

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

9. **WATER PLANNING IN SETTLEMENT AREA**

9.1 **In General**

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

9.1.2 **Common Interest** – The State and Nations have a common interest in the long-term sustainability of Settlement Area Waters and supporting water planning with sound 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 10.

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. ENFORCEMENT OF SETTLEMENT AGREEMENT; VENUE AND JURISDICTION

10.1 In General

10.1.1 The Settlement Legislation shall provide a federal cause of action for and federal jurisdiction over claims brought by a Party or Parties seeking declaratory or equitable relief for the interpretation or enforcement of the terms of the Settlement Agreement, the Amended Storage Contract Transfer Agreement, and the Settlement Act. No action shall be authorized for money damages against any Party. Neither the Settlement Commission established by the Settlement Act in accord with Section 5.3.3.2 nor the Atoka and Sardis Conservation Projects Board established pursuant to Section 6.5.2.1.1 may sue or be sued, and neither shall be considered a proper or necessary party for any purpose in any action, including actions to interpret or enforce the terms of the Settlement Agreement, the Amended Storage Contract Transfer Agreement, or the Settlement Act.

10.1.2 Venue and jurisdiction for all causes of action relating to the Settlement Agreement, the Amended Storage Contract Transfer Agreement, or the Settlement Act shall be in the United States District Court for the Western District of Oklahoma. No action may be brought in any other state, tribal, or federal court or administrative forum for any purpose relating to the enforcement or the interpretation of the Settlement Agreement, the Amended Storage Contract Transfer Agreement, or Settlement Act.
10.2  **Notice and Conference** – The following shall be a prerequisite to any Party’s filing suit to interpret or enforce the Settlement Agreement, the Settlement Act, or the Amended Storage Contract Transfer Agreement pursuant to Section 10:

10.2.1 Any party asserting noncompliance or seeking interpretation of the Settlement Agreement, Settlement Act, or Amended Storage Contract Transfer Agreement shall first serve written notice on the Party or Parties alleged to be in breach of the Settlement Agreement or violation of the Settlement Act;

10.2.2 The notice shall identify the specific provision of the Settlement Agreement, Settlement Act, or Amended Storage Contract Transfer Agreement alleged to have been violated or in dispute and shall specify in detail the asserting Party’s contention and any factual basis for the claim;

10.2.3 Representatives of the Party alleging a breach or violation and the Party or Parties alleged to be in breach or violation shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute. If the matter is not resolved to the satisfaction of the Party alleging breach within ninety (90) days of the original notice, such Party may take any appropriate action for interpretation or enforcement consistent with the Settlement Agreement and the Settlement Act.

11.  **GENERAL COMMITMENTS**

11.1 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:
11.1.1 Nations non-objection consistent with Section 2.6 to the conditions relating to the City’s Amended Permit as set forth in Section 6;

11.1.2 OWRB staff support for the conditions relating to the City’s Amended Permit as set forth in Section 6;

11.1.3 State, Nations, and City support to pursue and obtain enactment of the Settlement Legislation; and

11.1.4 Cooperation among the State, Nations, and City to work with the United States in conforming the Settlement Agreement to the Settlement Act, as may be necessary, in a timely manner.

11.1.5 To the extent 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.

11.2 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.

12. NOTICE

12.1 Unless otherwise specified by any Party in writing sent to all other Parties, all notice required to be given under the Settlement Agreement shall be written and given as follows:
12.1.1 To the State

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

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

12.1.2 To the Choctaw Nation of Oklahoma

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

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

12.1.3 To the Chickasaw Nation

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

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

12.1.4 To the OWRB

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

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

12.1.5 To the City

The Mayor of the City of Oklahoma City
200 N. Walker Avenue
Oklahoma City, Oklahoma 73102
12.1.6 To the Trust

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

12.1.7 To the United States

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

13. EXPIRATION DATE

13.1 The following shall apply if: (i) the Secretary does not publish a certification in accord with Section 4.2 on or before September 30, 2020, or on or before the date that is otherwise established by written agreement as provided by Section 13; or (ii) the Parties are unable to resolve an assertion of non-conformance raised pursuant to Section 6.2.3:

13.1.1 The Settlement Agreement shall be null and void, except for Section 13 and any provisions of the Settlement Agreement that are necessary to effectuate Section 13 (but only for purposes of effectuating Section 13) and, except with respect to Section 13, the State, the Nations, the City, the Trust, and the United States shall not be bound by any obligations or benefit from any rights recognized thereunder.

