Case No. #110375

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 10 2012
MICHAEL S. RICHIE
CLERK

Oklahoma Water Resources Board,

Petitioner,

vs.

The United States on behalf of the Choctaw Nation of Oklahoma,
a federally recognized Indian Tribe;
the United States on behalf of the Chickasaw Nation, *et al.*,

Respondents.

APPLICATION TO ASSUME ORIGINAL JURISDICTION

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IN THE SUPREME COURT OF OKLAHOMA

Oklahoma Water Resources Board,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No.
	)	
The United States on behalf of the Choctaw Nation of Oklahoma, a federally recognized Indian Tribe; the United States on behalf of the Chickasaw Nation,, *et al.*,	)	
	)	
Respondents.	)	

Application to Assume Original Jurisdiction

Petitioner, the Oklahoma Water Resources Board (the "OWRB") requests that the Court assume original jurisdiction over the Petition attached hereto. (See App. 1). In support of the Application and Petition, Petitioner would show this Court the following:

The Impetus for the Request

The importance of the issues presented in the Application to the State, its cities and towns, and citizens cannot be overstated. The matters presented in this Application to Assume Original Jurisdiction directly concern the ability of the State and its cities and towns to continue to supply water for public, commercial, industrial, agricultural, and domestic uses. As United States Supreme Court Justice Southerland noted in *Brush v. Comm'r of Int. Rev.*, 300 U.S. 352, 366 (1937), "[C]onservation and distribution of water in sufficient quantity and in a state of purity **is as vital as air**." *Id.* (emphasis added).

For more than a decade now, as the economic potential in water and water transfer or sale has become increasingly apparent, both the Chickasaw Nation and Choctaw Nation of

Oklahoma (the "Tribes") have claimed various rights to the waters in Southeast Oklahoma, including:

- The Tribes have claimed a right to regulate the water in over twenty-two counties—not just the right to regulate water located on their scattered patches of tribal lands.

- The Tribes have claimed that the OWRB cannot issue certain permits for water in the Kiamichi River, Muddy Boggy Creek, and Clear Boggy Creek stream systems (collectively, the "Basins") **until a comprehensive stream-wide adjudication of all water rights within those Basins under the McCarran Amendment, 43 U.S.C. § 666, has been completed.**

In short, the Tribes, over the past decade, have made various attempts to inject uncertainty into the State's ability to regulate the waters within the southeast corner of the State, and in particular the Basins, threatening water rights under existing and pending state permits — all part of a concerted effort to coerce the State into entering into a compact or agreement giving the Tribes water rights, including the power to regulate waters in the Basins

In light of the need for certainty and security in Oklahoma water rights and administration, and considering these tribal claims, the OWRB, in accordance with the power vested in it under Title 82, § 105.6, has determined that the best interests of the claimants to the use of water from the Basins will be served by a determination of all rights to the waters in the stream systems of the Basins, and have authorized the initiation of such an adjudication.

Fortunately, Congress recognized that such comprehensive stream-wide water right adjudications cannot take place absent adjudication of federal rights. Thus, in 1952 Congress passed the McCarran Amendment, 43 U.S.C. § 666, which permits the joining of the United States to determine its interests, including any federally protected rights of Native American tribes or nations or individual owners of "allotted," formerly tribal lands, and federal

instrumentalities, in a comprehensive stream-wide adjudication in state court.[1] Thus, neither the sovereign immunity of the United States nor of the Tribes prohibits such an adjudication in state court. In such an adjudication, the water rights of various classes of entities and individuals are determined, including the rights of:

- Federal, state, and tribal sovereigns,
- Individual owners of federal protected allotments of former tribal lands ("Restricted Allotment Holders"),
- Current OWRB water use permit holders,
- OWRB water use permit applicants, and
- Other water users who may have vested rights to the use of water in the Basins.

The Reasons Why the Court Should Assume Original Jurisdiction

In this Application, the OWRB asks this Court, in the exercise of its power to issue declaratory rulings in original proceedings, to assume original jurisdiction over the stream-wide adjudication presented in the accompanying Petition—through the use of a Special Referee or Special Master (who would be paid by the parties). This Application is made both because of the *publici juris* nature of the matter presented, and the importance of the relative speed with which the matter could be concluded through this Court's exercise of original jurisdiction. This Court's assumption of jurisdiction would have the following advantages:

- Stream-wide adjudication would be completed much more rapidly, because appeals and remands to district court would be avoided, thus, resulting in completing the adjudication many years, if not decades, quicker than district court actions.

[1] General stream adjudications are quite common, as they are the congressionally recognized method for determining the rights of all claimants to the waters of a stream system. All 18 western states have laws allowing for general stream adjudications. In fact, general stream adjudications are currently occurring in 13 of the 18 western states. The various adjudication statutes in the 18 western states are very similar. The general stream adjudication statutes of New Mexico, North Dakota and South Dakota are the most similar to Oklahoma's statute. New Mexico currently has 12 active adjudications, and over 20% of the water in New Mexico has been adjudicated through general stream adjudications like the one that the OWRB requests be initiated in this Court by the attached Petition.

- Procedural matters regarding service of parties, including determining who must be joined to have a comprehensive adjudication, could be determined as the matter proceeded, without corrective action requiring remand to the trial court, which in extreme cases could require an entire re-adjudication.

- As these cases are complex, and take years and at times decades to complete, district court dockets would not be consumed by such adjudication.

- This Court's assumption of jurisdiction would avoid important matters affecting the entire State from being decided by local judges, who are subject to local political pressures.

- The Court could select a Special Master or Referee with expertise in the area—expertise not available from the district court bench.

In a very real sense, the future of the State of Oklahoma is at issue here. The Legislature can pass all sorts of laws creating "business friendly" atmospheres within the State to boost the State's economy and job growth, but unless the State has the ability—free of doubt caused by un-adjudicated water rights or tribal regulatory claims—to regulate and provide the water necessary for private, agricultural and industrial use, the State could become an economic dust bowl. As the State's Comprehensive Water Plan recognizes:

> Water, more than any other element or natural resource, has reached a crucial level of importance to Oklahomans...It drives the state's agricultural industry through the irrigation of wheat, hay, corn, and other crops, and in sustaining cattle, sheep, chickens, hogs, horses, and aquaculture operations. It is integral to oil and gas production as well as more conventional industries and mining operations that rely upon withdrawals from surface and groundwater sources. Water is counted upon to generate power and support countless environmental and recreational uses. With less water or limited access to it, Oklahoma's quality of life is threatened and its economy ceases to grow.

The Oklahoma Comprehensive Water Plan, Executive Report at 3.

Only this Court's exercise of original jurisdiction and the appointment of a Special Master or Referee can efficiently provide the certainty needed for the State's continued ability to regulate and provide water to all its citizens.

The Specific Relief Requested

For these reasons, Petitioner requests this Court to assume original jurisdiction over the Petition, and appoint a Special Referee to hear the matter initiated by the Petition. Unlike the usual cases where the Court is asked to assume original jurisdiction, the jurisdictional and merits questions should not be, and as a practical matter cannot be, addressed simultaneously. Thus, the only issue before the Court at this time is the question of whether it should assume original jurisdiction. If original jurisdiction is assumed, a Special Referee can be assigned, and then the merits of the adjudication can be litigated to the Special Referee subject to this Court's efficient review. If the Court declines to exercise original jurisdiction, Petitioner asks the Court to transfer the case to the district court of its designation.

