

On July 27, 2011, long stretches of the Kiamichi River, above, were effectively dry, while on that same day, sprinkler water ran off of lush, green lawns and down the streets of “thirsty” Oklahoma City, below. See our “Water Myths” story on page 6.

## Is Okla. threatening your private property rights?

### From staff reports

Stream adjudication. Those two words have been the focus of multiple news stories throughout Oklahoma over the past few weeks, and have spawned new water bills filed for the upcoming legislative session.

Why? On Dec. 13, the Oklahoma Water Resources Board authorized its attorneys to file a stream adjudication — a suit to determine water rights — in Southeastern Oklahoma.

Oklahomans for Responsible Water Policy decries this move on the part of the board. To begin with, the OWRB does not and should not delegate its decision making to its attorneys. On its merits, such a lawsuit would be unprecedented, and would be little more than welfare for lawyers. A suit of this type is a massive legal action, launching a decades-long, generational battle that would pit Oklahomans against Oklahomans and cause thousands of Oklahomans to

hire lawyers to protect private property rights they already have.

The OWRB’s vote was held immediately after an executive session at its Dec. 13 meeting. Many citizens and elected officials from Southeast Oklahoma traveled to Oklahoma City to voice their objections, but were never given a chance to address members of the OWRB. The Board was advised by its attorneys not to let the public speak.

**What is a stream adjudication?**

Generally speaking, a stream adjudication is a complex lawsuit conducted in either federal or state court under specific law to determine who has rights to the use of water in a defined water system (*e.g.*, a watershed, river, tributary, *etc.*).

A *general* (or *comprehensive*) stream adjudication determines *all* rights to the use of water in a defined system. In a general stream adjudication, the plaintiff

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## Water legislation for 2012

### By Pennie Embry

From the crop of new bills filed at the State Capitol, it is clear water and water policy will be top priorities during Oklahoma’s new legislative session. This focus on the future of Oklahoma’s water, however, is not necessarily new. It has long been predicted that 2012 will be the Year of Water for our state.

Last fall, water-planning architects wound up the 2012 update to the Oklahoma Comprehensive Water Plan

(OCWP). The five-year, \$15 million study was intended to be a 50-year water plan for the state. It is supposed to be the groundwork legislators will use when crafting water policy intended to carry us halfway through the 21st century and beyond.

The state’s 50-year water plan has received much criticism. Oklahomans for Responsible Water Policy repeatedly stated — and continues to do so — that the OCWP reads more like an

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## Hogs and water

My grandpa used to lean against the fence or shed and watch our hogs eat. "You can learn a lot about people from watching hogs eat, boy," he'd say, and I'd nod my head like I knew what he was talking about.

Truth was, I had no idea what he meant; not until I spent nearly two decades in prison where I watched human nature expand and adapt to an unfettered new level, now-removed from societal expectations and norms. In this new world, artificially lit by halogen lights and imposed structure, the strong rose to the top and power absolutely corrupted. In the course of this evolution, a new sort of honor arose, one that had more to do with clout than it had to do with integrity, one that reminds me of corporate politics today.

After I was in there a while, I began to notice that people had quit using the words yes and no. They began saying, "On my momma," or, "On my set," or, "On my skin," (depending, of course, of their gang affiliation or other social identifier) to qualify their statements. It became confusing to me, a young man who'd grown up in Southeastern Oklahoma where most folks' yes generally meant yes and those whose didn't were known as liars.

Like my grandpa would say, when a pig grunts and knocks another pig out of the way so he or she can eat that food, it doesn't take a linguist to decipher what that grunt meant.

What does all this have to do with the OWRB/OKC politics/the water

war in Oklahoma/The Choctaws and Chickasaws?

Well, any student of history can tell you our history as a country is littered with wadded up, torn up and trampled pieces of paper called treaties that we signed with the original people of this continent as we swept across the country, stole their land and made manifest what we called destiny. During this process of "civilizing the country" we stretched the envelope on situational ethics.

