

## Protecting Oklahoma's Water Resources

### *The Role of a General Stream Adjudication*

Water is one of Oklahoma's most important and precious resources. Our lakes, streams, rivers, and aquifers support farming and ranching operations, numerous industries, recreation, and fish habitat. 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 security and certainty of our southeastern Oklahoma water resources has been called into question by a federal lawsuit filed by the Chickasaw and Choctaw Nations.

In that lawsuit, the Tribes seek total control over the water in 22 counties in southeastern Oklahoma. In their lawsuit:

- The Tribes claim that they have a right to regulate 100 percent of the water in over 22 counties—not just the right to regulate water located on the small percentage (approximately 3% or less) of those 22 counties that is actually Indian country.
- The Tribes claim that their water rights are “superior and paramount” to those claimed under state law, and that their water rights and regulatory authority are “the supreme law of the land.”
- The Tribes claim that the OWRB cannot take action on permits for water from the Kiamichi River, Muddy Boggy Creek and Clear Boggy Creek basins until a comprehensive adjudication of all water rights within those basins is completed.

The Tribes are conducting an unprecedented and extravagant media campaign to malign and discredit the State's efforts to address the Tribes' federal court lawsuit. The Tribes' litigation threatens water rights and uses, and the cloud of uncertainty placed upon existing water rights by the Tribes' claims can only be cleared up in one way – through a general stream adjudication that will confirm the water rights of all claimants to water within the identified stream systems, consistent with state and federal law. The adjudication will allow for the State and all who possess or claim rights to Oklahoma's precious water resources to defend and protect their rights.

To be clear, the State did not want to file the adjudication. In fact, it wasn't until the Tribes sued that the State even considered such an adjudication. The State asked the Tribes to drop their lawsuit so that a peaceful resolution could be reached, but the Tribes refused. As a result, the State had to act.

Keep in mind, the Tribes are attacking the adjudication process *precisely because* it allows every Oklahoman with a claim to the water to have a seat at the table when the Tribes' rights are determined. The Tribes don't want that, and would rather have a federal court decide their rights without Oklahomans ever having their voice heard. That just isn't right. The state adjudication process will give every Oklahoman with a water right the due process they deserve.

## Real Answers to Frequently Asked Questions

### *What is a general stream adjudication?*

In a general stream adjudication the court confirms the water rights in a particular stream system. The court will determine amount, priority, place and purpose of use of each right to water. It is a process through which all legally recognized rights will be confirmed.

### *What is the State's role in a general stream adjudication?*

The State, through the OWRB, is authorized to commence a general stream adjudication to protect and confirm the water rights of Oklahoma water claimants when it is deemed necessary and in the best interest of those claimants. The State will work with both the court and water users throughout the process to confirm and determine rights.

### *Is a general stream adjudication like a traditional lawsuit?*

No, a general stream adjudication is not a traditional lawsuit. It is a process whereby the State works with the state court and individual water users to confirm and validate rights to the use of water under State law (and to the extent applicable, federal law).

### *What is the process for a general stream adjudication?*

All water claimants will be provided notice, time, and opportunity to adequately present and address all of their claims to water in the stream systems at issue to the court. The OWRB will be available to assist with regard to questions on the process throughout the adjudication.

### *Will the State try and take away any water rights in a general stream adjudication?*

Absolutely not. In fact, the opposite is true. The State will work only to confirm and validate all water rights that are legally recognized.

### *Are my water rights currently threatened?*

If you currently use or claim the right to use water in the 22 counties of southeastern Oklahoma, the Choctaw and Chickasaw Tribes have threatened your water rights by claiming "prior and paramount" rights to, and "dominion over," that water. The general stream adjudication process is designed to protect your rights against such claims.

### *Will I lose my valid water rights in a general stream adjudication?*

No. To the extent you have a valid water right your right will be recognized. For state law-based claims, all claims based on beneficial uses of water and valid riparian uses will be recognized as allowed by State law. Claims premised on federal law will be recognized to the extent allowed by the applicable federal law.

### *Will the filed general stream adjudication address riparian uses?*

Yes. Riparian rights will be addressed and recognized in the general stream adjudication to the extent allowed by applicable law.

