E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

February 10, 2012

Dear Oklahomans and Others with water rights to protect:

Water is one of the most important and precious resources in the State of Oklahoma. Our streams and rivers support our agricultural and ranching livelihoods, recreation, fisheries and commercial endeavors. Water provides the lifeblood for our growing communities. The security and certainty of our water supplies is vital to the future of our State. However, the certainty and security of the water resources in southeastern Oklahoma has recently been called into question by a federal lawsuit filed by the Chickasaw and Choctaw Nations.

In that federal lawsuit, the Tribes have specifically challenged more than 100 years of State sovereignty over Oklahoma's water resources. The State has protected and allocated the water resources within the State for more than a century for the benefit of all citizens of Oklahoma. The Tribes' federal lawsuit challenges this. In claiming "prior and paramount rights" to water in the 22 counties comprising southeastern Oklahoma, the Tribes specifically state and ask the federal court declare that:

> The 1830 Treaty secures to the Plaintiff Nations sovereign and proprietary rights to waters in the Treaty Territory, and regulatory authority over those waters, that are prior and paramount to any water rights or regulatory authority in Treaty Territory waters claimed under State law. Second Amended Complaint, par. 87(a).

In their federal court complaint, the Tribes also request the Court enjoin the State from taking further permitting actions, "unless and until a comprehensive [stream] adjudication . . . has been completed" to determine all rights to water within the Kiamichi and Muddy Boggy and Clear Boggy Basin stream systems including the claims of the two Tribes. Second Amended Complaint, par. 99(k).

The State of Oklahoma, to demonstrate a good faith effort to address the Tribes' expressed concerns and to ensure protection and certainty as to Oklahoma's water resources in the 22 Oklahoma counties called into question by the Nations' federal lawsuit, the State of Oklahoma agreed to commence a general stream adjudication in the Kiamichi, Muddy Boggy and Clear Boggy Basin stream systems.

The attached Petition represents the State's efforts to protect your water resources and provide certainty and security as to State issued permits. Given the broad-reaching and

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unprecedented claims in the Tribes' federal lawsuit, it is only through a general stream adjudication that the State can fully defend its obligations to allocate and protect the waters, and its citizens' rights to the waters, of the respective Basins.

In recent months, the Tribes have launched an unprecedented media campaign to malign the State's efforts to address the challenges the Tribes themselves have brought as to your rights to water in southeastern Oklahoma. More recently, the Tribes have greatly increased the airing of their commercials so that they are akin to a public relations blitzkrieg, and they have even added full-page newspaper ads and editorials. One of the primary messages of this media campaign is that the Tribes are stewards of the land and protectors of the waters and natural resources of the region.

The Tribes' *actions*, however, send a different message:

- The Choctaw Nation commissioned a study on how much money it could make selling southeastern Oklahoma's water to Texas.

- In the Tribes' last attempt to enter into a cooperative water agreement with the State, the Tribes wanted 50% of all money from the sales of water to Texas and elsewhere.

- Since filing their current lawsuit against the State, and prior to the beginning of mediation, the Tribes' lawyers indicated that they were interested in exploring ways to sell or share in the revenues from the sale of water from the region.

- In an April 11, 2011 New York Times article entitled "Indians Join Fight for an Oklahoma Lake's Flow," which quoted Choctaw Chief Gregory Pyle and Chickasaw Nation attorney Stephen Greetham, the Tribes' goals were described as, "assuming the water is valuable, [the Tribes] want to share in the profits from selling or leasing it."

- While claiming to be in favor and giving priority to water needs of urban Oklahoma—Oklahoma City and Tulsa—the Tribe filed a lawsuit in federal court seeking a court order finding that Oklahoma City has no right to use its present pipeline—the pipeline that has provided water to Oklahoma City for the last 50 years.

- The Tribes' lawsuit also claimed that the Oklahoma Water Resources Board should be prevented from taking any action on permit applications for the region until the State had completed a comprehensive stream-wide adjudication. When the State responded to this claim by indicating that the State would file such an adjudication, the Tribes reversed course,

complaining that the State should not file a stream-wide adjudication as it was not necessary.

- In addition to this reversal of course, the Tribes now tell us that the lawsuit is not about earning money from the sale of water to Texas and elsewhere.

In short, the Tribes' *actions* and public relations posturing and its lawsuit send mixed messages. The Tribes' actions over the years indicate their interest is in making money from the sale of water to Texas. They now disavow that interest. They claimed that a comprehensive stream-wide adjudication was a prerequisite to the State issuing water permits — they now disavow that claim.

Because of the Tribes' reversals of course and conflicting positions and claims, the State has no way of knowing whether the Tribes' primary motive is no longer to make hundreds of millions of dollars selling water to Texas and elsewhere (which is what their study indicated was possible). None of this is clear. The Tribes' mixed messages and actions make it impossible to know.