Respectfully submitted,

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Counsel for Petitioner

ATTACHED APPENDIX

Number	Description
1	Petition over which Petitioner asks the Court to assume jurisdiction, or, alternatively, transfer to a district court of Petitioner's designation.

IN THE SUPREME COURT OF OKLAHOMA

Oklahoma Water Resources Board,	)
	)
Petitioner,	)
	)
vs.	)
	)
United States of America;	)
United States Department of Interior,	)
a federal agency;	)
United States Bureau of Reclamation,	)
a federal agency;	)
United States Army Corps of Engineers,	)
a federal agency;	)
the United States on behalf of the	)
Choctaw Nation of Oklahoma,	)
a federally recognized Indian Tribe;	)
the United States on behalf of the	)
Chickasaw Nation,	)
a federally recognized Indian Tribe;	)
the United States on behalf of individual	)
members of the Choctaw Nation of	)
Oklahoma;	)
the United States on behalf of individual	)
members of the Chickasaw Nation;	)
the Oklahoma Water Resources Board;	)
the Oklahoma City Water Utilities Trust;	)
the City of Oklahoma City;	)
McGee Creek Authority;	)
Donald Leslie;	)
Hugo Municipal Authority;	)
Antlers Public Works Authority;	)
Department of Tourism & Recreation;	)
Department of Wildlife Conservation;	)
Patrick Miller;	)
Talihina Public Works Authority;	)
Merlan Debolt, M.D.	)
Louise A. Redman;	)
Clyde & Donnie Corbin;	)
Latimer County Rural Water District No. 2;	)
Donna Addington McSpadden;	)
Sardis Lake Water Authority;	)
Pushmataha County Rural Water District	)
No. 3;	)
Decker Revocable Trust;	)

Danny W. Wilson;)
Dale Jackson;)
Bueford R. Lockhart;)
David and Leo Ralston;)
SCS Materials LP;)
William S. Howard;)
William S. and Brenda G. Howard;)
Big Mac Tank Trucks LLC;)
Michael Smith;)
Roland Brents;)
Town of Fort Towson;)
Western Farmers Electric Cooperative;)
M.E.N.S. Ranch)
J. T. Hutson;)
Meridian Aggregates Company, LP;)
Carl Boykin;)
Donna Addington-McSpadden;)
Bill Price;)
Meridian Aggregates Company;)
Jonathan David Burns;)
Clayton Chamber of)
Commerce, Inc;)
Sardis Water Resources Board Inc.;)
Tarrant Regional Water District;)
Upper Trinity Regional Water District;)
David Lynn Brown;)
Central Oklahoma Master Conservancy)
District;)
North Texas Municipal Water District;)
Choctaw County Economic Development)
Authority;)
Town of Kiowa;)
Louie Le Flore;)
Bromide Public Works Authority;)
Doyle Dean and Debrah J. Arnold;)
City of Ada;)
Coalgate Public Works Authority;)
W. E. Reeves;)
Howard Nelson;)
Bill Moore;)
Wiley and Donna Harrison;)
Charles and Conita Tipton;)
Dunn's Fish Farm of Arkansas Inc.;)
Oklahoma Gas and Electric Company;)
Eddie and Ronnie Bowen;)

Roy and Bea Hall;)
City of Atoka;)
County Commissioners of Atoka County;)
Southern Oklahoma Development Trust;)
Walter Woolley, Jr.;)
Jack G. Emerson;)
Lilly Cannon;)
B. L. Little;)
Thomas G. Lewis Revocable Trust;)
Duane Tomek and Susane Stockton)
Austin LeMay;)
Rick and Kathy Clayton;)
Carol A. Tomlin, Trustee;)
James C. Lollar Trust;)
Arbuckle Area Council;)
Oklahoma State University)
Vegetable Research Station;)
Mack Alford Correctional Center;)
Ron Willis;)
Wapanucka Public Works Authority;)
Bobby D. and Debbie Wall;)
Jack Wayne Jensen;)
Jimmy L. and Rita D. Nix;)
DHM Enterprises Inc.;)
Gerald Clifford Wilson;)
GHB Farms, Inc.;)
Hughes County Rural Water District No. 2;)
Robinson Bros. Park Inc.;)
Tyson Foods Inc.;)
Delbert A. Harden;)
Jamie W. and Earlene Howard;)
Will Alan King;)
Roger and Cindy Stinchcomb;)
Joyce Ferguson;)
BC Wetlands LTD;)
W. S. Jr. and Mary Frances Webb;)
Edgemont Beef;)
Richard J. and Mary Elizabeth Helton;)
Stream Natural Resources LC;)
Cedar Valley Nursery Inc.;)
J. M. and Shelby Welch;)
W-7 Swine Farms Inc.;)
Kenneth and Mary Alice Battles;)
Robert M. and Susan E. Reinauer;)
Howell Family Trust;)

Acie V. Hayes, Jr.;)
Michael and Kara McBrayer;)
Mallard Farms LLC;)
Jeffrey Allen Barker;)
City of Coalgate;)
L. Ray Wood;)
Chester Bench;)
Boggy River Ranch LLC;)
John Troyer;)
WACCAW Development LLC;)
Mustang Stone Quarries LLC;)
Wayman L. Garnett;)
St. Mary Land and Exploration Co.;)
Arcadia Farm LLC;)
TransCanada Keystone Pipeline LP;)
City of Midwest City;)
City of Tecumseh;)
Redark Development Authority;)
David Hull;)
National Coal County;)
City of Lehigh;)
Holnam, Inc.;)
Stonewall Public Works Authority;)
City of Stringtown;)
City of Tupelo;)
Mrs. Winifred Borders;)
Marion and Louise Borders;)
Chapman Family Revocable Trust;)
Lee O. Harrington;)
R.W. Borders;)
Allen Public Works Authority;)
Atoka County Rural Water District No. 2;)
Atoka County Rural Water District No. 3;)
Greg A. Turpin;)
Johnston County Rural Water, Sewer and)
Solid Waste Management District No. 4;)
Harold V. Merriman;)
Caddo Public Works Authority;)
Troy Morris;)
Lyndle Ellis;)
Clyde D. Lacey;)
Weaver Jackson;)
Susie M. Humphries;)
Carlton W. Corbin;)
Frezell Calvin;)

Bill Morrow;)
Oklahoma State University, Wes Watkins)
Agriculture Research and Extension Center;)
Town of Boswell;)
Wingard Water Corporation;)
Johnny Stinnet;)
Allen Public Works Authority;)
G.O. Philpot;)
Hughes County Rural Water District No. 6;)
Charles Wayne Borders;)
Nancy K. McDougal Revocable Trust;)
Town of Soper;)
Helen J. Smith;)
Greg and Ines Turpin;)
Choctaw County Rural Water District No. 1;)
Roy and Shirley Mobbs;)
David Mobbs;)
Doyle and Selma Foreman;)
Donald R. and Sherley Marie Zaicek;)
Southeastern Oklahoma Land Co.;)
Bryan County Rural Water, Sewer and Solid)
Waste Management District No. 6;)
Will Grote;)
G. Hump Ltd.;)
Mungle Corporation;)
Don Brents;)
Weyerhaeuser Co.;)
Eugene Hill;)
Roger Buchanan;)
Mike and Luisa Selman;)
Jack and John Johnson;)
Albert and Kathryn Holloway;)
Mr. and Mrs. Robert Ballard;)
W7 Land Co.;)
Dennis Harden;)
and all persons claiming or who may claim)
rights to the waters or use of the waters)
of the Kiamichi, Muddy Boggy or Clear)
Boggy Basin stream system in the)
State of Oklahoma,)
)
Respondents.)

