

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
February 13, 2012

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Linda Lambert at 9:30 a.m., on February 13, 2012, at the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on February 6, 2012, at 5:25 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

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

B. Roll Call

Board Members Present

Linda Lambert, Chairman
Joe Taron, Secretary
Marilyn Feaver
Ed Fite
Rudy Herrmann
Richard Sevenoaks
Tom Buchanan

Board Members Absent

Ford Drummond, Vice Chairman
Kenneth Knowles

Staff Members Present

J.D. Strong, 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
Amanda Storck, Chief, Administrative Services Division
Josh McClintock, Director of Government and Public Affairs
Mary Schooley, Executive Secretary

Others Present

Vicki Reed, Department of Environmental Quality, Oklahoma City, OK
Michael Taylor, Department of Environmental Quality, Oklahoma City, OK
Joetta Hyde, Town of Roland, OK
Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK
Bodie Bachelor, Centennial Law Group, Durant, OK
Chris Cochran, BOSC, Dallas, TX
Charlie Swinton, BancFirst, Oklahoma City, OK
D. Craig Shew, Ada, OK
Phil Brown, Payne County Rural Water District #4, Stillwater, OK
Mike Mathis, Chesapeake Energy, Oklahoma City, OK
Paul Warren, Mill Creek, OK
Charles Roos, Roff, OK
Chris Phyllis, Chickasaw Nation, Ada, OK
Janice Graves, Westlake, Oklahoma City, OK
Lisa Loewenkamp, Westlake, Oklahoma City, OK
Randall Loewenkamp, Westlake, Oklahoma City, OK
Stephen Schmelling, Ada Water Resources Board, Ada, OK
Dick Scalf, City of Ada, OK
Amy Ford, Citizens for Protection of Arbuckle Simpson Aquifer, Durant, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Tom Lay, Kerr Irvine Rhodes Ables, Oklahoma City, OK
J. Berton Fisher, Citizens for Protection of Arbuckle Simpson Aquifer, Tulsa, OK
Zack Robinson BOSC Inc.
Eddie Rhandour, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Jeremiah Johnson, Long Johnson Ranch, Sulphur, OK
Chuck Roberts, Fitzhugh, OK
Charles Morrow, Roff, OK
Joseph Morrow, Roff, OK
Tawanna Chapman, Lincoln County Rural Water District #4, Agra, OK
Clinton Pruitt, Lincoln County Rural Water District #4, Agra, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Kay Robbins Wall, Eufaula Public Works Authority, Eufaula, OK
Selina Jayne-Dorman, Eufaula Public Works Authority, Eufaula, OK
Robert Vaughan, Mehlburger Brawley, Eufaula Public Works Authority, McAlester, OK
Emily Dolina, Chickasaw Nation Division of Commerce, Norman, OK
Krystina Hollarn, Citizens for Protection of Arbuckle Simpson Aquifer, Tulsa, OK
Scott Robertson, City of Ada, OK
Kelly Hurt, Arbuckle Simpson Landowners
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
John Rehring, Carolla, Denver, CO
Bob Donaho, Citizens for Protection of Arbuckle Simpson Aquifer, Davis, OK
Floy Parkhill Citizens for Protection of Arbuckle Simpson Aquifer

C. APPROVAL OF MINUTES

Chairman Lambert stated she would entertain a motion to approve the minutes of the January 10, 2012, Regular Meeting. Dr. Taron moved to approve the minutes, and Mr. Buchanan seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Herrmann
NAY: None
ABSTAIN: Fite, Lambert
ABSENT: Drummond, Knowles

D. EXECUTIVE DIRECTOR'S REPORT

Executive Director J.D. Strong, began his report stating that Mr. Josh McClintock was at the Capitol assisting exhibitors at "Water Day", but had prepared a legislative update included in meeting materials today. He said at last count there were 84 water-related bills; about 30 bills deal with the eight priority recommendations of the water plan. Staff was asked to provide support or help with language on three of the bills; the first committee deadline is about three weeks from now and oftentimes the number of active bills will be reduced by half. He said the Senate Energy Committee would hear water bills this week and the House Ag, Wildlife and Environment Committee will hear water bills. The three bills the staff has assisted with are infrastructure financing--HJR 1085 which doesn't have language but is thought it might be a state question to back loans with a pledge of credit rather than an appropriation; HB 2914 regards regional planning groups --currently there are 10 bills filed on this subject; and HB 3055 by Speaker Steele regarding water conservation efficiency and reuse and establishing the goal to keep fresh water consumption in 2060 the same level as today while growing the economy through innovative ways of tapping water sources.

Mr. Herrmann asked about what Board members should advocate for in regard to the Water Plan. Mr. Strong answered that as a general matter that is the guidebook (to support the OCWP); there are ethics rules to lobbying, but staff will continue to work with the legislators and talk about the upside and downside of various measures. Ms. Lambert added the Board's Ad Hoc Legislative Committee will help to clarify the facts. Mr. Strong encouraged everyone to join the OWRB and other agencies at Water Day, the House convenes to consider the Water Appreciation Day Resolution at 1:30 p.m., at 2:30 p.m. the Speaker will unveil the House water agenda, and the bound copies of the Executive Report of the Oklahoma Comprehensive Water Plan will be delivered.

Mr. Strong continued there had been many meetings with legislators, the House budget meeting was held recently, there had been a meeting of the Pit Water group and technical group in developing rules, meetings with OSF and a contract in the packet regarding the mechanics of transferring personnel, and he spoke to the Aggregates Association and the Oklahoma Commercial Real Estate Council. The Kansas-Oklahoma-Texas Team meeting with the Corps of Engineers will be held February 15-16 in Kansas City, Bond Oversight Council meets February 23, Corps of Engineers Budget Briefing February 27, and the OACD on February 27.

