

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
October 23, 2013

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 3:30 p.m., on October 23, 2013, in the Reed Ballroom A-B located on the Second Floor of the Sheraton Midwest City Hotel at the Reed Conference Center, 5750 Will Rogers Road, Midwest 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 October 18, 2013, at 3:30 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website. The agenda was also posted at the Reed Conference Center Lobby on October 22, 2013.

Chairman Herrmann welcomed everyone to the meeting which was being held in conjunction with the Governor's Water Conference, and he thanked those who had also attended the conference as either an attendee or presenter.

A. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Tom Buchanan, Vice Chairman
Linda Lambert, Secretary
Bob Drake
Ford Drummond (joined the meeting at 4:10 p.m.)
Marilyn Feaver
Ed Fite
Jason Hitch
Richard Sevenoaks

Board Members Absent

None

Staff Members Present

J.D. Strong, Executive Director
Jerry Barnett, 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
Mary Schooley, Executive Secretary

Others Present

Kevin Blackwood, Citizens for Protection of Arbuckle Simpson Aquifer - CPASA
Dave Taylor, Waurika Master Conservancy District, Duncan, OK
Steven Jolly, Arbuckle Master Conservancy District, Davis, OK
Dick Scalf, Ada, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Mark Walker, OK Independent Petroleum Association, Pontotoc Farm Bureau,
Oklahoma Farm Bureau Legal Foundation, OK Cattlemen's Association, OK
Aggregates Association, Environmental Federation of Oklahoma; Oklahoma City,
OK
Kathryn Bruno, Fittstown, OK
(Not ledgible), Ada, OK
Thomas Lazarski, OG&E, Oklahoma City, OK
Martha Penisten, OK Department of Environmental Quality, Oklahoma City, OK
Joe Painter, APAI, Oklahoma City, OK
Paul Warren, Mill Creek, OK
Chuck Roberts, Fitzhugh, OK
Charles Roos, Roos Ranch, Roff, OK
Bill Flanagan, TXI, Mill Creek, OK
Frank Simpson, State Senate (Ardmore), Oklahoma City, OK
Floy Parkhill, CPASA, Tishomingo, OK
Gary Greene, CPASA, Tishomingo, OK
Reginald Robbins, CPASA, Tishomingo, OK
Shannon Shirley, CPASA, Mill Creek, OK
Jona Tucker, The Natural Conservancy, Ada, OK
Martha Kulman, Office of the Attorney General, Oklahoma City, OK
Bill Bunk, CPASA, Fittstown, OK
Josh McClintock, CPASA, Edmond, OK
Sue Rizco, Comanche County Rural Water District No.2, Elgin, OK
Al Jung, Comanche County Rural Water District No.2, Elgin, OK
James McDonald, Comanche County Rural Water District No.2, Elgin, OK
Jonathan Gourley, Oklahoma City, OK
Lewis Parkhill, City of Tishomingo, OK
Randy Nelson, Comanche County Rural Water District No. 2.
Bruce Noble, National Park Service, Sulphur, OK
Duane Winegardner, Norman, OK
Heath Holman, Town of Locust Grove, OK
Bob Donaho, Davis
, OK
Jim Barnett, Doerner Sanders Daniel Anderson; Arbuckle Simpson Aquifer Federation;
Oklahoma City, OK
D. Craig Shew, City of Ada, OK
Alan Woodcock, US Fish and Wildlife Service/National Park Service, Tulsa, OK
Peter Burck, US Fish and Wildlife Service, Albuquerque, NM
Mike Wofford, TXI, Oklahoma City, OK
Dan Becker, Dolese, Oklahoma City, OK
Scott Butcher, OK Independent Petroleum Association , Pontotoc Farm Bureau,
Oklahoma Farm Bureau Legal Foundation, OK Cattlemen's Association, OK

Aggregates Association, Environmental Federation of Oklahoma, Oklahoma City,
OK
Jim Weaver, Ada, OK
Amy Ford, CPASA, Durant, OK
Krystina Phillips, CPASA, Tulsa, OK
Chris Phillips, Chickasaw Nation, Ada, OK
Usha Turner, OG&E, Oklahoma City, OK
Marla Peek, OK Farm Bureau, Oklahoma City, OK
Duane Smith, Oklahoma City, OK
Tom Lui, Bank of America Merrill Lynch, New York, NY
Susan Paddack, State Senate, Ada, OK
Noel Osborn, Chickasaw National Recreation Area-Sulphur, National Park Service
Scott Christenson, Albuquerque, AZ
Gene Doussett, OWRB, Oklahoma City, OK
Guy Sewell, City of Ada, OK
Jack Keeley, Ada, OK
Eric Swanson, Ada News, Ada, OK
Gene Collemann, Chickasaw Nation, Ada, OK
Tony Choate, Chickasaw Nation, Ada, OK
Logan Layden, Norman, OK

B. APPROVAL OF MINUTES

Chairman Herrmann said the draft minutes of the September 17, 2013 Regular Meeting had been distributed.

Ms. Lambert moved to approve the minutes of the September 17, 2013, meeting and Mr. Buchanan seconded.

Chairman Herrmann called for the vote unless there were questions or corrections. There were none.

