

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

April 10, 2007

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on April 10, 2007, in the meeting room of the Oklahoma Water Resources Board, at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on April 4, 2007, at 2:40 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked Mr. Bill Secrest to provide the invocation.

B. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Mark Nichols, Vice Chairman
Bill Secrest, Secretary
Ford Drummond
Lonnie Farmer
Ed Fite
Jack Keeley
Kenneth Knowles
Richard Sevenoaks

Board Members Absent

None

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Mike Melton, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Monte Boyce, Comptroller
Lou Klaver, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Sherrie Matteson, Mooreland, OK
W.D. Matteson, Mooreland, Ok
Ronald Brynjiben, Waynoka, OK
John Hibbs, Waynoka, OK
Steve Walker, Waynoka, OK
Steven Stuart, Mooreland, OK
D.C. Anderson, Broken Arrow, OK
Bud Ground, Public Service Company of Oklahoma, Oklahoma City, OK
Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK
Bert Lutt, Norman, OK
Mike Schrammel, USDA Rural Development, Stillwater, OK
Scott A. Law, Matteson Ranch, Oklahoma City, OK
Charles Swinton, BancFirst, Oklahoma City, OK
Ken Senour, C.H. Guernsey & Co., Oklahoma City, OK
Mike Mathis, C.H. Guernsey & Co., Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Bobby & Donna McSpadden, Sardis Lake Water Authority, OK
Shawn Geurin, Ardmore Public Works Authority, Ardmore, OK
Mark Johanntoscons, Kiowa Tribe, Carnegie, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the March 13, 2007, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Mr. Nichols moved to approve the minutes of the March 13, 2007, Regular Meeting, as presented, and Mr. Sevenoaks seconded.

AYE: Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks, Herrmann
NAY: None
ABSTAIN: Drummond, Secrest
ABSENT: None

Prior to the Executive Director's report, Chairman Herrmann made a few comments in regard to recognizing Mr. Smith's ten-year anniversary as Executive Director of the Oklahoma Water Resources Board.

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Smith began his report introducing Mike Melton to present the agency's legislative report. In regard to budget matters, Mr. Smith said that he, Chairman Herrmann, Vice Chairman Mark Nichols and the OWRB Financial Team met with Scott Meacham and Gerald Adams of the Governor's Office, and while there was no commitment to remove the cap from the REAP fund, or put additional money into the fund, it was a very good meeting and they understand the need and want to try to help. He added the budget agreement that the Governor vetoed did not contain additional appropriations for the OWRB, but at that time there was still additional

money, over \$66 million to appropriate, and that was the piece the Board was trying to get involved with for an additional appropriation, and now are in essence back at square one. Senator Laster's bill to remove the cap passed the Senate and is at the House and he is hopeful it will be favorable.

Mr. Smith gave a PowerPoint presentation in light of the kickoff of the public meetings being held to gather information from citizens on the state's Comprehensive Water Planning effort. The first meeting is April 12, 2007, in Beaver, Oklahoma, and the presentation will be given at the meetings. The slides depicted the state's water resources, from the 1900s, the development of Oklahoma's water law beginning in 1963 with streamwater law and 1972 with groundwater law, the state's drought history, permit activities for both groundwater and streamwater, growth and development across the state that has occurred over the past 35 years, and population projections and water use projections for the next 50 years. Mr. Smith said it is important to look at the state's demographics and make predictions about what will happen in the future and plan for that eventuality in order to provide for security, certainty, and stability for the citizens of Oklahoma.

Mr. Dave Dillon, Director of Planning for the OWRB, updated the members on the practice listening session (public meetings) schedule, he noted the website, www.okwaterplan.info where citizens can register, and he also updated the members on the progress regarding the schedule for certain technical aspects of the plan. He announced the Corps of Engineers has authorized money under the Southeast study making \$140,000 available that will be matched by the state to develop a program plan detailing the technical issues and how that will be "fed" into the public participation aspect of the planning process. Mr. Smith added he will be meeting with the Corps of Engineers' Chief of Planning from Washington, D.C. to talk to him about the state's planning process, and he will be joining the City of Altus delegation along with Mark Nichols to visit Washington, D.C. and the Oklahoma delegation and he will be talking to them about federal funding.

