

Exhibit 6

Memorandum of Agreement
Between the Kansas Department of Agriculture, Division of Water Resources,
And the Kickapoo Tribe
To Administer and Protect the Kickapoo Tribal Water Right

I. Subject and Purpose of Agreement.

This Memorandum of Agreement (“MOA”) between the Kansas Department of Agriculture, Division of Water Resources (“KDA-DWR”), and the Kickapoo Tribe (“Tribe”), documents the procedures by which KDA-DWR shall protect the Tribal Water Right by administering junior non-domestic Kansas Water Rights when necessary. This agreement is Exhibit 6 to the Kickapoo Tribe Water Rights Settlement Agreement by and among the Kickapoo Tribe in Kansas, the State of Kansas, and the United States of America (“Agreement”). Capitalized terms in this MOA are defined terms in Article 3 of the Agreement.

II. General Provisions.

- A. The MOA does not alter any provision in the Agreement. In the event of any conflict between the two documents, all provisions in the Agreement are controlling.
- B. The MOA does not limit any right of the Tribe under federal or state law to protect the Tribal Water Right, except as modified by the Agreement.
- C. The MOA does not limit the Chief Engineer from taking any action available under federal or state law to protect the Tribal Water Right.
- D. The MOA applies to all non-domestic Kansas Water Rights junior to the Tribal Water right.
- E. As defined in the Agreement, “Tribal Water Right” means the Water Right reserved from further appropriation upon the establishment of the Reservation pursuant to the doctrine in *Winters v. United States*, 207 U.S. 564, 576-77 (1908), and its progeny.
- F. As set forth more fully in Section 7.10.C of the Agreement, the Parties recognize that the Chief Engineer’s effective protection of the Tribal Water Right depends upon the effective and timely communication between the Tribe and the Chief Engineer.
- G. Subsections 5.1 and 5.1.A of the Agreement describe the Tribal Water Right:
Subsection 5.1.

The Tribe or the United States on behalf of the Tribe shall have the right to Divert or Redivert 4,705 acre-feet of Water annually, with a Priority Date of October 24, 1832, for any Direct Use on the Reservation. The Tribe or the United States on behalf of the Tribe shall also have the right to Store Water in one or more reservoirs, for purposes of subsequent Direct Use, up to a total volume as described in subsection 5.1.A., with a Priority Date of October 24, 1832. Domestic Use of Water is exempted from metering and reporting under this Agreement.

Subsection 5.1.A.

The Tribe or the United States on behalf of the Tribe shall have the right to a combined volume, in one or more reservoirs, of not less than 18,520 acre-feet of Storage to satisfy the Tribal Water Right. If the Tribe or the United States on behalf of the Tribe chooses to use the seepage characteristics of the reservoir(s) to set the combined Storage volume, then the volume is as specified in the table below. The Parties agree to accept estimations of reservoir seepage resulting from professionally accepted engineering principles until such time as direct measurement of seepage becomes available. After this Agreement is effective, if direct measurement of reservoir seepage becomes available using professionally accepted principles, the Parties agree to accept direct measurements of reservoir seepage instead of estimates. Any dispute between the Parties over estimates or measurements of reservoir seepage will be conducted according to the dispute resolution provisions of this Agreement.

Value of Estimated or Measured Reservoir Seepage from All Reservoirs Used to Satisfy the Tribal Water Right (calculated using a storage volume based on weighted average in the case of more than one reservoir)	Total Storage Volume of All Reservoirs the Tribe or United States on behalf of the Tribe may construct to satisfy the Tribal Water Right
Less than or equal to 0.4 inches per month	18,520 acre-feet
Greater than 0.4 inches per month and less than 1.0 inches per month	21,090 acre-feet
Equal to or greater than 1.0 inches per month	27,300 acre-feet

- H. The Kansas Water Appropriation Act, K.S.A. § 82a-701 *et seq.*, requires the Chief Engineer to “control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits and beneficial uses of all its inhabitants in accordance with the rights of priority of appropriation.” K.S.A. § 82a-706. Pursuant to K.S.A. § 82a-706b, “[i]t shall be unlawful for any person to prevent, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same”
- I. During times of water shortage when the exercise of non-domestic Kansas Water Rights junior to the Tribal Water Right in the Delaware River Basin is impairing the Tribe’s use made of water under the Tribal Water Right, the Chief Engineer

has the duty to administer and to regulate the exercise of those rights to protect the Tribe's water requirements, up to the maximum authorized quantities of the Tribal Water Right as described in Sections 5.1 and 5.1.A of the Agreement; but that duty does not extend to administering non-domestic Kansas Water Rights where such administration would not reduce the impairment of the Tribal Water Right, or would produce water supplies for the Tribe in excess of its water use requirements.