Mr. Sevenoaks expressed his surprise at the recent letter of opposition to the Water Plan by several stakeholder groups. Mr. Strong said he had met with members of the group and walked through the Plan and its recommendations but wasn't informed they would be

distributing a position paper. He said though that while it did have a somewhat negative slant, the group supported about half the priority recommendations and the other half they take issue with. Mr. Sevenoaks said he didn't have a problem as the process sought transparency and bringing everyone in to express their view, but, he didn't think it fair for the group to be involved throughout the process and to blindsides the Board by a position paper. Mr. Strong said there had been some disappointment by legislators the group's concerns were not brought to the Joint Legislative Committee, and Ms. Lambert said some of the aspects of disagreement were in fact recommendations that are included in the Water Plan for further study and review, and that is being supportive of the action going forward. Mr. Herrmann commented the Water Board is being criticized on the one hand for not being protective of enough of the natural resources, yet if you read the Plan, there are some ways forward on some of the protection issues that are quite controversial on the other side, yet the consumptive users think its being overprotective of those very resources. He said if we are getting criticized on both sides, perhaps the Board did a credible job recognizing there are multiple constituents, multiple issues that need to be addressed, there's a way forward, let's come to the table and work through that. He thought criticism from both sides was a positive. Mr. Strong responded that staff has said there are wide differences of opinion from one side of the state to the other, urban and rural, etc., and the justification for why regional planning groups make sense. He said for roughly half of the priority recommendations that there was a consensus everyone could unite behind them to get those issues addressed, and half the issues that were very controversial the Board recommended further study and stakeholder input before moving forward in a substantive way.

Mr. Buchanan asked about the IT personnel; Mr. Strong said there were three employees, but they will remain at the OWRB, and there was no change in the agency's cost, which was an issue that had been worked out. Mr. Herrmann said he thought there was to be a reduction in costs and Mr. Strong said that was not anticipated initially but would probably happened over a couple of years.

Ms. Feaver suggested that Board members encourage people who have an opinion about the Water Plan to actually read the Water Plan, as many people she has visited with have not.

Mr. Strong concluded his report noting that the .037 phosphorous criterion is not on the agenda today as the Technical Advisory Group had asked for additional time. The standard is in effect and has been for ten years, and there is no rush to get the report finalized. Mr. Sevenoaks asked if Oklahoma would receive a response; Mr. Smithee said a written response was received (2/10) and will be reviewed.

E. Monthly Budget Report

Ms. Amanda Storck addressed the members and introduced the agency's budget analyst at the Office of State Finance, Mr. Austin Slaymaker. She said the prepared budget report is as of January 2012; there is 60% of funding available with 42% of the fiscal year remaining.

There were no further questions by members.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Rural Water District #4, Lincoln County.

Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this first item is a \$520,000.00 loan request by Lincoln County Rural Water District #4 which has requested the loan to refinance two variable rate loans the District has with the Board into a fixed rate loan. He said the loans were for construction of a water well and water system improvements. The loan will be funded through the Board's State Loan Program Revenue Bonds, and will have a maturity of approximately 13 years; he noted provisions of the loan. The District is a good loan customer, with a debt coverage ratio of approximately 1.67-times. Staff recommended approval.

Ms. Tawanna Chapman, District Manager, and Mr. Clinton Pruett, Field Supervisor, were present in support of the loan request.

Mr. Herrmann asked the current and future interest rates; Mr. Freeman said the bonds had not been remarketed, but the last variable remarketing was at 1.38 %. Mr. Sevenoaks asked about the noted OWRB Bond Issue Costs, and Mr. Freeman responded that OWRB cost is split between each of the borrowers from that issue, and is only associated when there is a new bond issue under the FAP program.

There were no other questions, and Mr. Herrmann moved to approve the loan to the Lincoln County Rural Water and Sewer District #4, and Mr. Sevenoaks seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Vian Public Works Authority, Sequoyah County. Recommended for Approval. Mr. Freeman said this item is a \$1,555,000.00 loan request from the Vian Public Works Authority located in Sequoyah County. The Vian PWA is requesting the loan to construct an approximately 850,000-gallon wastewater basin, an approximately 2.5-million gallon secondary basin, construct a lift station, and install a splitter box and flow meter. The loan will be funded through the Clean Water State Revolving Fund Loan Program at a fixed interest rate plus .5 administrative fee. Mr. Freeman noted provisions of the loan agreement. Vian currently has one outstanding loan with the Board, closed in June 2000 and matures in 2017. Over the last ten years, Vian's water and sewer connections have increased by approximately 7%, and its debt coverage ratio stands at approximately 1.33-times. Staff recommended approval.

Vian representatives were unable to attend due to the weather; however, Mr. Rick Smith, Vian's Financial Adviser was present to speak to the funding request.

There were no questions, and Mr. Fite moved to approve the Clean Water SRF loan to the Vian Public Works Authority. Dr. Taron seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Shattuck Municipal Authority, Ellis County. Recommended for Approval. Mr. Freeman stated the Shattuck Municipal Authority has requested a \$2,000,000.00

loan from the Drinking Water State Revolving Fund to construct a new water well, a 500,000-gallon water storage tank, rehabilitate a 200,000-gallon storage tank, and construct approximately 6,300 linear feet of 8-inch water line. The loan will be funded through the Drinking Water SRF loan program, and Mr. Freeman noted provisions of the loan agreement. Shattuck has been a loan customer of the Board's since the mid-1990s, and its debt coverage ratio is approximately 1.65-times. Staff recommended approval.

There were no town officials in attendance due to the weather; however, Mr. Allan Brooks was available to speak to the project.

There were no questions, and Mr. Sevenoaks moved to approve the DWSRF loan to the Shattuck Municipal Authority, and Mr. Buchanan seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Knowles

D. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Roland Utility Authority, Sequoyah County. Mr. Freeman said this item is for the consideration of a \$3.6 million loan request by the Roland Utility Authority. He said the Authority is requesting the loan to refinance a variable rate loan to a fixed rate. The loan was for construction of a reservoir, a water treatment plant, and refinancing of a Rural Development loan. The loan will be funded through the State Loan Program Revenue Bonds at a fixed interest rate, with approximately a 17-year maturity. He noted provisions of the loan agreement. Roland has been a loan customer of the Board's since mid-1990, and its debt coverage ratio stands at approximately 1.29 times. Staff recommended approval.

