

**TOWARDS BALANCE AND EQUITY: AN INDIGENOUS  
REVIEW FOR UPDATING THE 2016 WATER AGREEMENT  
BETWEEN THE CHOCTAW & CHICKASAW NATIONS  
WITH OKLAHOMA & THE UNITED STATES  
GOVERNMENT FOR A SUSTAINABLE FUTURE OF  
WATER USE**

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## INTRODUCTION

This Article discusses the Water Agreement between the Choctaw and Chickasaw Nations with the State of Oklahoma and the United States Government. These agreements relate to water usage at Sardis Lake and the issues connected to the decision in *McGirt v. Oklahoma*. *McGirt* offers the parties an opportunity to review and update the agreement consistent with the jurisdictional clarification precedence established by *McGirt*, both in common law and provisions of the agreement.

In 2020, the U.S. Supreme Court's decision in *McGirt v. Oklahoma*<sup>1</sup> reaffirmed the existence of tribal reservations in eastern Oklahoma, thus reshaping the legal jurisdiction and sovereignty within the state. Although its decision was focused on a criminal jurisdictional matter and state authority, the effects of this decision reached beyond these jurisdictional issues. For instance, one complex area is that of water governance, specifically regarding questions surrounding allocation, regulation, sustainability, and its intersection with tribal sovereignty and state interests. The Sardis Lake Reservoir in Oklahoma illustrates the complex issues of water governance between the State of Oklahoma and the Choctaw and Chickasaw Nations.

In 2016, a water settlement agreement was reached to resolve the long-standing dispute over Sardis Lake. An attempt to balance tribal claims of sovereignty with state development needs through the agreement was a move forward. Nevertheless, local non-Indians and tribal citizens criticized the agreement and Oklahoma's water usage.<sup>2</sup> *McGirt* creates doubt over whether the water agreement is fully just and equitable under the scope of federal law and tribal rights.<sup>3</sup> This Article explores the intersection of legal, environmental, and tribal sovereignty over the Sardis Lake agreement.

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1. 591 U.S. 894 (2020).

2. See, e.g., Clifton Adcock, *Lawsuit Filed in Fight over Oklahoma City's Sardis Lake, Kiamichi River Water Permit*, THE FRONTIER (Nov. 22, 2017), <https://www.readfrontier.org/stories/lawsuit-filed-in-fight-over-oklahoma-citys-sardis-lake-kiamichi-river-water-permit/>.

3. Joe Wertz & Logan Layden, *Inside the Landmark State and Tribal Agreement That Ends Standoff Over Water in Southeast Oklahoma*, KGOU (Aug. 13, 2016), <https://www.kgou.org/native-american/2016-08-13/inside-the-landmark-state-and-tribal-agreement-that-ends-standoff-over-water-in-southeast-oklahoma>.

*McGirt* allows Choctaw and Chickasaw tribes to review and amend the agreement consistent with the jurisdictional rulings.

In 1974, the State of Oklahoma contracted with the U.S. Army Corps of Engineers (USACE) to construct Sardis Lake for flood control as an attempt to improve infrastructure and bolster the economy.<sup>4</sup> Oklahoma City diverts water from southeast Oklahoma (Sardis Lake) to provide adequate water needs for the area. Sardis Lake holds significant community, economic, and environmental ties to both tribal members and non-Indians living near the lake.<sup>5</sup> Prior to the construction of Sardis Lake, the area was once known as the town of Sardis, which was flooded by USACE. The cemetery that once remained in the town of Sardis was instead “built up . . . 15 feet,” and then the headstones were placed back on the cemetery island on Sardis Lake.<sup>6</sup> According to Herrera and Layden, archaeologists uncovered entire settlements where the lake is now, which included artifacts, remains, and more, further proving the significance of the lake.<sup>7</sup> In 2011, the Choctaw and Chickasaw Nations filed suit against Oklahoma City to prevent the city from transporting water out of Sardis Lake to the city, claiming that it violated the Chickasaw Nations’ federally protected water rights.<sup>8</sup> Even though a settlement agreement was reached and was considered “fair and balanced,” *McGirt* became a catalyst for re-examining the 2016 water agreement as it relates to tribal sovereignty and tribal regulation within the Indian Territory of the Chickasaw and Choctaw’s territorial boundaries.

*A. Historical Context of the Sardis Lake in the Choctaw Nation, Indian Territory, Oklahoma*

The issues surrounding tribal sovereignty and Native American rights date back to the era of expansion and displacement in the 1800s. The Treaty

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4. Christine Pappas, *Water Unity in Oklahoma: A History of the 2016 Water Settlement Agreement*, 95 OKLA. B.J. 7, 7 (2024).

5. *Id.* at 8; Wertz & Layden, *supra* note 3.

6. Rocky Mountain PBS, *Native Lens: Sardis*, YOUTUBE, at 1:33 (Sept. 20, 2021), <https://www.youtube.com/watch?v=8V5S6g6sKVk>; accord Colleen Thurston, *Native Lens: Sardis*, ROCKY MOUNTAIN PBS (Sept. 20, 2021), <https://www.rmpbs.org/blogs/native-lens/native-lens-sardis/>.

7. Allison Herrera & Logan Layden, *Fight Over Sardis Lake Entangled in Ancient History, Indian Culture and Sacred Water*, STATE IMPACT OKLA. (Apr. 7, 2016), <https://stateimpact.npr.org/oklahoma/2016/04/07/fight-over-sardis-lake-entangled-in-ancient-history-indian-culture-and-sacred-water/>.

8. M. Scott Carter, *Choctaws, Chickasaws File Lawsuit Over Sardis Lake Purchase*, THE JOURNAL RECORD (Aug. 18, 2011), <https://journalrecord.com/2011/08/18/choctaws-chickasaws-file-lawsuit-over-sardis-lake-purchase-law/>.

of Dancing Rabbit Creek of Choctaw,<sup>9</sup> later the Chickasaw Treaty of Pontotoc<sup>10</sup> in 1832 with the U.S., and the Treaty of Doaksville<sup>11</sup> with the Choctaw in 1837 hold significance. These treaties show major shifts in land ownership and tribal sovereignty between the Native Nations and the U.S. The Choctaw signed the Treaty of Dancing Rabbit Creek in 1830, giving ten million acres of land to the United States in exchange for financial compensation and resettlement to southeastern Oklahoma.<sup>12</sup> Article III of the treaty explicitly states, “country ceded to [the] United States [and] self-government secured to Choctaws.”<sup>13</sup> Although this treaty gave land, resources, and self-governance to the Choctaw, the treaty did not explicitly vest water rights.<sup>14</sup> In 1832, the Treaty with the Chickasaw, also known as the Treaty of Pontitock (*aka* Pontotoc) Creek, was signed; the federal government received six million acres of land and the Chickasaw people moved to their new land west of the Mississippi River.<sup>15</sup> Soon after, the Chickasaw and Choctaw signed the Treaty of Doaksville with the United States in 1837, which relocated the Chickasaw people to Choctaw territory.<sup>16</sup> The Chickasaw Nation established itself as a district on Choctaw land, but it limited self-governance over the Chickasaws’ funds and affairs. Eventually, in 1856, the Chickasaw people sought to establish their government and formally separated from the Choctaws.<sup>17</sup> Although the Chickasaw people had slightly more independence, the issue of limited sovereignty persisted under the federal government, and the areas related to water rights were unaddressed. In 1908, the landmark case of *Winters v. United States* established the *Winters* doctrine, implicitly reserving sufficient water rights for Indian reservations.<sup>18</sup> The Court’s decision in *Winters* stated that “Indians

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9. See The Treaty of Dancing Rabbit Creek, Sept. 27, 1830, 7 Stat. 333. Signed on September 27, 1830, and proclaimed on February 24, 1831, this treaty between the United States and the Choctaw Nation ceded all Choctaw lands east of the Mississippi River. *Id.*

10. See The Treaty of Pontotoc or Treaty of Pontotoc Creek, Oct. 20, 1832, 7 Stat. 381. It was a removal treaty between the United States and the Chickasaw Nation and was later amended. See Treaty with the Chickasaw, May 24, 1834, 7 Stat. 450.

11. The Treaty of Doaksville, signed on January 17, 1837, allowed the Chickasaw Nation to settle in the western part of the Choctaw Nation’s territory in Oklahoma. Treaty with the Choctaw and Chickasaw, Jan. 17, 1837, 11 Stat. 573 (ratified Mar. 24, 1837).

12. *Treaty of Dancing Rabbit Creek*, EBSCO (2023), <https://www.ebsco.com/research-starters/politics-and-government/treaty-dancing-rabbit-creek>.

13. *Id.*

14. 1830 Treaty of Dancing Rabbit Creek, Feb. 24, 1831, 7 Stat. 333.

15. Phillip Knecht, *Treaty of Pontotoc Creek & Land Grant Office (1832)*, HILL COUNTRY HISTORY (Apr. 5, 2020), <https://hillcountryhistory.org/2020/04/05/pontotocreek/>.

16. *History*, THE CHICKASAW NATION, <https://www.chickasaw.net/Our-Nation/History.aspx> (last visited Apr. 6, 2025).

