



representative (non-legal counsel) to appear at the Prehearing Conference but said representative failed to appear.<sup>2</sup>

The Hearing Examiner ruled on following matters: i.) the Kemper Protestants', June 19, 2017 Entry of Appearance and Notice of Interested Party and Application of Protest (the "Kemper Notice"), ii.) the Applicant's June 22, 2017, Response to Entry of Appearance and Notice of Interested Party and Application of Protest and iii.) the Kemper Protestants' June 27, 2017 Sur Reply, finding as follows:

- i.) KRLA is not a Party to this matter because it submitted its protest out of time and has failed to show a claim of direct and adverse legally protected interest(s) by the association itself. OAC 785:4-5-4. Thus the June 19, 2017 Kemper Notice and Sur Reply are denied in part as to party status;
- ii.) KLRA is deemed an interested person pursuant to OAC 785:4-5-4(e);
- iii.) The Kemper Notice is, however, granted in part so as to permit Mr. Kemper to represent Protestants, Tom Garrett and Justin Jackson;
- iv.) Mr. Kemper will additionally be permitted to file Entries of Appearance as to other individuals who have submitted timely protests and have retained him as counsel;
- v.) Further, KLRA will be permitted to make statements in the public comment portion of the hearing by interested persons;

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<sup>2</sup> Protestant Russell Doughty submitted an email on June 27, 2017 designating Tinecia Hearne to represent him at the pre-hearing conference. Ms. Hearne did not appear.

- vi.) Upon Motion(s) of the parties the Hearing Examiner will make determinations as to the eligibility of each Protestant as to status as a Party or as an interested person(s) to this proceeding as a matter of law.

The following issues were also discussed by the parties and the Hearing Examiner finds as follows:

1. Any amendments to the Application shall be served upon all Protestants and filed with the OWRB by August 1, 2017.
2. The Protestants indicated that the adequacy of notice by the Applicants may be a contested issue in these proceedings. The Hearing Examiner finds that the adequacy of notice is a preliminary matter which would best be addressed prior to Hearing. Therefore, the Protestants are directed to file a Motion no later than July 21, 2017, showing support as to their claim that the Notice of Application No. 2007-0017 was not given as required by law. The Applicants may respond to Protestants' Motion no later than July 28, 2017. The Hearing Examiner will issue a ruling prior to hearing regarding adequacy of Notice.
3. The Applicant has indicated that they will submit a Motion to Dismiss or a Motion of Clarification as to which Protestants are interested persons and which are Parties in this matter and a Motion in Limine to exclude the April 10, 2017 letter from the United States Department of the Interior, Fish and Wildlife Service. Mr. Kemper stated that he does not anticipate submission of motions. Mr. Chandler of the Oklahomans for Responsible Water Policy will submit a motion for discovery, if it is considered a party in this matter.
4. The Parties are directed to serve the following documents pursuant to the timeframe listed below:

- a. Mr. Kemper shall submit an Entry of Appearance listing those Protestants he is representing no later than July 3, 2017;
- b. Applicant shall file its initial discovery requests with regard to party status to each person protesting the application by July 3, 2017;
- c. Protestants shall file responses to initial discovery by July 11, 2017, or risk denial of Party status;
- d. Applicant shall file any additional discovery requests (other than initial) on or before July 14, 2017 with all responses due on or before August 15, 2017;
- e. Preliminary Witness Lists are due by all parties no later than July 10, 2017;
- f. Amendments to the Application or the Protests of Parties are due no later than August 1, 2017;
- g. Final Exhibit and Witness Lists are due by all Parties no later than August 14, 2017;
- h. Responses to Final Exhibit Lists are due no later than August 15, 2017;
- i. Production of Documents is due by all parties no later than August 15, 2017;
- j. Responses to Motions shall be due 7 days subsequent to the filing of the Motion.

Rulings on items submitted after August 15, 2017 may not be ruled upon until the formal hearing.

5. The parties anticipate that the Hearing may focus on the following issues, which are contested or may be contested based on information obtained during discovery:
  - a. Whether individual Protestants have sufficient standing as parties to the proceedings under OAC 785:4-5-4;

- b. Whether there is availability of unappropriated water;
- c. Whether the present and future need for the water is a beneficial use;
- d. Whether the proposed use interferes with domestic use;
- e. Whether the Applicant is requesting to use water outside of the stream system.

If yes, will the proposed use interfere with existing or proposed beneficial uses within the stream system?

- 6. No contested issues have been raised with regards to the following issues:
  - a. Whether the applicant intends to use the water outside of the state;
  - b. Whether the applicant seeks to divert water from a “scenic river area” as designated by 82 O.S. §§ 896.4-896.16.

7. Subpoenas must be issued through the OWRB pursuant to OAC 785: 4-5-3.

8. Failure by a party to serve a Preliminary Witness and Exhibit List, a Final Witnesses and Exhibit List, discovery responses, or failure to exchange exhibits by the dates set forth in this Order may result in the exclusion of evidence or testimony at the hearing.

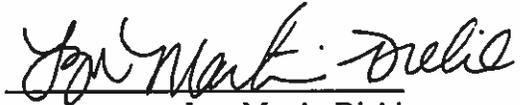
9. Any and all submissions must be filed with the OWRB at the same time they are served upon the other party.

10. Parties and interested persons who desire to use projectors, audio visual equipment and/or court reporters shall notify OWRB Hearing Clerk on or before July 17, 2017. PowerPoint presentations via Parties’ and interested persons’ laptop computers can be accommodated with notice for interface no later than August 11, 2017.

11. The Parties indicated at the Prehearing Conference and by notice thereafter, that they anticipate the combined presentation of their cases will take approximately 5 days. Thus,

the Formal Hearing for this matter will be from Monday, August 21 through Friday, August 25, 2017, with potential overflow to August 28, 2017 and August 29, 2017 for the public comment portion of the hearing, beginning at 9:30am on each day. The Formal Hearing will commence at the offices of the Oklahoma Water Resources Board, Board Room, 2nd Floor, 3800 North Classen Blvd., Oklahoma City, OK 73118.

IT IS SO ORDERED this 7<sup>th</sup> day of July, 2017.



Lyn Martin-Diehl  
Hearing Examiner

# EXHIBIT 1

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Brad Burgett  
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Sam Samandi, Engineering Manager, Utilities Dept.  
Nathan Madenwald, Civil Engineer, IV

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Justin Jackson  
Kevin R. Kemper, Ph.D., LL.M.  
Debbie L. Leo  
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Oklahomans for Responsible Water Policy  
through Chris Chandler, Coordinator  
Poteau Valley Improvement Authority  
through Mick LaFevers, Chairman  
Pushmataha County Commissioners  
through Commissioners Rickie Briggs, Michael Brittingham and Brad Burgett  
Kenneth P. Robert, Ph.D.  
Talihina, Town of  
through Donald Faulkner

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# EXHIBIT 2

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Tom Garrett  
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Frank Hilton  
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**CERTIFICATE OF MAILING**

I hereby certify that on the 10<sup>th</sup> day of July, 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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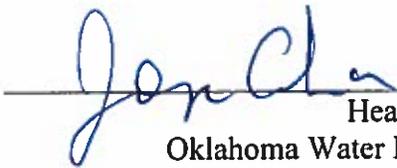
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