

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

January 12, 2010

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudolf J. Herrmann at 9:30 a.m., on January 12, 2010, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

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 5, 2010, at 5:15 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Rudy Herrmann asked Mr. Fite to give the invocation.

B. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Mark Nichols, Vice Chairman
Linda Lambert, Secretary
Ford Drummond
Ed Fite
Jack Keeley
Kenneth Knowles
Richard Sevenoaks
Joe Taron

Board Members Absent

None

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Mike Melton, Financial Assistance Division
Kyle Arthur, Director of Planning

Others Present

Quang Pham, Oklahoma Department of Agriculture, Food & Forestry, Oklahoma City, OK

Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK

Ashley Stringer, City of Edmond, OK

Cody Gaines, City of Edmond, OK

Michael Collins, Industrial Investments, Oklahoma City, OK

Diane Pedicord, Oklahoma Municipal League, Oklahoma City, OK

Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK

Bob Kellog, Oklahoma City, OK

Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK

Dan Weitman, Assistant Attorney General, Oklahoma City, OK

Greg Metcalfe, Assistant Attorney General, Oklahoma City, OK

Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK

Shelby Hudgens, Unimin Corporation, Roff, OK

Gary Fruemming, Unimin Corporation, Roff, OK

Randy Worden, Central Oklahoma Master Conservancy District, Norman, OK

Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK

Cheryl Dorrance, Oklahoma Municipal Utilities Provider/Oklahoma Municipal League, Oklahoma City, OK

Erin Boekman, eCapitol, Oklahoma City, OK

Ben Oglesby, Municipal Finances Services, Edmond, OK

Charlie Swinton, BancFirst, Oklahoma City, OK

Kara Williams, Office of the Secretary of Environment, Oklahoma City, OK

Carl Parrott, Oklahoma Department of Environmental Quality, Oklahoma City, OK

Dave Taylor, Waurika Lake Master Conservancy District, Waurika, OK

Barbara Bailey, Bank of Oklahoma, Oklahoma City, OK

Ken Senour, Guernsey Engineering, Oklahoma City, OK

Curt Shelmire, Bank of America Merrill, Oklahoma City, OK

Mike Mathis, Chesapeake Energy, Oklahoma City, OK

John Rehring, Camp Dresser McKee, Denver, CO

Shawn Lepard, Lepard Consulting, Oklahoma City, OK

Duane Suddath, BancFirst, Oklahoma City, OK

Mike Wofford, Central Oklahoma Master Conservancy District, Oklahoma City, OK

C. APPROVAL OF MINUTES

1. Chairman Herrmann stated the draft minutes of the December 9, 2009, Regular Meeting had been distributed. He stated he would accept a motion to approve the minutes. Ms. Lambert moved to approve the minutes, and Dr. Taron seconded.

A YE: Taron, Knowles, Sevenoaks, Fite, Lambert, Keeley, Herrmann

NAY: None
ABSTAIN: Drummond, Nichols
ABSENT: None

2. Chairman Herrmann stated there was a correction to the October 2009 and he would accept a motion to approve the correction. Mr. Fite moved to approve the correction, and Mr. Nichols seconded.

AYE: Taron, Drummond, Knowles, Sevenoaks, Fite, Keeley, Nichols,
Herrmann

NAY: None
ABSTAIN: Lambert
ABSENT: None

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, greeted the members and said the Legislative session is just around the corner; there have been a couple of bills that have been drafted and he asked Mr. Josh McClintock to update the members on the legislative activities. Mr. McClintock referred to a written report that had been distributed to the members, and noted the specific items the agency is watching. Federally, in the Congressional House, the jobs bill which includes about \$2 billion for Clean Water projects, \$715 million for the Corps of Engineers, \$100 million for the Bureau of Reclamation drinking water projects; staff will submit appropriations request by the end of January which support the Water Plan; the next Water Resources Development Act and new authorization for \$40 million to the COE for environmental planning and infrastructure projects; and full funding for the stream gaging program (supported by Congressman Tom Cole). He said he had been working with the Western States Water Council and the Interstate Council on Water Policy on the joint Washington Roundtable and invitations to all the major federal players for the Water Plan; the dates are March 23-25. Staff will attend according to the travel budget. On the state level, the Legislature will convene on February 1st, mostly it will be focused on the budget situation, there has been talk of an early adjournment. Mr. McClintock stated he wasn't aware of any major water-related activities; there are a number of carryover bills. He noted a bill by Senator Gumm SB1285, removing the pit water exemption for mining operations in a sole source aquifer and does not affect mining in other areas. This is a result of Senator's Paddack's interim study. Senator Paddack introduced SB 1689 which creates the state Water, Science and Research Advisory Board which will serve state and federal agencies, higher education institutions and other groups involved in water planning to advise the OWRB regarding the Comprehensive Water Plan. Rep. Eddie Fields has a bill creating a water commission to oversee and provide counsel on the implementation of the Water Plan and he is open to perhaps merge some of the language into the Senator's bill. He said the Governor met with the Leadership and seemed to be comfortable with a 10% budget cut for the remainder of the fiscal year.