17. *Id.*

18. MARIEL J. MURRAY & CHARLES V. STERN, CONG. RSCH. SERV., R44148, INDIAN WATER RIGHTS SETTLEMENTS (2025).

did not . . . relinquish to the United States the right to appropriate the waters” as the land was retained under a formal agreement.<sup>19</sup> Such rights “could not be divested under any subsequent legislation” under Native territory or of the United States.<sup>20</sup>

*B. Jurisdiction of Sardis Lake and Regional Territorial Boundaries of Choctaw Nation*

This created the question of whether the state, tribal nations, or federal government have jurisdiction, control, and regulatory authority over Sardis Lake. As mentioned, *McGirt v. Oklahoma* certified the sovereignty of Oklahoma’s tribes and the Indian territory of the Five Tribes. *McGirt* proved successful concerning tribal sovereignty, but still left many questions regarding jurisdiction over environmental concerns, and also how the tribal, state, and federal governments need to collaborate to create a fair and balanced Act, where the Tribes and State are equally treated and neither has a skewed amount of power over the other. Post-*McGirt*, tribes have a stronger legal standing within reservation bounds; the question of who has control or regulatory authority over Sardis Lake remains. The context of *McGirt* and its progeny opened questions regarding how tribes may be able to address environmental situations specifically with oil and gas. Oklahoma has asserted its authority over Sardis Lake, as the state has usurped tribal water rights despite *Winters*. In reality, that same question is more complex and nuanced because of historical, socio-economic, and spiritual implications. Ultimately, regulatory authority should belong to the Native tribes. This authority is built within reservation boundaries and holds significant intrinsic and economic ties reflected in the ruling for the Oneida Nation’s existing sovereignty being upheld on the same ruling in *McGirt* on a state regulatory issue.<sup>21</sup>

## II. PRE-MCGIRT WATER ISSUES AND ENVIRONMENTAL REGULATIONS

The Environmental Protection Agency (EPA) is a federal agency that focuses on the protection of human health and the environment. The EPA has authority to implement federal environmental laws in Indian Country, and has authority to delegate regulatory authority to tribes through treatment in a

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19. 207 U.S. 564, 573 (1908).

20. *Id.*

21. Frank Vaisvilas, *U.S. Appeals Court Rules in Favor of Oneida Nation Against Hobart, Endorsing Tribe’s Sovereignty*, GREEN BAY PRESS GAZETTE (July 30, 2020), <https://www.greenbaypressgazette.com/story/news/2020/07/30/oneida-nation-wins-appeal-case-against-hobart-over-sovereignty/5547148002>.

similar manner as a state (TAS).<sup>22</sup> A typical EPA granted TAS status allows tribes to implement and manage environmental programs, such as the Clean Air Act, Clean Water Act (CWA), and Safe Drinking Water Act.<sup>23</sup> This provides a cooperative effort between federal and tribal entities giving tribes more control over regulations.<sup>24</sup> Although the CWA has provisions of “treatment in a similar manner as a state[,]” the Act “does not authorize states to implement or enforce their water quality management programs in Indian lands” so the EPA can enforce federal water quality standards in Indian lands if such a status is absent.<sup>25</sup> The 2016 settlement (not a typical “TAS” regulatory scenario) included the Choctaw Nation, Chickasaw Nation, the State of Oklahoma, and Oklahoma City. This settlement established a co-management structure rather than the EPA’s formal Treatment as a State (TAS) regulatory framework with separate funding that allows the tribes to protect water resources and promote recreation while negotiating water sales to Oklahoma.<sup>26</sup>

#### A. 2016 Water Use Agreement over Sardis Lake

The 2016 Water Settlement Agreement over Sardis Lake was an enormous step for tribal sovereignty, water governance, and tribal and state cooperation.<sup>27</sup> The agreement involved the Choctaw Nation, the Chickasaw Nation, the State of Oklahoma, Oklahoma City, as well as all or parts of 22 counties in south-central and southeastern Oklahoma.<sup>28</sup> This agreement holds enormous strides for not only Native American tribes, but also non-native rural communities. The agreement reached in its present condition allowed the Choctaw and Chickasaw Nations to settle disputed claims over

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22. Elizabeth Kronk Warner & Heather Tanana, *Indian Country Post-McGirt: Implications for Traditional Energy Development and Beyond*, 45 HARV. ENV'T L. REV. 249, 275 (2021).

23. *Tribes Approved for Treatment as a State (TAS)*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas> (last updated Jan. 2026) (providing the regulatory authority used to implement TAS).

24. *Tribal Assumption of Federal Laws – Treatment as a State (TAS)*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/tribal/tribal-assumption-federal-laws-treatment-state-tas> (last updated Jan. 6, 2026).

25. Janet K. Baker, *Tribal Water Quality Standards: Are There Any Limits?*, 7 DUKE ENV'T L. & POL'Y F. 367, 369 (1997).

26. *See* Frequently Asked Questions, WATER UNITY OKLA., <https://www.waterunityok.com/questions> (last visited May 12, 2026) (answering detailed questions on the implementation and unique funding of the CWA).

27. State of Oklahoma et al., City Water Settlement § 10.1.1 (Aug. 2016) (unpublished settlement agreement) [hereinafter *Water Settlement Agreement*], <https://www.waterunityok.com/media/1075/agreement-160808.pdf>; *see generally* Statement of Findings: Choctaw Nation of Oklahoma and the Chickasaw Nation Water Rights Settlement, 89 Fed. Reg. 14699 (Feb. 28, 2024).

28. *See* Wertz & Layden, *supra* note 3.

water rights in southeastern Oklahoma surrounding Sardis Lake prior to the jurisdictional sovereignty regarding tribal lands and regulation after the *McGirt* decision. Tribal nations sought to establish a voice in all water regulatory decisions within their territories, and the agreement established a five person water commission, including tribal, state, and federal representatives.<sup>29</sup> Furthermore, the agreement provides for lake release restrictions in Section 6.1.8, where water cannot be released from the Sardis Reservoir unless the permit application has been reviewed by the Oklahoma Department of Wildlife Conservation and approved by the Oklahoma Water Resources Board.<sup>30</sup> Along with in-state restrictions, the agreement has provisions for out-of-state use of settlement area waters, barring such use if it violates the Settlement Agreement or state laws.<sup>31</sup> This agreement expands the scope of power for tribes, but legally, the ownership and management of Sardis Lake remains with the U.S. Army Corps of Engineers (USACE). Originally, Oklahoma took a loan from the federal government to build the lake, but failed to pay the required money, defaulting the lake's ownership to the USACE.<sup>32</sup> Tribal involvement in the water management scheme was limited to solely a technical advisory role. Nevertheless, tribal nations observed that agreement as an important path towards cooperative sovereignty, but many communities continue to hold concerns over the long-term implications of Oklahoma City's water usage.<sup>33</sup>

The present agreement poses substantive issues that give rise to issues that encourage renegotiating the Water Agreement to provide better area water use management, water quality, and future sustainability concerns. Such concerns include environmental, ecological, economic, health, and

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29. *Water Settlement Agreement*, supra note 27, at § 5.3.3.2. The agreement states: Members – The Settlement Commission shall be comprised office (5) members, appointed as follows: (i) one by the Governor of the State; (ii) one by the Attorney General of the State; (iii) one by the Chief of the Choctaw Nation; (iv) one by the Governor of the Chickasaw Nation; and (v) one by agreement of the aforementioned four members. In the event the four aforementioned members cannot agree on a single person, they shall jointly submit a list of no fewer than three (3) names to the Chief Judge for the United States District Court for the Eastern District of Oklahoma, who shall then make the appointment from that list. The initial appointments to the Settlement Commission shall be made within ninety (90) days of the Enforceability Date.

*Id.*

30. See Okla. Admin. Code tit. 785, § 20-5-5 (b)(3)(iv).

31. The Settlement Agreement states: “Establishment – The Settlement Legislation shall establish the Settlement Commission, the duties and authority of which are defined and limited by the Settlement Agreement and the Settlement Act.” *Water Settlement Agreement*, § 5.3.3.1.

32. *United States Seeks \$21 Million from State of Oklahoma on Unpaid Reservoir Contract*, U.S. DEP'T OF JUST. (Dec. 18, 2008), <https://www.justice.gov/archive/opa/pr/2008/December/08-enrd-1122.html>.

33. Wertz & Layden, supra note 3.

tribal cultural-resource issues. Many environmentalists argue that the agreement does not go in-depth to protect the environment, potentially affecting its tourism and economy.<sup>34</sup> Additionally, pulp and paper mills, which operate in and around the area of the Kiamichi River, pose concerns over air quality, water pollution, and waste management that could affect Sardis Lake. Companies such as Georgia Pacific and International Paper Valliant paper mills generate harmful byproducts affecting the environment and water quality. Wastewater from paper mills, such as effluent, has “lignin, resin acids, and heavy metals,” and if not treated properly can pollute water, harming both aquatic and human life.<sup>35</sup>

Given the issues that gave rise to the litigation and the Settlement Agreement there are many potential future challenges such as the ongoing debates regarding the proposed Southeast Oklahoma Power Corporation hydroelectric project on the Kiamichi River, which faced strong opposition due to environmental and economic concerns, and was denied a Federal Energy Regulatory Commission application on March 27, 2025.<sup>36</sup> Additional water use issues include the long-term financial obligations associated with managing Sardis Lake, coupled with the desire of central Oklahoma cities to acquire expanding water rights. These issues may also lead to future legal disputes unless a more comprehensive solution with an amended agreement creates a fair, balanced, and environmentally responsible water use plan for the Water Settlement area. The future legal battles in the Kiamichi River watershed have touched upon crucial issues of state sovereignty, interstate compacts, tribal water rights, property rights, and environmental protection. These challenges highlight the complex and often competing interests involved in water resource management in the face of growing demand and environmental sensitivity.