Ms. Joetta Hyde, Deputy Town Clerk, was present in support of the loan request.

Mr. Sevenoaks asked if the Bond Counsel, Local Counsel, Financial Consultant and Special Tax Counsel were four different people; Mr. Freeman said that they are four people. Mr. Herrmann asked about the cost of fees and savings going to a fixed rate, and Mr. Freeman said the rate might be a bit higher, but it was a matter of "not now, when." And, Chairman Lambert asked if the bond issue cost is a percentage of the total loan, and Mr. Freeman said that would be less than 1%.

There were no further questions, and Mr. Sevenoaks moved to approve the loan application to the Roland Utility Authority, and Mr. Herrmann seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Knowles

E. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Eufaula Public Works Authority, McIntosh County. Recommended for Approval. Mr. Freeman said to the members that this item is a \$4 million dollar loan request by the Eufaula Public Works Authority in McIntosh County. The Authority has requested the loan to retrofit and expand the existing wastewater treatment plant. The project will increase the plant's capacity to 910,000 gallons per day. Mr. Freeman noted provisions of the loan

agreement. He said over the past ten years, the Authority's water connections have increased by 13% and wastewater connections have increased by 17%; the debt coverage ratio stands at 2.56-times. Staff recommended approval.

Ms. Selina Jayne-Dorman, Mayor and Ms. Kay Robbins Wall, City Attorney, were present in support of the loan application.

Mr. Herrmann asked if all of the 3.5% sales tax is dedicated to the loan repayment, or are there other purposes. Mr. Freeman said the Board is taking a pledge on 3.5%, there are other items the sales tax goes toward, city representatives said.

There being no other comments or questions, Mr. Herrmann moved to approve the loan to the Eufaula Public Works Authority, and Dr. Taron seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Knowles

F. Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds, Series 2012A in Aggregate Principal Amount not to Exceed \$45,000,000; Approving and Authorizing Execution of a Twenty-First Supplemental Bond Resolution Providing for the Issuance of said Bonds; Waiving Competitive Bidding on the Bonds and Authorizing the Sale Thereof by Negotiation and at a Discount Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to said Bonds; Directing Deposit of Proceeds Derived from the Issuance of the Bonds in the State Treasury and Requesting the State Treasurer to Remit Such Proceeds to the Bond Trustee; Ratifying and Approving the Form of Promissory Note and Loan Agreement to be Executed by Borrowers in the State Loan Program; Authorizing Execution of Such other and Further Instruments, Certificates and Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman stated to the members that this item is for the consideration of an authorizing resolution for the issuance of FAP bonds. He said the bonds will be used for refinancing several loans in light of current market conditions. Included are the Lincoln County RWD #4, and Roland loans which the Board approved today, and approximately ten loans the Board will consider next month. He said there will also be a couple of new projects funded from the proceeds.

Mr. Freeman said the resolution authorizes: issuance of bonds not to exceed \$45 million, authorizing execution of a twenty-first supplemental bond resolution providing the issuance of said bonds, authorizing the issuance to be on a negotiated basis, directing the deposits of the proceeds with the State Treasurer for remittance to BancFirst, the Board's Trustee Bank. Also, approving the form of promissory note and loan agreement, and directing payment of the cost of issuance, and authorizing other documents necessary to close the issue. Staff recommended approval.

Chairman Lambert asked for comments or questions. Dr. Taron moved to approve the resolution, and Mr. Herrmann seconded.

Chairman Lambert asked about what change in interest rate may be expected. Mr. Freeman said the issue for Broken Arrow was just closed and Mr. Chris Cochran, BOSCO, said that was 6-8 weeks ago and the basis points are now 30-40 basis points lower. He said right now

the basis points are within 8 points of the lowest levels in history; there is a lot of activity with the OWRB and other issuers across the State wanting to lock in the low interest rate.

There were no other questions, and Chairman Lambert called for the vote.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Knowles

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 from the Summary Disposition Agenda 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.P.

Chairman Lambert noted the changes that had been made on the revised agenda, as well as the items on the Supplemental Agenda--well driller licensing and temporary groundwater permit. She asked if there were any other changes to the Summary Disposition Agenda. Ms. Julie Cunningham asked that the pump installation activity be withdrawn from items L.2.e.1. and 2. as the operator did not complete testing for the activity.

Noting the items withdrawn, the item added, and adding the Supplemental Agenda items, Chairman Lambert asked for a motion to approve the Summary Disposition Agenda as amended.

Mr. Herrmann so moved, and Dr. Taron seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Knowles

The following items were approved:

C. Financial Assistance Division Items:

1. Rural Economic Action Plan (REAP) Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
ASCOG				
a.FAP-07-0032-R		Manitou Development Authority	Tillman	\$ 99,450.00

- D. Consideration of and Possible Action on Contracts and Agreements, Recommended for Approval.
1. Agreement with Oklahoma State University, Oklahoma Water Resources Research Institute to participate in the annual Water Research Grants Competition.
 2. Interagency Agreement with Office of State Finance for Transfer of Information Technology Personnel.
 3. Amendment of Interagency Agreement with Board of Directors of Oklahoma Tobacco Settlement Endowment Trust Fund for Additional Wireless Internet Access.
- E. Applications for Temporary Permits to Use Groundwater:
1. Lanie Glen Hale, Canadian County, #2011-625
 2. Dudley & Karen Testerman, Harmon County, #2011-645
 3. Merlin D. Schantz, Jr., Blaine County, #2011-653
 4. Robert & Carol Diemer, Kay County, #2011-656
 5. Tyler Streck and the Darrell Unruh and Joyce M. Unruh Revocable Trusts, Kingfisher County, #2011-661
 6. Michael S. & Julie A. Terrel, Woods County, #2011-664
 7. Raymond Joe & Sarabeth Stephens, Pontotoc County, #2011-669
 - 8. *Frederick J. & Mary Kathryn Lorenz, Major County, #2011-674 Item withdrawn*
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. Merit Energy Company, Beaver County, #2011-571
 2. Angela Scribner Morgan & Emily G. Scribner, Marshall County, #2011-627
 3. Phillip Penner Living Trust, Beaver County, #2011-649
 4. Kula Rae York, Beckham County, #2011-651
 5. Mark & Carol McPhail, Tillman County, #2011-654
 6. Mark & Carol McPhail, Kiowa County, #2011-655
 7. Claude Smith 2009 Trust, Cimarron County, #2011-662
 8. Abel & Sharon K. deBoer, Cimarron County, #2011-663
 9. Flat Prairie Farms, Inc., Texas County, #2011-670
 - 10. *Jerry & Beth Wiebe, Texas County, #2011-671 Item withdrawn*
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Flat Prairie Farms, Inc., Texas County, #1973-346
 2. Flat Prairie Farms, Inc., Texas County, #1996-611
 3. Bandy & Amy Silk, Beckham County, #1998-550
 4. Flat Prairie Farms, Inc., Texas County, #2003-535
 5. Phil D. Burden, Beckham County, #2005-564
 6. Flat Prairie Farms, Inc., Texas County, #2009-563
- I. Applications to Amend Prior Rights to Use Groundwater:
- 1. *Frederick J. & Mary Kathryn Lorenz, Major County, #1970-110 Item withdrawn*