Continuing his report, Mr. Smith noted the Red River Compact Commission meeting is on April 24, 2007, and will be meeting at the OWRB but there is nothing on that agenda about the Tarrant County lawsuit. May 8 is Water Day at the Capitol, and Mr. Secrest's last OWRB meeting. He said some activities are being planned and will celebrate Mr. Secrest's career. He announced Mr. Rudy Herrmann had been re-appointed to the Board, and Ms. Linda Lambert has been appointed, the second woman to serve. Mr. Smith concluded his report.

Mr. Drummond asked about the status of the WRDA bill; Mr. Smith responded it had passed the U.S. House of Representative and Senate, and is now in conference. He said there are a few items regarding Oklahoma water in the version that passed but not about the water plan, which he will be working to get added.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Ardmore Public Works Authority, Carter County. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Ardmore Public Works Authority requested an extension of time to close on the remaining loan proceeds from the \$27 million Drinking Water State Revolving Fund Loan approved May 9, 2006. He said the Authority has closed the loan on approximately \$18.5 million in proceeds that are being used for

upgrading and expanding the water treatment plant and for construction of a two-million gallon water tower. The remaining \$8.5 million in proceeds will be for installing a new 24-inch transmission line, pump station, and distribution line. Mr. Freeman noted provisions of the loan agreement, and stated that Ardmore has been a loan customer of the Board's since December 2004, and has three other outstanding loans with the Board. It is estimated that Ardmore will save approximately \$2 million in interest expense on the \$8.5 million dollar loan by borrowing from the Board. Staff recommended approval

Mr. Shawn Geurin, Ardmore Public Utilities Director, was present in support of the request for an extension.

Chairman Herrmann asked about the \$27 million loan, and the extension for the \$8.5 million. Mr. Freeman responded the Board originally approved \$27 million in loan proceeds, and have closed on \$18.5 million.

Mr. Nichols moved to approve the extension of time for obligation of funds, and Mr. Drummond seconded.

AYE:	Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann
NAY:	None
ABSTAIN:	None
ABSENT:	None

B. Presentation and Discussion of Integrating the Clean Water State Revolving Fund with Watershed Protection. Mr. Freeman stated Ms. Julie Cunningham, Assistant Financial Assistance Division Chief, would make this presentation. As Assistant Chief, he said his focus is financing, and Ms. Cunningham brings into focus the environmental aspects of funding projects, and recently made the presentation at a recent conference, "Sustainable Infrastructure Financing." She introduced the presentation saying EPA sponsored the conference as a way to "tap into" what's going on nationally, the issues of solving water problems, and how to pay for these projects for the next 50 years—mimicking the OWRB water planning effort.

Ms. Cunningham opened by stating the Clean Water State Revolving Fund came from the Clean Water Act which goals are to protect, restore, and maintain waters of the U.S. to a fishable, swimmable level; to restore the integrity of the Nation's waters. The 1972 amendment required greater wastewater treatment levels to protect human health and the environment, and the 1987 amendment re-focused the act toward water quality and added Section 319 nonpoint source program, Section 320 estuary protection, and the revolving fund was added. She said the revolving fund program is the major financing for wastewater infrastructure across the U.S., about \$55 billion nationally, and \$600 million in the state. She spoke about today's challenges, competing uses, protection of water supplies through watershed planning, and that the program goals will be incorporated into the state's comprehensive water planning as it is developed. An example project is the City of Tulsa and Eucha-Spavinaw watershed improvement activities. She said the agency is looking for opportunities to further integrate the CWSRF into water quality programs, are identifying priority watershed, and developing strategies to meet the needs, and finally creating incentives to adopt implementing techniques.

Mr. Nichols commented about Oklahoma having difficulty obtaining priority watershed distinction from the Natural Resource Conservation Service for buffer zones and no-till practices. Mr. Knowles likewise commented that ranchers had an interest in the GREP program,

similar to the CREP program, but the funding was going to the eastern states because the point system is a hindrance.

Chairman Herrmann said that perhaps the farm groups would be able to assist farmers and ranchers in obtaining funding through the programs.

Mr. Smith complimented Ms. Cunningham and her national recognition for work in this program, and he also complimented Tulsa on its effort to improve the Eucha-Spavinaw watershed, and mentioned the important role that water quality standards effect how the dollars go out the door.

