

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER of Determining the Maximum)
Annual Yield for the Arbuckle-Simpson)
Groundwater Basin underlying parts of Murray,)
Pontotoc, Johnston, Garvin, Coal and Carter)
Counties.)

RESPONSE TO KELLY HURT'S EXH. 1

COMES NOW The City of Ada, (on occasion, "Ada" or "City") by and through its Attorney, D. Craig Shew, and responds to Kelly Hurt's Exh. 1, and shows the Hearing Examiner as follows:

Mr. Hurt notes in his opening paragraph that he has "... seen a lot of unusual twists and turns in the battle over the Arbuckle Simpson Aquifer." Perhaps the most dramatic twist and turn is Mr. Hurt's switching sides. As he explains, he is a "... former board member and officer of CPASA, immediate past president of the Ada Water Resources Board and [now] current representative of the Arbuckle Simpson Landowners Group." As pointed out in Ada's Brief at footnote 5, Mr. Hurt has an obvious and irreconcilable conflict of interest apparently driven by the prospect of the commission resulting from leasing water rights. Further, Mr. Hurt notes that one of the unusual twists and turns is that "... Ada now seem [sic] a little hesitant to abide by the study and reductions they fought so hard for." That, of course, is just inapposite to Ada's stated position. The City especially noted in the Preface of its Brief that, although it was opposed the five-year implementation period:

The City of Ada supports the Proposed Determination of both the maximum annual yield ("MAY") and the equal proportionate share ("EPS") for the reasons that i) these values appear to be based on solid scientific evidence resulting from OWRB's five-year study of the Arbuckle-Simpson Aquifer and none of the Protestants have provided any viable scientific evidence to refute the Board's values, ii) the Board's values will sustain the Arbuckle-Simpson for the foreseeable future and iii) the Board's values will serve to ultimately protect Ada's primary municipal water source - Byrds Mill Spring.

Next, Mr. Hurt castigates the City for obtaining “free” water from Byrds Mill Spring. As it turns out most all users get “free” water from springs and streams flowing from the Aquifer. For example, the City of Tishomingo, which lies over the Aquifer, gets “free” water from Pennington Creek. Even those users, like Ada, who happen to lie immediately outside the Aquifer, get “free” water flowing from springs and streams from the Aquifer: Ada from Byrds Mill Spring; Durant from the Blue River; and, Davis, Ardmore and Wynnewood from the Lake of the Arbuckles fed by Rock and Travertine Creeks and numerous springs in the area. Mr. Hurt states “[t]his is exactly what the landowners wanted to do.” But that is not true. Ten years ago, a number of ranchers wanted to sell 70 - 80 million gallons per day (“mgd”) of water to Canadian County residents pumped from the Aquifer, not free flowing from springs and streams.

Mr. Hurt goes on to state that once Ada gets the water from the Aquifer, it charges \$2.70 per 1000 gallons and further assumes a profit of \$1.00 per 1000 gallons for a net profit of \$18,000,000 over the past nine years. Mr. Hurt provides no factual basis for any of these numbers. In fact, Ada does not charge \$2.70 per 1000 gallons nor does it make a \$1.00 profit from selling water to its residents, and, therefore, has not netted \$18,000,000 over the past nine years. What Mr. Hurt overlooks, and apparently did not take the time obtain, are the facts and figures associated with all the many costs related to providing water to Ada’s residents.

The essence of Mr. Hurt’s argument in the first paragraph of page two is that Ada is hypocritical because it objects to landowners selling water to outside communities because of the impact on springs and streams when Ada’s wells impact springs and streams, but there are several important facts missing from that argument. Mr. Hurt is correct in that ten years ago Ada very strongly objected when several ranchers proposed to sell 70 - 80 mgd to Canadian County because

that entire amount had to be pumped from the Aquifer and this likely would have depleted the entire flow in the springs and streams. As pointed out previously in Ada's Brief, Ada relies primarily on surface water from Byrds Mill Spring, but in times of drought/low flow, Ada supplements its water supply from groundwater from its three wells. In 2006, which was the highest well usage in the past fourteen years, the amount of water Ada pumped from the Aquifer averaged only 3.13 mgd - a factor of 22 - 25 times less than what the ranchers wanted to pump and ship to Canadian County. Mr. Hurt offers no evidence that the 3.13 mgd, or any lesser volume throughout the years, had any impact on the surrounding springs or streams or landowners' wells. Thus, it is not a matter of being hypocritical, but rather the issue is the volume of water pumped and the depleted flow of springs and streams.

Mr. Hurt correctly points out that Ada's water delivery system has leaks. Although he lists the volume of leaks as 500,000, 600,000 and 1,000,000 gallons per day, the most recent determination was 490,000 gallons per day. See Hurt's Appendix B. No one knows the actual volume leaking as these volumes consist of not only leaks, but valid, unmetered usage (in exchange for easements) and illegal taps. However, as indicated in Ada's Brief, the City has commissioned an engineering study to upgrade/repair/replace/modernize its entire water infrastructure at an estimated cost of \$24,900,000 (a part of the report not included in Hurt's Appendix B). These improvements will not only eliminate any leaks and illegal taps, but will also meter the easement users along the twelve-mile line.

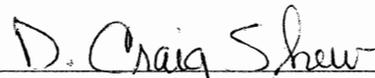
Although Mr. Hurt has made a number of statements with little or no factual basis, the most incredulous statement is "[l]andowners understand that the OWRB didn't write S.B. 288, the City of Ada did." Although he seems to cite an article in the Ada Evening News quoting Sid Bearden,

nowhere in that article does it even remotely indicate that the City of Ada wrote SB 288 nor does he cite any other authority or factual basis for such a remark. Although it is unknown which legislator or legislative aid actually wrote SB 288, according to the bill, Senators Gumm and Crutchfiel and Representative Roan authored SB 288 and none of these gentlemen represent Ada's District 13.

In concluding, Mr. Hurt leaves the impression that because Ada opposes the five-year implementation period it lacks "... the leadership and foresight to take proactive measures to secure its water future." Again, the facts do not support that position. Mr. Scalf's 2003 article cited by Mr. Hurt appears to be the start of Ada's planning process. In addition, the City and the Ada Water Resources Board have taken a number of steps over the years (see, Ada's Brief at page 3) to plan for the implementation of SB 288, including currently purchasing water rights. All of that seems inconsistent with Mr. Hurt's notion that "... the City of Ada will not take action until it is forced to do so."

Mr. Hurt ends with a summary of seven reasons why the OWRB "... should not allow Ada an implementation period or special considerations for additional time to comply with SB 288. ..." Each of the seven reasons has been either addressed in this response or previously in Ada's Brief.

Respectfully submitted,



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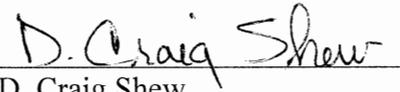
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CERTIFICATE OF SERVICE

I, D. Craig Shew, do hereby certify that on the 12th day of June, 2012, true and correct copies of The City of Ada's Response to Kelly Hurt's Exh.1 were mailed with pre-paid, first-class postage, to each and every party listed by the Oklahoma Water Resources Board as Formal Parties in the Hearing-Mailing List Part 1, e-mailed to the parties on the Arbuckle-Simpson Maximum Annual Yield Email List, and e-mailed to the OWRB.


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