

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 5303
OFFERED BY MR. MULLIN OF OKLAHOMA**

At the end of title I, add the following:

1 **SEC. _____ . CHOCTAW NATION OF OKLAHOMA AND THE**
2 **CHICKASAW NATION WATER SETTLEMENT.**

3 (a) PURPOSES.—The purposes of this section are—

4 (1) to permanently resolve and settle those
5 claims to Settlement Area Waters of the Choctaw
6 Nation of Oklahoma and the Chickasaw Nation as
7 set forth in the Settlement Agreement and this sec-
8 tion, including all claims or defenses in and to
9 Chickasaw Nation, Choctaw Nation v. Fallin et al.,
10 CIV 11–927 (W.D. Ok.), OWRB v. United States,
11 et al. CIV 12–275 (W.D. Ok.), or any future stream
12 adjudication;

13 (2) to approve, ratify, and confirm the Settle-
14 ment Agreement;

15 (3) to authorize and direct the Secretary of the
16 Interior to execute the Settlement Agreement and to
17 perform all obligations of the Secretary of the Inte-
18 rior under the Settlement Agreement and this sec-
19 tion;

1 (4) to approve, ratify, and confirm the amended
2 storage contract among the State, the City and the
3 Trust;

4 (5) to authorize and direct the Secretary to ap-
5 prove the amended storage contract for the Corps of
6 Engineers to perform all obligations under the 1974
7 storage contract, the amended storage contract, and
8 this section; and

9 (6) to authorize all actions necessary for the
10 United States to meet its obligations under the Set-
11 tlement Agreement, the amended storage contract,
12 and this section.

13 (b) DEFINITIONS.—In this section:

14 (1) 1974 STORAGE CONTRACT.—The term
15 “1974 storage contract” means the contract ap-
16 proved by the Secretary on April 9, 1974, between
17 the Secretary and the Water Conservation Storage
18 Commission of the State of Oklahoma pursuant to
19 section 301 of the Water Supply Act of 1958 (43
20 U.S.C. 390b), and other applicable Federal law.

21 (2) 2010 AGREEMENT.—The term “2010 agree-
22 ment” means the agreement entered into among the
23 OWRB and the Trust, dated June 15, 2010, relat-
24 ing to the assignment by the State of the 1974 stor-
25 age contract and transfer of rights, title, interests,

1 and obligations under that contract to the Trust, in-
2 cluding the interests of the State in the conservation
3 storage capacity and associated repayment obliga-
4 tions to the United States.

5 (3) ADMINISTRATIVE SET-ASIDE SUB-
6 CONTRACTS.—The term “administrative set-aside
7 subcontracts” means the subcontracts the City shall
8 issue for the use of Conservation Storage Capacity
9 in Sardis Lake as provided by section 4 of the
10 amended storage contract.

11 (4) ALLOTMENT.—The term “allotment” means
12 the land within the Settlement Area held by an allot-
13 tee subject to a statutory restriction on alienation or
14 held by the United States in trust for the benefit of
15 an allottee.

16 (5) ALLOTTEE.—The term “allottee” means an
17 enrolled member of the Choctaw Nation or citizen of
18 the Chickasaw Nation who, or whose estate, holds
19 an interest in an allotment.

20 (6) AMENDED PERMIT APPLICATION.—The
21 term “amended permit application” means the per-
22 mit application of the City to the OWRB, No. 2007–
23 17, as amended as provided by the Settlement
24 Agreement.

1 (7) AMENDED STORAGE CONTRACT TRANSFER
2 AGREEMENT; AMENDED STORAGE CONTRACT.—The
3 terms “amended storage contract transfer agree-
4 ment” and “amended storage contract” mean the
5 2010 Agreement between the City, the Trust, and
6 the OWRB, as amended, as provided by the Settle-
7 ment Agreement and this section.

8 (8) ATOKA AND SARDIS CONSERVATION
9 PROJECTS FUND.—The term “Atoka and Sardis
10 Conservation Projects Fund” means the Atoka and
11 Sardis Conservation Projects Fund established,
12 funded, and managed in accordance with the Settle-
13 ment Agreement.

14 (9) CITY.—The term “City” means the City of
15 Oklahoma City, or the City and the Trust acting
16 jointly, as applicable.

17 (10) CITY PERMIT.—The term “City permit”
18 means any permit issued to the City by the OWRB
19 pursuant to the amended permit application and
20 consistent with the Settlement Agreement.

21 (11) CONSERVATION STORAGE CAPACITY.—The
22 term “conservation storage capacity” means the
23 total storage space as stated in the 1974 storage
24 contract in Sardis Lake between elevations 599.0
25 feet above mean sea level and 542.0 feet above mean

1 sea level, which is estimated to contain 297,200
2 acre-feet of water after adjustment for sediment de-
3 posits, and which may be used for municipal and in-
4 dustrial water supply, fish and wildlife, and recre-
5 ation.

6 (12) ENFORCEABILITY DATE.—The term “en-
7 forceability date” means the date on which the Sec-
8 retary of the Interior publishes in the Federal Reg-
9 ister a notice certifying that the conditions of sub-
10 section (i) have been satisfied.

11 (13) FUTURE USE STORAGE.—The term “fu-
12 ture use storage” means that portion of the con-
13 servation storage capacity that was designated by
14 the 1974 Contract to be utilized for future water use
15 storage and was estimated to contain 155,500 acre
16 feet of water after adjustment for sediment deposits,
17 or 52.322 percent of the conservation storage capac-
18 ity.

19 (14) NATIONS.—The term “Nations” means,
20 collectively, the Choctaw Nation of Oklahoma
21 (“Choctaw Nation”) and the Chickasaw Nation.

22 (15) OWRB.—The term “OWRB” means the
23 Oklahoma Water Resources Board.

24 (16) SARDIS LAKE.—The term “Sardis Lake”
25 means the reservoir, formerly known as Clayton

1 Lake, whose dam is located in Section 19, Township
2 2 North, Range 19 East of the Indian Meridian,
3 Pushmataha County, Oklahoma, the construction,
4 operation, and maintenance of which was authorized
5 by section 203 of the Flood Control Act of 1962
6 (Public Law 87–874; 76 Stat. 1187).