J. Applications for Regular Permits to Use of Stream Water:

1. Joel & Amy Wisian, Carter County, #2011-030
2. Town of Muldrow, Sequoyah County, #2011-033
3. Sloan Farms, Inc., Muskogee County, #2011-039
4. Clay Cavender, McCurtain County, #2011-055
5. Thomas A. Vining, Washington County, #2011-056
6. Hawkins Family Farms, L.L.C., Sequoyah County, #2011-057
7. Kermit Scott, Canadian County, #2011-058
8. Bird Creek Farms, L.L.C., Tulsa County, #2011-060
9. James Earl (Jack) & Claudell Higgins, Love County, #2011-064
10. Curtis & Brenda Schulz, Choctaw County, #2011-067

K. Forfeitures (Reductions) of Stream Water Rights:

None

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- | | | |
|--------------|---|----------|
| a. Licensee: | Envirotech Drilling Services, LLC | DPC-0836 |
| 1. Operator: | Jaime Vasquez | OP-1882 |
| Activities: | Monitoring wells and geotechnical borings | |
| b. Licensee: | Blair Well Drilling | DPC-0838 |
| 1. Operator: | Greg Thomas | OP-1886 |
| Activities: | Groundwater wells, test holes and observation wells | |
| c. Licensee: | Kenneth Wayne Price | DPC-0840 |
| 1. Operator: | Kenneth Wayne Price | OP-1887 |
| Activities: | Pump installation | |

2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:

- | | | | |
|----------------|--|-----------------|--|
| • a. Licensee: | <i>Envirotech Engineering & Consulting, Inc.</i> | <i>DPC-0283</i> | |
| Operator: | <i>Tony M. Horner, Jr.</i> | <i>OP-1883</i> | |
| Activities: | <i>Monitoring wells and geotechnical borings</i> | | <i>Item added; items below re-numbered</i> |
| b. Licensee: | Fire and Ice | DPC-0432 | |
| 1. Operator: | Jerry Rice | OP-1884 | |
| Activities: | Heat exchange wells | | |
| 2. Operator: | Corey Pugh | OP-1885 | |
| Activities: | Heat exchange wells | | |
| c. Licensee: | Sahara Water Services | DPC-0781 | |
| Operator: | Lyle Bellmon | OP-1888 | |
| Activities: | Groundwater wells, test holes and observation wells | | |
| | Pump installation | | |
| d. Licensee: | Swink Waterwell Service | DPC-0830 | |
| 1. Operator: | Clinton Swink | OP-1804 | |
| Activities: | Plugging of certain groundwater wells | | |
| e. Licensee: | Citizen Potawatomi Nation | DPC-0641 | |
| 1. Operator: | Josh Smith | OP-1889 | |

Activities: Groundwater wells, test holes and observation wells
Pump installation withdrawn
Heat exchange wells

2. Operator: Scott Gray

OP-1890

Activities: Groundwater wells, test holes and observation wells
Pump installation withdrawn
Heat exchange wells

M. Dam and Spillway Variance Request:

1. Hall Park Dam and Spillway, Cleveland County, #OK11090

N. Dam and Reservoir Construction:

1. David Yonce, Okmulgee County, #OK30397

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

1. Oklahoma Department of Transportation, Craig County, #FP-11-43
2. Oklahoma Department of Transportation, Logan County, #FP-11-44
3. Oklahoma Department of Transportation, Payne County, #FP-11-45
4. Oklahoma Department of Transportation, Payne County, #FP-11-46
5. Oklahoma Department of Transportation, Okmulgee County, #FP-11-47
6. Oklahoma Department of Transportation, Noble County, #FP-11-48
7. Oklahoma Department of Transportation, Ottawa County, #FP-11-49
8. Oklahoma Department of Transportation, Kay County, #FP-11-50

P. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the February 13, 2012 packet of Board materials.

• Q. Application for Approval of Acquisition of Assets of Rural Water District.

1. *Application by Kingfisher Public Works Authority to Acquire Assets of Rural Water and Sewer District No. 4, Kingfisher County, Application No. RWA-2011-01. Item added*

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

There were no items of agency matters for presentation to the Board.

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 Regular Permit to Use Groundwater No. 2010-553, Payne County Rural Water District No. 4, Creek County:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that this item is an application to use groundwater by the Payne County RWD #4. She said the request is to take and use 46.8 acre-feet per year for rural water supply, and would actually be used for back up supply. Currently, the District purchases water from Lone Chimney Water Association which is subject to severe limitation during periods of drought. Payne County desires to add this one well on 23.42 acres of dedicated land in Creek County. There were protests on spacing concerns; however, the evidence in the record did not support claims to interference. In this basin, spacing does apply; it is a studied basin with an MAY/EPS of 2.0 acre-feet of water per acre feet of land, and in this case, the spacing requirements were met so the record stands that they meet all the requirements for this application. The record showed the applicant has satisfactorily passed the test and is entitled to the EPS for this basin. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

Ms. Cunningham stated the applicant is in attendance represented by Payne County Engineer Mr. Phil Brown, and the protestant is not present.

