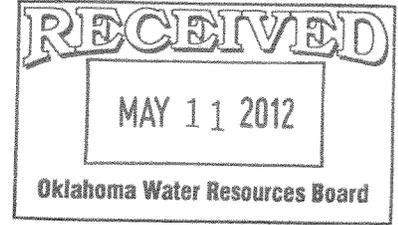


**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

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)



**JOINT RESPONSE TO CPASA’S MOTION FOR JUDICIAL
NOTICE OF COGNIZABLE FACTS**

The Oklahoma Farm Bureau Legal Foundation, the Cattlemen’s Association, Oklahoma Independent Petroleum Association, the Pontotoc County Farm Bureau, the Environmental Federation of Oklahoma, the Oklahoma Aggregates Association, TXI, Arbuckle-Simpson Aquifer Protection Federation of Oklahoma, Inc., John Sparks, and Floyd Bergen (collectively “Protestants”) respectfully object to CPASA’s Motion for Judicial Notice of Cognizable Facts (“Motion”). The facts sought to be noticed in the Motion might be properly included as Proposed Findings of Fact after the presentation of evidence at the hearing, but they may not be properly established by judicial notice before the hearing has even begun.

The asserted facts listed in the Motion are not undisputed facts that are relevant to the Hearing Examiners’ determination, but rather the substantive and procedural requirements that the Oklahoma Water Resources Board (“OWRB”) must satisfy and that it bears the burden of establishing through evidence at the hearing. *See* 82 O.S. §§ 1020.1-1020.6 (establishing obligation and requirements for determining the Maximum Annual Yield of groundwater basins within the state). Failure to establish any one of the asserted facts would be grounds for reversal on appeal, and thus each of the asserted facts is a matter the hearing is meant to determine. *Id.* § 1020.6(C) (determination appealable under Article II of the Oklahoma Administrative Procedures Act); 75 O.S. § 322 (agency action may be reversed for failure to adhere to

substantive and procedural statutory requirements). Taking judicial notice of such asserted facts without any evidence yet in the record thwarts judicial review and violates due process. *C. F. Braun & Co. v. Corp. Comm'n*, 1980 OK 42, 609 P.2d 1268, 1273 (quoting *Dayco Corporation v. Federal Trade Commission*, 362 F.2d 180 (6th Cir. 1966)).

For the foregoing reasons, the Motion should be denied, and if the movants desire to establish the alleged facts they should attempt to do so through the introduction of evidence at the hearing.

Dated this 11th day of May, 2012.

Respectfully submitted,



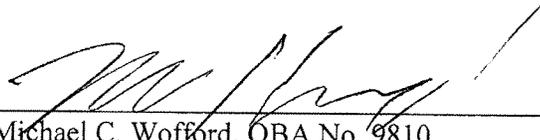
L. Mark Walker, OBA #10508
Scott A. Butcher, OBA #22513

-Of the Firm-

CROWE & DUNLEVY
A Professional Corporation
20 North Broadway, Suite 1800
Oklahoma City, OK 73102-8273
(405) 235-7700
(405) 239-6651 (Facsimile)

**ATTORNEYS FOR PROTESTANTS
OKLAHOMA FARM BUREAU LEGAL
FOUNDATION, THE CATTLEMEN'S
ASSOCIATION, OKLAHOMA
INDEPENDENT PETROLEUM
ASSOCIATION, THE PONTOTOC
COUNTY FARM BUREAU, THE
ENVIRONMENTAL FEDERATION OF
OKLAHOMA , THE OKLAHOMA
AGGREGATES ASSOCIATION**

Doerner, Saunders, Daniel & Anderson, L.L.P.

A handwritten signature in black ink, appearing to read "M. Wofford", is written over a horizontal line.