7 (17) SETTLEMENT AGREEMENT.—The term
8 “Settlement Agreement” means the settlement
9 agreement as approved by the Nations, the State,
10 the City, and the Trust effective August 22, 2016,
11 as revised to conform with this section, as applica-
12 ble.

13 (18) SETTLEMENT AREA.—The term “settle-
14 ment area” means—

15 (A) the area lying between—

16 (i) the South Canadian River and Ar-
17 kansas River to the north;

18 (ii) the Oklahoma–Texas State line to
19 the south;

20 (iii) the Oklahoma–Arkansas State
21 line to the east; and

22 (iv) the 98th Meridian to the west;
23 and

24 (B) the area depicted in Exhibit 1 to the
25 Settlement Agreement and generally including

1 the following counties, or portions of, in the
2 State:

- 3 (i) Atoka.
- 4 (ii) Bryan.
- 5 (iii) Carter.
- 6 (iv) Choctaw.
- 7 (v) Coal.
- 8 (vi) Garvin.
- 9 (vii) Grady.
- 10 (viii) McClain.
- 11 (ix) Murray.
- 12 (x) Haskell.
- 13 (xi) Hughes.
- 14 (xii) Jefferson.
- 15 (xiii) Johnston.
- 16 (xiv) Latimer.
- 17 (xv) LeFlore.
- 18 (xvi) Love.
- 19 (xvii) Marshall.
- 20 (xviii) McCurtain.
- 21 (xix) Pittsburgh.
- 22 (xx) Pontotoc.
- 23 (xxi) Pushmataha.
- 24 (xxii) Stephens.

1 (19) SETTLEMENT AREA WATERS.—The term
2 “settlement area waters” means the waters lo-
3 cated—

4 (A) within the settlement area; and

5 (B) within a basin depicted in Exhibit 10
6 to the Settlement Agreement, including any of
7 the following basins as denominated in the
8 2012 Update of the Oklahoma Comprehensive
9 Water Plan:

10 (i) Beaver Creek (24, 25, and 26).

11 (ii) Blue (11 and 12).

12 (iii) Clear Boggy (9).

13 (iv) Kiamichi (5 and 6).

14 (v) Lower Arkansas (46 and 47).

15 (vi) Lower Canadian (48, 56, 57, and
16 58).

17 (vii) Lower Little (2).

18 (viii) Lower Washita (14).

19 (ix) Mountain Fork (4).

20 (x) Middle Washita (15 and 16).

21 (xi) Mud Creek (23).

22 (xii) Muddy Boggy (7 and 8).

23 (xiii) Poteau (44 and 45).

24 (xiv) Red River Mainstem (1, 10, 13,
25 and 21).

1 (xv) Upper Little (3).

2 (xvi) Walnut Bayou (22).

3 (20) STATE.—The term “State” means the
4 State of Oklahoma.

5 (21) TRUST.—

6 (A) IN GENERAL.—The term “Trust”
7 means the Oklahoma City Water Utilities
8 Trust, formerly known as the Oklahoma City
9 Municipal Improvement Authority, a public
10 trust established pursuant to State law with the
11 City as the beneficiary.

12 (B) REFERENCES.—A reference in this
13 section to “Trust” shall refer to the Oklahoma
14 City Water Utilities Trust, acting severally.

15 (c) APPROVAL OF THE SETTLEMENT AGREEMENT.—

16 (1) RATIFICATION.—

17 (A) IN GENERAL.—Except as modified by
18 this section, and to the extent the Settlement
19 Agreement does not conflict with this section,
20 the Settlement Agreement is authorized, rati-
21 fied, and confirmed.

22 (B) AMENDMENTS.—If an amendment is
23 executed to make the Settlement Agreement
24 consistent with this section, the amendment is
25 also authorized, ratified and confirmed to the

1 extent the amendment is consistent with this
2 section.

3 (2) EXECUTION OF SETTLEMENT AGREE-
4 MENT.—

5 (A) IN GENERAL.—To the extent the Set-
6 tlement Agreement does not conflict with this
7 section, the Secretary of the Interior shall
8 promptly execute the Settlement Agreement, in-
9 cluding all exhibits to or parts of the Settlement
10 Agreement requiring the signature of the Sec-
11 retary of the Interior and any amendments nec-
12 essary to make the Settlement Agreement con-
13 sistent with this section.

14 (B) NOT A MAJOR FEDERAL ACTION.—
15 Execution of the Settlement Agreement by the
16 Secretary of the Interior under this subsection
17 shall not constitute a major Federal action
18 under the National Environmental Policy Act of
19 1969 (42 U.S.C. 4321 et seq.).

20 (d) APPROVAL OF THE AMENDED STORAGE CON-
21 TRACT AND 1974 STORAGE CONTRACT.—

22 (1) RATIFICATION.—

23 (A) IN GENERAL.—Except to the extent
24 any provision of the amended storage contract
25 conflicts with any provision of this section, the

1 amended storage contract is authorized, rati-
2 fied, and confirmed.

3 (B) 1974 STORAGE CONTRACT.—To the
4 extent the amended storage contract, as author-
5 ized, ratified, and confirmed, modifies or
6 amends the 1974 storage contract, the modi-
7 fication or amendment to the 1974 storage con-
8 tract is authorized, ratified, and confirmed.

9 (C) AMENDMENTS.—To the extent an
10 amendment is executed to make the amended
11 storage contract consistent with this section,
12 the amendment is authorized, ratified, and con-
13 firmed.

14 (2) APPROVAL BY THE SECRETARY.—After the
15 State and the City execute the amended storage con-
16 tract, the Secretary shall approve the amended stor-
17 age contract.

18 (3) MODIFICATION OF SEPTEMBER 11, 2009,
19 ORDER IN UNITED STATES V. OKLAHOMA WATER RE-
20 SOURCE BOARD, CIV 98–00521 (N.D. OK).—The Sec-
21 retary, through counsel, shall cooperate and work
22 with the State to file any motion and proposed order
23 to modify or amend the order of the United States
24 District Court for the Northern District of Okla-
25 homa dated September 11, 2009, necessary to con-

1 form the order to the amended storage contract
2 transfer agreement, the Settlement Agreement, and
3 this section.

