



OSAGE NATION WATER REGULATIONS

Rules and Regulations Promulgated by
The Osage Nation Environmental and Natural Resources Department

SECTION 1. FINDINGS AND GENERAL PROVISIONS

A. FINDINGS

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6 **1.** The Osage Nation Congress, pursuant to the enabling act of April 23, 2014, has
7 vested in the Environmental and Natural Resources Department all power and authority to draft,
8 promulgate, and implement regulations governing the management, use, and preservation of the
9 Osage Nation's Natural Resources.

10 **2.** The future of water resources is of critical importance to the Osage Nation and
11 necessary for the continued and efficient development of the Osage Nation's mineral resources.
12 The Osage Nation Environmental and Natural Resources Department takes very seriously its
13 responsibility to protect the natural environment, which depends upon an abundant, clean, and
14 uncontaminated water supply. The Osage Nation and the Osage Nation Environmental and
15 Natural Resources Department are fully committed to protecting this resource for future
16 generations and to ensure and enhance today's recreational opportunities and economic
17 development opportunities within the region.

18 **3.** The Osage Nation finds that Surface Water and Groundwater are directly
19 interconnected by the hydrologic cycle of the region and, therefore, water is a unitary resource,
20 whether occurring as groundwater, springs, mineral water, soil moisture, precipitation,
21 percolating water, recharge draining waters, Surface Water, or otherwise.

22 **4.** The Osage Nation recognizes that certain waters have been either owned by or
23 held in trust for the Osage Nation since the creation of the Osage Reservation and continuing to
24 the present time.

25 **5.** The Osage Nation recognizes that clean water is vital to the health and welfare of
26 the Osage Reservation's residents and to the vitality of the Osage Reservation economy.

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4 **B. DEFINITIONS**

5 For the purposes of these Regulations:

6 **1.** “*Agricultural Use*” means Osage Nation Water used for livestock, poultry, fish
7 farms, fish hatcheries, veterinary services, feed lots, irrigation, and other purposes commonly
8 understood as being directly related to farming or ranching activities.

9 **2.** “*Applicant*” means the person or entity that files an Application for a Permit or
10 License with ENR.

11 **3.** “*Application*” means a formal request to ENR, as described herein, and the first
12 step required to extract, take, use, defer, transfer, or otherwise engage in activities relating to
13 Osage Nation Water.

14 **4.** “*Application Fee*” the fee required for filing an Application for a Permit or
15 License, such fee to be assessed by ENR as identified on the applicable Permit or License form.

16 **5.** “*Beneficial Use*” means the reasonable use of Osage Nation Water for a lawful
17 purpose. Beneficial uses include, but are not limited to, Domestic Use, Municipal Use,
18 Agricultural Use, Industrial Use, Water Storage, Cultural or Religious Use, and Resource
19 Management.¹

20 **6.** “*Commercial Use*” means a use of Osage Nation Water which includes but is not
21 limited to water for institutions and businesses not included in Industrial and Agricultural Uses.

22 **7.** “*Cultural or Religious Use*” means the use of Osage Nation Water by the Osage
23 Nation or Osage Nation citizens for cultural or religious purposes.

24 **8.** “*Domestic Use*” means the use of Osage Nation Water by a natural individual,
25 family, or household for household purposes, for farm and domestic animals up to the normal
26 grazing capacity of the land whether or not the animals are actually owned by such natural
27 individual, family, or household, and for the irrigation of land not exceeding a total of three (3)
28 acres in the area for the growing of gardens. Domestic use also includes: (1) the use of Osage
29 Nation Water for agriculture purposes by natural individuals; (2) use of water for fire protection;
30 and (3) the use of Osage Nation Water by non-household entities for drinking water purposes,
31 restroom use, and the watering of lawns; provided that the amount of Groundwater used for any
32 such purposes shall not exceed five acre-feet per year.

33 **9.** “*ENR*” or “*ENR Department*” means the Osage Nation Environmental and
34 Natural Resources Department.

35 **10.** “*Existing Water Right*” means a Water Right asserted by a Water Right Holder as
36 pre-existing these regulations based on compliance with federal or Oklahoma law.