2. Discussion and presentation by parties. Mr. Brown stated to the members that there are severe limitations with use of water from the Lone Chimney Lake. He said the District has looked for a source of water for several years and found this 23-acre tract of land which the rights have been obtained, and the District is contracted and will continue to use water from Lone Chimney as long as it is available. Lone Chimney's source of water is Lake Lone Chimney, an SCS structure which has been built larger for water supply.

Mr. Herrmann reminded the members that during the last drought conditions, the Board approved an emergency grant for Lone Chimney to lower its intake structure.

There were no other comments or questions.

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 may be amended, or vote on any other action or decision relating to the proposed order

Dr. Taron moved to approve the proposed order for regular permit to use groundwater, #2010-533, and Mr. Herrmann seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles

B. In the Matter of Westlake Dam and Spillway, Cause No. DS-2011-01, Oklahoma County:

1. Summary – Ms. Julie Cunningham said that this matter concerning Westlake Dam and Spillway in Oklahoma County arose from an action initiated by Board staff against the owner of Westlake Dam and Spillway when it was found to be in unsafe conditions and not in compliance with applicable dam safety rules, causing an imminent peril to public health and welfare. She said that this was a partial dam failure and the Executive Director in this case is authorized to issue an emergency order, which was done on December 21, 2011; an administrative hearing was held. Ms. Cunningham stated that Westlake Dam, located on the northwest side of Oklahoma City is a small high hazard dam currently owned by the Westlake Homeowners Association, Inc. An initial inspection by Board staff in October 2010 found that the dam was in poor condition with several significant deficiencies identified, including: the spillway foundation undercut, the spillway's concrete surface is severely damaged, and the downstream slop of the dam is overgrown with large trees and heavy vegetation. In November 2011, the dam partially failed after a heavy rainfall on November 7, and the Board's dam safety engineer determined that the dam was in imminent danger of failure. The Board's Emergency Order directed the HOA to immediately lower the lake level to a minimum of three feet below the top of the emergency spillway. The Board also required the owner to take timely and effective action to minimize and prevent the likelihood of overtopping or failure of the dam in the future. The Westlake HOA has lowered the lake level as directed, and is working with the engineer to develop options and associated costs to move forward on a permanent solution and course of action.

Ms. Cunningham stated the proposed order today formalizes the emergency order and requires that the homeowners lower and maintain a lake level at or below three feet below the top of the spillway under the supervision of a registered P.E. until application for alteration and repair of the dam and spillway is approved by the Board and work completed. On or before April 30, 2012, the HOA must file with the Board an application with plans and specifications for removal of the dam and spillway or for alteration and repair of the dam and spillway. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

Ms. Cunningham said the Homeowners Association President, Ms. Janice Graves, was present. Mr. Sevenoaks asked if the order was being protested, and Ms. Cunningham answered it was not.

2. Discussion and presentation by parties. Ms. Graves stated homeowner Mr. Randall Loewenkamp would speak to the members. Mr. Loewenkamp addressed the members and asked to distribute a packet of information addressing the homeowners' concerns with the order. Mr. Couch advised that if the information was not evidence presented at the hearing, he could not allow the members to receive additional information. Mr. Loewenkamp said there was no evidence presented at the hearing, but these are documents to support his comments to the order. Mr. Couch explained that this is a proceeding at which evidence as considered by the hearing examiner, proposed findings is presented as written, and to that extent, the record has to be limited to that evidence that was submitted previously. New evidence cannot be presented to the final decision makers, because whoever else might be interested in the matter would need the opportunity for review and consideration.

Mr. Loewenkamp said the document tries to clarify a few issues, and Chairman Lambert stated the Board would hear Mr. Loewenkamp without reviewing the documents. He explained the physical location of the lake, and that the HOA wished to make comments and rebuttal to the conditions of the proposed order, but not to take issue the dam needs repair but to

bolster the Directors of the Westlake Homeowners Association to be able to respond to points in the proposed order that seemed to leave the Directors open to a possible lawsuit. He described the Association and said an assessment will be required and certain steps needed to be followed. He said he wanted to be on record that the Association Directors are in compliance with the bylaws, and have been proactive to do the right thing.

Chairman Lambert asked if the Association is seeking cover from the Board in order to do the job required by the Board of Directors, or disputing facts that have been stated in the case. Mr. Loewenkamp answered that he is disputing some of the facts, and notifying the Board there is more required through the bylaws in order to pay for the repairs. She asked him to state the disputed facts.

Mr. Loewenkamp said that stated in the findings, the lake was constructed for recreation and aesthetics associated with residential and apartment development, and he noted an OWRB stream water permit issued in 1978 stating the water is to be diverted to the reservoir construction in 1950, but Westlake wasn't built until 1978. The order stated the Board ordered an engineer be hired, but the HOA had already hired an engineer and he wanted to show the Directors had been proactive and worked in cooperation with the OWRB and the Directors so that it is handled properly. He said after the second heavy rain, the HOA, under the supervision of the OWRB and Johnson Engineering, placed a hole in the dam lowering the lake level and not compromising the dam. He disputed the downstream area was disintegrated or rendered not functional for its intended purpose, but said the riprap did what it is designed to do and channels the overflow. He said the order stated there was no showing the HOA has complied with the emergency order of December 21, 2011, but the order was not received until after that date, and pumping had commenced on December 20 by Cimarron Construction Company hired on December 16 to lower the lake level three feet as directed by the Board order. He said Johnson Engineering was hired on November 28 to do the studies to remedy the problems, and work referred to in paragraph 11.a. was completed on January 5. Johnson Engineering is currently working on the appropriate aspects of the project in order to approach the HOA membership about what the cost and options are to repair the dam. Mr. Loewenkamp said he contacted Oklahoma City and the right away has been cleaned so that water flow will not reach MacArthur.