While Oklahoma is and should be proud of the cultural riches of the many tribes who call this state home, not to mention the outright honor of being home to so many of the descendants of our Nation's Original People, the truth of the matter is that most of them arrived here at gunpoint and trailing blood. For many of those, Oklahoma wasn't their first "promised land," from the government; no, it was a wasteland that no one else wanted, a wasteland they'd been moved to after being forced from places they'd already been moved to but were now more desirable and we had now decided we wanted or needed.

History, it is said, repeats itself. If that is true, OKC's politics will trample tribal rights and forever tarnish our State.

In prison, where power ruled absolutely, yes and no was situational, depending on the amount of power you had.

My grandpa said you could learn a lot about people from watching hogs eat.

Bo Cox  
Norman, Okla.

## Responsible water policy starts with you

Responsible water policy starts with YOU. The need for a water conservation, reuse and recycling program is one priority recommendation that emerged from the 5-year, \$15 million state water study. It is also the subject of SB 1484 filed by Sen. Jerry Ellis (D-Valliant).

Use these water tips to conserve, recycle, and/or reuse thousands of gallons of water each year:

- ◆ When washing dishes by hand, don't let the water run while rinsing. Fill one sink with wash water and the other with rinse water.

- ◆ Turn off the water while you brush your teeth and save 4 gallons a minute. For a family of four, that's 200 gallons a week.

- ◆ Turn off the water while you shave and you can save more than 100 gallons a week.

- ◆ Wash your produce in the sink or a pan that is partially filled with water instead of running water from the tap. Collect that water and reuse to water houseplants.

- ◆ Some refrigerators, air conditioners and ice-makers are cooled with wasted flows of water. Consider upgrading

with air-cooled appliances for significant water savings.

- ◆ Run your washing machine and dishwasher only when they are full and you could save 1,000 gallons a month.

- ◆ If your shower fills a one-gallon bucket in less than 20 seconds, replace the showerhead with a water-efficient model.

- ◆ Keep a bucket in the shower to catch water as it warms up or runs. Use this water to flush toilets or water plants.

- ◆ Support projects that use reclaimed wastewater for irrigation and industrial uses.

# Chickasaws, Choctaws develop essential water planning points

ADA, Okla. — The Chickasaw and Choctaw Nations announced a seven-point plan intended to clarify the Nations' water resource management priorities in light of recent litigation over water rights in their southeastern Oklahoma homelands.

These points, dubbed "The Essentials," would ensure that every Oklahoman's water needs will be met while respecting the rights and wishes of the Nations with regards to the removal of water from their historic territories.

"Like other Oklahomans, the Chickasaws and Choctaws want to preserve the state's natural beauty and precious water resources for future generations," said Gov. Bill Anoatubby of the Chickasaw Nation. "The seven-point plan we have developed outlines the key points — the essentials, if you will

— that any water management plan must address in order to ensure the continued sustainability of our water supply and prosperity of our great state."

By publically outlining their water management priorities, the Nations hope that they can work together with state leaders to develop a water plan that meets the needs of urban and rural Oklahoma while maintaining the environmental health of the state's rivers, streams and lakes. Faced with the possibility of prolonged litigation, leaders of both tribes have repeatedly expressed a preference to settle their differences with the state through negotiation.

"The Nations have no desire to challenge existing permitted uses of water by any Oklahoman," added Chief Gregory E. Pyle of

the Choctaw Nation. "Rather, the lawsuit filed against state officials and Oklahoma City was designed to ensure that our rights are taken into account in any future plan to remove additional water from our historic homelands."

The plan outlines the following water resource management essentials:

**Urban.** It's essential to meet the water needs of our urban centers — Oklahoma City and Tulsa — in order for all Oklahoma to prosper.

**Towns and rural.** It's essential to meet the water needs of our growing towns and rural Oklahoma so that their economic potential is realized.

**Tourism.** It's essential to meet the water needs for tourism, Oklahoma's third-largest industry. This means holding water

levels high enough for water recreation uses.

