

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

January 8, 2008

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Mark Nichols at 9:30 a.m., on January 8, 2008, in the meeting room of the Oklahoma Water Resources Board, at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. He said the December meeting had been cancelled due to the ice storm.

The January 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 January 2, 2008, at 4:40 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Nichols asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

Mark Nichols, Chairman
Rudy Herrmann, Vice Chairman
Ford Drummond, Secretary
Lonnie Farmer
Ed Fite
Kenneth Knowles
Linda Lambert
Jack Keeley
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
David Dillon, Interim Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Jim Lewis, Town of Vian, OK
Verlita Meade, Vian, OK
Jerry Taylor, City of Tuttle, OK
John D. Shugart, City of Bethany, OK
Sandra Kimerer, City of Bethany, OK
Bryan Taylor, City of Bethany, OK
Bud Ground, Public Service Company, Oklahoma City, OK
Mayor Tim Gamble, City of Pauls Valley, OK
James Frizell, City of Pauls Valley, OK
Mike Mathis, C.H. Guernsey, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Mark Schlachtenhaufen, Capitol Network News, Oklahoma City, OK
Joe Anderson, Mustang, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Producers,
Oklahoma City, OK
Jeff Wilson, Office of U.S. Senator Jim Inhofe, Altus, OK
Josh McClintock, McClintock Associates, Oklahoma City, OK
Will Brown, City of Hobart, OK
Amy Ford, Citizens for the Protection of Arbuckle Simpson Aquifer, Durant, OK
Shannon Shirley, Mill Creek, OK
Reginald Robbins, Mill Creek, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Bob Kellog, Oklahoma City, OK
Jason Aamodt, Citizens for the Protection of Arbuckle Simpson Aquifer, Tulsa, OK
Mark Derichsweiler, Department of Environmental Quality, Oklahoma City, OK
Bill Brunle, Citizens for the Protection of Arbuckle Simpson Aquifer, Tulsa, OK
Zack Williams, Oklahoma Gas & Electric, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Nichols stated the draft minutes of the November 13, 2007, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Ms. Lambert noted the roll call for attendance should reflect that Mr. Keeley was absent. Mr. Herrmann moved to approve the minutes of the November 13, 2007, Regular Meeting as adjusted, and Ms. Lambert seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, addressed the members and said there was a special guest attending today, Mr. Jeff Wilson of Senator Jim Inhofe's office. He said that in the Comprehensive Water Plan, staff has been working primarily with Senator Inhofe's staff in funding for water projects in Oklahoma. In the WRDA authorization bill, there were a number of projects for water projects throughout Oklahoma for a number of communities, but also a part of that was funding for the Comprehensive Water Plan (OCWP). Mr. Smith said he had personally visited with Senator Inhofe in Washington, D.C. about \$6.5 million from the state and asked the federal government to match that, similar to Texas. The Senator's response was that if its being done in Texas, we can do it Oklahoma; now there is funding in the appropriations bill for the OCWP (\$250,000 or 25% cost-share), and the Planning Assistance to the States (PAS) Program (\$250,000 or 50/50 cost-share) which are projects for communities such a Bristow and Bartlesville where the state and the Corps of Engineers (COE) contract to look at water supply alternatives. He noted one of the greatest successes with the PAS was the sewer lagoon and distribution line around Grand Lake. There is over \$1 million in federal dollars the state will be able to match because of the state legislature's response last year, making available an additional \$2.1 million for the water planning effort. The authorization over the next five years potentially totals over \$20 million for the OCWP, because of the Senator's support, additional mapping and other work may be done, making it a model plan for the nation. Mr. Smith expressed his appreciation to the Senator and Mr. Wilson and other staff for their assistance to the OWRB in the OCWP effort.

Mr. Wilson stated to the members the Senator's office is pleased to work with the OWRB as Mr. Smith has brought a number of issues to their attention that they were able to add to the WRDA. He said it was long overdue, and a number of communities will be helped. Mr. Nichols added the WRDA bill was a bi-partisan bill, which is not easy in Washington, D.C., along with Senator Boxer but they had worked extremely well to get the bill passed and then to over ride the President's veto. He also thanked the Senator and his staff for what they have been able to accomplish which truly benefits communities across the nation.

Mr. Smith said other issues the staff is working with Senator Inhofe with involves the statewide revolving fund (SRF) program in trying to keep federal dollars up to help communities meet federal mandates, and in providing SRF monies to provide low-interest loans to those communities. He explained there are other issues the Administration is trying to do philosophically with the program that would result in the need for cash in the program instead of borrowing money for the program and in that case the state's program will substantially change, and he believed it to be a negative change. Again, he expressed his appreciation to the Senator and his staff.

Mr. Smith stated he spoke to the Texas Water Summit in San Antonio on December 3; he was the only Oklahoman asked to speak in the history of the Texas Water Summit. He said Texas is very interested in Oklahoma's water planning, and particularly the entities that are interested and have made applications in southern Oklahoma were in attendance. He said he updated them on the plan, which is for Oklahomans, and how we are going to get water to Oklahomans. The lawsuits are not open for discussion, but a major topic involved the Texas Panhandle and T. Boone Pickens and the transfer of water to Fort Worth, the marketing of water and how that would evolve over time, and the re-allocation of water in the Panhandle.

Mr. Smith noted upcoming meetings he will be attending: Agriculture Appreciation Days in Guymon, and House budget and performance review meetings. He concluded his report with the introduction of the Employee of the Quarter, Tracey Anderson.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Vian Public Works Authority, Sequoyah County. Recommended for Approval. Mr. Joe Freeman stated to the members that the Vian Public works Authority has made a \$75,000.00 emergency grant request due to problems associated with multiple water line breaks including low water pressure. Many times, he said, the pressure has not been adequate enough to meet the Department of Environmental Quality's minimum pressure requirement of 25 psi. In order to correct the problem, the Authority will be installing about 2,130 feet of 8" PVC line and gate valves. Total estimated project cost is \$113,150.00; the project will be funded with \$38,150.00 in local funds, and the \$75,000.00 requested OWRB grant. Staff recommended approval.

Vice Mayor Verlita Meade and Trustee Jim Lewis were present in support of the grant request.

Mr. Fite moved to approve the emergency grant to the Vian Public Works Authority, and Ms. Lambert seconded.

