

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

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;

² 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. Protestants shall file discovery requests on or before July 14, 2017 with all responses due by Applicant on or before August 15, 2017;
- f. Preliminary Witness Lists are due by all parties no later than July 10, 2017;
- g. Amendments to the Application or the Protests of Parties are due no later than August 1, 2017;
- h. Final Exhibit and Witness Lists are due by all Parties no later than August 14, 2017;
- i. Responses to Final Exhibit Lists are due no later than August 15, 2017;
- j. Production of Documents is due by all parties no later than August 15, 2017;
- k. 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 12 day of July, 2017.



Lyn Martin-Diehl
Hearing Examiner

CERTIFICATE OF MAILING

I hereby certify that on the 13 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:

Brian M. Nazareus, Esq.
Special Counsel for City of OKC
Ryley Carlock and Applewhite
1700 Lincoln Street, Ste. 3500
Denver, Colorado 80203
bnazareus@rcalaw.com

City of Oklahoma City
ATTN: Utilities Director
420 West Main Street, Ste. 500
Oklahoma City, OK 73102

Kevin R. Kemper, Ph.D., LL.M.
Law Office of Kevin R. Kemper
P.O. Box 2879
Norman, OK 73070
Dr2k@protonmail.com
REPRESENTING Loyd Boren; Patricia Boren;
Amber Brasfield; Austin Conley; Robert D.
Conley; Norma Conley; Frank Hilton; Denise
Hilton; Justin Jackson; Debbie L. Leo; Larinda
McClellan; Kevin Joseph Payne; Roger Dale
Payne; Walter Myrl Redman; Kenneth Roberts,
Ph.D., and Diane Smith

Ms. Judy Armstrong
P.O. Box 21
Clayton, OK 74536

Atoka County
Board of Commissioners
Atoka County Courthouse
200 East Court Street, Ste. 201W
Atoka, OK 74525
atokacommissioners@sbcglobal.net

Mr. Jason Brasfield
P.O. Box 2
Clayton, OK 74536

Mr. Rickie Briggs
172489 North 4480 Road
Nashoba, OK 74558
pushmataha@pine-net.com

Mr. Michael Brittingham
P.O. Box 96
Moyers, OK 74551
Mike009674557@yahoo.com

Mr. Brad Burgett
436942 E 1855 Loop
Rattan, OK 74562

Mr. Dale Carter
424448 E 1835 Rd.
Finley, OK 74543

Choctaw County
Board of County Commissioners
300 East Duke
Hugo, OK 74743

Ms. Kimberly Conley
P.O. Box 971
Clayton, OK 74536

Shannon Conley
P.O. Box 628
Clayton, OK 74536
Shannon2conley@yahoo.com

Mr. Hunter Davis
413430 E. 1870 Rd.
Antlers, OK 74523

Ms. Melissa Davis
413430 E. 1870 Rd.
Antlers, OK 74523

Mr. Donald Dawson
HC 66, Box 235
Moyers, OK 74557

Mr. Russell Doughty
10197 SE HWY 63
Talihina, OK 74571
rustymonroe@gmail.com

Mr. Tom Garrett
HC 66 Box 42
Moyers, OK 74557
tom@kriver.com

Ms. Theresa Harper
HC 66, Box 580
Moyers, OK 74557

Ms. Susan Herbert
2524 S. Harvard Pl., Apt. B
Tulsa, OK 74114
sherbuhuss@yahoo.com

Ms. Rebecca Hoel
210 N.E. "C" Street
Antlers, OK 74523

Mr. Kenneth Conley
168704 State HWY 2
Clayton, OK 74536
donconley@yahoo.com

George R. Crims, III
P.O. Box 77
Albion, OK 74521
repositlife@yahoo.com

Mr. Jerry Davis
413430 E. 1870 Rd.
Antlers, OK 74523

Ms. Nicole Davis
413430 E. 1870 Rd.
Antlers, OK 74523

Mr. Charles R. DeWeese
P.O. Box 862
Antlers, OK 74523

Mr. Loy and Ms. Jane Dunlap
435779 East 1931 Road
Rattan, OK 74562

Mr. Don Hairrell
17400 State Highway 2
Clayton, OK 74536

Ms. Imogene Hairrell Harris
174812 State Highway 2
Clayton, OK 74536
Imogene2016@outlook.com

Mr. Kevin N. Hilley
3827 Bowser Ave., Apt. #8
Dallas, TX 75219

Representative Justin J.J. Humphrey
The Oklahoma House of Representatives
2300 North Lincoln Blvd.
Oklahoma City, OK 73105-4805
Justin.humphrey@okhouse.gov

Mr. Syed Raziullah Hussaini
2524 S. Harvard Pl., Apt. B
Tulsa, OK 74114
Syed-hussaini@utulsa.edu