Michael C. Wofford, OBA No. 9810
201 Robert S. Kerr Ave., Suite 700
Oklahoma City, OK 73102-4203
(405) 319-3504, (405) 319-3534 Fax
Email mwofford@dsda.com

Attorney for Oklahoma Aggregates Association
and TXI

Doerner, Saunders, Daniel & Anderson, L.L.P.

A handwritten signature in black ink, appearing to read 'James R. Barnett', is written over a horizontal line.

James R. Barnett, OBA No. 547
201 Robert S. Kerr Ave., Suite 700
Oklahoma City, OK 73102-4203
(405) 319-3500; (405) 319-3509 Fax
Email jbarnett@dnda.com

Attorney for Arbuckle-Simpson Aquifer Protection
Federation of Oklahoma, Inc., John Sparks, and
Floyd Bergen

Certificate of Service

I certify that on May 11th, 2012, a copy of the above was mailed to :

Alan Woodcock Department of the Interior 7906 E. 33 rd St. Tulsa, OK 74145	U.S. Fish and Wildlife Service, National Park Service
Bill Holley City of Sulphur 600 W. Broadway Sulphur, OK 73086	City of Sulphur, A.S.A.P.
David Ocamb 4900 Richmond Square, Ste. 203 Oklahoma City, OK 73118	Sierra Club
Edward T. Tillery 210 W. Grant Ave. Pauls Valley, OK 73075	Arbuckle Master Conservancy District
Kyle E. Murray Oklahoma Geological Survey University of Oklahoma 100 E. Boyd Street, Ste. N131 Norman, OK 73019	Oklahoma Geological Survey
Peter Fahmy Office of the Solicitor, Branch of National Parks 12795 W. Alameda Parkway, Ste. 155A Lakewood, CO 80228	National Park Service

<p>Mike Wofford Doerner Saunders Daniel & Anderson LLP 201 Robert S. Kerr, Ste. 700 Oklahoma City, OK 73102</p>	<p>Oklahoma Aggregates Association, TXI</p>
<p>D. Craig Shew Box 1373 Ada, OK 74821-1373</p>	<p>City of Ada</p>
<p>Marla Peek Oklahoma Farm Bureau 2501 N. Stiles Oklahoma City, OK 73105</p>	<p>Oklahoma Farm Bureau</p>
<p>James R. Barnett Doerner Saunders Daniel & Anderson LLP 201 Robert S. Kerr, Ste. 700 Oklahoma City, OK 73102</p>	<p>Arbuckle-Simpson Aquifer Protection, Environmental Federation of Oklahoma, Inc.</p>
<p>Kerry Graves 5501 Highway 7 West Tishomingo, OK 73460</p>	<p>U.S. Fish & Wildlife Service, Tishomingo National Fish Hatchery</p>
<p>James Dunegan City Manager, City of Durant P.O. Box 578 Durant, OK 74702</p>	<p>City of Durant</p>
<p>Tommy Kramer 215 N. 4th Durant, OK 74701</p>	<p>City of Durant</p>
<p>Jerry L. Tomlinson, Mayor City of Durant P.O. Box 578 Durant, OK 74702</p>	<p>City of Durant</p>

Richard Day 3284 State Highway 1 W Roff, OK 74865	Self
Guy Sewell 1100 E. 14 th St. Ada, OK 74820	Institute of Environmental Science, Education & Research
Jim Rodriguez Oklahoma Aggregates Association 3500 N. Lincoln Oklahoma City, OK 73072	Oklahoma Aggregates Association
Dave Roberson P.O. Box 235 Sulphur, OK 73086	Murray County Rural Water District No. 1
George Mathews 426 Westchester Ada, OK 74820	U.S. Silica, Oklahoma Aggregates Association
Lewis Parkhill, Mayor City of Tishomingo 409 S. Mickle Tishomingo, OK 73460	City of Tishomingo
Gary Kinder, City Engineer City of Ada 231 S. Townsend Ada, OK 74820	City of Ada
C.J. Maxwell, Jr. 4500 Highway 7 West Tishomingo, OK 73460	Self