Chairman Lambert asked if there was a dispute of the engineering reports, and what does the HOA want the Board to do today. Mr. Loewenkamp said that there is no dispute; they want to be on record that they have responded as required and have been proactive, and are in compliance.

Chairman Lambert stated the Board is sensitive to the bylaws and applauds the homeowners' proactive nature. Ms. Cunningham said that as she reported, the Association is now in compliance, the Emergency Order was written following a hearing and Mr. Couch can advise as to changing the order. Mr. Couch said that the recording of the meeting today is a permanent part of the record, as are the statements made by Ms. Cunningham, and so for purposes of anything in the future outside of what the hearing examiner heard, the Board does not need to make any amendments. The order section of the order has a date for filing an application to permanently deal with the matter; there has been no request to change it, and no amendment is needed as the record will reflect the HOA members' statements. Mr. Loewenkamp responded the HOA Board knows the dam needs to be fixed and is addressing the problem in the best possible way.

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 may be amended, or vote on any other action or decision relating to the proposed order.

Chairman Lambert said unless there were any further comments, she would entertain a motion. Mr. Fite said he believed the HOA took exception with paragraph 10, about there being no showing on their behalf.

Chairman Lambert stated that this is part of the permanent record of this meeting which the HOA will have a permanent record Mr. Loewenkamp can take to the homeowners. She asked for a motion.

Mr. Herrmann moved to approve the proposed findings of fact, conclusions of law and Board order for DS-2011-01, as outlined, and Dr. Taron seconded. There was no further discussion.

AYE: Taron, Feaver, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles, Sevenoaks

C. In the Matter of Proposed Tentative Determination of the Maximum Annual Yield for the Arbuckle-Simpson Groundwater Basin underlying parts of Murray, Pontotoc, Johnston, Coal and Carter Counties:

1. Summary of Staff Proposal – Ms. Julie Cunningham addressed the members and using a PowerPoint described the process for the determination of a maximum annual yield (MAY) for a groundwater basin and reviewed the proposed tentative determination for the maximum annual yield for Arbuckle Simpson Groundwater Basin. She said that presentation and approval of the tentative determination for the maximum annual yield is the first step of the formal steps required to implement a maximum annual yield. The recommendation in the proposed tentative determination and implementation strategy before the Board today represents the culmination of technical recommendations from the hydrologic study, reports, technical team, policy recommendations by stakeholders and staff, as well as many others. There have been meetings with stakeholders and work conducted on the study for many years. At the January meeting, the Board heard from representatives of the Arbuckle Simpson Aquifer Protection Committee, a group established in May 2011 comprised of municipalities, rural water districts, county commissioner representatives who stated they represent 150,000 citizens and have submitted a recommendation and comments, there have also been recommendations for landowners, aggregate representatives, oil and gas, etc. Ms. Cunningham thanked everyone who has been involved, and stated that ultimately staff proposed a recommendation that would meet the statutory requirements initiated by the 2003 Legislature in SB 288 while providing for a compromise between many interests and with flexibility in implementation. Ms. Cunningham said there is a new sheet (printed front/back replacing pages 15-16) of the tentative order entitled; "Order and Directives" that includes sections had been inadvertently omitted from the previous packet.

Ms. Cunningham proceeded with the presentation on the MAY. (See attached Powerpoint presentation slides.) She began providing background information on the Oklahoma law establishing an allocation system in 1973, using permits to allow owners of land to use groundwater underlying their land, based on allocation on Maximum Annual Yield of water underlying the land, MAY is a determination by the Board of the total amount of fresh groundwater that can be produced from a basin or subbasin allowing a minimum 20-year life,

and is a mining law that contemplates draw down. She described the determination process as: OWRB conducts hydrologic survey and investigation, makes a tentative determination of MAY, calls and holds hearing in basin area – 30 days notice – evidence presented, proposed final determination submitted to OWRB, the OWRB hears arguments on proposed findings, conclusions, and order, and aggrieved persons can appeal to District Court. Specifically, the MAY includes: total land area overlying basin (acres), amount of water in storage (acre-feet), rate of recharge *to* basin and total discharge *from* basin, transmissibility (transmissivity), and possibility of pollution of basin from natural sources (deep brine water not included); *minimum* basin life of 20 years.

Ms. Cunningham addressed Senate Bill 288's application to a sensitive sole source aquifer; requiring additional determination for the MAY, including a moratorium on temporary permits until the MAY is approved; and ensuring that any permit will not reduce the natural flow of water from area springs or streams. Also, it provides that before issuing permits the OWRB must determine whether the proposed use is likely to degrade or interfere with basin area springs or streams.

Ms. Cunningham described the life of a groundwater basin, the Arbuckle Simpson Study-partners, scope, and basin boundary--the first time the OWRB has been required to assess groundwater pumping and the impacts on springs and surface water in a basin. She showed a map of the proposed basin boundaries including over 392,000 acres and 612 miles, explaining the basin outcrop and subcrop and describing the aquifer characteristics, limitations applied because of SB 288, noting that the "natural flow" is not defined, and zero use does not support "utilization" and "reasonable use policies." She said since flow is an essential component of stream habitat; the scientist team analyzed the potential effect of groundwater withdrawals on habitat; four indicator fish species were selected to study on the Blue River and Pennington Creek; and the Surface Water Technical Advisory Group Team deemed a reduction in a 5-year average base flow of no more than 25% as an acceptable limit.

Mr. Herrmann asked if the 25% is a one-time step reduction or 25% over a 5-year period and 25% over the next 5-year period. Mr. Strong responded that is 25% reduction of the average conditions, and Ms. Cunningham added, the time period used in setting the MAY number. Mr. Smithee explained this is the value that was used in the model to determine groundwater availability.

Ms. Cunningham continued stating there were several simulations conducted showing reduction in the average stream flow of 18-57% and base flow of 24-81% , assuming pumping of the full EPS over 100% (every acre has a well pumping 100% of the time) and assuming no mining (no 20-year drawdown). She noted current average use of water in the area was approximately 4,500 acre feet per year, and Mr. Sevenoaks asked about the permits in the area, particularly municipal. Ms. Cunningham answered there are about 53 permits for 73,000 acre-feet permitted, with ten municipalities, two of which are major users and there are also rural water districts and they are making plans to obtain additional groundwater.