AYE: Keeley, Herrmann, Fite, Drummond, Sevenoaks, Lambert, Farmer,
Nichols

NAY: None

ABSTAIN: None

ABSENT: Knowles

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Bethany Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman stated that the Bethany Public Works Authority has requested a \$5,190,000.00 Clean Water State Revolving Fund loan for a new lift station, upgrade an existing lift station, replace 206 feet of 6-inch gravity sewer line, 18,310 feet of 8-inch gravity sewer line 1,950 feet of 12-inch line and 1,000 linear feet of sewer manholes. Mr. Freeman noted the provisions of the loan agreement, and said the Authority's debt-coverage ratio is at 4.2-times. He said that Bethany has been an excellent customer of the Board's both through the Bethany Public Works Authority, and the Bethany Warr Acres Public Works Authority. Mr. Freeman said the Authority would save approximately \$1.3 million in interest expense by borrowing from the Board. Staff recommended approval of the loan application.

Mayor Bryan Taylor, City Manager John Shugart, and Finance Director Sandy Kimerer were present in support of the loan request.

Mr. Herrmann moved to approve the loan request to the Bethany Public Works Authority, and Mr. Fite seconded.

AYE: Keeley, Herrmann, Fite, Drummond, Sevenoaks, Lambert, Farmer,
Nichols

NAY: None

ABSTAIN: None

ABSENT: Knowles

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Pauls Valley Municipal Authority, Garvin County. Recommended for Approval. Mr. Freeman said this item is a \$7,515,000.00 loan request from the Pauls Valley Municipal Authority. The PAVMA is requesting the loan to go along with approximately \$700,000 of local funds to construct a three million gallon-per-day water treatment system, which can be expanded to six million gallons; construct a 300,00 gallon clearwell, renovate two water storage tanks, renovate the lake pump station, and construct a twenty-inch raw water pipeline. Mr. Freeman said the loan will be funded through the Board's Drinking Water State Revolving Fund loan program, and he noted provisions of the loan agreement. Pauls Valley has been a loan customer of the Board's since 1992, and currently has two outstanding loans with the Board with a combined principal balance of approximately \$2.9 million. Mr. Freeman said the debt-coverage ratio stands at about 1.6-times, and it is estimated that \$2.5 million will be saved in interest expense by borrowing from the Board. Staff recommended approval of the loan request.

Mayor Tim Gamble, City Manager James Frizell, and Financial Advisor Rick Smith were present in support of the application.

Mr. Herrmann moved to approve the DWSRF loan to the Pauls Valley Municipal Authority, and Ms. Lambert seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for Hobart Public Works Authority, Kiowa County. Recommended for Approval. Mr. Freeman informed the members that this request from the Hobart Public Works Authority for a \$90,000.00 increase in the amount of the loan approved at the March 2006 OWRB Board meeting. The new loan amount will be \$1,040,000.00 and will be funded through the OWRB Clean Water State Revolving fund loan program. The loan is to lay approximately 12,700 feet of sewer lines and mains, to rehabilitate 15 manholes, to construct 16 new manholes and two lift stations. The request for additional funds is a result of a revised engineering budget and a change in the lift station design. Originally, the Authority was going to rehabilitate the original lift station; however, the Department of Environmental Quality determined that station cannot be used, and based upon its recommendations a different design is being used, which is more costly. Secondly, after the initial submission of the loan application, approximately 1,600 feet of sewer line replacement was added to the project that was not previously included. Other than the increase in loan amount, all other terms of the loan agreement remain the same as the Board originally approved. Mr. Freeman said that Hobart has been an excellent loan customer of the Board's for the last several years, and including the increased loan amount, the debt-coverage ratio stands at approximately 2.8-times. Staff recommended approval of the increase in loan amount.

City Manager Wilt Brown was present in support of the request.

Ms. Lambert moved to approve the request for increase in obligation of funds for the Hobart Public Works Authority, and Mr. Fite seconded.

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

E. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Tuttle Public Works Authority, Grady County. Recommended for Approval. Mr. Freeman said this item for the Board's consideration is a request by the Tuttle Public Works Authority for a six-month extension of time for obligation of loan funds. Tuttle is requesting the extension because it is waiting on the Department of Environmental Quality to issue the permit to construct. Mr. Freeman said the loan was approved February 2007 for construction of a new water treatment plant. All other terms of the loan as previously approved by the Board remain the same. Mr. Freeman reviewed the provisions of the loan agreement as approved by the Board. Staff recommended approval.

Mr. Freeman noted the DEQ indicated as of January 7, 2008, it intended to issue the permit to construct very shortly.

Mr. Jerry Taylor, Tuttle City Manager, was present in support of the request.

Mr. Herrmann asked if under the new SRF model would it be problematic to grant extensions since loans will have to be funded within a certain time frame from the issuance of bonds? Mr. Freeman answered that actually it should be easier because the Board will be using the cash to close the loans and then issuing the bonds when having already met the IRS 30% spend-down requirement.

Mr. Drummond moved to approve the request for extension of time, and Ms. Lambert seconded.

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

Ms. Lambert asked about the listing of communities that have received grants that is provided each month to the members. She asked what year-to-date that list of 534 grants covers; Mr. Freeman said the list of grants begins in August 1983.

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.

A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items.

There were no requests to transfer items to the 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.P.

Mr. Sevenoaks asked if under item D.2., Grand River Dam Authority and OWRB, is the GRDA contributing funds and if so how much? Mr. Smithee responded the GRDA would be contributing the full amount of \$56,000 for the dependable yield calculation and \$150,000.00 for the mapping, and it is a one-and-one-half year project.

Mr. Herrmann asked if item D.4., is between the OWRB and USCOE, and the response was that it is.

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Nichols asked for a motion.

Mr. Sevenoaks moved to approve the Summary Disposition Agenda, and Mr. Herrmann seconded.

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

The following items were approved:

C. Consideration of Approval of the Following Applications for REAP Grants in Accordance with the Proposed Orders Approving the Grants:

| REAP | | | | Amount |
|------------------------|-------------------------------|--|----------------------|---------------------------|
| <u>Item No.</u> | <u>Application No.</u> | <u>Entity Name</u> | <u>County</u> | <u>Recommended</u> |
| ASCOG | | | | |
| 1. | FAP-07-0027-R | Rural Water District #4 | Stephens | \$79,999.00 |
| 2. | FAP-07-0037-R | Alex Municipal Authority | Grady | 99,800.00 |
| EODD | | | | |
| 3. | FAP-02-0044-R | Okay Public Works Authority | Wagoner | 99,000.00 |
| INCOG | | | | |
| 4. | FAP-06-0044-R | Burbank Public Works Authority | Osage | 99,980.00 |
| KEDDO | | | | |
| 5. | FAP-07-0026-R | Millerton Public Works Authority | McCurtain | 79,999.00 |
| 6. | FAP-07-0028-R | Crowder Public Works Authority | Pittsburg | 99,999.00 |
| SODA | | | | |
| 7. | FAP-06-0037-R | Bromide Public Works Authority | Johnston | 99,900.00 |
| SWODA | | | | |
| 8. | FAP-04-0059-R | Rural Water, Sewer, Gas & Solid Waste Management District #2 | Beckham | 99,850.00 |