3. SUMMARY DISPOSITION AGENDA ITEMS

Any item listed under this Summary Disposition Agenda may, at the requested of any member of the Board, the Board's staff, or any other person attending this meeting, may be transferred to the Special Consideration Agenda. Under the Special Consideration Agenda, separate discussion and vote or other action may be taken on any items already listed under that agenda or items transferred to that agenda from this Summary Disposition Agenda.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items and Approval of Items 3.C. through 3.O.

There being no questions or discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Sevenoaks moved to approve the Summary Disposition Agenda items, and Mr. Knowles seconded.

Mr. Drummond asked about the situation with Lone Chimney. Mr. Freeman stated he met recently with the Chairman Darrell Clark and while the area had not received as much rain as central Oklahoma, the lake while up four feet is still 6 feet low. The submersible pump is installed and inspected and Lone Chimney is approaching Rural Development for funding for pipeline. Chairman Herrmann asked if the item (3.C.1.) is a modification to what the Board had previously approved. Mr. Freeman said it is a modification to the funding for the project associated with drought, and under the rules for drought funding there needed to be a one-year time frame.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: Fite on item D.5.

ABSENT: None

The following items were approved:

C. Consideration of Approval of the Following Application for Amendment to Scope of Project for REAP Grant in Accordance with the Proposed Order Approving the Grant:

REAP			Amount
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>Recommended</u>
CEODD			

1. FAP-05-0016-R Lone Chimney Water Association Pawnee \$99,990.00

D. Consideration of and Possible Action on Contracts and Agreements, Recommended for Approval:

1. Amendment to Agreement with Office of the Secretary of the Environment for USEPA §106 Funding Increase for National Lakes Probabilistic Survey.
2. Third Modification to Subagreement with the University of North Texas for Services in Support of Monitoring and Mitigation Efforts in Grand and Hudson Lakes.
3. OWRB McAlester office renewal lease agreement with Mills Family LLC.
4. Joint Funding Agreement with the U.S. Geological Survey for the Attorney General Participation in the Federal-State Cooperative Program.
5. Memorandum Agreement with Attorney General of the State of Oklahoma for continued monitoring and determination of water quality in the Scenic Rivers area included in cooperative program between OWRB and the USGS.
6. Amended lease agreement with IDK Investors, LLC to include extra space for OWRB Oklahoma City office.

E. Applications for Temporary Permits to Use Groundwater:

1. Sam & Nila Birchett, Robert D. & Shannon Foreman, and Clara M. Foreman, Canadian County, #2006-610
2. Ronald J. & Nancy A. Carel, Canadian County, #2006-612
3. Bryan Kroeker, Kingfisher County, #2006-613
4. Dale S. & Tracy L. Bogle Trusts, Canadian County, #2006-614
5. Oklahoma #2, L.L.C., Craig County, #2006-617

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. Wallace Inc., Cimarron County, #2006-582
2. Oklahoma Department of Wildlife Conservation, Dewey County, #2006-606
3. Ellis County Rural Water District #1, Ellis County, #2006-608

H. Applications to Amend Regular Permits to Use Groundwater:

1. Jeff & Jeri Slatten, Beaver County, #2006-534

I. Applications to Amend Prior Rights to Use Groundwater:

None

- J. Applications for Regular Permits to Use Stream Water:
 - 1. Kenneth & Bonnie Hahn, Kiowa County, #2006-062
- K. Applications to Amend Regular Permits to Use Stream Water:
None
- L. Well Driller and Pump Installer Licensing:
 - 1. New Licenses, Accompanying Operator Certificates and Activities:
 - C. Dan's Windmill Service, DPC-0683
 - D. Aqua-Drill-Services, L.L.C., DPC-0687
- M. Dam and Reservoir Plans and Specifications:
None
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Department of Transportation, Oklahoma County, FP-07-06
 - 2. Department of Transportation, Oklahoma County, FP-07-08
- O. Applications for Accreditation of Floodplain Administrators:
None

4. QUESTIONS AND DISCUSSION ABOUT AGENCY WORK AND OTHER ITEMS OF INTEREST.

- A. Update on Comprehensive Water Plan Activities. Mr. Dave Dillon noted his presentation was included under the Executive Director's report earlier in the agenda.

