

OKLAHOMA WATER RESOURCES BOARD MEETING INFORMATION

The Oklahoma Water Resources Board meets monthly in accordance with the date, time, and location shown on the final posted agenda. A draft Board meeting agenda and packet materials are scheduled to be prepared approximately 10 calendar days prior to the Board's meeting. A final agenda is scheduled to be posted at least 24 hours prior to the meeting. The standard sections of the agenda are numbered in a series; additional or special items will appear on the agenda subsequently. Standard sections include the following:

- 01000 = Call to Order
- 02000 = Financial Assistance Division
- 03000 = Summary Disposition Agenda
- 04000 = Items of Interest
- 05000 = Special Consideration Items

This meeting packet contains expanded information (summary documents, proposed orders, etc.) associated with individual agenda items. Each section of the packet contains a cover sheet noting the appropriate corresponding agenda item/number. (For example, to locate agenda item 2.D., concerning a grant or loan, review the packet for the section labeled, "2. Financial Assistance Division," which will begin on page 02000. Item D. is placed in alphabetical order in the section and is labeled accordingly.) The documents and information provided within the meeting packet are draft until approved by the Board. Please contact OWRB staff for the final, official documents as approved by the Board.

If you require assistance in locating an item or accompanying documents, please contact OWRB staff at (405) 530-8800.

1.B.

September 15, 2020, Regular Meeting Draft Official Minutes

**For consideration at the
October 20, 2020, Board meeting**

DRAFT

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

Regular Meeting

September 15, 2020

1. CALL TO ORDER

The Regular Meeting of the Oklahoma Water Resources Board was called to order by Chairman Robert L. Stallings, Jr., at 9:32 a.m. on September 15, 2020, in the second floor Board Room of the Oklahoma Water Resources Board located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, 73118. 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 September 11, 2020, at 4:00 p.m., at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, and provided on the agency's website.

A. Roll Call. Chairman Stallings called the meeting to order and stated this meeting is being conducted with social distancing and via Zoom Webinar. He asked for the roll call of members who participated in the meeting via video or telephone conferencing.

Board Members Present

Robert L. Stallings, Jr., Chairman

Bob Drake, Secretary

Jennifer Castillo

Charles Darby

Thomas A. Gorman

Suzanne Landess

Robert L. Melton

Matt Muller

Board Members Absent

Stephen Allen, Vice Chairman

Staff Members Present and Participating via Zoom Webinar

Julie Cunningham, Executive Director

Sara Gibson, General Counsel

Cleve Pierce, Chief, Administrative Services Division

Joe Freeman, Chief, Financial Assistance Division

Kent Wilkins, Chief, Planning and Management Division

Bill Cauthron, Chief, Water Quality Programs Division

Mary Schooley, Executive Secretary

The following persons attended the meeting:

R. Wayne Schroeder
Kaylee Davis-Maddy, Attorney
Mike and Jody Pendleton

B. Discussion, Amendments, and Vote to Approve Official Minutes of the August 18, 2020, Regular Meeting. Chairman Stallings asked if there were any comments, proposed amendments, or a motion to approval of the August 18, 2020, meeting minutes. There were no comments.

Mr. Darby moved to approve the minutes of the August 18, 2020, Regular Meeting, and Ms. Castillo seconded. There was no discussion. Chairman Stallings called for the vote.

AYE: Darby, Gorman, Landess, Melton, Muller, Castillo, Stallings
NAY: None
ABSTAIN: None
ABSENT: Allen, Drake

Mr. Drake joined the meeting following the vote.

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, welcomed everyone to the meeting. She began her report stating this is a busy time of year, and provided the members with an update on the State's climate conditions. Noting the recently published Water Resources Bulletin, which is available on the OWRB website, she said that 33% of the state is experiencing moderate drought, typically the western counties and the Panhandle, while at the same time the south central and south eastern climate divisions are experiencing the first and second wettest periods since measuring began in 1921.

Governor Stitt has extended his executive order for all 77 counties declaring a health emergency through the end of the month (as he has month-to-month). She explained the legislation that was approved in the Spring for Boards and Commissions to conduct meetings virtually will expire November 15, and she suggested the Board conduct its November meeting before the 15th (it is scheduled for November 17) after receiving notice from Secretary Budd. In the past, the November and December meetings were combined to be held in conjunction with the annual water conference; however, the conference is being pushed back in order to be the focus of the kickoff the 2025 update of the Water Plan. The December meeting will need to be held to consider the record-breaking number of loans. Therefore, staff will plan that the October meeting will be held virtually, the November meeting will be rescheduled before November 15 and will be virtual, and the December meeting will be held in person, adhering to social distancing guidance.

Operationally, Ms. Cunningham reported staff has developed a new online complaint system saving several thousand dollars a year and she congratulated staff for finding those efficiencies and improved customer service. Several staff are testing Microsoft Teams Voice platform in an effort to modernize the phone system and realize a savings. Regarding calendar notes, Ms. Cunningham and Financial Assistance staff met with Dan Hillenbrand of Senator Inhofe's office legislation related to water technology and infrastructure improvement that he has been asked to cosponsor - the "Water Technology Enhancement and Commercialization Act of 2019" or the "Water TEC Act of 2019". It supports innovation in water/sewer infrastructure, recognizes loss of operator workforce and attempts to standardize training, among other things. Mr. Hillenbrand will be speaking to the Interstate Council on Water Policy annual meeting about the proposed legislation and highlighting Oklahoma modes of operation in coordination with federal agencies and communities. Staff has been meeting with firms about the kickoff for the 2025 water plan update and the first round stakeholder engagement and the scope of work for the next several years; the Board approved a contract with Carollo Engineering. Staff has met with Bureau of Reclamation Oklahoma and Texas representatives to determine ways for better collaboration on joint funding projects and to develop a system of more widely notifying potential grant recipients (communities, districts, tribes) of funding opportunities for water planning initiatives. The Water Quality Standards Group conducted the first of three informal

public hearing webinars on the 2021 proposed rulemaking focusing efforts on adopting the 2016 recommendations from the Joint Study Committee on the Illinois River (which was comprised of 3 representatives from Oklahoma and 3 from Arkansas). Staff worked cooperatively across the state line as well as with Oklahoma agencies with the Arkansas Division of Environmental Quality staff. The first webinar went very well and had good participation and comments. Two additional webinars are scheduled for September 22 and October 6; staff will be working with the Board's Rules Committee on the rules proposal for next year.

Staff met with the Produced Water Working Group which is chaired by the OWRB and was appointed by the Governor in 2016 to address earth quake issue and find potential commercial uses for an otherwise wasted product of oil and gas mining. She described the members of the PWWG that represent diverse backgrounds that have come together to develop solutions representing oil and gas, academia, research, water use sectors, and state and federal environmental agencies as well as commerce and industry sectors. Secretary of Energy and Environment Ken Wagner, Secretary of Agriculture Blayne Arthur, and Tom McGuire of the US Environmental Protection Agency were also in attendance. There is great participation by the group and work being done regarding recycling and reuse of produced water. She said the PWWG and Groundwater Protection Council's work is widely recognized and are leaders in this arena; she anticipated there would be semi-annual meetings in the future.

Ms. Cunningham concluded her report reminding the members to notify staff of their Board Committee assignment choices. Chairman Stallings mentioned rescheduling the November Board meeting and Ms. Cunningham said staff will poll members about a date convenient the second week of November. There were no other comments or questions.

D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Administrative Services Division Chief, addressed the members and stated the budget report is for the time period ending August 31, 2020. He said for the time period, the agency has spent 16% of the appropriated budget, leaving 84%; has spent 8% of the revolving fund leaving 92%; and has spent 5% of federal dollars with 95% remaining. The overall budget remaining stands at 91% with 83% of the fiscal year remaining; the agency's spending level is the same as this time last year. He said that the staff is working on the budget request and Strategic Plan for FY21-26 documents due October 1.

Mr. Pierce concluded his report with an update on the Gross Production Tax collections which were low in July but rebounded in August. There were no questions by members.

2. **FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for East Central Oklahoma Water Authority, Muskogee County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$100,000 emergency grant for the East Central Oklahoma Water Authority serving the Town of Webbers Falls in Muskogee County. He said the Town had sustained substantial flooding in May of 2019 and a sewage problem caused by the flooding was discovered during a construction project. The problem caused unstable underground conditions that resulted in quick sand and a two-foot drop in the sewer main. The proposed project will abandon the failed sewer main, install a lift station upstream and pump around the problem area. The estimated cost of the project is \$117,648; the project will be funded with the OWRB emergency grant, and \$17,648 in local funds. Staff recommended approval.

Mr. Freeman read a statement from Mayor Sandra Rice thanking the OWRB for its support and aid the past year.

There were no questions, and Chairman Stallings stated he would entertain motion regarding the emergency grant.

Mr. Melton moved to approve the emergency grant to the East Central Oklahoma Water Authority, and Mr. Gorman seconded.

AYE: Darby, Drake, Gorman, Landess, Melton, Muller, Castillo, Stallings
NAY: None
ABSTAIN: None
ABSENT: Allen

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Atoka Municipal Authority, Atoka County. Recommended for Approval. Mr. Freeman stated this item is for a \$1,261,000.00 loan request by the Atoka Municipal Authority. He said the Authority is requesting the loan to go along with OWRB loan proceeds approved earlier this year to modify and upgrade the water treatment plant, rehabilitate the elevated storage tank, construct a new clear well, rehabilitate two booster pump stations, install automatic meter readers, and improve the SCADA operations. Mr. Freeman stated the loan will be funded through the Drinking Water State Revolving Loan Program, and he noted provisions of the loan agreement. Atoka has two loans with the Board with a combined balance of \$4.8 million; its debt coverage ratio stands at 1.41-times. Staff recommended approval of the loan application.

Mr. Freeman read a statement from Mayor Brian Cathey expressing his gratitude for the OWRB staff's assistance to provide cost-effective financing for the project.

There were no questions by members regarding the application by the Atoka Municipal Authority, and Chairman Stallings stated he would accept a motion.

Mr. Drake moved to approve the Drinking Water SRF loan to the Atoka Municipal Authority, and Mr. Darby seconded.

AYE: Darby, Drake, Gorman, Landess, Melton, Muller, Castillo, Stallings
NAY: None
ABSTAIN: None
ABSENT: Allen

C. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Grove Municipal Services Authority, Delaware County. Recommended for Approval. Mr. Freeman stated this item is a \$5,350,000.00 loan request by the Grove Municipal Services Authority located in Delaware County. The Authority is requesting the loan to extend replacement of sewer lines and manholes throughout its system. Mr. Freeman stated the loan will be funded through the Clean Water SRF loan program, and he noted provisions of the loan agreement. He said that over the last ten years, Grove's water connections have increased by 28% and its wastewater connections have increased by 15%. Grove currently has three loans with the Board with a combined principal balance of \$8.8 million and the debt coverage ratio stands at a strong 5.27- times. Staff recommended approval of the loan application.

Mr. Bill Keifer, General Manager, provided a statement which Mr. Freeman read expressing the Authority's appreciation to the Board for its assistance in providing low-interest rate financing to make sewer line repairs across the community. He said the Board's programs have aided the Authority in improving the water and sewer system at very competitive rates and terms, and the Authority is pleased to come back to the Board for this important project.

Chairman Stallings asked for questions, and there were none. He stated he would entertain a motion for the Grove MSA application.

Ms. Castillo moved to approve the Clean Water SRF loan to the Grove Municipal Authority, and Ms. Landess seconded.

AYE: Darby, Drake, Gorman, Landess, Melton, Muller, Castillo, Stallings
NAY: None
ABSTAIN: None
ABSENT: Allen

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 move items to the Special Consideration Agenda.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items Listed. Chairman Stallings asked if there were questions or comments about the items listed on the Summary Disposition Agenda.

There were no questions, and Chairman Stallings stated he would entertain a motion. Mr. Darby moved to approve the Summary Disposition Agenda, and Mr. Drake seconded. Chairman Stallings called for the vote.

AYE: Darby, Drake, Gorman, Landess, Melton, Muller, Castillo, Stallings
NAY: None
ABSTAIN: None
ABSENT: Allen

The following items were approved:

C. Consideration of and Possible Action on 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 the Contracts and Agreements:

1. No-cost Extension Agreement with United States Geological Survey for the Hydrogeologic Investigation and Groundwater-Flow Model of the Salt Fork Red River Alluvial Aquifer in Southwestern Oklahoma.

2. No-cost Extension Agreement with United States Geological Survey for the Updated Hydrogeology, Numerical Simulation of Groundwater Flow and Effects of Water Use and Drought on the Groundwater Resources in Reach 1 of the Washita River Alluvial and Terrace Aquifer.

3. Interagency Agreement between OWRB and the Oklahoma Department of Agriculture, Food and Forestry ("ODAFF") for collecting groundwater samples at monitoring wells of swine licensed managed feeding operations ("LMFOs").

4. Amendment Agreement between USDA-Agricultural Research Service ("ARS") and the OWRB for monitoring and evaluating water resources in the Upper Washita River Basin.

5. Amendment Agreement with Meshek and Associates, LLC extending time and adding to the scope of work to provide professional engineering services in connection with Cooperating Technical Partnership Program Assistance for the creation and maintenance of Flood Hazard Data.

6. Cooperative Agreement between Oklahoma State University, Oklahoma Conservation Commission and OWRB to provide funding for the purchase of soil moisture sensors and associated service agreements for the participants that complete the Master Irrigator Program.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
None

F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
None

G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
None

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:

1. Johnston County Rural Water District No. 3, Johnston County, #1976-775

I. Consideration of and Possible Action on Applications to Amend Prior Right to Use Groundwater:
None

J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:

1. Nowata County Rural Water District No. 6, Nowata County, #2018-086

2. Will Harrington, Choctaw County, #2019-021

K. Consideration of and Possible Action on Dam and Reservoir Construction:
None

L. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

a. Licensee: Currie Drilling Company, Inc. DPC-0986

Operator: Shane Currie OP-1526

b. Licensee: Neill Well Service DPC-0998

Operator: Brandon Neill OP-2331

c. Licensee: The Phoenix Group DPC-0565

Operator: David Correll OP-2040

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

a. Licensee: Hoffman & Ewbank, LLC DPC-0063

Operator: George Emmert OP-2332

b. Licensee: Etter Water Well DPC-0782

Operator: Daniel Murge OP-2248

c. Licensee: Building and Earth Sciences, Inc. DPC-0979

Operator: John Tucker OP-0951

d. Licensee: Associated Environmental, Inc DPC-0269

Operator: Will Van Hoozer OP-2333

M. Consideration of and Possible Action on Proposed Resolution Appointing Persons to Serve as Members of the Well Driller and Pump Installers Advisory Council:

Names of persons to serve as members are individually set out in the September 15, 2020, packet of Board materials.

N. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Oklahoma Department of Wildlife Conservation, Comanche County, #FP-20-04

O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:

1. Lynn Burrow, City of Glenpool, #FPA-835

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

A. Presentation and Discussion of Board Education Series, "The Marketing Evolution of the Financial Assistance Division." Mr. Joe Freeman provided a history of the Board's Financial Assistance program beginning in the 1980's using a PowerPoint presentation, "The Marketing Evolution of the Financial Assistance Division." He said the Board provides financing to 65% of Oklahoma communities through loans and grants, but staff had evaluated what other services the Board can provide. He visited with the members about the evolution of the OWRB marketing program. Initially, staff traveled the state introducing the programs to city managers, city councils and rural water districts. However, people involved in city government change and it is a continual process to staff in touch with districts and communities. The first emergency grant was awarded in 1983, and the loans began in the 1986, closing four loans from the 1985 bond issue, the Financial Assistance Loan Program. The first Clean Water State Revolving Fund loan was granted in 1990; 1996 saw the Rural Economic Action Plan grants, as well as the Drinking Water State Revolving Fund Loan Program. The Board has administered various other funding programs over the years including Contract Financial Assistance Programs, Drought Grant Program, Water for 2060 Drought Grant Program, and Emergency Drought Relief Program. The best marketing program is the meet and exceed the customer's needs and in 2017 staff had the opportunity to work when EPA in Washington, DC, to improve services further with EPA funded Northbridge Environmental Consultants to assist in gathering a focus group of current and potential borrowers as well as borrowers with consulting engineers, financial advisors and bond counsels. From this group, staff learned ways to better serve cities and rural water districts throughout Oklahoma to provide more assistance for SRF borrowers to comply with Davis-Bacon Act wage requirements, provide a different method to fund planning and design for smaller communities, and enhance the OWRB outreach program. Mr. Freeman stated he had presented a panel on outreach, that included Ms. Tonya White, the Board's Marketing and Outreach Manager, and others at the 2019 Council on Infrastructure Financing Agencies which resulted in additional funding from EPA in December 2018 for a more comprehensive marketing plan with assistance from Northbridge. He said it was EPA's intent that the OWRB marketing plan be the model for other states throughout the country.

Ms. Tonya White, OWRB Marketing Manager, continued with the presentation and discussed with the members the staff's development and implementation of the strategy for planning and development success beginning with a kickoff in January 2019 that would evaluate the marketing efforts currently underway through the Financial Assistance Division (FAD), and goals for what could be done, along with a complete trends analysis for the last several years to include the percentage of the state that is using SRF funding. February 2019 saw the review of Clean Water State Revolving Fund Model Marketing Plan, with worksheet detail outlining objectives and in April 2019, a physical meeting with Northbridge was held to "brainstorm" on previously discussed details, recognize assets, and identify and prioritize marketing and outreach action items for SRF programs' marketing plan. The meeting resulted in a draft of a two-year structure built around 4-5 core messages that are woven into and through all materials and discussions in all contexts, important marketing activities done on an ongoing basis, establish a campaign of communication and coordination with internal staff, and break the year into two (2)-month blocks and rotate the program through six (6) focused themes highlighting different aspects of the program and targeting different slices of Oklahoma's customer base, which she discussed in detail. Ms. White explained that implementation of the State of Oklahoma SRF Marketing Plan begin January 2020 as an organized and methodical outreach to non-borrowers, borrowers and consulting professionals through GovDelivery email, calls, conferences, social mediae, etc., to increase SRF program education for agency employees, and a pre-determined strategy

designed to become a systematic process for growth and success. The effort saw a very strong start and the advent COVID-19 had an effect on clients and staff decided not to directly engage as originally anticipated but to use time to enhance current services offered and to build out themes more clearly. This would also allow time to interact with different groups within the FAD for additional growth and contributions to the marketing plan, conduct research and target other organizations marketing plans, and allow the FAD the ability to adapt to opportunities and changes provided within the SRF programs going forward using tools such as GovDelivery usage for mass email distribution to targeted recipients. Another key date of January 2021 has been established to fully engage in FAD's original approach to the Marketing Plan and is very active, and although it has taken a shift, staff will go forward with a more developed program. Ms. White concluded her remarks describing the Board's relationship with BondLink used for communication with investors on refinancing project, and she offered marketing packets that are available to the members to utilize in their respective regions.

Ms. Cunningham commented that EPA and the states are interested in the program to be able to meet the billion-dollar need identified in the 2012 Water Plan. The goal is to get the money out the door, making it as easy as possible for the communities to get projects built, finding the right funding source for the right community to improve water and wastewater systems and clean rivers in the state

(The presentation is available on the OWRB website Board meetings page.)

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action in the Matter on Application for Regular Permit to Use Groundwater No. 2018-540, R. Wayne and Mary S. Schroeder, Canadian County:

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, stated to the members this item is for the consideration of an application for a regular permit to use groundwater, #2018-540 in the name of R. Wayne and Mary S. Schroeder in Canadian County. He described the filing of the permit application to withdraw 79.35 acre-feet of groundwater per year from one well located on dedicated land in Canadian County. Initially the application was for the purpose of oil and gas, mining, and irrigation but prior to the hearing was amended for the purpose of irrigation use only. Mr. Wilkins said the land dedicated overlies the Alluvium & Terrace Deposits of the North Canadian River--for which the Maximum Annual Yield (MAY) and Equal Proportionate Share (EPS) have been determined as one acre-foot of water per acre per year. He described that proper notice was provided and a timely protest was received by Mike and Jody Pendleton, Judith Risk, Zan Nelson, Thomas Manske and Wayne and Shirley Morse. Staff determined the protests did not provide enough information to meet the standard for protests, and time was allowed for the protestants to respond, which was received by Mike and Jody Pendleton and Judith Risk. A hearing was conducted on July 15, 2020, and appearing on behalf of the applicant was Kaylee Davis-Maddy and protestants appeared on their own behalf. Protestants alleged the applicants well location was not within the North Canadian A&T but is in the El Reno Basin which is a minor bedrock aquifer and has a well spacing distance of 1320 feet. The protestants were also concerned about the groundwater supply in the area and the use of groundwater could potentially adversely affect nearby neighbors use of groundwater from the same basin, and also that the well was drilled prior to receiving the permit.

Mr. Wilkins referred to the Hearing Examiner's proposed order citing Title 82 O.S. §1020.9, Oklahoma Administrative Code 785:30 regarding issues to be determined by the Board: (a) the applicant owns or has a valid lease for the dedicated land to take groundwater, (b) the dedicated land overlies a fresh groundwater basin or subbasin, (c) the applicant will put the water to beneficial use; and (d) waste by depletion and waste by pollution will not occur, and in areas overlying a sensitive sole source aquifer, whether streams and springs would be degraded. In this case, the North Canadian Alluvium is not a sole source aquifer. If the Board finds in favor of the applicant on all issues within its jurisdiction, the Board is required to approve the application and issue the appropriate permit. Mr. Wilkins read from the proposed order, "The Board's proposed order acknowledges the Protestants' concerns about groundwater supply in the

area and that the use of groundwater could potentially be adversely affected by neighboring uses of groundwater from the same basin. However, there is no basis in this case to determine that Applicant's proposed use will be impermissible or unlawful. The legislative policy expressed in the Oklahoma Groundwater Law is 'to utilize the groundwater resources of the state.' The Oklahoma Groundwater Law authorizes the controlled reduction of the groundwater basin as long as that reduction is done in an orderly fashion according to the statutory scheme for reasonable restrictions on such use. The surface owner or lessee of land overlying a fresh groundwater basin is entitled to use the groundwater beneath the surface once certain elements of the Oklahoma Groundwater Law have been met. Here the application is in accordance with and not contrary to the law and rules." Mr. Wilkins stated the hearing examiner found the applicant has satisfied the necessary elements to obtain permit #2018-540, and the record showed the applicant owned or leased and has dedicated 79.35 acres of land to the application, the land overlies a fresh groundwater basin--the North Canadian River Alluvium and Terrace Aquifer, it is a studied basin and the MAY/EPS has been determined as one acre foot of water per acre per year, that irrigation is a beneficial use, and waste by pollution or waste by depletion will not occur. He said the Board hereby orders application #2018-540 in the name of R. Wayne and Mary S. Schroeder shall be and is hereby approved in the amount of 79.35 acres, authorizing one groundwater well located in Canadian County (legal description cited), and that all other terms and provisions set forth in the application and not inconsistent with the Order shall be incorporated as part of the permit.

Mr. Wilkins stated Mr. Schroeder is present along with his attorney, Ms. Kaylee Davis-Maddy. The protestants, Mike and Jody Pendleton, are also present.

There were no questions by Board Members.

2. Discussion and presentation by parties. Chairman Stallings invited the applicant to address the Board and allowed five minutes.

Ms. Kaylee-Davis Maddy and Mr. Schroeder approached the podium and she stated to the members their appreciation of the Board's consideration and the hearing examiner recommendation for approval. She reserved the remainder of her time for rebuttal.

Chairman Stallings invited the protestant to speak to the Board, allowing five minutes. Ms. Jody Pendleton approached the members and stated she and Mike Pendleton had concerns about the permit being approved due to the limited water source. She explained the history of the Schroeder's farm and that water has always been an issue and they are now on their third well and during months of drought they monitor use and neighbors have trucked in water. They were dismayed at the application to sell water which could cause nine families in the area to be out of water. She believed the water is over the El Reno basin on the map, which has 1320 feet of spacing, and she asked the Board put a limit on the amount of water that can be withdrawn to .5 acre-foot. She said the well log by Mr. Schroeder's driller indicated red shale and both aquifers were perforated. She asked that the water use be metered, that he has had some violations in the past by OCC, and said he agreed during the hearing to a meter. Ms. Pendleton thanked the Board for its consideration, and asked that when making these decisions, the Board look at the actual impact to the people. She reserved her remaining time for rebuttal.

Mr. Davis-Maddy responded that there were a number of things presented to the Board that were not in the record. She said allegations at the hearing of selling water do not concern this well, this well has never been used; he did sell water from a different location that is unrelated. Regarding the allegations the well is in the El Reno basin, Ms. Davis-Maddy stated there is no evidence of that in the record; the information has been provided as to which aquifer Mr. Schroeder's well is located and that is the North Canadian. There is well spacing, and there is an amount of water authorized and all the requirements have been met. Regarding the statement that Mr. Schroeder meter the water because of violation of the Oklahoma Corporation Commission, she said there is no evidence that was not said in the hearing and is unfounded, today is the first time it has been brought up. Mr. Schroeder has met all requirements necessary to receive the groundwater well, it is in the North Canadian. They understand the neighbors' concerns, but that is what the law is for, and once the requirements are met it is mandatory; the law allows one-acre foot per acre. She

respectfully requested the proposed findings of fact, conclusions of law and Board order be approved as submitted.

Ms. Pendleton responded by referring to the matter of the alluvium terrace she felt was in question and she did not bring a geologist to make a report, but that Mr. Schroeder's well log indicated he is in the red shale and she felt new guidance would be within the parameters to add the 1320ft spacing. She agreed that it is the law that Mr. Schroeder be granted one acre foot but to take a chance and dry up someone's property, but is that right, she asked. She thanked the Board for its consideration and that the restrictions are not unheard of or excessive to reduce to .5 acre-feet or to ask for a meter.

Chairman Stallings stated the option to the Board is to have questions and vote in open session, or stated the Board may enter an Executive Session to discuss and return (to regular session) to vote.

Ms. Castillo stated she had questions that would be appropriate to ask on an Executive Session. Chairman Stallings asked for the motion.

3. Possible Executive Session. As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act.”

(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.

Ms. Castillo moved the Board enter Executive Session to discuss the application before the Board. Ms. Landess seconded.

AYE: Darby, Drake, Gorman, Landess, Melton, Castillo, Stallings
NAY: Muller
ABSTAIN: None
ABSENT: Allen

(b) Designation of person to keep written minutes of Executive Session, if authorized. Executive Secretary Mary Schooley kept written minutes.

(c) Executive Session, if authorized.

At 10:42 a.m., Chairman Stallings stated the Board would convene into Executive Session. Mr. Cole Perryman put the webinar panelists on hold, and the webinar remained open. The Board was provided a teleconference number; however, some technical difficulties were experienced and not all members were able to join. A quorum members joined the Executive Session via teleconference at 11:17 a.m.

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

Mr. Perryman opened the webinar at 11:30 a.m. and Chairman Stallings announced the Board reconvened in regular 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.

Chairman Stallings asked if there was a motion. Mr. Darby moved to approve application #2018-540, and Mr. Drake seconded.

AYE: Darby, Drake, Muller, Castillo, Stallings
NAY: None
ABSTAIN: Gorman, Landess, Melton
ABSENT: Allen

Mr. Gorman, Ms. Landess, and Mr. Melton stated their vote to abstain was because they were unable to join the Executive Session via teleconference due to technical difficulties.

B. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda.

6. 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.

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

7. ADJOURNMENT

There being no further business, Chairman Stallings adjourned the regular meeting of the Oklahoma Water Resources Board at 11:33 a.m., on September 15, 2020.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

Stephen B. Allen, Vice Chairman

Charles Darby

Robert L. Melton, Sr.