- J. The Parties recognize that for the purpose of resolving the impairment of the Tribal Water Right, it may not be necessary to administer all junior non-domestic Kansas Water Rights above the Low-head Dam or above Storage subsequently constructed for the Tribe. The Parties likewise recognize that the administration of certain non-domestic Kansas Water Rights may not make water available to satisfy the Tribal Water Right. As water supply conditions improve on a real-time basis within the Delaware River Basin, it may not be necessary for all junior non-domestic Kansas Water Right holders to be administered or restricted in their use of water, and KDA-DWR may allow some users of non-domestic Kansas Water Rights to resume diversions.

- K. The current water supply for the Tribe is sourced by direct diversion from a shallow reservoir, whose pool is created by the Low-head Dam. By design, the Low-head Dam allows unused water to flow over its top and downstream. Currently, the pool above the Low-head Dam remains at a constant, full-and-spilling elevation, unless diversion occurs at a rate greater than streamflow. The Low-head Dam is not designed to provide Storage of Water for later Rediversion. Instead, the Low-head Dam is designed to ensure that the diversion pumps for the Tribe's municipal water supply plant are able to operate effectively. For that reason, the Agreement provides that the Water retained behind the Low-head Dam (as currently constructed and operated) does not count as part of the Tribal Water Right's cumulative Storage amount. KDA-DWR will administer non-domestic Water Rights junior to the Tribal Water Right to protect the Tribe's diversion of water from the pool created by the Low-head Dam.

- L. As of the date of this MOA, the Tribe does not have any other dams creating Storage. The procedures set forth in this MOA shall be revised by mutual agreement when the Tribe develops Storage in addition to the Low-head Dam. KDA-DWR and the Tribe agree to work in good faith to revise this MOA in the future as the Tribe builds new dams for Storage or otherwise gains access to Storage. As set forth more fully in Subsection 7.3 of the Agreement, the MOA will be reviewed annually and revised as needed to improve its effectiveness.

- M. The Tribe and KDA-DWR may find that flows are adequate to meet the Tribe's water needs, whether from the Low-head Dam or from Storage built subsequent to the date of this MOA. During these times, they may only need to periodically communicate regarding significant changes in diversions by the Tribe, storage

levels, inflows, and diversions from storage. All efforts should be taken for clear communication when necessary, but not for exhaustive communication when unnecessary.

- N. The Chief Engineer shall inform the Tribe and the United States of the administration actions taken to protect the Tribal Water Right. This information shall include:
 - i. The Chief Engineer's findings with respect to the Tribe's claim of impairment;
 - ii. A list of the non-domestic Kansas Water Rights that were administered during each administration event;
 - iii. A copy of the tabulation record used for storage reservoir releases; and
 - iv. Any other information the Chief Engineer deems to be relevant to the administration.
- O. KDA-DWR shall make random field site checks of the diversion and storage works of junior non-domestic Kansas Water Rights which are subject to an order of administration to protect the Tribal Water Right. Any non-compliance with the Order may result in the issuance of civil penalties, orders suspending use, or other actions allowable under law.
- P. Water lawfully impounded under any non-domestic storage Kansas Water Right for more than 14 days prior to KDA-DWR administration is not available for administration.

III. Coordination and Administrative Procedures for Low-head Dam Diversion.

- A. The Parties agree that the U.S. Geological Survey ("USGS") should be contracted to site, install, and maintain a USGS gage on the mainstem Delaware River upstream of the Low-head Dam in a location that will most accurately measure low streamflow at that point ("USGS Gage").
- B. Subject to the availability of funding, the United States agrees to provide all necessary funding for the installation and maintenance of the USGS Gage.
- C. Monitoring and Administrative Duties According to Streamflow Levels.
 - i. Whenever the average of the 7 previous mean daily flows at the USGS Gage falls below 5 cubic feet per second (cfs) but remains above 2 cfs, the