Ms. Lambert asked about SB1293 regarding compensation to parties for water use. Mr. McClintock said there are several carryover bills that were introduced in advance of HB 1483; most of those will probably go away.

Mr. Smith said he wanted to explain where we are headed with legislation in the next five years. He said as we look at the Water Plan, and it is completed, there will be many technical recommendations. The partner piece of the Plan is the federal legislation in the Water Resources Development Act, where we need authorization for \$40 million for implementation activities, i.e., water quantity, water quality, infrastructure, planning, studies, etc., and the cost share of 75% federal/25% state and as we move toward implementation and the list of priorities through the OCWP, we would then have a science advisory board that would review the technical merits and prioritize technically where those need to go and then request funding that has been authorized by Congress for a piece of that \$40 million. Mr. Smith said he is trying to build the platform to go beyond the end of the Water Plan, on how we forward think how we implement the water plan. He mentioned Texas has similar legislation. He said in speaking with Senator Inhofe, we want the smallest federal budget possible, but of that, we want the largest amount for Oklahoma and so as other states are asking for money for planning and implementation, we want our fare share, and we are working hard to pay attention through national organizations and our own delegation to make sure we are up to speed about what other states are doing and what we can do. He said as we go to the legislature, it's a compelling story of how we are going to use technical experts, be efficient as possible, collaborate the best we can, to get more impact for the dollars we spend in Oklahoma toward better science and better decision making.

Mr. Smith said next month (February 9) is Water Day at the Capitol, and the Board Meeting. The Rotunda is reserved, a number of booths of different organizations, and a special occasion recognizing the \$2 billion dollars of financial assistance. Invitees to speak are the new Administrator of the Region 6 EPA, the Governor, Speaker and President Pro Temp, and the House Chamber has been reserved. There will be updates of the Oklahoma Comprehensive Water Plan and how the Financial Assistance Program is implementation of the OCWP. He proposed the Board meeting be moved to 1:30 p.m. here at the same location, allowing members to attend Water Day Activities.

The Arbuckle Simpson report is finished, and he recognized the special work of Noel Osborn, not only for the report but coordination and working with the local people. He also complimented Jack Keeley for his leadership in the effort.

The US Geological Survey report, "Water Use 1950-2005" is available. The USGS is looking at water use in the United States, and using the information to influence public policy in Washington, D.C.; such as identifying problem areas in the High Plains area—and the Ogallala Aquifer is one area. Mr. Smith noted that one of the things staff is hearing throughout the water plan meetings is about the accuracy of the data. Eighty percent of the water use in Oklahoma is agriculture and its self-reporting, so the accuracy of the data comes into question, and that is not just in Oklahoma. As we look forward, there will be recommendations in the water plan regarding agriculture use.

The OWRB Water Quality Division worked with the EPA on a National Probabilistic Lakes Survey report; there was a shared article with The Oklahoman and Tulsa World recently. A cooperative program to evaluate lakes in Oklahoma, and EPA looking nationwide at problem areas and recommend federal policy through the Clean Water Act on how to protect the lakes. Clearly, in Oklahoma there are problems with eutrication and there needs to be better implementation in non-point source protections, and point source protections, and the lakes is how the health of water systems are monitored. Compliments to the Water Quality Division for its fine work and to Paul Koenig and his section employees on the report.

Mr. Smith said there had been several meetings regarding the Water Plan, and he asked that organizations invite the OWRB to come to their meetings and talk about the Water Plan.

Lastly, Mr. Smith stated there is a contract on the agenda with Intera Geosciences Engineering to look at instream flow work in Oklahoma. Dr. Barney Austin, the principal who will be working on the project, was present and introduced to the Board. He worked for the Texas Water Development Board on its instream flow program. He is one of the leaders in the region with a state perspective and looking toward how we put stakeholder participation together, what methodologies to use.

Mr. Smith concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water, Sewer, Gas, & Solid Waste Management District #10, Delaware County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$19,125.00 emergency grant request from Delaware County Rural Water District #10. The District is requesting the funds to rehabilitate one of its two wells that is high in sulphate bacteria as well as mineral buildup. Once done, the well will be restored to capacity, and the District will be able to meet demand to serve its 590 customers. Mr. Freeman said the \$22,500.00 project will be funded with the grant requested of the OWRB, along with \$3,375.00 in local funds. Staff recommended approval.

District Chairman John Myers was present in support of the grant request.