37 **11.** “*Groundwater*” means water under the surface of the Osage Nation regardless of
38 the geological structure in which it is standing or moving outside the cut bank of any definite
39 stream.

40 **12.** “*Industrial Use*” means the use of Osage Nation Water in processes designed to
41 convert materials of a lower order of value into forms having greater usability and commercial
42 value, including the exploration, removal, gathering, and treatment of minerals, as well as oil and
43 gas exploration, production and development.

44 **13.** “*License*” means the formal permission granted by the Osage Nation ENR
45 Department creating the right to engage in specific activities relating to Osage Nation Water;

¹ No presumption of preference of use shall be given to the order in which beneficial uses are listed.

1 provided that no License shall grant to an Applicant the right to employ Osage Nation Water for a
2 Beneficial Use.

3 **14.** “*Meter*” means the ENR device rented and used by the Water Right Holder to
4 measure the amount of water utilized for the permitted purpose.

5 **15.** “*Metering Report*” means the quarterly report provided by a Water Right Holder
6 to ENR.

7 **16.** “*Municipal Use*” means the use of Osage Nation Water by a municipality, rural
8 water district, water corporation, or community for all generally recognized municipal purposes.

9 **17.** “*Notice*” means, unless otherwise specifically provided for herein, publication in
10 a daily or weekly newspaper once a week for two (2) consecutive weeks.

11 **18.** “*Osage Nation*” or “*Nation*” means the Osage Nation of Oklahoma and/or the
12 Osage Reservation.

13 **19.** “*Osage Nation Water*” or “*Nation’s Water*” means all bodies of water located
14 within the original boundaries of the Osage Reservation, whether on or under the surface of the
15 ground, or in man-made reservoirs, available for a Beneficial Use on a reasonably dependable
16 basis.

17 **20.** “*Osage Reservation*” means that area of land originally established as a homeland
18 for the Osage Nation by the Act of Congress of June 5, 1872, 17 Stat. 228.

19 **21.** “*Permit*” means a formal permission granted by the Osage Nation ENR
20 Department that creates a valid right to divert, pump, use, transfer, store and/or sell Osage Nation
21 Water for a Beneficial Use.

22 **22.** “*Person*” means any individual, firm, partnership, association, corporation,
23 business or public trust, governmental agency or any political subdivision thereof, municipalities,
24 and any other duly constituted legal entity.

25 **23.** “*Quarter*” means a quarter of a calendar year, so that the first quarter is from
26 January 1st to March 31st, the second quarter is from April 1st to June 30th, the third quarter is
27 from July 1st to September 30th, and the fourth quarter is from October 1st to December 31st.

28 **24.** “*Resource Management*” means the use of Osage Nation Water for the
29 preservation or responsible management of all Osage Nation Resources, including, but not
30 limited to, pollution control, instream use, and fish and wildlife habitat preservation.

31 **25.** “*Surface Water*” or “*Surface or Stream Water*” means any permanent body of
32 water located above the surface on the Osage Reservation, including, but not limited to, rivers,
33 streams, ponds, lakes, and reservoirs.

34 **26.** “*Water Right*” means a valid right to divert, use, transfer, store or sell Osage
35 Nation Water based on a valid Osage Nation Permit.

36 **27.** “*Water Right Holder*” means a person or entity that possesses a valid Water
37 Right.

38 **28.** “*Water Storage*” means a right to store Osage Nation Water for future Beneficial
39 Use.

40 **29.** “*Well*” means any type of excavation for the purpose of obtaining groundwater or
41 to monitor or observe conditions under the surface of the earth but not including oil and gas
42 wells.

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1 **C. GENERAL POLICIES**

2 1. Existing uses, established duties of water, and relative priorities concerning the
3 use of Osage Nation Water are to be protected and preserved, subject to the Nation’s obligations
4 to protect water of the Nation and allottee derivative water.

5 2. Groundwater use will be guided by the overall condition of each aquifer system,
6 the expected long-term yields, and the cumulative impacts of existing and proposed uses of
7 Surface Water and Groundwater on overall water quality.

8 3. ENR will plan and develop the Osage Nation’s Water and land resources to
9 safeguard against Surface and Groundwater degradation.