AYE:	Lambert, Hitch, Buchanan, Sevenoaks, Feaver, Drake, Fite, Herrmann
NAY:	None
ABSTAIN:	None
ABSENT:	Drummond

Prior to continuing, Chairman Herrmann provided a framework to the attendees regarding the order of presentation of public comment to the members regarding consideration of item 5.A., determination of the Maximum Annual Yield for the Arbuckle-Simpson Groundwater Basin. He said all interested comments are important; however, the Board has been provided tremendous amounts of information over a long period of time. He said at the appropriate time, each side—those in support and those against -- would be allowed 20 minutes to make comments to the Board, whether by one spokesperson or several and asked they avoid repetitive comments. The Board members will be allowed time to ask questions at any time and vet any final issue; time used to address questions by members would not be deducted from the comment time allotment. He encouraged those wishing to make comments to caucus and be organized when the matter is considered later in the agenda.

C. EXECUTIVE DIRECTOR'S REPORT

Mr. Strong began his report stating the Governor's Water Conference was a great success and he thanked the Board members for their attendance and support, and he also thanked the staff for their work in coordinating the many details of the conference.

Mr. Strong stated he had attended the Western States Water Council meeting in Deadwood, South Dakota; Mediation and technical committee meetings continue in the Chickasaw/Choctaw litigation; the Arkansas-Oklahoma Arkansas River Compact Commission met September 26 at Shangri-La and had a productive meeting with counterparts in Arkansas; the Instream Flow Workgroup – part of the OCWP recommendations --met October 7; and the Emergency Drought Commission (of which Mr. Strong is a member) will conduct its first public meeting on October 24—the Governor has declared drought for five Oklahoma Counties. The first meeting of the Scenic Rivers Joint Study Committee will meet in Tulsa on October 29; Mr. Strong speaks to the Rural Economic Conference on November 1 at Stillwater, and to the Council on Infrastructure Financing Agencies Conference November 3-5 in Minneapolis, along with Financial Assistance staff. The Water for 2060 Council will meet following the November Board meeting, which will be held on Tuesday, November 19, 2013 at 9:30 a.m. in the OWRB meeting room.

Mr. Strong concluded his report.

D. Monthly Budget Report

Ms. Amanda Storck addressed the members and noted the prepared and distributed report, stating there is 83% of agency funding available with 75% of the fiscal year remaining. She said the agency is days away from resolving all issues with OMES from last year, and is doing budget revisions for the previous year. She said the agency is waiting for the budget to be approved which is anticipated within days, and she will report at the November meeting the status once all corrections have been made.

Mr. Tom Buchanan asked about the USGS Cooperative Agreement funding, and Ms. Storck responded that funding is on a contract basis.

Ms. Storck concluded the report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Locust Grove Public Works Authority, Mayes County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item is from the Locust Grove Public Works Authority in Mayes County. He said the Authority is requesting \$3,485,000.00 Clean Water State Revolving Fund Loan for wastewater treatment plant improvements. Mr. Freeman noted provisions of the loan agreement, and said Locust Grove has been a loan customer of the Board's for 20 years and currently has two loans with an outstanding balance of \$1.6 million, and the debt coverage ratio stands at approximately 1.48-times. Staff recommended approval of the loan application.

Locust Grove PWA Chairman and Mayor Heath Holman, and Bond Advisor Alan Brooks were present in support of the request.

There were no questions from Board members, and Mr. Drake moved to approve the CWSRF loan application to the Locust Grove Public Works Authority. Mr. Fite seconded the motion. Chairman Herrmann called for the vote.

AYE: Lambert, Hitch, Buchanan, Sevenoaks, Feaver, Drake, Fite, Herrmann
NAY: None
ABSTAIN: None
ABSENT: Drummond

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Rural Water District #2, Comanche County. Recommended for Approval. Mr. Freeman stated this item is for the consideration of a \$4,490,000.00 Drinking Water State Revolving Fund Loan request by the Comanche County Rural Water District No. 2. He said the District is requesting the loan to construct two new water wells, 12.9 miles of water lines, booster pump station, two emergency power generators and a standpipe. He noted provisions of the loan agreement, and said the District is a current loan customer of the Board's with one loan with an outstanding balance of \$796,000.00. The District's water customers have increased by over 8% in the last ten years, and its debt-coverage ratio stands at approximately 1.5-times. Staff recommended approval of the loan application.

Ms. Sue Rizco, District Office Manager, Mr. Randy Nelson, Financial Advisor, and Mr. Al Jung, Engineer, were present in support of the loan request.

Mr. Tom Buchanan asked if the 8% growth has been internally, or is the District expanding, and Ms. Rizco indicated it was due to internal growth. Mr. Hitch asked whether the emergency power generators would power both the water and the sewer, and Mr. Jung said there is no sewer system for this project.

Mr. Buchanan moved to approve the DWSRF loan to Comanche County RWD No. 2, and Mr. Sevenoaks seconded. There were no other questions, and Chairman Herrmann called for the vote.

AYE: Lambert, Hitch, Buchanan, Sevenoaks, Feaver, Drake, Fite, Herrmann
NAY: None
ABSTAIN: None
ABSENT: Drummond

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 listed.

Chairman Herrmann asked if there are amendments to the Summary Disposition Agenda. There were no changes to the Summary Disposition Agenda, and no questions by the members. Chairman Herrmann said he would entertain a motion regarding the Summary Disposition Agenda.

Ms. Lambert moved to approve the Summary Disposition agenda, and Mr. Hitch seconded.