13.1.2 The waivers and releases of Section 2.1 and 2.2 and Exhibits 5 and 6 shall not become effective.
13.1.3 The waivers of sovereign immunity and consents to suit provided in Section 3 shall not become effective.

13.1.4 If the City Permit has been issued, it shall be null and void. The City may re-submit to the OWRB, and the OWRB shall be deemed to have accepted, the OWRB Permit Application No. 2007-017 without having waived the priority date and appropriative amounts of its initial permit application.

13.1.5 The Amended Storage Contract shall be null and void notwithstanding any execution or approval thereof, and the Storage Contract Transfer Agreement shall be deemed to be in full force and effect as between the State and the Trust.

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

13.2 The occurrence of the Expiration Date shall not, in any way, prejudice:

13.2.1 any argument or suit that the Nations may bring to contest the City’s pursuit of OWRB Permit Application No. 2007-017 or any modified version thereof or to contest the Storage Contract Transfer Agreement;

13.2.2 any argument, defense, or suit the State may bring or assert with regard to the Nations’ claims to water or over water in the Settlement Area; or

13.2.3 any argument, defense or suit the City may bring or assert with regard to the Nations’ claims to water or over water in the Settlement Area relating to OWRB Permit Application No. 2007-017 or any modified version thereof or to contest the Storage Contract Transfer Agreement.

13.3 The Expiration Date may be extended by the Parties if:

13.3.1 prior to the Enactment Date, all Parties agree to such extension in writing; or
13.3.2 after the Enactment Date, all Parties agree to such extension in writing and such extension is in accord with the Settlement Act.

14. EFFECT OF SETTLEMENT AGREEMENT

14.1 Effect of Settlement Agreement – The Settlement Agreement shall bind the United States as trustee for the Nations, the State, the Nations, and the OWRB as to the claims and rights of the Nations in any general stream adjudication that may in the future be filed in the State of Oklahoma.

14.2 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.

14.3 Nothing in the Settlement Agreement:

14.3.1 affects the authority of each respective Nation to manage and regulate the exercise, on Trust Land consistent with the Settlement Agreement and the Settlement Act, of its water rights recognized by or established pursuant to Section 7;

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

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

14.3.2.2 the Safe Drinking Water Act (42 U.S.C. § 300f, et seq.);

14.3.2.3 the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.); and

14.3.2.4 any regulations implementing the Acts described in Section 14.3.2;

14.3.3 affects the ability of the United States to raise defenses based on 43 U.S.C. § 666(a); and
14.3.4 affects any rights, claims, or defenses the United States may have with respect to the use of water on federal lands in the Settlement Area that are not Trust Lands or Allotments.

15. EXECUTION OF AGREEMENT; COUNTERPARTS

15.1 The Parties may execute the Settlement Agreement in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument and shall not become effective unless and until counterparts have been signed by all of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

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

16. DISCLAIMER – The Settlement Agreement applies only to the claims and rights of the Nations, and nothing in the Settlement Agreement shall be construed in any way to quantify, establish, or in any way serve as precedent regarding the land and water rights, claims, or entitlements to water of any American Indian tribe other than the Nations, including any other American Indian tribe in the State of Oklahoma.

17. SIGNATURES

UNITED STATES OF AMERICA

_DRAFT_________________________ Date: ___________________
Sally Jewell, Secretary
United States Department of the Interior
STATE OF OKLAHOMA

_DRAFT_________________________  Date: ____________________
Mary Fallin, Governor

_DRAFT_________________________  Date: ____________________
E. Scott Pruitt, Attorney General
CHICKASAW NATION

_DRAFT________________________________ Date: ____________________
Bill Anoatubby, Governor
CHOCTAW NATION OF OKLAHOMA

_DRAFT________________________   Date:  ____________________
Gary Batton, Chief