**Agriculture.** It's essential to meet the water needs of our state's farmers and ranchers.

**Drought defense.** It's essential that our water plan puts Oklahomans first and prepares for the worst. Our current serious drought reinforces the importance of drought defense.

**Sustainability.** It's essential that our water resources are certifiably sustainable so the supply will be there when we need it. The Chickasaw and Choctaw Nations are committed to environmental stewardship of our water resources.

**Unity.** It's essential that Oklahomans work together cooperatively to create a water plan for the entire state.

"We call on state leaders to work with us to develop a sus-

tainable water management plan for the greater good of all Oklahomans," said Anoatubby. "We firmly believe that state and tribal leaders can resolve our differences through negotiation instead of proceeding with the general stream adjudication process proposed by the State of Oklahoma, which could prove costly and potentially take decades to resolve."

The Chickasaw and Choctaw Nations are currently working with the U.S. Army Corps of Engineers to develop a regional water plan that meets the goals outlined in The Essentials. The tribes believe that having a science-based plan is critical to sustainable management of water resources to support economic development, recreation, household use and to provide for the environmental health of Oklahoma's water supply.

## RIGHTS

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files suit against *all* persons — both known and unknown — who *may* claim a right to water in the subject stream system, thus requiring such persons to *either* go to court to make their claim *or* risk forever waiving it.

Such suits typically take decades to process (and can cloud property titles.) When a decree is entered that defines each right in relation to all other adjudicated rights, that provides the basis for the *administration* of the adjudicated system — a process that can spawn its own litigation.

Property owners who would be sued in Southeastern Oklahoma and wind up footing the multi-million dollar cost of the

suit — including the state's legal costs — have had *no opportunity* to voice their concerns prior to the State making this decision.

**Why is the OWRB considering such a suit?**

The OWRB's motives appear to be to open the way for Oklahoma City to take vast amounts of water from the Kiamichi River system. But, the OWRB won't admit as much. Instead, a statement from the State Attorney General's office blames the suit (that the State's attorneys would file) on the Indian Tribes. Specifically, the OWRB claims the suit would protect the water rights of Oklahomans from the Tribes.

A recent press release from the Choctaw and Chickasaw Nations disputes the OWRB's statements:

"We cannot state strongly enough that the tribes have no interest in disrupting any individ-

ual's current use of water that is made pursuant to a valid permit. The lawsuit filed against state officials and Oklahoma City was never intended to take action against individuals. We stand united with the farmers, ranchers, business owners and residents who depend upon our shared water resources. Our goal is to have our voice — and our rights — respected and included in any decision on proposals to remove waters from our homelands."

**Oklahomans for Responsible Water Policy asks:**

How can suing thousands of your own citizens without even discussing the matter with them beforehand be for their own good?

Why did the Attorney General's office, in its stream adjudication press release, not reveal that the cost of such a suit, INCLUDING THE COSTS ON BE-

HALF OF THE STATE, would be charged against those holding water rights?

Oklahomans for Responsible Water Policy believes the state water board plan to authorize suit was hatched in an attempt to further special interests and deflect attention from its prior secret deal with OKC over Sardis Lake. This privately negotiated deal intends to move all the available water from Sardis Lake as well as water from the Kiamichi River to OKC with no regard for the economic and environmental devastation to Southeast Oklahoma that would result.

**If the suit is not filed, why should Oklahomans worry?**

When this edition of *Oklahoma Water Issues* went to press, the state has not yet filed suit, leading some to believe the threat is over. However, the Dec. 13

move by the OWRB shed light on a larger problem: that an existing water statute threatens the private property rights of Oklahomans.

As written, this statute allows the OWRB to launch a suit or suits against Oklahoma citizens to determine water rights, and does not allow the citizens with water rights to have a voice about being dragged into such a suit; the law also makes those being sued over water rights they already possess responsible for the cost of the suit.

Rep. Ed Cannaday and Sen. Jerry Ellis have filed water legislation to restrict the power of the OWRB and give property owners a real voice in any decisions to launch stream adjudication suits.

Read more about this and other proposed water legislation on page 4.