- D. Consideration of and Possible Action on Contracts and Agreements, Recommended for Approval:
1. Lease Agreement with Four-Way Resources, LLC for OWRB McAlester office to reflect change in Lessor and change in square footage of space leased.
 2. Interagency Agreement between OWRB and Grand River Dam Authority to conduct hydrographic surveys of Grand Lake, W.R. Holway Reservoir, and Ft. Gibson Lake. In addition to survey work, dependable yield calculations will be made for Grand Lake, Lake Hudson/Holway and Ft. Gibson.
 3. Agreement Amendment for the Clean Water Act FY 07/08 §604(b) Water Quality Management Planning Program CA# C6-400000-47 between the OWRB and the Office of the Secretary of the Environment to reflect an increase in Federal funding.
 4. Planning Assistance to States Supplemental Agreement No. 1 for the Oklahoma Comprehensive Water Plan between the United States of America and OWRB to extend the study period and increase the total study cost of the original Letter Agreement entered into on June 19th, 2007.
- E. Applications for Temporary Permits to Use Groundwater:
1. None
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Geary M. & Mary Ann Campbell, Washita County, #1974-053
 2. Norman Utilities Authority, Cleveland County, #1998-502
- G. Applications for Regular Permits to Use Groundwater:
1. Natalee June Smith, Harper County, #2006-565
 2. Natalee June Smith, Harper County, #2006-566
 3. City of Guymon, Texas County, #2007-541
 4. Oaklake Trails Naturist Park, Inc., Creek County, #2007-551
 5. Ronnie J. & Sharon M. Glover, Comanche County, #2007-560
 6. The Whiting Oil & Gas Corporation, Texas County, #2007-563
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Jeff & Ronnie J. Glover, Comanche County, #1980-603A
 2. Quinlan Community RWD No. 1, Woodward County, #1990-520
 3. Hitch Pork Producers, Inc., Texas County, #1993-580
- I. Applications for Regular Permits to Use Stream Water:
1. Burk Royalty Co., Caddo County, #2006-041
 2. James Morrill, Delaware County, #2007-013
 3. Roy T. & Rebecca Oliver, McClain County, #2007-035
 4. James H. & Beulah D. Dawson, McIntosh County, #2007-039
 5. Mount Pecan Ranch, Inc., Okmulgee County, #2007-041

- J. Applications to Amend Regular Permits to Use Stream Water:
None
- K. Applications for Term Permits to Use Stream Water:
None
- L. Well Driller and Pump Installer Licensing:
 - 1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Able Environmental Drilling, L.L.C., DPC-0746
 - b. Aquaterra Environmental Solutions, Inc., DPC-0744
 - 2. New Operators, Activities for Existing Licenses:
 - a. Grubbs, Hoskyn, Barton & Wyatt, Inc., DPC-0353
 - b. Giles Environmental Services, Inc., DPC-0596
 - c. Panhandle Area Sales & Service, DPC-0635
 - d. Martin's Well Service, DPC-0669
- M. Dam and Reservoir Plans and Specifications:
None
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Oklahoma Department of Transportation, Kay County, #FP-07-41
 - 2. Oklahoma Department of Transportation, Pontotoc County, #FP-07-43
 - 3. Oklahoma Department of Transportation, Logan County, #FP-07-45
 - 4. Oklahoma Department of Transportation, Mayes County, #FP-07-48
 - 5. Oklahoma Department of Transportation, Creek County, #FP-07-49
 - 6. Oklahoma Department of Transportation, Carter County, #FP-07-50
 - 7. Oklahoma Department of Transportation, Carter County, #FP-07-51
- O. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the January 8, 2008 packet of Board materials.
- P. Application for Acquisition of Assets of Rural Water District:
 - 1. Application by Southern Oklahoma Water Corporation to Acquire Assets of Milo-Woodford Rural Water, Sewer, Gas and Solid Waste Management District in Carter County, Oklahoma.

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

A. Update on Comprehensive Water Plan Activities. Chairman Nichols said that Dr. Focht was unable to attend the meeting today due to the call of jury duty. Mr. Kyle Arthur presented the update reminding the members of the two parallel tracks to the Comprehensive Water Planning Process, public input and technical studies. The first phase of the public input

process has been completed, and he anticipated Dr. Focht would make the February meeting and present in detail comments received from the first phase, and the next steps in the process regarding the regional meetings. Overall, Mr. Arthur said there had been about 2,300 comments received and that corresponds to the total attendance at the meetings of about 2,300. The OWRRI calculated the staff traveled over 12,000 miles to attend the 42 public meetings. The staff is now accepting nominations for persons to serve on the regional meetings; there is an application and selection process for the 330 persons needed. There are eleven planning regions and ideally 30 persons at each, depending upon the balance of interest in each region.

Mr. Arthur reported that in regard to the technical studies, the funding has been awarded the Camp, Dresser, McKee from the Corps of Engineers and IWR to complete tasks four and five which are the final two tasks on the original Planning Assistance to the States agreement approved by the Board and includes a pilot mapping project in Pontotoc County looking at all the water lines and infrastructure. The second component is the water provider survey for the purposes of water provider-level planning which requires good information and this infrastructure and needs survey will provide that information, and work will be done with other agencies such as DEQ, OML, and OWRA to draft and distribute the survey as well as compiling the information once returned. Mr. Sevenoaks asked if there is additional work after tasks four and five, and Mr. Arthur responded the Board just approved the PAS agreement that is an extension in time of the current agreement to begin implementation of what is termed task six, supply analysis and demand analysis, critical to water planning. Mr. Sevenoaks asked if other engineering firms will be involved; Mr. Arthur answered there is a programmatic work plan being finalized that will include tasks that will involve other engineering firms.

Mr. Arthur concluded his reporting thanking Senator Inhofe's staff and the Congressional Delegation with the passage of the WRDA legislation and authorization for the opportunity for funding to the OCWP in the next two-three years. He said the Omnibus Appropriations bill that was passed in late December will provide funding for several projects, and meetings are scheduled with the Corps to get that work started.

Mr. Smith added because of the water law issues that have been seen across the state at the 42 meetings, he would like to have a seminar that focuses on water law so that everyone can hear the same thing once the regional members are selected. He said the state's water law is not easily understood and he is meeting with the University of Law School at the University of Oklahoma to discuss organizing such a seminar that would provide detail, not only by Oklahoma Law School professors, but others across the region.

Mr. Herrmann asked at what point in the process the water quality aspects of planning will be evaluated. Mr. Arthur responded that there is a certain amount of those discussions that will occur at both the supply and demand analysis level.