Mr. Fite moved to approve the emergency grant to the Delaware RWSG&SWMD, and Mr. Nichols seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Central Oklahoma Master Conservancy District, Cleveland County. Mr. Freeman said this item is the last ARRA funding request; the other Drinking Water and Clean Water ARRA loans were closed at the end of December. This \$1,131,765.20 funding request is from the Central Oklahoma Master Conservancy District. Since the project was originally reviewed by the Board at the September meeting, the design has been finalized and bids received and as a result, the overall cost of the project has increased by approximately \$396,695.00. As previously approved, the funding will be from the Green Reserve Fund of the Clean Water SRF ARRA funds, and will be in the form of principal forgiveness. Staff recommended approval.

Mr. Randy Worden, District Manager, and Mr. Mike Wofford, District legal counsel, were present in support of the application.

Mr. Drummond asked if the cost increases were due to the design change. Mr. Worden answered the original estimates were for construction. Mr. Sevenoaks asked if there is a lot of phosphorus in the water; Mr. Worden said there is some phosphorous, but algae is one of the issues they are attempting to address with the oxygen. Mr. Sevenoaks asked if the introduction of the supersaturated oxygen would reduce the algae? Mr. Worden answered, that is correct.

Chairman Herrmann asked how much has been approved, and is this an increase to an existing loan? Mr. Freeman answered the Board originally approved a portion, and the project was continued to

be designed and when those bids came in they were higher, and so the increase today. The reason it is different from past actions where the amount is increased, the original loan expired, and this is the new amount. Mr. Drummond asked if this is the total amount, and Mr. Freeman answered that the total amount is \$1,500,000.00, a portion has already been closed. Chairman Herrmann asked how much of an increment is the Board been asked to approve, and Mr. Freeman said \$396,695.00.

Mr. Nichols moved to approve the Clean Water funding to the Central Oklahoma Master Conservancy District, and Ms. Lambert seconded.

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

C. Consideration of and Possible Action on a Proposed Resolution Authorizing the Reallocation of Revolving Fund Revenue Bonds, Series 2004. Recommended for Approval. Mr. Freeman stated to the members this resolution authorizes reallocation of undisbursed funds from the Board's 2004 SRF bond issue for use as 20% state matching funds for Clean Water SRF Capitalization grants. The reallocation will consist of \$3,908,100.00 of leveraged loan bonds to be classified as state match bonds resulting in Oklahoma being able to obtain \$19,540,500.00 of Clean Water Capitalization grants from EPA. He said the original SRF bond issue resolution and official statement identified the legal ability to utilize bond proceeds for this eligible purpose. This reallocation is in the same form as the Board previously approved in July 2008. This plan has been reviewed by the Board's bond counsel, staff counsel, and financial advisors. The plan benefits the Board by immediately satisfying the need for state matching funds without legislative appropriation; an access of over \$19 million in funds for additional loans. Staff recommended approval.

Chairman Herrmann stated this is the cross-collateralization that has been in place for several years and blessed by EPA and bond counsel. There were no questions by Board members.

Mr. Drummond moved to approve the resolution authorizing reallocation of revolving fund revenue bonds, and Mr. Fite seconded.

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

Mr. Freeman distributed a report regarding the status of the American Recovery and Reinvestment Act of 2009 Clean Water State Revolving Fund.

Chairman Herrmann recognized Mr. Paul Koenig of the OWRB Water Quality (as Mr. Smith noted he appeared in a news story about the lakes study).

D. Presentation of Revolving Fund Revenue Bonds, Series 2010. Mr. Freeman introduced Ms. Anne Burger Entekin, with FirstSouthwest Company, and distributed to the members a book regarding the bond closing in the afternoon prepared by Merrill Lynch Bank of America. He stated to the members that he wanted to visit about the approximately \$94 million dollar, 2010 SRF bond issue that staff has been working on for the last few months. He said the Board has closed loans of approximately \$113 million that will be backing up the bond issue and with cash on hand, there is an additional approximate \$46.9 million in additional loans that will be moving, along with bond proceeds and cash on hand for the ability of total funding of approximately \$161.2 million. There is some diversification; borrowers range from

1% of the funding sources up to the largest borrower—the Muskogee Municipal Authority at about 19%. He reviewed with the members the rating agency reviews received and general overview of the project. He reminded the members of the parties involved with staff—managers, co-managers, underwriters, and trustee bank, and noted there is review by the State Bond Advisor. He said he is pleased to have received AAA ratings from all three rating agencies, making the OWRB one of the only three natural AAA in Oklahoma along with the Noble Foundation and the Oklahoma City Water Utilities Trust. A booklet presented to the members provided a summary of borrowers, rating agency reports, and a timeline (Transaction Summary, pages 1-5).

Ms. Entrekin spoke to the members about the transaction overview, sources and uses, true interest cost, and the Tax Increase Prevention and Reconciliation Act (TIRPA) provisions regarding the requirement that 3% be loaned in the first year (pages 6-9). Ms. Entrekin also spoke about the summary of order, summary of allocation, order results by firms, and institutional analysis (pages 10-13). She concluded her remarks stating her extreme appreciation of the Board’s staff, their assistance with the structure, their very professional work, especially on top of maintaining the ARRA funds.