Jennifer Castillo

Suzanne V. Landess

Matt Muller

Thomas A. Gorman

ATTEST:

Bob Drake, Secretary

(SEAL)

1. D. FINANCIAL UPDATE

1. D.1. Monthly Budget Report

Oklahoma Water Resources Board

FY 21 Revenues and Expenses through September 30, 2020

		Budgeted	Expended	Balance	Percentage Remaining	
Revenues	General Revenue					
	1	FY 20 Appropriation	3,994,610	938,786	3,055,824	76%
		Total General Revenue	3,994,610	938,786	3,055,824	76%
	Revolving Funds					
	2	Drillers Indemnity Fund	50,000	0	50,000	100%
	3	OWRB Revolving Fund	3,403,033	553,804	2,849,229	84%
	5	Revolving Fund	706,319	141,999	564,320	80%
	6	Drillers Regulation Fund	20,000	0	20,000	100%
	7	Water Infrastructure Dev. Fund (OCWP)	3,083,889	326,663	2,757,226	89%
	8	USGS Cooperative Agreement	301,300	0	301,300	100%
	9	DW Loan Administration Fund	1,171,348	77,655	1,093,693	93%
	10	CW Loan Administration Fund	2,099,983	346,140	1,753,843	84%
11	CW Loan Fund	400,000	0	400,000	100%	
	Total Revolving Funds	11,235,872	1,446,260	9,789,612	87%	
	Federal Funds					
12	Federal Fund	2,614,011	183,040	2,430,971	93%	
	Total Federal Funds	2,614,011	183,040	2,430,971	93%	
	Total Funding	17,844,493	2,568,086	15,276,407	86%	
Expenses		Budgeted	Expended	Balance	Percentage Remaining	
	13	Salary Expense	6,468,465	1,548,010	4,920,455	76%
	14	Insurance	1,232,946	267,757	965,189	78%
	15	FICA and Retirement	1,576,136	368,045	1,208,091	77%
	16	Professional Services	5,667,187	189,898	5,477,289	97%
	17	Flexible Benefits	15,993	1,647	14,346	90%
		Total Personal Services	14,960,727	2,375,356	12,585,371	84%
	18	Travel Expense	399,982	22,738	377,244	94%
	19	Administrative Expense	1,236,691	163,510	1,073,181	87%
	20	Furniture and Equipment Expense	291,441	6,481	284,960	98%
21	Intra Inter Agency Payments	955,652	0	955,652	100%	
	Total Operating Expenses	2,883,766	192,729	2,691,037	93%	
	Total Expenditures	17,844,493	2,568,086	15,276,407	86%	

Percent of FY Remaining 75%

2. FINANCIAL ASSISTANCE DIVISION

October 20, 2020

OKLAHOMA WATER RESOURCES BOARD
 Emergency Grant Program
 Priority List

9/28/2020

\$339,755.51

Priority Ranking	Priority Points	Date Requested	Grant Number	Applicant	County	Project Type	Amount Recommended	
1	63	09/22/2020	FAP-21-0002-G	Boynton Public Works Authority	Muskogee	Efficiency	\$85,000.00	+
							Total Requests:	\$85,000.00

+ Recommended for approval when funds available

**WATER RESOURCES FUND
EMERGENCY GRANT ACCOUNT
September 30, 2021**

Beginning Balance, 9/1/2020		\$ 1,078,953.37
<u>Income:</u>		
Interest Earnings	1,751.33	
Reserve Earnings		
Grant Refunds:		
Returned Grant Funds		
Total Income	1,751.33	1,751.33
 <u>Grants Funded:</u>		
Total Grants Funded		-
Ending Balance, 8/31/2020		1,080,704.70
Funds obligated for approved grants		(239,197.86)
Total of grants recommended for approval		(85,000.00)
Total unobligated funds available for grants		\$ 756,506.84

EMERGENCY GRANT APPLICATION
RECOMMENDED FOR APPROVAL

APPLICANT: Boynton Public Works Authority
COUNTY: Muskogee

DATE RECEIVED: 09/22/2020
APPLICATION NUMBER: FAP-21-0002-G

Amount Requested: \$85,000.00

Amount Recommended: \$85,000.00

PROJECT DESCRIPTION: The Town of Boynton purchases water from the town of Haskell who buys water from Muskogee. Over the past few years Muskogee has cut back on chlorination to limit the production of disinfectant byproducts formed by chlorination. By the time the water reaches Boynton (10 miles or so) the water does not always meet chlorine requirements. The proposed project is to construct a chlorination station near Boynton’s connection to Haskell’s line. The total estimated cost of the project is \$100,000 which will be funded with the requested Emergency Grant of \$85,000 and local funds of \$15,000.

Priority Ranking		Priority Points
Emergency Ranking 2 (Maximum: 50 points)		<u>40</u>
WATER AND SEWER RATE STRUCTURE (Maximum: 13 points)		
Water rate per 5,000 gal/month: \$ 71.00	() Flat rate -3	
Sewer rate per 5,000 gal/month: \$ 25.00	() Decreasing Block -2	
Total \$ 96.00	() Uniform 0	<u>12</u>
<u>10</u> points	(x) Increasing Block +2	
	() Sales tax (W/S) +1	
INDEBTEDNESS PER CUSTOMER (Maximum: 10 points)		
Total Indebtedness: \$ 19,983.00		
Monthly Debt Payment: \$ 245.00		<u>0</u>
Number of Customers: 197		
Monthly Payment Per Customer: \$ 1.25		
LOCAL PARTICIPATION (Maximum 10 points)		
From Reserves: \$ 15,000.00		
Contribution from Loan: \$ 0.00		<u>1</u>
% of Project Local Funded: 15%		
MEDIAN HOUSEHOLD INCOME \$ 31,250.00	(Maximum: 10 points)	<u>6</u>
ABILITY TO FINANCE PROJECT (Maximum: 12 points)		
FP = $\frac{(\$85,000.00)}{(197)}$	$\frac{(0.0710)}{(12)}$ = \$ 2.55	<u>6</u>
AMOUNT OF GRANT REQUESTED (Maximum: 10 points)		
AR = \$85,000.00		<u>-2</u>
REQUEST NUMBER <u>1</u>		<u>0</u>
BENEFIT OF PROJECT TO OTHER SYSTEMS	No	<u>0</u>
TOTAL PRIORITY POINTS		<u>63</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF GRANT APPLICATION)
NO. FAP-21-0002-G IN THE NAME OF THE)
BOYNTON PUBLIC WORKS AUTHORITY,)
MUSKOGEE COUNTY, OKLAHOMA.)

**PROPOSED
ORDER APPROVING GRANT APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board on the 20th day of October 2020. The Board finds that since the application for this grant has received a priority ranking of 63 points under Chapter 50 of the Board's Rules and that since sufficient funds are available in the Emergency Grant Account of the Water Resources Fund, the grant application for an amount not to exceed \$85,000.00 should be approved to be advanced for the following purpose and subject to the following conditions:

Purpose: The project shall consist of constructing a chlorination station near Boynton's connection to Haskell's line, as well as other related construction and necessary appurtenances, as more fully described in the engineering report included in applicant's grant application.

Conditions:

1. The amount of the grant will be based on 85% of the actual total eligible cost of the project. The amount of the grant shall not exceed \$85,000.00.
2. Grant funds shall be deposited in a separate account with a federally insured financial institution.
3. Applicants who have raised water and/or sewer rates resulting in an advancement in position of priority for assistance shall not modify those rates after receipt of the grant without the prior written consent of the Board, unless such modification would not result in a change in position of priority.
4. The applicant shall fully document disbursement of grant funds as required by the Board. Further, applicant shall maintain proper books, records, and supporting documentation, and make the same available for inspection by the Board. Disbursement of grant funds without supporting documentation shall be considered unauthorized expenditure of grant funds.
5. The applicant shall return any unexpended grant funds to the Board within thirty (30) days of completion of the project or within thirty (30) days from the applicant's receipt of all invoices, whichever is later.

6. The applicant shall return or otherwise pay to the Board, any grant funds expended for unauthorized or unallowable purposes. Authorized purposes are those which are necessary for the completion of the project described in the grant application, which application is incorporated by reference herein, or which are necessary for the project as approved, if the project is different from that described in the application. Any funds returned by the applicant under this paragraph shall bear interest at the maximum rate allowed by law. The applicant shall direct to the Board any and all questions regarding whether an expenditure is authorized.
7. Furthermore, prior to and during the construction period, Boynton Public Works Authority is required to comply with the requirements of all applicable federal and state statutory provisions and all Oklahoma Water Resources Board rules, regulations and grant policies.

SO ORDERED this 20th day of October 2020, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

(SEAL)

Reviewed by:

_____/s/
Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Municipal Authority of the City of Bristow, Oklahoma, Creek County

Loan Application No.: ORF-21-0030-CW
 Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$9,100,000.00

Interest Rate: The CWSRF Loan shall bear a fixed interest rate to be determined prior to loan closing plus an administrative fee of 0.5% per annum, all on the outstanding principal balance of the loan.

Payment Term: Interest, administrative fee, and principal payments shall be made on a semi-annual basis. The applicant shall commence principal repayment no later than one (1) year following Project completion and the maturity of the loan shall be no later than twenty (20) years following the date the Project is completed.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, wastewater, and sanitation systems, a 4% sales tax, and may include a mortgage on the applicant's water and wastewater systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) expand the existing wastewater treatment plant, which includes adding new sequential batch reactors, ultraviolet disinfection, headworks, a lab and control building, a new control system, along with the installation of a solid state meter system, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$9,100,000.00	Project	\$8,912,500.00
		Bond Counsel	93,500.00
		Financial Advisor	93,500.00
		Trustee Bank	500.00
Total	<u>\$9,100,000.00</u>	Total	<u>\$9,100,000.00</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-21-0030-CW IN THE NAME OF)
THE MUNICIPAL AUTHORITY OF THE CITY OF BRISTOW, OKLAHOMA)
CREEK COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of October, 2020.

WHEREAS, The Municipal Authority of the City of Bristow, Oklahoma (the "Applicant") has made its Application for Funding No. ORF-21-0030-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-21-0030-CW in the name of The Municipal Authority of the City of Bristow, Oklahoma be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) expand the existing wastewater treatment plant, which includes adding new sequential batch reactors, ultraviolet disinfection, headworks, a lab and control building, a new control system, along with the installation of a solid state meter system, all related appurtenances (the "Project"), and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$9,100,000.00. The Applicant shall pay interest on the loan at a fixed rate to be determined prior to closing plus an administrative fee at the rate of 0.5% per annum, all on the outstanding balance of disbursed loan proceeds. Interest, administrative fee, and any principal payments shall be made on a semi-annual basis. The Applicant shall commence principal repayment no later than one (1) year following Project completion, and the maturity of the loan shall be no later than twenty (20) years following the date the Project is completed.

ORDER APPROVING LOAN APPLICATION

The Municipal Authority of the City of Bristow, Oklahoma
ORF-21-0030-CW

2. The loan shall be secured with a lien on the revenues of the Applicant's water, wastewater, and sanitation systems, a 4% sales tax, and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of October, 2020, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

(SEAL)

Reviewed By:

/s/
Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Oklahoma City Water Utilities Trust, Oklahoma County

Loan Application No.: FAP-21-0003-L
 State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$60,000,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the Applicant's water and sewer system and may include a mortgage on the Applicant's water and sewer systems and other real property.

Purpose: The Applicant will utilize the loan proceeds to: (i) refinance bonds originally issued in 2011 to fund several sewer and water projects throughout the system, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$52,690,000.00	Refinance	\$56,664,693.00
Reserve Balance	4,478,612.50	OWRB Costs of Issuance	503,919.50
Total	<u><u>\$57,168,612.50</u></u>	Total	<u><u>\$57,168,612.50</u></u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-21-0003-L IN THE NAME OF)
OKLAHOMA CITY WATER UTILITIES TRUST)
OKLAHOMA COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of October, 2020.

WHEREAS, Oklahoma City Water Utilities Trust (the "Applicant") has made its Application for Funding No. FAP-21-0003-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2011, Sections 1085.31 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-21-0003-L in the name of the Oklahoma City Water Utilities Trust be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) refinance bonds originally issued in 2011 to fund several sewer and water projects throughout the system, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$60,000,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

ORDER APPROVING LOAN APPLICATION
Oklahoma City Water Utilities Trust
FAP-21-0003-L

2. The loan shall be secured with a lien on the revenues of the Applicant's water and sewer systems and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of October, 2020, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

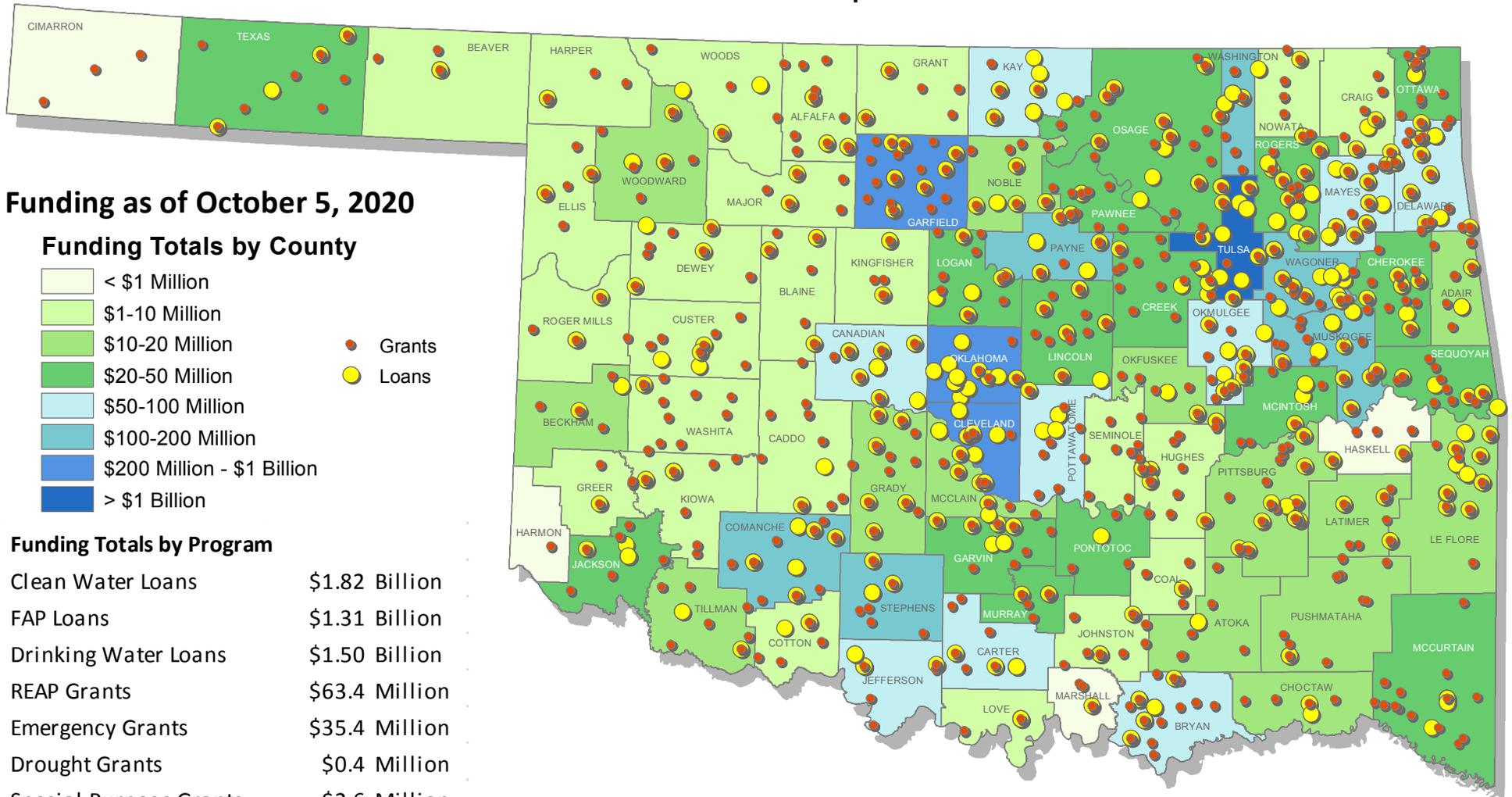
(SEAL)

Reviewed By:

/s/
Joe Freeman, Chief
Financial Assistance Division

Financial Assistance Division

Loan and Grant Recipient Status



Funding as of October 5, 2020

Funding Totals by County



Funding Totals by Program

Clean Water Loans	\$1.82 Billion
FAP Loans	\$1.31 Billion
Drinking Water Loans	\$1.50 Billion
REAP Grants	\$63.4 Million
Emergency Grants	\$35.4 Million
Drought Grants	\$0.4 Million
Special Purpose Grants	\$2.6 Million
TOTAL	\$4.73 Billion
TOTAL SAVINGS	\$1.6 Billion

3.C. SUMMARY DISPOSITION AGENDA ITEMS

FINANCIAL ASSISTANCE DIVISION

October 20, 2020

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-20-0017-DW IN THE NAME OF)
GEARY UTILITIES AUTHORITY)
BLAINE COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING EXTENSION
OF TIME FOR OBLIGATION OF FUNDS**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of October, 2020. The Board finds as follows:

1. On October 15, 2019, the Board approved a \$100,000.00 loan to the Geary Utilities Authority to provide funds to install a 4-inch water line, all related appurtenances, and pay related costs of issuance. The Board's October 15, 2019 Order (the "Order") specified various purposes and conditions of the loan.

2. In the Order, the Board stipulated that funds would be obligated for the loan for a period of one (1) year from the date of October 15, 2019 unless an extension of time is requested by the Authority and approved by the Board.

3. The Authority has requested approval of an additional extension of time for obligation of funds.

4. Good cause for this request has been shown, and the Board is agreeable to approving an extension of time for obligation of funds.

IT IS THEREFORE ORDERED that the requested extension of time for obligation of funds shall be approved, with said extension to expire on October 20, 2021 or the date of loan closing, whichever occurs earlier.

IT IS FURTHER ORDERED that except for the extension of time specified herein, all other terms, purposes and conditions specified in the Board's Order shall remain in full force and effect.

IT IS SO ORDERED this 20th day of October, 2020, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

(SEAL)

Reviewed By:

/s/

Joe Freeman, Chief
Financial Assistance Division

3. SUMMARY DISPOSITION AGENDA ITEMS

D. Contracts and Agreements Recommended for Approval

October 20, 2020

AGENDA ITEM 3D(1)

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

WITH:	Gold Systems, Inc.
PURPOSE:	To extend the contract end date and the statement of work end date.
AMOUNT:	No cost
TERM:	09/30/2020 through 09/30/2021

Contract Amendment

Client Oklahoma Water Resources Board		Gold Systems Contract ENV2017-10 SOW: GSSOWENV2017-10
Phone number 405.530.8998	Effective Date Client Acceptance/Signature Date	Termination Date 09/30/2021
Client Address 3800 N Classen Blvd, Oklahoma City, OK 73118		

THIS AMENDMENT to the AWQMS Professional Service Agreement ENV2017-10 by and between Oklahoma Water Resources Board (Client) and Gold Systems, Inc. (Vendor) documents that Client and Vendor (the Parties) have mutually agreed to change the agreement as follows:

- The Parties hereby amend the Contract End Date as follows:

Current:	9/30/2020
Revised:	9/30/2021
- The Parties hereby amend the Statement of Work End Date as follows:

Current:	9/30/2020
Revised:	9/30/2021

This contract amendment will be effective and become an integral part of the Professional Service Agreement upon signature of an authorized representative of both parties. This amendment supersedes any and all previous or contemporaneous agreements and understandings with respect to the subject matter of this amendment (provided that the Agreement remains in full force and effect).

ACKNOWLEDGED AND ACCEPTED:

The undersigned have read, understand, and agree to the terms and conditions herein, including any attachments hereto.

For and on behalf of Client:	For and on behalf of GOLD SYSTEMS:
By:	By: 
Printed Name/Title:	Printed Name/Title: Dave Wilcox, CEO
Date:	Date: 08/11/2020

AGENDA ITEM 3D(2)

PROFESSIONAL SERVICES AGREEMENT

WITH: Freese and Nichols, Inc.

PURPOSE: To provide engineering services in connection with
OWRB's Oklahoma Comprehensive Water Plan

AMOUNT: Not to exceed \$250,000.00

TERM: Through 09/30/2021

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement “Agreement”, is made and entered into as of the _____ day of October, 2020 (“Effective Date”), by and between the Oklahoma Water Resources Board (“BOARD”), with its principal place of business at 3800 North Classen Boulevard, Oklahoma City, OK and Freese and Nichols, Inc. (“CONTRACTOR”), 6303 North Portland Avenue, Suite 100, Oklahoma City, Oklahoma.

- 1. Scope of Work.** During the term of this Agreement CONTRACTOR shall furnish Engineering Services in connection with the BOARD’s Oklahoma Comprehensive Water Plan (“Project”), as described in the Scope of Work attached hereto as Attachment A.
- 2. Term.** The term of this Agreement shall be from the Effective Date through September 30, 2021, unless otherwise terminated as provided herein or extended by mutual written agreement of the parties. The Agreement may be renewed at the same terms and conditions for up to three (3) additional one year periods not to extend beyond September 30, 2024.
- 3. Independent Contractor.** During the term of this Agreement, CONTRACTOR shall act at all times as an independent contractor and shall have the responsibility for and control over the details and means of performing the work. CONTRACTOR acknowledges it has the duty to provide continuous, adequate supervision of its personnel, consultants and subcontractors, if any. Nowhere in this Agreement shall it be construed or implied that CONTRACTOR or any of its consultants, subcontractors, affiliates, employees, agents, or representatives are employees, representatives, or agents of BOARD. CONTRACTOR shall be subject to the direction of BOARD only with respect to the scope of the work and the general results required. CONTRACTOR shall not make any commitment nor incur any charge or expense in BOARD’s name without the prior written approval of BOARD.
- 4. Payment.** The total amount to be paid by BOARD to CONTRACTOR under this Agreement shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). Pursuant to 74 O.S. § 85.44B, invoices will be paid in arrears after products have been delivered or services provided. Interest on late payments made by BOARD is governed by 62 O.S. § 41.4a and 62 O.S. § 41.4b. Invoices will be prepared in accordance with CONTRACTOR's standard invoicing practices and will be submitted to BOARD by CONTRACTOR, unless otherwise agreed in writing. Each invoice shall be accompanied by all supporting documentation as required by BOARD, including, but not limited to, an updated progress schedule.

Payment of undisputed invoices is due and payable within forty-five (45) days of BOARD’S receipt of a complete and accurate invoice. Invoices must be received by the 5th of the month following the month for which the work is being billed. In the event payment of undisputed amounts has not been made within this time period, CONTRACTOR may, after giving seven (7) days written notice to BOARD, suspend services under this Agreement until CONTRACTOR has been paid in full all amounts due for services accepted, expenses, and other related charges. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

In the event of any termination, CONTRACTOR will be entitled to invoice BOARD and will be paid in full for all services accepted and all reasonable reimbursable expenses incurred through the effective date of termination.

5. Confidentiality.

5.1 CONTRACTOR acknowledges that BOARD is a public entity subject to the provisions of the Oklahoma Open Records Act. CONTRACTOR acknowledges that it has been or may be exposed to confidential or proprietary information, oral or written (“Confidential Information”), including, but not limited to, customer information, financial and business information (including, without limitation, revenues, expenses, taxes and contracts), partner relationships, patents, trade secrets, technical processes, formulae related to products and services, pricing and any device, technique or compilation of information used in BOARD business. CONTRACTOR agrees that it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees having a “need to know.” CONTRACTOR may only disclose Confidential Information to third parties upon prior written approval by BOARD, and shall comply with BOARD approval in making such disclosure. CONTRACTOR shall use at least the same degree of care in safeguarding Confidential Information as it uses in safeguarding its own confidential information, but in no event less than reasonable care. Nothing is intended to or shall grant CONTRACTOR an ownership right, a license or other right of any nature to use Confidential Information except as expressly provided herein.

5.2 The disclosure provisions of Section 5.1 shall not apply to information that a) CONTRACTOR had in its possession prior to disclosure by BOARD; b) becomes public knowledge through no fault of CONTRACTOR; c) CONTRACTOR lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; or d) is required to be disclosed by law or court order.

5.3 CONTRACTOR acknowledges, understands, and agrees that the results generated by CONTRACTOR hereunder shall constitute the sole, separate, and exclusive property of BOARD, and that neither CONTRACTOR, nor any of CONTRACTOR’s officers, agents, employees or subcontractors shall disclose the results obtained in the fulfillment of this Agreement without the prior consent of BOARD.

6. **Subcontractors.** CONTRACTOR may retain subcontractors to carry out the Services outlined in this Agreement. BOARD reserves the right to approve all subcontractors prior to their use by CONTRACTOR. There shall be no relationship, fiduciary or otherwise, between BOARD and the subcontractors hired by CONTRACTOR. CONTRACTOR shall ensure that all subcontractors retained by CONTRACTOR acknowledge this Agreement, including the confidentiality provisions, in writing.

7. Warranties.

7.1 CONTRACTOR agrees to perform Services with the same degree of care, skill and diligence as is ordinarily possessed and exercised in the same profession under similar

circumstances and shall ensure that its subcontractors, if any, have the level of skill in the area commensurate with the requirements of the scope of services to be performed.

7.2 If it is shown within twelve (12) months of completion of the Services that CONTRACTOR or its subcontractors committed an error in the performance of the Services or that normal standards of care and diligence have not been met, and BOARD promptly notifies CONTRACTOR of such an error or deficiency, CONTRACTOR shall perform corrective Services at no cost to BOARD as may be necessary to remedy the error or deficiency. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, BOARD may have the corrective Services performed by a third party, and all costs, losses, and damages arising out of or relating to such correction will be paid by CONTRACTOR.

8. **Indemnification/Liability.**

8.1 CONTRACTOR hereby releases BOARD and shall fully protect, defend, indemnify and hold harmless BOARD, its officers, members, employees, agents and representatives from and against any and all claims, costs (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature to the extent caused by the willful misconduct or negligent, reckless or tortious acts or omissions of CONTRACTOR in the performance of its obligations under this Agreement. Notwithstanding the foregoing, and as allowed under the laws of the State of Oklahoma, for any claim alleging CONTRACTOR's negligent performance of professional services, CONTRACTOR's obligations regarding BOARD's defense under this paragraph include only the reimbursement of BOARD's reasonable defense costs incurred to the extent of CONTRACTOR's negligence as expressly determined by a final judgment, arbitration, award, order, settlement, or other final resolution.

8.2 Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to BOARD under Oklahoma law. Notwithstanding the foregoing, and as allowed under the laws of the State of Oklahoma, CONTRACTOR shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental or consequential damages to the BOARD or any third party arising out of breach of contract, termination, or for any other reason whatsoever. Additionally, CONTRACTOR shall not be responsible for acts and decisions of third parties, including governmental agencies, other than CONTRACTOR's subconsultants, that impact project completion and/or success.

9. **Insurance.**

9.1 For the duration of this Agreement, CONTRACTOR shall, at his own expense, procure and maintain insurance and shall require all subcontractors of all tiers to provide and maintain insurance of the type and with limits as set forth below, on all of its operations, and with companies authorized to do business in the State of Oklahoma, or with companies acceptable to BOARD, as follows:

- (a) **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than \$500,000 each accident for bodily injury by accident, with a \$500,000 policy limit for bodily injury by disease, and \$500,000 each employee for bodily injury by disease.
- (b) **General Liability Insurance.** Commercial General Liability insurance covering all operations by or on behalf of CONTRACTOR providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
- (1) premises and operations liability;
 - (2) products and completed operations liability;
 - (3) contractual liability insuring the obligations assumed by CONTRACTOR in this Agreement;
 - (4) broad form property damage (including completed operations);
 - (5) X.C.U. Coverage – If the Agreement requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include coverage commonly referred to as X.C.U. for explosion, collapse and underground hazards;
 - (6) personal injury liability; and

The limits of liability shall not be less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage);
\$1,000,000 for Personal Injury Liability;
\$2,000,000 Aggregate for Products-Completed Operation; and
\$2,000,000 General Aggregate. BOARD, its officers, members and employees shall be named Additional Insureds.

