

JAN 23 2014

## MEMORANDUM OF UNDERSTANDING

**OKLAHOMA SECRETARY  
OF STATE**

This Memorandum of Understanding ("MOU"), dated for convenience of reference January 1, 2014, by and between the Governor of the State of Oklahoma and the Governor of the State of Texas,

WITNESSETH:

WHEREAS, a portion of the boundary between the State of Oklahoma and the State of Texas is established as provided in the Red River Boundary Compact (the "Boundary Compact", which was enacted into law in 1999 in both States and consented to by the Congress of the United States in 2000, and which is codified at Section 12.002 of the Natural Resources Code of the Texas Statutes and Section 6106 of Title 74 of the Oklahoma Statutes) and the Texoma Area Boundary Agreement executed July 28, 2000, (the "Boundary Agreement") between the two States; and

WHEREAS, the Flood Control Act of 1938 (P.L. 75-761) authorized funding for Denison Reservoir (now known as Lake Texoma) for flood control and other purposes; and

WHEREAS, Lake Texoma was subsequently constructed by the U.S. Army Corps of Engineers ("USACE") on the main stem of the Red River and is located partly in the State of Oklahoma and partly in the State of Texas; and

WHEREAS, in 1978 the States of Oklahoma and Texas, together with the States of Arkansas and Louisiana, entered into the Red River Compact (the "Apportionment Compact") to apportion the water of the Red River basin among the party States; and

WHEREAS, the Apportionment Compact was subsequently enacted into law in each such State and consented to by the Congress of the United States; and

WHEREAS, the Apportionment Compact provides in Section 4.04 thereof that the storage of Lake Texoma and flow from the main stem of the Red River into Lake Texoma is apportioned (1) in the amount of 200,000 acre feet to Oklahoma and 200,000 acre feet to Texas, which quantities include existing allocations and uses, and (2) additional quantities in a ratio of fifty percent (50%) to Oklahoma and fifty percent (50%) to Texas; and

WHEREAS, the North Texas Municipal Water District (the "District") is a conservation and reclamation district and political subdivision of the State of Texas, created and functioning under the laws of that State, which *inter alia* provides potable water to over 1.6 million residents and customers of the District's member and customer municipalities in the North Texas region; and

WHEREAS, the United States Supreme Court, in *Oklahoma v. Texas*, 206 U.S. 606 at 632 (1923), and *Oklahoma v. Texas*, 261 U.S. 340 at 342-343 (1923), noted that the Treaty of 1819 between the United States and Spain (8 Stat. 252) secures for the inhabitants of the State of Texas a right of reasonable access to the waters of the Red River along the state boundary, such

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as will enable them to reach the waters at all stages and to use the same for beneficial purposes in common with the inhabitants of the State of Oklahoma and of other parts of the United States; and

WHEREAS, the District holds a permit from the Texas Commission on Environmental Quality ("TCEQ") that authorizes use of 197,000 acre feet per year from Lake Texoma, which is within the Texas share of the Apportionment Compact allocation from Lake Texoma; and

WHEREAS, the District holds the necessary agreements with USACE for storage space in Lake Texoma to support its water rights allocation from TCEQ; and

WHEREAS, in 1987 the District constructed an intake structure (the "Texoma Pump Station") that extends into Lake Texoma from the south shore of the lake approximately between Latitude 33.932°N, Longitude 96.977°W and Latitude 33.818°N, Longitude 96.570°W, and that the District believed was located wholly within the State of Texas based on information available at that time; and

WHEREAS, following the enactment and approval of the Boundary Compact and the Boundary Agreement, the boundary line between the States in the area of the Texoma Pump Station was determined in accordance with the terms of the Boundary Agreement; and

WHEREAS, according to the boundary ascertained in accordance with the terms of the Boundary Agreement, six (6) of the pumps of the Texoma Pump Station, (hereinafter referred to as "Pumps") with a maximum total capacity of 544 cubic feet per second, are located wholly or partially within the State of Oklahoma; and

WHEREAS, the States desire to express their understanding that the circumstances of the location of the Pumps within the State of Oklahoma are unique and extraordinary, and that the District's continued use of water from the Pumps within the State of Oklahoma, including any replacement pumps of the same total capacity, is not improper and does not require any additional right or authorization from the State of Oklahoma as long as conditions in place upon enactment of the Boundary Compact and Boundary Agreement continue to be met.

NOW THEREFORE, in consideration of the foregoing, the Governor of the State of Oklahoma and the Governor of the State of Texas express their understanding and agreement as follows:

1. The use by the District of water from Lake Texoma has been in accordance with (a) the provisions of the District's water use permit from TCEQ under Texas law and (b) the State of Texas' apportionment of water from Lake Texoma.
2. The location of the Pumps within the State of Oklahoma was rendered so by the subsequent determination of the political boundary between the States as provided by the Boundary Compact and the Boundary Agreement.
3. As long as the District's use of water from the Pumps, or replacement pumps of the same total capacity, is in accordance with the District's water use permit from TCEQ and the

State of Texas' apportionment from Lake Texoma in accordance with the Apportionment Compact already consented to by the State of Oklahoma, the State of Oklahoma will not object to the location of the Pumps, or replacement pumps of the same total capacity, within the State of Oklahoma.

4. In order for the District to demonstrate compliance with this MOU and with the State of Texas' apportionment from Lake Texoma in accordance with the Apportionment Compact, TCEQ shall make available to the State of Oklahoma, through the Oklahoma Water Resources Board, the District's annual water use reports, in the same manner as those reports are submitted or otherwise made available to the State of Texas, TCEQ, or other appropriate Texas agency.
5. To the extent permissible under Texas law, the State of Texas shall never use against the State of Oklahoma in any manner, and shall defend and hold harmless the State of Oklahoma against any claim or demand by any Texas person leveled against, the nonobjection by the State of Oklahoma to the location of the Pumps, or replacement pumps of the same total capacity, in whole or in part within the State of Oklahoma as provided in this MOU.
6. The statutes of the State of Oklahoma that restrict export of water out of state, including but not limited to 82 O.S. §§ 105.12, 105.12A, 1086.1, and 1324.10, are not implicated by the location of the Pumps, or replacement pumps of the same total capacity, in whole or in part within the State of Oklahoma.

This understanding and agreement applies only to the unique and extraordinary circumstances of the location of the Pumps, or replacement pumps of the same total capacity. Other than as expressly provided in this MOU, the State of Oklahoma and the State of Texas reserve all rights and remedies available under applicable law.

In witness whereof, the Governor of the State of Oklahoma and the Governor of the State of Texas have approved and executed this MOU as shown below.

GOVERNOR  
OF THE STATE OF OKLAHOMA

GOVERNOR  
OF THE STATE OF TEXAS

Mary Fallin 11/17/14 RICK PERRY 11/17/14  
Mary Fallin Date Rick Perry Date

ATTEST:



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Chris Benge, Secretary of State