Mr. Sevenoaks asked about the reserve fund amount which Ms. Entrekin stated was 30-40% of the total amount of the issue, and he asked about using cash flow rather than reserve fund. She answered interest earning from the reserve fund would help make the debt service payment in addition to the principal interest payments from by borrowers. Mr. Sevenoaks asked about increased risk, and Ms. Entrekin stated that many of the credit providers who are traditional reserve fund investments, have been significantly downgraded and from a credit perspective they are actually better credit than some of the other credit providers such as AIG that have been downgraded, not in the business, or unable to service AAA programs. He asked if this is a new model, and Ms. Entrekin answered it was originated in 2003 with a reserve flow model and a cash flow model and was called a “hybrid indenture” allowing the Board the ability to do a reserve fund model or a cash flow model, contemplating the Board would do a reserve fund model; however, the vision of the Board provided flexibility to respond to the “tanking” market environment and to structure a bond issue that optimizes the OWRB program. Chairman Herrmann said the model was put in place in October 2008 when the financial markets blew up and this is a culmination of 15 months worth of work.

Mr. Freeman concluded the presentation stating his pleasure with the transaction, that the OWRB program is the lowest interest cost of the AAA ratings, The TIPRA requirement has been satisfied having loaned over 46% of bond proceeds, and that he did not anticipate having to turn over any loans to the trustee. Ms. Lambert asked if the three-year issue is separate than the IRS letter that is outstanding, and Mr. Freeman answered that it is.

Mr. Freeman reviewed the update on the ARRA funds, there being a total of 55 loans and 51 closed and having met the ARRA requirements. Mr. Smith added the staff met the Board’s desire to provide 70% loan and 30% grant—both on the Drinking Water and Clean Water—with most just a “hair” over 30%. Mr. Freeman said he anticipated there will be additional ARRA funds authorized, has been having meetings with communities to identify projects to get the money out, and stressed to communities to “get ready” for the funds when available. Mr. Smith emphasized to the cities it is time to get the engineering work done and not wait, because when the money comes available it will be on a “tight fuse” to get allocated.

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 Special Consideration 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 further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion.

Mr. Drummond moved to approve the Summary Disposition Agenda items as presented, and Mr. Nichols seconded.

Mr. Sevenoaks asked about a contract with Mr. Harold Springer and, Chairman Herrmann asked about the amended agreement with Charles Dumars. Mr. Smith said Mr. Springer is a former employee of the OWRB. And, that we will be asking the Legislature to fulfill the funding for the Dumars contract; if there is no funding, there will not be a contract. Mr. Dumars has agreed to work on this last piece in anticipation some funding will come. The previous contract was “not to exceed \$50,000”, and this contract takes it up to \$100,000. Ms. Lambert asked if Mr. Dumars will continue to act on the OWRB’s behalf with that unknown, and Mr. Smith answered, yes.

There being no further questions, Chairman Herrmann asked for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

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

<u>REAP</u>				<u>Amount</u>
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
None				

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

1. First Amended Interagency Agreement with Oklahoma Department of Agriculture, Food and Forestry.
2. Supplemental Agreement No. 3 with the U.S. Army Corps of Engineers, Tulsa District.
3. Amendment to Interagency Agreement with The Grand River Dam Authority.

4. Professional Engineering Services Contract with Harold Springer.
 5. Contract with Intera Geosciences Engineering.
 6. Amended Professional Services Contract with Charles Dumars.
- E. Applications for Temporary Permits to Use Groundwater:
1. Dolese Bros. Co., Kingfisher County, #2009-551
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Raymond O. Watson Trust, Elma J. Watson, Trustee, Caddo County, #1977-540
 2. City of Healdton, Carter County, #1999-547
- G. Applications for Regular Permits to Use Groundwater:
1. H. S. Timmons, Jr., Mary Frances Brown and Eloise Timmons, Texas County, #2009-520
 2. Randy B. & Dominique Lehr, Texas County, #2009-556
 3. Joe E. & Carol J. Winn, Beaver County, #2009-558
- H. Applications to Amend Regular Permits to Use Groundwater:
1. The Danny Leck Revocable Living Trust and the Marsha Hope Leck Revocable Living Trust, Canadian County, #2009-509
- I. Applications for Regular Permits to Use Stream Water:
- None
- J. Applications to Amend Regular Permits to Use Stream Water:
- None
- K. Forfeitures of Stream Water Rights:
1. Robert E. Eshelman, Etux, Kay County, #1973-005
 2. Tracy L. Morgan, Okfuskee County, #1994-015
 3. L. C. Neel, Cherokee County, #1952-398
 4. Harvey Chase, Jr., Cherokee County, #1954-590
 5. Grass Valley Ranch, Inc., Cherokee County, #1990-016
 6. Riverbend Estates, Cherokee County, #1983-057
 7. Pettit Bay Water Association, Cherokee County, #1976-110
 8. Pettit Bay Water Association, Cherokee County, #1961-017
 9. Sam Riley, Hughes County, #1994-021
 10. Donald Lewis Coffin, Logan County, #1976-149
 11. Bob Mathews, Logan County, #1968-112
 12. Calvin Burgess, Logan County, #2000-032
 13. Ronald L. Wilson, Logan County, #1982-022
 14. Claude Ragsdale, Mayes County, #1955-1399
 15. Wanda Baumert/Frances Garrison, Osage County, #1977-082
 16. Richard & Nancy Anderson, Payne County, #1987-024
 17. John L. Maitlen, Payne County, #1989-029
 18. B. Fay Abbott, et al, Canadian County, #1984-009
 19. Bill Short, Woods County, #1986-003