Why a Stream-Wide Adjudication is Needed In Light of the Tribes' Actions

One thing *is* clear, the Tribes themselves, not the bringing of a general stream adjudication, have caused the threat to the water resources of our State. The cloud of uncertainty placed upon existing water rights by the Tribes' claims can only be cured effectively in one way: the filing of a general stream adjudication. The adjudication will allow, under state and federal law, (and in state court) the final determination of the water rights of all claimants to water within the identified Basins. The adjudication will allow for the State, and all claimants to Oklahoma's precious water resources, to defend and protect their rights.

The Tribes claim they have the right to regulate and control one hundred percent (100%) of the waters in the 22 counties in southeastern Oklahoma, despite the fact the Tribes' "Indian Country" composes perhaps 3% or less of the land within those 22 counties. The Tribes claim:

- The power to determine who gets the water.
- The power to determine where the water will go.
- The power to regulate how the water will be used in the future under present permits.

The Tribes' have made carefully-worded statements that are designed to lead the public to believe that they are not challenging any existing water rights. Those statements are misleading. What the Tribes' say is that they are not challenging "any *current use* of water pursuant to any existing permits" (emphasis added). What they do not say is that they are not

challenging any future uses under those permits, nor do they say that they do not challenge the rules and regulations that govern those permits. Simply put, if they had no intentions of affecting anyone's water rights in any way, they could easily say so. Their failure to do so speaks volumes about their true intentions.

And to be clear, it is the claims that the Tribes' are making in their federal court pleadings that matter—not their self-serving public statements that attempt to distance themselves from those pleadings. In other words, apparent—though not actual—conciliatory statements made in the press have no binding effect and do not provide the needed certainty for the State to move forward with any confidence that it will not be plagued with claims of Tribal rights again and again in the future as either moods or tribal leaders change.

There is only one vehicle available under federal and state law to provide such certainty—that is a comprehensive stream-wide adjudication, which the Tribes originally claimed was needed. Such an adjudication is the *only* method for removing the clouds of uncertainty placed upon existing and future water rights by the Tribes' claims. Under federal and state law such a stream-wide adjudication allows for the final determination of the water rights of *all* entities and residents within a stream basin. There simply is no other process that allows *every* resident with water rights an equal and fair opportunity to protect their rights. A stream-wide adjudication will test the Tribes' claims and result in a final decision that binds all parties.

The case filed by the State in the State Supreme Court is just such a comprehensive stream-wide adjudication. As it proceeds, we will be asking the Court to approve forms which may be filled out and returned, or completed on the internet, which residents can use to respond to protect their rights—without the necessity of hiring a lawyer.

Further, we will take steps to make the process as painless as possible, and will continue—assuming the Nations are still willing to do so—to attempt to mediate a settlement, which can be approved as part of this adjudication, and thus streamline the process.

The State's Basic Position

The State's basic position is this: while the State realizes that the Federal Government has made many promises to the Tribes in the past, including promises that their land would never be part of the territory or a state, Congress long ago changed its minds and made those lands part of the State of Oklahoma. The State's position is that in opening the lands to settlement, diminishing the Tribes' land, and in creating the State of Oklahoma, which included lands of the Tribes, Congress severely limited the Tribes' rights and powers. It was *not* the intent of Congress to create a State with the responsibilities of providing for the health and safety of all of its citizens, including the responsibility of seeing all citizens have water, yet not give it regulatory control over the State's waters.

If the Tribes have any remaining water rights—which is doubtful—they would relate to the small percentage of land within the area that is Indian Country—not the sweeping power claimed by the Tribes, powers which would put the economic future of the entire state in the Tribes' hand.

Question Presented by the State's Initial Filing

The State's initial filings ask the Oklahoma Supreme Court to decide one question, and one question only at this time: **whether the State's stream-wide adjudication should continue in the Supreme Court or whether the Supreme Court should transfer it to a district court of the State's choosing?**

The question before the Court now is *not* whether such a stream-wide adjudication should continue. The *only* question is in which Court it should proceed. We have filed it the Oklahoma Supreme Court, asking it to exercise its original jurisdiction, rather than filing the case in district courts for the following reasons:

- the adjudication would be completed more efficiently because rather than filing the case in district court where it would then be appealed up to the Supreme Court, the case can be heard by the Supreme Court from the outset, which avoids those appeals. This will allow the adjudication to be completed many years quicker, and more cheaply, than it would be were it filed in district court.
- The Supreme Court can make final determinations about procedural matters, including determining who must be joined to have a comprehensive adjudication. If a district court makes those determinations, those decisions can be appealed to the Supreme Court, who could make a different decision and require a whole new adjudication.
- the Supreme Court could select a Special Master or Referee with expertise in the area to preside over the case—expertise not available from the district court bench.

The hearing and notice that you receive relates only to the issue of whether the Supreme Court should preside over the case. If you have no objection to the matter proceeding in the Supreme Court rather than a district court designated by the State, you need not appear or respond at this time.

You will receive further notices on when and how to respond to protect your water rights. In the interim, should you have any questions regarding this notice or the general stream adjudication process please contact the Oklahoma Water Resources Board at (405) 530-8800.

We look forward to working with you to restore certainty and security to the water resources of our State.

Sincerely,

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

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