- (c) **Automobile Liability Insurance** (Bodily Injury and Property Damage Liability) including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 Combined Single Limit for each accident. CONTRACTOR's Automobile Liability insurance policy shall include coverage for Automobile Contractual Liability.
- (d) **Professional Liability.** Professional Liability insurance including errors and omissions coverage in an amount of not less than \$1,000,000 per occurrence (or claims made) and aggregate for licensed professional consultants.

CONTRACTOR shall verify its subcontractors' compliance with the requirements of sections (a) through (d), and cause their certificates of insurance to be provided to CONTRACTOR, and upon request, to be made available to BOARD.

9.2 Any deductible or self-insured retention greater than \$25,000 per claim must be declared to and approved by BOARD. Any and all deductibles or self-insurance retentions in the foregoing insurance policies shall be assumed by and be for the account of, and at the sole risk of CONTRACTOR and its subcontractors.

9.3 Certificates of insurance shall be furnished by CONTRACTOR to BOARD before any Services are commenced hereunder by CONTRACTOR. The certificates of insurance shall provide that there will be no cancellation, reduction or modification of coverage without thirty (30) days' prior written notice to BOARD. On all policies except for Professional Liability and Workers' Compensation, the certificates shall also contain a specific endorsement adding the required entities as additional insureds, as well as specifically stating that all coverage furnished by CONTRACTOR is primary, and that any insurance held by BOARD is excess and non-contributory. If CONTRACTOR does not comply with this section, BOARD may, in addition to any other remedies it may have, terminate this Agreement, subject to any provision of this Agreement. Alternatively, BOARD may, at its option, provide insurance coverage to protect BOARD and charge CONTRACTOR for the cost of that insurance. The required insurance shall be subject to the approval of BOARD, but any acceptance of insurance certificates by BOARD shall not limit or relieve CONTRACTOR of the duties and responsibilities assumed by it under this Agreement.

9.4 The insurance coverage required within this entire section shall not minimize, limit, nor eliminate CONTRACTOR's responsibility for any uninsured or uncovered claims, losses, or expenses occurring during or after completion of the Services. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR, and any approval of said insurance by BOARD, or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liability and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to the provisions concerning indemnification. BOARD reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the insurance requirements outlined above.

10. Representatives and Notice.

10.1 BOARD may appoint a representative to act as liaison with CONTRACTOR. BOARD'S representative may be changed upon prior written notice to CONTRACTOR. All notices necessary or required under this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid and return receipt requested, as follows:

If to THE BOARD:	Oklahoma Water Resources Board Attn: Owen Mills 3800 North Classen Boulevard Oklahoma City, Oklahoma 73118 Phone: (405)530-8800
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If to CONTRACTOR: Freese and Nichols, Inc.
Attn: Tricia Hatley/Jeremy Rice
6303 North Portland Ave, Suite 100
Oklahoma City, OK 73112
Phone: (405)607-7065/ (918)238-1930

10.2 Notice given by personal delivery, overnight delivery, or mail shall be effective upon actual receipt. The parties may change any address to which notice is to be given by giving notice as provided above of such change of address.

11. **Changes in Work.** Subject to Section 14.3, CONTRACTOR shall be entitled to reasonable compensation for additional work requested by BOARD in writing or for changes in the manner or method of work performance not solely caused by CONTRACTOR and as approved by BOARD in writing. An “Amendment for Professional Services” is the instrument that shall be signed by authorized representatives of the CONTRACTOR and BOARD on or after the Effective Date of the Agreement to authorize any waiver, amendment, modification, addition, deletion, or revision in the Agreement. BOARD shall not be liable for payment of any additional work performed by CONTRACTOR not previously authorized by BOARD in writing.

12. **Force Majeure.** Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.

13. **Dispute Resolution.**

13.1 If a dispute arises between the parties relating to this Agreement, the following procedure shall be followed:

A. The parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the parties thereunder or be deemed a waiver by a party hereto of any remedies to which such party would otherwise be entitled thereunder unless otherwise agreed to by the parties in writing.

B. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.

C. The parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation

period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the parties.

13.2 The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days. The substantive and procedural law of the State of Oklahoma shall apply to the proceedings. If the parties are not successful in resolving the dispute through mediation, then the parties shall be free to litigate the matter.

14. Appropriation of Funds.

14.1 Performance of BOARD'S obligations under this Agreement is expressly subject to appropriation of funds by the Oklahoma Legislature. In the event funds are not appropriated in whole or in part sufficient for performance of BOARD'S obligations under this Agreement then this Agreement shall thereafter become null and void by operation of law, and BOARD shall thereafter have no liability for compensation or damages to CONTRACTOR in excess of BOARD'S authorized appropriation for this Agreement or the applicable spending limit, whichever is less. BOARD shall notify CONTRACTOR as soon as reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable.

14.2 CONTRACTOR and BOARD agree and acknowledge as a part of this Agreement that no amendment that requires additional compensable work to be performed under this Agreement shall be issued by BOARD unless funds are available to pay such additional costs, and CONTRACTOR has been given written assurance by BOARD that lawful appropriations to cover the cost of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement.

15. Termination.

15.1 The following conduct shall be deemed to be a default of CONTRACTOR under this Agreement and shall constitute cause for termination of this Agreement by BOARD:

- a) The Services under this Agreement are abandoned by CONTRACTOR; or
- b) The Agreement is assigned by CONTRACTOR without the written consent of BOARD; or
- c) CONTRACTOR is adjudged bankrupt; or
- d) A general assignment of CONTRACTOR's assets is made for the benefit of its creditors; or
- e) A receiver is appointed for CONTRACTOR or any of its property; or
- f) At any time BOARD certifies in writing that the performance of the Services under this Agreement is being unnecessarily delayed, that CONTRACTOR is violating any of the material conditions of this Agreement or that CONTRACTOR is executing the same in bad faith or otherwise not in accordance with the terms of said Agreement; or

- g) The Services are not substantially completed within the time named for its completion.

15.2 Upon default, BOARD may serve written notice upon CONTRACTOR of BOARD's intention to terminate this Agreement. If CONTRACTOR agrees to corrective action, then CONTRACTOR will have an additional five (5) calendar days to develop a corrective action plan acceptable to BOARD for completion of the work. If CONTRACTOR fails to complete the previous two activities within the prescribed timeframes, or if CONTRACTOR fails to complete the work pursuant to the corrective action plan, then BOARD may terminate this Agreement without further notice to CONTRACTOR. In the event of such termination, BOARD may take over and prosecute the work to completion, by contract or otherwise. CONTRACTOR shall be liable to BOARD for all reasonable costs sustained by BOARD by reason of such prosecution and completion.

15.3 This Agreement may be terminated without cause by BOARD upon thirty (30) days advance written notice to CONTRACTOR. CONTRACTOR shall not be paid for any Services performed after the date of termination, unless otherwise mutually agreed upon by the parties in writing.

15.4 Notwithstanding the foregoing, either party may terminate this agreement prior to the end of any fiscal year of BOARD for any reason, with or without cause, by providing 30 days written notice to the other party. If no such notice is received on or prior to June 1 of any term year, the Agreement shall be deemed to have been renewed for an additional fiscal year, subject to the rights to terminate this Agreement as set forth above.

16. Copyrights/Intellectual Property.

16.1 CONTRACTOR agrees that BOARD will have extensive input in the process of producing all materials associated with this Agreement. Therefore, CONTRACTOR agrees and acknowledges that all materials produced as a result of this Agreement (e.g. video, artwork, brochures, covers, labels, writings, designs, models, etc.) that have been or will be used by or paid for by BOARD, pursuant to this Agreement is a work made for hire as that term is defined by the United States copyright laws, but within full control of BOARD, and that BOARD is the sole owner of any work product which CONTRACTOR has made or will make under this Agreement, including but not limited to all intellectual property rights in said work product under copyright, patent, trademark, trade secret and other applicable law, and that compensation to CONTRACTOR for acceptance and acknowledgment of this Agreement is included in any compensation or price whatsoever paid to CONTRACTOR. It is the intent of the parties that THE BOARD shall have full ownership of the work product produced pursuant to this Agreement upon payment in-full by THE BOARD to CONTRACTOR.

16.2 CONTRACTOR hereby warrants to BOARD that it will take no action to copyright, patent, trademark, or trade secret any and all of the work product described in this Agreement.

16.3 In the event this Agreement is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this Agreement provision shall act as an irrevocable disclaimer by CONTRACTOR in favor of BOARD and as an irrevocable assignment to BOARD by CONTRACTOR of any and all intellectual property rights in CONTRACTOR's work product, including, but not limited to, copyright, patent, trademark and trade secrets, including, but not limited to, all rights in perpetuity. Under this irrevocable assignment, CONTRACTOR hereby assigns to BOARD the sole and exclusive right, title, and interest in and to CONTRACTOR's work product, in any and all countries. It is CONTRACTOR's specific intent to assign all right, title, and interest whatsoever in any media and for any purpose, to BOARD, including all rights of renewal and extension. To that end, CONTRACTOR agrees to execute and deliver all necessary documents requested by BOARD in connection therewith and appoints BOARD as CONTRACTOR's agent and attorney-in-fact to act for and in CONTRACTOR's behalf and stead to execute, register and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by CONTRACTOR. Further, the parties expressly agree that the provisions of this paragraph shall be binding upon the parties and their legal representatives, successors, and assigns.

Notwithstanding any other provision of this Agreement between CONTRACTOR and BOARD or any provision of the scope of work, work assignments, work authorizations, or any amendment issued hereunder, all of CONTRACTOR's pre-existing or proprietary information, documents, templates, professional seals, materials, computer programs, or software not developed specifically pursuant to this Agreement shall remain the exclusive property of CONTRACTOR. In addition, CONTRACTOR may keep and maintain one record copy of all materials produced as a result of the Services.

17. **Non-Discrimination.** CONTRACTOR shall comply with all federal and state nondiscrimination laws and have an equal employment opportunity policy. CONTRACTOR shall also comply with BOARD's Equal Employment Opportunity/Affirmative Action policies regarding nondiscrimination and harassment, which includes sexual harassment, in the conduct of its business while on BOARD's property and/or interacting with BOARD's employees.

18. **Audit.**

(A) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. CONTRACTOR agrees that any pertinent State of Oklahoma or Federal agency will have the right to examine and audit all records relevant to execution and performance of the Agreement.

(B) The CONTRACTOR shall retain records relative to the Agreement for the duration of the Agreement and for a period of three years following completion and/or termination

of the Agreement. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records shall be maintained for three years from the date that all issues arising out of the action are resolved, or until the end of the three year retention period, whichever is later.

19. **Severability.** If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.
20. **Assignment.** There shall be no assignment of the rights or obligations contained in this Agreement by either party without the prior written consent by the other party, and any such assignment shall be null and void. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than BOARD and CONTRACTOR.
21. **Compliance with Laws and Regulations.** This Agreement and the rights and obligations of the parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules and regulations of any duly constituted governmental body or official having jurisdiction.
22. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Oklahoma without reference to conflicts of laws. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising there under shall be in the District Court in and for Oklahoma County, Oklahoma, and, if necessary for exclusive federal questions, the United States District Court for the Western District of Oklahoma.
23. **Survival.** The provisions of this Agreement with respect to confidentiality, warranties and indemnification shall survive the termination of this Agreement.
24. **Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Facsimile copies of signatures shall be permitted for purposes of the binding nature of this Agreement.
25. **Time of the Essence.** The parties agree that time is of the essence and performance of the Services under this Agreement shall be developed, completed and implemented according to the Scope of Work. Any delays in performance within the control of CONTRACTOR, its consultants, subcontractors, employees or agents shall not be cause for extending the date for completion of the Services.
26. **BOARD-Provided Information and Services.** The BOARD shall furnish CONTRACTOR available studies, reports and other data pertinent to CONTRACTOR's services; obtain or authorize CONTRACTOR to obtain or provide additional reports and data as required; furnish to CONTRACTOR services of others required for the performance of CONTRACTOR's services hereunder, and CONTRACTOR shall be

entitled to use and rely upon all such information and services provided by BOARD or others in performing CONTRACTOR's services under this Agreement.

27. **Estimates and Projections.** In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for potential projects, CONTRACTOR has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, CONTRACTOR makes no warranty that BOARD's actual project costs, financial aspects, economic feasibility, or schedules will not vary from CONTRACTOR's opinions, analyses, projections, or estimates.

28. **Third Parties.** The services to be performed by CONTRACTOR are intended solely for the benefit of the BOARD. No person or entity not a signatory to this Agreement shall be entitled to rely on CONTRACTOR's performance of its services hereunder, and no right to assert a claim against CONTRACTOR by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or the performance of CONTRACTOR's services hereunder.

29. **Entire Agreement.** This Agreement with attachments constitutes the entire agreement between the parties and supersedes all previous written or oral communications, understandings, and agreements between the parties unless specifically stated herein. This Agreement may only be amended by a written agreement signed by both parties. Email and all other electronic (including voice) communications from BOARD in connection with this Agreement are for informational purposes only. No such communication is intended by BOARD to constitute either an electronic record or an electronic signature, or to constitute any agreement by BOARD to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

In witness whereof, the representatives of each party hereto certifies via execution below that they are duly authorized to commit their organization to this Agreement in its entirety:

OKLAHOMA WATER RESOURCES BOARD

CONTRACTOR

By: _____

Name: Robert L. Stallings

Title: Chairman

Date: _____

ATTEST:

Bob Drake
Secretary

By: _____

Name: Tricia H. Hatley

Title: Vice President

Date: _____

By: _____

Name: Jennifer L. Wasinger

Title: Associate

Date: _____

**ATTACHMENT A
SCOPE OF WORK**

**Oklahoma Water Resources Board
On Call Professional Engineering Services**

This Scope of Work describes the work to be performed by Freese and Nichols Inc. (Contractor) and any subcontractors for the Oklahoma Water Resources Board (Board) pursuant to the mutual promises, covenants and conditions contained in the Professional Services agreement between the above named parties dated the _____ day of _____, 2020, in connection with:

Oklahoma Comprehensive Water Plan (“Project”)

PURPOSE

Contractor will provide services in support of the Board’s update of the OCWP and first-ever Oklahoma Flood Plan (OFP), in coordination and consultation with Board staff and other entities performing work on the Project. The purpose of this Scope of Work is to define the services to be provided by Contractor in support of the Project.

CONTRACTOR’S SERVICES

The scope of work includes the following items to support the update of the Oklahoma Comprehensive Water Plan (OCWP) and first-ever Oklahoma Flood Plan (OFP).

1. Develop a stakeholder engagement strategy and facilitate stakeholder meetings to gather input on the OCWP emphasis on infrastructure and identification of infrastructure projects.
2. Document pressing infrastructure needs of water stakeholders and water professionals based on stakeholder feedback.
3. Identify water infrastructure needs over the fifty-year horizon including water, wastewater and flood mitigation infrastructure projects.
4. Develop tools to convey findings of the OCWP and OFP to drill down from state to watershed to local level infrastructure projects.
5. Based on the identified infrastructure needs provide recommendations on potential funding strategies to implement these projects.
6. Assist OWRB staff in the implementation of a virtual Governor’s Water Conference.
7. Develop the Programmatic Workplan (PWP) for Oklahoma’s first Statewide Flood Plan.
8. Provide input on the Programmatic Workplan (PWP) for the OCWP update.
9. Perform technical analysis in support of the OCWP and OFP including modeling, mapping and cost estimating.

10. Other tasks identified that seek to advance the long-term water position of Oklahoma.

Costs for individual Tasks will be mutually agreed upon in writing by the Board and Contractor. Invoices will be submitted monthly reflecting the percent complete of each subtask, along with any other additional documentation for services rendered as required by the Board. Services provided by CONTRACTOR under this Scope of Work will not exceed \$250,000.00 over up to four years, inclusive of all labor, expenses, and any subcontract expenses. The Board may in its sole discretion elect to use none, a portion, or all of the budget defined in the Professional Services Agreement through defined Tasks.

AGENDA ITEM 3D(3)

JOINT FUNDING AGREEMENT

WITH: U.S. Geological Survey ("USGS").

PURPOSE: To provide funding for the Annual Mean Runoff Map for Oklahoma with the Oklahoma-Texas Water Science Center

AMOUNT: OWRB to pay an amount not to exceed \$77,200.00

TERM: 11/01/2020 through 01/31/2022



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Oklahoma Water Science Center
202 NW 66th St, Building 7
Oklahoma City, OK 73116

September 29, 2020

Chris Neel
Oklahoma Water Resources Board
3800 N. Classen Boulevard
Oklahoma City, Oklahoma 73118

Dear Chris:

Enclosed is our standard joint-funding agreement for the Annual mean Runoff Map for Oklahoma with the Oklahoma-Texas Water Science Center, during the period November 1, 2020 through January 31, 2022 in the amount of \$77,200 from your agency. U.S. Geological Survey contributions for this agreement are \$20,000 for a combined total of \$97,200. Please sign and return one signed copy to Julie Murray via email at jamurray@usgs.gov or a mailed hard copy to the address above.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **November 1, 2020**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Shana Mashburn by phone number (405) 664-6557 or email shanam@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed quarterly via Down Payment Request (automated Form DI-1040). Please allow 30-days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Julie Murray at phone number (405) 205-1952 or email at jamurray@usgs.gov.

The results of all work performed under this agreement will be available for publication by the U.S. Geological Survey. We look forward to continuing this and future cooperative efforts in these mutually beneficial water resources studies.

Sincerely,

Timothy H. Raines
Director

Enclosure
21SJFAOK002010

003119

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the November 1, 2020, by the U.S. GEOLOGICAL SURVEY, Oklahoma Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Oklahoma Water Resources Board party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations (per attachment), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$20,000 by the party of the first part during the period November 1, 2020 to January 31, 2022
- (b) \$77,200 by the party of the second part during the period November 1, 2020 to January 31, 2022
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of: \$0

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices>).

Water Resource Investigations

9. Billing for this agreement will be rendered **quarterly**. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Shana Mashburn
Hydrologist
Address: 202 NW 66th Street
Oklahoma City, OK 73116
Telephone: (405) 664-6557
Fax:
Email: shanam@usgs.gov

Customer Technical Point of Contact

Name: Chris Neel
Address: 3800 N. Classen Boulevard
Oklahoma City, Oklahoma 73118
Telephone: (405) 530-8800
Fax:
Email: chris.neel@owrb.gov

USGS Billing Point of Contact

Name: Julie Murray
Budget Analyst
Address: 202 NW 66th Street
Oklahoma City, OK 73116
Telephone: (405) 205-1952
Fax:
Email: jamurray@usgs.gov

Customer Billing Point of Contact

Name: Chrystal Krittenbrink
Legal Assistant
Address: Oklahoma Water Resources Board 3800
N. Classen Blvd
Oklahoma City, OK 73118
Telephone: (405) 530-8801
Fax: (405) 530-8900
Email: Cris.Krittenbrink@owrb.ok.gov

U.S. Geological Survey
United States
Department of Interior

Oklahoma Water Resources Board

Signature

Signatures

By _____ Date: 09/29/2020
Name: Timothy H. Raines
Title: Director

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

3. SUMMARY DISPOSITION AGENDA ITEMS

PLANNING AND MANAGEMENT DIVISION

October 20, 2020

PLANNING AND MANAGEMENT DIVISION
Applications for Temporary Permits to Use Groundwater

October 20, 2020

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
2014-518 2/21/2014	Dee Max & Kimmie Corbin	3	Custer County Rush Springs Sandstone	400 acres Secs. 11 & 12, T15N, R14WIM	Irrigation use 800 a.f.
2020-509 3/26/2020	Pam Chain Living Trust	1	Kingfisher County Loyal Isolated Terrace	140 acres Sec. 10, T16N, R9WIM	Mining use – drilling and primary completion of oil & gas wells 280 a.f.
2020-516 4/20/2020	Noble Research Institute, LLC	1	Carter County Oscar Group	1,027 acres Secs. 4, 8, 9, 16 & 17, T4S, R1EIM	Irrigation use; and Agriculture use 2,054 a.f.

PLANNING AND MANAGEMENT DIVISION
Applications to Amend Temporary Permits to Use Groundwater

October 20, 2020

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
1974-328 7/30/2020	Town of Calera	5*	Bryan County Woodbine Formation	770.4 acres* Secs. 13, 14, 23, 24, 25, 26 & 27, T7S, R8EIM	Municipal use 1,540.8 a.f.*

*The applicant requests to amend their temporary groundwater permit by adding 580.8 acre-feet of groundwater per calendar year (for a total of 1,540.8 acre-feet authorized); adding 290.4 acres to lands dedicated (for total of 770.4 acres dedicated); and adding one well location (for a total of five wells authorized). All other aspects of the permit will remain the same.

**PLANNING AND MANAGEMENT DIVISION
Applications for Regular Permits to Use Groundwater**

October 20, 2020

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
2020-515 4/16/2020	GCC Lender, LLC	5	Oklahoma County Garber-Wellington	272.15 acres Secs. 10 & 11, T13N, R4WIM	Irrigation use (golf course) 544.3 a.f.
2020-525 6/11/2020	Ryan Kimbrel	4	Texas County Ogallala – Panhandle Region	640 acres Sec. 10, T4N, R18ECM	Irrigation use; and Agriculture use 1,280 a.f.
2020-527 7/6/2020	Peter Loewen	2	Texas County Ogallala – Panhandle Region	320 acres Sec. 7, T5N, R12ECM	Irrigation use; and Agriculture use 640 a.f.

PLANNING AND MANAGEMENT DIVISION
Applications for Term Permits to Use Stream Water

October 20, 2020

APP. NO. & DATE FILED	NAME OF APPLICANT	POINTS OF DIVERSION	COUNTY & STREAM SYSTEM	PURPOSE & AMOUNT RECOMMENDED
2019-019 3/21/2019	KOPCAT, LLC	A pond on an Unnamed Tributary to Walnut Creek Sec. 1, T7N, R5WIM	Grady County SS 2-6-1	Mining use – drilling and primary completion of oil & gas wells 464 a.f.
2020-004 2/13/2020	Vinyard, Inc.	One point of diversion on Bitter Creek Sec. 2, T1N, R21WIM	Jackson County SS 1-16	Irrigation of 280 acres 205.7 a.f.

PLANNING AND MANAGEMENT DIVISION
Applications for Regular Permits to Use Stream Water

October 20, 2020

APP. NO. & DATE FILED	NAME OF APPLICANT	POINTS OF DIVERSION	COUNTY & STREAM SYSTEM	PURPOSE & AMOUNT RECOMMENDED
2020-003 2/11/2020	Lacey & Diana Weger	A private pond (Weger farm pond) Sec. 15, T8S, R8EIM	Bryan County SS 1-7	Irrigation of 252 acres (sod farm) 127.5 a.f.
2020-010 7/6/2020	C-4 Land & Cattle, LLC	One point of diversion on Headquarters Creek Sec. 15, T17N, R3EIM	Payne County SS 2-9-1	Irrigation of 140 acres 295.5 a.f.
2020-011 7/13/2020	Yancey Joel & Sheila Gean Kinsch	One point of diversion on a Verdigris Oxbow of the Verdigris River Sec. 1, T18N, R16EIM	Wagoner County SS 2-15-1	Heat exchange – cooling of green house 564 a.f.

PLANNING AND MANAGEMENT DIVISION
Applications to Amend Regular Permits to Use Stream Water

October 20, 2020

APP. NO. & DATE FILED	NAME OF APPLICANT	POINTS OF DIVERSION	COUNTY & STREAM SYSTEM	PURPOSE & AMOUNT RECOMMENDED
2019-032 6/9/2020	Daryl & Kristy Dowd	One point of diversion on Island Bayou* Sec. 15, T8S, R11E1M	Bryan County SS 1-7	Irrigation of 150 acres 150 a.f.

*The Applicant requests to amend their regular stream water permit by changing their point of diversion (for a total of one point authorized). All other aspects of the permit will remain the same.

PLANNING AND MANAGEMENT DIVISION
Applications to Construct, Enlarge, Repair or
Alter Dam and/or Spillway

October 20, 2020

NID. NO. & COUNTY	NAME OF APPLICANT & NAME OF PROJECT	PLANS & SPECS PREPARED BY	HAZARD CLASSIFICATION	LEGAL DESCRIPTION
OK30579	Lacey & Diana Weger	Corby Key, P.E.	High	Sec. 15, T8S, R8EIM
Bryan County	Weger Dam #1	Arrowhead Engineering Co., LLC		

The applicant requests approval for the modification of a high hazard-potential dam that was originally built in 2020. The primary purpose of the dam and reservoir is irrigation. The proposed plan is to modify the dam and spillway to meet high hazard-potential hydraulic requirements. The dam is 30 feet tall. It has a normal impoundment capacity of 229 acre-feet and a maximum impoundment capacity of 544 acre-feet.

**PLANNING AND MANAGEMENT DIVISION
Well Driller and Pump Installer Licensing**

October 20, 2020

DPC NUMBER	NAME OF FIRM	CERTIFIED ACTIVITIES	OPERATORS
New Licenses, Accompanying Operator Certificates and Activities:			
DPC-1000	US Silica	Monitoring wells and geotechnical borings	Jason Quigley OP-2334
New Operators, License Name Change, and/or Activities for Existing Licenses:			
DPC-0353	Grubbs, Hoskyn, Barton & Wyatt, Inc.	Monitoring wells and geotechnical borings	Druie Cannon OP-2335
DPC-0587	J & B Pump & Supply, LLC	Pump installation	Devin Story OP-2336
DPC-0283	Envirotech Engineering & Consulting, Inc.	Monitoring wells and geotechnical borings	Bryan Huckabay OP-2337

spouse who, when she received notice of the hearing, contacted the Board to advise same. During the investigation of the complaint, Board staff observed the obituary associated with Mr. King's death and the home builder who built Mr. Owens' home also advised Board staff of Mr. King's death.

5. Evidence adduced at the hearing proved that the violations were second violations of the same kind. In 2018, King Water Well Drilling was cited for failing to submit a multi-purpose completion report and for failing to install a surface seal on a domestic water well located in Lincoln County, Oklahoma. *See* Exhibit 4. The fine levied was paid, the completion report was filed with the Board, and a proper surface seal was installed.

6. The Hearing Notice for the alleged violations was properly served on Respondent. *See* Exhibit 1. Respondent, or any representative thereof, failed to appear at the hearing. Although evidence adduced at the hearing indicated Operator Tommy King was deceased, evidence also established that another operator, Nathan Queen, conducted business under Respondent. No evidence was adduced that King Water Well Drilling ceased operating. After presenting evidence to support the allegations, Board staff requested that the penalties and actions included in the Hearing Notice be assessed. The recommended penalty is Five Thousand Dollars (\$5,000.00) for failure to meet water well construction standards for the Owens well.

CONCLUSIONS OF LAW

7. Title 82 O.S. § 1020.16 and 27A O.S. § 1-3-101 gives the Board subject matter jurisdiction to license persons engaged in the commercial drilling or plugging of groundwater wells, monitoring wells, observations wells, and the commercial installation of water well pumps. Section 1020.16(G) of title 82 provides that the Board may, after notice and hearing, impose administrative penalties up to Five Thousand Dollars (\$5,000.00), and may revoke, suspend or deny renewal of any license or operator certification for each violation of Oklahoma Water Resources Board Rules.

