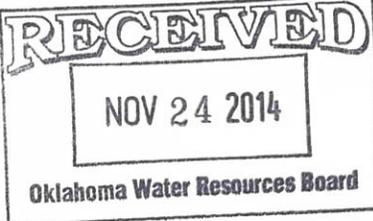


Sarah



FILED IN DISTRICT COURT OKLAHOMA COUNTY

NOV 21 2014

TIM RHODES COURT CLERK

IN THE DISTRICT COURT OF OKLAHOMA COUNTY STATE OF OKLAHOMA

35

OKLAHOMA FARM BUREAU LEGAL FOUNDATION, et al.,  
 Petitioners,  
 v.  
 OKLAHOMA WATER RESOURCES BOARD,  
 Respondent,  
 v.  
 TISHOMINGO NATIONAL FISH HATCHERY, et al.,  
 Other Parties of Record.

Case No. CV-2013-2414  
 District Judge Barbara Swinton

**MOTION FOR IN CAMERA INSPECTION OF DOCUMENTS**

Appellants Arbuckle Simpson Aquifer Protection Federation of Oklahoma, Oklahoma Aggregates Association, TXI, and Oklahoma Farm Bureau Legal Foundation move the Court to conduct an *in camera* inspection of un-redacted documents which have thus far only been produced to the Court and the appellants in redacted form, and in support thereof state:

1. On April 23, 2013 the Oklahoma Supreme Court ruled that the protestants/appellants in this matter are entitled to an impartial hearing examiner.
2. The Supreme Court found that appellee Oklahoma Water Resources Board had communications with the hearing examiner during the course of the hearing that were not revealed to the protestant parties.
3. Appellants in this action for judicial review requested of this Court that they be entitled to obtain and examine the OWRB secret communications with the hearing examiner.

4. OWRB produced redacted version of an e-mail to the hearing examiner from OWRB staff claiming attorney work product privilege as the basis for withholding the information from the appellants.

5. At hearing before this Court appellants requested that the Court conduct an *in camera* inspection of the document with the redaction removed in order to see whether the material was privileged. Appellees dispute that this request was made but appellants attorneys all recall otherwise. In any event, the Court's order did not include a process for *in camera* inspection of an un-redacted version of the document but instead stated that if the OWRB could obtain from its hearing examiner an affidavit to the effect that the document did not contain anything outside the record, then the OWRB could keep it secret.

6. The e-mail that the OWRB produced in redacted form has all substance of it covered up. It was sent during the time the hearing examiner was considering the case after the close of briefing but prior to the hearing examiner's issuance of a proposed order in the case.

7. The OWRB has always maintained that it was not an adverse party to the protestant/appellants but also claims that its communications with the hearing examiner were attorney work product. These two positions are incompatible. In addition, the OWRB staff attorneys who secretly communicated with the hearing examiner did so after having participated in the evidentiary hearing, cross-examining and putting on witnesses to refute the positions of protestant appellants.

8. Any ruling that the e-mail communication is privileged requires a finding that the OWRB considered itself adverse to protestants/appellants and thus the OWRB could not have been impartial toward such parties, in violation of the Supreme Court's order.

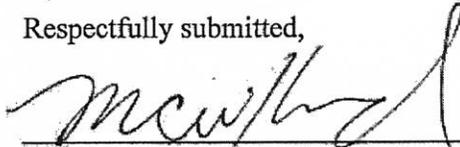
9. It is the burden of OWRB to show that the redacted material is privileged and it has not done so.

10. This Court is capable of understanding whether the secret material only contains matters in the open record, or not.

11. Protestants/appellants have been treated to a secretive process of communications with the hearing examiner by an adverse party, the OWRB, and the Court should not tolerate this behavior but should protect the interests of the public and the parties to an impartial hearing process which, because of these secret communications, the protestants/appellants have not be provided to date.

WHEREFORE, the Appellants request the Court to order OWRB to produce its un-redacted copy of the document in question for an in camera inspection by the Court to determine whether it contains information and arguments that do not already appear in the open part of the record the hearing.

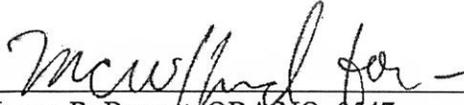
Respectfully submitted,



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Oklahoma Independent Petroleum Association,  
Environmental Federation of Oklahoma,  
Oklahoma Cattlemen's Association and  
Oklahoma Aggregates Association

#### CERTIFICATE OF MAILING

This is to certify that on November 21<sup>st</sup>, 2014, a true and correct copy of the above and foregoing instrument was mailed by U.S. mail, postage prepaid, to all persons listed below.

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