*B. Post-McGirt Issues and Opportunities for a Fair and Balanced Agreement for Water Use*

*McGirt* fundamentally reshaped the legal landscape by affirming the continued existence of tribal sovereignty and restoring jurisdiction over

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34. Clifton Adcock, *Lawsuit Filed in Fight Over Oklahoma City's Sardis Lake, Kiamichi River Water Permit*, THE FRONTIER (Nov. 22, 2017), <https://www.readfrontier.org/stories/lawsuit-filed-in-fight-over-oklahoma-citys-sardis-lake-kiamichi-river-water-permit/>.

35. Lucie M.J. Levsque, *The Environmental Impact of Paper Mill Wastes: Challenges and Solutions*, 13 INT'L RSCH. J. ENV'T SCI. 1, 1 (2024).

36. See *Pushmataha County Pumped Storage Project*, CHOCTAW NATION OF OKLA., <https://www.choctawnation.com/about/eps/pushmataha-county-pumped-storage-project/> (last visited Apr. 8, 2026); see also Letter from Nicholas Jayjack, Acting Dir., Div. of Hydropower Licensing, to Johann Tse, Se. Okla. Power Corp. (Apr. 19, 2024) (on file with the Fed. Energy Regul. Comm'n).

resources.<sup>37</sup> Under the federal Indian trust doctrine<sup>38</sup> and *McGirt*, there are legal grounds that tribes can renegotiate the water agreement or alternatively raise issues that the agreement now requires amendments requiring negotiations for changes in the agreement as currently inconsistent with regulatory management of water use. The federal trust responsibility of Congress via the Plenary Power Doctrine states that the United States has a legal fiduciary obligation to protect tribal treaty rights, lands, assets, and resources.<sup>39</sup> This trust responsibility requires the administration of the fiduciary obligation to protect and manage Native American lands and resources for tribes.<sup>40</sup> While not completely consistent with that obligation, the terms of the Choctaw Nation of Oklahoma and the Chickasaw Nation Water Rights Settlement Agreement include specific provisions to ensure tribal participation in the Oklahoma Water Resources Board's (OWRB) consideration of certain water appropriation applications. The provisions reflect their historic treaty territories, which need updating consistent with the trust responsibility to tribes and tribal sovereignty over their territories.

The agreement contemplated tribal participation through the following mechanisms: (1) consultation and review of applications where the Settlement Act and Settlement Agreement establish a framework for the Nations to participate in the OWRB's consideration of water applications which includes procedures for the Nations to be involved in the evaluation of major water right allocation proposals; (2) the protection of existing and future water uses has a provision where the Settlement Agreement recognizes and protects the existing water uses of both the Chickasaw Nation and the Choctaw Nation and further outlines procedures for the Nations to ensure expanded water uses in the future; (3) the Agreement identifies the Settlement Area Waters and Projects to include the Kiamichi River and riparian areas as designated parts of the "Settlement Area Waters" under the

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37. See Warner & Tanana, *supra* note 22, at 260.

38. See, e.g., Kimberly Chen, *Toward Tribal Sovereignty: Environmental Regulation in Oklahoma After McGirt*, 121 COLUM. L. REV. FORUM 95 (2021) (for a detailed analysis of the post-McGirt environmental landscape under plenary power doctrine and *McGirt*); *McGirt v. Oklahoma*, 591 U.S. 894, 938 (2020) (Roberts, C.J., dissenting) ("The decision today creates significant uncertainty for the State's continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and environmental law.")

39. See, e.g., *United States v. Kagama*, 118 U.S. 1109, 1112 (1886) (establishing the Constitutional basis for Congress's plenary power over tribes and ended the treaty process to statutory process under federal law that is later identified by scholars as the Plenary Power Doctrine); see also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) ("Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess.") (internal citations omitted).

40. *What Is the Federal Indian Trust Responsibility?*, U.S. DEP'T OF THE INTERIOR: BUREAU OF INDIAN AFFS. (Nov. 8, 2017), <https://www.bia.gov/faqs/what-federal-indian-trust-responsibility>.

Water Settlement Agreement as well as any proposed projects within the “Settlement Area” that are also subject to the provisions of the Settlement Act; and (4) coordination and shared interests of both tribal nations share a recognized and protected interest in the use of water from the Kiamichi River and neither nation can proceed with water-related projects without close coordination with the other.<sup>41</sup>

In essence, the settlement aims to provide the Choctaw and Chickasaw Nations with a voice in water management decisions within their historic territories, ensuring the protection of their water rights and promoting collaborative approaches to addressing water-related challenges. The Tribal Nations must be the party to assert changes, supplements, amendments, updates, and enforce environmental regulations.<sup>42</sup> They also must assert all the terms of the Water Agreement, as a native allottee may not have rights to do so based on a recent federal appeals court decision, *Hill v. U.S. Department of Interior*, decided in August 2025.<sup>43</sup>

Under *McGirt* and the *Winters* doctrine, Tribal Nations can renegotiate water agreements to restore rights to manage, allocate, and protect waters by fostering a more holistic and involved alliance between tribal, state, and federal entities. They can renegotiate an increased representation or regulatory involvement in water governance, as well as emphasize environmental and cultural protection over water, as they are fundamental in tribal values. This will also protect the rights of the tribal and non-Indian citizens living within the Water Settlement Agreement areas.

### *C. Environmental, Hydrological, and Infrastructure Issues*

The purpose of Sardis Lake is primarily for flood control, water supply, recreation, and fish and wildlife support. The U.S. Army Corps of Engineers manages and monitors Sardis Lake, but as of late, has been experiencing staffing shortages, leading to environmental impacts on the lake. These impacts include reduced services, recreational areas temporarily shut down, and gaps in the lake’s monitoring.<sup>44</sup> Along with management concerns, water quality and sustainability concerns continue to rise in southeast Oklahoma. These problems and concerns are being caused by water storage decreases,

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41. See Statement of Findings: Choctaw Nation of Oklahoma and the Chickasaw Nation Water Rights Settlement, 89 Fed. Reg. 14699 (Feb. 28, 2024).

42. See *Hill v. U.S. Dep’t of Interior*, 151 F.4th 420, 426–27 (D.C. Cir. 2025).

43. *Id.*

44. Graycen Wheeler, *U.S. Army Corps of Engineers Says Staffing Shortages Will Limit Lake Life for Oklahomans, Visitors*, HIGH PLAINS PUB. RADIO (May 13, 2025), <https://www.hppr.org/hppr-news/2025-05-13/u-s-army-corps-of-engineers-says-staffing-shortages-will-limit-lake-life-for-oklahomans-visitors>.

due to less inflow and an increase in usage outflow, that can be exacerbated by drought conditions; seasonal shifts in water levels based on environmental conditions require a more scientifically informed water management plan as shown by the present conditions for water quality and use in the region.<sup>45</sup> The 2022 Sardis Water Quality Report states that Sardis Lake is impaired by turbidity, and its current pH has been affecting fish and wildlife propagation.<sup>46</sup> It was also reported that mercury concentrations were found in the lake, along with iron, magnesium, and arsenic.<sup>47</sup> Overall, the lake's water reduced phytoplankton growth and affected shellfish and water consumption. Invasive species and fauna pose a threat to the current ecology of the lake.<sup>48</sup>

The Oklahoma Department of Wildlife Conservation provided an extensive report in its Five-Year Sardis Lake Fisheries Management Plan (2011), identifying which plants and species would be most harmful to the lake.<sup>49</sup> The report highlighted its concerns, particularly with largemouth bass and mussels. With largemouth bass, in 1991, there was an outbreak of Largemouth Bass Virus, causing a higher mortality among this species. As a result of the decline in the ecological status, the quality of the area's water extended to the lake's drinking water. Such issues arose due to the Sardis Lake Water Authorities' inability to filter contaminated water due to persistent infrastructural issues.<sup>50</sup>

The lake's outdated infrastructure, coupled with issues of drought and climate change, calls for a renegotiation into a more climate-informed, sustainable, and sensible water management plan for better water quality in drinking water. The ecological and infrastructural shortcomings have highlighted the urgent need for climate-responsive management of Sardis Lake but also intersect with the legal and political frameworks governing Oklahoma's water resources. The primary problem of protecting the region's water quality and environmentally responsible management of Sardis Lake and surrounding inflow of ground water to the lake is the *Midnight Rider*.<sup>51</sup>

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45. *Sardis Lake Page*, U.S. ARMY CORPS OF ENG'RS, <https://www.swt-wc.usace.army.mil/SARD.lakepage.html> (last visited May. 4, 2026).

46. See U.S. ARMY CORPS OF ENG'RS, SARDIS LAKE WATER QUALITY: 2022, at 1–6 (2022) [hereinafter Water Quality Report]; see also *Sardis Lake Page*, *supra* note 45.

47. Water Quality Report, *supra* note 46, at 1–6.

48. See OKLA. DEP'T OF WILDLIFE CONSERVATION, FIVE YEAR SARDIS LAKE FISHERIES MANAGEMENT PLAN – 2011 (2011) (listing “Aquatic Nuisance Species”: Zebra Mussels, Asian (Grass) Carp, Bighead Carp, Silver Carp, Snakehead Fish, Alligator weed).

49. *Id.* Specific species and fauna are listed in the report within charts. *Id.* at 14.