5. SPECIAL CONSIDERATION

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation, or

proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

Ms. Klaver stated prior to the presentation of the agenda item that the Water Board is losing a valued employee who has directed the Permitting Section of the Planning and Management Division for a number of years, Ms. Phyllis Robertson, is retiring on April 30, 2007.

A. Application for Regular Permit to Use Stream Water No. 2006-044, Wesley Dean and Sherrie S. Matteson, Major County.

1. Summary – Ms. Lou Klaver, Chief, Planning and Management Division, stated to the members this application by Sherrie and Dean Matteson is for a regular permit to use streamwater from Main Creek in Major County. Ms. Klaver explained what an applicant must establish in order to obtain a streamwater permit: unappropriated water available in the amount applied for, the applicant has a present or future need for the amount of water, that the water will be placed to beneficial use, and the use will not interfere with downstream or existing appropriative uses. An additional provision involved the water being transported outside the stream system of origin; however, that is not applicable in this case. The applicants are requesting a permit to take and use 168 acre-feet of stream water per year for irrigation from two diversion points on Main Creek at a rate of 500 gallons per minute. The applicants will grow alfalfa, wheat and sorghum.

Ms. Klaver stated the issues that are discussed in the findings of fact included the matter of unappropriated water for the applicant's use. Because there is no gage on Main Creek, the hearing examiner got evidence to the fact that the annual precipitation runoff – the amount of water that would be flowing by the proposed diversion point, minus the domestic use, other appropriations and reservoir storage – was 1,366 acre-feet available on an annual basis at the two points of diversion. The hearing examiner also considered whether the applicant has a present and future need for the streamwater for irrigation, and found that alfalfa needed 23 inches of water per acre and found the applicant needed 168 acre feet per year. It was determined that Main Creek was the only source of water that was reasonable for the applicant to use, and found that the applicant has demonstrated a present and future need. A manager will oversee the irrigation system, and the hearing examiner found that it appeared that reasonable diligence and reasonable intelligence would be exercised by the application, and that it is a beneficial use.

Ms. Klaver stated the issue of interference is a primary issue in the case. The hearing examiner found that on an annual average basis, interference should not occur; however, also present at the hearing were five protestants to the application who live downstream of the applicant and use water for domestic purposes, mainly watering cattle. The protestants believe the applicants use of the water will interfere with their domestic use and the watering of cattle.

The primary issue before the Board is whether the applicant's proposed withdrawal would interfere with other protected uses during the time the applicant will be irrigating, actually using water when water is available. Ms. Klaver explained that in the summer of 2006, the applicants believed they had a water permit and began irrigating their 88 acres in a 22-acre section and a 66-acre section, from the two diversion points on Main Creek. The protestants downstream complained to the OWRB that the applicants were irrigating without an appropriate permit, and they did not have enough water to supply their cattle. Therefore, the OWRB staff investigated and found the permit they thought they were irrigating under was for a different

section of land. The applicant immediately stopped irrigating and made application for a provisional temporary permit –a 90-day short-term permit--and a long-term streamwater application which is before the Board today. The provisional temporary (PT) permit is issued by the Executive Director and OWRB staff investigated and it appeared there was flow to sustain 15 acre-feet over 90 days and would keep the crops from dying. The PT was issued to allow irrigation of 15 acre-feet, and testimony was presented that the applicant used 7-8 acre-feet under the PT. It was determined that Main Creek is a perennial, stream-fed creek and flow is sustained year-round, and it was believed it would be somewhat immune to impacts from irrigation. The applicants brought in expert witness to the hearing that testified that in his opinion interference would not occur.

Also at the hearing, the protestants appeared with their attorney and presented evidence that interference had actually occurred, that water had to be hauled for their cattle, and showed photos of the reduced stream flow and dry creek bed. The hearing examiner found that the protestants had indeed established interference had occurred, that if the applicant intended to irrigate at 500 gallons per minute, taking 168 acre-feet that interference would occur to the five downstream landowners. The hearing examiner further found that using 78 acre-feet during the months of July, August, and September interfered with the protestants. Ms. Klaver reminded the Board members that every streamwater permit issued contains the condition that interference with domestic or existing appropriative uses cannot occur. She said that in this case, because the applicants had actually placed water to use and the protestants presented actual evidence of interference during these months, the hearing examiner is recommending denial of the streamwater application.