PETITION OF THE OKLAHOMA WATER RESOURCES BOARD FOR A GENERAL STREAM ADJUDICATION IN THE KIAMICHI, MUDDY BOGGY AND CLEAR BOGGY BASIN STREAM SYSTEMS

Petitioner, the Oklahoma Water Resources Board ("OWRB" or "Board"), through this Petition for a General Stream Adjudication in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems, requests the Court commence a general stream adjudication in the Kiamichi Basin, Muddy Boggy Basin and Clear Boggy Basin stream systems (collectively "the Basins") pursuant to the facts and allegations as set forth herein. This Petition presents a matter of great public importance to the State of Oklahoma and its citizens as set forth below. As the basis for its Petition, the OWRB states as follows:

BACKGROUND AND NATURE OF THE ACTION

A. Basis for and nature of the action.

1. Claims by the Choctaw Nation of Oklahoma and the Chickasaw Nation (collectively hereinafter "the Tribes") have given rise to disputes over rights in and to the use and administration of water in the portions of southeastern Oklahoma known as the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems. These disputes concern and affect current and future water supplies for Oklahoma municipalities, other public and private entities, and individuals.

2. This is an action for a comprehensive general stream adjudication to determine all claims to the rights to the use of water within the Basins pursuant to 82 O.S. §§ 105.6 through 105.8 ("Oklahoma General Stream Adjudication Statute") and to provide for the administration of such rights pursuant to an Interim Administrative Order and Final Decree as requested herein.

3. A general stream adjudication, in contrast to a private dispute among limited users or claimants, requires the joinder of all known claimants and a determination as between the State and each as to the other (*inter sese*) of all claims within a defined stream system and their relative

priorities pursuant to all applicable federal and state law necessary for the determination of such claims.

4. A general stream adjudication involves "all of the rights of various owners on a given stream." *Dugan v. Rank*, 372 U.S. 609, 618 (1963). The purpose of a general stream adjudication is to address the claims of the various owners within a given stream system in order to be able to effectively and efficiently allocate and administer the available water resources based on the relative priorities of the rights. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 804 (1976) ("*Colorado River*").

5. The Oklahoma General Stream Adjudication Statute provides a comprehensive scheme for the adjudication of all water rights within a given stream system whether those claims to water arise under state or federal law.

6. The waters of the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems are public waters subject to appropriation for beneficial uses as provided by Oklahoma law or as otherwise recognized by federal law.

7. Various individuals and entities claim rights to the waters of the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems. The claims to all rights relating to water or the use of such water in the Kiamichi, Muddy Boggy and Cleary Boggy Basin stream systems have never been finally determined in a comprehensive general stream adjudication.

8. The water resources of the State belong to the public and are subject to rights of use and the development of a water right through application to the OWRB and application of water to beneficial use under state law. The State's control over water use and allocation within its boundaries is supported by over two centuries of federal deference to, and acknowledgment of, state primacy vis-à-vis water within state boundaries as expressly recognized by the McCarran

Amendment, 43 U.S.C. § 666 ("the McCarran Amendment"), described below. *See, e.g.*, *United States v. City and Cnty. of Denver,* 656 P.2d 1, 9 (Colo. 1983) ("[B]y enacting the McCarran Amendment, Congress recognized that the western states have a legitimate interest in and responsibility for the allocation of water resources within their borders including determination and adjudication of the water rights claimed by the United States."); *see also California v. United States*, 438 U.S. 645, 677 (1978). In limited instances, claims to water can arise under federal rather than state law, including in the context of claims asserted by, or on behalf of, Indian Tribes or Nations. Under the McCarran Amendment such federal rights are subject to adjudication and determination in state court in a comprehensive general stream adjudication and administration pursuant to the adjudication and a final decree.

9. The Tribes, federally recognized Indian Tribes, each claim rights to water arising under federal law in the Basins. OWRB has determined that the Tribes' claims and other factors have created the need to commence a comprehensive general stream adjudication to determine the relative rights of all claims in the Basins whether such claims arise under state or federal law.

10. A determination by this Court of all of the claims of each defendant as between the State of Oklahoma and through OWRB and *inter sese* as to the waters of the Basins is necessary for the effective and uniform use, administration and supervision of the waters of the respective stream systems.

11. All claims to the right to water or to use water within the Basins, whether arising under state or federal law, are subject to adjudication in state court pursuant to the Oklahoma General Stream Adjudication Statute in conformance with the McCarran Amendment for purposes of waiver of the immunity of the United States on its own behalf and on behalf of water claims of Indian Tribes.

12. This action requests this Court adjudicate all claims to the waters or use of waters of the Basins and enter a Final Decree determining all claims and the administration thereof.

A. The McCarran Amendment authorizes state court adjudication and administration of all federal claims to water, including claims made by or on behalf of Indian Tribes.

1. The McCarran Amendment provides for state adjudication and administration of federally claimed water rights and waives the immunity of the United States as to the adjudication and administration of all federally based claims to water from suit in state court. *See Colorado River*, 424 U.S. at 809.

2. The McCarran Amendment provides in pertinent part:

> Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights . . . .

43 U.S.C. § 666.

3. The waiver of immunity provided by the McCarran Amendment applies to allow suits to determine the rights of the United States and, accordingly, of any Indian Tribe, Nation, or individual Indian held or protected by the United States on behalf of such Tribe, Nation, or individual Indian. *See Colorado River*, 424 U.S. at 805.

4. Language contained in a State's Enabling Act at the time of statehood disclaiming jurisdiction over Indian lands or territory is not a bar to the McCarran Amendment's waiver of sovereign immunity as to tribal claims. *See Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 564 (1983) ("*San Carlos Apache*").

5. The United States Supreme Court has repeatedly affirmed the importance of deference to state court jurisdiction with regard to the adjudication of rights to water and administration thereof. *See Colorado River,* 424 U.S. at 819-20; *San Carlos Apache,* 463 U.S. at

567-68; *United States v. Dist. Ct. In & For Eagle Cnty., Colo.*, 401 U.S. 520, 525 (1971) ("*Eagle County*") (United States amenable to suit in Colorado state court pursuant to Colorado general adjudication statute for all claims by the United States); *United States v. Dist. Ct. In & For Water Div. No. 5, Colo.*, 401 U.S. 527, 529 (1971) (same).

6. The McCarran Amendment reflects the intent that "it is clear that the States have the control of the water within their boundaries, [and] it is essential that each and every owner along a given water course, including the United States must be amenable to the laws of the State, if there is to be a proper administration of the water law as it has developed over the years." S. Rep. No. 755, 82nd Cong., 1st Sess. 6 (1951).