# Oklahoma WATER ISSUES

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LEGISLATION

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accounting report than a plan, and that report has a heavy emphasis on what planners deemed “excess and surplus water” in some parts of the state. Excess and surplus water is the amount of water considered available for export from one watershed to meet the needs in another.

Non-consumptive water uses, such as water for recreation, fishing and environmental health, are neither quantified nor protected by the plan. Recreational waters, which form a large part of the economy in Southeast Oklahoma and generate billions of dollars annually, were mostly labeled as “excess and surplus” (available to be transferred out of the basin). No studies were done to show how such a transfer would affect local economies and the environment.

From mid-summer into late fall, a special Joint Legislative Water Committee met multiple times to review and study various aspects of the water plan. The 16 senators and representatives on this committee will share what they learned with fellow legislators in this new session.

The updated state water plan, the 2011 drought stretching into 2012, Sardis Lake, lack of representation from Southeast

Oklahoma on the state water board, the threat to Oklahoma’s recreational waters, the growing need for water conservation in Oklahoma, ongoing efforts to move Oklahoma’s water into Texas, and a potential stream adjudication that could threaten the personal property rights of thousands of Oklahomans: these have all triggered one or more of the many water bills filed this session. Below is a recap of some of those bills.

HB 2552 The People’s Water Act

This bill by Rep. Eric Proctor (D-Tulsa) and Sen. Jerry Ellis (D-Valliant) places the decision to sell water out-of-state in the hands of Oklahoma voters.

The sale of Oklahoma’s water out-of-state seems to never be off the table. Despite more than a decade of citizen efforts that launched first a moratorium on out-of-state water sales, and then HB 1483, a bill that restricts such sales, there are still those in Oklahoma government who

want to sell Oklahoma’s water out of state — specifically to Texas. Under HB 1483, the legislature has the final say in whether we sell or do not sell Oklahoma’s water outside the borders of Oklahoma.

“Powerful special interest groups from Texas are working to ensure that the people are kept out of this decision making process,” said Rep. Eric Proctor. “This decision should not be made in closed-off rooms or as often happens, in

a midnight session of the State Legislature.

“Our bill would take the power from politicians, lobbyists and special interest groups and give the choice to the people of Oklahoma. If the State House and Senate make a decision on water, the people would have to give their okay as well. Oklahoma’s water policy should be made by Oklahomans, not by federal courts or lobbyists and definitely not by the State of Texas.”



HB 2202



This bill by Rep. Ed Cannaday (D-Porum) and its companion bill, SB 1333 by Sen. Jerry Ellis (D-Valliant) amend current stream adjudication statutes to set conditions that must be met before an incursion into property owners’ rights results when the Oklahoma Water Resources Board files suit under the existing language.

Current stream adjudication law (82 Okla. Stat. § 105.6) allows the OWRB to institute a suit on behalf of the state to determine all rights to the use of water in a stream system. By law, the cost of such a suit, including costs on behalf of the state, falls on the parties to the action. In other words, by filing such stream adjudication,

the state water board would be reaching into the pockets and spending the money of those persons who have or claim to have water rights in the affected stream system. Those with water permits or riparian rights would have to pay to prove they have what they have had for years, often for a lifetime. Those with water rights also have no say in whether or not they wish to be sued.

HB 2202 would set the following conditions to be met before the state could file such a suit:

- ◆ The Board must provide notice to all persons in every county where a stream may exist;
- ◆ Explain to all such persons who receive notice the reasons

for this suit in its view and in the interests of the persons claiming rights in the stream system;

- ◆ Consider impacts to the natural resources of the area and groundwater flows;
- ◆ Hold a public hearing and allow a reasonable period of public comment on any planned adjudication; and
- ◆ Fully and adequately respond to all comments received.

If a majority of persons claiming a right to use water in a stream system under consideration for stream adjudication object to this action by the Board, the Board shall be prohibited from initiating the suit. The Board’s authority shall be restricted to only one defined stream system at one time.