Ms. Lambert asked, under "Discussion of Agency Work and Other Items of Interest" about emergency plans by municipalities for conditions such as the recent ice storm. She asked about municipalities long-term financial planning and backup generators, etc., as several municipalities did not have water because there was no electricity. Mr. Sevenoaks explained the situation in Tulsa where there were two sources of power for the Mohawk plant, but both were down, as well as several pumping stations, but Tulsa was fortunately able to supply water. He said the cost of having a generator at the plants and all the plant stations to have \$2-3 million dollar generators on standby is not cost efficient, as this year is the first time power at both plants was lost.

Mr. Smith said that from the OWRB's standpoint, that is not our role, but would be the DEQ's role in terms of overseeing public water supply. The OWRB can potentially assist by helping to fund an emergency. Ice storms is one example, there have also been floods and drought, there are many things that can impact water supply that cities must plan for, and to the extent that they don't, it puts a burden on the Board's financing programs. He said as regards the OCWP, it will be more focused on reliable water supply in terms of withstanding drought, climate change, flooding, and not so much emergency response, although that subject may come forward through the public meetings. Ms. Lambert expressed her concern that proactive thinking and planning for contingencies is being addressed somewhere. Mr. Smith said that, because this is not an agenda item today, this type of discussion could be scheduled at a future meeting at the Board's preference.

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).

A. Application for Temporary Permit to Use Groundwater No. 2006-615, Joe Anderson Property Management Company, L.L.C., Canadian County:

1. Summary – Mr. Dave Dillon, Interim Planning and Management Division Director, stated to the members that this application is for a temporary permit to use groundwater by the Joe Anderson Property Management Company located in Canadian County. The application was filed on December 4, 2006, to withdraw 320 acre-feet per year for commercial sales for municipal or rural water purposes from one well located on 160 acres of dedicated land in far western Canadian County. The evidence showed the applicant desired to be able to sell water to one or more public water suppliers, although those are not yet selected. It appeared from the record the applicant would exercise reasonable intelligence and reasonable diligence in the application of this groundwater for the lawful purpose of sale for municipal and rural water district purposes.

Mr. Dillon said the application was protested because of concern about adverse affects on the groundwater supply in the domestic wells on the neighboring land. The evidence provided to the hearing examiner did not support the application should not be approved. The record did show the applicant to have a valid right to the dedicated land, the land overlies a fresh groundwater basin—the Rush Springs Sandstone and Marlow formations—for which the

maximum annual yield and equal proportionate share has not been determined and each landowner is therefore entitled to two-acre feet per acre; commercial sales for municipal or rural water district purposes is a beneficial use, and waste will not occur. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

Mr. Anderson, the applicant, was present at the meeting. There were no protestants in attendance.

2. Discussion and presentation by parties. Mr. Anderson expressed his appreciation for the Board's favorable consideration of the application.

Mr. Drummond asked if the application was preparing for a future business opportunity for water sales, and Mr. Anderson answered that he was. Mr. Drummond asked Mr. Couch if in the past there has been a concern for beneficial use if there is no user? Mr. Couch answered that typically the Board has just inquired as to the general category of ultimate use, not as to a specific customer. That has not been the interpretation or requirement for an applicant to provide that information. Mr. Smith added that on page 5004, under item 6., is the discussion of beneficial use where the evidence in the record supports a beneficial use designation, and while the applicant does not know who the particular user will be—it is a municipal or rural water district--there are DEQ requirements that he has agreed to comply with. Mr. Drummond asked then if the use must be for municipal or rural water and couldn't be used for some other purpose; Mr. Smith answered that is correct.

Mr. Sevenoaks asked about the interpretation of the proposed rule on the water right. Mr. Couch answered this agenda item does not pertain to the rule, but there may be a view that rules could be tightened about this particular point, but that is not the current rule that this application was presented under. Mr. Smith said the new rule proposes that the applicant shall present its buyers, but in this particular application there aren't any, so even with the new rule in place, the applicant would have met the requirement of providing information about who the buyers are, the new rule doesn't say because there is no buyer the permit would not be approved. The permit approval is based upon the four points of law determined by the Board. Mr. Sevenoaks asked if there were a time limit on the application, and Mr. Smith said there was not, but it is a temporary permit, in essence a long-term permit that once the maximum annual yield is determined would administratively be moved to a regular permit. Mr. Sevenoaks asked if the Board has approved this type of permit in the past, and Mr. Smith said that it had. Mr. Sevenoaks said then that until the Board does additional rulemaking, this application follows all the rules currently in place. Mr. Smith answered that is correct.

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

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

Mr. Knowles moved to approve the application for temporary groundwater permit 2006-615, and Mr. Herrmann seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of Items Transferred from the Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for discussion.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce, OWRB Comptroller, addressed the members and stated one-half of the fiscal year has been completed, and the agency has expended and obligated 74% of the budget and collected 56% of the budget. The carryover from FY'2007 has been pulled forward to FY'2008, on operations there was only \$897 remaining for the Secretary of Environment and the Oklahoma Rural Water Association had a carryover of \$7,375; this remained from \$4.6 million.

Mr. Sevenoaks asked the agency's total budget for FY'2007; Mr. Boyce answered the total was approximately \$22 million. Mr. Sevenoaks asked about the accounting for the additional dollars coming from the federal government. Mr. Boyce responded that amount is not in the FY'2008 budget, but will have to be added. He said it could be treated as a capital item; this report is only operational. A capital budget is a 30-month budget, appropriate for a long-term budget, but if categorized as operations, it will be go under "federal funds-OWRB." Mr. Sevenoaks asked about a separate category for the Comprehensive Water Plan, and Mr. Boyce said the gross production tax is currently found as the, "Water Infrastructure Development Fund." He said to track federal dollars going to the plan separately, he could ask for separate category. Mr. Smith added the federal dollar does not come to the OWRB, we contract with the Corps of Engineers, and actually pay the Corps; however, the agency's 25% cost share does come to the OWRB. He agreed that the Board should be able to look at the budget and determine where the Water Plan dollars are.

Mr. Boyce said that at a previous meeting he presented a budget-to-actual report that was just on the Water Plan, and he offered to present that information each month along with the regular report, which the members agreed would be useful.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

- A. Consideration of Settlement Agreement with The Daily Oklahoman to allow payment to be made to the Daily Oklahoman for their involvement in the Newspaper in Education Sponsorship Program Weather Wise to promote the OWRB and water-related weather information.