4 (4) CONSERVATION STORAGE CAPACITY.—The
5 allocation of the use of the conservation storage ca-
6 pacity in Sardis Lake for administrative set-aside
7 subcontracts, City water supply, and fish and wild-
8 life and recreation as provided by the amended stor-
9 age contract is authorized, ratified and approved.

10 (5) ACTIVATION; WAIVER.—

11 (A) FINDINGS.—Congress finds that—

12 (i) the earliest possible activation of
13 any increment of future use storage in
14 Sardis Lake will not occur until after
15 2050; and

16 (ii) the obligation to make annual
17 payments for the Sardis future use storage
18 operation, maintenance and replacement
19 costs, capital costs, or interest attributable
20 to Sardis future use storage only arises if,
21 and only to the extent, that an increment
22 of Sardis future use storage is activated by
23 withdrawal or release of water from the fu-
24 ture use storage that is authorized by the
25 user for a consumptive use of water.

1 (B) WAIVER OF OBLIGATIONS FOR STOR-
2 AGE THAT IS NOT ACTIVATED.—Notwith-
3 standing section 301 of the Water Supply Act
4 of 1958 (43 U.S.C. 390b), section 203 of the
5 Flood Control Act of 1962 (Public Law 87-
6 874; 76 Stat. 1187), the 1974 storage contract,
7 or any other provision of law, effective as of
8 January 1, 2050—

9 (i) the entirety of any repayment obli-
10 gations (including interest), relating to
11 that portion of conservation storage capac-
12 ity allocated by the 1974 storage contract
13 to future use storage in Sardis Lake is
14 waived and shall be considered nonreim-
15 bursable; and

16 (ii) any obligation of the State and,
17 on execution and approval of the amended
18 storage contract, of the City and the
19 Trust, under the 1974 storage contract re-
20 garding capital costs and any operation,
21 maintenance, and replacement costs and
22 interest otherwise attributable to future
23 use storage in Sardis Lake is waived and
24 shall be nonreimbursable, if by January 1,
25 2050, the right to future use storage is not

1 activated by the withdrawal or release of
2 water from future use storage for an au-
3 thorized consumptive use of water.

4 (6) CONSISTENT WITH AUTHORIZED PURPOSES;
5 NO MAJOR OPERATIONAL CHANGE.—

6 (A) CONSISTENT WITH AUTHORIZED PUR-
7 POSE.—The amended storage contract, the ap-
8 proval of the Secretary of the amended storage
9 contract, and the waiver of future use storage
10 under paragraph (5)—

11 (i) are deemed consistent with the au-
12 thorized purposes for Sardis Lake as de-
13 scribed in section 203 of the Flood Control
14 Act of 1962 (Public Law 87–874; 76 Stat.
15 1187) and do not affect the authorized
16 purposes for which the project was author-
17 ized, surveyed, planned, and constructed;
18 and

19 (ii) shall not constitute a reallocation
20 of storage.

21 (B) NO MAJOR OPERATIONAL CHANGE.—
22 The amended storage contract, the approval of
23 the Secretary of the amended storage contract,
24 and the waiver of future use storage under
25 paragraph (5) shall not constitute a major oper-

1 ational change under section 301(e) of the
2 Water Supply Act of 1958 (43 U.S.C. 390b(e)).

3 (7) NO FURTHER AUTHORIZATION RE-
4 QUIRED.—This section shall be considered sufficient
5 and complete authorization, without further study or
6 analysis, for—

7 (A) the Secretary to approve the amended
8 storage contract; and

9 (B) after approval under subparagraph
10 (A), the Corps of Engineers to manage storage
11 in Sardis Lake pursuant to and in accordance
12 with the 1974 storage contract, the amended
13 storage contract, and the Settlement Agree-
14 ment.

15 (e) SETTLEMENT AREA WATERS.—

16 (1) FINDINGS.—Congress finds that—

17 (A) pursuant to the Atoka Agreement as
18 ratified by section 29 of the Act of June 28,
19 1898 (30 Stat. 505, chapter 517) (as modified
20 by the Act of July 1, 1902 (32 Stat. 641, chap-
21 ter 1362)), the Nations issued patents to their
22 respective tribal members and citizens and
23 thereby conveyed to individual Choctaws and
24 Chickasaws, all right, title, and interest in and

1 to land that was possessed by the Nations,
2 other than certain mineral rights; and

3 (B) when title passed from the Nations to
4 their respective tribal members and citizens, the
5 Nations did not convey and those individuals
6 did not receive any right of regulatory or sov-
7 ereign authority, including with respect to
8 water.

9 (2) PERMITTING, ALLOCATION, AND ADMINIS-
10 TRATION OF SETTLEMENT AREA WATERS PURSUANT
11 TO THE SETTLEMENT AGREEMENT.—Beginning on
12 the enforceability date, settlement area waters shall
13 be permitted, allocated, and administered by the
14 OWRB in accordance with the Settlement Agree-
15 ment and this section.

16 (3) CHOCTAW NATION AND CHICKASAW NA-
17 TION.—Beginning on the enforceability date, the
18 Nations shall have the right to use and to develop
19 the right to use settlement area waters only in ac-
20 cordance with the Settlement Agreement and this
21 section.

22 (4) WAIVER AND DELEGATION BY NATIONS.—
23 In addition to the waivers under subsection (h), the
24 Nations, on their own behalf, shall permanently dele-
25 gate to the State any regulatory authority each Na-

1 tion may possess over water rights on allotments,
2 which the State shall exercise in accordance with the
3 Settlement Agreement and this subsection.

4 (5) RIGHT TO USE WATER.—

5 (A) IN GENERAL.—An allottee may use
6 water on an allotment in accordance with the
7 Settlement Agreement and this subsection.

8 (B) SURFACE WATER USE.—

9 (i) IN GENERAL.—An allottee may di-
10 vert and use, on the allotment of the allot-
11 tee, 6 acre-feet per year of surface water
12 per 160 acres, to be used solely for domes-
13 tic uses on an allotment that constitutes ri-
14 parian land under applicable State law as
15 of the date of enactment of this Act.