50. See Water Quality Report, *supra* note 46, at 1–6.

51. The “Midnight Rider” refers to a provision in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA), specifically Pub. L. 109-59, § 10211, 119 Stat. 1144, 1937, which

The Governor of Oklahoma activated the Midnight Rider provision almost before the ink dried on the *McGirt* opinion to protect the economic interest of polluters in Indian Territory.<sup>52</sup>

### III. THE MIDNIGHT RIDER ATTACKS TRIBAL SOVEREIGNTY AND WATER QUALITY FOR ALL

The Midnight Rider lowered Environmental Protection Agency (EPA) standards for water and air quality over the entire area in eastern Oklahoma, known as Indian Territory.<sup>53</sup> Congress passed this provision to exempt potential toxic tortfeasors in the extraction industry seeking the natural resources within the tribal territories.<sup>54</sup> The Midnight Rider significantly altered how water agreements are negotiated and approved. This approval comes through environmental enforcement and regulation by tribes, states, and federal agencies.

In 2004, the Pawnee Nation of Oklahoma gained treatment in a similar manner as a state (TAS) status under the Clean Water Act (CWA), giving the Pawnee Nation tribal authority over tribal water.<sup>55</sup> Instead, Senator Inhofe discreetly inserted a provision within the Safe, Accountable, Flexible, Efficient, Transportation, Equity Act (SAFETEA), which curtailed tribal sovereignty, requiring that Oklahoma tribes “enter into a cooperative agreement with the state” to obtain TAS status.<sup>56</sup> Section 10211(a) under

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granted Oklahoma authority over environmental regulation in Indian country. Following *McGirt*, this provision became central to disputes over state versus tribal environmental jurisdiction.

52. Shannon Biggs, *Media Advisory: Oklahoma Tribes Under Attack from State*, MOVEMENT RTS. (Sept. 7, 2020), <https://movementrights.org/media-release-oklahoma-tribes-under-attack-from-state/>.

53. Chen, *supra* note 38, at 102.

54. 18 U.S.C. § 1151. This definition is relevant in regard to civil jurisdiction despite the fact that it is found in the federal criminal code. Letter from EPA, Off. of Adm’r, to Kevin Stitt, Governor of Okla. (Oct. 1, 2020) (on file with TurtleTalk); see also *DeCoteau v. District County Court*, 420 U.S. 425, 427 n.2 (1975). In understanding the context of the enforcement and jurisdiction, applying federal environmental laws within Indian country is more nuanced. As a preliminary manner, tribal lands must first be defined to delineate the boundaries of jurisdictions and why the State of Oklahoma forced the “midnight rider” into the legislation; the definition for “Indian country” is set in 18 U.S.C. § 1151 as: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . , (b) all dependent Indian communities within the borders of the United States . . . , and (c) all Indian allotments, the Indian titles to which have not been extinguished . . . .” This definition made Federal law pre-empt State law and place the tribes in a position over natural resource extraction companies in enforcement in tribal court.

55. See Christine Pappas & Terrie A. Becerra, *As Long as the Water Flows: Native American Water Policy in Oklahoma*, 30 OKLA. POL. 61, 67 (2020); see also *Tribes Approved for Treatment as a State (TAS)*, *supra* note 23.

56. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, § 10211(b)(2), 119 Stat. 1144, 1937 (2005) [hereinafter SAFETEA].

SAFETEA states that with the request of the state, administrators (the EPA) “shall approve the State to administer” programs in areas “that are in Indian country.”<sup>57</sup> Section 10211(b) of the Act states that administrators can treat an Indian tribe in Oklahoma “as a State . . . only if” the tribe meets requirements to be treated as a state and the Indian tribe “enter[s] into a cooperative agreement” with Oklahoma.<sup>58</sup> Senator Inhofe added this provision, unknown to tribal leaders, effectively asserting federal authority over tribal sovereignty, as tribal nations seeking TAS status must obtain an agreement with the state first. As the legal landscape became unsteady after *McGirt*, Oklahoma’s Governor Stitt wrote a letter to the EPA requesting approval for the State of Oklahoma to continue administration of environmental programs within tribal land.<sup>59</sup> Rather than call a meeting of parties to evaluate the legal jurisdiction and terms, the Governor chose to attack any tribal attempt to regulate water quality in their jurisdiction post-McGirt.

The EPA granted Oklahoma authority to continue its environmental programs on tribal land with some limitations.<sup>60</sup> These actions, even after *McGirt*, illuminate the state’s priority of economic interests over tribal and environmental concerns, as Oklahoma has become a fossil-fuel-dependent state. It was a way to protect the oil and gas industries from the consequences and accountability of violating EPA environmental laws.<sup>61</sup> However, in 2025, the EPA limited Oklahoma and the Governor’s control over environmental regulation over all tribal lands.<sup>62</sup> On January 13, 2025, the EPA’s Office of the Administrator withdrew the October 1, 2020 decision granting Oklahoma environmental regulatory authority over tribal lands in relation to the Midnight Rider attempting to limit tribal enforcement of the EPA standards.<sup>63</sup>

Rural and tribal communities are suffering from issues of equitable and accessible clean water, as resources are being used to bolster urban

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57. SAFETEA, § 10211(a).

58. SAFETEA, § 10211(b)(1)–(2).

59. See, Letter from Kevin Stitt, Governor of Okla., to Andrew Wheeler, EPA Off. of Adm’r (July 22, 2020) (on file with EPA) [https://www.epa.gov/system/files/documents/2021-12/oklahoma-july-2020-request\\_0.pdf](https://www.epa.gov/system/files/documents/2021-12/oklahoma-july-2020-request_0.pdf); see also Ti-Hua Chang, *Oklahoma Governor Asked EPA to Strip Tribes of Environmental Authority*, NAT’L CATH. REP. (Sept. 2, 2020), <https://www.nronline.org/news/oklahoma-governor-asked-epa-strip-tribes-environmental-authority>. On “Thursday, June 18, 2020, in the State Dining Room of the White House[,] Stitt has asked the EPA to give his state jurisdiction over environmental regulations on Native American reservations.” *Id.* (internal citation omitted)).

60. Letter from Kevin Stitt, *supra* note 59, at 3; see also Letter from Kevin Stitt, Gov. of Okla., to Michael S. Regan, EPA Off. of Adm’r, at 1–2 (Dec. 4, 2024) (on file with author) (continuing request to deny Tribal regulatory sovereignty over EPA standards).

61. See, U.S. Env’t Prot. Agency, Final Decision on Letter from EPA to Kevin Stitt, Governor of Okla.’s SAFETEA Request (Jan. 13, 2025).

62. *Id.*

63. *Id.*

community needs rather than rural and tribal communities. Water shut-offs, boil orders, and filtration problems are ongoing for Pushmataha County and surrounding areas.<sup>64</sup> Big corporations affect rural and native communities through water contamination. Tyson Foods and other companies have industrial poultry farms located in southeast Oklahoma but generate lots of waste. These poultry farms and companies have been able to operate with little to no oversight, even though farms are “polluting or depleting the region’s groundwater.”<sup>65</sup> Along with poultry farm contamination, native and rural communities face a crisis of methamphetamine and mobile meth labs, becoming a public-health and environmental concern.<sup>66</sup> Waste from these meth labs is improperly discarded, contaminating “groundwater . . . wells . . . kill[ing] plants; and harm[ing] aquatic life and animals.”<sup>67</sup>

In response to these growing community impacts, many collaborative water projects have taken place to increase water equity. In 2024, the Sardis Lake Water Authority was set to receive \$19.3 million to construct a new water treatment plant, which would increase the amount of water treated by five times.<sup>68</sup> Working with state, federal, and tribal entities, the Choctaw Nation will provide \$6,481,350, the Oklahoma Water Resources Board \$2,896,500, and the U.S. Department of Agriculture \$9,927,000.<sup>69</sup> Furthermore, the Choctaw Nation helped with water infrastructure improvements on reservation land through the Broken Bow Water Authority project.<sup>70</sup>

This project was a collaboration between the Choctaw Nation and the Oklahoma Department of Energy and Environment, which increased water supply availability to rural and tribal areas.<sup>71</sup> In a major effort to improve water infrastructure, numerous collaborative projects are underway. At the forefront of these improvements are five Oklahoma tribes (Choctaw,

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64. Graycen Wheeler, *‘We Are in Desperate Need’: Communities in Southeast Oklahoma Run Out of Water as They Wait for Repairs*, KOSU (June 16, 2022), <https://www.kosu.org/energy-environment/2022-06-16/communities-in-southeast-oklahoma-run-out-of-water-as-they-wait-for-repairs>.

65. Juan Vassallo, *Oklahoma’s Loophole: How Tyson’s Water Use Goes Unchecked*, SENTIENT FOOD (June 13, 2025), <https://sentientmedia.org/tysons-water-use-goes-unchecked/>.

66. See generally U.S. Env’t Prot. Agency, *METHEMPHETAMINE: Threatening the Health and Environment of Tribal Communities*, TRIBAL WASTE J., June 2008, at 1, 3.

67. *Id.* at 4.

68. Mike W. Ray, *Sardis Lake Water Authority Receives Funds for New Treatment Plant*, SW. LEDGER (Nov. 20, 2024), <https://www.southwestledger.news/news/sardis-lake-water-authority-receives-funds-new-treatment-plant>.

69. *Id.*

70. Tabatha Keton, *CNO Celebrates Completion of Broken Bow Water Project*, BISKINIK (Apr. 1, 2025), <https://biskinik.com/news/cno-celebrates-completion-of-broken-bow-water-project>.