8. The Board has acquired personal jurisdiction over the Respondent King Water Well Drilling in this case. Due and proper notice of this proceeding was given to the Respondent as required by law. *See* Exhibit 1. The Respondent has been afforded due process of law and an adequate opportunity to be heard. Oklahoma Administrative Code ("OAC") Section 785:4-7-3.

9. OAC 785:35-7-1-(d)(1) requires that "all new groundwater wells . . . shall be made water-tight around the outside of the production casing by cement grouting" no less than Ten (10) feet deep. The Board finds that the Owens well did not have a minimum Ten (10) foot deep cement grout surface seal.

10. OAC 785:35-5-3 requires the "licensee or certified operator . . . shall file a multi-purpose completion report for each groundwater well, water well test hole, fresh water observation well, or heat exchange well completed or plugged." The report shall be filed within sixty (60) days after the date of completion of the well. The Board finds that Respondent failed to file a multi-purpose completion report for the Owens well drilled in 2017.

11. OAC 785:35-1-4(b)(2)(E)(ii) and (F)(ii) provide that the Board may, after notice and hearing, impose administrative penalties of Two Hundred Fifty dollars (\$250.00) for a second or subsequent offense of failing to submit a multi-purpose completion report and Five

Thousand dollars (\$5000.00) for a second or subsequent violation of the groundwater well minimum standard.

12. Based on the evidence and legal argument presented and Respondents failure to appear at the hearing, the Board finds that the administrative penalty of Five Thousand Dollars (\$5,000.00) should be assessed as amended at the hearing on September 9, 2020. These measures are included in the Order set forth below.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent King Water Well Drilling shall before November 20, 2020:

1. Properly install a minimum Ten (10) foot surface seal on the Owens well located at 105090 Elisha Road, Meeker, Oklahoma. The work should be completed between 9:00 am and 4:00 pm on any day other than Saturday and Sunday. Respondent shall give the Board 48 hours notice so that Board staff can be present if they so choose;
2. After the installation of the surface seal, the OWRB shall inspect. If the seal is not constructed to the OWRB staff satisfaction, staff may order the well be plugged;
3. Once the said violation is remedied, Respondent shall file a multi-purpose completion report to the OWRB pursuant to Board rules; and
4. Pay to the Board a fine in the amount of Five Thousand dollars (\$5,000.00) pursuant to Title 82 O.S. § 1020.16 and OAC 785:35-1-4(b)(2)(E)(ii) and (F)(ii).

IT IS SO ORDERED by the Oklahoma Water Resources Board in regular and open meeting this 20th day of October, 2020.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

(SEAL)

5. SPECIAL CONSIDERATION

PLANNING AND MANAGEMENT DIVISION

October 20, 2020

PLANNING AND MANAGEMENT DIVISION
Application to Amend Regular Permit to Use Groundwater

October 20, 2020

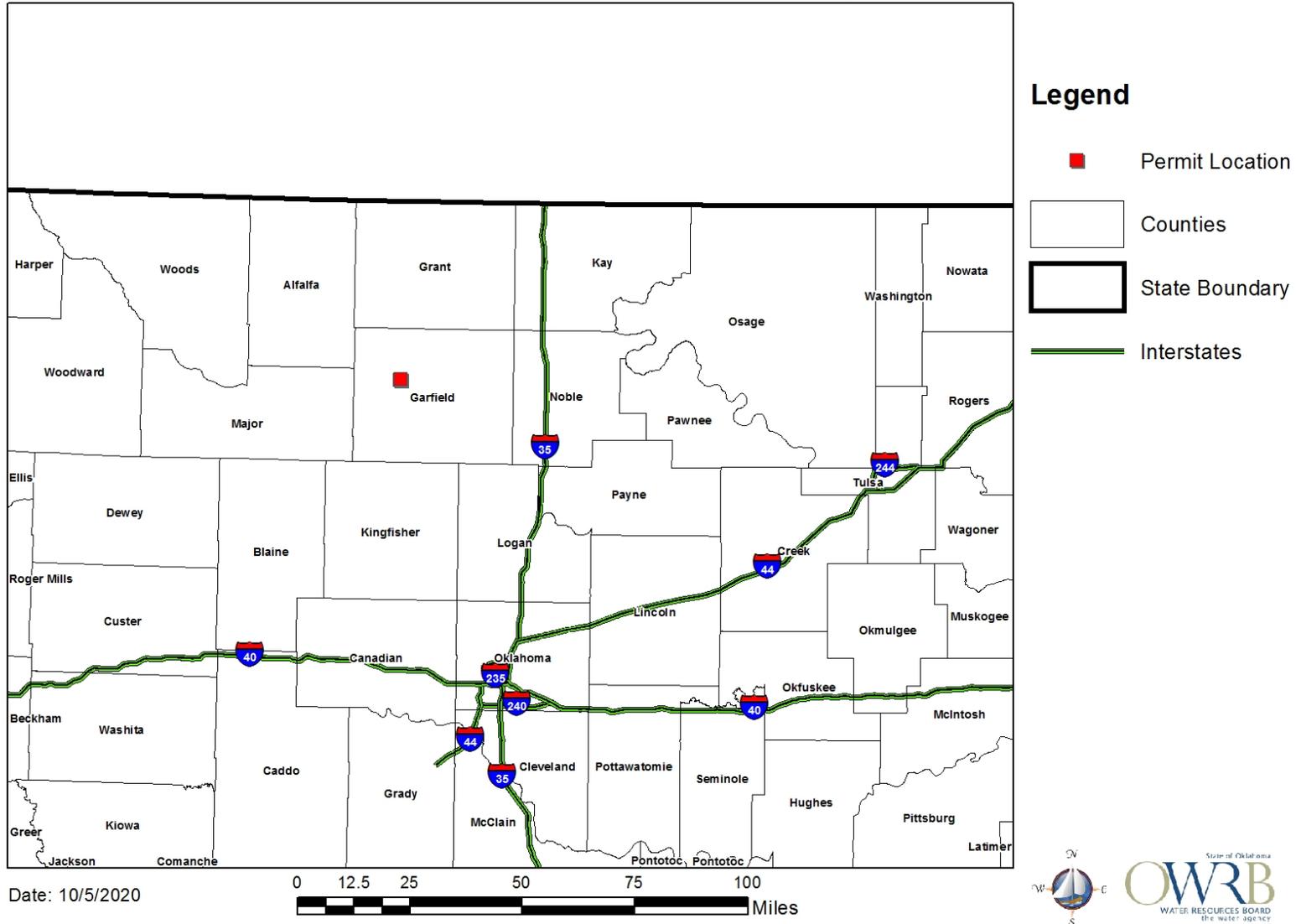
NUMBER & DATE	COUNTY	NAME OF APPLICANT	RECOMMENDATION
1978-756 6/6/2017	Garfield	Willow Lake Owners Association	Approval of Proposed Findings of Fact, Conclusions of Law and Board Order

Applicant has requested an amendment to a regular permit to withdraw an additional 156.4 acre-feet for a total of 205.7 acre-feet per year for irrigation, recreation, fish and wildlife uses from an additional 312.8 acres of dedicated land in Garfield County. The Applicant also requests the addition of two additional wells (one proposed and one existing) bringing the total wells to be authorized to seven. Applicant also sought a well location exception. Evidence in the record showed that the Applicant will use the water to maintain the lake water levels and will allow home owners to use the water to irrigate their properties. It appears from the record that the Applicant is a good steward of the water and would not unnecessarily use or allow waste to occur. The record shows that the Applicant has a valid right to the dedicated land, the land overlies the Enid Isolated Terrace Groundwater Basin (for which the maximum annual yield and equal proportionate share has been determined and each landowner is therefore entitled to 0.5 acre-feet per acre); irrigation, recreation, fish and wildlife are beneficial uses; and waste will not occur.

The Applicant's proposed well was drilled closer than the required spacing requirement of 660 feet from authorized wells owned by another but have provided evidence to meet an exception to the spacing requirement. Therefore, the application should be approved and a regular permit should be issued.

One of the primary disputes in the case involves the proximity of the Applicant's wells to the Protestant's well and the possibility of interference. The proposed well by the Applicant is located less than the required 660 foot spacing from authorized wells owned by another. Applicant testified that the dimensions of the land and location of houses, precludes the Applicant from complying with the 660 feet requirement. Therefore, the Applicant should be granted an exception to the spacing requirements. See Finding of Fact nos. 14, 15, and 16 and Conclusion of Law nos. 33 and 34.

Special Consideration: Groundwater Amendment: Permit #19780756 - Willow Lake Owners Association - Garfield County



**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of the Application of Willow Lake)
Owners Association to Amend Groundwater) Application No. 1978-756
Right in Garfield County)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND BOARD ORDER

INTRODUCTION

This matter arises out of the Application for Amendment to Groundwater right filed by Willow Lake Owners Association (“Applicant”). Applicants requested to drill one additional well and use an existing well on the property for purposes of irrigation, recreation, fish and wildlife use. Protests to the application were received and notice was given to all protestors regarding the time and date of the scheduled hearing.

A hearing was held at the Oklahoma Water Resources Board ("Board") offices in Oklahoma City, Oklahoma. Applicant was present and represented by counsel. Applicant’s application went unchallenged. After the hearing was adjourned, the matter was taken under advisement. A proposed Order was prepared, served on the parties, and presented to the Board for consideration and action.

Based upon the below stated Findings of Fact and Conclusions of Law, the Board determines that the application should be granted.

BACKGROUND

1. On June 6, 2017, Applicant filed Application No. 1978-756 with the Board for an amendment to groundwater right. Applicant requested authorization to use an additional 156.4 acre-feet of groundwater, for a total of 205.7 acre-feet of groundwater per calendar year. Applicant dedicated to the application 312.8 acres of land, located as follows: 80 acres in the West half of the SW Quarter of Section 18, Township 22 North , Range 5 of the West Indian Meridian and 232.8 acres in the East half of Section 13, Township 22 North, Range 06 of the West Indian Meridian, all in Garfield County. One proposed groundwater well is to be located in the SW Quarter of NE Quarter of NW Quarter of Section 35, Township 23 North, Range 7 of the West Indian Meridian and the second existing well is located in SW Quarter of SE Quarter of NW Quarter of Section 35, Township 23 North, Range 7 of the West Indian Meridian, both in Garfield County, Oklahoma. Applicant also sought a well location exception. The application contained various other terms, including that it would be taken from the Enid Isolated Terrace groundwater basin.

2. To support this application, Applicant submitted a Groundwater Lease between Applicant and the City of Enid. The lease, signed by William E. Shewey, Mayor, establishes the City of Enid owns the West half of the SW Quarter of Section 18, Township 22 North, Range 5 West of the West Indian Meridian (80 acres); the NE Quarter Section 13, Township 22, Range 6

West; (82.8 acres) and the SE Quarter of Section 13, Township 22, Range 6 (approximately 150 acres), and leased 312.8 acres of water rights to Applicant that underlie the said property. The lease commences on the approval by the OWRB of this amendment and continues for seven (7) years, with a three (3) year extension option at the expiration of the initial term.

3. Applicant made revisions to the application as necessary by Board rules and statute.

NOTICE

4. On December 20, 2018, Board staff notified Applicant that the application had been reviewed and directed Applicant to give notice of the application by certified mail to each surface owner of land within 1,320 feet of the outside boundary of each ten-acre tract of land with a groundwater well location covered by the application, and publish notice of the application in a newspaper of general circulation in the county in which the well is located. Ultimately, Applicant gave notice April 12, 2019 and April 19, 2019 in the Enid News and Eagle, a newspaper of general circulation in Garfield County. The notice listed a protest deadline of May 6, 2019. Applicant also sent, by certified mail, direct notice to those individuals listed on the surface estates owners map.¹

PROTESTS

5. Separate written protests against the application were received on or before the prescribed protest deadline. All protestors were made parties herein and provided proper notice.

HEARING

6. Prior to the hearing, six protestors filed written withdraws of their protest to Applicant's application.

7. The hearing commenced on August 28, 2020, at the Board's office in Oklahoma City, Oklahoma. Appearing on behalf of Applicant was Jon R. Ford, Attorney at Law from Enid, Oklahoma. None of the remaining protestants appeared, resulting in Applicant presenting his application uncontested. The hearing was opened, appearances were entered, two witnesses were sworn and the hearing was adjourned. Thereafter, a proposed order was prepared, served on the parties, and presented to the Board for consideration at its October 20, 2020 meeting.

OWNERSHIP

8. Applicant has a lease with the City of Enid giving Applicant use of the water rights as described fully above in paragraph two (2). The validity of the lease was not disputed at the hearing.

¹ Applicant initially published in the Enid News and Eagle on January 9, 2019 and January 16, 2019. Amendments to the application to amend required republication twice thereafter.

LAND LOCATED OVER GROUNDWATER BASIN

9. The land dedicated to this application overlies the groundwater basin known as the Enid Isolated Terrace groundwater basin. The maximum annual yield determination has been established by the Board for this groundwater basin at .5 acre-foot per year per acre of land. *See Exhibit 2.*

BENEFICIAL USE

10. The proposed use of the groundwater is for irrigation, recreation, fish and wildlife. Testimony established that covenants of the association allow homeowners who live on the lake, approximately seventy four (74) to eighty (80) homeowners, to use the water to irrigate their properties. Testimony also established that Applicant intends to use the water to maintain the lake water level when necessary. Applicant also testified that Willow Lake Owners Association was a good steward to the water and would not unnecessarily use or allow waste to occur. Applicant testified that when the application was filed it was because there was a drought and the association wanted to have water to replenish the lake during those periods of time. Applicant testified that even if all of the wells were operating at the same time, they could not exceed the amount allowed because the pumps utilized only allow for capture of approximately half (150 gallons per minute) of the water allowed (300 gallons per minute).

WASTE BY DEPLETION

11. Applicant intends to use the groundwater for irrigation, recreation, fish and wildlife. There was no evidence introduced to indicate that Applicant's water system/use is or will be inefficient. There was no evidence that in the future Applicant will take more fresh groundwater than is authorized by the permit; take or use fresh groundwater in any manner so that the water is lost for beneficial use; transport the water from the wells to the place of use in such a manner that there is an excessive loss in transit; use the water in such an inefficient manner that excessive losses occur; allow any fresh groundwater to reach a pervious stratum and be lost into cavernous or pervious materials encountered in a well; drill a well or produce groundwater therefrom contrary to the applicable well spacing of the Enid Isolated Terrace groundwater basin determined by the Board without an exception issued by the Board; or use the water for air conditioning or cooling purposes without providing facilities to aerate and reuse such water.

12. Board staff testified that Applicant's use of permitted wells will not deplete the Enid Isolated Terrace groundwater basin.

WASTE BY POLLUTION

13. There was no evidence of any abandoned or unused water wells, hand dug wells or windmills on the dedicated land, or evidence that Applicant failed to properly plug any such abandoned wells.

WELL SPACING EXCEPTION

14. Well spacing set by the Board for alluvium and terrace aquifers has been set at 660 feet. Applicant requested an exception. The well in question is located in the yard of a resident who gave the Applicant permission to locate the well on the homeowner's property. The well had a temporary permit, but that has expired and the well is currently not operating.

15. As a result of notice, there was a written protest related to the well spacing. Applicant testified he spoke with that homeowner, the neighbor of the property owner who gave Applicant permission to locate the well on his property, and the protestant's concern was that the use of the well would dry up his well. That protestant did not attend the hearing to offer an objection to or present any evidence that an exception should not be granted. Applicant testified that the dimensions of the land and location of houses in the Association, precludes the Association of complying with the 660 feet requirement.

16. Information contained within the OWRB records indicate the well was completed in June, 2017.

CONCLUSIONS OF LAW

Based upon applicable law, and as applied to the above Findings of Fact and evidence in the record, the Board draws the following Conclusions of Law:

USE OF GROUNDWATER

17. Under 60 O.S. § 60, the owner of the surface of a given tract of land owns the fresh groundwater beneath the surface of that land. That surface owner or his lessee may use such groundwater in accordance with the use regulations imposed by the Oklahoma Groundwater Law, 82 O.S. § 1020.1 and following.

SUBJECT MATTER JURISDICTION

18. The Board has subject matter jurisdiction to adjudicate applications for permits according to the Oklahoma Groundwater Law and the Board's rules promulgated pursuant thereto.

PERSONAL JURISDICTION; DUE PROCESS

19. Due and proper notice of the application and subsequent proceedings was given to all potentially interested persons as required by law. Applicant appeared for the hearing and is an interested party. No protestants appeared. All other potentially interested persons have defaulted or abandoned their interests. Oklahoma Administrative Code ("OAC") 785:4-7-3.

ELEMENTS TO BE DETERMINED

20. When a person makes an application for a groundwater permit, 82 O.S. § 1020.9 and OAC 785:30-3-5 requires the Board to determine several specific issues. These are:

- (a) whether the applicant owns the surface of the dedicated land or holds a valid lease for the taking of groundwater from the land;
- (b) whether the dedicated land overlies a fresh groundwater basin or subbasin;
- (c) whether the use to which the applicant intends to put the water is a beneficial use; and
- (d) that waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur.

If the Board finds for the applicant on all these issues, the rule provides that the Board shall approve the application and issue the appropriate permit. Section 1020.9(D) of Title 82 provides further that the Board may specify conditions in the permit, including but not limited to the rate of withdrawal and the level of perforation and sealing wells.

OWNERSHIP; LEASE

21. Based on the information submitted in the application and at the hearing, the Board concludes that Applicant has provided evidence of his right to take groundwater from the land, in the form of ownership/lease documentation and testimony.

GROUNDWATER BASIN

22. The dedicated land overlies the Enid Isolated Terrace groundwater basin. The maximum annual yield for this groundwater basis is .5 acre-foot per acre per year. Based on that maximum annual yield, the Board concludes the Applicant is entitled to a groundwater allocation of .5 acre-foot per acre per year, as provided in 82 O.S. § 1020.11(8).

BENEFICIAL USE

23. “Beneficial use” is defined in OAC 785:30-1-2 as:

[T]he use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. **Beneficial uses include** but are not limited to municipal, industrial, agricultural, **irrigation, recreation, fish and wildlife**, etc. (emphasis added).

24. "Irrigation use" is defined in OAC 785:30-1-2 as:

[U]se of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.

25. "Recreation, fish and wildlife use" is defined in OAC 785:30-1-2 as:

[U]se which includes but is not limited to the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

26. The facts in this case establish that Applicant's proposed use, pursuant to the Board's own definitions and rules, meets the definition of beneficial use.

27. The Board concludes that no evidence was presented to demonstrate Applicant's intended use was not beneficial.

WASTE BY DEPLETION

28. The Board must determine whether Applicant will allow waste as specified by 82 O.S. § 1020.15 to occur. Section 1020.15 is quoted as follows:

A. The Oklahoma Water Resources Board shall not permit any fresh groundwater user to commit waste by:

1. Drilling a well, taking or using fresh groundwater without a permit, except for domestic use;
2. Taking more fresh groundwater than is authorized by the permit;
3. Taking or using fresh groundwater in any manner so that the water is lost for beneficial use;
4. Transporting fresh groundwater from a well to the place of use in such a manner that there is an excessive loss in transit;
5. Using fresh groundwater in such an inefficient manner that excessive losses occur;
6. Allowing any fresh groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well;
7. Permitting or causing the pollution of fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to

filter or otherwise intrude into such a basin or subbasin. The Board shall be precluded from determining whether waste by pollution will occur pursuant to the provisions of this paragraph if the activity for which the applicant or water user intends to or has used the water as specified under Section 1020.9 of [Title 82] is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the department of Environmental Quality or the Oklahoma Department of Agriculture, Food and Forestry;

8. Drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board;

9. Using fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water; or

10. Failure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof.

According to OAC 785:30-1-1, paragraphs (1) through (6) and paragraphs (8) and (9) are forms of “waste by depletion” (as that term is used in the case of *Oklahoma Water Resources Board v. Texas County Irrigation and Water Resources Ass’n*, 1984 OK 96). Paragraphs (7) and (10) are forms of “waste by pollution”).

29. There is no basis in this case to determine that Applicant’s proposed use will be impermissible or unlawful. The legislative policy expressed in the Oklahoma Groundwater Law is “to utilize the groundwater resources of the state.” 82 O.S. § 1020.2(A). To implement that policy, the Oklahoma Groundwater Law authorizes the controlled reduction of a groundwater basin as long as that reduction is done in an orderly fashion according to the statutory scheme for reasonable restrictions on such use. The surface owner or lessee of land overlying a fresh groundwater basin is entitled to use the groundwater beneath the surface once certain elements of the Oklahoma Groundwater Law have been met. Here the application is in accordance with and not contrary to the law and rules.

30. The Board concludes, based on the findings of fact that waste by depletion will not occur if this permit is approved.

WASTE BY POLLUTION

31. The provisions of 82 O.S. 1020.15(A)(7) provides the Board shall not permit any groundwater used to commit waste by “permitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin.” Subsection (10) also declares waste as an owners “failure to properly plug abandoned water wells in accordance with rules of the Board and file reports thereof.” As stated above, no evidence was adduced by either party regarding pollution

32. The Board must conclude, based on the above findings of fact that waste by pollution will not occur.

WELL SPACING EXCEPTION

33. Pursuant to 785:30-3-6(a), the well spacing for “alluvium and terrace groundwater basins or subbasins where the maximum annual yield has been determined,” is 660 feet. Although Appellant sought a well exception, there was no evidence introduced at the hearing to determine the distance of Applicant’s well and other wells in the area. Regardless, Applicant testified that the dimensions of the land precluded Applicant from complying with the well spacing requirements and that the landowner permitted Applicant to drill the well on the property. No objection based on well spacing was received at the hearing. The well in question was drilled in June, 2017. Therefore, pursuant to 785:30-3-6(b), Applicant has shown that compliance with the well spacing requirements would be unreasonable and a well spacing exception is warranted.

34. The Board concludes that the well spacing exception should be granted.

CONCLUSION

35. The Board orders that the Application for Amendment to Groundwater Right, Water Right No. 1978-756 in the name of Willow Lake Owners Association shall and is hereby approved.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Application for Amendment to Groundwater Right, Water Right No. 1978-756 in the name of Willow Lake Owners Association shall be and the same is hereby granted. A permit shall be issued which authorizes one proposed groundwater well to be located in the SW Quarter of NE Quarter of NW Quarter of Section 35, Township 23 North, Range 7 of the West Indian Meridian. The permit also authorizes the use of an existing well located in SW Quarter of SE Quarter of NW Quarter of Section 35, Township 23 North, Range 7 of the West Indian Meridian, both in Garfield County, Oklahoma.

IT IS FURTHER ORDERED that all other terms and provisions set forth in the application and not inconsistent with provisions of this Court Order shall be incorporated into and made a part of the permit.

IT IS SO ORDERED by the Oklahoma Water Resources Board in regular and open meeting this 20th day of October, 2020.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

(SEAL)

PLANNING AND MANAGEMENT DIVISION
Application for Term Permit to Use Stream Water

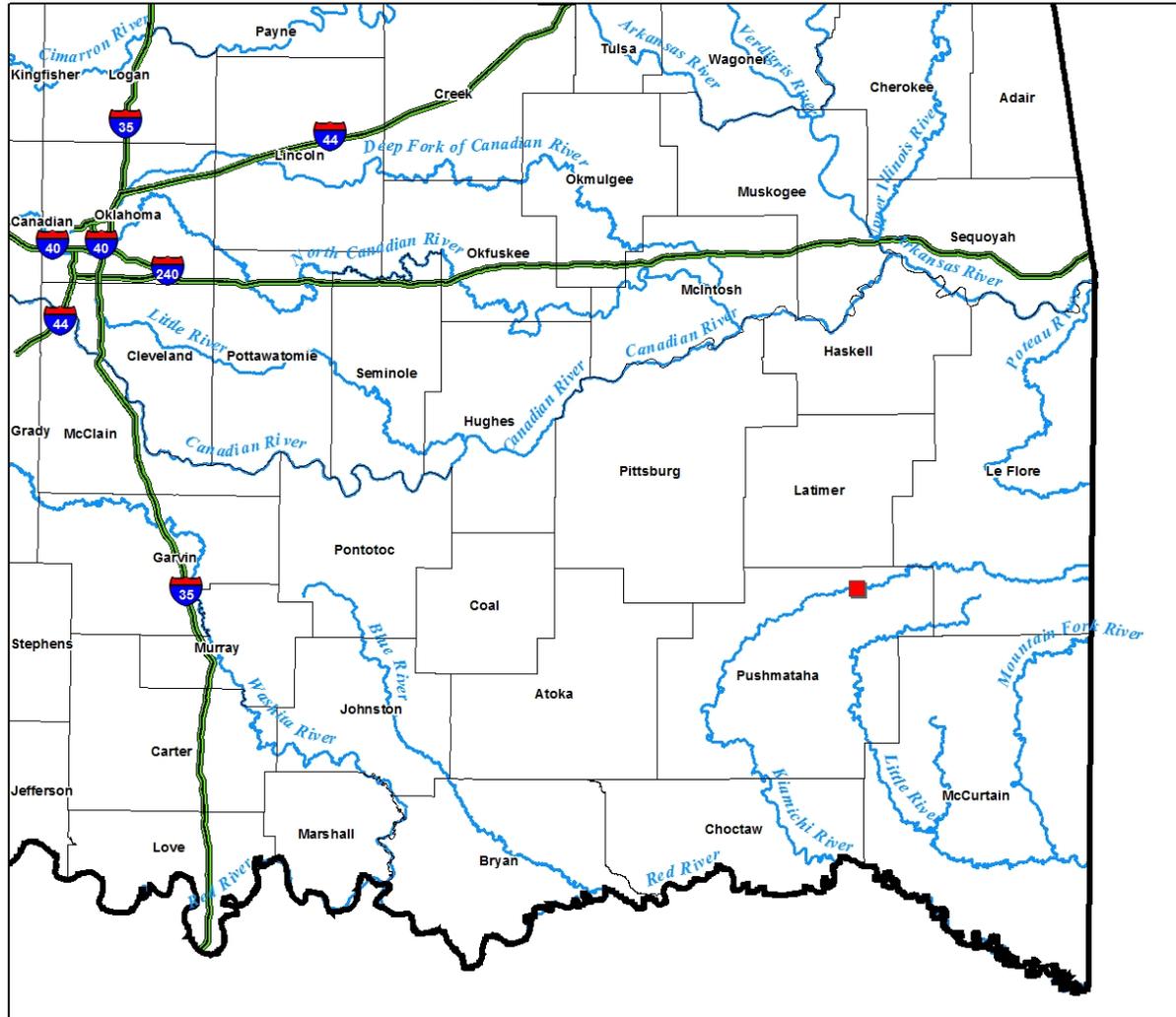
October 20, 2020

NUMBER & DATE	COUNTY	NAME OF APPLICANT	RECOMMENDATION
2019-0023 4/25/2019	Pushmataha	Tomlin Energy, LLC	Approval of Proposed Findings of Fact, Conclusions of Law and Board Order

Applicant has requested a term permit to use 33,000 acre-feet of run-off stream water until 2070 (approximately 50 years) from one point of diversion on the Kiamichi River for the purpose of generating electricity (closed-loop hydroelectric plant). The record shows that the plant will only need between 3,000 and 5,000 acre-feet per year after the initial 33,000 acre-foot acquisition. Water will be collected by diverting run-off water that overflows the banks of the river due to rains and other excess flows. The Applicant has a present and future need for the water requested; generation of electricity is a beneficial use; the proposed use should not interfere with downstream domestic or existing appropriative uses; and the water is proposed to be used within the stream system. Therefore the application should be approved and a term permit should be issued.