7. In order for the waiver provided by the McCarran Amendment to be effective, the suit must be comprehensive in nature and join all known claimants to the water of a river system or other source. Consistent with the overarching federal deference to State control and regulation of water resources in determining whether a general stream adjudication is sufficiently comprehensive for purposes of the waiver of immunity supplied by the McCarran Amendment, courts have generally deferred to the choices made by individual States in general stream adjudication statutes. *See, e.g.*, *Eagle County*, 401 U.S. at 525; *United States v. Oregon*, 44 F.3d 758, 767 (9th Cir. 1994); *In re General Adjudication of all Rights to Use Water in the Gila River System & Source*, 857 P.2d 1236, 1247-48 (Ariz. 1993) ("*Gila River*"); *United States v. Bluewater Toltec Irrigation Dist.*, 580 F. Supp. 1434, 1438 (D.N.M. 1984), *aff'd sub nom*, 806 F.2d 986 (10th Cir. 1986) ("*Bluewater Toltec*").

8. The Oklahoma General Stream Adjudication statute contemplates and provides for a comprehensive suit as contemplated by the McCarran Amendment.

A. Overview of Oklahoma's General Stream Adjudication Statute

1. Pursuant to 82 O.S. § 105.6, the OWRB is vested with the authority to file suit on behalf of the State to determine the rights to the use of water from any stream system within the State where the Board has determined that the interests of all the claimants to use of the water from the stream system would be best served by such a determination.

2. Once commenced, the Board is directed to "diligently prosecute such action to a final adjudication," 82 O.S. § 105.6, and to "furnish data necessary for the determination of the rights involved" as requested by the Court. 82 O.S. § 105.7.

3. Like many other general stream adjudication statutes throughout the western United States, the Oklahoma General Stream Adjudication statute provides that "[t]he cost of such suit, including the costs on behalf of the state, shall be charged against each of the parties thereto in proportion to the amount of water rights allotted." 82 O.S. § 105.6; *see, e.g.,* Idaho Code § 42-1414. The costs of such suit can be imposed on all water rights claimants with the exception of the United States. *See United States v. Idaho*, 508 U.S. 1, 8 (1993) (McCarran Amendment did not waive immunity for State imposition of the costs of a general stream adjudication, but the United States must participate in a state court proceeding relative to all federal claims).

4. The Oklahoma General Stream Adjudication Statute is comprehensive as it provides for the Board to join "any person who is using or who has used water from the stream or who claims the right or who might claim the right to use water from the stream . . . ." 82 O.S. § 105.7. Additionally, the Oklahoma General Stream Adjudication Statute provides for intervention as of right to "any person who is using or who has used or who claims the right to use water from the stream." *Id.*

5. The Oklahoma General Stream Adjudication Statute provides that the rights of all users joined shall be determined *inter sese* as to the priority, amount, purpose and place of use of all claims to water and as to all claimants in any given stream system under applicable law and that such rights shall be entered in a Final Decree. 82 O.S. §§ 105.7, 105.8. The statute provides that the Final Decree shall bind all those who are parties to the action. 82 O.S. § 105.7.

6. The Oklahoma General Stream Adjudication Statute authorizing the Board to file a general stream adjudication is discretionary; OWRB is not obligated to file a general stream adjudication unless it determines such an action would be in the best interests of the claimants in the stream system. The statute recognizes OWRB's independent authority and obligation to grant permits and licenses as those matters come before it without regard to the filing of a general stream adjudication. 82 O.S. § 105.6 ("neither the bringing of such suit nor an adjudication in such a suit shall be a condition precedent to the granting of permits and licenses as authorized by this act").

A. Oklahoma's General Stream Adjudication Statute provides for a comprehensive general stream adjudication as contemplated by the McCarran Amendment.

1. The dispositive question as to whether a general stream adjudication is sufficiently comprehensive to allow for the waiver of immunity contemplated by the McCarran Amendment is whether the Board has in fact sought to join all known claimants to the waters of the stream system and whether those rights will be determined *inter sese*. In this action OWRB has named and will join all known claimants to the water or use thereof within the Basins by naming all known claimants to the waters of the respective stream systems and the United States in its capacity as trustee for any and all claims made by the Tribes, and the United States on behalf of all persons holding rights to allotments of the Tribes' former lands the title to which remains held in trust by the United States or subject to federal restrictions on alienation ("Restricted Allotment Holders").

2. Because the OWRB has or will join in this action all known claimants in the respective stream systems who claim rights to the use of water under applicable state or federal law, the action before the Court is sufficiently comprehensive to constitute a general stream adjudication for purposes of the McCarran Amendment. *See, e.g.*, *United States v. Oregon*, 44 F.3d at 768-70 (Oregon's general stream adjudication sufficiently comprehensive for purposes of McCarran Amendment although it excluded all state-permitted users after 1909 and all claims to groundwater); *Gila River*, 857 P.2d at 1247-48 (Arizona general stream adjudication statute, which excluded some categories of use and users, was sufficiently comprehensive for purposes of McCarran Amendment).

3. The Oklahoma General Stream Adjudication Statute provides that the rights of all users joined shall be determined *inter sese* as to the priority, amount, purpose and place of use of all claims to water and as to all claimants in the Basins. 82 O.S. §§ 105.6, 105.8. Accordingly, this action is sufficiently comprehensive to comprise a general stream adjudication for all purposes including the waiver of the immunity of the United States and the determination of federally protected tribal and individual claims to water. *See San Carlos Apache*, 463 U.S. at 564-69 (Arizona stream adjudication statutes sufficiently comprehensive to adjudicate tribal claims to water); *see also Eagle County*, 401 U.S. at 525-26 (Colorado adjudication procedures sufficiently comprehensive where relative rights of all users determined even though all users not joined or rights adjudicated at the same time).

4. This action is sufficiently comprehensive for the purposes of the McCarran Amendment because, even if all respondents are not joined at the commencement of the action, OWRB will join all required claimants in due course. *See Eagle County*, 401 U.S. at 525-26; *Bluewater Toltec*, 580 F. Supp. at 1438-39.

5. As a matter of law any decree entered pursuant to the Oklahoma General Stream Adjudication Statute as a result of this general stream adjudication will be binding on parties to the action and, in accordance with principles of due process, on those currently unknown claimants provided adequate notice and who choose not to join or participate. *See generally* Hutchins, W.A., Water Rights Laws in the Nineteen Western States, Vol. II, Chap. 15 at 510 (1974). The Oklahoma General Stream Adjudication Statute explicitly provides for this legally acceptable approach. 82 O.S. § 105.7.

6. The McCarran Amendment was not designed to avoid state permitting processes contemporaneous with a general stream adjudication, but rather to avoid "piecemeal" and duplicative state and federal stream adjudications. *Colorado River*, 424 U.S. at 819; *San Carlos Apache*, 463 U.S. at 565-66. Thus, the recognition in the Oklahoma General Stream Adjudication Statute that OWRB has independent authority and obligation to grant permits as those matters come before it, *see* 82 O.S. § 105.6, does not affect the validity of a general stream adjudication proceeding brought pursuant to the statute. Regardless, OWRB will join any permittee, and any permit will be subject ultimately to the outcome of this adjudication. The application and permit process does not adjudicate rights, as a final matter *inter sese,* and all such rights, including federal rights, are as a matter of law ultimately subject to any rights determined by this Court in a general stream adjudication. Moreover, any federal rights are "protected from extinguishment under State law by the Supremacy Clause." *See Sierra Club v. Yeutter*, 911 F.2d 1405, 1419 (10th Cir. 1990); *see also United States v. Anderson*, 736 F.2d 1358, 1365 (9th Cir. 1984) ("[A]ny permits issued by the State would be limited to excess water. If those permits represent rights that may be empty, so be it.").