Mr. Fite moved to approve the Supplemental Agenda item, and Ms. Lambert seconded.
AYE: Keeley, Herrmann, Knowles, Fite, Drummond, Sevenoaks,
Lambert, Farmer, Nichols
NAY: None
ABSTAIN: None
ABSENT: None

8. PUBLIC HEARINGS ON PROPOSED AMENDMENTS TO PERMANENT RULES

Following discussion of the 2008 rulemaking process, the Board will conduct the public hearings, by chapter, to receive oral and written comments on the proposals. The proposals are not scheduled for action by the Board at this meeting. Consideration of adoption of the proposals to amend the rules as presented or as may be revised is scheduled for the February 12, Board meeting.

Chairman Nichols read into the record a statement of notice of rulemaking postings officially published in the Oklahoma Register, Volume 5, no. 25, on November 15, 2007. Those notices are designated Office of Administrative Rules docket no. 07-1442 through 07-1452. Another notice with the effect of update the November 15, 2007, notice regarding Chapter 5 on fees was published in the Oklahoma Register on December 17, 2007, OAR docket no. 07-1561.

Chairman Nichols said the primary focus of the public hearing today is to simply receive comments, written and oral from the public. Board members will have an opportunity to fully review and consider comments over the next month when the proposed rules will be brought to the Board for consideration of adoption at the February Board meeting. The public hearing will be held by chapter as the notices were published as required by the Office of Administrative Rule. As indicated on the agenda for today's meeting, staff will introduce and state briefly the highlights of the proposed amendments with perhaps comment. Chairman Nichols stated that the item on the agenda for discussion by the Board members is simply to allow clarification of proposed language changes and content of the proposal, but is not intended for lengthy debate about policy. After the month's review, the Board will be allowed full discussion at the February meeting.

Mr. Smith reiterated that the purpose of the hearing today is to receive comments from the public, and once the comments are received, there is a response to the comments, and next month then come back to the Board for full discussion on the merits of the comments.

A. Proposed Amendments to Chapter 1 - Organization and Procedures

1. Highlights and Summary of draft proposed rules – Mr. Duane Smith explained the proposed rule changes concerns complaints. Mr. Couch indicated the Board members received the rules packet and there were additional copies available for the public. The change regards the response by staff changing within “two working days” to “as soon as practical after” receipt of the complaint.

2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public.

Ms. Shannon Shirley, from Mill Creek, Oklahoma, explained to the members the problems she has encountered with a local company that pumps water from Mill Creek, and the difficulty she and others downstream would have regarding the availability of water. She said the Board has been responsive to their complaints and she is opposed to the change to reduce the two-day rule to whatever is a reasonable amount of time after contact with the Board, as she would be in trouble. She said she is dependent upon the creek, and needed someone to be able to take action as soon as it is needed.

Ms. Amy Ford representing the Citizens for the Protection of the Arbuckle-Simpson Aquifer (CPASA), said she had provided the Board with written comments in support and opposition for certain rule changes. She said she would not read, but would summarize her

comments. For the proposed rule change for 785:1-11-1, the agency's 48-hour obligation to notify complainants of the receipt of the complaint and that it is being addressed. This proposed change to, "as soon as practical" is ultimately going to harm those complainants who need the Board's help. She felt it was a "fail safe" for the agency, and it would be putting communities and individuals at risk.

B. Proposed Amendments to Chapter 4 – Rules of Practice and Hearings

1. Highlights and Summary of draft proposed rules – Duane Smith said this proposal regards required remediation that comes from discussion by members. The agency has received a number of comments about the type of mediation, the rule concerns discussion rather than formal remediation.

2. Questions and Discussion by Board Members. There was no discussion by members.

3. Public Hearing to Receive Oral and Written Comments by Public.

Mr. Jim Barnett addressed the members and stated he had written comments he would provide to the members that concerned a number of issues and a number of chapters, but he would only make verbal comments to those which he felt are really important. Mr. Barnett said this proposal is relatively significant because he didn't believe the Board had any authority to have mandatory mediation, there is no provision in the Oklahoma Administrative Procedures Act nor in Title 82, and absent statutory authority the Board does not have authority; the Board's authority is derived from legislative authorization, and the Legislature has not seen fit to give the Board, or any other administrative agency, the authority to have mandatory mediation on individual proceedings under the Administrative Procedures Act. Due process is adequately addressed under the current situation, and the rule while a fine idea, is without legal foundation.

Ms. Shannon Shirley said she had become an active participant in the past year or two in OWRB hearings where it concerned the Arbuckle-Simpson. She said she had been required to attend a lot of things designed to make sure she was serious in her intentions to be protestants. She said on one occasion Mr. Shirley was unable to attend and had he not been able to ask someone to represent him they would have been left out of the loop. She said she believed mediation to be a good idea, she is big on compromise but to require the protestant to be present and the other side does not, is not right, all parties should have to be present.

Ms. Amy Ford addressed the members and said she is neither an attorney nor a water expert so she will read the written comments. She said that the CPASA is under the impression the OWRB does have authority to resolve disputes, and dispute resolution is simply another avenue that if the proposed is approved will provide another option rather than lengthy hearings. She said CPASA strongly supported the rule, with a few modifications: (1) that the alternative dispute resolution be neutral—as currently written paralyzes the protestant and not the applicant in the event that someone does not show at a meeting; (2) mediation is not the only avenue, there are other alternate dispute resolution options, but not to just limit to mediation; and (3) any information gathered at the alternative dispute resolution (ADR) be kept within the spirit of that meeting so that no one gains an advantage in litigation by participation in ADR.

Mr. Fite asked Ms. Shirley if she supported the rule or does not. Ms. Shirley responded she liked mediation, but to throw out a protest for not being able to attend; she disagreed with penalizing one (party) and not the other.

Mr. Jason Aamodt, representing CPASA, stated to the members that CPASA would like to suggest modifications to proposed rule change 785:4-1-1 relating to the definition of the term "enhanced recovery of oil and gas." He said as the modification is written, the term fracturing

ultimately would never be enhanced recovery. He said CPASA welcomes the economic development that future oil and gas and current oil and gas operations bring in south central Oklahoma, but wants to see that development done responsibly. The enhanced recovery rules don't prohibit a company from getting water to do enhanced recovery, but instead a company that will use the water for enhanced recovery to do additional environmental safeguards for the use of that water. While he would agree that in most instances fracturing would be considered to be what is called a "primary technique" and therefore would not be enhanced recovery. There are situations where fracturing is not a primary technique and is enhanced recovery. A lot of water can be used in fracturing and CPASA's mission is to preserve the springs and streams in south central Oklahoma and to ensure the Arbuckle-Simpson Aquifer continues to provide that service for its communities as it has for eons before. To that extent, if the term "fracturing" were to be categorically excluded from ever being enhanced recovery, then the OWRB would not ever be able to meet its mission of protecting the quality and quantity of water resources in those instances where fracturing is not actually a primary development of an oil and gas well.