20. Robert Ensminger, Major County, #1977-167
21. Fred Simpson & Robert Ensminger, Major County, #1978-001
22. Leland Walker Ranch, Woodward County, #1968-008
23. Ronny Pyle, Cleveland County, #1987-043
24. Phillip R. Walters, Cleveland County, #1951-124
25. Floyd Holland, Noble County, #1972-395
26. Edith Freese, Noble County, #1981-163
27. Leslie Gentry, Kingfisher County, #1972-156
28. Percy Labrue, Alfalfa County, #1896-001
29. M & M Cattle Co., Washington County, #1955-1167
30. John Gerard, Washington County, #1980-134
31. Carl Shank, Rogers County, #1954-208
32. F. L. Chisum, Rogers County, #1978-145
33. Herman Gentry, Pottawatomie County, #1969-395
34. Herman & Roy Gentry, Pottawatomie County, #1969-053
35. Herman Gentry, Pottawatomie County, #1969-052
36. Herman Gentry, Pottawatomie County, #1969-175
37. Gene Smith, Pottawatomie County, #1966-458
38. Michael/Catherine Schwarz, Payne County, #1978-059
39. Ken Garrett, Beaver County, #1980-056
40. James & Glenda Roye, Haskell County, #1996-024
41. J. B. Merveldt, Canadian County, #1975-001
42. Clyde Beckner, Jr., Garfield County, #1982-043
43. W. Ray Newman, Oklahoma County, #1932-026B
44. Union Bank & Trust Co., Oklahoma County, #1984-044
45. Westlake Homeowners Association, Inc., Oklahoma County, #1978-038
46. Larry Hern, Adair County, #1972-273
47. Howard Fain, Adair County, #1972-423
48. J. C. Fain, Adair County, #1972-424
49. Warren Favor, Adair County, #1963-236
50. Davidson Sand & Gravel, Adair County, #1989-024
51. Roy Kay, Adair County, #1980-065
52. Bill Brunk, Adair County, #1954-452
53. Stephen Smith, Blaine County, #1953-073
54. Skipper Wilson, Beaver County, #1949-137
55. Jack Moman, Tulsa County, #1967-120
56. William Flanagan, Tulsa County, #1976-155
57. Kingsford Farms, Delaware County, #1980-014
58. Mr. & Mrs. George Thomas, Delaware County, #1978-110
59. Mr. & Mrs. George Thomas, Delaware County, #1980-149
60. Ervin Shawver, Delaware County, #1963-391
61. Church of Jesus Christ of Latter-Day Saints, Oklahoma County, #1982-012
62. Nellie Vloedman Family Trust, Oklahoma County, #2000-020
63. Donald Watts, Garvin County, #1971-015
64. Christ Farm Land, Garvin County, #1969-174
65. Grant Square Bank & Trust, Oklahoma County, #1977-051
66. Linda Kopff, Lincoln County, #1976-103
67. Docco Oil Corp., Tulsa County, #1965-432
68. Paul Caldwell, Washita County (William Lynn Tate, Caddo County), #1998-056

L. Well Driller and Pump Installer Licensing:

1. New DPC Licenses, Accompanying Operator Certificates & Activities
 - a. Licensee: Professional Service Industries, Inc. (reinstate) DPC-0772
1. Operator: James M. Smith OP-1738
Activities: Monitoring wells and geotechnical borings
 - b. Licensee: DJ Enterprises DPC-0774
1. Operator: David Richter OP-1739
Activities: Monitoring wells and geotechnical borings
 2. Operator: Jeremy Richter OP-1740
Activities: Monitoring wells and geotechnical borings
 - c. Licensee: Andrews & Foster Drilling Company DPC-0776
1. Operator: Ronald Ellis OP-1742
Activities: Groundwater wells, test holes and observation wells
Monitoring wells and geotechnical borings
Heat exchange wells
 2. New Operators for Existing Licenses:
 - a. Licensee: Tanner Pump Company DPC-0199
1. Operator: Robert D. Armstrong, II OP-1737
Activities: Pump installation
 - b. Licensee: Dolese Bros. Co. DPC-0740
1. Operator: Robert Moore OP-1741
Activities: Monitoring wells and geotechnical borings

M. Dam and Reservoir Construction:

None

N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Oklahoma Department of Transportation, Grady County, #FP-09-20
2. Northeastern Oklahoma A&M College, Ottawa County, #FP-09-28.