7. Although the United States is immune from the imposition of costs in this general stream adjudication, *see United States v. Idaho*, 508 U.S. at 8, the imposition of fees on other claimants is not a bar to the adjudication of the claims of the United States including tribal claims, in state court pursuant to the Oklahoma General Stream Adjudication Statute. *See id.* (United States must participate in state court proceeding relative to all claims).

8. OWRB seeks in this action to determine rights to water or the use thereof in the Basins arising under both state and federal law including all claims made by or on behalf of the Tribes or Restricted Allotment Holders. *See Colorado River*, 424 U.S. at 811-12; *San Carlos Apache*, 463 U.S. at 564. OWRB requests the Court determine all state law-based claims to water under the applicable provisions of state law and all claims made by the United States on behalf of itself, the Tribes, and Restricted Allotment Holders under applicable federal law and state law to the extent applicable. *See Jicarilla Apache Tribe v. United States*, 601 F.2d 1116, 1126-30 (10th Cir. 1979) (McCarran Amendment provides for joinder of United States "as a party defendant in the state court even though the suit arises under state law and the federally reserved rights involve an interpretation and application of federal law").

9. This Court's determination of all state and federal claims is appropriate notwithstanding allegations of historic "hostility" of state courts to tribal claims. *See Colorado River*, 424 U.S. at 812 and *San Carlos Apache,* 463 U.S. at 551-52; *see also United States v. Oregon*, 44 F.3d at 771-72 (rejecting claims of the United States that Oregon state adjudication statute was ineffective for purposes of McCarran as it allowed federal rights to be initially determined in allegedly biased state administrative proceeding); *In re General Adjudication of the Big Horn River System*, 753 P.2d 76, 114-15 (Wyo. 1988) (rejecting a claim that the Wyoming State

Engineer may be unfair.) This general stream adjudication is properly before the state courts of Oklahoma.

JURISDICTION AND VENUE

10. This action arises under both state and federal law for the purposes of adjudication and administration of water rights within the State of Oklahoma in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems.

11. Jurisdiction and venue rests in this Court pursuant to the Oklahoma General Stream Adjudication Statute, 82 O.S. §§ 105.6 through 105.8, specifically authorizing the OWRB to initiate suit and prosecute to completion an action for a comprehensive general stream adjudication, and pursuant to Art. 7, § 4 of the Oklahoma Constitution, authorizing this Court to exercise its original jurisdiction, and to grant the relief requested in the Petition.

12. The Supreme Court of Oklahoma has original jurisdiction over this action because of the significant issues of public interest and policy relating to the allocation, use and administration of the waters of the State and the determination of the federal rights to water, including the rights of the Tribes and Restricted Allotment Holders within the State.

13. For purposes of joinder of the United States, the immunity of the United States and its agencies, and the immunity of the United States as to claims to water made by or on behalf of the Tribes or Restricted Allotment Holders, is waived pursuant to 43 U.S.C. § 666.

14. The claims of the United States, if any, on its own behalf and on behalf of the Tribes and Restricted Allotment Holders arise under federal law over which this Court has jurisdiction. 43 U.S.C. § 666; *Colorado River*, 424 U.S. at 809.

15. The Board, at its December 13, 2011 meeting, determined that the interests of all claimants in the Basins will be served by the commencement and completion of a comprehensive general stream adjudication.

PARTIES

16. Petitioner OWRB brings this action on its own behalf and on behalf of the State of Oklahoma. OWRB is the state agency established under Oklahoma law charged with the duty to allocate and administer the waters of the State, including filing a general stream adjudication for purposes of determining the rights to water and the use thereof within any stream system within the State.

17. Respondents are all persons or entities claiming rights or interests to the waters of the Kiamichi, Muddy Boggy or Clear Boggy Basin stream systems in the State of Oklahoma.

18. Petitioner OWRB has identified, named, and will join all claimants known to it in this adjudication through: (1) a review of all applications and permits on file with the OWRB; (2) a review of all previous non-comprehensive adjudications in the respective Basins including *Oklahoma City v. State Bd. of Pub Affairs, et al.*, No. 10217 (Atoka County Dist. Ct. 1958); OWRB Final Order No. 9, March 9, 1965; OWRB Final Order No. 12, March 9, 1965; and (3) identification and review of all interests and claims of the United States, including the claims of the Tribes and Restricted Allotment Holders.

19. These claimants fall into three general categories: sovereigns and governmental entities (including their agencies); current permit holders; and permit applicants. Additionally, OWRB will publish notice to notify any unknown claimants to water within each of the Basins.

a. Sovereigns

1. Respondent United States, United States Department of Interior, may claim to hold in trust for and/or claim on behalf of the Tribes, claims to water rights or rights to water within the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems pursuant to federal law. "[T]he United States is the proper party defendant in any general water rights adjudication proceeding, whether brought in federal or state court, relating to federally created water rights, including those reserved for use by the Indian Tribes." *Jicarilla Apache Tribe*, 601 F.2d at 1127.

2. Respondent United States may hold in trust and/or may claim water rights or rights to water within the Kiamichi, Muddy and Clear Boggy Basin stream systems on behalf of Restricted Allotment Holders who currently own interests in land formerly allotted and currently held in trust or subject to federal restraints on alienation.

3. Respondent United States Army Corps of Engineers ("Corps") may claim rights to storage or other rights to water in Sardis Lake pursuant to the Flood Control Act of 1962, Pub. L. No. 87-874, § 203, 76 Stat. 1173, 1187; *see also* Flood Control Act of 1936, chap. 688, 49 Stat. 1570, 1571 (currently codified as 33 U.S.C. § 701a (2011)); Water Supply Act of 1958, Pub. L. No. 85-500, § 301, 72 Stat. 297, 319 (currently codified as 43 U.S.C. § 390b (2011)); and rights to storage or other rights to water in Hugo Reservoir pursuant to the Flood Control Acts of 1936 and 1962.

4. Respondent United States Bureau of Reclamation may claim rights to storage or other rights regarding the impoundment of or the rights to the use of water in McGee Creek Reservoir pursuant to Public Law 94-423, the Reclamation Act of 1902, and all acts amendatory or supplementary thereto.

5. Petitioner OWRB may claim rights to the storage and use of water pursuant to that certain contract entered into with the Corps on February 2, 1974 for rights to the use of storage capacity in Sardis Reservoir ("1974 Contract"). In June 2010, the State of Oklahoma entered into a Storage Contract Transfer Agreement to allow the Oklahoma City Water Utilities Trust to acquire all of the State's rights title and interest to the 1974 Contract. That transfer agreement has not yet been approved by the Corps.

6. Respondent the City of Oklahoma City, an Oklahoma municipal corporation, is a city within and the capital of the State of Oklahoma, organized under the laws of the State of Oklahoma ("Oklahoma City"). Oklahoma City may claim rights to the storage and use of water in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems pursuant to permits, contracts or applications pending with the OWRB.

7. Respondent Oklahoma City Water Utilities Trust is a public trust authorized under state law to function as the primary policy-making body for the Oklahoma City Water and Wastewater Utilities. The Oklahoma City Water Utilities Trust may claim rights to store and use water pursuant to permits, contracts or applications held in trust for the use and benefit of Oklahoma City in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems.

8. Respondent Hugo Municipal Authority is an Oklahoma public water trust formed for the benefit of the City of Hugo, Oklahoma. The Hugo Municipal Authority may claim rights to the storage and use of water pursuant to that certain contract entered into with the Corps on October 30, 1972, and approved on October 22, 1974 for rights to the use of storage capacity in Hugo Reservoir.