Ms. Klaver stated the parties are represented by counsel and counsel for the applicant, Mr. Law, has filed exceptions to the proposed order that are in the Board's materials. Mr. Law and several protestants are in attendance.

2. Discussion and presentation by parties. Chairman Herrmann invited the applicant and protestants to present their case to the Board allowing 10 minutes for each.

Mr. Scott Law, representing the applicants Sherrie and Dean Matteson, stated to the members that he was contacted after the protestants filed their objections to the water permit. He said he reviewed the merits of the case, that the applicants had a permit in place, and available for use, and subsequently the applicants purchased equipment, and built two low-water dams, allowed the ponds to fill and then irrigated. Later, it was discovered the permit was not on the land dedicated, but ceased immediately and contacted the OWRB and did what necessary to obtain a PT and long-term permit. They hired counsel, an expert witness, and asked OWRB staff in the OWRB Woodward office, Anne Klaver, to investigate. Ms. Klaver issued an August 14 report stating there was flow before, during and after irrigation. He noted the report is in his exceptions but not referenced in the proposed order. He said after the temporary permit was granted, Ms. Klaver returned to the site and asked the applicant to turn on the irrigation system, tested the flow with a gage before, during and after, and it was anticipated Ms. Klaver would submit a second report, but that has not been done. Mr. Law also stated he had submitted a subpoena to the hearing examiner that Ms. Klaver appear and testify at the hearing and bring all of her notes and data. He said Ms. Klaver did not appear. Mr. Law quoted the hearing examiner in the proposed order where it states, "evidence in the record shows that the proposed use does interfere with domestic or existing appropriate uses and consequently, the application must be denied." He questioned why Ms. Klaver's information had not been referenced, and he believed it had been provided, it would show there is sufficient flow before, during, and after irrigation of

the crops at this time period, and that the information the hearing examiner relied upon is subjective. He further argued that the photos showed at the hearing showing interference were not dated nor could the protestants confirm a date they were taken, and in fact the applicants were building the low water dams during this time which would have stopped the flow. He said there is not objective data available because the OWRB did not investigate, and the hearing examiner relied upon anecdotal evidence that could have easily been verified, and it is a misapplication of law. He argued that nominal damage does not constitute substantial consequences, that testimony was the stream responded within 12-24 hours and that does not constitute substantial interference, and he requested that the report be completed and reviewed, that the August 14 report be considered, that the Board look at the objective data, and that the proposed order is reversible error. He said his clients have gone to considerable expense, but are prepared to appeal.

Mr. Drummond asked if there were crops planted, and the applicant responded there is 80 acres of alfalfa planted, and because the PT expired no other crops were planted.

Mr. John McCue of Fairview, representing the protestants, approached the members and stated he thought it interesting the counsel for the applicant attempted to suggest it is the Board's responsibility to establish the needs of the Matteson's, that the hearing examiner be reprimanded for not conducting further investigation, but he said it is the applicant's responsibility to present the evidence that is needed. He said there was a lot of evidence presented at the hearing that was not included in the proposed findings and order, and additionally there was no objection for Ms. Klaver not having appeared at the hearing while there was ample opportunity to obtain the witness, and the written report by Ms. Klaver was submitted. He said he was confident the hearing examiner considered all the evidence but the written report apparently was not germane to the issue. He said he did not object or have any conflict with the hearing examiner's findings as to whether there is appropriate water available over the full year even though there are times of the year when the flow is fluctuating, that the applicant has a need, and that irrigation is a beneficial use. He said the main issue is whether the applicant's use interferes with the downstream neighbors. He said the protestants whose land is located on either side of the stream presented ample evidence – according to the hearing examiner-- that when the applicants were irrigating, it dropped to the level of the stream and if there was enough water in the stream to water cattle, his clients would not have protested. He said the evidence showed and was not contradicted that the stream was dry when they were irrigating, and substantially so further down the river; regardless of being able to establish the date, the stream is dry during the months of irrigation.