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 12, 2010 packet of Board materials.

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

- A. There were no items for presentation or discussion by the Board members.

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. There were no Special Consideration agenda items for the Board consideration.

B. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for further consideration.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Duane Smith stated to the members that as Mr. Monte Boyce has moved to the Department of Environmental Quality, Ms. Leslie Nance has stepped in, put in over time hours, and has done an impressive job at picking up the additional work with a great attitude. The Legislature is coming in and the priorities is to provide that information. He said the biggest news on the budget is that agencies are anticipating that 10% cut (average) to be maintained for the entire year. The steps put in place i.e., push back purchases, keep employee positions open, etc., to be efficient as possible will put the agency through this year, and we are now looking at next year.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

Chairman Herrmann stated there is a Supplemental Agenda for the Board's consideration.

A. Contracts and Agreements Recommended for Approval.

1. Interagency Agreement with the Department of Environmental Quality for Accounting, Budget Assistance, and Related Services. Chairman Herrmann called on Mr. Kyle Arthur about the Supplemental Agreement with the Corps, which he addressed. No comments were made about the proposed agreement with DEQ.

Ms. Lambert moved to approve, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

B. Application for Regular Permit to Use Groundwater

1. Arthur G. & Deborah A. Bohlmann, Texas County, #2009-521

Ms. Julie Cunningham stated this permit application was not ready for the posting of the regular agenda and was therefore placed on the Supplemental Agenda.

Mr. Nichols moved to approve the application for regular permit to use groundwater, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

8. UPDATE ON OKLAHOMA WATER RESOURCES BOARD ANNUAL RULEMAKING PROCESS.

Chairman Herrmann stated at the December meeting, staff presented information on the proposed rule amendments, and this portion of the meeting is for conducting the public hearing where the public can comment directly to the Board. The Board may ask questions for clarification, and at the February meeting the Board will take action.

Mr. Smith stated that staff presented an overview of the rules during the past two months, the purpose of today's meeting is to receive comments from the public, and not the opportunity for the Board to respond. The comments will be evaluated in total, and at next month's meeting recommendations will be presented that reflect what was put out for notice and the comments received, and which will be for final Board approval. He said Mr. Couch is the "marshall," this is a legal, administrative proceeding; this is the opportunity for the board to hear the "raw" comment by the public.

After discussion of procedure, Chairman Herrmann stated that the Board has heard from staff and he invited the public to comment on each chapter according to the letters of comment written as well as others that may be present. Both written and oral comments will be received.

A. Proposed Amendment to Chapter 5 – Fees

Mr. Jim Barnett, Environmental Federation of Oklahoma, stated to the members he had a very productive meeting with Mr. Smith who was very accommodating; he had submitted 5-6 pages of comments on the first draft and the second draft is much improved and he appreciated staff working with him. He said he would not spend any more time commenting on Chapter 5 fees or Chapter 35, dam safety rules. The remaining item of concern is the citizenship affidavit required on both the groundwater [application] form and stream water [application] form. He said the Board has been requiring that without a rule, and this would put a rule in place, but he didn't believe the Board had any authority to require that. He said that HB 1804 which is the state legislation incorporating the federal statute regarding alien registration sets forth clearly

there must be a citizenship affidavit if you are the recipient of a benefit, and a benefit in the state law definition is the federal definition by reference, and he read the definition. He suggested a water right does not fall under that definition, and to require anyone who wants to obtain a permit to use groundwater—their own private property—and even streamwater, is not a benefit. He said the Board has gone well beyond statutory authority and has no basis for this requirement.

Ms. Marla Peek, Oklahoma Farm Bureau, addressed the members and stated she had comments regarding Chapter 5 and Chapter 30. She said she appreciated staff's revision but believes that groundwater is a private property right and you should not have to pay a fee to use your own private property. She said each person that holds a groundwater right should be notified by mail and she didn't believe there were many groundwater right holders that were aware of the fee proposal. She said she paid particular attention to the rule impact statement, but rules are only minor if they don't apply to you. A user fee should be used for the purpose for which it is taken, and the statement acknowledges that the fee is to offset reduced state appropriation, but there is no dollar figure for what that will cost. She said her question is whether all of the fee dollars will go strictly for administering groundwater rights, or to a general fund, for technology—it isn't stated what it will be used for. She said if the fee exceeds the purpose for which it is taken, that fee should be reduced. She said she understood the need to fill the hole in the budget, but not on the backs of permit holders, as citizens have been affected by the economic downturn as well as state agencies. Ms. Peek stated OFB disagrees with the rationale that the administration of the program continues to be inadequate causing adverse consequences to public health and safety; and she asked if the OWRB had considered online reporting by water right holders to reduce administrative costs. Summarizing, Ms. Peek said the fee increase should not be more than is needed for the program, all permit holders should be notified, and she asked the Board to clarify how public health and safety is threatened.