AYE: Lambert, Hitch, Buchanan, Sevenoaks, Feaver, Drake, Fite, Herrmann
NAY: None
ABSTAIN: None
ABSENT: Drummond

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>
None				

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

1. Amendment of Joint Funding Agreement with U.S. Geological Survey for the project "Continuation of the Monitoring Program between OWRB and USGS".
2. Joint Funding Agreement with U.S. Geological Survey for the Stream-Flow Monitoring of Seven Stream-Flow Sites and One Lake in Upper Washita River and Cobb Creek Basins.
3. Amendment of Agreement with Oklahoma Department of Environmental Quality to share office space in OWRB's McAlester and Woodward offices.
4. Contract for Lab Analysis between Oklahoma Department of Environmental Quality and OWRB.
5. Professional Services Agreement with Parsons Environment & Infrastructure Group Inc. for dam breach analysis and technical support.
6. Professional Service Agreement with the Tarigma Corporation for support service for the computer loan and grant tracking software used by the Financial Assistance Division.

E. Applications for Temporary Permits to Use Groundwater:

1. Yost Lake County Club, Payne County, #2012-699
2. Mary Elizabeth Williams Revocable Living Trust, Harmon County, #2013-548
3. Jack C. McLemore & Freeda McLemore Revocable Trust, Washita County, #2013-563
4. Michael N. & April M. Young, Major County, #2013-583
5. Richard C. & Phyllis J. Brown, Woods County, #2013-592
6. Ruth Evelyn Ferrell & Billy Leon Ferrell, Trustees of the Ruth Ferrell Revocable Trust, Alfalfa County, #2013-610
7. Ronald L. & Patsy J. Dalrymple, Custer County, #2013-617

F. Applications to Amend Temporary Permits to Use Groundwater:

1. Harold Merriman & Peggy Merriman Revocable Living Trust and Harold Merriman & Peggy Merriman Living Trust, Pontotoc County, #1977-544
2. City of Tuttle, Grady County, 1998-574
3. Lavonne Kroeker, Major County, #2002-597
4. H. J. Rickabaugh and the Estate of B. W. Rickabaugh, Grant County, #2013-511

G. Applications for Regular Permits to Use Groundwater:

1. James Bobbitt, Beaver County, #2012-675

2. H. A. Kilgore & Sons, L.L.C., Texas County, #2013-601
 3. Deanna & Jack Johnson, Beckham County, #2013-607
 4. Thomas Snider, Custer County, #2013-621
- H. Applications to Amend Regular Permits to Use Groundwater:
1. City of Elk City, Beckham County, #1974-039
 2. City of Elk City, Beckham County, #1974-045
 3. Lyle David Rapp, Texas County, #1996-590
 4. Buffalo Wallow, L.L.C., Cimarron County, #2012-619
 5. Dustin & Sonya Donley, Woodward County, #2012-636
- I. Applications for Term Permits to Use Stream Water:
1. XTO Energy, Bryan County, #2013-025
 2. Patriot Consulting Firm, Bryan County, #2013-026
- J. Applications for Regular Permits to Use Stream Water:
1. Wehling Family Trust, Garfield County, #2013-019
 2. John H. Miller, Coal County, #2013-029
- L. Dam and Reservoir Construction:
1. Basil Savage, Marshall County, #OK30458
- M. Well Driller and Pump Installer Licensing:
1. New Licenses and Operator Certificates
 - a. Licensee: Anderson Engineering DPC-0905
 1. Operator: Gary L. White OP-2010
 - b. Licensee: Diamond K, L.L.C. DPC-0907
 1. Operator: Milton D. Knutson OP-2011
 - c. Licensee: McIntosh Irrigation DPC-0909
 1. Operator: Thomas Dewayne McIntosh OP-2012
 2. New Operators to Existing Permits
 - a. Licensee: Midwest Engineering & Testing Corp DPC-0653
 1. Operator: Johnny L. White, Jr. OP-1997
 - b. Licensee: Williams Drilling Co., Inc. DPC-0229
 1. Operator: Dustin E. Hatcher OP-2008
 - c. Licensee: Able Environmental Drilling L.L.C. DPC-0746
 1. Operator: Roy Sylvester OP-2013
 - d. Licensee: F & H Drilling Services DPC-0065
 1. Operator: Kyle Elliott OP-2014
 2. Operator: Seth Langford OP-2015
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma Department of Transportation, Garvin County, #FP-13-12
 2. Oklahoma Department of Transportation, Grady County, #FP-13-15
 3. Oklahoma Department of Transportation, McCurtain County, #FP-13-16
 4. Oklahoma Department of Transportation, Rogers County, #FP-13-18
 5. Oklahoma Department of Transportation, Payne County, #FP-13-19
 6. Oklahoma Department of Transportation, LeFlore County, #FP-13-23
 7. Oklahoma Department of Transportation, LeFlore County, #FP-13-24
 8. Oklahoma Department of Transportation, Creek County, #FP-13-26.

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

- A. No items. There were no questions or items of discussion by the 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. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order establishing final determination of maximum annual yield for the Arbuckle-Simpson Groundwater Basin underlying parts of Murray, Pontotoc, Johnston, Garvin, Coal and Carter Counties, Recommended for Approval:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, addressed the members and stated that staff is pleased today to present for the Board’s consideration the proposed findings of fact, conclusions of law and Board order establishing final determination of maximum annual yield (MAY) for the Arbuckle-Simpson Groundwater Basin underlying parts of Murray, Pontotoc, Johnson, Garvin, Coal and Carter Counties, which is recommended for approval. Ms. Cunningham stated the recommended final determination comes from the most extensive technical study and public involvement process ever undertaken by the Board regarding groundwater studies. She said the process was shaped by the directive under historic legislation Senate Bill 288 passed in 2003 and imposing a broad moratorium on any temporary groundwater permit for municipal or public water supply use outside of any county that overlies in whole or in part a sensitive sole source basin until such time as the Water Resources Board determines a maximum annual yield that will ensure that any permit will not reduce a natural flow of water from area springs or streams. In addition to the broad based moratorium, it also mandates that before issuing a permit, the OWRB must determine whether the proposed use is likely to degrade or interfere with basin springs and streams. Ms. Cunningham reviewed the statutorily-directed process for the determination of maximum annual yield for a groundwater basin by conducting hydrologic survey with interested federal and state organizations and agency partners; the Board will make a tentative determination which was done in March 2012, and she described the public notice and hearing requirements to gather evidence. She said the Board is here today to make the final determination.