Mr. Aamodt suggested by way of middle ground the OWRB created a rebuttable presumption, that where the water would be used in fracturing and that fracturing would take place in connection with the primary development of a well, that a rebuttable presumption is created that that water would be used as primary and not enhanced development, and therefore the rules for enhanced development would not apply, so there is just a normal water application. He added the presumption could be overcome and such a presumption would not attach in the future to a fracturing activity that does not take place in connection with an activity at a well that is not done at the time that it is initially developed, becoming an issue the Board would ultimately decide with evidence to the hearing examiner and to the Board which would decide each case.

Mr. Herrmann presumed Mr. Aamodt was commenting on Chapter 20; Mr. Aamodt said the definition is also referred to in Chapter 4. Mr. Couch interjected that in Chapter 20 and Chapter 30 the first highlighted point in the packet are proposed changes to the definitions of stream water and groundwater activities and permits. He said he is unaware in Chapter 4 on hearings that enhanced oil recovery is a defined term that is used in Chapter 4; nevertheless, the comments would be designated for Chapter 20, item D., and Chapter 30, item F. Mr. Aamodt believed the definitional change was the same in Chapter 4 as it was in Chapter 20 and Chapter 30, and he represented them in both places, and will not comment under those chapters.

Mr. Sevenoaks asked what group Mr. Aamodt represented; he explained CPASA is a citizen's group in south central Oklahoma whose purpose is to see that the aquifer is maintained and protected and in Senate Bill 288 and other law and rules that protect the aquifer are respected and applied.

C. Proposed Amendments to Chapter 5 – Fees

1. Highlights and Summary of draft proposed rules – Duane Smith said this chapter outlines the agency's fees and the proposal is to double the stream water application fee, the stream water annual fee is scheduled to be increased to \$100, the application fees for groundwater (long-term) would double, the proposal does not include an annual fee on a groundwater permit. He said the agency's legislative proposal for the budget, the change would generate approximately \$275,000 in addition to a request from the legislature for \$100,000.00, bringing the total to \$375,000.00. The February meeting will include a presentation on where the fee income is used, i.e., the streamgaging program, and the extensiveness of the water permit system.

2. Questions and Discussion by Board Members. Ms. Lambert asked how long the current fee structure had been in place, and Mr. Couch responded the one-time, long-term application fee was set in 1993. Mr. Couch noted for clarification of the record, the initial notice for Chapter 5, was published November 15, 2007, and indicated a \$100 annual fee for both stream water and groundwater; however, after further discussions by the Board's Rules Committee, shortly after the draft notice had to be presented some time before November 15, it was decided that an adjustment to that proposal and draft would be made. Another notice, a follow-up notice, had to be published to clarify that point, like an amendment to the notice, so that public is sure that what is before the Board in packet is what is proposed and to be considered by the Board. There is another notice about fees, and on December 17 there was notice and the separate hearing will be held on January 17, but there will not be any changes to that which is before the Board today. Comments can be received on the proposal today; the 17th will be the last opportunity.

Mr. Herrmann asked for clarification on the amount of dollars that would be generated by the fee increase. Mr. Smith responded the \$275,000 is the total of the three proposed increases. Mr. Couch said the three total \$225,000.00, and in addition to the one-time fees that vary according to the weather, another \$50,000.00, so the total is \$275,000. Mr. Drummond asked the current annual groundwater fee; Mr. Smith said there is no annual groundwater fee, even though the agency sends water use reports, and once returned are entered into the computer system and evaluated, there is no fee, which is proposed to stay the same.

3. Public Hearing to Receive Oral and Written Comments by Public.

Ms. Marla Peek, Oklahoma Farm Bureau, stated to the members that the OFB stance on fee increase has not changed since last year as it is against any increase in fees to groundwater to get a permit as it is inappropriate for a landowner to be required to have to pay to use something that he already owns—groundwater is private property. The application fees could double, and the OFB is prepared to actively oppose this rule at the Legislature, and she said while there is a requirement to notify persons who may be affected by more than \$50, most permit holders are probably not going to be aware of the fee increase. She said the OFB is also concerned the proposed fee increases will create a disincentive for people to apply for water rights. With the proposed water right administration fee, the lowest amount is \$10, and \$25, which are proposed to be increased to \$100. The OFB opposes any fee increase.

Ms. Peek added that it is confusing to have two notices for changes of rules within one chapter, but it is also confusing to say the requirement of the rule passage is contingent upon receiving or not receiving funding from the legislature, making the rule a moving target.

Mr. Herrmann asked, because Ms. Peek referred to property rights, was she commenting about groundwater and stream water fees? Ms. Peek responded that people are able to get their riparian rights but stream water does not belong to them, but the groundwater is their private property and they are having to pay to use that property when they get an application. Mr. Herrmann said that argument does not apply to streamwater, and Ms. Peek responded that in her opinion, it does not.

D. Proposed Amendments to Chapter 20 – Appropriation and Use of Stream Water

1. Highlights and Summary of draft proposed rules – Mr. Dave Dillon addressed the members and said there are four proposed changes. First, the definition of “enhanced oil recovery” so that it shows that fracturing is a primary method and is not considered enhanced oil recovery. That change is both in chapter 20 and chapter 30. Second item is a clean up item regarding consumptive and non-consumptive use; currently both uses cannot be applied for under the same

permit. The proposal is to allow that both consumptive and non-consumptive uses be identified and granted in the same permit. Thirdly, regarding the inactive applications, intends to amend the language on deeming applications withdrawn to clarify the treatment of applications that were pending before the law was changed in 2000, and the applications placed in pending status after the law was amended, by allowing the Board more flexibility. The fourth item regards the marketing of water, the present or future need under stream water, and adds language that for proposed water sale use the applicant shall be required to provide information about respective buyer, contract of purchase, and information showing financial ability to complete all components of the project necessary. This proposal is in both chapters 20 and 30.

2. Questions and Discussion by Board Members. Mr. Drummond asked on the fracturing definition change, is it enhanced recovery? Mr. Dillon answered the proposed change in this rule would clarify to call it a primary method and it would not be considered enhanced recovery of oil and gas.

3. Public Hearing to Receive Oral and Written Comments by Public.

Ms. Amy Ford stated to the members that regard to the proposed rule change for the sale of water to others, she understood there would be a contract in place for the Board to view. She said she strongly supported the rule, it would provide for an orderly administration of water resources, reduce speculation and help to ensure that real water is available to applicants who will make use of it. She suggested the additional phrase allowing the Board to require other information “as it deems necessary and appropriate” also be included.

