SECOND STATEMENT OF JOINT PRINCIPLES AND ACTIONS

WHEREAS, this Second Statement of Joint Principles and Actions (Second Statement), dated this 20th day of February, 2013, is intended to extend and augment the Statement of Joint Principles and Action (First Statement) entered in 2003 among named Arkansas and Oklahoma Environmental Agencies, which with the addition of the Oklahoma Conservation Commission and Oklahoma Department of Agriculture, Food and Forestry, are herein after referred to as the "Parties"; and

WHEREAS, the States of Arkansas and Oklahoma share a common goal of improving water quality in the designated Scenic Rivers;

WHEREAS, in an effort to avoid costly and protracted litigation and administrative proceedings which would further strain relationships between the two States and distract from cooperative efforts needed to protect and improve water quality in the designated Scenic Rivers, the two States entered into a Statement of Joint Principles and Actions in 2003 (the "First Statement");

WHEREAS, under the First Statement, both states agreed to undertake interim actions designed to improve river clarity and substrate quality in the designated Scenic Rivers and their Watersheds including substantial upgrades to wastewater treatment plants and the development and implementation of regulations restricting the use of nutrients to fertilize lands within the Scenic River Watersheds lands;

WHEREAS, Oklahoma agreed in the First Agreement to re-evaluate, by 2012, the 0.037 mg/L Numeric Phosphorus Criterion based on the best scientific information available.

WHEREAS, the two States believe it is in their best interests to continue to work cooperatively to protect and improve water quality in the designated Scenic Rivers and to avoid costly and protracted litigation and administrative proceedings which would further strain relationships between the two States and distract from those cooperative efforts.

NOW THEREFORE, the Parties enter into this Second Statement of Joint Principles and Actions.

THREE YEAR EXTENSION OF COMMITMENTS

For a period of three years commencing February 20, 2013 and ending February 20, 2016 (the "Term"), the Parties make the following commitments:

The States, through the appropriate Parties, will continue to require existing point source dischargers to the Illinois River Watershed with a design capacity of greater than 1 MGD to operate under existing National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of not more than 1mg/L based upon a 30 day average, assuming the U.S. Environmental Protection Agency does not object. Oklahoma's law prohibits increased loading from existing dischargers and the permitting of new dischargers in Oklahoma into its Scenic River watersheds; existing dischargers may expand and new dischargers may be permitted in Arkansas provided that the cumulative permitted loading of phosphorus (in pounds per day) in the watersheds of any of the six Scenic Rivers will not be increased during the Term of this Second Statement.

The States, through the appropriate Parties, will continue implementation and enforcement of regulations governing the use of nutrients to fertilize lands within the designated Scenic River Watersheds. Subject to the limitations of the Parties to bind their respective legislatures, the Parties shall not seek to modify current law or regulations governing the use of nutrients to fertilize lands unless the

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requested modification is at least as restrictive as current law applicable to that State's respective portion of the designated Scenic River Watersheds. To the extent funding is available, the Parties agree to maintain inspectors and nutrient management plan writers for their respective nutrient management regulatory programs for the designated Scenic River Watersheds equal to, if not greater than, current agency staffing levels.

Although information collected pursuant to Act 1060 of the 2003 Arkansas General Assembly, quantifying the amount of poultry litter stored, applied and transferred by individual poultry feeding operations is made confidential under the statute, the Arkansas Natural Resources Commission will prepare detailed compilations and summaries of this information and make these compilations and summaries available on at least an annual basis to Oklahoma environmental agencies and EPA. The Arkansas Natural Resources Commission will work with appropriate Oklahoma Parties in determining the format for these compilations and summaries (e.g., information by county, geographic area or watershed), as well as the amount of detail necessary to address reasonable concerns by Oklahoma Parties. Similarly, Oklahoma Parties will work with Arkansas Parties to provide comparable information for poultry operations in Oklahoma.

JOINT PHOSPHORUS CRITERIA STUDY

COST OF JOINT STUDY -- The Arkansas Parties agree to use best efforts to secure appropriate funding in the amount of Six Hundred Thousand dollars ($600,000) to complete a three-year water quality study of the designated Scenic Rivers and their watersheds.(the "Joint Study"). Although the Arkansas Parties agree to use best efforts to secure the funding for the Joint Study, the willingness of the State of Arkansas to fund the Joint Study is not, and shall not be, construed by any signatory to this document as a legal obligation of the State of Arkansas. Although the Arkansas Parties have explored some options and believe currently that a sufficient source of funds is available to undertake the Joint Study, the Arkansas Parties may also pursue state, federal and private grants which may be available to fully or partially satisfy the willingness of the Arkansas Parties to undertake the task of finding the funding for the Joint Study under this Second Statement. Failure to secure the funding necessary to complete the Joint Study within the Term of this Second Statement shall provide just cause for termination of the Second Statement.