10 4. All land, water, or other resource strategies, decisions, or regulations shall
11 consider the potential effect on all of the Nation’s natural resources.

12 5. All land, water, or other resource strategies, decisions, or regulations shall
13 consider the potential effect on all Reservation natural resources.

14 6. All water allocation decisions are subject to periodic consideration and annual
15 review for their net effect on resources and values of the Nation.

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17 **D. DUTIES OF THE ENVIRONMENTAL AND NATURAL RESOURCES DEPARTMENT**

18 The Osage Nation has declared the ENR Department as the primary enforcement and
19 management agency responsible for controlling the Nation’s Water and resources, including:

20 1. Overseeing the management, use, and preservation of Osage Nation Water;

21 2. Approving or disapproving Permits to remove, use, or transfer Osage Nation
22 Water and Licenses to engage in activities relating to Osage Nation Water;

23 3. Conducting administrative hearings regarding Applications for Permits or
24 Licenses and disputes regarding allocation of Osage Nation Water;

25 4. Adopting such additional rules, regulations, Permit and License forms, and
26 additional materials as necessary to interpret and execute its authority;

27 5. Advising the Nation on all aspects of these Regulations and Osage Nation Water;
28 and

29 6. Organizing and operating its offices in order to discharge its duties and
30 responsibilities effectively.

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32 **E. TRIBAL WATER ENGINEER**

33 [Reserved]
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36 **SECTION 2.**
37 **PERMITTING AND LICENSING**
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39 **A. PERMITS FOR USE OF OSAGE NATION WATER**

40 1. *When Permit Required.* No Person shall extract, divert, use, or sell Osage Nation
41 Water or undertake an activity affecting or involving a Beneficial Use of the Nation’s Water
42 without first obtaining a Permit from the ENR Department, unless such diversion is solely for
43 Domestic Use.

44 2. *Types of Permits.* Surface Water and Groundwater shall be permitted separately.
45 For both Surface Water and Groundwater Permits, ENR recognizes six (6) categories of Permits.

1 Any two or more categories may be combined into a single Permit, as appropriate. Any Permit
2 may be made subject to such additional conditions and stipulations as ENR may deem necessary.

- 3 a. Permit to Extract Water. Grants or confirms a right to extract Osage Nation
4 Surface Water or from a Groundwater well.
- 5 b. Permit for Beneficial Use. Grants or recognizes rights of use, appropriation, or
6 development of water.
- 7 c. Permit for Change. Grants the right to change the location or purpose of water
8 use, method, application, or method or point of diversion.
- 9 d. Permit to Store. Grants the right to impound Surface Water or Groundwater for a
10 future Beneficial Use.
- 11 e. Permit to Transfer. Grants the right to transfer Osage Nation Water outside of the
12 jurisdiction of the Osage Nation.
- 13 f. Permit to Sell. Grants the right to sell Osage Nation Water.
- 14 3. *Metering*. All Water Right Holders must utilize a Meter and provide quarterly
15 Metering Reports as provided below.
 - 16 a. Meter Rental. Permit Holders shall utilize ENR Meters, rented for an annual fee
17 of \$20 to be paid in full at the time of rental.
 - 18 b. Quarterly Metering Report. Permit Holders shall submit a Form D Metering
19 Report to ENR within thirty (30) days of the end of each quarter. Forms shall be
20 submitted by hand during normal business hours or by mail at the address on
21 Form D.
 - 22 c. Failure to Submit a Quarterly Metering Report. The failure of to submit a timely
23 Metering Report for any quarter may be cause for automatic termination of the
24 Permit and will subject the Permit Holder to violations pursuant to Section 7 of
25 these Regulations.

26 27 28 **B. LICENSES FOR ACTIVITIES RELATING TO OSAGE NATION WATERS**

29 1. *When License Required*. No person shall engage in the specified activities set out
30 at Section 2(B)(2) hereof relating to the drilling of Groundwater wells, alteration of streams,
31 discharge of wastewater, or the construction of a Groundwater wells without first obtaining a
32 License from the ENR Department authorizing such activity.

