

Attorney: Stream adjudication lawsuit move not a surprise

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By M. Scott Carter

[MARCH 14, 2012 – OKLA. CITY] City and state officials are still scratching their heads over a legal maneuver by the Department of Justice Monday that shifted a stream adjudication lawsuit from the Oklahoma Supreme Court and placed it back in federal court.

The move is the latest chapter in a two-year legal drama that has evolved from the sale of Sardis Lake's water storage rights. In 2010, despite objections from tribal leaders, the Oklahoma City Water Utilities Trust paid \$27 million to purchase water storage rights to the southeastern Oklahoma reservoir.

That deal spawned a firestorm of protests that climaxed in a federal lawsuit filed by the Choctaw and Chickasaw nations in August 2011. In that lawsuit, both tribes claimed that water rights to the area were granted to them in the 1830s via a series of federal treaties.

Following the tribes' action, city and state officials countered with a stream adjudication lawsuit that went to the Oklahoma Supreme Court.

On Monday, the stream adjudication, like the tribes' initial legal action, was placed in federal court.

Bob Sheets, an attorney with the Phillips Murrah law firm, said the state could try to have the case moved back, but success was unlikely.

"The only real question is: Is it a proper removal and do they have jurisdiction?" Sheets said. "The state could ask for removal. They could try to get it remanded back to state court, but if they've (the DOJ) proper jurisdiction, it would be unlikely it would be remanded."

Sheets said moving a case from state to federal court wasn't uncommon.

"If you've got the grounds, cases can be moved," he said. "Some people want to be in federal court as opposed to state court. It's fairly common; I don't see it as earth-shattering."

In the notice to move the case, U.S. Attorney Sanford Coats wrote that the petition filed by the state did not reveal any reason for initiating a general stream adjudication of the Kiamichi, Muddy Boggs and Clear Boggy basins apart from the Oklahoma Water Resources Board's desire to resolve a claim filed by both nations.

"The question whether the Oklahoma Supreme Court action satisfies the requirements of the McCarran Amendment has also been presented to this court in the pending action," Coats wrote. "The (water) board's petition and brief do not reveal any reason for initiating a general stream adjudication of the Kiamichi, Muddy Boggy and Clear Boggy basins (such as a water shortage) apart from the board's desire to resolve the nations' federal law-based claims, and thus suggest that the state-law legal questions and associated factual questions typically presented in a general stream adjudication could be avoided by resolution of the nations' claims presented in its action in this court."

Oklahoma City officials, who previously issued statements praising the state's high court for taking the case, downplayed the DOJ's action.

"This is a procedural move that doesn't change the nature of

the case,” Oklahoma City Manager Jim Couch said. “General stream adjudication could be decided in either court. Oklahoma City remains committed to a legal process that will result in a fair allocation of the state’s water.”

Alex Weintz, Gov. Mary Fallin’s spokesman, said the governor’s legal team was examining the notice.

“The governor and her office are reviewing the pleadings filed ... by the Department of Justice and conferring with legal counsel,” Weintz said.

State Attorney General Scott Pruitt, whose office filed the stream adjudication and petitioned the state’s highest court to assume original jurisdiction in the lawsuit, said little about the filing.

“We have received the pleading and we’re reviewing it,” said Diane Clay, Pruitt’s spokeswoman, in an emailed statement.

Tribal leaders, however, praised the move.

“We think this is a very positive development because we think federal court is the proper venue for our claim, which is based on our historic treaties with the U.S. government and on federal law,” Choctaw Chief Greg Pyle and Chickasaw Gov. Bill Anoatubby said in a joint statement.

Federal rules require that a notice to remove a lawsuit filed against the United States in state court must be made within 30 days of receipt of service of the state court lawsuit. Justice Department officials said the agency would seek opportunities to resolve the dispute through a negotiated process with the state and tribal sovereigns.