71. *Id.*

Muscogee, Cherokee, Iowa, and Chickasaw), the state of Oklahoma, and the Indian Health Service, which together have over 20 million in improvement funds.<sup>72</sup> Under Senate Bill 429, Section 4 and Section 6 allow the Oklahoma Water Resources Board to grant funding that matches tribal investments in clean and drinking water improvements.<sup>73</sup> Furthermore, the Chickasaw Nation, in partnership with the Oka' Institute at East Central University, launched “[t]he Tribal Center for Community Excellence,”<sup>74</sup> a collaborative initiative to advance water-based community development, aiming to strengthen and improve long-term water resources across the Chickasaw Nation.<sup>75</sup>

Additional proactive infrastructure improvement efforts from the U.S. Army Corps of Engineers (USACE) are also important to note. Specifically, the USACE aims to improve environmental flow that focuses on reaching the downstream of dams to balance ecology and human water use.<sup>76</sup> The Choctaw and Chickasaw Nations' partnerships with federal, state, and local entities illuminate how tribal sovereignty and cooperative government interaction and engagement can create tangible improvements in rural/tribal infrastructure rather than political posturing for control of one party to the agreement over the others. These projects—federal grants, state American Rescue Plan Act (ARPA) funds, and tribal contributions—with resource management inclusion clearly illustrate a model of collaboration that prioritizes balancing ecological stewardship with sustainable and beneficial community development of water resource usage.<sup>77</sup>

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72. *5 Oklahoma Tribes, IHS, and State of Oklahoma Come Together to Improve Water Infrastructure*, NATIVE NEWS ONLINE (Oct. 20, 2023), <https://nativenewsonline.net/health/5-oklahoma-tribes-ihs-and-state-of-oklahoma-come-together-to-improve-water-infrastructure>.

73. S. 429, 58th Leg., 2d Sess. §§ 4, 6 (Okla. 2022) (enrolled), vetoed § 6 (2022).

74. *Oka' Institute and Chickasaw Nation Launch Tribal Center for Community Excellence to Advance Water Sustainability*, OKA' INST., <https://www.okainstitute.org/post/oka-institute-and-chickasaw-nation-launch-tribal-center-for-community-excellence-to-advance-water-s> (last updated July 14, 2025).

75. *Id.*

76. U.S. ARMY CORPS OF ENG'RS, KIAMICHI RIVER – ENVIRONMENTAL FLOWS WORKSHOP SUMMARY REPORT 5 (2022).

77. *See, e.g., Tribal Water and Nat. Res. Conservation Guide*, U.S. ENV'T PROT. AGENCY <https://www.epa.gov/nps/tribal-water-and-natural-resources-conservation-guide> (last updated Jan. 5, 2026); *see also* Mike W. Ray, *supra* note 64. The Sardis Lake Water Authority (SLWA) has secured a total of \$19.3 million in funding for a new treatment plant, which stands as a key model of collaboration blending American Rescue Plan Act (ARPA) funds with tribal contributions and environmental stewardship. The Choctaw Nation will contribute \$6,481,350 in American Rescue Plan Act (ARPA) grant funds, and the Oklahoma Water Resources Board will provide \$2,896,500 from an ARPA grant, for a total of \$9,377,850 in ARPA funding blended with other funding. *Id.*

#### IV. FACTORS TO CONSIDER WHEN UPDATING THE WATER AGREEMENT BETWEEN THE PARTIES

If state, federal, and tribal entities continue to share responsibility for water infrastructure and resource allocation, the issue of renegotiation—after *McGirt*—requires careful consideration. Any renegotiated framework must weigh these factors to improve the water use plan under the agreement by setting aside petty political posturing. Instead, acknowledging tribal sovereignty and jurisdictional clarity post-*McGirt*, sustainable water allocation for all affected residents over industrial profit, the region's important environment protection and diverse ecology, cultural and historical resources of the area and equitable infrastructure development in both tribal and non-tribal communities is needed. Collaborative efforts between state, tribal, and federal governments are needed to ensure sustainable and equitable water-governance solutions. By looking to commonalities and engaging in worthwhile collaboration over individual greed, a balanced plan based on equality and fairness will improve the entire region for everyone's future.

#### V. THE IMPORTANCE OF RECOGNIZING INTERNATIONAL NORMS OF HUMAN AND INDIGENOUS PEOPLES RIGHTS IN THE NEGOTIATIONS PROVIDES FOR A SUSTAINABLE FUTURE

Amending and updating the water settlement agreement should incorporate the concepts of the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) in the consultation and negotiation process. Federal law should be examined in light of the international human rights norms and treaties as any project that affects Indigenous peoples and their lands.<sup>78</sup> By incorporating collaborative efforts from beneficial relationships to these marginalized communities in Oklahoma and the integration of UNDRIP in water governance plans will result in more comprehensive and inclusive plans. These plans could maintain the environmental integrity of the area and provide sufficient water resources that the local community and others can use safely.<sup>79</sup> The current dominating governance framework promotes water colonialism, impacting under-resourced and marginalized

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78. See generally G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous People (Sept. 13, 2007).

79. Kat Taylor et al., *Water Governance Frameworks Need to Harmonize with United Nations Declaration on the Rights of Indigenous Peoples*, GLOB. WATER F. (June 18, 2020), <https://www.globalwaterforum.org/2020/06/18/water-governance-frameworks-need-to-harmonise-with-united-nations-declaration-on-the-rights-of-Indigenous-peoples-2/>.

communities,<sup>80</sup> and UNDRIP is important in restoring Indigenous knowledge and law in these water frameworks. Tribal water governance is not only about sovereignty; it is about understanding that Indigenous People have a unique and spiritual relationship with water.<sup>81</sup> This intrinsic connection with water requires legal systems to adapt to Indigenous water views and have independent, unbiased studies to establish proper and equitable solutions to water justice. Further, using traditional Indigenous natural resource management programs provides long-term sustainability for continued future use and development.

#### VI. PROPOSED HYDRO-ELECTRICAL PLANT & OTHER POTENTIAL DEVELOPMENTS REQUIRE DETAILED SCIENTIFIC, ENVIRONMENTAL & CULTURAL IMPACT ASSESSMENTS

Additionally, the proposed hydroelectric plant on the Kiamichi River warrants careful attention during renegotiation, as it can have adverse effects on the river and Sardis Lake. The proposed project aims to provide renewable energy for grid operations while also conserving the resources of the Kiamichi River.<sup>82</sup> In 2024, Southeast Oklahoma Power Corporation filed a pre-application for a closed-loop pumped storage hydroelectric project, which would be located along the Kiamichi River with a 100-mile transmission line that would go through Pushmataha into Texas.<sup>83</sup> The Federal Energy Regulatory Commission (FERC) accepted the preliminary application.<sup>84</sup>

In April 2025, FERC issued a letter to Southeast Oklahoma Power Corporation informing the company of the termination of its Integrated Licensing Process.<sup>85</sup> FERC's reason for this decision was that the Proposed Study Plan lacked the required information. Specifically, the plans did not

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80. See MURRAY & STERN, *supra* note 18. The EPA has increasingly had to intervene, directing Oklahoma to coordinate with tribal nations on environmental programs following the *McGirt v. Oklahoma* decision, which affirmed tribal territory in eastern Oklahoma as set out in the summary and analysis for the congressional report on the Indian Water Rights Settlements. *Id.* These actions are often described as colonial because they reflect the state government's attempts to control, commodify, and distribute water in a manner that historically disregarded the sovereignty of tribal Nations. *Id.*

81. Taylor et al., *supra* note 79.

82. *About the Project*, SEO POWER CORP, <http://www.greenvaultenergy.net/> (last visited Apr. 9, 2026).

83. *Pushmataha County Pumped Storage Hydroelectric Project*, FED. ENERGY REGUL. COMM'N, <https://www.ferc.gov/pushmataha-county-pumped-storage-hydroelectric-project> (last updated Aug. 28, 2025) [hereinafter Pushmataha County Project].

84. *Id.*

85. Letter from FERC to Johann Tse, Se. Okla. Power Corp., (April 4, 2025) (on file with FERC) [https://stateimpactcenter.org/files/AG\\_Actions\\_SEOPC\\_FERC\\_Termination\\_04.14.2025.pdf#:~:text=T herefore%2C%20as%20soon%20as%20possible%2C,expires%20on%20March%2031%2C%202027.](https://stateimpactcenter.org/files/AG_Actions_SEOPC_FERC_Termination_04.14.2025.pdf#:~:text=T%20herefore%2C%20as%20soon%20as%20possible%2C,expires%20on%20March%2031%2C%202027.)

address why they did not adopt stakeholder-requested studies and did not incorporate the recommended methodologies.<sup>86</sup> Although plans for this proposed project are on hold for the time being, a new appointee to FERC, Commissioner David Rosner, may approve the proposed project. Rosner's top priorities include grid reliability, managing energy transitions, and gas and transmission-infrastructure development.<sup>87</sup> The project fails to meet basic FERC standards as set out in the denial letter and provides no benefit to the residents of southeast Oklahoma, whether tribal members or not. The proposal completely lacked an Environmental Impact Study (EIS)<sup>88</sup> (as required by law) and U.S. Army Corps of Engineers (USACE) regulations and permit requirements (as required by federal regulations that affect interstate waters).<sup>89</sup> FERC and the USACE use Environment Impact Studies (EIS) in reviewing projects that require ground work modification where this specific Power Plant "Loop" project never responded to the previous inquiries of FERC and USACE staff regarding the Environmental Impact of the project. Project Developers and Promoters typically issue a draft EIS to evaluate the environmental effects of the proposed surrender and subsequent decommissioning of a project when it is to be taken down and the impacts of removing it when its use and life has ended but still impacts the environment the project impacts.<sup>90</sup> In relation to the Southern Oklahoma Power Corp. project, Sardis Lake is a federal reservoir constructed and managed by USACE. The project required USACE coordination under Section 408,

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86. Pushmataha County Project, *supra* note 83.