There were no questions by the Board.

Ms. Peek added OFB comments regarding Chapter 46: she said the OWRB should move forward with what has been proposed except for the portion addressing “naturally occurring conditions,” it is unnecessarily complicated and asked that be held and resubmitted next year.

There were no questions by the Board.

Chairman Herrmann noted the Board had received comments from OG&E, and Michael Vanderburg, City Attorney for the City of Okmulgee; however, no representatives were present to speak to the Board.

Ms. Carolyn Stager, Executive Director of the Oklahoma Municipal League, wrote a letter. She was not present; however, Ms. Cheryl Dorrance and Ms. Diane Pedicord were present. Ms. Dorrance stated OML commented on Chapters 5, 20, and 40; she said OML's General Counsel met with Mr. Smith and they are satisfied with revisions. Regarding the fee issue, OML believed it critically important that anytime a fee increase is proposed that documentation is included that it is to support the cost of administration. She said OML also appreciated the removal of the proposal that the water right would be lost if late on filing fees, and concerns regarding well spacing.

There were no questions by the Board.

Ms. Angie Burkhalter, Oklahoma Independent Petroleum Association, addressed the members and stated OIPA appreciated the revisions staff had made to the proposals so far, but she had remaining concerns. She said OIPA commented on proposals to Chapters 5, 20, 25, 30 and 45. The main concern relates to Chapter 20 and the proposal to double the application fee for nondomestic use of water. She believed this would discourage an applicant from coming forward and is contrary to OWRB's past policy that encouraged people to come into compliance on their own, and OIPA would like to see that cooperative effort continued and recommended the additional fee be deleted or at a minimum reduced. Regarding Chapter 30 and the use of groundwater, there is similar language in this section regarding application fees after the fact, and OIPA has the same comments and would like to see a more cooperative effort between the Board and applicants. Regarding Chapter 45, relating to the language, "naturally occurring conditions," OIPA believed there should be a process established to encourage state agencies and the regulated community to import information, but that it needs to be reasonable and economically feasible, and what the OWRB has proposed so far is burdensome and excessively costly. She requested the OWRB withdraw that provision and work over the next year in coordination with industry and others.

Chairman Herrmann interjected there are examples of interim work being effective. There were no questions by the Board members.

Chairman Herrmann noted comment letters had been received by David Cameron, City Administrator of Siloam Springs, Arkansas, and Allen Gates on behalf the Northwest Arkansas Conservation Authority. Neither party was in attendance. Mr. Sevenoaks asked about the comments regarding the .037 phosphorous standard for the Scenic Rivers, are they commenting on an existing rule? Mr. Smithee responded that in 2004 when the .037 phosphorous criterion was promulgated, the Board suggested the full implementation occur by 2012, and that became a "magic date" and was captured at EPA and the Arkansas-Oklahoma-EPA Joint Principals and Actions document, and one element of that document is that the OWRB shall review the .037 phosphorous criterion by 2012. Mr. Smithee said anytime rulemaking occurs, the entire chapter and entire rule is open for comment and review.

Chairman Herrmann stated the Board received comments from the Oklahoma Conservation Commission regarding Chapter 25, dams and reservoirs. There were no representatives who commented, and there were no questions by Board members.

Chairman Herrmann stated the final item in the packet regards well drillers, and there were no comments by the public or questions by the members regarding Chapter 35.

Mr. Derek Smithee stated to the members that Chapter 45 of the Water Quality Standards contain additional public participation and notice requirements because of that chapter's Clean Water Act responsibilities. Staff distributed a packet of written comments received on the narrow issue of Chapter 45.

Chairman Herrmann asked if those who had commented earlier had anything to add; there were no further comments.

Other comments regarding Chapter 45 were received from the Department of Environmental Quality, but there were no further comments by the representative present, and no questions were posed by the Board.

Comments were received by the Environmental Protection Agency; there was no representative in attendance. Mr. Sevenoaks asked if comments from the EPA are required to be included in the rulemaking; Mr. Smithee answered it is. Chairman Herrmann asked for clarification; Mr. Smithee said all comment letters received for Chapter 45 WQS revision will be included in the public comment response packet. Mr. Sevenoaks asked if what EPA is suggesting has to be included verbatim into the actual rule, does it have to pass “quality assurance” from EPA? Mr. Smithee answered, no it does not have to be included, but quality assurance will come at the “back end.” There are several hoops that must be passed through before the rule is effective. Once through the state process, EPA will be able to approve or disapprove and then it becomes effective as federal law; these comments come before (EPA review) so that the OWRB knows its concerns and can make changes for full approval at the end of the process. Mr. Smithee said staff pays special attention, but may not always do what is suggested, and EPA can still approve.