9. Respondent McGee Creek Authority is an entity formed under federal law, Public Law 94-423, § 701, for the purpose of developing, financing, operating and maintaining

the water supply in McGee Creek Reservoir. It is comprised of the Southern Oklahoma Development Trust, the County of Atoka, the Oklahoma City Water Utilities Trust and the City of Oklahoma City. The McGee Creek Authority may claim rights to store or otherwise utilize the waters of McGee Creek Reservoir.

a. Current Permit Holders

1. According to the records of the OWRB, the following Respondents currently hold active permits for the right to divert and use the surface waters of the Kiamichi Basin stream system: Donald Leslie, Hugo Municipal Authority, Antlers Public Works Authority, Oklahoma Department of Tourism and Recreation, Oklahoma Department of Wildlife Conservation, Patrick Miller, Talihina Public Works Authority, Merlen Debolt, M.D., Louise A. Redman, Clyde and Donnie Corbin, Latimer County Rural Water District No. 2, Donna Addington-McSpadden, Sardis Lake Water Authority, Pushmataha County Rural Water District No. 3, Dirk Decker, Decker Revocable Trust, Danny W. Wilson, Dale Jackson, Bueford R. Lockhart, David and Leo Ralston, SCS Materials LP, William S. Howard, William S. and Brenda G. Howard, Big Mac Tank Trucks LLC, and Michael Smith.

2. According to the records of the OWRB, the following Respondents currently hold active permits for the right to divert and use the groundwater underlying the Kiamichi Basin stream system area: Roland Brents, Town of Fort Towson, Western Farmers Electric Cooperative, J. T. Hutson, Meridian Aggregates Company, LP, Carl Boykin, Donna Addington-McSpadden, Bill Price, Meridian Aggregate Company, M.E.N.S. Ranch and Jonathan David Burns.

3. According to the records of the OWRB, the following Respondents currently hold active permits for the right to use the surface waters of the Muddy Boggy and/or Clear Boggy Basin stream systems: Town of Kiowa, Louie Le Flore, City of Oklahoma City,

Bromide Public Works Authority, Doyle Dean and Debrah J. Arnold, City of Ada, Coalgate Public Works Authority, W. E. Reeves, Department of Wildlife Conservation, Howard Nelson, Bill Moore, Wiley and Donna Harrison, Charles and Conita Tipton, Dunn's Fish Farm of Arkansas Inc., Oklahoma Gas & Electric Company, Eddie and Ronnie Bowen, Roy and Bea Hall, City of Atoka, County Commissioners of Atoka County, Southern Oklahoma Development Trust, Walter Woolley, Jr., Jack G. Emerson, Lilly Cannon, B. L. Little, Thomas G. Lewis Revocable Trust, Austin LeMay, Rick and Kathy Clayton, Carol A. Tomlin, Trustee, James C. Lollar Trust, Arbuckle Area Council, Department of Tourism & Recreation, Oklahoma State University Vegetable Research Station, Mack Alford Correctional Center, Ron Willis, Wapanucka Public Works Authority, Bobby D. and Debbie Wall, Jack Wayne Jensen, Jimmy L. and Rita D. Nix, DHM Enterprises Inc., Gerald Clifford Wilson, GHB Farms, Inc., Hughes County Rural Water District No. 2, Robinson Bros. Park Inc., Tyson Foods Inc., Delbert A. Harden, Jamie W. and Earlene Howard, Will Alan King, Roger and Cindy Stinchcomb, Joyce Ferguson, BC Wetlands LTD, W. S. Jr. and Mary Frances Webb, Edgemont Beef, Richard J. and Mary Elizabeth Helton, Stream Natural Resources LC, Cedar Valley Nursery Inc., J. M. and Shelby Welch, W-7 Swine Farms Inc., Kenneth and Mary Alice Battles, Robert M. and Susan E. Reinauer, Howell Family Trust, Acie V. Hayes, Jr., Michael and Kara McBrayer, Mallard Farms LLC, Jeffrey Allen Barker, City of Coalgate, L. Ray Wood, Chester Bench, Boggy River Ranch LLC, John Troyer, Mustang Stone Quarries LLC, WACCAW Development LLC, Wayman L. Garnett, St. Mary Land & Exploration Company, Arcadia Farm LLC, c/o Commercial Law Group, Duane Tomek and Susane Stockton, and TransCanada Keystone Pipeline LP.

4. According to the records of the OWRB, the following Respondents currently hold active permits for the right to divert and use the groundwater underlying the Muddy

Boggy and/or Clear Boggy Basin stream system area: City of Lehigh, Holnam, Inc., Stonewall Public Works Authority, City of Stringtown, City of Tupelo, Mrs. Winifred Borders, Marion and Louise Borders, Chapman Family Revocable Trust, Lee O. Harrington, R.W. Borders, Allen Public Works Authority, Atoka County Rural Water District No. 2, Atoka County Rural Water District No. 3, Greg A. Turpin, Johnston County Rural Water, Sewer and Solid Waste Management District No. 4, Harold V. Merriman, Caddo Public Works Authority, Troy Morris, Lyndle Ellis, Clyde D. Lacey, Weaver Jackson, Susie M. Humphries, Carlton W. Corbin, Frezell Calvin, Bill Morrow, Oklahoma State University, Wes Watkins Agriculture Research and Extension, Town of Boswell, Wingard Water Corporation, Johnny Stinnet, Allen Public Works Authority, G.O. Philpot, Hughes County Rural Water District No. 6, Charles Wayne Borders, Town of Soper, Greg and Ines Turpin, Choctaw County Rural Water District No. 1, Roy and Shirley Mobbs, David Mobbs, Doyle and Selma Foreman, Donald R. and Sherley Marie Zaicek, Southeastern Oklahoma Land Co., Bryan County Rural Water, Sewer and Solid Waste Management District No. 6, Will Grote, G. Hump Ltd., Mungle Corporation, Hughes County Rural Water District No. 2, Coalgate Public Works Authority, Robinson Bros. Park Inc., Gerald Clifford Wilson, GHB Farms, Inc., Bromide Public Works Authority, Nancy K. McDougal Revocable Trust, Helen J. Smith, and Tyson Foods Inc.

a. Permit Applicants

1. According to the records of the OWRB, the following Respondents currently have applications on file with the OWRB for claims to the use of the waters of the Kiamichi Basin stream system: City of Oklahoma City, Clayton Chamber of Commerce, Inc., Sardis Water Resources Board Inc., Sardis Lake Water Authority, Hugo Municipal Authority, Tarrant Regional Water District, William S. and Brenda G. Howard, Upper Trinity Regional Water District, David Lynn Brown, Central Oklahoma Master Conservancy District, North Texas Municipal Water

District, Choctaw County Economic Development Authority, and Pushmataha County Rural Water District No. 3.

2. According to the records of the OWRB, the following Respondents currently have applications on file with the OWRB for claims to the use of the waters of the Muddy Boggy and/or Clear Boggy Basin stream system: City of Midwest City, City of Tecumseh, Redark Development Authority, David Hull, National Coal County, WACCAW Development LLC, Upper Trinity Regional Water District, and North Texas Municipal Water District.

a. Other

1. Based on information and belief, the following respondents may claim rights to the groundwater of the Kiamichi Basin stream system: Don Brents, Weyerhaeuser Co., Eugene Hill, and Roger Buchanan.