### *Why did the State file a general stream adjudication now?*

Based on the federal lawsuit filed by the Choctaw and Chickasaw Nations, the rights to water in southeastern Oklahoma and the State's sovereignty over those resources have been threatened. The State has worked and will continue to work diligently to resolve the Tribes' concerns amicably. However, the Tribes have chosen litigation. The State was left with no choice but to file a general stream adjudication to ensure the protection of the water resources in southeastern Oklahoma.

*If I receive notice of an adjudication, will I be required to hire a lawyer to have my claim recognized?*

No. The process will allow those noticed to file a claim through use of forms either accompanying or following the notice. Some claimants might decide to hire a lawyer if their claim is disputed by someone like a neighbor or an Indian Tribe.

*Do other states have a general stream adjudication process?*

Yes. All 18 western states have laws allowing for general stream adjudications. 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 State has initiated for the Kiamichi, Muddy Boggy, and Clear Boggy basins.

*How long does a general stream adjudication take?*

It is quite possible that individual existing claims can be recognized and determined quickly. However, there is no set time for completion of a general stream adjudication. It can take several years depending on the number of claimants and the nature of their claims.

*What is the benefit of a general stream adjudication to me as a water user?*

An adjudication will provide certainty as to your claim to water in the Kiamichi, Muddy Boggy and Clear Boggy stream systems. It will provide for a final determination of all water rights, as well as the State's ability to administer and protect those rights.

*What is the State doing to protect southeastern Oklahoma's water?*

Before allowing water to be transported out of a stream system, Oklahoma law requires that the OWRB ensure that users within a stream system have all of the water required to adequately supply their beneficial uses. 82 O.S. §105.12. Oklahoma law also prohibits the OWRB from granting any application for water where the water would be transported out of state for use, unless the Oklahoma Legislature passes a new law allowing the permit to be granted. 82 O.S. §105.12A. These two laws, and others like them, have been challenged in federal court by entities who wish to transport water out of southeastern Oklahoma to Texas. The OWRB and Attorney General's office have vigorously defended those laws, and have been successful in doing so at the district court and Tenth Circuit Court of Appeals, and they are now defending those laws at the United States Supreme Court. In short, the State has laws in place to protect local users of southeastern Oklahoma stream water, and is defending in court the State's ability to enforce those laws.

Remember, with their lawsuit, the Tribes seek total regulatory control over southeastern Oklahoma's water. If successful, Chickasaw and Choctaw tribal law would supercede state law, including the state laws described above.

*The Tribes claim that they have backed off of their original claim and that they now do not seek to disrupt “existing uses made pursuant to valid state permits.” How does this affect the adjudication?*

It doesn't. If what the Tribes meant was that they would not seek any court ruling that would disrupt any Oklahomans' existing water rights in any way, they easily could have done so. Instead, they had their lawyers craft carefully worded language that actually preserves their ability to disrupt existing water rights. First, they say they will only not disrupt “existing uses made pursuant to valid state permits.” This preserves their ability to challenge all *future* uses under those state permits. Second, they say that they will only not disrupt “valid” state permits. This preserves their ability to claim that those permits are “invalid” and thus null and void. This is particularly troubling since the gist of their claim is that their tribal water rights pre-date State law. Since all State permits are issued pursuant to State law, if successful in their claims, the Tribes could claim that all State permits are “invalid.” Lastly, since the Tribes' claim is that they have sovereignty over southeastern Oklahoma's water, if successful, tribal law would displace State law, which would absolutely disrupt State permits, even if the Tribes promised to recognize a similar right under whatever new tribal law would now govern.

In short, because the Tribes' lawsuit still clearly and unequivocally threatens Oklahoman's water rights, and threatens the State's authority to regulate Oklahoma's waters, an adjudication remains necessary. Remember, the Tribes' have asked a federal judge to prevent the State from issuing certain permits until a stream adjudication is completed. To confirm the State's right to issue those permits, the State has no choice but to complete an adjudication.

*Why shouldn't the Tribes be allowed to decide how southeastern Oklahoma's water is used?*

When Congress allowed Oklahoma to become a state in 1907, it made the State of Oklahoma the sovereign with the authority to regulate the State's natural resources. In the over 100 years since, the State of Oklahoma has had great success protecting and allocating its citizens' water resources. The Tribes have no experience managing and regulating the State's water resources, and never expressed an interest in doing so until recently.

The State has always believed that Oklahoma's water policy should be determined by the Oklahoma Legislature, so that every Oklahoma citizen has a voice in the process, rather than by Indian tribes who answer only to their tribal members.