<p>Peter Burck P.O. Box 1306 Albuquerque, NM 87103</p>	<p>U.S. Fish & Wildlife Service</p>
<p>Cody Holcomb Ada Public Works Authority 231 S. Townsend Ada, OK 74820</p>	<p>City of Ada, Ada Public Works Authority</p>
<p>Bill Flanigan 1341 W. Mockingbird Dallas, TX 75247</p>	<p>Self</p>
<p>Kelly Hurt P.O. Box 299 Allen, OK 74825</p>	<p>Arbuckle-Simpson Landowners Group</p>
<p>Bruce Noble National Park Service Chickasaw National Recreation Area 1008 W. 2nd Street Sulphur, OK 73086</p>	<p>National Park Service, Chickasaw National Recreation Area</p>
<p>Jonathan Gourley 901 NW 37th Street Oklahoma City, OK 73118</p>	<p>NOAA, National Severe Storms Lab</p>
<p>Kevin Blackwood P.O. Box 2352 Ada, OK 74821</p>	<p>CPASA</p>
<p>Jona Tucker Nature Conservancy of Oklahoma 31700 CR 3593 Stonewall, OK 74871</p>	<p>Nature Conservancy of Oklahoma</p>

<p>Jason Aamodt Aamodt Law Firm 1723 S. Boston Ave. Tulsa, OK 74119</p>	<p>CPASA</p>
<p>Fred Chapman Chapman Properties P.O. Box 1754 Ardmore, OK 73401</p>	<p>Chapman Properties</p>
<p>Gary J. Montin P.O. Box 202 Connerville, OK 74836</p>	<p>Self</p>
<p>Dick Scalf P.O. Box 851 Ada, OK 74820</p>	<p>Self</p>
<p>Bill Brunk P.O. Box 280 Fittstown, OK 74842</p>	<p>Self</p>
<p>Angela Williams 11937 N CR 3250 Paoli, OK 73074</p>	<p>Self</p>
<p>Shannon Shirley 2370 N. Daube Ranch Rd. Mill Creek, OK 74856</p>	<p>Self</p>
<p>Donald J. Chaffin P.O. Box 1766 Ardmore, OK 73401</p>	<p>Chapman Family & Related Entities</p>

<p>Thomas J. Enis 100 N. Broadway, Ste. 1700 Oklahoma City, OK 73102</p>	<p>Estate of Ida Sutton Williams</p>
<p>Chuck Roberts 21745 CR 3510 Fitzhugh, OK 74843</p>	<p>Self</p>
<p>Joseph Morrow 23475 CR 3500 Roff, OK 74865</p>	<p>Self</p>
<p>Ronnie Wartchow 26440 CR 3520 Roff, OK 74865</p>	<p>Self</p>
<p>Charles Morrow 24044 Highway 1 W Roff, OK 74865</p>	<p>Self</p>
<p>Carolyn Sparks P.O. Box 502 Sulphur, OK 73086</p>	<p>Self</p>
<p>Floy Parkhill 409 S. Mickle St. Tishomingo, OK 73460</p>	<p>Self</p>
<p>Jerry Lamb 12160 CR 1690 Roff, OK 74865</p>	<p>Self</p>
<p>Amy Ford 889 Knight Drive Durant, OK 74701</p>	<p>Self</p>

<p>Velta Wingard Wingard Water Corporation 10371 CR 1620 Fitzhugh, OK 74843</p>	<p>Wingard Water Corporation</p>
<p>James T. Johnson J.B. Johnson 1133 Fletcher Rd. Sulphur, OK 73086</p>	<p>Self</p>
<p>Paul Warren P.O. Box 60 Mill Creek, OK 74856</p>	<p>Self</p>
<p>Charles Roos 7955 CR 1670 Roff, OK 74865</p>	<p>Self</p>


L. Mark Walker