16 (ii) EFFECT OF STATE LAW.—The use
17 of surface water described in clause (i)
18 shall be subject to all rights and protec-
19 tions of State law, as of the date of enact-
20 ment of this Act, including all protections
21 against loss for nonuse.

22 (iii) NO PERMIT REQUIRED.—An al-
23 lottee may divert water under this sub-
24 section without a permit or any other au-
25 thorization from the OWRB.

1 (C) GROUNDWATER USE.—

2 (i) IN GENERAL.—An allottee may
3 drill wells on the allotment of the allottee
4 to take and use for domestic uses the
5 greater of—

6 (I) 5 acre-feet per year; or

7 (II) any greater quantity allowed
8 under State law.

9 (ii) EFFECT OF STATE LAW.—The
10 groundwater use described in clause (i)
11 shall be subject to all rights and protec-
12 tions of State law, as of the date of enact-
13 ment of this Act, including all protections
14 against loss for nonuse.

15 (iii) NO PERMIT REQUIRED.—An al-
16 lottee may drill wells and use water under
17 this subsection without a permit or any
18 other authorization from the OWRB.

19 (D) FUTURE CHANGES IN STATE LAW.—

20 (i) IN GENERAL.—If State law
21 changes to limit use of water to a quantity
22 that is less than the applicable quantity
23 specified in subparagraph (B) or (C), as
24 applicable, an allottee shall retain the right
25 to use water in accord with those subpara-

1 graphs, subject to paragraphs (6)(B)(iv)
2 and (7).

3 (ii) OPPORTUNITY TO BE HEARD.—

4 Prior to taking any action to limit the use
5 of water by an individual, the OWRB shall
6 provide to the individual an opportunity to
7 demonstrate that the individual is—

8 (I) an allottee; and

9 (II) using water on the allotment
10 pursuant to and in accordance with
11 the Settlement Agreement and this
12 section.

13 (6) ALLOTTEE OPTIONS FOR ADDITIONAL
14 WATER.—

15 (A) IN GENERAL.—To use a quantity of
16 water in excess of the quantities provided under
17 paragraph (5), an allottee shall—

18 (i) file an action under subparagraph
19 (B); or

20 (ii) apply to the OWRB for a permit
21 pursuant to, and in accordance with, State
22 law.

23 (B) DETERMINATION IN FEDERAL DIS-
24 TRICT COURT.—

1 (i) IN GENERAL.—In lieu of applying
2 to the OWRB for a permit to use more
3 water than is allowed under paragraph (5),
4 an allottee may, after written notice to the
5 OWRB, file an action in the United States
6 District Court for the Western District of
7 Oklahoma for determination of the right to
8 water of the allottee.

9 (ii) JURISDICTION.—For purposes of
10 this subsection—

11 (I) the United States District
12 Court for the Western District of
13 Oklahoma shall have jurisdiction; and

14 (II) the waivers of immunity
15 under subparagraphs (A) and (B) of
16 subsection (j)(2) shall apply.

17 (iii) REQUIREMENTS.—An allottee fil-
18 ing an action pursuant to this subpara-
19 graph shall—

20 (I) join the OWRB as a party;
21 and

22 (II) publish notice in a news-
23 paper of general circulation within the
24 Settlement Area Hydrologic Basin for
25 2 consecutive weeks, with the first

1 publication appearing not later than
2 30 days after the date on which the
3 action is filed.

4 (iv) DETERMINATION FINAL.—

5 (I) IN GENERAL.—Subject to
6 subclause (II), if an allottee elects to
7 have the rights of the allottee deter-
8 mined pursuant to this subparagraph,
9 the determination shall be final as to
10 any rights under Federal law and in
11 lieu of any rights to use water on an
12 allotment as provided in paragraph
13 (5).

14 (II) RESERVATION OF RIGHTS.—
15 Subclause (I) shall not preclude an al-
16 lottee from—

17 (aa) applying to the OWRB
18 for water rights pursuant to
19 State law; or

20 (bb) using any rights al-
21 lowed by State law that do not
22 require a permit from the
23 OWRB.

24 (7) OWRB ADMINISTRATION AND ENFORCE-
25 MENT.—

1 (A) IN GENERAL.—If an allottee exercises
2 any right under paragraph (5) or has rights de-
3 termined under paragraph (6)(B), the OWRB
4 shall have jurisdiction to administer those
5 rights.

6 (B) CHALLENGES.—An allottee may chal-
7 lenge OWRB administration of rights deter-
8 mined under this paragraph, in the United
9 States District Court for the Western District
10 of Oklahoma.

11 (8) PRIOR EXISTING STATE LAW RIGHTS.—
12 Water rights held by an allottee as of the enforce-
13 ability date pursuant to a permit issued by the
14 OWRB shall be governed by the terms of that per-
15 mit and applicable State law (including regulations).

16 (f) CITY PERMIT FOR APPROPRIATION OF STREAM
17 WATER FROM THE KLAMICHI RIVER.—The City permit
18 shall be processed, evaluated, issued, and administered
19 consistent with and in accordance with the Settlement
20 Agreement and this section.

21 (g) SETTLEMENT COMMISSION.—

22 (1) ESTABLISHMENT.—There is established a
23 Settlement Commission.

24 (2) MEMBERS.—

1 (A) IN GENERAL.—The Settlement Com-
2 mission shall be comprised of 5 members, ap-
3 pointed as follows:

4 (i) 1 by the Governor of the State.

5 (ii) 1 by the Attorney General of the
6 State.

7 (iii) 1 by the Chief of the Choctaw
8 Nation.

9 (iv) 1 by the Governor of the Chicka-
10 saw Nation.

11 (v) 1 by agreement of the members
12 described in clauses (i) through (iv).

13 (B) JOINTLY APPOINTED MEMBER.—If the
14 members described in clauses (i) through (iv) of
15 subparagraph (A) do not agree on a member
16 appointed pursuant to subparagraph (A)(v)—

17 (i) the members shall submit to the
18 Chief Judge for the United States District
19 Court for the Eastern District of Okla-
20 homa, a list of not less than 3 persons;
21 and

22 (ii) from the list under clause (i), the
23 Chief Judge shall make the appointment.