Ms Cunningham said the recommendation considered model variability, conservative assumptions, statutorily-declared "reasonable regulations for...reasonable use" and private property policy, and concludes that simulated pumping of all lands with an EPS of 0.20 af/a/yr (2.4 inches) will not reduce base flow by 25%. This equates to one tenth of the current 2.0 af/a/yr EPS, and a MAY of 78,404 af/year that can be removed from the basin.

Ms. Cunningham discussed the concept of phased implementation in response from public water suppliers and others requesting a 20-year phase-in with incremental reductions.

However, others requested immediate implementation, but the groundwater law and rules do not provide for a timeframe for conversion or authorize regular permits to allow pumping greater than the MAY. Staff recommends that temporary permits remain in effect for a period of no more than 5 years from the date of final determination unless there is good cause.

Mr. Sevenoaks asked about new permits. Mr. Strong said the new permits will be issued at the .2 af/yr and the existing permits will have up to five years to convert. Ms. Cunningham said staff had visited with some of the water suppliers who feel they can comply in a quick fashion. Mr. Herrmann asked what criteria would determine "good cause." Mr. Strong said staff is proposing input on that, but it could include financial assistance and affordability criteria, what are the rates now and what is feasible, what is the effect on rate payers and what period of time is reasonable, for example. Mr. Sevenoaks asked if "good cause" is a defensible legal term, and Mr. Couch responded that is the proposal, using that phrase to trigger the 5-year period that is proposed as well. He said that staff did not want to propose what that would mean at this tentative stage, and seeks input, and that could be a rule.

Mr. Fite said the public water suppliers asked for a 20-year phase in but they could do it in five years? Ms. Cunningham said some suppliers expressed they could possibly do it in less than 20 years. The members talked about municipal water suppliers' ability to be able to implement in a timely manner.

Ms. Cunningham continued reviewing the requirements of SB 288 and the recommendation to seek input during the MAY hearing about site-specific cumulative pumping impacts, and promulgation of set-back rules for new wells and a definitive methodology for determining degradation/interference. She also addressed what is required by the designation by EPA as a Sensitive Sole Source Basin and that the Board approve the entire basin as the same designation.

Regarding the Order and Directives, Ms. Cunningham reviewed points 1.- 6. outlining the recommendations as presented, describing the hearing, and seeking input on the extension of time and well spacing provisions. Ms. Cunningham stated staff recommended approval of the proposed tentative determination as presented.

Chairman Lambert asked Mr. Strong if he had additional comments. Mr. Strong said it is important at this stage the Board is comfortable releasing it for public input and comment and important to remember today is not the final decision-making day; this is the tentative order stage. Unlike the previous protested matters considered where applicants and protestants are allowed comment before final action, this is not at that stage, nor is it like the rulemaking process. No one individual or party is allowed to sway the Board members when others haven't had the same opportunity, which could be grounds of appeal. In December, there was an effort to bring a draft maximum annual yield to the Board members, and Counsel advised the Board similarly then as now. Mr. Strong recognized the many attendees--landowners, cities, and others-- and assured them this is by no means the final opportunity for input, but rather "kicks off" the opportunity and once the Board approves the tentative order a hearing will be scheduled in the basin area as required by law. The hearing will be held open as long as it takes to get everyone's input and include all comments into the record, including all items that have been received by the Board prior to this draft so the Board, prior to any final decision, can look at the entire record as well as the proposed findings of the hearing examiner. He said there is opportunity today for further questions and answers, there is the additional language that should be considered, and he re-emphasized it is early in the process.

2. Discussion by Board Members. Chairman Lambert asked for the Board's comments and questions. Mr. Buchanan asked how drought was considered in the proposal. Ms. Cunningham said the group considered the major drought event in 2006 and major flood event in 2007 into the 5-year average calculation. He asked if there were other Board processes that considered a phased-in implementation timeframe if, as Ms. Cunningham stated, the law does not allow or define that. Mr. Strong said that staff is proposing in this context that reducing the equal proportionate share tenfold is not something that can be done overnight, and staff is proposing--and believes there is the ability under the law and rules--to allow a reasonable amount of time to come into compliance. Staff could not find within the law that the 20-year step down approach could be approved. The surface water "schedule of use" was used as example, but it is a different issue and different law applies. Ms. Cunningham referred to point #9. of the conclusions, (Page 11 of the order, #5029 of the packet) that discusses the groundwater law does not provide a procedure for a process of converting temporary permits to regular permits; and under "c." the Board implement, "as soon as practical." Mr. Buchanan commented the Board does not always have the capability to address the wants and needs of the public due to the limitations of the law.

Mr. Strong said there are many issues in this particular case, staff struggled internally on how to balance the strict law and reasonable implementation of the law. There was criticism about the fish indicator being used saying staff was attempting to protect minnows when staff was looking for a way for people to be able to withdraw some amount water, when interpretation could mean no water is to be withdrawn. Another reminder, this is the tentative order and there is opportunity for input as to whether there is another way, and he discussed stream and spring flow and withdrawal rate below the recharge rate, and that every acre of land is considered to have a well on it, which is never the case but should a landowner not exercising their groundwater right today get less treatment from someone that is. All impacts the implementation period, based on the argument that if there isn't 100% development of the basin, there could be increased withdrawal of water over a period of time because the total volume being pumped would be below the maximum annual yield, but staff has not determined a way to justify that approach under the law. Once the Board approves the tentative order and it is sent out for hearing that is the opportunity for people to show how the Board can marry practical, feasible implementation under the strict reading of the law.

Mr. Herrmann asked the timetable of the next steps. Mr. Strong said there will be a 30-day notice of the hearing, the tentative order will be sent to all permit holders so probably a month and a half after the tentative order is approved before the hearing will be held. The unknowns are the length of the hearing and preparation by the hearing examiner so it could be late summer [before it comes back to the Board].