Mr. McCue stated the report mentioned by Mr. Law that supposedly was to be submitted by Ms. Klaver was not mentioned at the hearing, and now Mr. Law wanted to introduce more evidence, which is against his understanding of the OWRB rules. He said adding a gage on the stream will prove there is adequate water over the year but when water is pumped from the stream at certain times the stream will run dry, which will affect his clients, and that is substantial interference with downstream owner. He said the hearing examiner's opinion is correct because the evidence was correct, his recitation of the issue is correct, and he asked the Board to enter the order as proposed.

Mr. Drummond asked if the stream was the primary source of water for the cattle, and Mr. McCue responded that it is. He asked if it was the sole source, and Mr. McCue answered there was testimony about an old well.

Mr. Keeley asked about Ms. Anne Klaver's relationship to Ms. Lou Klaver, and she replied Anne is her sister. She then explained the timeline of events saying the low water dams, -the pooling of the two diversion points--happened at the end of July; the complaints came in and on August 4, the applicant ceased pumping water when the permit mistake was discovered. Ms. Anne Klaver of the OWRB Woodward office, investigated the flow in Main Creek to see if it were possible to issue a shortterm PT, but no pumping was occurring on August 7 when she checked the flow, and the exceptions show her memo and photos taken on August 10. However, at that time, since there was nothing going on in the creek, it appeared there should be flow to sustain the PT and staff recommended approval. What actually happened though it appears is that when the applicant withdrew approximately 7-8 acre-feet over that 90-day period the creek did diminish and experienced dry periods. She said it was her understanding that Anne Klaver would return, but there is no final report and has since become ill and quit working. She said there is no record, the hearing examiner did not have it before him, and it is actually outside the scope of the hearing. With regard to a subpoena for Ms. Anne Klaver to appear at the hearing, Ms. Lou Klaver stated she didn't recall receiving the request, if received those are forwarded to the hearing examiner; she said she is unaware of receiving the request and consequently the hearing examiner did not issue a subpoena, and the issue was not raised at the hearing.

Mr. Kenny Knowles stated his concern about whether the downstream landowners had an alternative supply of water for their cattle. Mr. McCue stated when the stream is dry, the landowners hauled water, and there was an abandoned well that was put back into service, but it still was not sufficient. Mr. Knowles asked if historically during the dry months the stream had never dried up, and Mr. McCue said that the testimony at the hearing was that in 50 years the stream had not dried up in that time.

Mr. Law noted in his exceptions his correspondence to Ms. Lou Klaver dated November 6, 2006, requesting Ms. Anne Klaver's appearance at the hearing. He added it was suggested he wanted to shift the burden of proof upon the Board but he is not. But, Burt Smith, the hydrologist, relied upon the statistical information from OWRB employee Mr. Bob Sandbo, and relied upon the inspections performed by Anne Klaver; that he was in contact with her and expected the additional report. Mr. McCue interjected that the time for Mr. Law's objection to Ms. Klaver's absence at the hearing is not before the Board, but before the hearing examiner, and no objection was made; there is no statutory authority to re-do the hearing.

Chairman Herrmann asked Ms. Klaver to address those comments presented and staff's recommendation. Ms. Klaver stated to the members there has been a distinction over an average annual basis and it appeared that should work, but when the applicants actually diverted the water, there was trouble. She said an applicant must show all the things discussed, including interference will not occur to the downstream domestic users. If the Board cannot find that, the Board shall deny the application, and that is what the hearing examiner based the order on. She is not saying there aren't other options if the Board desires to choose a different way to go, but the hearing examiner, based on the evidence in front of him, recommended denial based on interference.

Mr. Sevenoaks asked if off-site storage as an option during peak demand in the summer and low flow was considered, and Ms. Klaver answered that is an option the Board might want to look at. There was no evidence in the record to suggest there was a place to put storage, but because it is a perennial spring-fed spring and the hearing examiner looked at the evidence, but was not able to conclude that in January something might not happen. He was also concerned about the issue of the subpoena and he asked if it would be out of the ordinary to stay the matter

until a subpoena is issued and have Ms. Klaver come back and give the testimony, as that is the key portion of the testimony for the applicant. He was concerned about the procedure and was uncomfortable that there was a request that wasn't done. Ms. Klaver responded the matter could be remanded for more evidence, and Mr. Sevenoaks explained he did not want the entire matter re-heard.