The funds collected to pay for the Joint Study will be placed in the Arkansas-Oklahoma Arkansas River Compact Commission ("CC"). The CC will act solely as a repository for the funds and will disperse the funds at the direction of the Joint Study Committee.

MANDATORY STUDY COMPONENTS -- The primary purpose of the Joint Study is to determine the Total Phosphorous threshold response level, in milligrams per liter (mg/L), at which any statistically significant shift occurs in algal species composition or algal biomass production resulting in undesirable aesthetic or water quality conditions in the Designated Scenic Rivers. The Joint Study shall be completed in accordance with U.S. EPA Rapid Bio-assessment Protocols, incorporate quality assurance and control provisions consistent with EPA Guidance on Quality Assurance and Quality Control, and follow EPA's most recent guidance "Using Stressor-response Relationships to Derive Numeric Nutrient Criteria" (EPA 820-S-10-001, November 2010). The Joint Study shall include a sampling population that is adequate to determine the frequency and duration component of the numeric criterion. To the extent data from reference streams or sites is incorporated into the Joint Study, reference streams or sites shall, to the fullest extent possible, be limited to streams or rivers within the same EPA eco-region and comparable to the streams in the designated Scenic River watersheds in terms of stream order and watershed land uses.

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JOINT STUDY COMMITTEE -- The Joint Study will be funded by Arkansas and managed by a committee of six (6) individuals - 3 appointed by the Governor of the State of Oklahoma, 3 appointed by the Governor of the State of Arkansas (the "Joint Study Committee"). Each representative shall be qualified to design and conduct water quality studies. This committee will be authorized to select qualified scientific professionals to conduct the Joint Study and to formulate the specific scope of work for the Joint Study. The qualified scientific professionals selected or any professionals hired by the Joint Study Committee shall not reside in, nor have their principal place of business in, the States of Arkansas or Oklahoma. The Joint Study Committee members will be entitled to solicit input from stakeholders on aspects of the Joint Study such as proposed scopes of work, study protocols, sampling plans, candidate reference streams or sites and the selection of water quality indicators for the purpose of minimizing or avoiding future disputes about the methods and findings of the Joint Study. The Joint Study Committee will establish a reasonable schedule of project deliverables including at least two (2) interim written reports and at least one public meeting each year with stakeholders to provide a measure of transparency and public comment opportunities during the completion of the Joint Study. The final report and all data collected or reviewed during the Joint Study shall be made publicly available.

Failure of the Joint Study Committee to reach agreement on the procurement, execution or conduct of the Joint Study within the Term of this Second Statement shall provide just cause for termination of the Second Statement.

USE OF STUDY FINDINGS AND RESULTS -- The final report will provide an objective analysis of the water quality data and identify relationships, if any, between various concentrations of phosphorus in the designated Scenic Rivers and multiple ecological response levels commonly used in the scientific community to describe undesirable aesthetic and water quality conditions. The committee and the scientific professionals employed to complete the Joint Study will be asked to make specific recommendations as to what phosphorus levels, and what frequency and duration components of measure, are necessary to protect the aesthetics beneficial use and scenic river (Outstanding Resource Water) designations assigned to the designated Scenic Rivers, and based on overall stream health which shall include evaluating the relationship, if any, between phosphorous concentrations in the designated Scenic Rivers and biotic indicators of water quality, including primarily algal taxonomic composition and periphyton biomass. The purpose of the Joint Study is to provide reliable and objective data and analysis that will then form the basis for the Parties and EPA to make informed decisions about the scientific merit of any proposed revisions to the phosphorus criterion for the designated Scenic Rivers.

The Parties recognize that Oklahoma's total phosphorus criterion of 0.037 mg/L was adopted by Oklahoma to protect its designated Scenic Rivers' "aesthetic beneficial uses." Oklahoma's Water Quality Standards state the phosphorus criterion applies to protect the aesthetic use of the Scenic Rivers. OAC 785:45-5-19(c). Under the federal Clean Water Act, Arkansas has no aesthetic designated use for any waters of the state. Therefore, this Joint Study designed to help identify the phosphorus levels necessary to protect the aesthetic beneficial use of Oklahoma's designated Scenic Rivers shall not be binding upon or applicable to any study to develop nutrient criteria necessary to protect aquatic life or fish communities within any waters of the State of Arkansas.