24 (C) INITIAL APPOINTMENTS.—The initial
25 appointments to the Settlement Commission

1 shall be made not later than 90 days after the
2 enforceability date.

3 (3) MEMBER TERMS.—

4 (A) IN GENERAL.—Each Settlement Com-
5 mission member shall serve at the pleasure of
6 appointing authority.

7 (B) COMPENSATION.—A member of the
8 Settlement Commission shall serve without
9 compensation, but an appointing authority may
10 reimburse the member appointed by the entity
11 for costs associated with service on the Settle-
12 ment Commission.

13 (C) VACANCIES.—If a member of the Set-
14 tlement Commission is removed or resigns, the
15 appointing authority shall appoint the replace-
16 ment member.

17 (D) JOINTLY APPOINTED MEMBER.—The
18 member of the Settlement Commission de-
19 scribed in paragraph (2)(A)(v) may be removed
20 or replaced by a majority vote of the Settlement
21 Commission based on a failure of the member
22 to carry out the duties of the member.

23 (4) DUTIES.—The duties and authority of the
24 Settlement Commission shall be set forth in the Set-
25 tlement Agreement, and the Settlement Commission

1 shall not possess or exercise any duty or authority
2 not stated in the Settlement Agreement.

3 (h) WAIVERS AND RELEASES OF CLAIMS.—

4 (1) CLAIMS BY THE NATIONS AND THE UNITED
5 STATES AS TRUSTEE FOR THE NATIONS.—Subject to
6 the retention of rights and claims provided in para-
7 graph (3) and except to the extent that rights are
8 recognized in the Settlement Agreement or this sec-
9 tion, the Nations and the United States, acting as
10 a trustee for the Nations, shall execute a waiver and
11 release of—

12 (A) all of the following claims asserted or
13 which could have been asserted in any pro-
14 ceeding filed or that could have been filed dur-
15 ing the period ending on the enforceability date,
16 including Chickasaw Nation, Choctaw Nation v.
17 Fallin et al., CIV 11–927 (W.D. Ok.), OWRB
18 v. United States, et al. CIV 12–275 (W.D.
19 Ok.), or any general stream adjudication, relat-
20 ing to—

21 (i) claims to the ownership of water in
22 the State;

23 (ii) claims to water rights and rights
24 to use water diverted or taken from a loca-
25 tion within the State;

1 (iii) claims to authority over the allo-
2 cation and management of water and ad-
3 ministration of water rights, including au-
4 thority over third-party ownership of or
5 rights to use water diverted or taken from
6 a location within the State and ownership
7 or use of water on allotments by allottees
8 or any other person using water on an al-
9 lotment with the permission of an allottee;

10 (iv) claims that the State lacks au-
11 thority over the allocation and manage-
12 ment of water and administration of water
13 rights, including authority over the owner-
14 ship of or rights to use water diverted or
15 taken from a location within the State;

16 (v) any other claim relating to the
17 ownership of water, regulation of water, or
18 authorized diversion, storage, or use of
19 water diverted or taken from a location
20 within the State, which claim is based on
21 the status of the Chickasaw Nation or the
22 Choctaw Nation as a federally recognized
23 Indian tribe; and

24 (vi) claims or defenses asserted or
25 which could have been asserted in Chicka-

1 saw Nation, Choctaw Nation v. Fallin et
2 al., CIV 11–927 (W.D. Ok.), OWRB v.
3 United States, et al. CIV 12–275 (W.D.
4 Ok.), or any general stream adjudication;

5 (B) all claims for damages, losses or inju-
6 ries to water rights or water, or claims of inter-
7 ference with, diversion, storage, taking, or use
8 of water (including claims for injury to land re-
9 sulting from the damages, losses, injuries, inter-
10 ference with, diversion, storage, taking, or use
11 of water) attributable to any action by the
12 State, the OWRB, or any water user authorized
13 pursuant to State law to take or use water in
14 the State, including the City, that accrued dur-
15 ing the period ending on the enforceability date;

16 (C) all claims and objections relating to
17 the amended permit application, and the City
18 permit, including—

19 (i) all claims regarding regulatory
20 control over or OWRB jurisdiction relating
21 to the permit application and permit; and

22 (ii) all claims for damages, losses or
23 injuries to water rights or rights to use
24 water, or claims of interference with, diver-
25 sion, storage, taking, or use of water (in-

1 cluding claims for injury to land resulting
2 from the damages, losses, injuries, inter-
3 ference with, diversion, storage, taking, or
4 use of water) attributable to the issuance
5 and lawful exercise of the City permit;

6 (D) all claims to regulatory control over
7 the Permit Numbers P80-48 and 54-613 of
8 the City for water rights from the Muddy
9 Boggy River for Atoka Reservoir and P73-
10 282D for water rights from the Muddy Boggy
11 River, including McGee Creek, for the McGee
12 Creek Reservoir;

13 (E) all claims that the State lacks regu-
14 latory authority over or OWRB jurisdiction re-
15 lating to Permit Numbers P80-48 and 54-613
16 for water rights from the Muddy Boggy River
17 for Atoka Reservoir and P73-282D for water
18 rights from the Muddy Boggy River, including
19 McGee Creek, for the McGee Creek Reservoir;

20 (F) all claims to damages, losses or inju-
21 ries to water rights or water, or claims of inter-
22 ference with, diversion, storage, taking, or use
23 of water (including claims for injury to land re-
24 sulting from such damages, losses, injuries, in-
25 terference with, diversion, storage, taking, or

1 use of water) attributable to the lawful exercise
2 of Permit Numbers P80–48 and 54–613 for
3 water rights from the Muddy Boggy River for
4 Atoka Reservoir and P73–282D for water
5 rights from the Muddy Boggy River, including
6 McGee Creek, for the McGee Creek Reservoir,
7 that accrued during the period ending on the
8 enforceability date;

9 (G) all claims and objections relating to
10 the approval by the Secretary of the assignment
11 of the 1974 storage contract pursuant to the
12 amended storage contract; and

13 (H) all claims for damages, losses, or inju-
14 ries to water rights or water, or claims of inter-
15 ference with, diversion, storage, taking, or use
16 of water (including claims for injury to land re-
17 sulting from such damages, losses, injuries, in-
18 terference with, diversion, storage, taking, or
19 use of water) attributable to the lawful exercise
20 of rights pursuant to the amended storage con-
21 tract.