The Protestants claim that Applicant did not provide adequate notice. In addition, the Protestants argue that the Applicant's use would negatively impact the ecosystem of the Kiamichi River. However, the evidence in the record did not support these claims. See Findings of Fact No. 11 and Conclusions of Law Nos. 16 and 22.

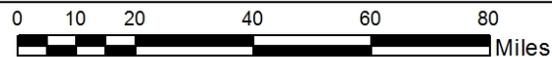
Special Consideration: Stream Water Application: Permit #20190023 - Tomlin Energy LLC - Pushmataha County



Legend

- Applicant's Location
- Counties
- State Boundary
- Interstates
- Rivers

Date: 10/5/2020



**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION OF)
TOMLIN ENERGY, FOR A) Permit Application No. 2019-0023
PERMIT TO USE GROUND WATER IN)
PUSHMATAHA COUNTY, OKLAHOMA)

**PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BOARD ORDER**

This individual proceeding arose from the Tomlin Energy, LLC (“Tomlin”) application for a term permit to use stream water, filed April 25, 2019 to run until 2070 for use in a closed-loop hydro electric plant in Pushmataha County. After notice of the application was published, protests were filed with the Oklahoma Water Resources Board (“OWRB”) by the following entities and individuals:

1. Peggy Simmons Hart Miller
2. Larinda McLellan;
3. Donnie and Laconia Corbin;
4. William Redman on behalf of the Louise A. Redman Revocable Trust and the Kiamichi River Legacy Alliance (“KRLA”);
5. Lauren Haygood;
6. Susan and Dale Trainer;
7. Debbie Leo on behalf of Miller Lake Retreat, L.L.C.;
8. Barbara Walker on behalf of the Walker Family Trust; and
9. Gerry Caslow and Joann Rymel.

PROCEDURAL HISTORY

A pre-hearing conference was held on January 20, 2020, and shortly thereafter, the OWRB’s Hearing Examiner issued a Pre-Hearing Conference Order which contained a schedule for discovery and a deadline for the parties to exchange hearing exhibits. The Pre-Hearing Conference Order also set a date for the administrative hearing. The Pre-Hearing Conference Order was served on all parties by certified mail. That Order was subsequently modified on protestant’s motion and over Tomlin’s objection, due to the Covid-19 pandemic and issues surrounding the same. A new scheduling order was issued and new hearing dates were set. The modified order was served on all parties by certified mail.

Motions to dismiss were filed by Tomlin, Louise A. Redman Revocable Trust and Kiamichi River Legacy Alliance, and Peggy Hart Miller and Larinda McClellan. Each was denied.

FINDINGS OF FACT

NOTICE OF THE APPLICATION

1. As required by Oklahoma Administrative Code ("OAC") 785:4-7-2, the hearing examiner opened the hearing by reviewing the proofs of publication to determine whether notice was properly given of the application. Protestants Louise A. Redman Revocable Trust and Kiamichi River Legacy Alliance objected to the notice of the application published by Tomlin, arguing, that Tomlin did not provide adequate notice. They asserted that Tomlin was required to have provided notice in every county that falls within the Kiamichi River Basin. Further, they assert that Tomlin is required to provide notice in every county that would or could be affected by the project. Protestants cite 82 O.S § 105.11 and OAC § 785-20-5-1. Tomlin provided affidavits showing that notice was published in The Clayton Today on June 20 and 27, 2019, the Antlers American on June 20 and 17, 2019 and the Hugo News on June 30 and August 6, 2019. Upon review of the applicable Law, administrative rules and evidence presented by Tomlin. the hearing examiner found that notice of the application was properly given as required by law.

NOTICE OF ADMINISTRATIVE HEARING

2. Following the prehearing conference, a prehearing scheduling order was sent to all parties by certified US Mail. The prehearing order gave a date, time, and location for the administrative hearing. The prehearing order was followed by a Notice of Administrative Hearing and OWRB Exhibits, which, in addition to the date, time, and location of the hearing, explained the nature of the administrative hearing and the issues that would be presented. The modified scheduling order, also containing dates, time and location for the administrative hearing, was also sent to all parties by certified mail.

AVAILABILITY OF STREAM WATER FOR APPROPRIATION

3. Tomlin seeks to use 33,000 acre feet of run-off stream water per year until 2070, which is approximately 50 years. That is to say, Tomlin is seeking to take water that overflows the banks of the river due to rains and other excess flows. However, Tomlin affirmed, through testimony, that the plant will only need between 3,000 and 5,000 acre feet per year after the initial 33,000 acre-foot acquisition. Tomlin intends to divert run-off water from the Kiamichi River at a point to be located in NE/4 of SW/4 of SE/4 of Section 23, Township 2N, Range 20 EIM in Pushmataha County.

4. Jason Tutkowski, a Permitting Specialist for the OWRB, concluded that there was not water available for diversion from the Kiamichi River at the requested cite, but also conceded that the Applicant would not be diverting water from the stream itself but rather, capturing run-off from overflow events and that the Board has the authority to grant term permits when there is no water available for regular permits.

5. Tomlin called, as a witness, Dr. Blaine Reely, Ph.D., P.E., as an expert in hydrology and hydraulics. After Voir Dire by opposing counsel, Dr. Reely was accepted as an expert witness for those purposes. Dr. Reely testified that there have been approximately 31 events in the past

years when more than 5,000 acre feet of overflow water would have been available for utilization at the proposed diversion point and that there would be no ability to divert water directly from the river itself and none would be collected during low water flow in the river. Protestants did not call an expert to refute these findings from Dr. Reely. Protestant Ms. Lauren Heygood did testify as an expert in Environmental Geology, but limited her testimony to potential environmental impacts of the project.

PRESENT OR FUTURE NEED FOR WATER AND BENEFICIAL USE

6. OAC 785:20-5-5 requires the Board to determine whether an applicant has a present or future need for the amount of water requested and whether the water will be put to a beneficial use. Tomlin presented evidence and testimony that they intend to build a closed-loop hydroelectric plant near the diversion point along the Kiamichi River. The plan anticipates the formation of two lower reservoirs and a third at the top of a hill where the plant will be located. The lower lakes will consist of an impoundment lake of approximately 30 acres which will collect run-off water to be transferred to a lower lake of approximately 200 acres. The impoundment lake will hold approximately 1800 acre feet of overflow water. The lower lake will hold approximately 28,000 acre feet of water. This water will be transferred to an upper lake which will hold approximately 10,000 acre feet of water. The water will be transferred to the upper lake, dropped through a pipe past turbines to the lower lake which will generate electricity and be reused repeatedly. It is proposed after the initial 33,000 acre feet of run-off water is collected, 3000-5000 acre feet per year will be diverted each year to replace evaporated water and water lost in plant operations.

7. Tomlin also put on testimony through Dan Tomlin, Jr. that the proposed plant will generate electricity to be used to supply electricity to the Southwest Power Pool energy grid which provides power to all of Oklahoma and Kansas as well as parts of 11 other states. Such testimony also indicated that this type of plant uses renewable energy and reduces both electrical “blackouts” as well as fluctuations in energy prices to customers.

8. Protestants did not provide any evidence challenging these assertions as to Present or Future Need or Beneficial use except that Protestants Kiamichi River Legacy Alliance and Louise A. Redman Trust suggested that such a plant hasn’t been built in the United States since 1990 and that such is an impermissible use of river water. Protestants provided no authority based in statute or administrative rule for such a contention.

9. The evidence presented shows by clear and convincing evidence that there is a present and future need for the water requested for appropriation and that if the term permit is granted the water would be put to beneficial use.

INTERFERENCE WITH DOMESTIC OR EXISTING APPROPRIATIVE USES

10. OAC 785:20-5-5(d) and 785:20-7-3, state that the Board will determine whether there will be interference with domestic and existing appropriative uses. The stream water calculations by Mr. Tutkowski based on the OWRB’s standard watershed model took into account permits above the diversion point in question, pending applications above the point in question, SCS normal storage, reservoir dependable yield, water for navigation, and domestic use. No

parties challenged the methodology or conclusions of Mr. Tutkowski. Furthermore, Protestants did not challenge or assert that Mr. Tutkowski's calculations underestimated domestic use or that the overall appropriative use calculations were flawed. Dr. Reely's report and testimony not only observed the specific run-off amounts sought by Applicant based on prior stream data, but also built off of the appropriative and domestic water availability calculations provided by Mr. Tutkowski. Dr. Reely concluded that after observing prior excess flow events between January 1, 2020 and June 1, 2020 and reviewing the calculations provided by Mr. Tutkowski, there would be sufficient run-off water for the amounts applied for by Applicant. The Protestants did not challenge the methodology or conclusions of Dr. Reely, nor did they elicit testimony from a similarly situated expert to reach any different conclusions regarding water availability or interference. Even when there is evidence presented that indicates that interference with domestic or existing appropriative uses may occur as a result of the proposed stream water application, "[t]he Board may determine that conditions or restrictions are necessary to protect existing beneficial uses and rights and may establish and impose such conditions on certain stream flow whereby direct diversion may be allowed only during certain times of the year or when a certain level of stream flow or elevation in the stream is reached." *See* OAC 785:20-5-5(d)(2). Protestants did not provide any OWRB or expert testimony that demonstrated to any degree of certainty that capturing an initial amount of 33,000 acre feet and annual run-off capture not to exceed 5,000 acre feet thereafter will interfere with domestic or existing prior appropriative uses.

11. Protestants primarily relied on the initial calculations provided for by the OWRB that all water flowing downstream was appropriated when existing users and current pending applications were considered. There was no testimony provided by any Protestant expert that the collection of the applied for amount of run-off water would cause interference to downstream appropriated or domestic users. Protestants did argue that because the lakes designed by Tomlin will be open and can collect water at all times if run-off exists there is a chance that they will capture more than their allotted amount. There was no expert testimony to this effect, and it seems clear that if the lakes are full the run-off will overflow the banks of the lakes and continue downstream as unimpeded run-off, and thus, the Protestants' argument is unconvincing.

12. All premises considered, there is a dearth of evidence to demonstrate interference to downstream appropriative or domestic users.

OUT OF STREAM SYSTEM OR OUT OF STATE USE

13. Tomlin proposes to collect the run-off water from the Kiamichi River basin and hold it there in lakes constructed for the purpose. Some of that water will be transported and temporarily stored in a lake at the top of the adjacent mountain from which the water will be used to flow down a pipe back into the lakes in the Kiamichi River basin. Given that the water is not permanently transported to another location and considering the use will remain in state, it is clear the water is not being used out of the stream system or out of state.

CONCLUSIONS OF LAW

JURISDICTION AND APPLICABLE LAW

14. The OWRB is vested with exclusive authority to determine stream water permit applications by Oklahoma's Stream Water Statutes, 82 O.S. § 105.1 *et seq.*, and by Chapter 20 of Title 785 of the OAC. The OWRB is vested with authority to conduct administrative hearings under Article 7, § 1 of the Oklahoma State Constitution and by Article II of the Oklahoma Administrative Procedures Act (OAPA), 75 O.S. §§ 308a through 323. Hearings are conducted pursuant to Article II of the OAPA and Chapter 4 of Title 785 of the OAC.

NOTICE OF APPLICATION

16. Protestants argued that Tomlin did not provide adequate notice. They asserted that Tomlin was required to have provided notice in every county that falls within the Kiamichi River Basin. Further, they assert that Tomlin is required to provide notice in every county that would or could be affected by the project. Protestants cite 82 O.S § 105.11 and OAC § 785-20-5-1. 82 O.S § 105.11 states:

“...a notice thereof, at the applicant's expense, in a form prescribed by the Board in a newspaper of general circulation in the county of the point of diversion, and in a newspaper of general circulation published within the adjacent downstream county and any other counties designated by the Board once a week for two (2) consecutive weeks.”

OAC § 785-20-5-1 states::

“Notice of the application, including hearing date, time and place if scheduled prior to notice, shall be provided by the applicant as required by law and Board instructions.”

Documents provided by Tomlin demonstrates that notice was provided and met both the statute and any requirements made by the OWRB. No special requirements or instructions were shown to be made by the OWRB. It is the determination of the Board that the Applicant has met the requirements of notice and notice was proper.

AVAILABILITY FOR APPROPRIATION

15. Under the provisions of 785:20-5-5(a)(1), the OWRB must take into consideration the “the mean annual precipitation run-off in the watershed above the point(s) of diversion, the mean annual flow, stream gauge measurements, domestic uses and all existing appropriations and other designated purposes in the stream system.” In the instant case no water is being diverted from the Kiamichi River itself, but rather, it is proposed that only run-off water during overflow

events will be utilized. On the basis of mean annual precipitation and mean annual flow, there appears not to be water available for appropriation in the Kiamichi River itself on an annual basis

for diversion, however, there does appear to be sufficient run-off water available. The facts, measurements and calculations testified to by Dr. Reely do not appear to contradict, at least on an annual basis, the calculation by OWRB staff that there is sufficient stream water available for appropriation as the OWRB did not directly address run-off. Therefore, the OWRB finds that the requirements for this element are met.

NEED AND BENEFICIAL USE

16. Under the provisions of 785:20-5-5 requires the Board to determine whether an applicant has a present or future need for the amount of water requested and whether the water will be put to beneficial use. The OWRB “may review the efficiency of the works proposed to place the water to beneficial use and may order modifications to such works or that different works be utilized.” The OWRB’s review of proposed, but not-yet-constructed works is presumably for the purpose of limiting the amount of the stream water appropriation to the actual amount of stream water the applicant could feasibly put to beneficial use. *See* 82 O.S. § 105.10 and OAC 785:20-3-9 (OWRB may reject applications based on feasibility or safety of plans). Tomlin’s witnesses testified that though there were some specifics, such as exact location, depth and sizes of the ponds to be utilized, some specifics of plant functionality and such, the approximations and general design, testimony regarding other types of plants in use in other areas of the country and the diagrams and analogs provided demonstrate the plant is in need of the modified amounts of water requested and that it will be put to beneficial use.

17. While the OWRB has the discretion to review the efficiency and feasibility of works prior to determining whether to approve an application for stream water, the agency also has authority to inspect such works after their construction. *See* 82 O.S. § 105.25. “Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed, the Board may require the necessary changes to be made within a reasonable time and shall not issue a certificate of completion until such changes are made.” *Id.* When constructed works are not capable of making beneficial use of the entire appropriated amount of water, the OWRB is authorized to amend the stream water permit by reducing the permitted amount to the actual capacity of the works. OAC 785:20-9-1(i).

18. While Tomlin did not propose specific plans for its works, such as the method for creating the lakes involved, where debris will be disposed of and what environmental protections will be required and utilized, (all parties agreed that Tomlin will be required to pass numerous other inspections and obtain other certificates, including Federal Environmental Regulatory Commission (“FERC”) inspection and certification), it has demonstrated a present and future need for water by providing an estimate of the amount of water required for the plant to function as planned. Tomlin’s proposed use of water for generation of hydroelectric power production appear to meet the OWRB’s definition of “beneficial use” as stated in OAC 785:20-1-2. Therefore, the OWRB finds that these elements of Tomlin’s application have been met; provided, however, that any appropriation of water remains subject to any reduction in the OWRB’s Certificate of Completion based on the actual capacity of Tomlin’s constructed works, as authorized under 82 O.S. § 105.25 and OAC 785:20-9-1(i).

INTERFERENCE WITH DOMESTIC AND EXISTING APPROPRIATIVE USES

19. Before taking final action on any stream water permit application, the OWRB must determine whether the proposed use “does not interfere with domestic or existing appropriative uses.” 82 O.S. § 105.12(A)(3). The purpose of this determination, as stated in the statute, is “to protect the public welfare of the citizens of Oklahoma[.]” *Id.* at § 105.12(A). This determination of non-interference must be made “from the evidence presented.” *Id.* When the evidence presented indicates that interference with domestic or existing appropriative uses may occur as a result of the proposed stream water application, “[t]he Board may determine that conditions or restrictions are necessary to protect existing beneficial uses and rights and may establish and impose such conditions on certain stream flow whereby direct diversion may be allowed only during certain times of the year or when a certain level of stream flow or elevation in the stream is reached.” OAC 785:20-5-5(d)(2).

20. Interference must be demonstrated by substantial evidence which is more than a mere scintilla. *Miller v. Charter*, 99 F.3d 972. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* The protection against interference is protect against substantial or material injury to the other user at such time as a user has actual need for it. “...the accepted rule allows a riparian owner the right to make any use of water beneficial to himself as long as he does not substantially or materially injure those riparian owners downstream who have a corresponding right.” *Franco-American Charolaise, Ltd. v. Oklahoma Water Resources Board*, 1990 OK 44, 855 P2d 568,575.

21. Protestants offered no expert testimony, no studies, no reports and no personal testimony that would demonstrably show that the capture and utilization of 33,000 acre feet of run-off water initially followed by 5,000 acre-fee per year thereafter from the Kiamichi river at the diversion point will interfere with downstream domestic or appropriative users and substantially or materially injure them.

OTHER ISSUES RAISED BY THE PROTESTANTS

22. Protestants Larinda McLellan, William Redman, Debbie Leo and Lauren Haygood, the latter being designated an expert in environmental geochemistry, all testified as to their concerns regarding possible negative environmental ramifications of Tomlin’s proposed plan. The majority of those concerns related to chemicals and debris being introduced into the Kiamichi River through the construction of the lower lakes proposed in the plan and any that would be leached from the lakes themselves over time. There was no testimony of any study, report or definitive finding that such would occur but rather, speculatively might occur. Further, as stated previously, Tomlin will be required to acquire other certifications and licenses by organizations, such as the FERC, who will be particularly situated and mandated to evaluate and protect against exactly these issues. Finally, while these concerns are understandable, they do not, by themselves, prohibit the OWRB from issuing a term stream water permit to Tomlin.

23. Oklahoma’s stream water statutes require that the OWRB determine the following questions before taking final action on a stream water permit: (1) whether there is unappropriated water in the amount applied for; (2) whether the applicant has a present or future need for water

and intends to put the water to beneficial use, and (3) the proposed use does not interfere with domestic or existing appropriative uses. 82 O.S. § 105.12(A). The same statutory provisions provide that if the evidence is sufficient to determine the aforementioned questions in the affirmative, “the Board shall approve the application by issuing a permit to appropriate water.” *Id.* The language of the stream water statutes do not require that an applicant definitively establish that its proposed works are practicable, nor even that it has secured access to the stream as conditions prerequisite to obtaining a permit from the OWRB. Further, OAC 785:20-7-3 permits the Board to issue term permits even if there is no water available for appropriation.

24. It is true that the statutes and the associated rules of the OWRB allow the agency to consider proposed plans for works when it determines the need for water and the beneficial nature of the proposed use. However, such considerations are not mandatory and only relate to the Applicant’s demonstration that it has a need for water and intends to put the water to beneficial use. *See* OAC 785:20-5-5(c)(1) (OWRB *may* review efficiency of works proposed as part of considering the amount of water requested). With respect to Tomlin’s application, the need and beneficial use of the requested water was substantially established.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Application No. 2019-0023 in the name of Tomlin Energy, LLC shall be and the same is hereby approved, subject to the conditions hereinafter stated and otherwise imposed by law. The permit shall authorize the diversion of:

An initial total of 33,000 acre feet of run-off stream water from a diversion point on Kiamichi River, located in the NE/4 of SW/4 of SE/4 of Section 23, Township 2N, Range 20 EIM in Pushmataha County, Oklahoma. Subsequent to the initial 33,000 acre feet, 5,000 acre feet per year of run-off may be diverted in all subsequent years until the end of the term of the permit, which is 2070.

IT IS FURTHER ORDERED that the permit shall state, in addition to the usual stream water permit conditions, the following conditions:

1. The permit holder shall not divert water from the Kiamichi River, all water is to be derived through natural run-off and/or overflow from the Kiamichi River, through the use of a pond system as delineated in the exhibits provided the OWRB during the administrative hearing for this permit.
2. The permit holder shall inform the OWRB in writing when the initial 33,000 acre feet is accomplished.

IT IS SO ORDERED by the Oklahoma Water Resources Board in its regular and open meeting this 20th day of October, 2020.

OKLAHOMA WATER RESOURCES BOARD

Robert L. Stallings, Jr., Chairman

ATTEST:

Bob Drake, Secretary

(SEAL)

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF THE APPLICATION
OF TOMLIN ENERGY, LLC, FOR A
PERMIT TO USE STREAM WATER IN
PUSHAMATAHA COUNTY, OKLAHOMA,

Permit Application No. 2019-0023

**PROTESTANTS PEGGY HART MILLER, LARINDA MCCLELLAN, LOUISE A.
REDMAN TRUST AND KIAMICHI RIVER LEGACY ALLIANCE’S EXCEPTIONS TO
PROPOSED ORDER AND FINDINGS OF FACT & CONCLUSIONS OF LAW**

Pursuant to Oklahoma Administrative Code (“OAC”) 785:4-9-1(d), Protestants LOUISE A. REDMAN REVOCABLE TRUST and KIAMICHI RIVER LEGACY ALLIANCE, along with Protestants PEGGY HART MILLER and LARINDA MCCLELLAN (“Protestants”) hereby submit their Exceptions to the proposed Order and Findings of Fact & Conclusions of Law (hereafter the “Order”), which Order is set for consideration before the Oklahoma Water Resources Board (“OWRB”) at 9:30 A.M. on October 20, 2020:

- 1. Based upon the landmark Oklahoma Supreme Court opinion issued on October 6, 2020 in *Purcell et al. v. Parker et al.*, 2020 OK 83, the OWRB’s notice rules for stream water permits are constitutionally inadequate.**

It is now black letter law in Oklahoma: no longer may an applicant in a stream water permit proceeding rely solely upon newspaper publication as sufficient notice of its application. Where affected landowners can be found with reasonable means, actual personal notice must be provided. Here, Applicant, Tomlin Energy, LLC (hereafter “Tomlin” or “Applicant”) failed to provide notice sufficient to pass constitutional muster to those landowners that will be directly affected by issuance of a Permit. A permit simply cannot be issued unless and until this jurisdictional defect is resolved.

In the wake of the Oklahoma Supreme Court's decision issued last week, on October 6, 2020, in *Purcell et al. v. Parker et al.*, 2020 OK 83, ¶24, Tomlin must provide personal service of its application to anyone directly impacted by the stream water permit. That is, it must not and cannot rely solely upon notice by publication to make certain the due process rights of water rights holders are protected. The directive of our Supreme Court in *Purcell* could not be clearer:

Pursuant to Cate, Dulaney and Carlile, supra, if the affected landowners are known, or reasonably discoverable, notice provided by publication results in an unconstitutional exercise of jurisdiction and a denial of due process. There is no excuse for failing to give personal notice of something that directly affects landowners when such landowners are known or easily discoverable.

Id. At ¶24. As Justice Rowe said in his concurrence, which was joined by Chief Justice Gurich and Justices Kauger and Combs:

The value of water to landowners in Oklahoma is immeasurable, and as such, a landowner must be afforded strict due process in protecting his or her water rights.

Id. at ¶4 (Rowe, J., concurring) (emphasis added). At the June 29-30, 2020 hearing in this matter, objections were made as to whether even the notice by publication was adequate. The Kiamichi River basin runs through Atoka, Choctaw, Latimer, LeFlore, Pushmataha, and Pittsburg counties, and the proposed diversion point is in Pushmataha County. Applicant's notice by publication failed to meet the requirements of 82 O.S. § 105.11 and O.A.C. § 785-20-5-1 in all of those counties. McCurtain County is not a part of the Kiamichi River basin, but testimony shows that part of the project will affect the Little River basin, which also would impact property owners in McCurtain County. Thus, there simply was not adequate notice to all affected landowners. Each property owner within the Kiamichi River basin has certain domestic and appropriative uses of the stream water. All residents of the Kiamichi River basin have

“beneficial uses” to the water. The rights to the water are property rights. In fact, our Oklahoma Supreme Court has noted “that the Oklahoma riparian owner enjoys a vested common-law right to the reasonable use of the stream. This right is a valuable part of the property owner's "bundle of sticks" and may not be taken for public use without compensation.” *Franco-American Charolaise, Ltd. v. Oklahoma Water Resources Bd.*, 855 P.2d 568, 571 (Okla. 1990).

The impact of the *Purcell* decision on this proceeding is this: Tomlin must be required to issue personal service of its application to all property owners with rights that may potentially be impacted by its requested permit. Short of that, no permit can be issued. To the extent the OWRB issues a stream water permit in this case, the permit will be a nullity as to all riparian landowners along the Kiamichi River downstream of the diversion point who lack actual notice of Tomlin’s application. *Anson Corp. v. Hill*, 1992 OK 138, 841 P.2d 583, 586–87. See also *Union Texas Petroleum v. Corporation Commission*, 1981 OK 86, ¶12, 651 P.2d 652, 659.

Going forward in the wake of the *Purcell* decision, the OWRB must make reasonable efforts to give actual personal notice to affected landowners along the Kiamichi River. *Purcell et al.* at ¶24. The identity and address of these landowners can be easily obtained by and through records at the OWRB, searches of the records of the county clerk’s office in each county courthouse and by and through other publicly available information. An applicant for a stream water permit can no longer rely upon the publication provisions at 82 O.S. § 105.11 and O.A.C. § 785-20-5-1. *Purcell et al.* at ¶1. Since the notice procedures exercised by Tomlin are now constitutionally inadequate, the OWRB cannot and must not grant the permit at this juncture. Instead, personal service of the application must be provided by Tomlin to all affected landowners as a requisite to the issuance of a permit.

2. The Order erroneously finds Tomlin Energy, LLC (“Tomlin”) possesses a present or future need for the volumes of water it will take from the Kiamichi River.

Tomlin did not (and cannot) show a present or future need to take volumes of water from the Kiamichi River in excess of its permit limit. Yet, Tomlin’s water diversion system will indeed result in it taking more water from the Kiamichi River than an OWRB issued permit will allow. Tomlin’s application accordingly should be denied.

As noted in the proposed Order: “OAC 785:20-5-5 requires the Board to determine whether an applicant has a present or future need for the amount of water requested.” *See* Order at ¶16, p. 3. Further, 82 O.S. §105.12 states as follows concerning applications for stream water:

A. In order to protect the public welfare of the citizens of Oklahoma and before the Oklahoma Water Resources Board takes final action on the application, the Board shall determine from the evidence presented whether:

1. There is unappropriated water available in the amount applied for;

2. **The applicant has a present or future need for the water** and the use to which applicant intends to put the water is a beneficial use. In making this determination, the Board shall consider the availability of all stream water sources and other relevant matters as the Board deems appropriate, and may consider the availability of groundwater as an alternative source;

3. The proposed use does not interfere with domestic or existing appropriative uses;

4. If the application is for the transportation of water for use outside the stream system wherein the water originates, the proposed use must not interfere with existing or proposed beneficial uses within the stream system and the needs of the water users therein. In making this determination, the Board shall utilize the review conducted pursuant to subsection B of this section; and

5. If the application is for use of water out of state, the Board shall, in addition to the criteria set forth in this subsection, also evaluate whether the water that is the subject of the application could

feasibly be transported to alleviate water shortages in the State of Oklahoma.

If the evidence is determined to be sufficient, and subject to subsection B of this section, the Board shall approve the application by issuing a permit to appropriate water. The permit shall state the time within which the water shall be applied to beneficial use. In the absence of appeal as provided by the Administrative Procedures Act, the decision of the Board shall be final.

82 O.S. §105.12 (emphasis added). Simply stated, the Applicant does not have a present or future need for the volumes of water that it will actually take from the Kiamichi River by and through its presently designed water diversion system. To illustrate, Tomlin's testimony and exhibits demonstrated that it needs, at most, 33,000 acre feet of water annually - 28,000 acre feet to fill the Lower Lake and 5,000 acre feet to partially fill the Upper Lake. (Appl. Ex. 1, p. 6; Day 2 Audio at 2:49:13-2:50:00). Thereafter, Tomlin anticipates needing, at most, an additional 3,000-5,000 acre feet per year of water. In other words, Tomlin will need, at most, 5,000 acre feet per year once it reaches 33,000 acre feet, collectively, in the Lower and Upper Lakes.