Mr. Jerry Barnett, OWRB General Counsel, summarized the steps getting from the tentative order to where we are today. The hearing examiner (HE) retained in this case issued an order in March 2012 and conducted a pre-hearing conference to bring parties together to discuss and prepare for the hearing which was conducted over two days, May 15-16, 2012, in Sulphur,

Oklahoma, where there were a number of briefs and filings submitted by the parties after the hearing and taken under advisement by the hearing examiner. He said in November 2012, a motion to recuse the HE was filed by several protestants but which was denied by the Board at its December 2012 meeting; by December 27, 2012, the HE issued the first proposed order in this case. However, as staff prepared the matter to be considered by the Board at its January 2013 meeting, several protestants initiated an action in the State Supreme Court for extraordinary writ relief to prevent the Board from taking action on that proposed order. The Court issued a stay, and in April issued its opinion to the effect that most of the relief sought by the protestants was denied, but the Court did issue a writ of mandamus to the limited extent of requiring the HE to notify all parties in the case regarding the USGS memorandum, as it was referred to, and to give the parties opportunity to file responses to be placed in the record. Mr. Barnett said that this was done this past summer, motions and objections were filed regarding those responses, and the HE earlier this month issued an order addressing some of those motions as well as a second proposed which is before the Board today which staff is recommending for approval. Mr. Barnett added that late on October 18, 2013, additional exceptions were received to the proposed order from several protestants of record which incorporated exceptions they filed earlier in January on the first proposed order; he said they are represented today. He repeated that staff recommended approval of the proposed order.

Chairman Herrmann asked Ms. Cunningham to review the proposed order with the Board members. Ms. Cunningham referred to pages 5018-5019 in the meeting packet containing the proposed order, noting there are several parts to the maximum annual yield (MAY) proposal: (1) quantification of the boundaries, (2) declaration as a major groundwater basin; (3) basin is declared to be a sensitive sole source groundwater basin; (4) the determination of the MAY of the basin is 78,404 acre-feet; (5) the equal proportionate share (EPS) to each acre of land overlying the basin is determined to be 0.20 acre-foot per acre per year (equal of 2.4”); and, (6) the Agency is directed to initiate rulemaking for the two purposes: establish a time period for reasonable implementation as it relates to valid temporary permits to withdraw groundwater from the basin to be replaced by regular permits and to initiate rulemaking regarding modification of well spacing provisions set forth in the current rules and adoption of established spacing distance between new proposed wells and springs and stream in the Basin; and methodology for assessing and determining the effects of proposed pumping of specifically proposed wells on specific springs and streams (added to address the site specific protection by SB 288).

Chairman Herrmann asked if the Board had questions director to Mr. Jerry Barnett or Ms. Julie Cunningham.

Ms. Lambert asked for summary clarification of Senate Bill 288 and the parameters of what the Board is authorized and not authorized to do. Mr. Jerry Barnett responded in the order the HE describes the regular statute requirements for determination of MAY and EPS, and it does impose additional requirements and considerations and standards of study and order for sensitive sole source groundwater basins. He said there is a requirement the Board not issue certain permits until a completed study and order is issued that will not reduce the natural flow of springs and streams emanating from the basin (MAY)—referred to as the macro—and for the individual permit application within the sensitive sole source basin, the Board is also to determine whether it will or will not degrade or interfere with springs and streams emanating from the basin—referred to as the micro. He said that today the Board is addressing the standard, SB 288, driving the additional determination that the MAY will not reduce the natural flow of springs or streams emanating from the basin. He said the HE has methodically reviewed and addressed all statutory factors and SB 288 requirements, and staff believes [the proposed order] does a good job of meeting and implementing all the requirements of the law. Ms. Lambert wanted to reiterate that is all that the Board’s job is, and no more.

Ms. Cunningham interjected that in conclusion of law (COL) D., page 5015, SB 288 does not define “will not reduce natural flow” and does not expressly alter the pre-existing groundwater law for reasonable allocation and reasonable use; that stream water protection and private property rights should be harmonized and blended to the extent possible.

Mr. Jason Hitch stated he joined the Board later and he asked if the western side of the formation had been studied, or only the eastern side. Ms. Cunningham responded that the majority of the work is within the central area of the geologic framework; all three lobes was studied and COL and FOF indicate they are all substantially similar. Mr. J.D. Strong added that the issue was discussed extensively at the two-day hearing, and the HE was satisfied the evidence presented showed all three lobes was studied, is connected, and is sufficiently similar throughout, and the fact there were more monitoring wells in the main lobe was sufficient to characterize all three lobes. Ms. Lambert added that the order also stated that SB 288 contemplates interaction.

Mr. Barnett noted that one of the main contentions of the protestants was treating the three as one, and that is discussed in FOF 13, page 5005; particularly in FOF 15, pages 5005-5006, and through FOF 18, page 5006. Mr. Hitch said he read that the USGS report indicated certain areas were modeled but not necessarily studied, and Ms. Cunningham answered the model was based on the central lobe.