Chairman Herrmann stated written comments had been previously received by the following and he invited additional comment by the public, as noted:

Mr. Kent Fletcher of Western Farmers Electric Cooperative, who was present but no further comments, and no questions by the Board.

Mr. Ken Frazier, US Fish and Wildlife Service; not present and no questions by the members.

Mr. David Hall, American Electric Power; not present and no questions by the Board.

Congressman John Boozman, State of Arkansas; no one present and no questions by the Board.

The Arkansas Department of Environmental Quality; no one present and no questions by the Board.

Mr. Allen Gates, Northwest Arkansas Conservation Authority; not present and no questions by the Board.

Mr. Ed Clifford, Northwest Arkansas Council; not present and no question by the Board.

Mr. David Jurgens, Fayetteville, Arkansas; not present and no questions by the Board

Mr. David Cameron, Siloam Springs, Arkansas; not present and no questions by the Board.

Mayor Doug Sprouse, Springdale, Arkansas; not present and no questions by the Board.

Tyson Foods; not present and no questions by the Board.

Mr. Joe Freeman, OWRB Financial Assistance Division Chief, noted the formal hearing on Chapter 50 will be January 19, 2010 at 10:00 a.m., and he had not received any comments to date. Chairman Herrmann stated if there are any issues, the Board members will be made aware of that prior to the next meeting.

Mr. Dean Couch, OWRB General Counsel, noted for the record that all of the underlined-strikeout versions, the notice of rulemaking intent, and the rule impact statements for all of these chapters have been posted on the website and are available for public review. Staff will be

providing responses received as a result of these comments to the Board members. Today is the public hearing and cutoff for comments, but staff responses will be provided.

Chairman Herrmann stated because it is a public hearing, he would offer an opportunity to comment to any other members of the public who hasn't specifically commented in writing. There were no additional comments by the public regarding any proposed rule amendment.

Mr. Fite asked if the Board would discuss as the next meeting and adopt at that meeting, or adopt at the March meeting. Mr. Couch stated the suggestion is at the next meeting (the Board would vote) the rules must be at the Legislature by April 1, so if there is a problem or some need to postpone a statement or sentence that allows that flexibility. Mr. Smith added a month has been built in so that if something isn't quite what we want it to be and want to get back together, there is opportunity to do that. Chairman Herrmann added at the next meeting there is opportunity for the members to have full discussion. There was no further discussion by the Board or members of the public.

9. PROPOSED EXECUTIVE SESSION

Chairman Herrmann

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 attorneys 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, and as authorized by the Oklahoma Open Meeting Act in Section 307(B)(1) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[d]iscussing the employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee.”

Pursuant to these provisions, the Board proposes to hold an executive session for the purpose of: Discussion of Tarrant Regional Water District v Herrmann; and Review of the duties of the Executive Director.

A. Vote on whether to hold Executive Session – before an executive session can be convened, it must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Chairman Herrmann read the statement above regarding the purpose of the proposed executive session and asked if there was a motion.

Dr. Taron moved that the Board enter executive session, and Mr. Drummond seconded. Chairman Herrmann called for the vote.

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

B. Designation of person to keep written minutes of Executive Session, if authorized

Chairman Herrmann asked Executive Secretary Mary Schooley to keep written minutes.

C. Executive session, if authorized

The Board entered executive session at 11:32 a.m., January 12, 2010.

10. VOTE ON MATTER DISCUSSED IN EXECUTIVE SESSION - Return to open meeting and possible vote on any matters discussed in the Executive Session.

Chairman Herrmann announced the Board adjourned from executive session and returned to regular session (12:20 p.m.).

Mr. Nichols moved that the Board grant Mr. Duane Smith, Executive Director, six-month's leave, with the expectation he will return August 1, 2010, and to complete the Comprehensive Water Plan, J.D. Strong, Secretary of Environment, will become Interim Director, and Chairman Herrmann is authorized to sign any necessary documents. Ms. Lambert seconded the motion.

Mr. Sevenoaks said he didn't want to change the motion, but asked about salary for Mr. Strong, and the members said that would be up to the Chairman.

Chairman Herrmann restated the motion. There was no further discussion, and Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: None

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. Mr. Fite commented the Board did not take action on Tarrant County.

12. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 12:27 p.m. on Tuesday, January 12, 2010.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Richard Sevenoaks

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
F. Ford Drummond

_____/s/_____
Joseph E. Taron

ATTEST:

_____/s/_____
Linda P. Lambert, Secretary
(SEAL)