Well, how much water will Tomlin actually take from the Kiamichi River? Two (2) witnesses in Tomlin's case in chief testified that the Impoundment Lake will at all times remain open to receive runoff water from the Kiamichi River. (Day 1 Audio at 1:49:30-36, 3:18:10-17, 4:45:20-48). This is critical. By way of demonstration, the Impoundment Lake will carry a capacity of 1,800 acre feet of water. (Appl. Ex. 1, p. 5). Kiamichi River flood water that is captured in the Impoundment Lake will then be pumped into the Lower Lake and Upper Lake to be used in the hydroelectric power generation process. *Id.* In its initial year of operation, Tomlin will need 33,000 acre of feet of water to make the hydroelectric power facility operational. (Appl. Ex. 1, p. 6). Therefore, to reach 33,000 acre feet into the Lower (28,000 acre feet) and Upper Lakes (5,000 acre feet), Tomlin will have to deplete the Impoundment Lake 18.33 times.

Once the Impoundment Lake has been filled and depleted eighteen (18) times, Tomlin will have reached approximately 32,400 acre feet of water. And, an additional 600 acre feet of water will be needed to reach 33,000 acre feet, collectively, in the Upper and Lower Lakes. Once that 600 acre feet is pumped from the Impoundment Lake, Tomlin will have reached its permit capacity of 33,000 acre feet of water. Yet, the Impoundment Lake will be, minimally, 600 acre feet below capacity. With the Impoundment Lake being perpetually open to receive water, subsequent rounds of flood waters will restore the Impoundment Lake to its capacity of 1,800 acre feet. At that point, Tomlin will have taken 33,600 acre feet of water from the river and exceeded its permit capacity by 600 acre feet. Plainly, once Tomlin captures its annual permit maximum of water, any additional volumes of waters that flow into the Impoundment Lake will exceed its permit allotment. (Day 1 Audio at 1:51:07-57, 3:50:45-3:52:02).

Importantly, historical flood data presented at trial by Tomlin revealed that in at least five of the six years reviewed, the Kiamichi River produced sufficient volumes of flood water for Tomlin to exceed its permit maximum. (Day 1 Audio at 4:45:30-4:58:42). In fact, if Tomlin had a term permit to use 33,000 acre feet of water from the Kiamichi River at the diversion point for the years 2015-2016 and 2018-2020, not later than early May enough water would have overflowed the banks of the Kiamichi River to meet Tomlin's permit limit and re-fill the Impoundment Lake. *Id.* In other words, Tomlin would have exceeded its permit limit by early May in each of those years. *Id.*

Moreover, the record reflects additional volumes of water will seep out of the Kiamichi River into both the Impoundment Lake and Lower Lake. Specifically, due to the permeability of the rock and the bottom the Kiamichi River being higher in elevation than the bottom of the Impoundment Lake and Lower Lake, water will migrate from the river into the lakes. (Day 2

Audio at 5:30:22-31:37). Notably, Tomlin has no plan to return any water it receives from the Kiamichi River. (Day 1 Audio at 1:51:07-21). Therefore, even assuming *arguendo* Tomlin can demonstrate a present or future need for 33,000 acre feet of water (and 5,000 acre per year thereafter), it is cogently clear that Tomlin will exceed those permit limits. No evidence or argument was presented to demonstrate a present or future need for water in excess of 33,000 acre feet per year. Tomlin's application for a stream water permit accordingly should be denied.¹

3. The Order erroneously finds there will be no interference with downstream domestic and appropriate uses.

Tomlin's excavation of the Impoundment and Lower Lakes will create a mountain of shale, rock and debris, all within a few feet of the banks of the Kiamichi River. Trial testimony demonstrated that natural events of Mother Nature will result in the introduction of shale and other debris into the river, compromising its health and aesthetic appeal. Tomlin presented no evidence or testimony to contradict this truth. Its application should be denied.

Tomlin's Lower Lake will be approximately 200 acres at an astonishing average depth of 140 feet. (Appl. Ex. 1, p. 14). Its Impoundment Lake will be approximately 30 acres at an average depth of sixty feet. *Id.* Tomlin testified it has no knowledge of what volume of dirt, rock and shale will be disturbed when it excavates the Lower Lake and Impoundment Lake. (Day 1 Audio at 2:15:12-20). Protestants do. In their case in chief, Protestants established that approximately 1.3 billion cubic feet of shale and rock will be disturbed during Applicant's construction of the Impoundment Lake and Lower Lake. (KRLA Ex. 12). It disturbs Protestants

¹ Exhibit "1" hereto is a demonstrative presentation which underscores the volume of shale and rock that will be disturbed if Tomlin is issued a permit and its impact on the Kiamichi River. Protestants intend to present this demonstration at the October 20 hearing.

and should disturb the OWRB that Tomlin intends to store the disturbed dirt, rock shale on the construction site along the dam of the Lower Lake. (Day 1 Audio at 2:15:21-41). Tomlin has no plan to prevent the disturbed shale from eroding into the Kiamichi River. (Day 1 Audio at 2:16:03-17). This means that approximately 1.3 billion cubic feet of shale and rock will be stored less than 1,000 feet from the bank of the Kiamichi River, at an elevation higher than the river. (Day 2 Audio at 26:35-28:54). Rock and shale from the Lower Lake alone will be four (4) football fields wide, forty-five (45) football fields long and 46 yards high. (KRLA Ex. 13). The Impoundment Lake will yield enough rock, dirt and shale that is four (4) football fields wide, twenty-seven (27) football fields long and 20 yards high. *Id.* With wind and rain events, the stored dirt, rock and shale will erode and be washed into the Kiamichi River. (Day 2 Audio at 5:22:44-23:04). Once dirt, rock and shale is introduced into the Kiamichi River, the appearance of the river will become dirty and murky. (Day 2 Audio at 50:02-52:05; KRLA Exs. 15-18).

Protestants' beneficial downstream uses will be impacted by the introduction of shale into the Kiamichi River. First, the Louise A. Redman Trust ("Trust") possess permits from the Oklahoma Water Resources Board to utilize stream water from the river. The water utilized by the Trust is used to water cattle and to irrigate crops. (Day 2 Audio at 2:26:07-27:30). The Trust also makes other beneficial uses of the river such as agriculture, personal uses, fishing and recreation. (Day 2 Audio at 13:12-15:03; 2:35:30-50). Next, board members of the Kiamichi River Legacy Alliance ("KRLA") own land along or adjacent to the Kiamichi River. (KRLA Ex. 6; Day 2 Audio at 18:11-59). KRLA board members make domestic and beneficial uses of the Kiamichi River. The same is true for Protestants Peggy Hart Miller and Larinda McClellan. It goes without saying: each of these beneficial and domestic will be jeopardized by the

introduction of shale into the river. Minimally, Protestants' use and enjoyment of the river will be reduced. Tomlin's application for a stream water permit should accordingly be denied.

4. OWRB rules state that no permit is necessary to use stream water for hydroelectric power generation.

Fundamentally, there is no statutory (or other) basis for the Board to issue Tomlin a permit to use stream water for its proposed hydro-electric facility. In fact, Board rules expressly state that a stream water permit is not necessary for hydroelectric power generation. To wit, regarding the usage of stream water for a hydro-electric plant, the Oklahoma Administrative Code states as follows:

(c) Unless otherwise determined by the Board, **a permit to use water for hydroelectric power generation**, navigation, recreation fish and wildlife, and other nonconsumptive instream uses **is required only where the water used for such purpose is taken from reservoir storage.**

OAC §785:20-1-6(c). (emphasis added). The proposed usage in Tomlin's application is precisely that described in the highlighted statutory language above: taking stream water for a hydroelectric power plant. OWRB representative Jason Tutkowski testified at trial that he is not aware of any stream water permits issued by the OWRB for hydroelectric power. (Day 1 Audio at 3:59:47-4:00:15). Simply stated, the hearing and consideration of Tomlin's application has been a waste of time and resources for the Board and the parties as OWRB rules expressly do not authorize the issuance of a stream water permit for hydroelectric power. Tomlin's application for a stream water permit should accordingly be denied.

5. The proposed Order erroneously finds there to be "sufficient run-off water available" for Tomlin's appropriation.

Paragraph 15 of the proposed Order erroneously finds there is sufficient runoff water available for appropriation at the point of diversion. This finding expressly contradicts the

testimony and memorandum of OWRB representative, Jason Tutkowski. In his memorandum, introduced as Tomlin's Exhibit 2 at trial, Mr. Tutkowski expressly states as follows:

“We find there is no water available for appropriation. The applicant is asking for a Term Permit due to this lack of unappropriated water.”

(See Tomlin Ex. 2, p. 3). Simply stated, because there is no water available for appropriation, Tomlin cannot meet the elements for a standard stream water permit provided for at OAC §785:20-5-5. Critically, it makes no difference that the water to be taken by Tomlin is flood water or “run-off” as described in the proposed Order. In fact, under existing OWRB rules, flood waters or “run-off” is characterized no differently than ordinary flow. OAC §785:20-5-5(a) provides the standard to determine whether water is available for appropriation in a stream water application:

For direct diversions from a stream, the determination of water available for appropriation shall take into consideration the mean annual precipitation run-off in the watershed above the point(s) of diversion, the mean annual flow, stream gauge measurements, domestic uses and all existing appropriations and other designated purposes in the stream system. The Board may consider other evidence or laws relating to stream flow or elevation, including but not limited to apportionment provisions of interstate stream compacts to which the State of Oklahoma is a party and the Oklahoma Scenic Rivers Act.

OAC §785:20-5-5(a). Importantly, Mr. Tutkowski confirmed at trial that this is the precise standard he used to find there was no unappropriated water available in the Kiamichi River at Tomlin's proposed point of diversion. (Day 1 Audio at 3:54:30-56:04). Per further testimony provided by Mr. Tutkowski at trial, the phrase “mean annual precipitation runoff” includes all water that runs into a stream system, whether by flood, normal or light rainfall event. *Id.* Trial testimony also confirmed the phrase “mean annual flow” means the average flow in at stream system which includes high flow and low flow events. *Id.* Plainly, all levels of stream flow and

rainfall events are considered to determine whether there is water available for appropriation. Simply stated, it makes no difference that the water to be appropriated is flood water or run-off.

As Mr. Tutkowski noted in his memorandum, because there is no unappropriated water available, Tomlin is forced to seek a term permit. (*See Tomlin Ex. 2, p. 3*). The standard for a term permit is provided at OAC §785:20-7-3:

In addition to regular permits, the Board is authorized to issue seasonal, temporary, term or provisional temporary permits at any time it finds such issuance will not impair or interfere with domestic uses or existing rights of prior appropriators and may do so even where it finds no unappropriated water is available for a regular permit. All seasonal temporary, term or provisional temporary permits shall contain substantially the same information as a regular permit and shall contain a provision making them subject to all rights of prior appropriators and domestic users.

OAC §785:20-7-3. Notably, any term permit must expressly be made subject to all rights of prior appropriators and domestic users. Despite that, no such language is included on the face of the proposed Order. Importantly, both the Trust and KRLA members are downstream prior appropriators and domestic users and Mr. Tutkowski testified that if the permit is issued, the amount of water available to downstream users and appropriators will be reduced. (Day 1 Audio at 3:46:20-41). In the seminal case on stream water law in our state, our Oklahoma Supreme Court held that stream water appropriators take water subject to the rights of prior appropriators. *Franco-American Charolaise, Ltd. v. Oklahoma Water Resources Bd.*, 855 P.2d 568, 581-582 (Okla. 1990). Mr. Tutkowski further testified that he is not sure if a term permit has ever been issued by the OWRB where there is no unappropriated water available in the stream system. (Day 2 Audio at 3:02:35-50). By virtue of the express language of OAC §785:20-7-3, a term permit expressly made subject to prior appropriators and domestic users must fail when its

issuance will interfere with downstream users. Tomlin cannot prove the elements of a term permit. Its application for a stream water permit should accordingly be denied.

CONCLUSION

Based upon the evidence presented at trial, Tomlin's request for a permit can be denied for any of the following independent reasons:

1. Tomlin cannot be issued a permit since it has not met the constitutional threshold for due process notice to all affected landowners, per the teachings and requirements of *Purcell*.
2. There is no unappropriated water available at the point of diversion and issuance of the permit will reduce the amount of water available to prior appropriators, including Protestants.
3. Pursuant to OAC §785:20-1-6(c), no permit is needed to use stream water for the generation of hydroelectric power.
4. A dearth of evidence and testimony establishes that issuance of the requested permit will reduce the visible aesthetics of the river, and result in interference with Protestants' downstream uses.
5. Tomlin cannot show a present or future need for the volumes of water to be taken under its stream water diversion system.

WHEREFORE, Protestants respectfully request the Board deny Tomlin's application for a stream water permit.

Respectfully submitted,

Dated: October 14, 2020

By:



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CERTIFICATE OF MAILING

This is to certify that on the 14th day of October 2020, a true and correct copy of the above and foregoing document was mailed, postage prepaid, to the following parties:

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EXHIBIT 1

Supplemental Information for OWRB Examination
in regards to the
Tomlin Hydropower Term Water Application # 2019-023

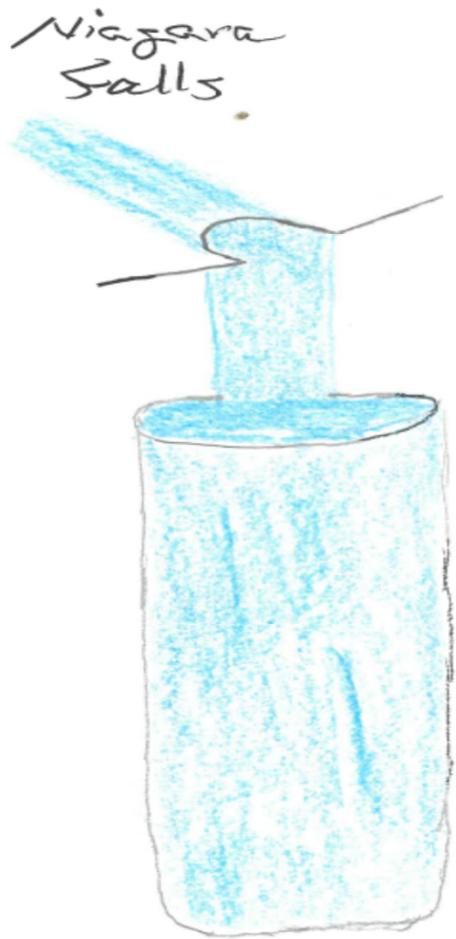
10/13/2020

On behalf of
The Louise A. Redman Trust

William A. Redman

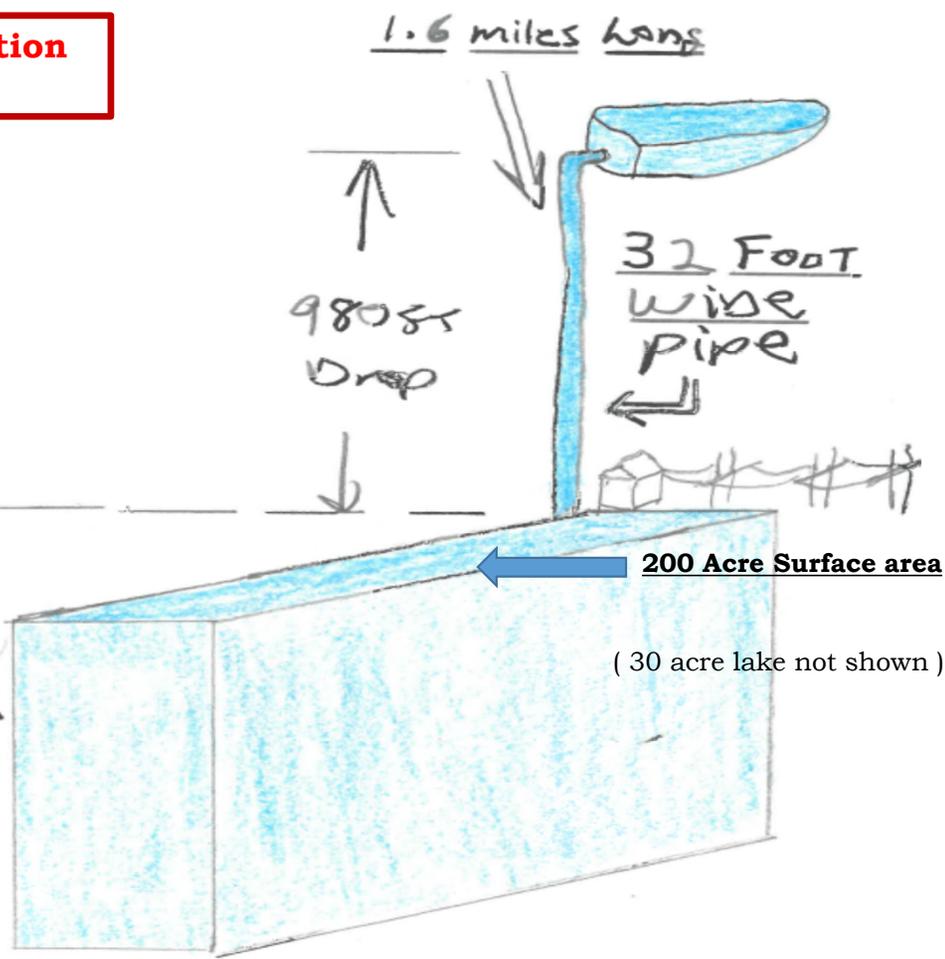
Lets look at the particulars of the Tomlín hydropower facility...

For a little simplification and perspective...



160 FT. Drop

190 FT Plunge Basin



980 FT Drop

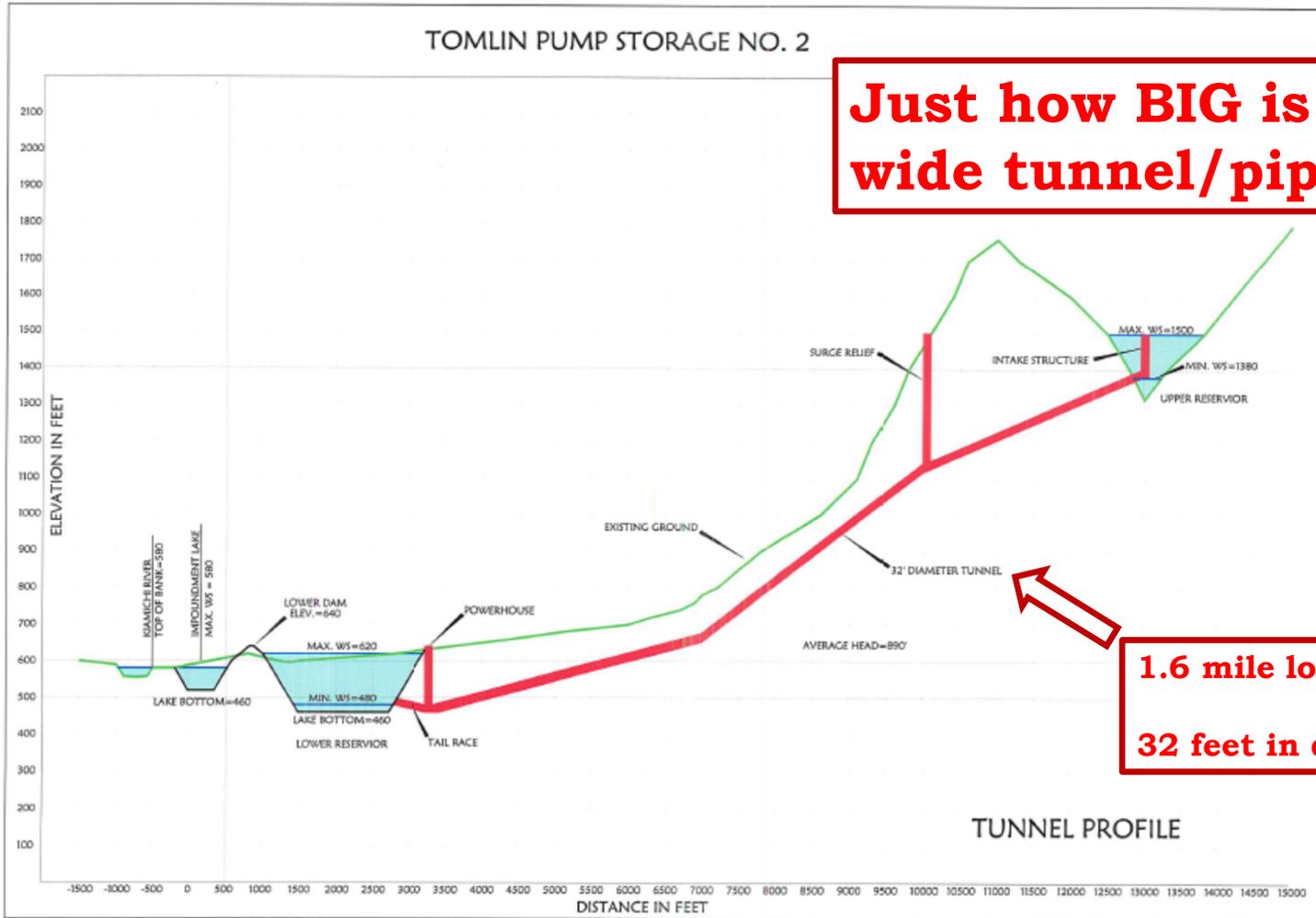
200 Acre Surface area

(30 acre lake not shown)

(Not to Scale)

First lets look at the Tunnel/Pipe...

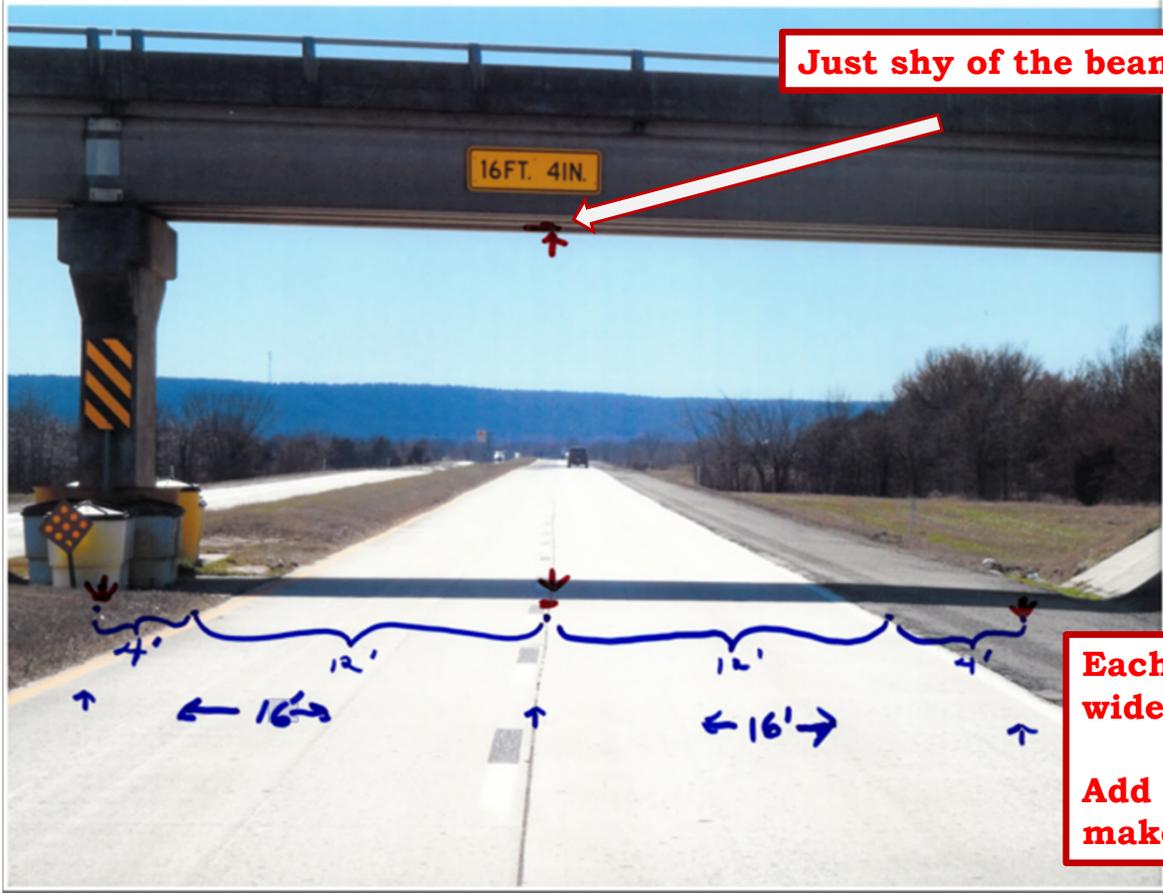
TOMLIN PUMP STORAGE NO. 2



Just how BIG is a 32 ft wide tunnel/pipe???

**1.6 mile long tunnel/pipe.
32 feet in diameter.**

From Applicant Exhibit #9, slide # 72



Just shy of the beam is 16 ft tall/high.

Each concrete slab is 12 ft. wide.
Add 4 ft to each side to make 16 ft each.

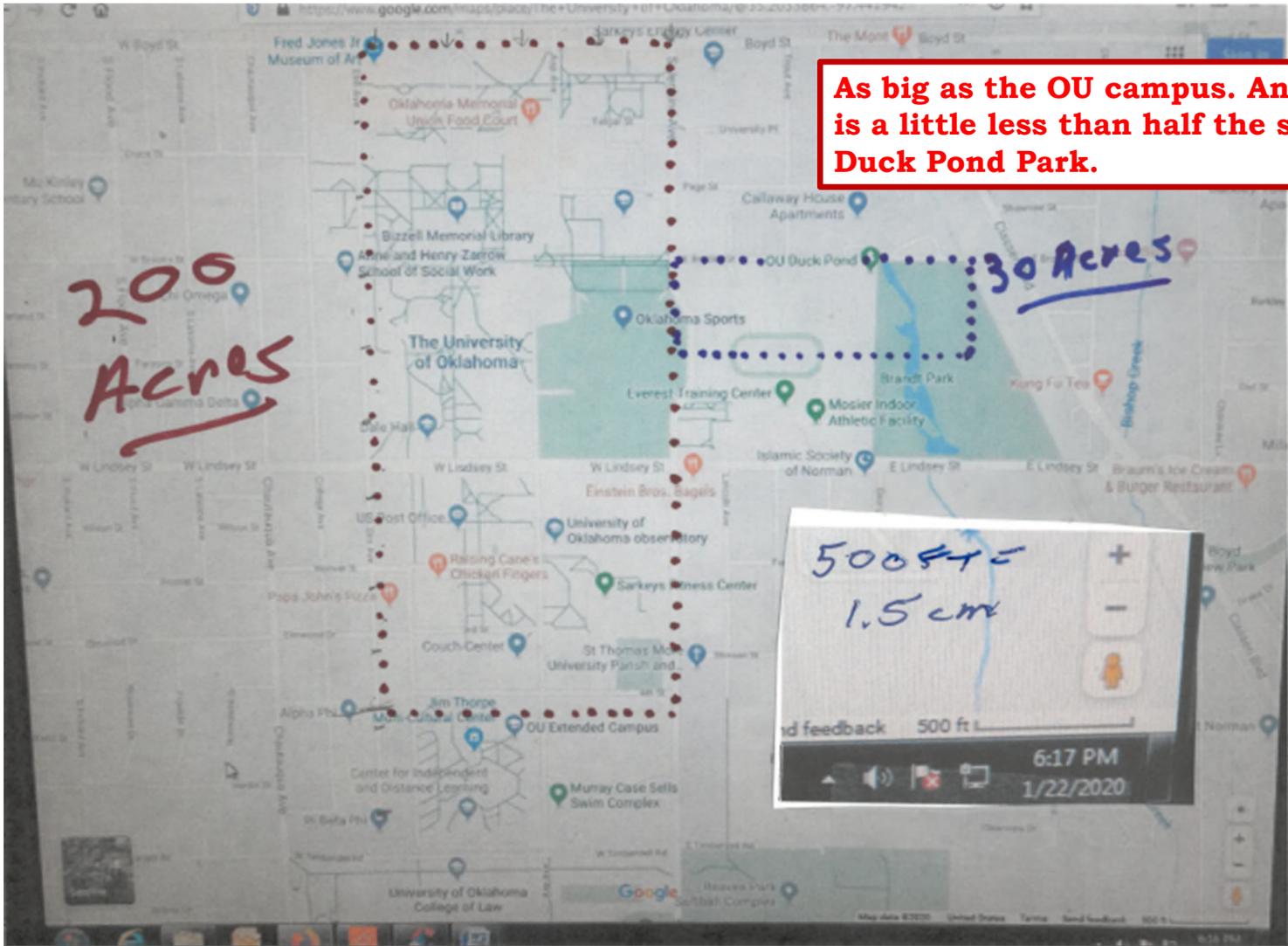


**This circle is 16 ft tall/high.
And 32 ft wide.**

**This represents HALF of the size of
Tomlin's 1.6 mile long tunnel/pipe!!!**

**NOTE: Tomlin's application states that
he will be flowing water up and down this
pipe multiple times per day (and night)!!!**

Now, how big is 200 acres, really?



