

In order to be considered a party to the application process, however, a protestant must provide information showing how approval of the application may directly and adversely affect legally protected interests of the protestant. OAC 785:4-5-4(b); 82 O.S. §§105.11-105.12.

Procedural due process principles are generally not implicated where an agency's actions do not directly affect the legal rights of property owners or deprive them of a constitutionally protected interest. *See State ex rel. Corp. Com'n v. Tex. County Irr. And Water Res. Ass'n, Inc.*, 1991 OK 63, ¶ 12.

Legally protected interests are generally rights granted and/or protected by statute or constitution. *See e.g., Flast v. Cohen*, 392 U.S. 83, 103 (1968); *Baker v. Carr*, 369 U.S. 186, 207 (1962); *Murry County v. Homesales, Inc.*, 2014 OK 52, ¶ 17 (citing *Toxic Waste Impact Group, Inc. v. Leavitt*, 1994 OK 148, ¶ 9; *ISD 9 v. Glass*, 1982 OK 2, ¶ 10); *Democratic Party of Okla. v. Estep*, 1982 OK 106, ¶ 7.

Legally protected interests with regard to Oklahoma water are generally riparian or appropriative. *See Franco-American Charolaise, Ltd. v. OWRB*, 1990 OK 44, ¶ 3.

Thus, those persons able to show that the granting of Permit Application No. 2007-0017 would directly and adversely affect their legally protected interests would generally be limited to 1.) those persons who have a pending or prior appropriative right to the water at issue and 2.) those persons who own land appurtenant to the Kiamichi River, its tributaries or Sardis Lake who are a.) entitled to domestic riparian use or b.) hold a prior established right to other riparian use. *Id.*

Twenty three persons indicated either in their original protest letters or responses to Applicant's Request for Discovery that they held rights pursuant to ownership of land appurtenant to the Kiamichi, its tributaries or Sardis Lake. No one indicated they had an appropriative right to the water at issue.

For the reasons listed herein your Motion to Dismiss Sixty Two Protestants for Lack of Standing is **GRANTED** in part with regard to the following persons:

Judy Armstrong

Atoka County Board of Commissioners

Loyd Boren, Patricia Boren

Amber Brasfield, Jason Brasfield

Rickie Briggs

Michael Brittingham

Brad Burgett

Choctaw County Board of County Commissioners

Austin Conley, Kenneth Conley, Kimberly Conley, Norman Conley, Robert D. Conley, Shannon Conley

George R. Crims, III

Davis Hunter

Jerry Davis, Melissa Davis, Nicole Davis

Charles R. DeWeese

Russell Doughty

Loy and Jane Dunlap

Don Harrell

Theressa Harper

Susan Herbert

Kevin N. Hilley

Syed Raziullah Hussaini

Georgia Irwin

Erin Iski

Curtis Johnson, Jaime Johnson

Dennis Kerr

Latimer County Board of Commissioners

Leflore County Board of County Commissioners

Marshall County Board of Commissioners

Brody McClellan

McCurtain County Board of County Commissioners

Nadean Osborn

Pittsburg County Board of County Commissioners

Poteau Valley Improvement Authority

William T. Potter

Judy Pryor

Pushmataha County Commissioners

Johnny C. Self, Marcia Self

Dale Teeters

Sharon Tipps, Wayne Tipps

Jerry Tolbert, Mike Tolbert

Mitchell Tompkins

U.S. Dept. of Interior Fish & Wildlife Service

Lawanda Vaughan, Sue Ann Vaughan, Terron Vaughan, Terry Vaughan

Doug and Linda West.¹

For the reasons listed herein and the fact that two persons indicated they held appurtenant land ownership in their original protest letters, your Motion to Dismiss Sixty Two Protestants for Lack of Standing is **DENIED** in part with regard to **Dale Carter**, Finley, Oklahoma and **Linda Jackson**, Tuskahoma, Oklahoma.

¹ This Order does NOT address the status of Oklahomans for Responsible Water Policy which was the subject of a separate Motion to Dismiss also submitted by Applicant on July 17, 2017.

Persons dismissed as Protestants may, however, appear as interested persons to observe the Hearing proceedings during the argument and evidentiary portion and may make non-repetitive statements/presentations as to their opinions during the public proceedings portions of the proceedings. OAC 785:4-5-4(d). Public proceedings will commence when the Applicant and Protestants have concluded presentation of arguments and evidence. Said public proceedings are expected to occur on Friday, August 25, 2017, and potentially Monday, August 28, 2017.

IT IS SO ORDERED this 14 day of August, 2017.



Lyn Martin-Diehl
Hearing Examiner

CERTIFICATE OF MAILING

I hereby certify that on the 15 day of August, 2017, a true and correct copy of the forgoing document was mailed to the following persons electronically (if an email address was provided by the individual or entity) and by depositing it in the First Class U.S. Certified Mail, return receipt requested to the following addresses:

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