Ms. Angie Burckhalter, representing the Oklahoma Independent Petroleum Association, and responded to comments regarding hydraulic fracturing, which definition change is in chapter 20 and also chapter 30. She said that enhanced recovery of oil and gas operations is a long-term process injecting water, gas or heat into a mature reservoir to displace the remaining oil or gas to a production well bore to recover remaining oil and gas in the formation. Ms. Burckhalter said fracturing of the oil and gas formation is not enhanced recovery of oil or gas; never has been and can’t be classified as such; it is a stimulation technique and usually a process that takes a few hours to no more than a day. She said that while there had not been problems with current definition; if there were changes to be made she had submitted written comments, minor adjustments to clarify that process. Also, Ms. Burckhalter said she provided a comment on part of the chapter that relates to requiring information of applicants related to contracts to purchase water, etc., and her concern is that contractual information is a confidential business agreement and she did not have concerns with general information but to request specific details is excessive and not relevant to the permitting process.

Mr. Jim Barnett, Environmental Federation of Oklahoma, spoke to the members about the current definition of enhanced recovery rules saying it is not an issue with his organization, but the intention at the time and all these many years has been that rule would apply when using fresh water for a water flood project, either secondary or tertiary recovery—for forcing the oil out of the ground as opposed to any kind of completion of a well or fracturing a well. He said the rule is confusing, and it is not needed, the law is clear, but if there is a rule on fracturing, it shouldn’t be part of the definition of enhanced recovery.

Mr. Barnett said that in his years at the OWRB, he had a difficult time figuring out how any accurate water accounting if consumptive and non-consumptive use permits are mixed. He said he prefers the policy that if a reservoir has consumptive use permits on it, non-consumptive uses were not permitted on the same reservoir. He said no one has explained to him how to have accurate water accounting procedures when comparing apples and oranges. Mr. Barnett said the

important issue on the stream water under 20-3-9 and 20-5-5, these rules both undercuts the appropriative doctrine. The essence of the doctrine is there is an objective standard for when it is used or lost; under the revised recommended rule there is no finality for losing it, and subjectivity has been interjected into an objective criteria, undercutting the real value of having a prior appropriation doctrine in the state of Oklahoma. Regarding 20-5-5, current law already provides adequate safeguards against water speculation i.e., requirement to contract for storage, seven year use or lose, schedule of use provisions, protection of present and future stream system needs, and he failed to see the utility of the rule other than making things more complicated and more difficult. He said he would make additional comments under the rule for groundwater.

E. Proposed Amendments to Chapter 25 – Dams and Reservoirs

1. Highlights and Summary of draft proposed rules – Mr. Dillon said there were three areas of revisions: (1) adding the requirement relating to the notice of completion of the dam that the notice to the OWRB be accompanied by an engineer’s certification that the dam was constructed according to the plans approved by the OWRB, putting the engineering stamp of approval burden on the owner of the dam; (2) adding language the executive director shall approve the issuance of a certificate of completion if based on the certification from the engineer in the notice of completion the dam or reservoir is safe according to limitation described in the certificate; again shifting the burden to the dam owner; and, (3) allows board staff to conduct the inspections unscheduled in conditions of emergency, or the Board may requirement owner to conduct unscheduled inspection at the owner’s expense.
2. Questions and Discussion by Board Members. There was no discussion.
3. Public Hearing to Receive Oral and Written Comments by Public. There were no comments.

F. Proposed Amendments to Chapter 30 – Taking and Use of Groundwater

1. Highlights and Summary of draft proposed rules – Mr. Smith stated to the members the first section concerns the definition for enhanced oil recovery that have already been discussed. Regarding the remaining proposed changes for well interference, commercial sale and marketing of water, Mr. Smith said after discussions with the Board’s Rules Committee as well as comments already received and conversations with various folks, these matters will probably “bubble-up” through the comprehensive water planning; the ideas are sound but the wording needs development, and he preferred to avoid unintended consequences. The rule regarding sand and gravel mining mimics what the Board did and is not imminent but merely a clarification. The rule concerning water marketing is a result of the Auditor and Inspector’s recommendations, and there is merit in defining who the applicant is to avoid someone getting a permit and not disclosing what it is going to and there be a different purpose the Board is not aware of. There are also potential unintended consequences to that as well as a municipality wanting to sell to a rural water district, etc., and that needs to be understood before approving a rule. Also, he said to those who want that in the rule, staff is currently asking for the information and he believed that can be done under the current rule and it is available now. Mr. Smith said the Comprehensive Water Plan is a great avenue to work through the ideas that involve a lot of policy dealing with a wide spectrum of issues, and there should be thorough discussions with the public. He said depending upon comments received, next month he may recommend that the Board not move forward with all proposals, except the first proposal.
2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public.

Ms. Shannon Shirley wanted to comment on the use of modeling, which is a valuable tool, and was used for the streamwater permit for Mill Creek, which shows there are still 2,000 acre-feet. Common sense needs to play a part. She also thought modeling was not site-specific, and the general protestant cannot afford hydrological modeling.

Ms. Amy Ford stated written comments had been provided, and the varying rule changes are confusing. She said she strongly supported the new rule requiring an applicant to obtain a permit to use water that is taken off site from the mine. She quoted Senate Bill 288 regarding the negative interference of the flow and streams and springs. CPASA suggested a number of alternatives, which have been provided, including the operator of the mine should be able to account for the total water use, and to define what “site” means, and the “super permit” proposal under 785:30-9-4(c.)

Mr. Jim Barnett stated to the members he agreed with Mr. Smith’s comments and the changes reflect significant changes in Board policy and a different interpretation of the law than before. He said it is wise to allow changes to come through the planning process. He added about the water marketing request for information, for groundwater permit, “need” is not a component for getting a permit, and therefore the information is irrelevant and incompetent and immaterial as to whether the Board should issue a permit. He said it is good information to have and his clients will provide it, but it is not a factor under the law as to whether they are entitled to their groundwater right.

G. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing

1. Highlights and Summary of draft proposed rules – Mr. Dillon said there are nine proposed changes, and he recognized OWRB staff Kent Wilkins who manages the Well Driller’s program. Mr. Wilkins explained the OWRB works with the Well Drillers and Pump Installers Advisory Council on a year-round basis. An eight-member council comprised of industry representatives and the rule proposals are reviewed by the council who are aware of what changes are needed.

Mr. Dillon highlighted several changes: clean up language to be consistent with other rules regarding freshwater, continuing education, license renewal, improving construction standard to be consistent DEQ rules and regulations, clarifying OWRB license jurisdiction on heat exchange, pump installers standard change to 12,” flexibility in being able to drill test hole and temporary completion (casing, seal and cap) with approval by landowner to remove and plug or complete well, and clarifying language requested by the Corporation Commission regarding monitoring wells and grouting of 95% of the bore hole.