Mr. Buchanan asked if establishing a time period for reasonable implementation, item 6. of the order on page 5019, is to be determined. Mr. Strong responded, yes; if the Board were to approve the proposed order, that paragraph directs staff to initiate rulemaking for the stated purposes at the suggestion of the HE, which would be in a rulemaking process to follow.

Chairman Herrmann recognized that Board Member Ford Drummond had joined the meeting after a delayed landing in Tulsa and driving to the meeting (4:10 p.m.).

2. Discussion and presentation by parties. There were no other questions by Board members at this time, and Chairman Herrmann invited members of the public who wished to speak in support of the proposed order to address the members as he earlier instructed, allowing 20 minutes total.

A. Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer (CPASA), spoke on behalf of the citizens of southeast Oklahoma, south central Oklahoma, municipalities, businesses, farmers and ranchers and all who rely upon Oklahoma’s only sole source aquifer, and thanked the agency and all those who had given all or part of the past half-decade and especially the OWRB for consideration of the order which is believed to provide a sustainable yield of the Arbuckle-Simpson Aquifer (ASA) and allow them to continue to thrive for generations to come.

B. Craig Shew, attorney for the City of Ada, stated Ada is the largest user, relies upon the wells and springs of the aquifer, to supply water to 30,000 residents as well as Pontotoc County Rural Water Districts; the 120,000 residents of the County cannot move on as the commercial interests can, and options are few and expensive if the aquifer were to become depleted. He said that although Ada will need to secure 29,000 acres of water rights due to the reduction, he strongly supported the proposed order as it provides a high degree of dependability and sustainability, and he urged the Board to adopt the proposed order.

Mr. Sevenoaks asked how long the City would need to implement the MAY, and Mr. Shew answered he did not know how long it would take to obtain the additional rights and would like to see the implementation period be as long as possible; ten years.

Mr. Hitch commented that if the commercial interests left as Mr. Shew suggested, the residents would not have a place to work, and Mr. Shew agreed.

C. Lewis Parkhill, local resident and former member of Tishomingo City Council and Mayor, and representing the City as water policy advisor, stated Tishomingo is on the other side

of SB 288 in regard to conjunctive use as it is solely reliant upon surface flows of Pennington Creek and does not have a viable alternative. Tishomingo is appreciative of the Board moving forward with the MAY, the City is half-way through with a large water-wastewater project in part financed through OWRB funding; he has been involved with the issue since a 2002 meeting with El Reno City Council and SB 288 was a result of concern for the aquifer. The \$5 million study that demonstrates the ASA is far more fragile than first thought, and he believed the MAY would benefit both those who support and those who oppose the order because a sustainable yield will be the most economical solution.

Mr. Sevenoaks asked if Tishomingo had enough water, and Mr. Parkhill answered he believed that it does at this moment.

D. Bruce Noble, Superintendent of Chickasaw National Recreation Area (CNRA), provided the history of the park since its creation in 1906, and has annual visitors of 1.5 million that generate \$100 million in annual revenue for the local economy. He offered support for the proposed order establishing the MAY/EPS of .20 acre-feet per acre per year ensuring the sustainability of the groundwater resources of the ASA. He said the .2 af/y is not sufficient to support the CNRA, and suggested additional measures of buffer zones, well spacing, etc. are necessary to protect the water resource. He thanked those who have devoted a tremendous amount of time to achieve a MAY/EPS for the ASA, as well as the Board.

Ms. Feaver asked the status of the springs in the park, and Mr. Noble said two springs are dry due to drought, the Vendome well is flowing, but of the initial 33 springs, five are currently active. Mr. Sevenoaks asked how long the Board should allow for implementation of the MAY, and Mr. Noble answered the municipalities had more at stake and he had full confidence of the staff of the OWRB.

Mr. Hitch asked about the suggestion of a buffer zone, and Mr. Noble responded because it is known that the closer wells are drilled near springs the greater the impact, a setback or buffer zone around the park could minimize the effect of any well drilling upon the springs and streams inside the park. Chairman Herrmann commented any rulemaking regarding buffer zones would be considered at a later date.

E. Peter Burk, US Fish and Wildlife Service, representing both Tishomingo National Wildlife Refuge and Tishomingo National Fish Hatchery, stated to the members that the USFWS feels these stations provide value to the public, and supports the proposed order and rulemaking contemplated by the order. As well, he stated his appreciation for the opportunity to work with the Board to address well spacing and thanked the Board for its consideration.

Mr. Sevenoaks asked how long the Board should allow for implementation, and Mr. Burk responded he had not studied that but concurred with Mr. Noble the municipalities have more at stake and would likely support a timeframe agreeable to the Board and municipalities.

F. Jona Tucker, Oklahoma Chapter of The Nature Conservancy, thanked the staff of the OWRB for the work required to get to this point; she has tremendous respect for the sound science that has gone into the determination being considered today. The ASA is a tremendously important resource to the people and to nature of the area and extends beyond the basin to Ada and Tishomingo. She thanked the Board for its consideration of the proposed order.

Mr. Sevenoaks asked how long the Board should allow for implementation, and Ms. Tucker answered everyone in area wants to see cities and rural water districts grow and will work together.

G. Shannon Shirley, a resident of Mill Creek, stated the journey began 10 years ago, she thanked the Board for the work and time done on the study on behalf of those who depend upon the streams of the area, and the Board's due diligence for the future of the area is greatly appreciated.

Mr. Sevenoaks asked how long the Board should allow for implementation, and Ms. Shirley stated she has learned that when people work together a lot can get done.