87. Ethan Howland, *White House Names Democrat Rosner to Lead FERC*, UTILITY DIVE (Aug. 14, 2025), <https://www.utilitydive.com/news/white-house-david-rosner-ferc-chairman/757656/>.

88. 42 U.S.C. § 4332. An Environmental Impact Study (EIS) is required under Section 102(2)(C) of NEPA. *Id.* This is the overarching federal statutory requirement that mandates an EIS for any "major Federal action significantly affecting the quality of the human environment." *Id.*; see generally *Hydropower*, U.S. FED. ENERGY REGUL. COMM'N, <https://www.ferc.gov/hydropower> (last visited Apr. 9, 2026).

89. See *About the Project*, SEO POWER CORP, <http://www.greenvaultenergy.net/> (last visited Feb. 6, 2026); see also *Se. Okla. Power Corp.*, 192 FERC 61,225, 2 (2025) (citing 18 C.F.R. § 5.11 (2025)) ("As required by the Commission's ILP regulations, applicants must submit a proposed study plan detailing the methodologies, reporting, and timelines of studies to be conducted as well as explanations as to why other studies will not be conducted. Accordingly, on December 23, 2024, Southeast Oklahoma filed a Proposed Study Plan, which Commission staff rejected because it did not comply with the Commission's regulations. As relevant here, Commission staff found that Southeast Oklahoma provided insufficient information relating to study descriptions, methodologies, and schedules, and failed to explain why certain studies requested by various stakeholders were not adopted. The Commission staff provided Southeast Oklahoma with 30 days to file an adequate study plan and warned that the ILP for the project might be terminated. should Southeast Oklahoma fail to file an adequate plan.").

90. See generally *FERC Staff Issues Draft Environmental Impact Statement for the Answers on Damn Hydroelectric Project Exemption*, U.S. FED. ENERGY REGUL. COMM'N (Sept. 12, 2025), <https://www.ferc.gov/news-events/news/ferc-staff-issues-draft-environmental-impact-statement-anderson-dam-hydroelectric>.

which is required for any non-federal project that proposes to occupy or use a USACE-constructed civil works project, and this Section necessitates a determination that the project will not be injurious to the public interest.<sup>91</sup> The project also required coordination under Section 404 of the Clean Water Act, which is mandated to prevent and monitor any discharge of dredged or fill material including equipment fuels and chemicals that can cause contamination and be released into Sardis Lake or the Kiamichi River during construction or decommissioning. FERC officially dismissed the project in April 2025 because the developer failed to provide the necessary environmental and consultative documentation required under the Integrated Licensing Process.<sup>92</sup>

A cost-benefit analysis would not justify building the plant *versus* the plant's negative effects on Sardis Lake and local water quantity and quality needs, in addition to the needs of Oklahoma City residents (as set forth under the agreement). Although the proposed project might help with grid reliability, especially in Texas, it would be siphoning off over 15 billion gallons of water.<sup>93</sup>

Another unknown impact consideration is private land investment buying up lands in the region and utilizing well drilling into the water table and aquifers to pump and sell for commercial profit and industrial usage in different regions.<sup>94</sup> Such developments appear to significantly impact water usage by at least 35% (based on studies of water quantities during use rather than simple storage-area data).<sup>95</sup> The parties to the Water Agreement need to understand and consider potential well usages in the region because the amount of water that an aquifer stores is much less and different than what it

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91. 33 U.S.C. § 408.

92. See *Oklahoma AG Celebrated Termination of Proposed Hydroelectric Plan as Inconsistent with Tribal Rights Protective of Natural Resources*, STATE ENERGY & ENV'T IMPACT CTR. (April 15, 2025), <https://stateimpactcenter.org/ag-work/ag-actions/oklahoma-ag-celebrated-termination-of-proposed-hydroelectric-plan-as-inconsistent-with-tribal-rights-protective-of-natural-resources>.

93. Cf. Mike W. Ray, §3.1B Kiamichi Hydropower Project Would Siphon Billions of Gallons of Water from River, SOUTHWEST LEDGER (Sept. 10, 2024), <https://www.southwestledger.news/news/31b-kiamichi-hydropower-project-would-siphon-billions-gallons-water-river>.

94. See Megan Kimble, *Company Behind East Texas Water Grab Hired Key Lobbyists Just Before Bill Delaying It Died*, HOUSTON CHRONICLE (Sept. 10, 2025), <https://www.houstonchronicle.com/politics/texas/article/east-texas-water-blakemore-senate-21032382.php>; see also Will Bostwick, *Inside the Fight for Texas's Most Precious Resource*, TEX. MONTHLY (Sept. 15, 2025), <https://www.texasmonthly.com/news-politics/east-texas-water-wars-kyle-bass/>.

95. See Bostwick, *supra* note 94 (discussing an expert at Meadows Center for the Water and Environment at Texas State University that provided scientific data of water storage of an underground aquifer as irrelevant given that such aquifers have dynamic organic sediments and strata that creates pressure in aquifers that create a producible amount of artesian pressurized well water and the industrial pumping of such water by commercial wells completely depletes the pressure and overall yield of producible water faster until the aquifer fails and cannot be naturally recharged with adequate pressure).

can sustainably produce. Based upon the sustainable production margins of an aquifer, a developer cannot list an aquifer as an underground reservoir because its pressure yield determines the amount of water it can sustainably produce. When proposing any planned use of the aquifer, an environmental waters sustainability and impact study is required because large pumping developments for commercial purposes deplete the pressure of the aquifer and diminish the water it can produce. In an unsustainable destruction of the aquifer resource, especially during drought periods, commercial pumps hinder other water well pumps' use, such as drinking water and standard individuals' use.<sup>96</sup>

*A. An Updated Water Agreement Should Provide Tribal Water Regulation*

When amending the Sardis Lake Water Agreement, regulations should be consistent with *McGirt* and its progeny of cases<sup>97</sup> that support tribal regulation of water rights within the federally registered territorial boundaries of the Chickasaw and Choctaw Nations.<sup>98</sup> Section 10 of the Water Agreement states how tribes can raise issues regarding the settlement

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96. *See id.*

97. *See, e.g.,* Oklahoma v. Sizemore, 142 S.Ct. 935 (2022). In Oklahoma v. Sizemore, the Court applied *McGirt* to the Choctaw Nation, rejecting state jurisdiction and regulatory authority over Choctaw Reservation opening the *Winters* and *Arizona* cases involving water rights to the Choctaw Nation. In *Winters v. United States*, the Supreme Court held that when the federal government confined tribes to reservations, it implicitly reserved the amount of water necessary to maintain a reservation as a "homeland." 207 U.S. 564 (1908). Additionally, *Arizona v. California* remains a foundational case for quantifying these rights based on "practicably irrigable acreage," which tribes now assert more strongly within *McGirt*-affirmed boundaries. 373 U.S. 546 (1963); *see* Leslie Sanchez et al., *Beyond "Paper" Water: The Complexities of Fully Leveraging Tribal Water Rights*, FED. RESERVE BANK OF MINNEAPOLIS (May 3, 2022), <https://www.minneapolisfed.org/article/2022/beyond-paper-water-the-complexities-of-fully-leveraging-tribal-water-rights>. The ruling upheld the federal government's authority to apportion water among lower basin states. A subsequent decree implementing the decision was issued in 1964. *See* 376 U.S. 340 (1964); *see* Dep't of the Interior, Statement of Findings: Choctaw Nation of Oklahoma and the Chickasaw Nation Water Rights Settlement, 89 Fed. Reg. 14699 (Feb. 28, 2024). The *McGirt* ruling acts as a foundation, strengthening the tribes' legal position that they, as sovereign nations, hold the senior rights to water within their jurisdictional boundaries, challenging previous state-level control. Now, 114 years after *Winters*, 46 tribes have concluded adjudications and successfully reclaimed rights to 10.7 million acre-feet of water (AF). The adjudication process spans 21 years on average, with parties spending half of that time in court before switching to negotiation. The magnitude of water entitlements tends to reflect the size of a reservation's land base, with larger reservations receiving more water. Yet, more recent settlements involve less water but more funding for tribes. In addition, 23 tribes have initiated the adjudication process but not completed it. A 2020 study estimated that in the coming decades, the total water entitlement for tribes actively undergoing adjudication will be between 1.2 and 1.6 million AF. *See* Leslie Sanchez et al., *The Economics of Indigenous Water Claim Settlements in the American West*, ENV'T RES. LETTERS, Aug. 21, 2020, at 1.