# HB 2334



## Regional water groups

This bill by Rep. Brian Renegar (D-McAlester) defines guidelines and procedures for establishing regional water planning groups in Oklahoma.

Many of our neighboring states long ago realized that top down water planning was not an effective way to manage water. Water regions within these states are vastly different, both in water demands and water supply. Those states' officials learned water planning from the bottom up (which places control of local water issues in the hands of locals) works well.

There are sharp differences among some of the different water regions of Oklahoma. Protection of non-consumptive water uses and the multi-billion tourism industry they support is important to Southeast Oklahomans.

The OCWP acknowledged that such differences might exist, and one of its key recommendations was to create regional water planning groups. Oklahomans for Responsible Water Policy supports this recommendation, but urges the legislature to give these groups some real power to keep

decisions about local water in the hands of local people.

"HB 2334 will form at least 13 Regional water planning groups. In essence, it sets up some local control of water in those regions," said Rep. Renegar. "I've received widespread support for this bill, something I feel is ironic. Three years ago I introduced an almost identical bill, my 'Basin of Origin Bill.' It achieved many of the same things. Back then, the committee chairman said it was a little too much for the state to consider.

"Oh what a difference three years and a major drought makes."

# HB 2333

## Protecting the water beneath our feet

This bill by Rep. Brian Renegar (D-McAlester) requires the OWRB to negotiate groundwater basin or sub-basin contracts or compacts with the federal government and neighboring states for shared aquifers.

HB 2333 is aimed at obtaining assistance, coop-

eration, and support for the development and implementation of conservation and use plans for groundwater basins or sub-basins that underlie Oklahoma and another state or states.

"I filed this bill because during a Joint Legislative

Water Committee meeting last year, I asked Charles DuMars, the attorney Oklahoma hired to fight Tarrant County, if it would be wise to attempt multi-state water compacts to protect our aquifers. His answer was strongly in the affirmative."



# SB 1484

## Conservation, reuse and recycling

This bill by Sen. Jerry Ellis (D-Valiant) creates the Water Conservation, Efficiency, Recycling and Reuse Task Force.

Oklahomans for Responsible Water Policy believes all of Oklahoma — especially municipalities — should aggressively promote water conservation. The city of El Paso has not increased its water usage since 1990, and some cities are going for the 50-year horizon with conservation planning. New technology makes this goal attainable. There is a state water plan recommendation for water efficiency and

reuse, and ORWP supports this recommendation.

Recently, the Oklahoma Congress of Mayors passed a resolution identifying water reuse as a "practical, reliable, responsible and viable alternative for extending water supplies for Oklahoma cities..."

SB 1484 creates a Water Conservation, Efficiency, Recycling and Reuse Task Force made up of nine appointed residents of Oklahoma who must have knowledge of a variety of water uses and interests.

The purpose of the task force is to study water conservation pro-

grams in other cities and states, and "...gather information necessary to make recommendations to the Governor and the Legislature to implement a program of incentives... to encourage improved irrigation and farming techniques, efficient (green) infrastructure, retrofitting of water-efficient infrastructure, use of water recycling/reuse systems in new buildings, promotion of "smart" irrigation techniques, control of invasive species, artificial recharge of aquifers, and use of marginal quality waters, including treated gray and wastewater."





# MYTHS

*about*

## Oklahoma water

The mere mention of selling or moving Oklahoma's water stirs the emotions of almost all her citizens. Some think we should sell our water, while others feel we should conserve and protect our water for future generations and economic development. As metro areas like Dallas/Ft Worth and Oklahoma City continue to grow, so will their thirst for water. Where they will get this water is being debated today, and much rhetoric and misinformation surrounds this issue. As we begin this legislative session, it's important to examine and rebut some water myths.

By DON FAULKNER



### **Southeast Oklahoma has excess water.**



The State Water Plan says several water basins in Southeast Oklahoma have excess water. They determined this by totaling consumptive water use (i.e. municipal and industrial, agricultural, oil/gas and thermoelectric power) in individual water basins and then projecting each basin's water needs for the next 50 years. All water left over, except for a small "reserve," is considered "excess" and available to be permitted and moved out of the basin.