With fourteen minutes, there were no other persons wishing to speak to the support of the order, and Chairman Herrmann asked if the members had any other questions.

Mr. Buchanan asked Mr. Shew (Ada) where the City is looking to obtain the additional 29,000 acres needed, and Mr. Shew said there are three options: buy water rights, buy land, or lease water rights. Mr. Hitch asked how far along the journey is Ada, and Mr. Shew said they had obtained about 6,000 acres and had received a proposal from a group of landowners which at the end of 25-30 years, the cost would be about 11-times the cost of buying water rights, estimating 29,000 acres costing \$8 million and a lease proposal would be \$79 million. Mr. Hitch asked about plans for obtaining rights through condemnation, and Mr. Shew said the City preferred to buy rights at this time.

There were no other questions by members, or persons wishing to speak in support of the proposed order.

Chairman Herrmann invited members of the public who wished to speak in opposition to the proposed order to address the members, as he earlier instructed, allowing 20 minutes total.

F. Mark Walker, representing Pontotoc Farm Bureau, Oklahoma Farm Bureau Legal Foundation, OK Cattlemen's Association, OK Independent Petroleum Association, OK Aggregates Association, and Environmental Federation of Oklahoma, addressed the members stating these groups represent real people who will be severely impacted if the Board adopts the proposed MAY as there will be severe curtailment on the right to use groundwater going from 2.0 acre-feet to .20 acre-feet, or a 90% reduction. Mr. Walker expressed the concerns on behalf of these groups about the criteria used to establish the .2 acre-foot (af) rather than .6 or .5 or .4; that the law can't mean what it says if SB 288 states water can be taken if not reducing the natural flow but the testimony was that withdrawing any groundwater will reduce the natural flow. Now, there is the idea of reasonable versus unreasonable impact to the natural flow which requires a criteria be established, and the Surface Water Technical Advisory Group looked at a stream flow that would protect fish population looking at the baseline low-flow regime and stating that a reduction of no more than 25% would be acceptable and the criteria to measure the MAY. Once criteria was decided, science (modeling) was to determine what amount of groundwater corresponded to the 25% reduction in the baseline low flow, but at the hearing it was learned the base modeler did not use the baseline low flow regime that was established as the criteria but some other regime and the computer model results do not tie-back to the baseline low flow and fish habitat study which means if adopted, the Board does not know how much fish habitat is or is not protected. Mr. Walker referred to FOF paragraphs 36. and 37. of the proposed order. His argument was if the criteria was abandoned, what criteria is being used to determine that .2 af is the right number, but which is not stated in the order and which was tried at the hearing but now abandoned and no new criteria is stated.

Mr. Walker's second argument concerned the HE had communications after the MAY hearing with the USGS in which she received evidence in favor of the .2 without telling anyone which was discovered and the Oklahoma Supreme Court determined that was inappropriate and instructed that the HE introduce the USGS report into the record and allow all parties to respond and the responses admitted into the evidence. Mr. Walker said the HE did as instructed but new evidence regarding peer review was introduced in the responses; however, the HE admitted CPASA's evidentiary submission into the record, but excluded his clients' submission which is contrary to what the Supreme Court said must be done to remedy the appearance bias. He said

the proposed order does not take into consideration all of the evidence that the Oklahoma Supreme Court ordered, which his client's believed to be a fatal flaw.

Lastly, Mr. Walker stated his clients filed post-hearing exceptions which are part of the record—which Chairman Herrmann acknowledged--and he respectively requested the Board not approve the MAY order.

Mr. Sevenoaks asked if the Board approves the order does Mr. Walker know how long it would take for his clients to implement the MAY, and Mr. Walker said he did not know the answer. Mr. Hitch asked if Mr. Walker looked at results of the modeling and Mr. Walker responded a world-renowned modeler, Dr. Ilene Poder, reviewed the model and found fundamental errors primarily because the aquifer is an unconfined zone that gives water readily, and the USGS modeler did not take that into account and treated the upper zone the same as the confined zone, and he explained the upper zone can give water at a faster rate than the lower zone meaning there could potentially be a higher MAY number. When Dr. Poder ran the model correcting the error, she came up with a groundwater removal rate five times higher than the .2 which would have equated to the same reduction in the stream flow that the USGS modeler found; she did not calibrate the model, but indicated that when the error was corrected, it has a significant impact on the answer. Mr. Ford Drummond asked if the modeling issue was addressed during the hearing process and Mr. Walker answered they did, and the HE recognized the two modelers work and accepted the USGS because his work was subject to peer review, which makes the ex parte issue important. Mr. Walker said Dr. Poder consulted other modelers—including the top USGS modeler--who all said not treating the unconfined upper zone as it should have been, is a fundamental flaw, and it is now stricken from the record.

G. Jim Barnett, representing the Arbuckle-Simpson Aquifer Protection Federation of Oklahoma, a group of ranchers representing some 50,000 acres overlying the Hunton Anticline of the basin, said the HE in the order acknowledged the number the model produced, using whatever criteria, is not the .2 af; there is no basis for that number in the order. He argued that is an arbitrary number; however, the recharge number is not arbitrary and is recognized in the order as 5.58 inches per year. He said his landowners will be contributing more than twice the amount of water to the aquifer through recharge on their land than they are able to retain for their own use which they believe is fundamentally unfair. He said the issue has been raised the ranchers are the most immediately effected, it is their private property being taken away and are being told they cannot actually use even the amount of water that falls on their land. He asked that the Board give the 5.58 recharge per year. He added in response to Mr. Sevenoaks' earlier question about implementation, his clients did not believe the Board had the authority for a phase-in so the order should become effective immediately.