Tribe shall begin communicating directly with the Topeka Field Office of KDA-DWR on a weekly basis. The Tribe's communication shall include:

- a. The daily and weekly metered quantity of water directly diverted from behind the Low-head Dam;
 - b. The year-to-date metered quantity of water diverted; and
 - c. The anticipated daily and weekly water supply demand for the upcoming week, as well as any anticipated peak demands from the Delaware River above the daily average demand.
- ii. Upon receipt of the communication described in Subsection III.C.i, KDA-DWR's Topeka Field Office shall compare the Tribe's current and anticipated water demand to concurrent USGS gaged flows, to prepare for potential Kansas Water Rights administration.
 - iii. Whenever the daily flow at the USGS Gage falls between 1 and 2 cfs, the Tribe and KDA-DWR shall communicate daily.
 - a. The Tribe's daily communication shall include:
 1. The Tribe's direct diversion quantities; and
 2. The Tribe's anticipated daily diversion quantities.
 - b. The Tribe and KDA-DWR shall make a daily comparison between the quantities described in Subsection III.D.iii.a and streamflow at the USGS Gage.
 - c. As needed, KDA-DWR and the Tribe will jointly request the USGS to check the USGS Gage site manually, or KDA-DWR and the Tribe will manually check the gage.

IV. Coordination and Administrative Procedures for Reservoir Storage and Rediversion of Direct Use

- A. The Parties agree that the USGS should be contracted to site, install, and maintain a USGS gage or multiple gages at locations in the Delaware River Basin that will most accurately measure streamflow entering any Tribal Storage dams constructed subsequent to the Agreement.
- B. Subject to the availability of funding, the United States agrees to provide all necessary funding for the installation and maintenance of the USGS Gages.

- C. The Maximum Reasonable Annual Quantity for Storage of water for beneficial use in a reservoir (MRAQS) is considered to be the lesser of the two following quantities:
- i. [(three years current Direct Use) plus (three years Indirect Use, provided this sum does not exceed reservoir capacity)], minus [(the year-to-date quantity diverted for Direct Use) plus (year-to-date estimated Indirect Use)] ; or
 - ii. [(one year current Direct Use) plus (one year Indirect Use) plus (Reservoir Capacity)], minus [(the year-to-date quantity diverted for Direct Use) plus (year-to-date estimated Indirect Use)].

D. Monitoring and Communications Duties according to Tribal Reservoir Levels.

- i. When storage is 1 foot below the MRAQS in any reservoir, the Tribe will communicate directly, by electronic means if available, with KDA-DWR's Topeka Field Office to provide the following information: the metered quantity of water diverted from Storage each day of the past week and the weekly total; the year-to-date metered quantity of water; the anticipated daily and weekly Direct Use for the next one week period; current storage volume based on a permanent gage installed at the site; and inflows. The communication will include a year-to-date reservoir accounting for all reservoirs utilized.
- ii. KDA-DWR's Topeka Field Office shall tabulate the information provided in Subsection IV.D.1 and will compare it with readings from the USGS Gage upstream of each reservoir. KDA-DWR will then determine whether reservoir inflows are sufficient to reasonably satisfy the pumping and storage under the Tribal Water Right from each reservoir.
- iii. If the reservoir storage is at or above the MRAQS, then no action will be taken.
- iv. Whenever storage at any Tribal reservoir falls to 1.5 feet below the MRAQS, KDA-DWR and the Tribe shall communicate daily and KDA-DWR's Topeka Field Office shall prepare to administer non-domestic Kansas Water Rights above that reservoir.

V. Conditions Requiring the Administration of non-domestic Kansas Water Rights to Protect the Tribal Water Right.

- A. Until the Tribe develops Storage other than that held behind the Low-head Dam, the following shall apply. Whenever the average daily flow at the USGS Gage falls below 1 cfs or below the level necessary to meet the Tribe's water requirements, whichever is greater, and the Tribe notifies KDA-DWR that the

Tribe believes that the Tribal Water Right is being impaired, KDA-DWR shall administer non-domestic Kansas Water Rights according to Section VI.

