AGREEMENT

This Agreement is entered into this 19th day of May, '09, by and among the State of Oklahoma and the Cherokee Nation.

WHEREAS the State of Oklahoma has sued certain poultry integrator companies for their alleged pollution of the lands, water and other natural resources located in that portion of the Illinois River Watershed within the State of Oklahoma ("Illinois River Watershed") in the action denominated *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla.;

WHEREAS Defendants in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla., have filed a motion entitled "Defendants' Motion to Dismiss for Failure to Join the Cherokee Nation as a Required Party or, in the Alternative, Motion for Judgment as a Matter of Law Based on a Lack of Standing," DKT #1788, wherein Defendants, *inter alia,* have challenged the State of Oklahoma's standing to assert certain of its claims for pollution of the lands, water and other natural resources in the Illinois River Watershed;

WHEREAS the State of Oklahoma and the Cherokee Nation agree that the lands, water and other natural resources of the Illinois River Watershed should be free of pollution, and accordingly that the claims asserted in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla., should continue to be prosecuted against Defendants;

WHEREAS the State of Oklahoma and the Cherokee Nation agree the Cherokee Nation has substantial interests in lands, water and other natural resources located within the Illinois River Watershed though the extent of those interests has not been fully adjudicated;

WHEREAS upon the execution of this agreement that the State of Oklahoma and the Cherokee Nation agree that the State has sufficient interest in the lands, water and other natural resources of the Illinois River Watershed to prosecute the claims asserted in *State of Oklahoma v. Tyson Foods, Inc.*, et. al., 05-cv-329, N.D. Okla.

WHEREAS the Cherokee Nation is assigning to the State of Oklahoma the right to prosecute any of the Nation's claims relating to the causes of action brought by the State in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla. and upon signing of this Agreement the Nation agrees that the continued prosecution of this action by the State of Oklahoma would not impair or impede the Nation's interests such that it is a necessary party under Rule 19(a);

WHEREAS both the State of Oklahoma and the Cherokee Nation agree that it is not necessary for the Court to resolve the precise nature of each sovereign's interests in lands, water and other natural resources of the Illinois River Watershed in order to determine that the State of Oklahoma has sufficient interests to prosecute the action in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla. and agree that it is in the best interests of both sovereigns to avoid the unnecessary time and expense associated with such an exercise at the present time and in the present forum;

WHEREAS, in furtherance and in consideration of these desires, the State of Oklahoma and the Cherokee Nation have agreed to the terms and conditions set out below.

NOW, THEREFORE, the State of Oklahoma and the Cherokee Nation stipulate and agree as follows:

1. The Cherokee Nation, to the extent of its interests in lands, water and other natural resources in the Illinois River (including any regulatory authority incident thereto), delegates and assigns to the State of Oklahoma any and all claims it has or may have against Defendants named in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla., for their alleged pollution of the lands, water and other natural resources of the Illinois River Watershed resulting from poultry waste.

2. The State of Oklahoma and the Cherokee Nation agree that the scope of this Agreement is expressly limited to the claims described in paragraph 1 of this Agreement, and for no other purpose.

3. Except as explicitly set forth in paragraph 1 above regarding delegation and assignment of Cherokee Nation's claims in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla, the State of Oklahoma and the Cherokee Nation agree that nothing in this Agreement constitutes, or shall be argued to constitute, a grant, transfer or conveyance to the State of Oklahoma of any interests that the Cherokee Nation has or may have in the lands, water and other natural resources located in the Illinois River Watershed.

4. The State of Oklahoma and the Cherokee Nation reserve all rights, privileges or defenses with respect to their interests, if any, in the lands, water and other natural resources located in the Illinois River Watershed.

5. No amendments or variations of the terms of this Agreement shall be valid unless made in writing and signed by the duly authorized representatives of the State of Oklahoma and the Cherokee Nation.

6. This Agreement may be executed in counterparts, and the totality of the executed counterparts shall be deemed a complete, executed Agreement.

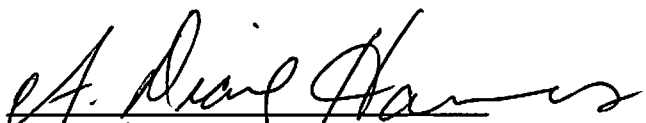
7. The undersigned representatives warrant and represent that they are duly authorized to execute this Agreement on behalf of the State of Oklahoma and the Cherokee Nation, respectively, and that he / she holds the title and office as indicated on the execution page.

8. The effective date of this Agreement shall be deemed June 13, 2005.

9. Nothing in this agreement shall be interpreted as an express or implied waiver of sovereign immunity.

10. In the event a court in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla. finds that it is necessary to determine the nature of each sovereign's respective interest in the lands, water or other natural resources of the Illinois River Watershed, this Agreement shall be null and void and nothing shall prevent each sovereign from asserting the full extent of its interest and authority in the Illinois River Watershed.

11. After the date of this Agreement and only to the extent it does not result in any waiver of applicable attorney-client or work product privileges, the State of Oklahoma and the Cherokee Nation agree that the State shall make best efforts to confer with the Attorney General of the Cherokee Nation with respect to any court filing in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla. that is intended to or that could reasonably result in a judicial ruling that would define the scope of the State of Oklahoma's and/or Cherokee Nation's interest in or authority over the lands, water and other natural resources located within the Illinois River Watershed, *provided however* that nothing herein shall be construed as a limitation on the State of Oklahoma's right to control the content of any such court filing in *State of Oklahoma v. Tyson Foods, Inc., et al.*, 05-cv-329, N.D. Okla.



For the Cherokee Nation:
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For the State of Oklahoma:
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