98. Chez Oxendine, *Yurok Tribe Gains Federal Authority to Set Water Quality Standards on Its Reservation*, TRIBAL BUS. NEWS (Aug. 2, 2025), <https://tribalbusinessnews.com/sections/energy/15241-yurok-tribe-gains-federal-authority-to-set-water-quality-standards-on-its-reservation>.

agreement, including venue and jurisdiction.<sup>99</sup> If a disagreement arises over the Settlement Agreement, the Amended Storage Contract Transfer Agreement, or the Settlement Act, in accordance with the law, parties must go to federal court for a judge's ruling.<sup>100</sup> Furthermore, parties cannot sue for monetary damages but are allowed to interpret the agreement or order compliance with the agreement.<sup>101</sup> In such cases, the U.S. District Court for the Western District of Oklahoma has the proper jurisdiction and authority to address disagreements.<sup>102</sup> Section 10.1.2 of the agreement is subject to amendment because it is inconsistent with federal law and tribal sovereignty as the terms were presented at the time.<sup>103</sup>

Under federal statutes regarding venue, a civil action can be brought in "a judicial district in which a substantial part of the events" gave rise to the claim or "a substantial part of property that is the subject of the action is situated."<sup>104</sup> As Sardis Lake is located in the Eastern District of Oklahoma, Section 10.1.2 of the Settlement Agreement overrides federal venue statutes. The venue raises questions of judicial fairness particularly in the basic ability to bring witnesses and evidence where the local federal court is versus the District of Columbia U.S. District Court. In addition, tribal courts are barred from hearing disputes related to the Settlement Agreement. Considering *McGirt*, these disputes are inconsistent with recognized tribal sovereignty over tribal lands and agreements as well as locality for basic case management needs in terms of travel of witnesses at trial and other pretrial hearings.

The Chickasaw and Choctaw Nations may face numerous procedural issues when renegotiating the agreement, including delayed access to court, detailed notice requirements, mandatory conferences, and a lack of tribal forum options in the area and region affected by the agreement's terms.<sup>105</sup> Parties that are asserting noncompliance or seeking interpretation must "serve written notice on the Party or parties," and the written notice must have specific provisions that have "been violated or in dispute and shall specify in detail the asserting Party's contention" and factual basis for the claim.<sup>106</sup> Both parties must meet within 30 days of the written notice to

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99. See *Water Settlement Agreement*, *supra* note 27, § 10.

100. *Id.* § 10.1.1; see also § 10.

101. *Id.* §§ 9.11, 9.1.2; see § 9.

102. *Id.* § 10.1.2; see, § 10.

103. *Id.* § 10.1.2.

104. 28 U.S.C. § 1391(b)(2) (2018).

105. See, e.g., MURRAY & STERN, *supra* note 18; Compliance with Federal "Settlement" Procedures: Tribal water rights settlements require federal funding and congressional action, and they often face opposition from groups that object to specific provisions, creating procedural hurdles in gaining final approval. These challenges are typically exacerbated by shifting political landscapes.

106. *Water Settlement Agreement*, *supra* note 27, §3.1.2.2; *id.* § 3.1.2.2.1.

resolve the issue; if the issue is not resolved within 90 days of the original written notice, then the dispute may be taken to federal court.<sup>107</sup> Procedural requirements outlined in Section 10.2 can create hurdles against tribes seeking timely relief. With the Tribal Nations' use of water, under the agreement, Tribes are able to use the water but only if they comply with state laws, such as using water through existing permits or obtaining new permits.<sup>108</sup> However, instead of flat figures, parties involved should contribute by water usage/need to the conservation fund and evaluate specific use on an equitable basis.

*B. Applying Better Standards for Future Planning of Water Use.*

Using traditional Indigenous management of the water and natural resources in the water settlement area of the Kiamichi Valley allows for a cultural and spiritual emphasis on co-stewardship between Tribal Nations, state, federal, and non-tribal peoples. The concepts set out in the United Nations Declaration of the Rights of Indigenous Peoples should foster a healthy and equitable interaction and evolving plan for sustainable water use.

Planning for a sustainable future can be accomplished using Seventh Generation thinking.<sup>109</sup> Additionally, bonding that with traditional Indigenous governance logic that relationship, coherence, and long-view care, results in not just a shift in mindset, but a structure for how we build, govern, and sustain systems that reflect who we are as members in a community. Seventh Generation thinking is an Indigenous philosophy, originating with the Haudenosaunee Confederacy,<sup>110</sup> that dictates present-day decisions must consider the well-being of the next seven generations in the future. This principle emphasizes long-term sustainability, responsibility to unborn generations, and the elimination of self-interest in public decision-making, particularly regarding natural resources, but can also be applied to social and cultural contexts.<sup>111</sup> The core principles state: (1) "stewardship of the future," where the central idea is to make decisions that create a sustainable world for seven generations ahead, encompassing environmental

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107. *Id.* § 10.2.3.

108. *Id.* § 7.1–7.2.

109. See Breanne Smith, *Seven Generations Principle, Healing the Past & Shaping the Future*, THE INDIGENOUS FOUND., <https://www.theIndigenousfoundation.org/articles/seven-generations-principle-healing-the-past-amp-shaping-the-future> (last visited Apr. 9, 2026).

110. See Wertz & Laydon, *supra* note 2; see also *Who Do We Answer To? The Haudenosaunee Confederacy Responsibility to Future Generations*, LIFE WORTH LIVING, <https://lifeworthliving.yale.edu/resources/the-haudenosaunee-confederacy-on-responsibility-to-future-generations#> (last visited, Mar. 23, 2026).

111. Smith, *supra* note 109.

health, well-being, and cultural vitality; (2) moral responsibility, which fosters a sense of moral obligation to those who are yet to be born, extending responsibility beyond immediate needs and desires; (3) holistic community focus, where this principle encourages thinking in terms of the entire community and future generations, rather than individual or short-term gains.<sup>112</sup>

A similar Indigenous approach to reviewing the terms of the Water Settlement Agreement is through using Indigenous thinking systems<sup>113</sup> that provide an equitable system of governance based upon the following ideas: (1) relational accountability: where trust flows through relationships, not roles and titles, and where responsibility is shared, not assigned by the participants and the affected by the plan; (2) interdependence: where every system, health, housing, justice, and education has an effect on others, and where coordination is not optional but an integral part of balance in creating interdependence in a community mind frame; (3) long-view thinking: where the plans and management of the resource reviews its impact that is measured in generations and where urgency is guided by foresight, not deadlines for future sustainability and continuity of health use of the resource; (4) sovereignty as structure: the updated water agreement must be based on design, decision-making, and power that reflects Indigenous regulatory authority, not just participation and compliance; and, very importantly, (5) a healing-centered design: this ensures the plan, management, and authorities in balance must be built to protect well-being and not just to avoid harm, but actively support repair, particularly from past marginalization of both the impoverished community members and tribal citizens. Thus, the focus on helping fix water and infrastructural issues within states and communities before capitalist objectives of a few must be paramount and include the Indigenous concepts of women in relation to the sacredness of water.<sup>114</sup>

On January 13, 2025, the EPA reversed the October 2020 decision and provided an order more contemporaneous with the jurisdictional and regulatory relationship envisioned by the majority opinion in *McGirt*.<sup>115</sup> The 2025 decision replaced the previous policy with new requirements that include: the EPA administrator issuing orders that require mandatory tribal

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112. *See id.*

113. *See, e.g.,* JESSE GREY EAGLE, *INDIGENOUS SYSTEMS THINKING: THE OPERATING SYSTEM OF SOVEREIGNTY* (2025).

114. J. Eric Reed, *Restoration of Matriarchal Roles is Essential*, ICT (Nov. 18, 2020), <https://ictnews.org/opinion/restoration-of-matriarchal-roles-is-essential/>.

115. *See* Letter from EPA, Off. of Adm'r, to Kevin Stitt, Governor of Okla. (Jan. 13, 2025) (EPA letter reversing the 2020 letter to comport with the *McGirt* decision regarding Indian Country), <https://oklahoma.gov/content/dam/ok/en/governor/documents/Signed%20SAFETEA%20Reconsideration%20Document.pdf>.

consultation where the EPA now conditions state environmental regulatory approval on specific tribal engagement and consultation meetings that encourages individual agreements between the State and Tribal Nations to better promote tribal sovereignty.<sup>116</sup> The EPA letter also imposes regulatory conditions that require additional reporting and comment period protocols for Oklahoma's environmental programs.<sup>117</sup> The logic and legal precedent reversing the October 2020 letter is "because the State's programs were generally not approved to apply in Indian country, the State's program implementation was no longer appropriate following the Supreme Court's clarification regarding the Indian reservation status of the subject lands."<sup>118</sup> Subsequent to the ruling in *McGirt*, several Oklahoma state court decisions have held that the reservations of other tribes in Oklahoma had also never been disestablished and remained Indian country under federal law.<sup>119</sup>

Beginning in November 2025 and early 2026, major issues have involved federal litigation over tribal hunting and fishing sovereignty against Oklahoma state officials. The Choctaw, Chickasaw, Cherokee, and Creek Nations are suing Governor Stitt over citations issued to tribal citizens on reservation land.<sup>120</sup> Focusing and planning between the parties for the Sardis Lake water agreement being used to implement long-term, multi-party water resource management and upholding treaty rights is critical. Ongoing negotiation based on theories of equality and recognition of tribal regulatory rights ensures that water from Sardis Lake and surrounding areas meets the needs of both the tribes and Oklahoma City in the coming years.<sup>121</sup>

Additionally, in January 2026, the Five Tribes filed federal lawsuits against Governor Kevin Stitt and the Oklahoma Department of Wildlife Conservation, challenging state citations issued to tribal members hunting on their own lands. The tribes argue these actions violate their inherent

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116. *See, Id.*

117. *See, Id.*

118. *See* Letter from EPA, *supra* note 115.