22 (2) WAIVERS AND RELEASES OF CLAIMS BY
23 THE NATIONS AGAINST THE UNITED STATES.—Sub-
24 ject to the retention of rights and claims provided in
25 paragraph (3) and except to the extent that rights

1 are recognized in the Settlement Agreement or this
2 section, the Nations are authorized to execute a
3 waiver and release of all claims against the United
4 States (including any agency or employee of the
5 United States) relating to—

6 (A) all of the following claims asserted or
7 which could have been asserted in any pro-
8 ceeding filed or that could have been filed by
9 the United States as a trustee during the pe-
10 riod ending on the enforceability date, including
11 Chickasaw Nation, Choctaw Nation v. Fallin et
12 al., CIV 11-9272 (W.D. Ok.) or OWRB v.
13 United States, et al. CIV 12-275 (W.D. Ok.),
14 or any general stream adjudication, relating
15 to—

16 (i) claims to the ownership of water in
17 the State;

18 (ii) claims to water rights and rights
19 to use water diverted or taken from a loca-
20 tion within the State;

21 (iii) claims to authority over the allo-
22 cation and management of water and ad-
23 ministration of water rights, including au-
24 thority over third-party ownership of or
25 rights to use water diverted or taken from

1 a location within the State and ownership
2 or use of water on allotments by allottees
3 or any other person using water on an al-
4 lotment with the permission of an allottee;

5 (iv) claims that the State lacks au-
6 thority over the allocation and manage-
7 ment of water and administration of water
8 rights, including authority over the owner-
9 ship of or rights to use water diverted or
10 taken from a location within the State;

11 (v) any other claim relating to the
12 ownership of water, regulation of water, or
13 authorized diversion, storage, or use of
14 water diverted or taken from a location
15 within the State, which claim is based on
16 the status of the Chickasaw Nation or the
17 Choctaw Nation as a federally recognized
18 Indian tribe; and

19 (vi) claims or defenses asserted or
20 which could have been asserted in Chicka-
21 saw Nation, Choctaw Nation v. Fallin et
22 al., CIV 11–927 (W.D. Ok.), OWRB v.
23 United States, et al. CIV 12–275 (W.D.
24 Ok.), or any general stream adjudication;

1 (B) all claims for damages, losses or inju-
2 ries to water rights or water, or claims of inter-
3 ference with, diversion, storage, taking, or use
4 of water (including claims for injury to land re-
5 sulting from the damages, losses, injuries, inter-
6 ference with, diversion, storage, taking, or use
7 of water) attributable to any action by the
8 State, the OWRB, or any water user authorized
9 pursuant to State law to take or use water in
10 the State, including the City, that accrued dur-
11 ing the period ending on the enforceability date;

12 (C) all claims and objections relating to
13 the amended permit application, and the City
14 permit, including—

15 (i) all claims regarding regulatory
16 control over or OWRB jurisdiction relating
17 to the permit application and permit; and

18 (ii) all claims for damages, losses or
19 injuries to water rights or rights to use
20 water, or claims of interference with, diver-
21 sion, storage, taking, or use of water (in-
22 cluding claims for injury to land resulting
23 from the damages, losses, injuries, inter-
24 ference with, diversion, storage, taking, or

1 use of water) attributable to the issuance
2 and lawful exercise of the City permit;

3 (D) all claims to regulatory control over
4 the Permit Numbers P80–48 and 54–613 for
5 water rights from the Muddy Boggy River for
6 Atoka Reservoir and P73–282D for water
7 rights from the Muddy Boggy River, including
8 McGee Creek, for the McGee Creek Reservoir;

9 (E) all claims that the State lacks regu-
10 latory authority over or OWRB jurisdiction re-
11 lating to Permit Numbers P80–48 and 54–613
12 for water rights from the Muddy Boggy River
13 for Atoka Reservoir and P73–282D for water
14 rights from the Muddy Boggy River, including
15 McGee Creek, for the McGee Creek Reservoir;

16 (F) all claims to damages, losses or inju-
17 ries to water rights or water, or claims of inter-
18 ference with, diversion, storage, taking, or use
19 of water (including claims for injury to land re-
20 sulting from the damages, losses, injuries, inter-
21 ference with, diversion, storage, taking, or use
22 of water) attributable to the lawful exercise of
23 Permit Numbers P80–48 and 54–613 for water
24 rights from the Muddy Boggy River for Atoka
25 Reservoir and P73–282D for water rights from

1 the Muddy Boggy River, including McGee
2 Creek, for the McGee Creek Reservoir, that ac-
3 crued during the period ending on the enforce-
4 ability date;

5 (G) all claims and objections relating to
6 the approval by the Secretary of the assignment
7 of the 1974 storage contract pursuant to the
8 amended storage contract;

9 (H) all claims relating to litigation brought
10 by the United States prior to the enforceability
11 date of the water rights of the Nations in the
12 State; and

13 (I) all claims relating to the negotiation,
14 execution, or adoption of the Settlement Agree-
15 ment (including exhibits) or this section.