2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public. There were no comments by the public.

H. Proposed Amendments to Chapter 45 – Water Quality Standards

1. Highlights and Summary of final draft proposed rules – Mr. Derek Smithee stated to the members that revisions to the Water Quality Standards undergo a slightly different process than the agency’s other rules. A series of informal meetings is held in addition to this hearing and small work group activities. Mr. Smithee said those meetings were held in August, September, and October with the goal to resolve any controversy or language controversy. Water Quality Standards are driven not only by Oklahoma statute, but the Federal Clean Water Act, with additional public comment requirement. This year is the 24th revision since 1959.

Specific revisions regard new agriculture beneficial use subcategories protecting livestock watering and crop irrigation, Comanche Station plant site specific minerals criteria for chloride sulphates and total dissolved solids, and site specific criteria for the City of Poteau and AES Shady Point regarding the toxicity of metals (selenium, lead, silver and cadmium) discharges to the Poteau River.

2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public.

Ms. Shannon Shirley asked who could attend the informal meetings? Mr. Smithee stated anyone could attend; traditionally the same active state agencies, advocacy groups and private citizens attend.

Mr. Bud Ground, Public Service Company of Oklahoma/American Electric Power stated to the members one of the provisions deals specifically with the power plant in Comanche County. He said he is supportive of the revision, and complimented the staff for their assistance in this process.

Ms. Marla Peek, OFB, stated she did not have comments on what has been proposed; however, she expressed the OFB's concern for the lack of a proposal for a revised pathogen bacteria criteria. She had visited with EPA's Michael Shapiro expressing concern that total maximum daily load (TMDL) were being performed needlessly in Oklahoma costing tax payers money and the agencies time and money when there is not confidence in the pathogen bacteria criteria. Shapiro suggested (unofficially) until the proper criteria could be determined, that states should put the stream and river pathogens bacteria 303(d) listings as a low priority for TMDLs in the interim. She asked that Oklahoma put those impaired pathogen bacteria on a lower priority until criteria has been developed. Recognizing there is problem with Oklahoma's pathogen and bacterial standard, DEQ and EPA recommended revisions to the current pathogens provisions of Oklahoma's Water Quality Standards should be considered, including numeric evaluation for farmers who grow poultry litter. She mentioned the lawsuit by the Attorney General, and said the state is attempting to halt the use of a beneficial organic fertilizer that is being lawfully utilized in the watershed. She noted causes cited in the DEQ Water Quality report that are major factors affecting the overall use support of rivers streams of the state. She asked to keep this issue on the "front burner."

Mr. Mark Derichsweiler, Department of Environmental Quality, stated to the members the DEQ is the biggest customer of the Boards for the WQS, as they are used on a daily basis in their decision-making in the DEQ permitting program. He complimented the OWRB standards staff, and holds the DEQ/OWRB relationship in high regard. He submitted written detailed comments that contain minor math inconsistencies and changes on some technical issues; the DEQ does not have any serious concerns with anything proposed. Mr. Derichsweiler highlighted a couple of matters: chronic test failure definition adding end points for growth and reproduction and sub lethal effects, agriculture language and split of sub use and concern with unintended consequences with use of the clause, "notwithstanding the applicability of other rules prohibiting impairment of beneficial use and toxicity to aquatic life..." he asked the phrase be stricken in regard to the agriculture use.

I. Proposed Amendments to Chapter 46 – Water Quality Standards Implementation

1. Highlights and Summary of final draft proposed rules – Mr. Smithee stated the implementation rules are two types: general implementation which are the general interpretation or clarifying language of the standards that the other state environmental agencies follow to

ensure consistency in water quality management across the state; and, the agency (OWRB) water quality standards implementation. He highlighted item 5. in the summary regarding the USAP provisions and the removal of a threatened use. He said EPA no longer recognized that a specific water might be threatened, it is either on the list or it is okay; this revision reflects that change at the federal level.

2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public.

Mr. Derichsweiler stated to the members the DEQ has no difficulties in any proposed change, and commented that the development of the USAP rules have come a long way over time. He expressed concern about one section 785:46-15-1; he agrees with the intent to allow consideration of other data, should include other indicators besides just the levels of phosphorous or nitrogen in the stream; however, the language is overly broad to bring in more data than what would be envisioned and substitute language has been suggested (in written comments) that would clarify that any additional supporting data also meet requirements set out in the USAP rules.

J. Proposed Amendments to Chapter 50 – Financial Assistance

1. Highlights and Summary of final draft proposed rules – Mr. Joe Freeman stated to the members that there are two minor proposed amendments: during the 2007 rulemaking process the priority point system for school districts for REAP grants were deleted from the rules and this recommendation reinstates the Board rule (no changes); and the second regards the Clean Water State Revolving Fund Loan program amending language to remove 20 years and insert “as allowed by federal regulations.”

2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public.

There were no comments by the public.

K. Proposed Amendments to Chapter 55 – Development on State Owned or Operated Property Within Floodplains.

1. Highlights and Summary of draft proposed rules – Mr. Dillon stated to the members that there are three proposed changes, first, entities designating floodplain administrators clarify all communities must designate an administrator and broadens the language to include the appointment of the “proper community official or community governing body” shall designate a person, improving the ability of communities to participate. The second change involves temporary accreditation deleting obsolete temporary accreditation period that were in affect in 2005; temporary accreditation is no longer needed. The third proposed change regards exemption for renewing accreditations, the Flood Plain Board administrators proposed striking the requirement of continuing education for administrators that have been accredited for less than one year. All flood plain administrators have to be accredited and the courses are available every other month.

2. Questions and Discussion by Board Members. There was no discussion.

3. Public Hearing to Receive Oral and Written Comments by Public.

There were no comments by the public.

Chairman Nichols thanked everyone for their participation.

9. PROPOSED EXECUTIVE SESSION

Chairman Nichols

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.

The Board did not vote to enter Executive Session.

B. Designation of person to keep written minutes of Executive Session, if authorized.
No designation necessary.

C. Executive Session, if authorized.
The Board did not enter Executive Session.

10. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.

Return to open meeting and possible vote or action on any matter discussed in the Executive Session.

The Board did not enter executive session, and there was no action taken by the Board.

11. 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.

12. ADJOURNMENT

There being no further business, Chairman Nichols adjourned the regular meeting of the Oklahoma Water Resources Board at 12:20 p.m. on Tuesday, January 8, 2008.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Jess Mark Nichols, Chairman

_____/s/_____
Rudolf J. Herrmann, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Absent
Edward H. Fite

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Linda Lambert

_____/s/_____
Richard Sevenoaks

ATTEST:

Richard Sevenoaks
~~F. Ford Drummond~~, Secretary
(SEAL)