There were no questions by members. Mr. Sevenoaks suggested allowing more time for those opposed, and Chairman Herrmann considered there were four minutes remaining.

H. Bill Flanagan, TXI, stated to the members that as landowners over the Arbuckle-Simpson Aquifer and operator over the geographic foot print of the aquifer, they have a vested interest in the application of sound science to the decision making of the State in regulating the amount of water that will be produced from the three lobes of the aquifer. He spoke to the issue of the three lobes having different characteristics and urged the Board to reconsider the EPS proposal because of the incorrect application of the site-specific model of the Hunton Anticline as if identical geologically to the other two anticlines, and he is concerned the assumption continuity exists is erroneous and will lead to mismanagement of the aquifer. He spoke to 4.C.12 of the order, page 5004, and noted the USGS report and maps that characterize the southern Eastern lobe as a no flow boundary, and also indicates there is no connectivity; it is not one body of water. He argued there are no flows to the Pennington and Blue streams from the Eastern and Central lobes and the instream flow models do not apply to the Western and Central

lobes, and also that the calculation regarding Sulphur Falls were not considered. He suggested site specific science be applied and also argued the calculations on the recharge rate for the Eastern lobe.

Mr. Sevenoaks asked about the company and Mr. Flanagan stated TXI is an aggregate company with one operation in the area that mines 5 million tons a year and has 6,000 acres located in the Central lobe. Mr. Drummond asked if these issues were brought to the hearing and Mr. Flanagan answered the USGS did some characterization of the differences but no specific references as he provided today as he did not have a chance at the hearing. Mr. Sevenoaks asked about time to find alternative sources of water and Mr. Flanagan answered he had not studied that. Mr. Hitch asked if the operation used the full 2.0 acre foot for the 6,000 acres and Mr. Flanagan answered that depends on what is use, and that part of the acreage is over the granite which is the difference between the lobes. Mr. Strong added the order considers an outcrop boundary. Mr. Hitch asked if the reduction of 2.0 to .2 will impact the operation, and Mr. Flanagan said that it will. Ms Lambert asked about his comment regarding time allowed at the hearing and the opportunity to be heard, and Mr. Strong answered all of those issues were “front and center” in the hearing process because they are discussed and summarized in the order. Mr. Hitch asked if Mr. Flanagan attempted to make appearance and was excluded or didn’t make an appearance at all, and Mr. Flanagan answered he was at the hearing all days ready to testify at counsel’s suggested priority.

Chairman Herrmann stated there were 5 remaining minutes for comments in support of the order and asked if there were any other presenters.

Mr. Steven Greetham, attorney for Chickasaw Nation and former employee of the Ada area, stated to the members it is his experience working with people of the Arbuckle-Simpson area that this has been a very difficult issue. The Chickasaw Nation has a unique perspective; he mentioned “squabbling” in another part of the state dealing with water management issues but indicated to Mr. Strong his full support. He said members of the communities overlying the aquifer have been wrestling over the issue for years; it’s about survival of the community; you canicker about the science; and there will be interests that are dissatisfied no matter what the Board does. He said the product that comes to the Board today is not simply the HE’s work but is years of effort by hundreds/thousands of diverse people in the Arbuckle region trying to figure out how to live with each other. The Chickasaw Nation has been very supportive of the process and effort to prioritize sustainability and sound scientific basis for decisions. He said he could not speak on behalf of the Chickasaw Nation on the issue before the Board, but as someone who works in the leadership of the Chickasaw Nation, the product before the Board will be best for all Oklahomans and the community. He closed with comments regarding the unique history of the area and that the Chickasaws asked the federal government to set aside these lands when the park was created and what the Board is doing today traces back to that commitment of sustainability.

Chairman Herrmann asked Mr. Strong to address technical questions asked, and Mr. Jerry Barnett regarding legal questions and specifically regarding the order as in keeping with the directive of the State Supreme Court (SCC).

Mr. Jerry Barnett addressed the members and stated the hearing was held two days and many factual issues were vigorously contested well by professionals on both sides – three lobes, not one aquifer, the modeling, the storage coefficient. The hearing examiner was a professional, a law professor who did a good job sorting through those contests; expert witnesses, lawyers, multiple witnesses all of which she has gone through methodically in the proposed order. He said the Board has heard today disagreements with the findings but staff would recommend this

is a good discussion of the competing evidence laid out in a methodical, reasoned, and reasonable way.

Regarding the question of how the HE handled the steps that occurred after the State Supreme Court decision, Mr. Barnett read from paragraph 17 of the SSC decision (named case), decided April 23 (rehearing later denied), “we hereby issue a writ compelling the hearing officer to provide notice of ex parte communication to all parties of the maximum annual yield proceeding and to disclose contents of communications to the parties and incorporate those communications and responses to them into the record.” He said the Court did not direct her to necessarily submit new evidence; the affidavit from Dr. Poder that was in the response that was filed by several of the protestants the HE viewed as new evidence and was objected to by CPASA. What the HE decided to do was to strike that from her consideration although it is and will be in the record and will have notations to show it was excluded from consideration by the HE. Mr. Barnett added that Mr. Walker has told the Board today what is in the affidavit, so it is before the Board, nevertheless the HE did what the SCC ordered her to do; the argument that she has erred or violated the SCC opinion is not correct but she has followed the Court faithfully, and is not a fatal flaw.