One obvious flaw in this method is that it defines water supply based on averaging water available in a basin throughout the year. Seasonal variations in water flow were not considered. So while Southeast Oklahoma may have abundant water in spring and fall some years, in the summers it suffers very dry periods with low water levels. Cities claiming to be "thirsty" will certainly try to take this water year round, but especially during dry periods. On July 27, 2011, the Kiamichi River had a zero flow rate — effectively dry — while on the same day, residents in "thirsty" OKC watered their lawns so much that water ran down the streets and into the storm drains. (see photos at [www.orwp.net](http://www.orwp.net))



### **The Oklahoma Comprehensive Water Plan (OCWP) is comprehensive.**



The state spent \$15 million formulating a water plan for all of Oklahoma. But a look at the OCWP reveals many gaps. The state has no current studies on most of Oklahoma's aquifers. By not knowing how much water is in

our aquifers and how much is being removed, people with wells may one day soon find those wells going dry.

The OWRB also didn't study how much water must remain in a stream system to support wildlife and the many economies built around water-based tourism. Tourism is the third largest industry in Oklahoma. How can the state exclude quantifying recreational water use from a state-wide water plan? The OWRB also did not study the environmental or economic impact removal of water would have on the donor basin.

How can our state government establish responsible water policy if the OCWP doesn't cover all the variables concerning Oklahoma water?



### **Officials in Oklahoma City have the right to take water from Sardis.**



On June 10, 2010, the OWRB voted to sell storage rights for Sardis Lake to Oklahoma City. For this transfer of rights from the state to OKC to be valid, the U.S. Army Corps of Engineers must approve it. To date, the USACE has not approved this transfer.

The Water Resources Board also assumed it had the right to permit almost 90 percent of Sardis water yield to OKC without any regard to tribal claims. Now, it seems the courts will decide who owns that water. You wouldn't buy property without determining if there is a cloud on the title (more than one owner). How can Oklahoma sell (or Oklahoma City purchase) water without first determining who legally owns that water? Wouldn't it be wiser and less costly to the citizens of Oklahoma to negotiate these issues rather than litigate?



### **Water is just running down the rivers to the ocean. Why not sell it?**



Approximately 30 years ago, Arkansas, Louisiana, Texas and Oklahoma signed the Red River Compact. In this document, these four states established guidelines for the use of water from the Red River. The runoff water that flows into the Red River from Oklahoma helps dilute particles and pollutants, thus cleansing the basins and is not excess/surplus. If this water is prevented from entering the Red River, municipalities downstream could incur higher water treatment costs, and farmers could find the water too polluted to use for irrigation. If this occurs, Oklahoma could be sued to cover this increased cost.

The Red River is also a navigable river. If we remove water from the river and affect the ability to navigate it, will that also generate litigation? To prevent possible lawsuits, further studies need to be done to determine the effect that removal of water from our rivers and streams would have on the Red River.



### **Stream adjudication is necessary because of the tribal lawsuit.**



The OWRB voted Dec. 13, 2011, to allow their lawyers to sue the citizens of Southeastern Oklahoma to adjudicate all water rights, not just permitted rights but constitutional riparian rights, in the Kiamichi, Muddy Boggy, Clear Boggy, North Boggy and McGee Creek basins and all their tributaries. They claim this action is necessary because of the lawsuit

filed by the Choctaw and Chickasaw tribes. This lawsuit will force the landowners in these basins to pay, not only to defend their water rights, but for the legal costs the state will incur in suing them. If the landowners refuse to participate in this litigation, they may risk losing their water rights.

• • •

All Oklahomans use water, and we should all be concerned about managing this precious resource. We must pay attention to water policy. Soon our legislators will craft new water policy that will affect every citizen for decades. Will we look back 50 years from now and ask why we didn't take time to complete and scientifically validate the Oklahoma Comprehensive Water Plan before taking action?