As big as the OU campus. And 30 acres is a little less than half the size of the Duck Pond Park.

200 Acres

30 Acres

500ft =
1.5 cm

500 ft

6:17 PM
1/22/2020

Now, lets look at the volume of rock and shale that will be removed...

The volume of rock and shale to be removed from just the two pits/lakes is:

200 acre pit, 140 ft deep =		1,219,680,000	cubic feet
30 acre pit, 60 ft deep =		78,408,000	cubic feet
Total rock, shale, etc removed =		<u>1,298,088,000</u>	cubic feet

Well, ok. So, how much rock/shale is that, really???



← **Approx. 140 ft.**

← **12th Floor; approx. 120 ft.**

← **6th Floor; approx. 60 ft.**

This is one of the big dorms at the University of Oklahoma. It is 12 stories/floors tall.

Generally speaking a “floor” of a building is considered to be 10 ft tall. Thus, that would make this building about 120 ft tall. The elevator-control building would add another floor/story while the antenna tower would add approximately another. Making the tip of the antenna approximately 140 ft from ground level.

**Art Museum,
Theater, Music
building,
parking garage**



College of Engineering "area"



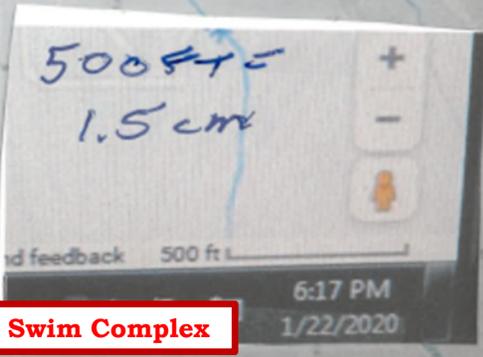
*200
Acres*

30 Acres

Duck Pond Park



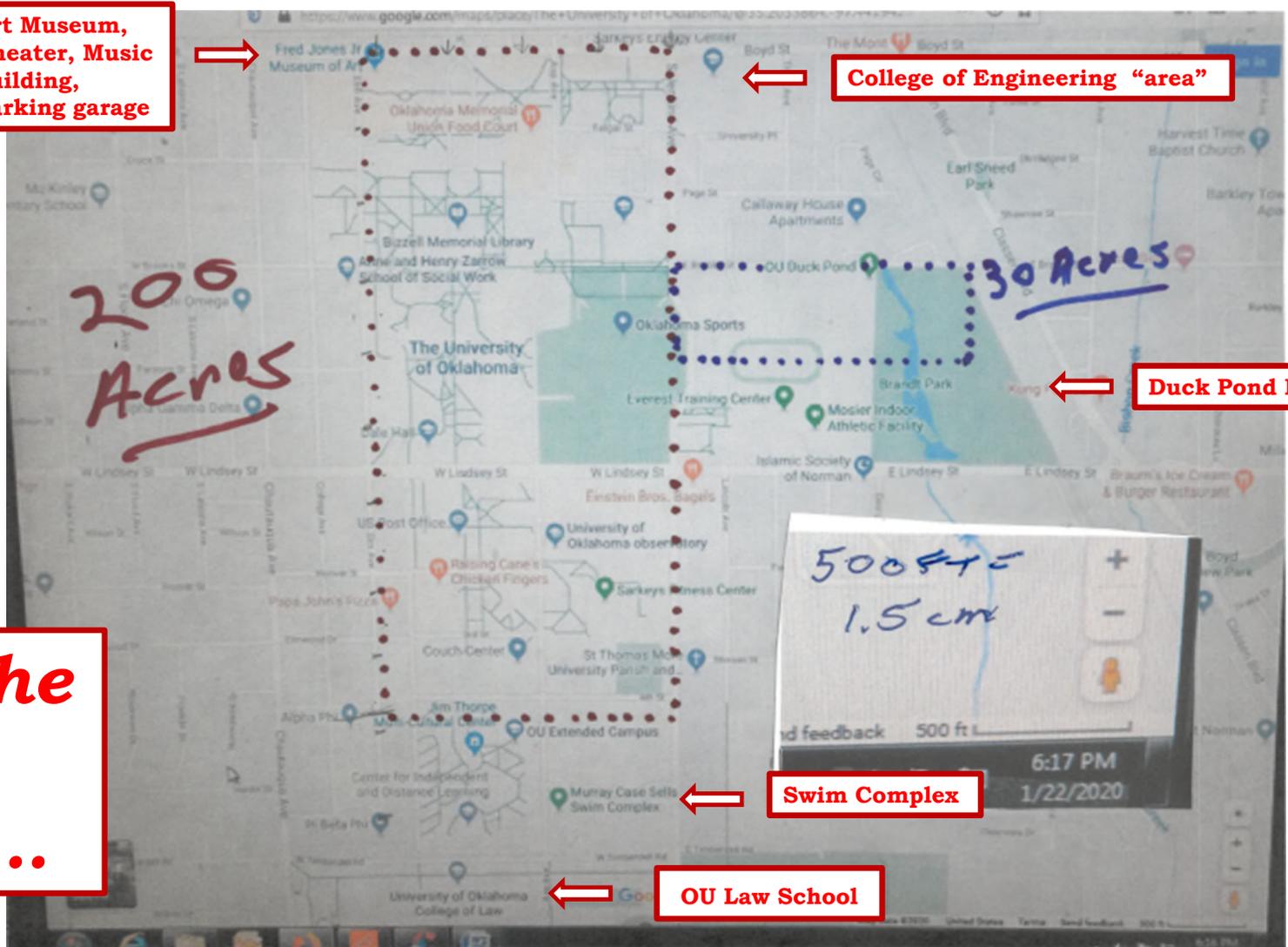
**See the
next
slide...**



Swim Complex



OU Law School



- 1) Take that 12-story red brick dorm from a slide ago...
- 2) Now, on the previous slide, go to one of the inside corners of the red-dotted-line/campus, say, the NE corner of campus, where some of the College of Engineering Buildings are.
- 3) Dig a hole BIG ENOUGH AND DEEP ENOUGH for that whole dorm to sit down into... with the upper tip of its antenna JUST at street level.
- 4) Now, remove ALL THE OTHER DIRT, AT THAT EXACT DEPTH, inside the whole 200 acre dotted line; essentially, make a hole out of the whole OU campus that is as deep as its tallest dorm is tall.
- 5) Repeat the process (60 ft deep) with the 30 acres at the Duck Pond.

THIS IS AN EXAMPLE OF WHAT IS BEING PROPOSED!!!

WHERE IS ALL THE REMOVED MATERIAL GOING TO GO???

This facility is to be put in on the side of a mountain. There is no soil there. What will be removed is shale and sandstone rock.

For perspective and context, here are some examples of how much...

Lets say he just backs his dump trucks up
and dumps all that rock waste in a long
narrow row...

Great Wall of China



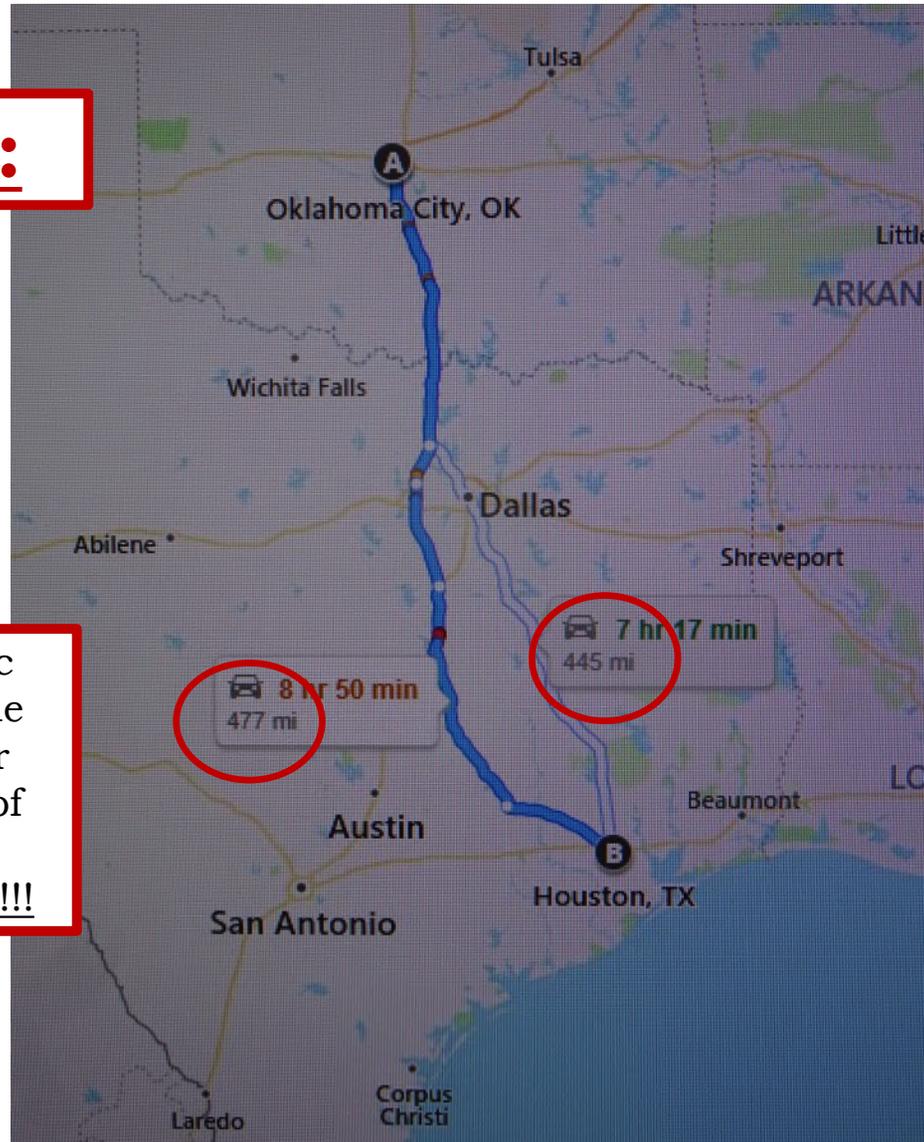
26 ft tall
16 ft wide (top)
20 ft wide (bottom)
(average dimensions)

Magnitude, Volume: 1,298,088,000 cubic feet



Volume of rock to be extracted for the Tomlin Hydropower pits = **472 miles of the Great Wall** !!!

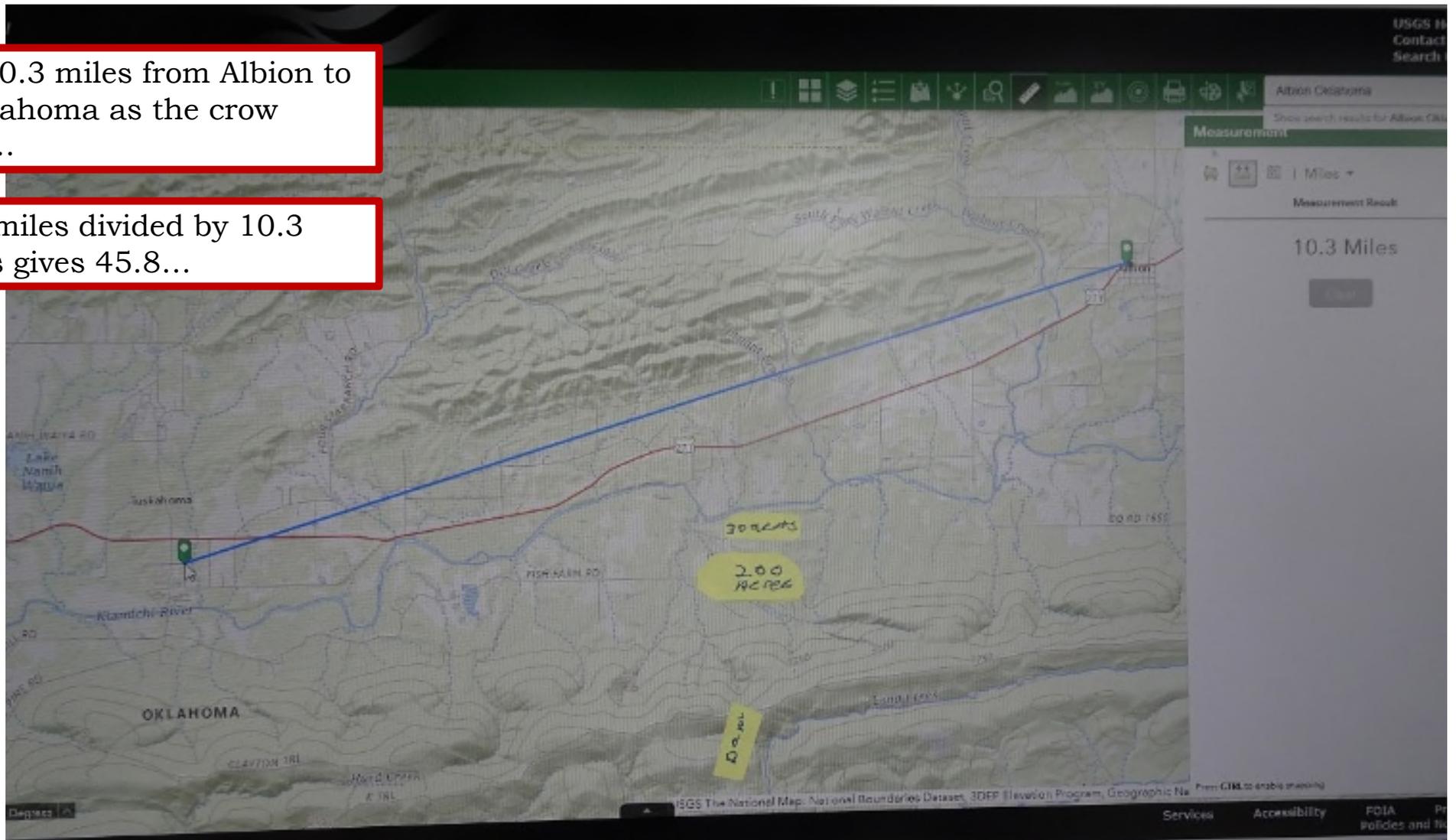
472 miles is:



Enough rock and shale, etc would be extracted from the Tomlin Energy Hydropower pits to make a Great Wall of China all the way from Oklahoma City to Houston!!!

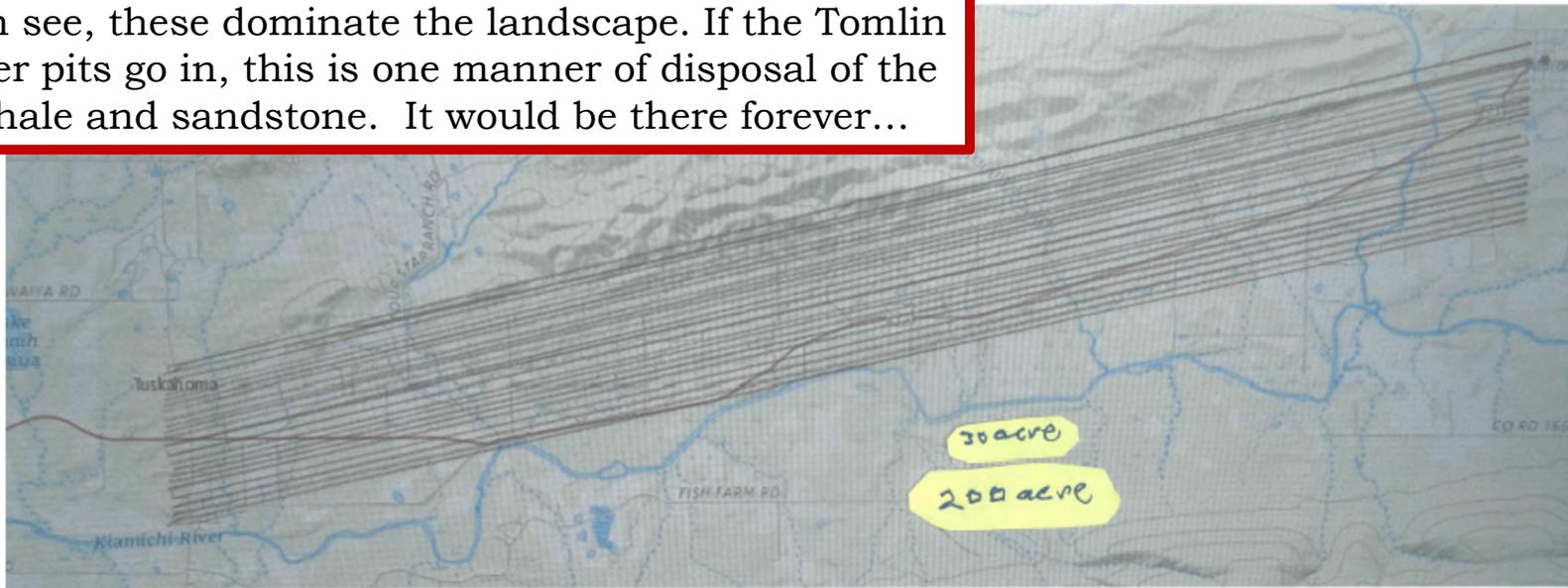
It's 10.3 miles from Albion to Tuskahoma as the crow flies...

472 miles divided by 10.3 miles gives 45.8...



I couldn't draw 46 lines, each 10.3 miles long on this map. So, instead, I drew 23 lines. Thus, each line here represents a DOUBLE-WIDE Great Wall of China, that is 10.3 miles long.

As you can see, these dominate the landscape. If the Tomlin Hydropower pits go in, this is one manner of disposal of the removed shale and sandstone. It would be there forever...



Great Wall of China:

26 ft tall
16 ft wide (top)
20 ft wide (bottom)

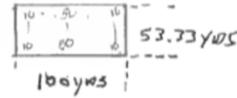
(average dimensions)

If he kind of widens it or smears it out
some...

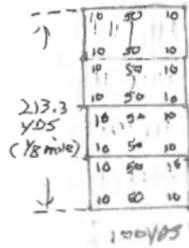
Perspective

Just how much **IS** 1,298,088,000 cubic feet of rock, shale, dust, etc?

Lets take a football field, without the end zones:



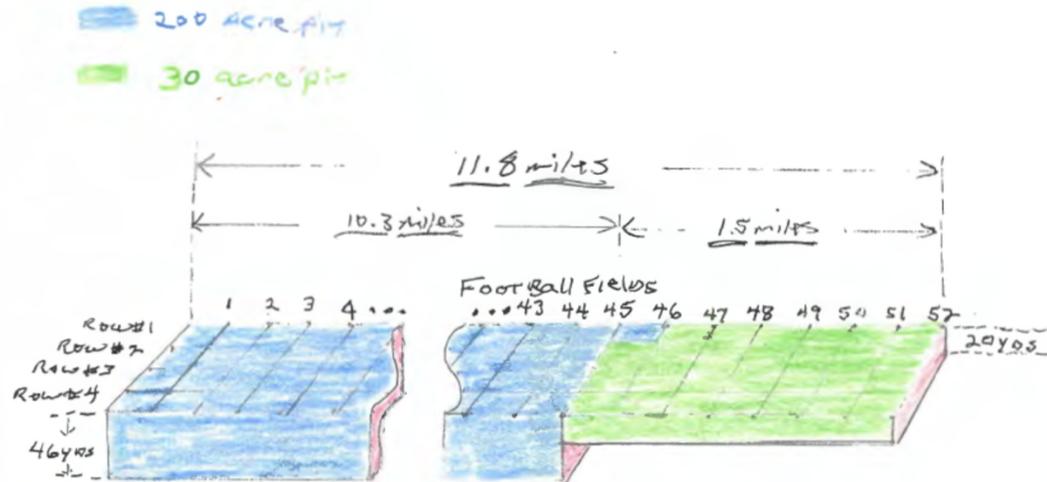
Now, lets take 4 of them and line them up side by side:



These will be the beginning of 4 long rows of football fields...

KRLA 000034

(not to scale) (dramatization) (some calculations rounded off)

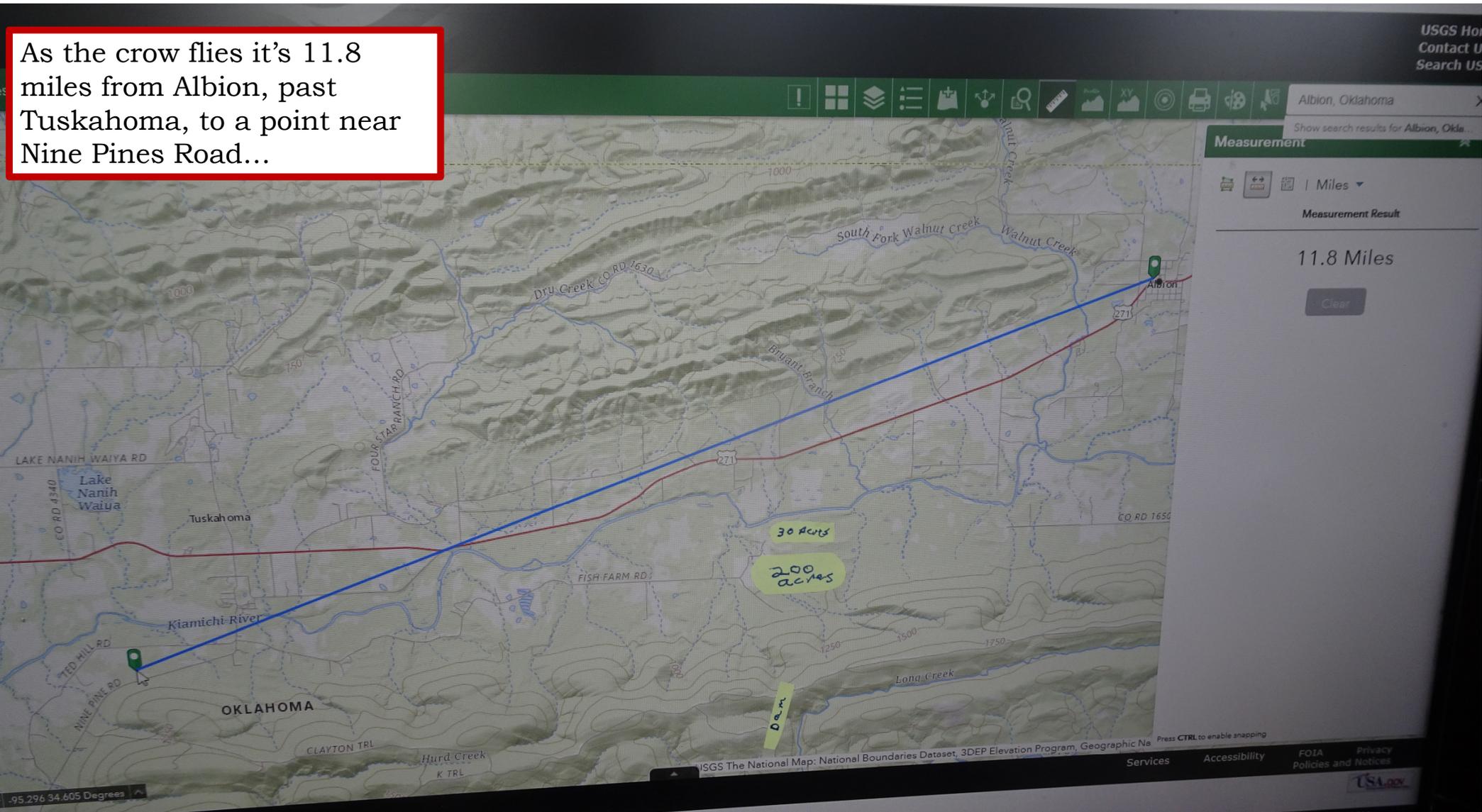


The 200 acre, 140 foot deep pit will yield rock, shale, dust, etc that is:
4 football fields wide, 45 football fields long and 46 yards deep/high.
(or, 1/8th mile wide, 10.3 miles long and 138 feet deep/high)

The 30 acre, 60 foot deep pit will yield rock, shale, dust, etc that is:
4 football fields wide, 27 football fields long and 20 yards deep/high.
(or, 1/8th mile wide, 1.5 miles long and 60 feet deep/high)

KRLA 000035

As the crow flies it's 11.8 miles from Albion, past Tuskahoma, to a point near Nine Pines Road...



