

**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 CHUCK ROBERTS' EXH. 1

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

Mr. Roberts has submitted a number of statements and/or opinions ("S/O"), most of which are in the form of one or two lines and few are supported by any facts or authority. Ada will respond ("R") accordingly.

PAGE 1:

S/O: Ada has been offered 25,000 acres of water rights over the recharge area for Byrd's Mill but they have refused to even talk.

R: In late April, Kelly Hurt requested that his offer of 25,000 acres of water rights be put on the Ada City Council Agenda, but to date it has not yet been on the agenda. See also, Ada's Brief in which Mr. Hurt's offer is discussed in detail.

S/O: There is a serious question as to the legality of OWRB allowing a phase in.

R: Apparently, Mr. Roberts is referring to the proposed five-year period prior to final implementation. If so, what is the "serious question?" SB 288 does not address this issue and nowhere in either the OWRB Rules or Oklahoma Statutes is such a delayed implementation period prohibited.

S/O: Phase in is not fair to landowners. Under their plan they would have 20 years to pump more than their share of water. If they pump more than their share then they are pumping my limited share from under my land without compensation. (Sounds like stealing my water for 20 years).

R: All users, including Mr. Roberts, could pump their permitted allocation for whatever phase in period is allowed. Since Ada's allocation is limited to one af/a and presumably Mr. Roberts' allocation is two af/a, he would be "stealing" Ada's water during the phase in period.

S/O: This phase in/grandfathering [sic] was determined to not be fair by the legislature in 2003 when HB 1033 failed in favor of SB 288.

R: According to the historic legislative records online for 2003, HB 1033 is a bill related to taxation not a phase in or SB 288. Additional authority is needed to address this issue.

S/O: Ada and Sulphur cannot claim they didn't know what was happening, their legislators sponsored the bill 9 years ago.

R: Ada has never claimed it did not know what was happening in regard to SB 288. But for the record, SB 288 was sponsored by Senators Gumm and Crutchfield and Representative Roan, none of whom represent Ada.

S/O: Why does Ada need 20 years? They can lease water rights with little or no rate increase or new taxes. Landowners have offered a plan that includes a graduated price structure so as not to place [an] immediate pricing hardship on the city.

R: This issue was discussed in detail in Ada's Brief. As shown in Exhibit 3 in the Brief, according to the Landowners' offer, it would cost the City \$79,680,377 for the 30-year life of the lease and increasing annually - more than ten times the one-time cost of buying water rights and four times the cost of buying land. Since the Ada City Council has yet to consider the leasing issue, it remains to be seen whether the Council considers this a "pricing hardship."

S/O: The water market in the Arbuckle Simpson has effectively been limited to Ada, Sulphur, Aggregate companies, and a few rural water districts. Now these organizations want to completely eliminate any market for 20 years so they can use our water for free. (Steal our water for 20 years).

R: It is not a matter of stealing or using free water. As pointed out in Ada's Brief, Ada is currently purchasing water rights, but it projects that it will take longer than five years to accumulate the 29,375 acres needed to match the City's current water rights. Moreover, the landowners are free to use, sell or lease their water rights during this interim period.

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S/O: 1 Any phase in is unfair to landowners.

R: Mr. Roberts provides no reasons nor any factual or authoritative basis for his statement.

S/O: 2 Any further delay in implementing SB 288 restricts the private property rights of landowners.

R: As pointed out before, the landowners are free to use their water and/or sell or lease their water rights during this interim period. Consequently, there is no restriction of private property rights.

S/O: 3 Phase in has never been used before.

R: Assuming a phase in has never been used before, that does not mean it is prohibited.

S/O: 4 Phase in is not legal. There is no mention of phase in SB 288.

R: Because there is no mention of phase in SB 288 does not make it illegal. Further, Mr Roberts provides no authority for a phase in not being legal.

S/O: 6 Allowing some entities to pump more than their EPS for any length of time is allowing them to pump part of my limited EPS from under my land. This is taking my water without compensation or more simply put, stealing my water.

R: During the interim period before implementation, all users, including landowners, will be able to use whatever their temporary permits allow. In addition to using the water, the landowners are free to lease or sell their water rights during this period. No users would be stealing water.

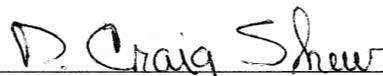
S/O: 7 Phase in will allow over allocation for the length of the phase in. This is not allowed by SB 288.

R: It is not clear how Mr. Roberts arrived at this conclusion. The OWRB is proposing a maximum annual yield of 78,404 acre feet per year and approximately that amount is currently permitted, but only a very small fraction of that amount is ever actually used (~ 6 - 8%). Thus, assuming every permitted user pumped their allocated amount, the amount used would approximate the proposed maximum yield during the interim period. Realistically, however, the amount used would more likely be 6 - 8% of the proposed maximum yield of 78,404 acre feet per year.

S/O: 12 Why is Ada wanting to phase in 10,000 acre feet when they only use 6,000 acre feet. Phase in allows them to steal my water then sell it for a profit. Not fair.

R: Mr. Roberts provides no basis for the origin of either the 10,000 or 6,000 acre feet, so it is not clear where these numbers came from or what he is trying to establish. More importantly, there is no authority for the City selling water for a profit and "stealing" water has been previously addressed.

Respectfully submitted,



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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 Chuck Roberts' 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.

D. Craig Shew
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