Oklahomans should insist on examining all issues surrounding the use of our water. We should evaluate recreational water needs and the economies they support, drought conditions, weather patterns, environmental impact, economic impact, future needs in each water basin, conservation, and tribal water rights. The state should help all regions of Oklahoma utilize the water within their particular basins for local economic development. One area of our state should not suffer in order for another area to prosper. Rural Oklahoma should have the same opportunities for a prosperous future as urban areas.

As our legislators prepare for the new session, tell them that before establishing policy that affects everyone, they must take the time to thoroughly study all issues surrounding Oklahoma's water. Don't make policy we will later regret.



# Tarrant County, City of Hugo appeal to Supreme Court

By Pennie Embry

Last fall, the U.S. 10th Circuit Court of Appeals ruled in favor of Oklahoma in two lawsuits filed in an attempt to grab water from Oklahoma for Texas. In January, plaintiffs in both suits filed petitions for writ of certiorari, asking the U.S. Supreme Court to review decisions by the 10th Circuit Court of Appeals that dismissed the lawsuits against Oklahoma.

In its case, the City of Hugo sought to force Oklahoma to allow the sale of 200,000 acre-feet of water to Irving, Texas. The Hugo case was dismissed by the appeals court on the grounds that a political subdivision of a state does not have standing to sue its own state. In its petition, Hugo is asking the Supreme Court to review this part of the decision.

In 2007, Tarrant Regional Water District (TRWD) filed permits with the OWRB to divert billions of gallons of water from tributaries of the Red River *within* the borders of Oklahoma. Although Tarrant water officials acknowledge those waters flow into the Red River where Texas can then legally take it, TRWD states the water in the Red River is too salty to be economically useful.

TRWD sought to meet its growing water needs by coming into Oklahoma and taking water. In a lawsuit that Tarrant County lost both in federal district court and in the district court of appeals, it tried to interpret the Red River Compact to support this action.

The Red River Compact apportions Red River waters to four states — Oklahoma, Texas, Arkansas and Louisiana. TRWD argued that, in the Red River Compact, the specific sub-basin that includes the tributaries of the Kiamichi River below the Hugo Dam are defined by geographical points, not state boundaries. So, TRWD argues, it can take its share of Red River waters of that sub-basin from anywhere in that sub-basin, even if that means taking water from inside Oklahoma.

"The 10th Circuit concluded that was an incorrect reading of the compact,"

said Stephen Curtice, a New Mexico water attorney working on the Oklahoma/TRWD case. "And I agree."

Now Tarrant Regional Water District is petitioning the Supreme Court, hoping it will overturn the decision made by a lower court and supported by the court of appeals.

"Basically that's it," said Curtice. "They filed a petition with the Supreme Court; our response to that is due toward the end of February."

Filing an appeal with the U.S. Supreme Court is different from filing an appeal to district court. "When they (Tarrant County Regional Water District) appealed to the District Court of Appeals, the 10th Circuit had to hear the case. Everyone has the right to an appeal," Curtice explained.

Unlike that situation, not everybody has the right to have the U.S. Supreme Court review a circuit court decision. Instead, the plaintiff must convince the Supreme Court to take the case. Statistically, the U.S. Supreme Court takes a very small percentage of the cases it is asked to review. Whether or not it does take the case typically rests on specific criteria.

"Often they like to take cases where there is a circuit split," Curtice said. "We are in the 10th Circuit. So if the Fourth Circuit has reviewed a similar case and come to a different result, then that could be one grounds for the Supreme Court wanting to step in and give a sort of final answer."

"Also, if the case is a matter of substantial public importance, that would be the other grounds. Generally speaking, if you just say 'The lower court was wrong,' that's not enough to get the Supreme Court to review it."

Curtice and well-known New Mexico water attorney Charles DuMars are working with the State Attorney General's office on this latest chapter of the Tarrant County vs. Oklahoma case, but not on the latest filing by the City of Hugo. That case is being handled by the State Attorney General's office.