119. *See, e.g.*, *Spears v. State*, 485 P.3d 873 (Okla. Crim. App. 2021), *cert. denied*, 142 S. Ct. 934 (2022) (Cherokee Nation Reservation); *Bosse v. State*, 499 P.3d 771 (Okla. Crim. App. 2021), *cert. denied*, 142 S. Ct. 1136 (2022) (Chickasaw Nation Reservation); *Sizemore v. State*, 485 P.3d 867 (Okla. Crim. App. 2021), *cert. denied*, 142 S. Ct. 935 (2022) (Choctaw Nation Reservation); *Grayson v. State*, 485 P.3d 250 (Okla. Crim. App. 2021), *cert. denied*, 142 S. Ct. 934 (2022) (Seminole Nation Reservation); *State v. Lawhorn*, 499 P.3d 777 (Okla. Crim. App. 2021) (Quapaw Nation Reservation); *State v. Brester*, 531 P.3d 125 (Okla. Crim. App. 2023) (Ottawa, Peoria and Miami Reservations); *State v. Fuller*, 547 P.3d 149 (Okla. Crim. App. 2024) (Wyandotte Reservation).

120. *See Tribes File Federal Suit Against Gov. Stitt and Wildlife Department Over Prosecution of Hunting and Fishing on Tribal Land: Chickasaw Nation, Choctaw Nation of Oklahoma and Cherokee Nation Defend Tradition, Sovereignty and Treaty Rights*, CHOCTAW NATION OF OKLA. (Nov. 18, 2025), <https://www.choctawnation.com/news/news-releases/tribes-file-federal-suit-against-gov-stitt-and-wildlife-department-over-prosecution-of-hunting-and-fishing-on-tribal-land/>.

121. *See generally Water Settlement Agreement*, *supra* note 27.

sovereign rights while the state claims authority to prosecute crimes within the state. These issues are contemporaneous with tribal authority regarding environmental regulation of tribal lands and waters where the tribes are asserting unlawful interference by the state and governor.<sup>122</sup> The lawsuit raises the issues of *McGirt*'s affirmation of tribal authority, sovereignty, and jurisdiction to regulate members' hunting and fishing rights in Indian Territory, including non-Indian fee lands where a tribal member has consent, permission, and/or a lease to hunt on non-Indian lands in the Indian Territory.<sup>123</sup> In the separate Muscogee Creek case, the Tribe argues that the state's attempt to ticket and prosecute tribal citizens for hunting without state licenses unlawfully infringes on treaty rights and tribal sovereignty, citing the precedent set by *McGirt*.<sup>124</sup>

The agreement limits Oklahoma City's water withdrawals based on lake levels to protect local recreation and wildlife. Oklahoma City is restricted to approximately 37.5 billion gallons annually, whereas they could have taken up to 88.8 billion without the agreement.<sup>125</sup> In February 2024, the Department of the Interior certified that all conditions for the settlement were met, effectively finalizing the legal framework for the long-term. Nevertheless, ongoing monitoring between the Five Tribes, environmentalists, and conservation groups (like the Sierra Club, Oklahomans for Responsible Water Policy, and others) continue to push for scientific research to ensure "sustainable management" as the state-tribal

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122. See Complaint for Plaintiff, *The Cherokee Nation v. Free*, No. 4:25-cv-00630-CVE-JFJ (N.D. Okla. Nov. 18, 2025) (alleges Governor Stitt and the Oklahoma Department of Wildlife Conservation violated tribal sovereignty and treaty rights by appointing a special prosecutor (Russ Cochran) to cite tribal citizens for hunting/fishing without state licenses on reservation land). Note: The defendants in this suit include Wade Free (Director of the Oklahoma Department of Wildlife Conservation), Nels Rodefeld, and Special Prosecutor Russ Cochran. See also *Stitt v. Drummond*, No. 122662 (Okla. Nov. 12, 2025) (Governor Stitt sues Attorney General Drummond to block a binding legal opinion (issued in December 2025) that declared the state's tribal hunting enforcement policy illegal); Katrina Crumbacher, *Oklahoma Governor and Wildlife Sue Attorney General Over Tribal Hunting Opinion*, THE J. RECORD (Feb. 2, 2026), <https://journalrecord.com/2026/02/02/oklahoma-sues-ag-tribal-hunting-opinion/>; cf. Federal Law Preemption of Oklahoma Wildlife Code, 19 Op. Okla. Att'y Gen. 2 (2025) (stating that the state cannot prosecute tribal members for hunting/fishing on their own reservations).

123. Complaint for Plaintiff, *The Cherokee Nation*, *supra* note 122.

124. The Muscogee Nation filed a separate suit regarding similar issues, with proceedings ongoing in January 2026. See Complaint for Plaintiff, *Muscogee (Creek) Nation v. Wade Free*, No. 4:26-cv-00003 (N.D. Okla. Jan. 5, 2026); see generally Sarah Liese (Twillia), *Muscogee Nation Wages Its Own Legal Battle Against State Officials Over Hunting, Fishing Rights*, KOSU (Jan. 8, 2026), <https://www.kosu.org/news/2026-01-08/muscogee-nation-wages-its-own-legal-battle-against-state-officials-over-hunting-fishing-rights>.

125. Chad Hunter, *High Court Rejects Tribal Hunting, Fishing Lawsuit*, CHEROKEE PHOENIX (Mar. 25, 2026), [https://www.cherokeephoenix.org/news/high-court-rejects-tribal-hunting-fishing-lawsuit/article\\_81c442ac-89ac-4288-b18c-fed3c32ce250.html](https://www.cherokeephoenix.org/news/high-court-rejects-tribal-hunting-fishing-lawsuit/article_81c442ac-89ac-4288-b18c-fed3c32ce250.html).

commission evaluates future water proposals.<sup>126</sup> While this landmark agreement was reached between the Choctaw, Chickasaw, and Oklahoma City to settle decades of conflict over water resources, tensions remain regarding the implementation and long-term control of water resources in southeastern Oklahoma, particularly Lake Sardis and the Kiamichi River Valley that are rooted in 19th-century treaties. Most importantly, the core conflict that involves these disputes revolves around tribal sovereignty within the state, specifically whether the state can regulate environment regulations, hunting and fishing licenses, company activities on tribal lands, and ultimately whether the state or tribes control the water resources in the region.

CONCLUSION: MOVING TO A BETTER FUTURE WITH AN UPDATED WATER AGREEMENT

Given the issues arising under the agreement and the Governor of Oklahoma's political posturing thereto, the best approach for State, Federal Agencies, Tribal Nations, and all residents in the affected water settlement areas in Oklahoma, is to use concepts based on theories of equality and longevity for the sustained use of the water and all natural resources in the Kiamichi Valley and southeast Oklahoma. Tribes that have regulatory authority of water, as shown in the Yurok tribe example granted by the Environmental Protection Agency and treatment in a similar manner as a state status, allows the tribe to create water quality standards within their reservation that benefits all the communities around them and maintain a sustainable use plan.<sup>127</sup>

Any water use plans involving the waters in the water settlement area should always include more thorough assessments and evaluations of the impact on the environment, cultural resources, and sacred sites, as required by U.S. Army Corps of Engineers permitting<sup>128</sup> *via* a full environmental impact statement.<sup>129</sup> Such requirements should the standard for an unbiased

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126. Katrina Crumbacher, *Oklahoma Tribes Sue Gov. Stitt in Ongoing Fishing, Hunting Dispute*, THE J. RECORD (Nov. 19, 2025), <https://journalrecord.com/2025/11/19/oklahoma-tribes-sue-gov-stitt-hunting-rights/>.

127. *See* Oxendine, *supra* note 98.

128. While FERC handles the primary license termination, the USACE may require its own environmental review or input if the decommissioning involves issues described by Section 404 of the Clean Water Act (i.e., when the termination involves the discharge of dredged or fill material into waters of the United States) or Section 10 of the Rivers and Harbors Act (i.e., if the project involves structures or work in or affecting navigable waters of the United States).

129. An EIS is required for significant environmental impacts resulting from the decommissioning or removal of project works as with the loop pump electric power system proposed and terminated because of the impacts to the area's environmental sensitivity and native cultural resources as having an impact such that it required the necessity of studies the proponent for the project did not provide

oversight committee, as set out in an amended and updated water agreement; the committee should use Seventh Generation planning and other sustainable longevity models for present and future planning in regard to water use in the Settlement areas.

Failing to engage in forward-thinking planning is short-sighted and stagnant as most existing systems erase memory of the past, extract value for individual profit, and fail communities by squandering resources under a colonized natural-resource-exploitation model rather than a plan for long-term, sustainable use. A forward-looking governance has logic rooted in kinship, coherence, and long-view care. This worldview sees us as part of a long continuum: we are here because of those who came before us. And those who come after will live with what we leave behind and is a traditional Indigenous concept of genuine success.

Start with land where the Indigenous people historically lived and worked with so that you can understand their story. Acknowledge the impacts that shape today's decisions. When you live by principles of traditional Indigenous resource management and planning, urgency changes. Short-term wins seem less important than the long-term health of relationships between people, nations, and with the land itself. Planning in this mindset and using the law and the agreement to benefit each party is not about fear of the future.

- *It's about care.*

- *It's about continuity.*

- *It's about the belief that our actions today can be a gift to those who come long after we are gone.*

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for reconsideration. *See* 18 C.F.R. § 380 (FERC's regulations implementing NEPA). However, as of February 2026, FERC is proposing to amend its NEPA regulations to adopt Categorical Exclusions (CEs) for certain terminations or revocations of water power licenses that do not involve significant ground-disturbing work, which would reduce the need for a full EIS in some cases.