Chairman Herrmann asked for OWRB General Counsel Dean Couch to comment about the procedural issue and this particular application. Mr. Couch responded the document drafted by the hearing examiner is proposed specifically for the 9-member Board to determine whether to approve and adopt, amend or take other action. It is not common, but the Board has remanded matters to the hearing examiner and regarding what other evidence, it goes to the heart of the legal issue what constitutes interference or what might be presented about that point. He said Mr. Law mentioned gaging, and besides storage of water to overcome those dry times, certainly typical irrigation pumping—as was the understanding of the hearing examiner—used the water when the water is naturally low in July, August, and September. Storage and also an agreement to gage and not divert when the flows are at a certain point is another option the permit can be conditioned on, but would require evidence to be presented, and the applicant to agree to those kinds of conditions and that can be presented to the hearing examiner.

3. Possible executive session. The Board did not vote to enter executive session.

Mr. Sevenoaks mentioned his concern about the availability of the witness and Mr. Keeley asked about what might be in the report, or if it exists, said Mr. Nichols.

4. Vote on whether to approve the proposed order as presented or as may be amended, or vote on any other action or decision relating to the proposed order.

Chairman Herrmann asked for a motion from the Board to continue discussion along a particular focused direction.

Mr. Sevenoaks moved the Board stay the execution of the order, re-open the hearing execute the subpoena, find out if there is additional documentation only, not to throw out other material but a continuation of the hearing, and to report back to the Board in thirty days.

Mr. Couch clarified the Board would “remand” the matter back to the hearing examiner, and because of the need for timing and scheduling he was concerned about “30 days.”

Mr. Sevenoaks restated the motion to remand the matter to the hearing examiner to get additional information and bring it back to the Board. Mr. Keeley seconded the motion.

Chairman Herrmann asked for discussion. Mr. Nichols expressed concern about the timing as summer months are approaching. The members discussed the need for water for the crops, the cattle, the possibility of issuing a temporary permit, the annual average runoff, the need for a 301 permit, when a stream becomes groundwater, and that the parties could come together with a solution. Mr. Smith expressed his concern about two issues: where the report is and what it entails, and that the applicant should have brought that up at the hearing when there was plenty of opportunity, and now to re-create there is not enough information so it is probably appropriate to remand for a further look.

Chairman Herrmann asked if there was further discussion relative to the motion and second to remand the matter to staff for clarification relative to the report and the subpoena question. There was no further discussion, and Chairman Herrmann called for the vote.

Drummond: Pass

Farmer: Pass

Fite: No

Keeley: Aye
Knowles: Aye
Nichols: Aye
Secrest: Pass
Sevenoaks: Aye
Herrmann: Aye

Call on the pass votes:

Drummond: Aye
Farmer: Aye
Secrest: Aye
Fite: Aye (Mr. Fite asked to change his vote.)

The motion carried.

Chairman Herrmann said the matter is remanded to staff relative to the very specific questions that have been identified.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce addressed the members and said the budget report distributed is for the month of March 2007. Seventy-five percent of the fiscal year has been completed, and 81% of the budget has been obligated and expended, and have collected 76% of the budget. He noted the Water Infrastructure Development Fund that regards the Comprehensive Water Plan, the total collections are \$3.5 million; the next deposit will be August 2007. There were no other questions regarding the budget report.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There were no Supplemental Agenda items for the Board's consideration.

8. PROPOSED EXECUTIVE SESSION

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an Executive Session for the purpose of discussing the Tarrant Regional Water District v. Herrmann

A. Vote on whether to hold Executive Session - before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Chairman Herrmann stated in regard to the Tarrant County matter, the Attorney General's office has responded and the members have received copies of the response. He asked the members if they wanted to direct any questions to Mr. Couch the Board could enter executive session for that purpose. None of the members expressed a desire to hold an executive session. Therefore, the Board did not vote to enter an executive session.

9. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IN AUTHORIZED. The Board did not vote to enter executive session, therefore there was no vote regarding any other matter.

10. NEW BUSINESS

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

There were no New Business Items for the Board's consideration.

11. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:20 p.m. on Tuesday, April 10, 2007.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/Absent_____
Lonnie Farmer

_____/s/_____
Jack W. Keeley

_____/s/_____
F. Ford Drummond

_____/s/_____
Richard Sevenoaks

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/Absent_____
Bill Secret, Secretary
(SEAL)