33 2. *Types of Licenses*. Licenses will apply to activities relating to Groundwater and
34 Surface Water. ENR recognizes four (4) categories of Licenses. Any two or more categories
35 may be combined into a single License, as appropriate. Any License may be made subject to
36 such conditions and stipulations as ENR may deem necessary.

- 37 a. Driller's License. Grants a License to drill or cause to be drilled a well effecting
38 Osage Nation Waters. The issuance of a Driller's License is contingent upon the
39 applicant's providing satisfactory description of technical competence, including,
40 but not limited to, a description of relevant training and experience, procedures
41 and equipment, current financial condition, and disclosure of prior or existing
42 claims; upon the posting of a bond in favor of the Nation and in an amount as set
43 by ENR; and upon the applicant's written undertaking to comply with all Osage
44 Nation laws and regulations.

1 **5.** *Staying a Decision Pending Receipt of Additional Information.* Should ENR stay
2 a decision on an Application pending receipt of additional data or information or correction of
3 Application errors under Section 3(B)(3)(d) hereof, ENR shall issue a Notice of Additional
4 Information or Deficiency. If the Application is defective as to form, the Notice of Additional
5 Information or Deficiency shall advise the Applicant of the corrections, amendments, or changes
6 required and sixty (60) days shall be allowed for the refiling thereof.

7 **6.** *Failure to Provide Additional Information.* If the Application is not corrected,
8 amended or changed within the time required, ENR may inactivate the Application. If an
9 Applicant does not correct an Application as instructed by ENR, and no further proceedings are
10 initiated by the Applicant for six (6) months after the Notice of Additional Information or
11 Deficiency, the Application shall be deemed withdrawn.

12 **7.** *Issuance of Permit or License.* If the Application is approved, ENR shall issue
13 the Permit or License the subject of an Application within ten (10) days of approval.

14 **8.** *Term of Permits and Licenses.* All Permits and Licenses shall be valid for a
15 maximum initial term of five (5) years, or such shorter term as stated in the Permit or License.

16 **9.** *Renewal of Permits and Licenses.* All Permits and Licenses shall be automatically
17 renewed for two (2) additional terms equal to the term of the initial Permit or License, unless
18 ENR shall determine, in its sole and reasonable discretion, that the Permit or License renewal is
19 not in the best interest of the Nation. Any denial of a renewal Permit or License may be
20 reconsidered and appealed pursuant to subsections C and D below.

21 22 **C. RECONSIDERATION**

23 **1.** *Request for Reconsideration.* An Applicant may seek reconsideration of any ENR
24 decision by resubmitting the Application to ENR with a letter stating the reasons for
25 reconsideration and any additional information.

26 **2.** *Decision Upon Reconsideration.* ENR shall issue a written decision upon
27 reconsideration of an Application within ninety (90) days, following the same process
28 established in Section(3)(B) of these Regulations.

29 30 **D. APPEAL**

31 **1.** *Appeal of Denial Upon Reconsideration.* If the Application is denied upon
32 reconsideration, the Applicant may seek review of the denial in Osage Nation Tribal Court
33 pursuant to Osage Nation Rules of Civil Procedure.

34 **2.** *Representation of the Nation's Interest.* The Osage Nation Attorney General's
35 Office shall represent the Nation's and ENR's interests in any appeal.

36 **3.** *Exhaustion.* No person may seek review by the Osage Nation Tribal Court of a
37 decision or ruling of ENR unless such person has first exhausted all appeal rights provided by
38 these Regulations. Additionally, with respect to any appeal of a denial of an Application by
39 ENR, no such appeal may be heard by or filed with the Osage Nation Tribal Court unless the
40 Person the subject of the denial shall have first sought reconsideration of the denial with the ENR
41 Department.

42 **4.** *Standard Review.* Unless otherwise provided for under the laws of the Osage
43 Nation, appeals shall be limited to review of the record before the ENR Department.

44 **5.** *Administrative Record.* Upon receipt of service of the complaint, ENR shall
45 certify and transmit to the Clerk of the Osage Nation Tribal Court the administrative record,

1 including all documents, things, transcripts and other information which formed the basis for the
2 decision or ruling being appealed.

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