16 (3) RETENTION AND RESERVATION OF CLAIMS
17 BY NATIONS AND THE UNITED STATES.—

18 (A) IN GENERAL.—Notwithstanding the
19 waiver and releases of claims authorized under
20 paragraphs (1) and (2), the Nations and the
21 United States, acting as trustee, shall retain—

22 (i) all claims for enforcement of the
23 Settlement Agreement and this section;

24 (ii) all rights to use and protect any
25 water right of the Nations recognized by or

1 established pursuant to the Settlement
2 Agreement, including the right to assert
3 claims for injuries relating to the rights
4 and the right to participate in any general
5 stream adjudication, including any inter se
6 proceeding;

7 (iii) all claims relating to activities af-
8 fecting the quality of water that are not
9 waived under paragraph (1)(A)(v) or para-
10 graph (2)(A)(v), including any claims the
11 Nations may have under—

12 (I) the Comprehensive Environ-
13 mental Response, Compensation, and
14 Liability Act of 1980 (42 U.S.C. 9601
15 et seq.), including for damages to nat-
16 ural resources;

17 (II) the Safe Drinking Water Act
18 (42 U.S.C. 300f et seq.);

19 (III) the Federal Water Pollution
20 Control Act (33 U.S.C. 1251 et seq.);
21 and

22 (IV) any regulations imple-
23 menting the Acts described in items
24 (aa) through (cc);

1 (iv) all claims relating to damage,
2 loss, or injury resulting from an unauthor-
3 ized diversion, use, or storage of water, in-
4 cluding damages, losses, or injuries to land
5 or nonwater natural resources associated
6 with any hunting, fishing, gathering, or
7 cultural right; and

8 (v) all rights, remedies, privileges, im-
9 munities, and powers not specifically
10 waived and released pursuant to this sec-
11 tion or the Settlement Agreement.

12 (B) AGREEMENT.—

13 (i) IN GENERAL.—As provided in the
14 Settlement Agreement, the Chickasaw Na-
15 tion shall convey an easement to the City,
16 which easement shall be as described and
17 depicted in Exhibit 15 to the Settlement
18 Agreement.

19 (ii) APPLICATION.—The Chickasaw
20 Nation and the City shall cooperate and
21 coordinate on the submission of an applica-
22 tion for approval by the Secretary of the
23 Interior of the conveyance under clause (i),
24 in accordance with applicable Federal law.

1 (iii) RECORDING.—On approval by the
2 Secretary of the Interior of the conveyance
3 of the easement under this clause, the City
4 shall record the easement.

5 (iv) CONSIDERATION.—In exchange
6 for conveyance of the easement under
7 clause (i), the City shall pay to the Chicka-
8 saw Nation the value of past unauthorized
9 use and consideration for future use of the
10 land burdened by the easement, based on
11 an appraisal secured by the City and Na-
12 tions and approved by the Secretary of the
13 Interior.

14 (4) EFFECTIVE DATE OF WAIVER AND RE-
15 LEASES.—The waivers and releases under this sub-
16 section take effect on the enforceability date.

17 (5) TOLLING OF CLAIMS.—Each applicable pe-
18 riod of limitation and time-based equitable defense
19 relating to a claim described in this subsection shall
20 be tolled during the period beginning on the date of
21 enactment of this Act and ending on the earlier of
22 the enforceability date or the expiration date under
23 subsection (i)(2).

24 (i) ENFORCEABILITY DATE.—

1 (1) IN GENERAL.—The Settlement Agreement
2 shall take effect and be enforceable on the date on
3 which the Secretary of the Interior publishes in the
4 Federal Register a certification that—

5 (A) to the extent the Settlement Agree-
6 ment conflicts with this section, the Settlement
7 Agreement has been amended to conform with
8 this section;

9 (B) the Settlement Agreement, as amend-
10 ed, has been executed by the Secretary of the
11 Interior, the Nations, the Governor of the
12 State, the OWRB, the City, and the Trust;

13 (C) to the extent the amended storage con-
14 tract conflicts with this section, the amended
15 storage contract has been amended to conform
16 with this section;

17 (D) the amended storage contract, as
18 amended to conform with this section, has
19 been—

20 (i) executed by the State, the City,
21 and the Trust; and

22 (ii) approved by the Secretary;

23 (E) an order has been entered in United
24 States v. Oklahoma Water Resources Board,
25 Civ. 98–C–521–E with any modifications to the

1 order dated September 11, 2009, as provided in
2 the Settlement Agreement;

3 (F) orders of dismissal have been entered
4 in Chickasaw Nation, Choctaw Nation v. Fallin
5 et al., Civ 11–297 (W.D. Ok.) and OWRB v.
6 United States, et al. Civ 12–275 (W.D. Ok.) as
7 provided in the Settlement Agreement;

8 (G) the OWRB has issued the City Permit;

9 (H) the final documentation of the
10 Kiamichi Basin hydrologic model is on file at
11 the Oklahoma City offices of the OWRB; and

12 (I) the Atoka and Sardis Conservation
13 Projects Fund has been funded as provided in
14 the Settlement Agreement.

15 (2) EXPIRATION DATE.—If the Secretary of the
16 Interior fails to publish a statement of findings
17 under paragraph (1) by not later than September
18 30, 2020, or such alternative later date as is agreed
19 to by the Secretary of the Interior, the Nations, the
20 State, the City, and the Trust under paragraph (4),
21 the following shall apply:

22 (A) This section, except for this subsection
23 and any provisions of this section that are nec-
24 essary to carry out this subsection (but only for
25 purposes of carrying out this subsection) are

1 not effective beginning on September 30, 2020,
2 or the alternative date.

3 (B) The waivers and release of claims, and
4 the limited waivers of sovereign immunity, shall
5 not become effective.

6 (C) The Settlement Agreement shall be
7 null and void, except for this paragraph and
8 any provisions of the Settlement Agreement
9 that are necessary to carry out this paragraph.

10 (D) Except with respect to this paragraph,
11 the State, the Nations, the City, the Trust, and
12 the United States shall not be bound by any ob-
13 ligations or benefit from any rights recognized
14 under the Settlement Agreement.

15 (E) If the City permit has been issued, the
16 permit shall be null and void, except that the
17 City may resubmit to the OWRB, and the
18 OWRB shall be considered to have accepted,
19 OWRB permit application No. 2007–017 with-
20 out having waived the original application pri-
21 ority date and appropriative quantities.

22 (F) If the amended storage contract has
23 been executed or approved, the contract shall be
24 null and void, and the 2010 agreement shall be

1 considered to be in force and effect as between
2 the State and the Trust.

3 (G) If the Atoka and Sardis Conservation
4 Projects Fund has been established and funded,
5 the funds shall be returned to the respective
6 funding parties with any accrued interest.