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# Broken Bow Lake



## The ORWP mission

Oklahomans for Responsible Water Policy (ORWP) is a grassroots citizens' organization created to protect Oklahoma's water resources, environment and way of life.

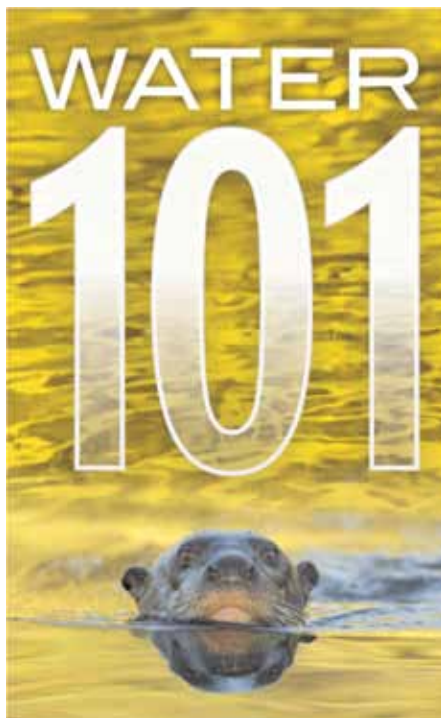
ORWP recognizes the necessity of prudent and reasonable water policy; as such, it is ORWP's mission to preserve and protect economic, agricultural, environmental and other local beneficial uses of all of Oklahoma's pristine water resources.

We consider it our obligation to defend the water resources within Oklahoma boundaries — resources that are truly the lifeblood of Oklahoma. In less than two years, ORWP has grown to almost 12,000 members, indicating just how important this issue is to fellow Oklahomans.

ORWP embraces the task at hand and urges all citizens concerned with protecting Oklahoma's pristine water resources to join our organization.



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# Living along the Kiamichi River

by Debbie Leo



**The Kiamichi is an incredibly rich area, but not in a “cash value” way.**

Once upon a time an opportunity came along for some city dwellers from Colorado to live along a river in Southeastern Oklahoma. These naive city folk didn't realize they'd stumbled onto a jewel of grand proportion. The Kiamichi River, which runs for a mile along their border, is a natural wonder and home to one of the most diverse ecosystems in America. We'd like to share with you some of the special wonders of the forests and stream beds of the Kiamichi River basin.

The river system of the Kiamichi mountains is home to pileated woodpeckers. Rather large red-headed woodpeckers, much like “Woody” the woodpecker, are awesome to

see as they fly from tree to tree. There are river otters, reintroduced by the Department of Fish and Wildlife; playful and shy, they also find a home here.

Fresh-water mussels — some endangered — struggle to survive the severe drought conditions we've experienced the last few years. Water released from Sardis Lake this last summer season helped save some habitat for the mussels. These fresh-water mussels help keep the water clean as it moves down to Hugo Lake and on to the Red River.

Bald eagles fly here. Once endangered, they soar freely along the river in winter and

spring. Great blue herons, egrets, wild turkey, white-tail deer, beaver, frogs, toads, snakes and chiggers; if you can name an Oklahoma wildlife species, then it probably lives and/or grows here.

Our vast variety of trees, bog plants, river plants, wild fruits and berries are unique to southeastern Oklahoma. It's no wonder indigenous peoples from the distant past thrived here. Ancient historical sites abound along the river valley. The Kiamichi River has been used throughout history as a trade route, a passage to the Gulf of Mexico.

Not so much has really changed here over time. The

many nature-based “industries” that have come and gone throughout the years have relied on the waters of the Kiamichi. The small “mom and pop” businesses still survive. The wildlife still survives, and the people who live here along the river remain faithful caretakers of the beauty that surrounds them.

It is an incredibly rich area, but not in a “cash value” way. It is rich in the natural, earthy way that supports life for all the species who share the Kiamichi River basin and her waters. We just get to care for this place for a while, as it has an agenda all its own. The river ebbs and flows to the cycles of nature. Water others try to label “excess” is used by nature to keep safe the lives that thrive here. So be it. Let's fight to keep it this way.