Mr. Strong added that in regard to the responses that were filed by all of the parties it is absolutely untrue that the HE allowed the responses from CPASA and the supporting parties and rejected all of the responses of the protestants. She allowed some of the responses from CPASA and the supporters into the record, and some of the portions of the response of the opponent into the record and struck from the record portions of both of their responses. Mr. Barnett said the Court said incorporate the responses, not new evidence or have a new hearing, etc.

Chairman Herrmann asked if there were questions by members for Mr. Barnett on legal questions identified. Mr. Hitch asked if the evidence presented a rebuttal of something that was newly added based on the SCC ruling or to something else already in the order. Mr. Barnett answered he had not read the Poder affidavit but he believed it was an attempt to rebut.

There were no other questions regarding legal issues and Chairman Herrmann asked Mr. Strong to address the technical questions.

Mr. Strong said this is probably a first for every sitting member as it is the first MAY the Board has considered in a long time, and in this case is a process that has involved over five years and five million dollars, a technical study and investigation by some of the best scientists that could be brought to bear on the process, and was also a very involved and lengthy hearing process so that others have an opportunity to submit expensive studies from their experts to rebut a HE that is an extension of this Board and one he hoped they could trust as being a disinterested hearing examiner, rendering a final decision for the Board’s consideration. He said he is not qualified as a biologist and agronomist to give an opinion on the geology questions that have come to the Board today, but it is important to remember that all happened in the hearing process which was for two days. He said to his knowledge no one was excluded; there were decisions made by the parties as to how they would allocate and organize their time which was also a subject of the prehearing to allow everyone to decide how they wanted to organize and tell the HE how much time they needed. He said you can shoot holes in any scientific study, this is the most sophisticated and expensive MAY done by the State, and it was done by the best scientists—if you believe the OWRB staff and those contracted with and cooperate with on a daily basis are the best such as the USGS, USFWS, the university system and others. The “fish study” not correlating to the report was brought up at the hearing and addressed in the order, and some of the argument he heard suggest the number should be between 0-1.25. It is the staff and Board’s job to decide how to “marry” this very stringent law passed to specifically protect the ASA (SB 288) with the rest of the groundwater law which allows for mining and consumptive use of groundwater. Mr. Strong referenced on page 5013, FOF 56. (before the COL) as

summarizing it best, and he quoted from the paragraph that the decision rests on all the evidence. He said most of the concerns heard stem from the law and the Board has, as he has, sworn an oath to uphold that law; it is what the Legislature passed and what the Board is responsible for following. If people don't like the outcome of the law, the democratic process allows for people to get the law changed, which could result in consideration of a new MAY according to that law.

Chairman Herrmann asked if the members had questions for Mr. Strong. Mr. Sevenoaks asked who wrote the order, and Mr. Barnett answered Professor Emily Meazell. Mr. Sevenoaks asked regarding page 5019, item 6. regarding implementation, will the Board consider those purposes now or will that be separate and Mr. Strong said if the Board approves the order as drafted, it would be directing agency staff to initiate that rulemaking as there is a process, and they mentioned there is a process for converting temporary to regular permits and for promulgating rules, and whether there is time for it to be done this year.

There were no other questions by Board members.

3. Possible Executive Session; and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter Executive Session.

5. 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.

Ms. Lambert stated that she is not a hydrologist or engineer or scientist, but she believes in the staff of the OWRB, believes in the hearing examiner; thousands of people have put thousands of hours over many years into this process and no one will be 100% happy. She said she believed in the process that has been implemented over many years, she believed in the people, the scientists that have put forth the information, and believes in our staff and our legal counsel, and she moved approval of the Maximum Annual Yield as recommended by staff.

Mr. Drummond seconded the motion. He stated as a rancher he is very concerned about restrictions on private property rights and he takes that very seriously but as an attorney he also takes very seriously upholding the rule of law. Senate Bill 288 sets the framework, we have spent \$5 million and five years coming up with the science for this rule, and we have had an open, fair and very long process to get where we are.

Chairman Herrmann stated there is a motion and second and he asked if there was any other discussion. There were no other questions or discussion, and Chairman Herrmann called for the vote.

AYE:	Drummond, Lambert, Hitch*, Sevenoaks, Feaver, Fite, Herrmann
NAY:	None
ABSTAIN:	Buchanan*, Drake*
ABSENT:	None

Mr. Hitch commented his vote was in the interest of certainty as a private property owner. Mr. Buchanan stated he is a member of the Oklahoma Farm Bureau State Board of Directors and sits on the Oklahoma Farm Bureau Legal Foundation which is a protestant on this issue and would abstain. Mr. Drake commented his vote followed legal consultation and much prayer, and he most humbly and respectfully abstained.

Chairman Herrmann stated the proposed MAY passes, and staff will prepare for the next step.

B. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda to the Special Consideration Agenda for the Board's consideration.

6. 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 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 Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al.

Chairman Herrmann stated there is an agenda item for a proposed Executive Session; however, it is not necessary for the Board to conduct an Executive Session at this time.

A. Vote on whether to hold Executive Session upon determination that disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

The Board did not vote to enter an Executive Session.

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

C. Executive Session, if authorized.

There was no Executive Session authorized, and no vote or action.

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

There were no matters for discussion or action as a result of no Executive Session being conducted.

8. NEW BUSINESS

Chairman Herrmann

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.

9. ADJOURNMENT

Chairman Herrmann

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 5:30 p.m. on Wednesday, October 23, 2013.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Tom Buchanan, Vice Chairman

_____/s/_____
Edward H. Fite

_____/Absent_____
F. Ford Drummond

_____/s/_____
Marilyn Feaver

_____/Absent_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

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