Ms. Georgia Irwin
P.O. Box 1084
Talihina, OK 74571

Ms. Erin Iski
4330 S. Norfolk Ave.
Tulsa, OK 74105
eviski@gmail.com

Mr. Dale Jackson
P.O. Box 100
Clayton, OK 74536
bugobble@yahoo.com

Ms. Linda Jackson
P.O. Box 7
Tuskahoma, OK 74574

Jamie Johnson
168839 St HWY 2
Clayton, OK 74536
jaimetestco@yahoo.com

Mr. Dennis Kerr
College of Engineering and Natural Sciences,
Department of Geosciences
The University of Tulsa
800 South Tucker Ave.
Tulsa, OK 74104
Dennis-kerr@utulsa.edu

Latimer County
Board of Commissioners
Attn: Latimer County Clerk
109 North Central, Room 103
Wilburton, OK 74578

LeFlore County
Board of County Commissioners
ATTN: LeFlore County Clerk
P.O. Box 218
Poteau, OK 74953

F. Jerrold Gutierrez
dba Miller Lake Retreat, LLC
P.O. Box 25
Moyers, OK 74557

Mr. Paul Marcum
P.O. Box 654
Antlers, OK 74523
pmarcum@questmhsa.com

Marshal County
Board of Commissioners
1 County Courthouse Street, Room 106
Madill, OK 73446

Mr. Brody McClellan
P.O. Box 89
Finley, OK 74543

McCurtain County
Board of Commissioners
P.O. Box 1078
Idabel, OK 74745

Oklahomans for Responsible Water Policy
c/o Chris Chandler, Coordinator
400 North Main
Broken Bow, OK 74728
chris@orwp.org

Pittsburg County
Board of County Commissioners
115 East Carl Albert
McAlester, OK 74501

Poteau Valley Improvement Authority
c/o Mick LaFevers, Chairman
25768 US Highway 270
Wister, OK 74966-9124
Tote-a-poke@clnk.com

Ms. Judy Pryor
409514 E. 1880 Rd.
Antlers, OK 74523-1315
Jpryor5380@yahoo.com

Pushmataha County Commissioners
304 S W "B" Street
Antlers, OK 74523

Mr. Phillip Russo
P.O. Box 1057
Antlers, OK 74523
Xfire6@msn.com

Mr. Johnny C. Self
P.O. Box 55
Rattan, OK 74562

Ms. Marcia Self
P.O. Box 55
Rattan, OK 74562
Marciaself50@yahoo.com

Ms. Pamela Smith
P.O. Box 1057
Antlers, OK 74523
pamnugent@yahoo.com

Ms. Wendy Sprague
HC 66
Box 235
Moyers, OK 74557

Town of Talihina
c/o Don Faulkner
P.O. Box 457
Talihina, OK 74571
don.faulkner@sbcglobal.net

Dr. Dale Teeters, Ph.D.
243 North Ridge Ave.
Sand Springs, OK 74063
Dale-teeters@utulsa.edu

Ms. Sharon Tipps
190751 N 4110 Rd.
Antlers, OK 74523-7406

Mr. Wayne Tipps
190751 N 4110 Rd.
Antlers, OK 74523-7406

Mr. Jerry Tolbert
P.O. Box 175
Moyers, OK 74557

Mr. Mike Tolbert
P.O. Box 175
Moyers, OK 74557

Mr. Mitchell Tompkins
Address Not Provided

United States Department of the Interior
Fish and Wildlife Service, Division of
Ecological Services
ATTN: Jonna Polk, Field Supervisor
9014 East 21st Street
Tulsa, OK 74129

Ms. Lawanda Vaughan
421628 E. 1920 Rd.
Antlers, OK 74523
Terryvaughan6352@gmail.com
Lawandavaughan2174@gmail.com

Ms. Sue Ann Vaughan
421692 E. 1920 Rd.
Antlers, OK 74523
sueannvaughan@gmail.com

Mr. Terron Vaughan
421692 E. 1920 Rd.
Antlers, OK 74523
Tdv31186@yahoo.com

Terry Vaughan
421628 E. 1920 Rd.
Antlers, OK 74523
Terryvaughan6352@gmail.com
Lawandavaughan2174@gmail.com

Mr. Doug and Ms. Linda West
P.O. Box 89
Moyers, OK 74557
linda@oiopro.net
doug@oiopro.net

Dr. William T. Potter, Ph.D.
Professor of Chemistry and Biochemistry
University of Tulsa
800 South Tucker Ave.
Tulsa, OK 74104-3189

Ms. Nadean Osborn
P.O. Box 264
Moyers, OK 74557

Ms. Marla Marcum
P.O. Box 654
Antlers, OK 74523
mmarcum@questmhsa.com

Mr. Curtis Johnson
168839 ST. HWY 2
Clayton, OK 74536
curtistestco@gmail.com

Courtesy Copies sent by email only to the following:

Craig Keith
Nathan Madenwald
Wayne Kellogg
Tye Baker
Steve McHugh
Mark Showell
Krystina Phillips

Craig.keith@okc.gov
Nathan.madenwald@okc.gov
Wayne.kellogg@chickasaw.net
tbaker@choctawnation.com
steve@trlawtm.net
lcnt@att.net
krystina@iaelaw.com


Hearing Clerk of the
Oklahoma Water Resources Board