7 (3) NO PREJUDICE.—The occurrence of the ex-
8 piration date under paragraph (2) shall not in any
9 way prejudice—

10 (A) any argument or suit that the Nations
11 may bring to contest—

12 (i) the pursuit by the City of OWRB
13 permit application No. 2007–017, or a
14 modified version; or

15 (ii) the 2010 agreement;

16 (B) any argument, defense, or suit the
17 State may bring or assert with regard to the
18 claims of the Nations to water or over water in
19 the settlement area; or

20 (C) any argument, defense or suit the City
21 may bring or assert—

22 (i) with regard to the claims of the
23 Nations to water or over water in the set-
24 tlement area relating to OWRB permit ap-

1 plication No. 2007–017, or a modified
2 version; or

3 (ii) to contest the 2010 agreement.

4 (4) EXTENSION.—The expiration date under
5 paragraph (2) may be extended in writing if the Na-
6 tions, the State, the OWRB, the United States, and
7 the City agree that an extension is warranted.

8 (j) JURISDICTION, WAIVERS OF IMMUNITY FOR IN-
9 TERPRETATION AND ENFORCEMENT.—

10 (1) JURISDICTION.—

11 (A) IN GENERAL.—

12 (i) EXCLUSIVE JURISDICTION.—The
13 United States District Court for the West-
14 ern District of Oklahoma shall have exclu-
15 sive jurisdiction for all purposes and for all
16 causes of action relating to the interpreta-
17 tion and enforcement of the Settlement
18 Agreement, the amended storage contract,
19 or interpretation or enforcement of this
20 section, including all actions filed by an al-
21 lottee pursuant to subsection (e)(4)(B).

22 (ii) RIGHT TO BRING ACTION.—The
23 Choctaw Nation, the Chickasaw Nation,
24 the State, the City, the Trust, and the

1 United States shall each have the right to
2 bring an action pursuant to this section.

3 (iii) NO ACTION IN OTHER COURTS.—

4 No action may be brought in any other
5 Federal, Tribal, or State court or adminis-
6 trative forum for any purpose relating to
7 the Settlement Agreement, amended stor-
8 age contract, or this section.

9 (iv) NO MONETARY JUDGMENT.—

10 Nothing in this section authorizes any
11 money judgment or otherwise allows the
12 payment of funds by the United States,
13 the Nations, the State (including the
14 OWRB), the City, or the Trust.

15 (B) NOTICE AND CONFERENCE.—An enti-
16 ty seeking to interpret or enforce the Settle-
17 ment Agreement shall comply with the fol-
18 lowing:

19 (i) Any party asserting noncompliance
20 or seeking interpretation of the Settlement
21 Agreement or this section shall first serve
22 written notice on the party alleged to be in
23 breach of the Settlement Agreement or vio-
24 lation of this section.

1 (ii) The notice under clause (i) shall
2 identify the specific provision of the Settle-
3 ment Agreement or this section alleged to
4 have been violated or in dispute and shall
5 specify in detail the contention of the party
6 asserting the claim and any factual basis
7 for the claim.

8 (iii) Representatives of the party al-
9 leging a breach or violation and the party
10 alleged to be in breach or violation shall
11 meet not later than 30 days after receipt
12 of notice under clause (i) in an effort to re-
13 solve the dispute.

14 (iv) If the matter is not resolved to
15 the satisfaction of the party alleging
16 breach not later than 90 days after the
17 original notice under clause (i), the party
18 may take any appropriate enforcement ac-
19 tion consistent with the Settlement Agree-
20 ment and this subsection.

21 (2) LIMITED WAIVERS OF SOVEREIGN IMMUN-
22 NITY.—

23 (A) IN GENERAL.—The United States and
24 the Nations may be joined in an action filed in

1 the United States District Court for the West-
2 ern District of Oklahoma.

3 (B) UNITED STATES IMMUNITY.—Any
4 claim by the United States to sovereign immu-
5 nity from suit is irrevocably waived for any ac-
6 tion brought by the State, the Chickasaw Na-
7 tion, the Choctaw Nation, the City, the Trust,
8 or (solely for purposes of actions brought pur-
9 suant to subsection (e)) an allottee in the West-
10 ern District of Oklahoma relating to interpreta-
11 tion or enforcement of the Settlement Agree-
12 ment or this section, including of the appellate
13 jurisdiction of the United States Court of Ap-
14 peals for the Tenth Circuit and the Supreme
15 Court of the United States.

16 (C) CHICKASAW NATION IMMUNITY.—For
17 the exclusive benefit of the State (including the
18 OWRB), the City, the Trust, the Choctaw Na-
19 tion, and the United States, the sovereign im-
20 munity of the Chickasaw Nation from suit is
21 waived solely for any action brought in the
22 Western District of Oklahoma relating to inter-
23 pretation or enforcement of the Settlement
24 Agreement or this section, if the action is
25 brought by the State or the OWRB, the City,

1 the Trust, the Choctaw Nation, or the United
2 States, including the appellate jurisdiction of
3 the United States Court of Appeals for the
4 Tenth Circuit and the Supreme Court of the
5 United States.

6 (D) CHOCTAW NATION IMMUNITY.—For
7 the exclusive benefit of the State (including of
8 the OWRB), the City, the Trust, the Chickasaw
9 Nation, and the United States, the Choctaw
10 Nation shall expressly and irrevocably consent
11 to a suit and waive sovereign immunity from a
12 suit solely for any action brought in the West-
13 ern District of Oklahoma relating to interpreta-
14 tion or enforcement of the Settlement Agree-
15 ment or this section, if the action is brought by
16 the State, the OWRB, the City, the Trust, the
17 Chickasaw Nation, or the United States, includ-
18 ing the appellate jurisdiction of the United
19 States Court of Appeals for the Tenth Circuit
20 and the Supreme Court of the United States.

21 (k) DISCLAIMER.—

22 (1) IN GENERAL.—The Settlement Agreement
23 applies only to the claims and rights of the Nations.

24 (2) NO PRECEDENT.—Nothing in this section
25 or the Settlement Agreement shall be construed in

1 any way to quantify, establish, or serve as precedent
2 regarding the land and water rights, claims, or enti-
3 tlements to water of any American Indian Tribe
4 other than the Nations, including any other Amer-
5 ican Indian Tribe in the State.