2. Based on information and belief, the following respondents may claim rights to the surface waters of the Muddy and Clear Boggy Basin stream system: Mike and Luisa Selman.

3. Based on information and belief, the following respondents may claim rights to the groundwater of the Muddy and Clear Boggy Basin stream system: Marion and Louise Borders, Jack & John Johnson, Mr. and Mrs. Robert Ballard, Albert and Kathryn Holloway, W7 Land Co., and Dennis Harden.

1. Pursuant to 82 O.S. § 105.24 and OWRB Rule, codified at Oklahoma Administrative Code 785: 20-9-5, all applicants or permittees claiming a right to the use of water in any stream system are required to provide OWRB with the current name and address of the claimant of such right. OWRB will join or substitute parties in this action as necessary based on such information as it may be received.

FACTS

2. The Kiamichi Basin stream system is comprised of the Kiamichi River and its tributaries. The Basin has a drainage area of 1,830 square miles and the Kiamichi River flows through six (6) Oklahoma counties Atoka, Choctaw, Latimer, LeFlore, Pittsburg and Pushmataha. The Kiamichi River arises in the Ouachita National Forest in extreme western Arkansas, enters Oklahoma in southeastern LeFlore County, then meanders for 172 miles prior to its termination at the Red River in Choctaw County, Oklahoma. The Basin includes the tributaries of Jackfork, Cedar, Buck and Ten Mile Creeks and the impoundments of Sardis and Hugo Lake. A map depicting the boundaries of the Kiamichi Basin is attached hereto as Exhibit A.

3. The waters of the Kiamichi Basin stream system are used or claimed for agricultural, municipal, domestic, recreational, commercial, industrial and instream flow purposes by the various respondents named herein.

4. The Muddy Boggy Basin and Clear Boggy Basin stream system are collectively referred to as the Boggy Basin. The Boggy Basin is comprised of the Muddy Boggy Creek and Clear Boggy Creek and their tributaries and the impoundments of Atoka Lake and McGee Creek Reservoir. The Boggy Basin has a drainage area of approximately 2,429 square miles and includes parts of the counties of Pontotoc, Hughes, Pittsburg, Atoka, Johnson, Bryan, Pushmataha, and Choctaw counties in southeastern Oklahoma. The basin is about 70 miles long and has a maximum width of about 30 miles. A map depicting the boundaries of the Muddy Boggy and Clear Boggy Basin is attached hereto as Exhibit A.

5. The waters of the Muddy Boggy Basin and Clear Boggy Basin stream system are used or claimed for agricultural, municipal, domestic, recreational, commercial, industrial and instream flow purposes by the various respondents named herein.

6. The Tribes are federally recognized Indian Tribes that claim to have federally created water rights or rights to water held in trust for their benefit or subject to federal restraints on alienation by the United States within the Kiamichi, Muddy and Clear Boggy Basin stream systems.

7. The Tribes base their claims on several treaties.

a. First, the Tribes rely upon a September 27, 1830 Treaty, 7 Stat. 333, pursuant to which the United States issued a patent on March 23, 1842 granting land to the Choctaw Nation "in fee simple" to "inure to [the Choctaw Nation], while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States, or with their consent."

b. Second, through two treaties executed in 1837, 11 Stat. 373, and 1854, 10 Stat. 1116, the Tribes agreed that the Chickasaw Nation "shall have the privilege of forming a district within the limits of [the Choctaw] country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it, which is held in common with the Choctaws and Chickasaws, to be called the Chickasaw district of the Choctaw Nation."

c. Third, in an 1855 Treaty, 11 Stat. 611, the United States defined the boundaries of the Tribes' collective lands as encompassing what is now the portion of the state of Oklahoma lying south of the main Canadian and the Arkansas Rivers.

d. Fourth, in an 1866 Treaty, 14 Stat. 769, the Choctaw and Chickasaw Nations ceded to the United States all lands west of the 98th meridian, leaving the Tribes the lands east of the 98th meridian in between the main Canadian and the Arkansas Rivers and the Red River. That area encompasses all or portions of the following current Oklahoma counties: Atoka, Bryan, Carter, Choctaw, Coal, Garvin, Grady, Haskell, Hughes, Jefferson, Johnston, Latimer, LeFlore, Love, McClain, McCurtain, Marshall, Murray, Pittsburg, Pontotoc, Pushmataha, and Stephens.

1. After 1866, Congress enacted a series of laws which gradually put in force a body of state laws applicable to Indians as well as non-Indians and which led to the extinguishment of the Tribes' title to lands through allotment of those lands to individual, enrolled members.

a. Between 1870 and 1891, Congress passed laws which established United States Courts with jurisdiction over civil actions within the area described by the 1866 Treaty, among other areas, and made the laws of the State of Arkansas applicable to Indians and non-Indians alike. *See, e.g.*, 25 Stat. 783 (March 1, 1889); 26 Stat. 81 (May 2, 1890).

b. On March 3, 1893, Congress established the Dawes Commission to negotiate with the Tribes, among other tribes or nations, "for the purpose of extinguishment of the national or tribal title to any lands" held by those tribes or nations either "by cession of the same or some part thereof to the United States, or by the allotment or division of the same in severalty. . . ." *See* 27 Stat. 645.

c. Thereafter, on April 23, 1897, the Tribes and the United States entered into the Atoka Agreement which provided, among other things, that the Tribes' lands should be allotted; that town sites would be reserved from allotment, sold, and the proceeds distributed *pro rata* to the enrolled members of the Tribes; and that tribal government should continue only until March, 1906. The Curtis Act of June 28, 1898, 30 Stat. 495, ratified and confirmed the Atoka Agreement.

d. The Atoka Agreement was subsequently modified by a 1902 Supplemental Agreement, 32 Stat. 641, which, among other things, specified regulations for the allotment of the Tribes' land and significantly curtailed the powers of the Tribes' Councils.

e. In its Annual Report for the year ending June 30, 1902, the Dawes Commission declared that the Supplemental Agreement "embraces provisions far-reaching in effect, and which, if ratified by the tribes, will practically complete the disintegration of the Choctaw and

Chickasaw commonwealths and effect the installment of new political and social conditions and tenures common to the States and Territories." 57th Cong., 2d. Sess., H. Doc. No. 5 at 11 (1903).

f. Pursuant to the Atoka Agreement, as modified by the 1902 Supplemental Agreement, all but a tiny fraction of the approximately 11,660,951 acres of the lands described by the 1866 Treaty were either allotted or sold with the proceeds of sale being distributed to the enrolled members of the Tribes.

g. Upon information and belief, today, the total of (i) lands held in trust by the United States for the benefit of the Tribes, (ii) lands owned by the Tribes, and (iii) trust or restricted allotments held by or for the benefit of enrolled members of the Tribes amounts to less than 3% of the lands described by the 1866 Treaty.

1. Sardis Reservoir, previously named Clayton Reservoir, was authorized by Congress pursuant to the Flood Control Act of 1962, Pub. L. No. 87-874, § 203, 76 Stat. 1173, 1187. *See also* Flood Control Act of 1936, chap. 688, 49 Stat. 1570, 1571 (currently codified as 33 U.S.C. § 701a (2011)); Water Supply Act of 1958, Pub. L. No. 85-500, § 301, 72 Stat. 297, 319 (currently codified as 43 U.S.C. § 390b (2011)). The Flood Control Acts under which Sardis Reservoir was authorized required the Corps to construct and maintain Sardis Reservoir for purposes of providing storage for municipal and other purposes. Construction of Sardis Reservoir began in 1974 and was completed in 1983.