- B. When the Tribe develops Storage in addition to that held behind the Low-head Dam, the following shall also apply. Whenever storage at any Tribal reservoir falls to 2 feet below the MRAQS, then the Chief Engineer shall administer non-domestic Kansas Water Rights above that reservoir according to Section VI.
 - i. Where the MRAQS is the value calculated in Subsection IV.C.i, then KDA-DWR will administer non-domestic Kansas Water Rights to protect that value.
 - ii. Where the MRAQS is the value calculated in Subsection IV.C.ii, then KDA-DWR will administer non-domestic Kansas Water Rights to protect a full reservoir up to that value.

VI. KDA-DWR Orders for Administration of non-Domestic Kansas Water Rights to Protect the Tribal Water Right.

- A. As determined to be necessary by KDA-DWR, an Order for the Administration of non-domestic Kansas Water Rights (Order) may require:
 - i. The administration of all direct diversion rights upstream of the Low-head Dam and/or any tribal reservoir in the Delaware River Basin; and
 - ii. Requiring the bypass of inflows to all reservoirs upstream of the Low-head Dam and/or any tribal reservoir in the Delaware River Basin.
- B. The Chief Engineer shall notify by the Order the holders of non-domestic Kansas Water Rights which are to be administered to resolve the impairment of the Tribal Water Right. The Order shall require:
 - i. Holders of certain non-domestic, direct diversion Kansas Water Rights to immediately cease all diversions from the main stem of the Delaware River and its tributaries until further notice, to satisfy the Tribe's water needs; and
 - ii. Holders of certain non-domestic, storage Kansas Water Rights junior to the Tribal Water Right to immediately take any necessary action (such as opening valves or gates, or installing pumps or siphons) to bypass all inflows until further notice.
- C. For the duration of the Order, the Tribal Water Right is entitled to any runoff collected and stored by the administered non-domestic storage Kansas Water Rights above the Low-head Dam or the Tribal reservoir or reservoirs within 14 days of the issuance of the Order. Any runoff within the 14 days prior to the

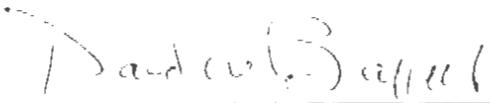
Order, as well as any runoff that occurs while the Order is in effect, shall be administered. The rate of release shall allow for the evacuation of this runoff in not more than 14 days. In determining the volume to be released, one of two methods may be used:

- i. The holder of a non-domestic storage Kansas Water Right for a reservoir can install a staff gage in that reservoir. When flows at the USGS Gage described in Section III fall to an average weekly value of 5 cfs or less, KDA-DWR shall require the holder to maintain weekly records of water levels in that reservoir. The Order shall require the holder to report the staff gage elevation as of the date of the Order to KDA-DWR. The Order will require the holder to release water from his or her reservoir to return it to the elevation identified 14 days prior to the date of the Order, and will also require the holder to bypass inflows to the reservoir that occur during the duration of the Order using the installed staff gauge. The release will require a reduction in the reservoir's water level down to the level of the previous week's reading or the reading from two weeks previous to the Order, whichever is lower in elevation.
- ii. In the event the holder of such a non-domestic storage Kansas Water Right cannot install a staff gage, or does not compile the required record of gage readings or report these readings to the KDA-DWR as required, or if any other situation or condition occurs that results in the inability of a determination to be made for a specific volume to be released from the reservoir, the holder must release or otherwise evacuate all water retained in the reservoir or as otherwise directed by the Chief Engineer.

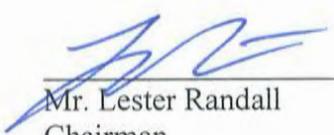
D. Resumption of use by non-domestic Kansas Water Rights.

- i. As long as the Tribe lacks Storage other than that held behind the Low-head Dam, the following shall apply. When the average weekly flow at the USGS Gage described in Section III of this MOA exceeds the quantity of the weekly diversions by the Tribe for a period of 14 days and KDA-DWR determines that the administration of non-domestic Kansas Water Rights is no longer necessary, then KDA-DWR shall notify the holders of those rights that their diversions may resume.
- ii. When the Tribe develops Storage in addition to the Low-head Dam, the following shall apply. When the storage within the affected Tribal reservoir is maintained at 100% of the MRAQS for a period of 14 days and KDA-DWR determines that administration of non-domestic Kansas Water Rights is no longer necessary, then KDA-DWR shall notify the holders of those rights that their diversions may resume.

SIGNATURES



David W. Barfield
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture



Mr. Lester Randall
Chairman
Kickapoo Tribe in Kansas