The States of Arkansas and Oklahoma, acting through their respective Parties, agree to be bound by the findings of the Joint Study. Oklahoma, through the Oklahoma Water Resources Board, agrees to promulgate any new Numeric Phosphorus Criterion, subject to applicable Oklahoma statutes, rules and regulations if significantly different than the current 0.037 mg/L standard. "Significantly different" means the new Numeric Phosphorous Criterion exceeds -.010 or +.010 than the current .037 criterion. If the new Numeric Phosphorous Criterion is at or between .027 and .047, then the State of Oklahoma is not required to promulgate the new criterion in its water quality standards. Arkansas agrees to be bound by and to fully comply with the Numeric Phosphorous Criterion at the Arkansas-Oklahoma State line,

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whether the existing 0.037 mg/L standard is confirmed or a new Numeric Phosphorus Criterion is promulgated. Parties for the States of Arkansas and Oklahoma shall forego any legal or administrative challenges to the Joint Study.

SUSPENSION OF ADMINISTRATIVE PROCESSES AND COVENANT NOT TO SUE

In consideration of the commitments by each Party to cooperate in completing the Joint Study, the Parties agree to the following terms which are intended to avoid costly and distracting legal proceedings while preserving all Parties' legal rights.

Oklahoma, through the Oklahoma Water Resources Board, will propose a rule amendment that removes the date to achieve full compliance with the Numeric Phosphorus Criterion set forth in Oklahoma Administrative Code 785:45-5-19 and 785:45-5-25(d), provided that such rule amendment will have to be promulgated pursuant to law. Parties for both States will continue cooperative efforts to improve and protect water quality in the Scenic Rivers, and Parties for both States covenant and agree during the Term of this Second Statement not to institute or maintain administrative enforcement actions, judicial proceedings or to take regulatory actions contrary to this Second Statement.

The Parties reserve any and all rights, claims or causes of action that presently exist or which may arise during the Term of this Second Statement related to the First Statement, the Numeric Phosphorus Criterion and the TMDL (the "Tolled Claims") but covenant and agree not to initiate legal or administrative proceedings against any other Party to this Agreement related to the Tolled Claims.

The Term of this Second Statement shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by a Party to this Second Statement relating to the Tolled Claims. Any defense of laches, estoppel, waiver or other similar equitable defense to the Tolled Claims based on the running or expiration of any time period shall not include the Term of this Second Statement. The foregoing tolling agreement does not constitute any admission or acknowledgement of any fact, conclusion of law, or liability by any Party to this Second Statement. Nor does the foregoing tolling agreement constitute any admission or acknowledgement by any Party that any statute of limitations, or similar defense concerning the timeliness of commencing a legal or administrative action, is applicable to the Tolled Claims. The Parties reserve the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a legal or administrative action is applicable.

GENERAL PROVISIONS

Nothing in this Second Statement creates any rights or causes of action for any person who is not a Party to this Second Statement.

This Second Statement is not intended to affect any claims by or against a third party. However, if a third party initiates a legal or administrative proceeding related to water quality in the designated Scenic Rivers which is inconsistent with the terms of this Second Statement, the Parties shall take necessary steps to indicate to the Court their support for this document.

This Second Statement is effective upon execution by the Parties and without the requirement of filing with any Court and may be signed in counterparts.

This Second Statement, together with any provisions of the First Statement not superseded herein, contains the entire understanding between the Parties, and no statement, promise, or inducement made by

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any Party that is not set forth in this Second Statement, together with any provisions of the First Statement not superseded herein, shall be valid or binding, nor shall it be used in construing the terms of this Second Statement.

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Teresa Marks
Director
Arkansas Department of Environmental Quality

2/19/13
Date

J. Randy Young, P.E.
Director
Arkansas Natural Resources Commission

2/19/13
Date

Teresa Marks
Director
Arkansas Department of Environmental Quality

Date

J. Randy Young, P.E.
Director
Arkansas Natural Resources Commission

Date

Gary Sherrer
Oklahoma Secretary of the Environment

Feb 12, 2013
Date

J.D. Strong
Executive Director
Oklahoma Water Resources Board

Feb 12, 2013
Date

Steven A. Thompson
Executive Director
Oklahoma Department of Environmental Quality

Feb. 12, 2013
Date

Edward H. Fite, III
Administrator
Oklahoma Scenic Rivers Commission

February 20, 2013
Date

Jim Reese
Secretary and Commissioner of Agriculture
Oklahoma State Board of Agriculture

Feb 15, 2013
Date

Mike Thralls
Executive Director
Oklahoma Conservation Commission

Feb 15, 2013
Date

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It is my opinion that approval of this Second Statement is within the authority of the Oklahoma officials and agencies executing the same.

E. Scott Pruitt, Attorney General of Oklahoma

2/20/2013
Date

It is my opinion that approval of this Second Statement is within the authority of the Arkansas officials and agencies executing the same.

Dustin McDaniel, Attorney General of Arkansas

2-19-13
Date