2. Pursuant to the federal authorizing legislation, the Corps was required to enter into contracts for the use of water stored in Sardis Reservoir. In 1974 the Corps entered into a contract for the storage and use of the water supply available from Sardis Lake with the Water Conservation Storage Commission, a predecessor to the OWRB, and OWRB is now vested with all right, title and interest in the 1974 Contract.

3. In June 2010, OWRB and the Oklahoma City Water Trust entered into a contract ("Transfer Agreement") by which the Trust would acquire the rights to use the storage capacity in Sardis Reservoir that were previously held by the State of Oklahoma pursuant to the 1974 Contract. The Transfer Agreement requires the approval of the Corps. The Corps has not yet approved the transfer.

4. McGee Creek Reservoir was constructed by the United States Bureau of Reclamation pursuant to Public Law 94-423 and in accordance with federal Reclamation Law. Pub. L. No. 94-423, § 701. McGee Creek Reservoir was authorized for the purposes of storing, regulating, and conveying water for municipal and industrial uses. Public Law 94-423 further provided the "permanent right to use the reservoir and related facilities" to the contracting entity. *Id.* § 705(d).

5. McGee Creek Reservoir impounds waters from McGee Creek and other small streams, which are all tributaries of the Muddy Boggy River. The McGee Creek Authority was established to develop, finance, operate and maintain the water supply in McGee Creek Reservoir and serves as the contracting entity. *See* H.R. 110-460. The McGee Creek Authority includes the Southern Oklahoma Development Trust, the County of Atoka, the Oklahoma City Water Utilities Trust, and the City of Oklahoma City.

6. Public Law 101-514 authorized the Secretary to enter into a contract with the McGee Creek Authority, which ultimately allowed the McGee Creek Authority to become responsible for operating and maintaining the project. *See* Pub. L. No. 101-514. The Bureau of Reclamation, however, retains title to the McGee Creek project facilities. *See* H.R. 111-460. Thus, although the Bureau of Reclamation owns the reservoir, the Authority has ownership title to the project office, aqueduct and appurtenances, and other operation and maintenance related facilities. *Id.* Consistent

with Public Law 94-423, the McGee Creek Authority "shall have a permanent right to use the reservoir and related facilities of the McGee Creek project." Pub. L. No. 94-423 § 705(d).

7. Atoka Lake was constructed by Oklahoma City in 1964. The lake supplies water to Oklahoma City. In 1974, the Lake Atoka Reservation Association was created by Oklahoma City, the Oklahoma City Water Utilities Trust, and the City of Atoka to administer the reservoir. In addition to Oklahoma City, the City of Atoka and the Atoka County Rural Water District No. 2 both use water from Atoka Lake.

8. The Corps began construction of Hugo Reservoir in 1967 pursuant to the Flood Control Acts of 1936 and 1962. Construction was completed in 1974. The Reservoir was constructed for the purposes of flood control, water supply, fish and wildlife management, and recreation. Storage for water quality was added as a project purpose under Public Law 86-88. The Corps continues to operate Hugo Reservoir. Hugo Reservoir's storage capacity is 158,617 acre-feet. The Hugo Municipal Authority has a water storage supply contract with the Corps.

COUNT I
(Adjudication of Water Rights)

9. Petitioner OWRB brings this suit to adjudicate all claims to the right to divert, impound, or use the water of the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems in the State of Oklahoma under applicable state and federal law.

10. Respondents each claim or may claim a right to impound, divert, or otherwise use or control the waters of the Kiamichi, Muddy and Clear Boggy Basin stream systems.

11. An adjudication of the rights of all claimants *inter sese* to impound, divert, or use the waters of the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems is necessary to determine and settle claims to the water resources of the respective stream systems and to promote

lawful and orderly administration of the waters of the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems.

12. This general steam adjudication seeks a determination of the nature, extent, place and purpose of use and relative priority of the water rights and the rights to use or control the water of all persons or entities, public or private within the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems whether those rights to water arise under federal or state law.

13. Petitioner OWRB seeks a Final Decree determining and setting forth as to all claimants to the waters of the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems the source, priority, amount, point of diversion, periods and purpose and place of use of such claims or other right to water.

COUNT II
(Administration of Water Rights)

14. Petitioner OWRB brings this suit to allow for the administration of the rights adjudicated pursuant to a Final Decree issued by this Court.

15. Upon determination of the source, amount, point of diversion, periods, purpose and place of use and relative priorities of all the rights to water within the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems, this action seeks a determination of the rights of OWRB to administer all rights decreed herein pursuant to a Final Decree or other orders of this Court.

16. Accordingly, Petitioner OWRB seeks entry of a Final Decree setting forth the administration of the rights adjudicated and decreed in this action pursuant to applicable law.

17. Prior to entry of a Final Decree, Petitioner OWRB requests this Court enter an Interim Administrative Order providing for the orderly administration of the claims to water in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems pursuant to all applicable law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, the Oklahoma Water Resources Board, prays that the Court:

1. Adjudicate all rights to water or the use of the water in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems.

2. Appoint a Special Referee to take evidence and make a report to the Court on all questions of fact and law, which report shall determine all general and specific issues of fact properly arising in this action and make such findings of fact and conclusions of law as may be necessary.

3. Order the respondents to appear and fully describe what rights, if any, they claim to the use of, control, or right to water in the Kiamichi, Muddy Boggy and Clear Boggy Basin steam systems and specifically state:

   a. When said water right was initiated;

   b. The point of diversion for the water right;

   c. The place of use of such water right;

   d. The source of water;

   e. The purpose of use of the water;

   f. The amount of water claimed for the specific use;

   g. If the claim is based on non-consumptive or future uses of water, the specific basis for such non-consumptive use and basis for a claim for the future use(s); and

   h. Such other matters as may be necessary to define a particular right and its priority.

1. Determine and define the water rights of each of the respondents and enter a Final Decree stating:

a. The water rights adjudged each party;

b. The source, priority, amount, points of diversion, periods, purpose and place of use of each right;

c. If such right is based on non-consumptive or future uses, the basis and parameters for such non-consumptive or future use;

d. That any right determined and adjudged is subject to any valid riparian uses, if any, as may be allowed or recognized by applicable law; and

e. Such other matters as may be necessary to define a particular right or its priority.

1. Assess the costs of this action as against all respondents with the exception of the United States, as provided for pursuant to 82 O.S. § 105.6.

2. Allow joinder or intervention of additional parties from time to time as it appears necessary to determine and adjudicate all the rights to water in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems and to allow a comprehensive general stream adjudication.

3. Enter an Interim Administrative Order providing for the orderly administration of the water resources in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems by the OWRB pending a Final Decree in this action including all rights of the Tribes, if any.

4. Determine the appropriate administration of all such water rights finally determined in the Final Decree.

5. Determine all related matters necessary or appropriate to the adjudication and administration of the rights brought before the Court.

6. Grant such other relief as is necessary and proper to enter an Interim Administrative Order and Final Decree to adjudicate and administer the rights to water in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems.

Respectfully submitted,

On behalf of the Petitioner Oklahoma Water Resource Board

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