Mr. Sevenoaks commented that after approval of the MAY, the moratorium imposed by SB 288 will be off, and the Board can approve the withdrawal of groundwater outside the boundaries of the basin---people will have the ability to buy land and move water. Mr. Buchanan asked about the hearing examiner, and Mr. Strong indicated the staff would like to hire outside the agency because of the complexity and for objectivity.

Chairman Lambert asked if there were other questions. Ms. Feaver said that she could not say in good conscience that she fully understands the implications of this particular determination, even though it is temporary. She asked if there were public forums so that people understand what this means? Mr. Strong said there was a public meeting in 2009, and there have been a number of meetings since then, but this is the formal and robust process for the

opportunity for suggestions, once the tentative order is approved. Ms. Cunningham mentioned a list of meetings and forums the staff has been involved in with the past director; there were extensive public comments which are available on the website. Chairman Lambert stated that this has been an a nine year process, the staff has had information for "X" number of months, the Board has had information for "X" number of days and the opportunity for this Board to make an informed and thorough decision, does not mean it has to be approved or disapproved today. She said if the Board feels that within the timeframe it has today that more discussion is needed and questions answered, she wanted the Board to know that is an option. She said she wanted the Board to feel it is making the right decision, not that it is making the decision right now. Ms. Feaver said she felt she needed to be better educated. Ms. Lambert noted the Board's silence, and Mr. Sevenoaks said silence meant, "so moved." Mr. Buchanan asked for clarification on that motion. Mr. Strong said there wasn't a motion on the table, and the Board did not have to take any action.

Mr. Herrmann stated he was not interested in rushing faster than the Board is comfortable in acting. The Board has heard many aspects [of the matter] over many years. He said it is his sense the people of the basin are ready to move forward with the .2 af which is the huge issue but there is angst about the time table, there are limitations about flexibility, but that staff and this body wants to be supportive within the context of the statute. He is not uncomfortable moving forward, but does not want to move any faster than the Board is comfortable moving.

3. Vote on whether to approve the Proposed Tentative Determination as presented or as may be amended, or vote on any other action or decision relating to the Proposed Tentative Determination.

Mr. Herrmann said for the sake of making a decision, he moved approval of the staff recommendation as outlined by Ms. Cunningham and including the amendments regarding page 15 and 16. Mr. Sevenoaks seconded.

Mr. Jim Barnett spoke from the audience his objection to the Board voting prior to hearing public comment on the matter.

Mr. Strong reminded everyone that a public hearing will follow after the tentative order is approved by the Board, and public input is not being foreclosed at this stage. Chairman Lambert said that the public hearing would be an opportunity for all the public, to have all stake holders represented, not just those that are here today.

Chairman Lambert stated there has been a motion and second that the tentative draft determination with the order and directives amendment be approved. She asked if there was further discussion.

Mr. Buchanan said as the Board's newest member, he was aware of the issue and has concern about moving forward with no more than the knowledge he has today while realizing the Board would have to move forward at some time. But, he agreed with Ms. Feaver and said he isn't ready yet. Mr. Sevenoaks said that the Board, staff, and people involved have been doing this for nine years; let's move forward to the public hearing. Mr. Herrmann said the Board would have "another bite at the apple."

Mr. Strong said that there is a motion and second on the table to approve, and a no vote would disapprove; someone wanting more time has the opportunity to introduce a tabling motion which would be a prior motion, if that is something the newer members who haven't had as much experience with this are comfortable with. Chairman Lambert wanted to clarify whether that

meant the matter could be considered at the March meeting for those that might not disapprove, but might not be ready to approve, and Mr. Strong said that could be a motion.

Mr. Buchanan moved to table the motion to the March meeting, and Chairman Lambert clarified the motion is to defer consideration of the determination until the March meeting, and he said that is correct. She asked for a second, and Ms. Feaver seconded.

Ms. Feaver asked for clarification on the motion. Mr. Strong said an "aye" vote would table it to the March meeting. Chairman Lambert called for the vote.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles

Chairman Lambert charged the Board members, to the greatest extent possible, to inform themselves and come back in March with questions and concerns resolved and able to move forward. Staff is available to assist the Board members.

D. Items transferred from Summary Disposition Agenda, if any.

There were no items transferred from the Summary Disposition Agenda.

6. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

The Supplemental Agenda items were considered under the Summary Disposition Agenda.

7. PROPOSED EXECUTIVE SESSION

Chairman Lambert

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 *Chickasaw Nation and Choctaw Nation v. Fallin, et al. and Tarrant Regional Water District v. Herrmann, and City of Hugo v. Nichols*

The Board has been advised by legal counsel that disclosure of the discussion of the litigation will seriously impair the Board and State to conduct the present and proposed litigation in the public interest.

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

Chairman Lambert stated the Attorney General's office is present, and she would entertain a motion to enter Executive Session. Mr. Herrmann so moved, and Mr. Sevenoaks seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles

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

Chairman Lambert designated Executive Secretary Mary Schooley to keep written minutes.

C. Executive Session, if authorized.

The Board voted to enter Executive Session at 11:40 a.m. on February 13, 2012. Following a 5-minute break, the Board entered the Executive session at 11:45 a.m.

8. 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

Mr. Sevenoaks moved to return from Executive Session to Open Session.

Mr. Herrmann asked if there are updates from the other cases; Mr. Strong and Mr. Couch responded they had both filed appeals for review with the Supreme Court, and responses had been filed.

Chairman Lambert said there is a motion to come out of Executive Session, and she asked for a second. Mr. Herrmann seconded.

AYE: Taron, Feaver, Sevenoaks, Buchanan, Fite, Herrmann, Lambert
NAY: None
ABSTAIN: None
ABSENT: Drummond, Knowles

The Board returned to Regular Session at 12:20 p.m. There was no action taken by the Board relating to items discussed in Executive Session.

9. 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.

10. ADJOURNMENT

There being no further business, Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 12:21 p.m. on Monday, February 13, 2012.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Linda P. Lambert, Chairman

_____/s/_____
F. Ford Drummond, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Tom Buchanan

_____/s/_____
Bob Drake

ATTEST:

Secretary
(SEAL)