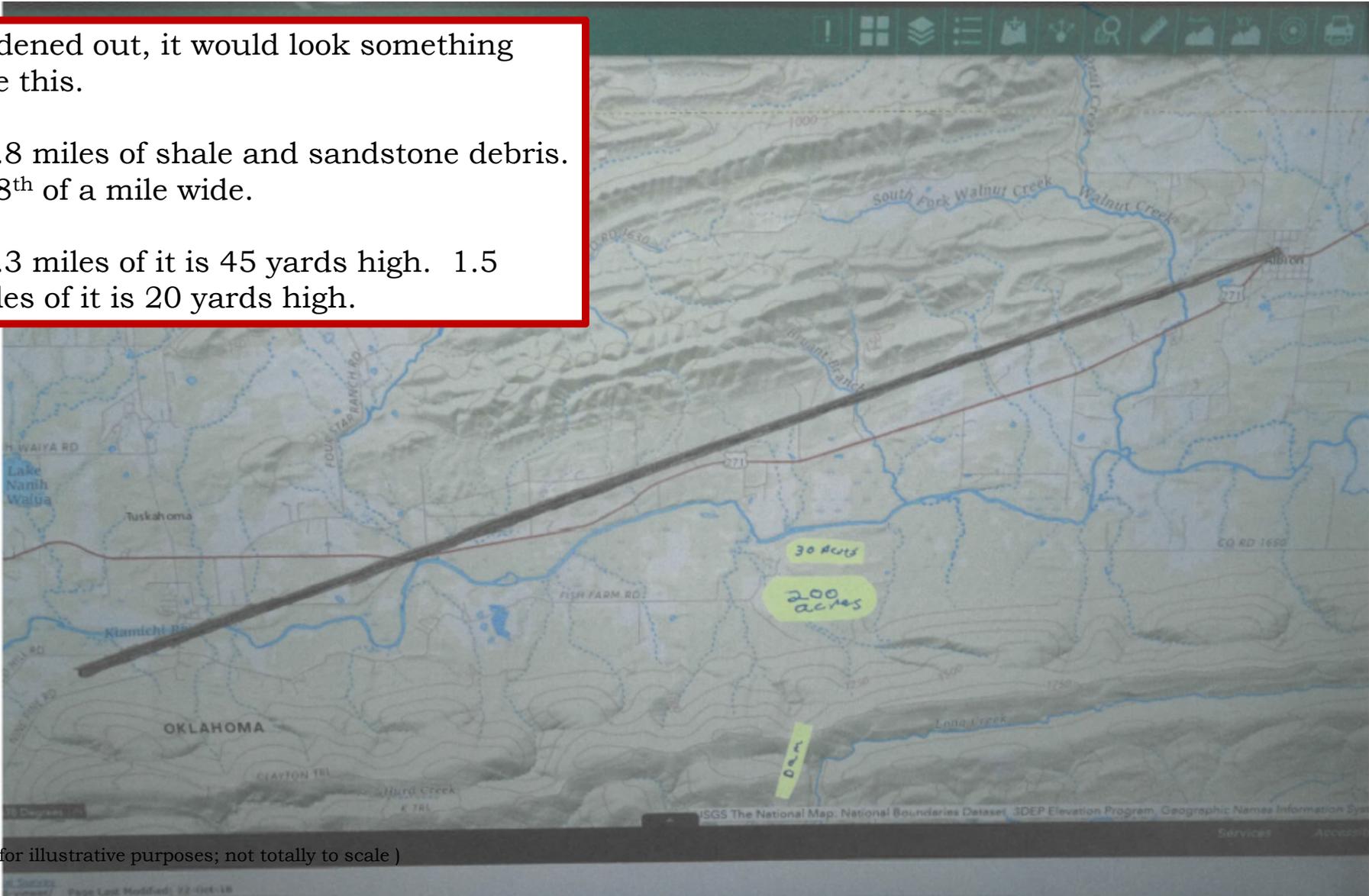
11.8 Miles

Clear

Widened out, it would look something like this.

11.8 miles of shale and sandstone debris.
1/8th of a mile wide.

10.3 miles of it is 45 yards high. 1.5 miles of it is 20 yards high.



(for illustrative purposes; not totally to scale)

If he dumps it in piles...



- Great Pyramid of Giza:
- Height: **456** ft or 152 yds
- Length of each side: 252 yds
- Area of Base: **13.1 acres**
- **“8th tallest building in OK.”**

**Myriad Botanical
Gardens,
Oklahoma City.**

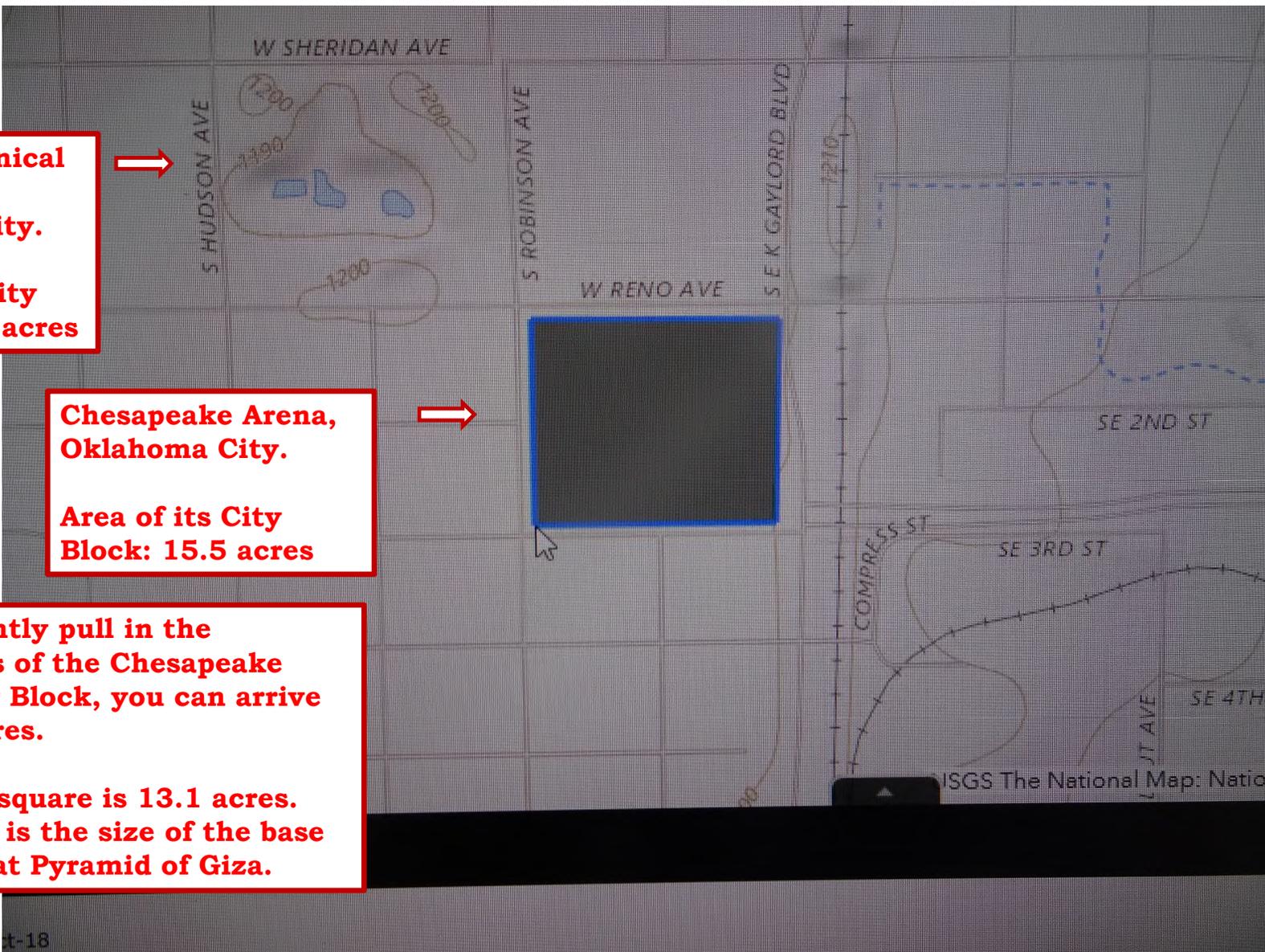
**Area of its City
Block: 17.1 acres**

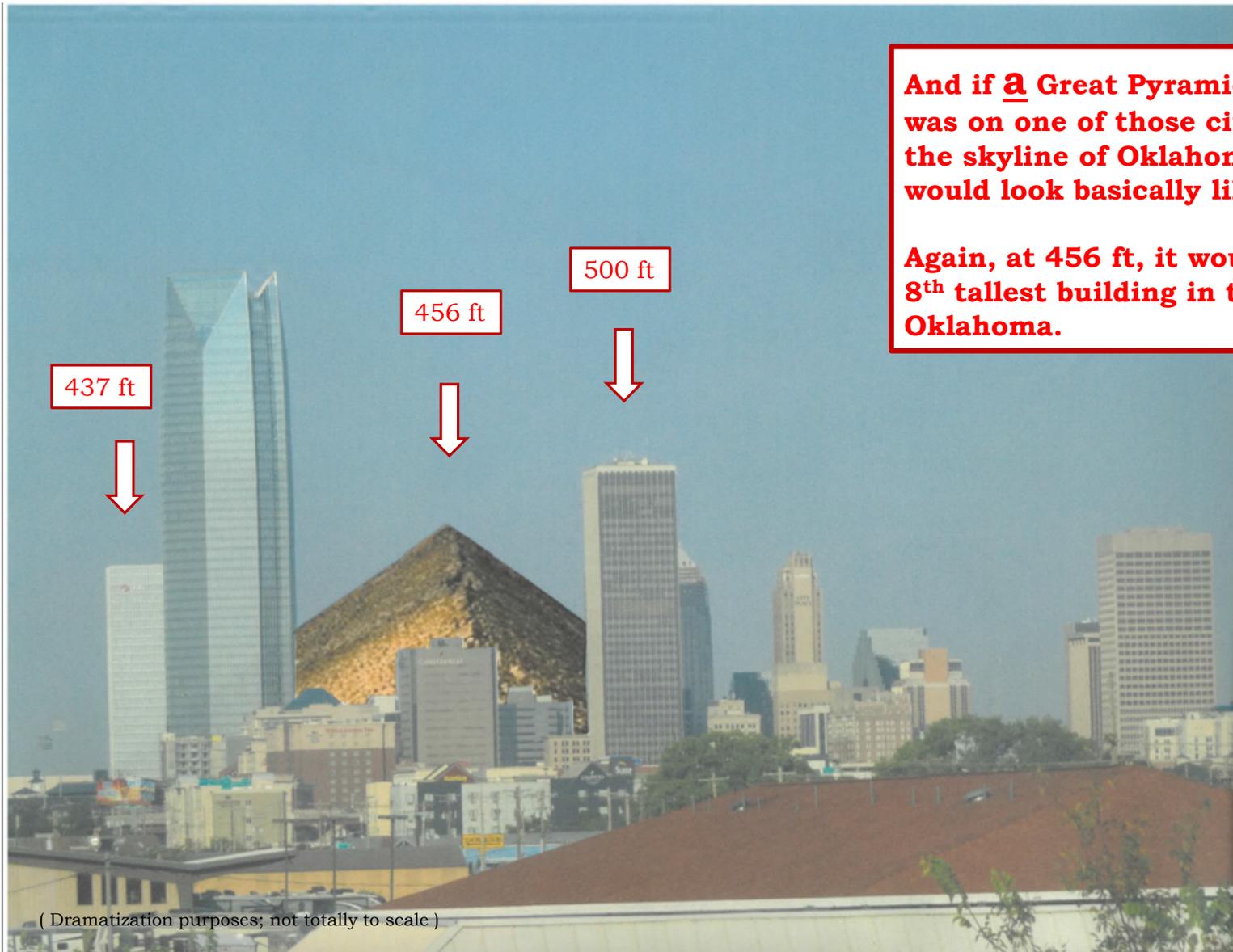
**Chesapeake Arena,
Oklahoma City.**

**Area of its City
Block: 15.5 acres**

**If you slightly pull in the
boundaries of the Chesapeake
Arena City Block, you can arrive
at 13.1 acres.**

**The black square is 13.1 acres.
13.1 acres is the size of the base
of the Great Pyramid of Giza.**

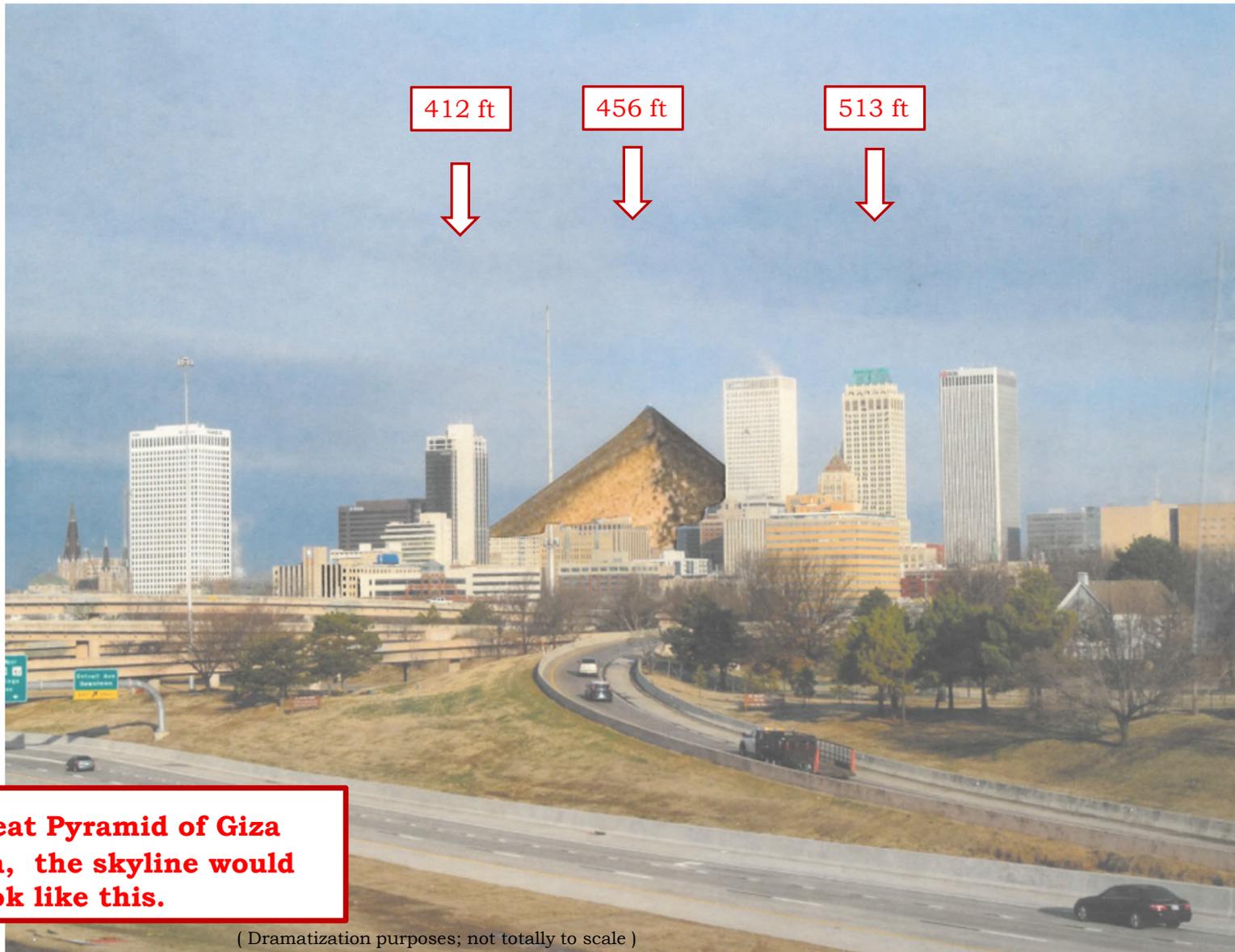




And if a Great Pyramid of Giza was on one of those city blocks, the skyline of Oklahoma City would look basically like this.

Again, at 456 ft, it would be the 8th tallest building in the state of Oklahoma.

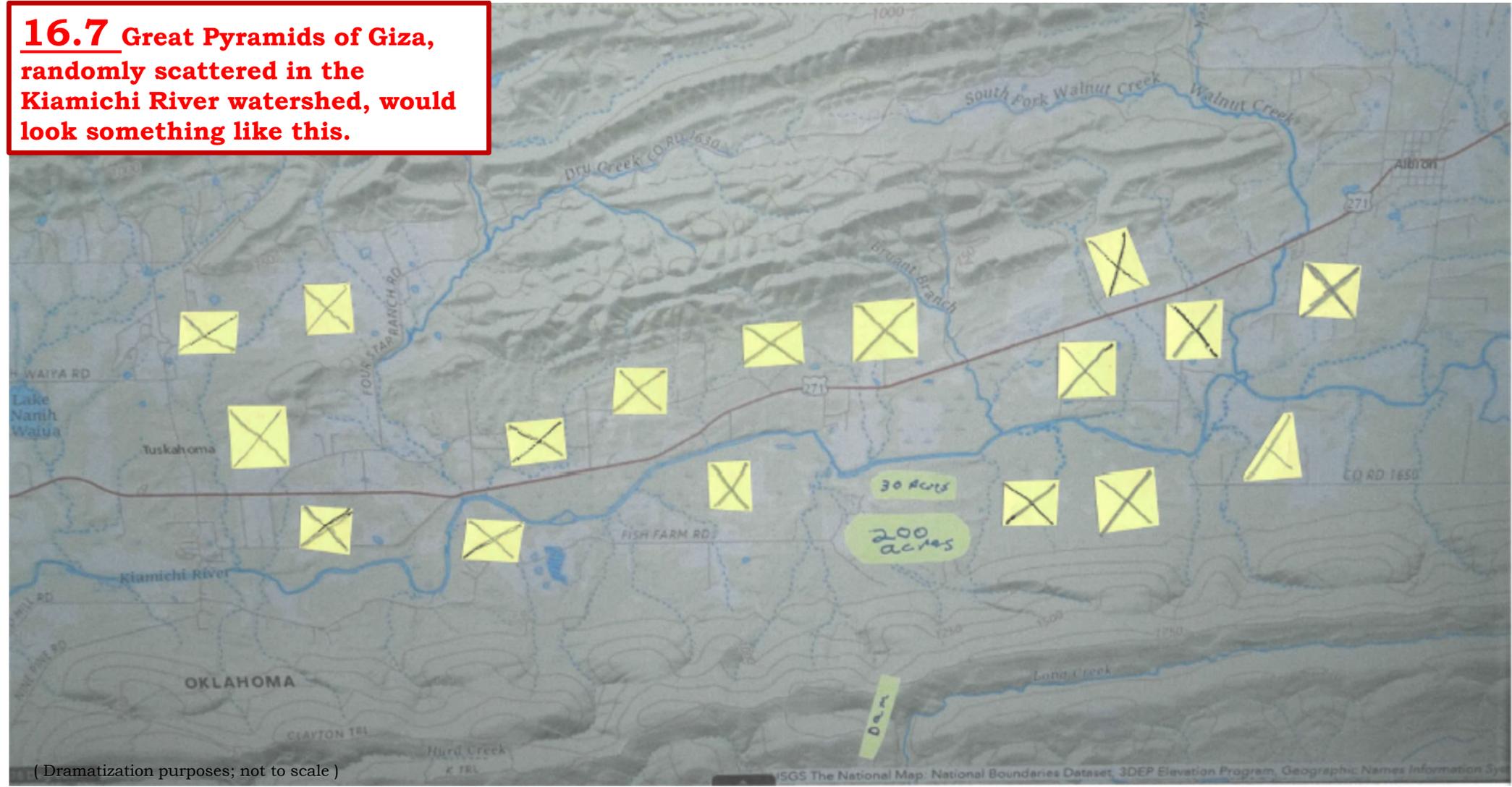
(Dramatization purposes; not totally to scale)



And if a Great Pyramid of Giza was in Tulsa, the skyline would basically look like this.

(Dramatization purposes; not totally to scale)

16.7 Great Pyramids of Giza, randomly scattered in the Kiamichi River watershed, would look something like this.



(Dramatization purposes; not to scale)

sandstone and shale...

Sandstone

(rock)

WRITTEN BY

[The Editors of Encyclopaedia Britannica](#)

Sandstone, lithified accumulation of sand-sized grains (0.063 to 2 mm [0.0025 to 0.08 inch] in diameter). It is the second most common [sedimentary rock](#) after [shale](#), [constituting](#) about 10 to 20 percent of the sedimentary rocks in the [Earth's](#) crust. Because of their abundance, [diverse](#) textures, and [mineralogy](#), sandstones are important indicators of erosional and depositional processes.

Texturally, sandstones consist of two components: (1) a framework composed of sand-sized grains and (2) interstitial volume between grains, which may be empty, especially in modern sandstones, or, in the case of most ancient sandstones, filled with either a chemical cement of silica or calcium carbonate or a fine-grained [matrix](#).

<https://geology.com/rocks/sandstone.shtml>

Sandstone

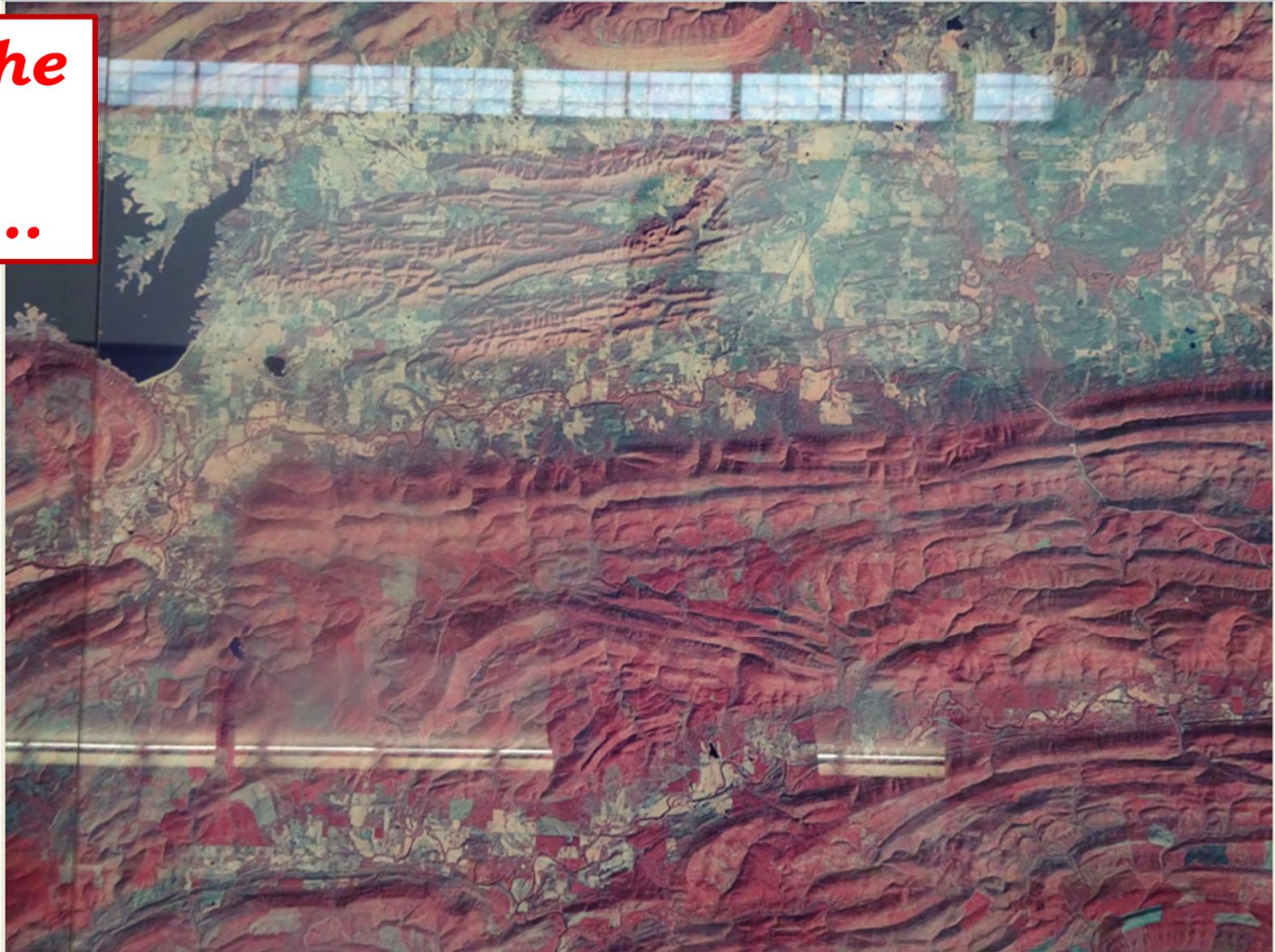
A clastic sedimentary rock composed of sand-size grains of mineral, rock, or organic material.

Article by: [Hobart M. King](#), PhD, RPG

What is Sandstone?

Sandstone is a [sedimentary rock](#) composed of sand-size grains of [mineral](#), [rock](#), or organic material. It also contains a cementing material that binds the sand grains together and may contain a matrix of silt- or clay-size particles that occupy the spaces between the sand grains.

***See the
next
slide...***



In the preceding slide an enhanced satellite view of Northern Pushmataha County is shown.

Sardis Lake is to the right or west, Clayton is below it, Lake Nanih Waiya is the smaller lake, to its east are the Potato Hill Mountains. The Kiamichi River runs from east to west (left to right) across the whole picture.

The mountain range that runs east-west just south of the Kiamichi River is the northern front of the Kiamichi Mountains. Primarily comprised of sandstone and shale, these mountains are around 250 million years old.

Now, just think: every winter for 250 million years rain has come from the north and bombarded them. Then freeze/thaw cycles. Then spring rains.

Consequently, it is no surprise that a Geologist once told me the sandstones comprising this range of mountains are HIGHLY WEATHERED.

In Jar #1 you will find some sandstone from within a mile of the Tomlin Hydropower site. Rub them together. Scrape them together. Rub a coin on them. Scratch them with your fingernails. See how much sand comes off. See how "soft" they are. The sandstone from our place, roughly 40 miles due south of the Tomlin site, is MUCH MUCH harder than this.

Heavy construction/excavation into this sandstone would result in an INCREDIBLE amount of dust and fine sand particles. Which would, like a bleeding sore, perpetually flow directly into the Kiamichi River!!!

<https://www.britannica.com/science/shale>

Shale, any of a group of fine-grained, laminated sedimentary rocks consisting of silt- and clay-sized particles. Shale is the most abundant of the sedimentary rocks, accounting for roughly 70 percent of this [rock](#) type in the crust of the [Earth](#).

Shales are often found with layers of [sandstone](#) or [limestone](#). They typically form in [environments](#) where muds, silts, and other sediments were deposited by gentle transporting currents and became compacted, as, for example, the deep-ocean floor, basins of shallow seas, river floodplains, and playas. Most shales occur in extensive sheets several metres thick, though some develop in lenticular formations.

Shales characteristically consist of at least 30 percent [clay](#) minerals and substantial amounts of [quartz](#). They also contain smaller quantities of carbonates, feldspars, iron oxides, fossils, and organic matter. Some organic-rich shales, called [oil shales](#), contain kerogen (a chemically complex mixture of solid hydrocarbons derived from plant and animal matter) in large enough quantities to yield oil when subjected to intense heat.

Shales' colour is determined primarily by [composition](#). In general, the higher the organic content of a shale, the darker its colour. The presence of [hematite](#) and [limonite](#) (hydrated ferric oxide) gives rise to reddish and purple colouring, while mineral components rich in ferrous iron impart blue, green, and black hues. Calcareous shales (those having a large percentage of calcite), on the other hand, are light gray or yellowish.

The hardness of shale is about 3 on the Mohs Geological Hardness Scale. (1) Sand and sandstones are much harder, around 7.

Consequently, in a stream bed, over time, the shale gets chewed up and broken down by the grinding action of the other rocks and minerals. Until it is a fine powder or silt.

Mohs Geological Hardness Scale

mineral	Mohs relative hardness scale	scratch test	other facts
talc	1	scrapeable with fingernail	used in talcum powder
gypsum	2	scrapeable with fingernail	ingredient of plaster
calcite	3	scratch with copper coin	used in cement
fluorite	4	scratch with a nail	used in toothpaste
apatite	5	scratch with a nail	mineral in bone
feldspar	6	scratch with steel file	ingredient in glass, etc.
quartz	7	scratches window glass	used in glass, etc.
topaz	8	scratches glass	gemstone
corundum	9	scratches topaz	rubies & sapphires
diamond	10	scratches corundum	“womans best friend”

http://geologycafe.com/images/mohs_scale.jpg

- (1) <https://rocks.comparenature.com/en/properties-of-shale/model-19-6#:~:text=Rocks%20are%20rated%20on%20the%20on%20the%20Moh%27s,of%20rock%20when%20it%20is%20crushed%20or%20powdered.>

In Jar #2 you will find some smallish pieces of shale that have been in a stream bed for over 30 years. Note the rounded edges. Try scratching the surface of them with a coin. Try breaking them into smaller pieces. See how fragile they are. These too can be considered "weathered".

Heavy construction/excavation/removal would ALSO result in an INCREDIBLE amount of dust and fine shale particles put "into play" in the watershed. Which would, like a bleeding sore, perpetually flow directly into the Kiamichi River!!!

A Test Case: Little Cedar Creek

"An Experiment that has already been tried... and failed!"

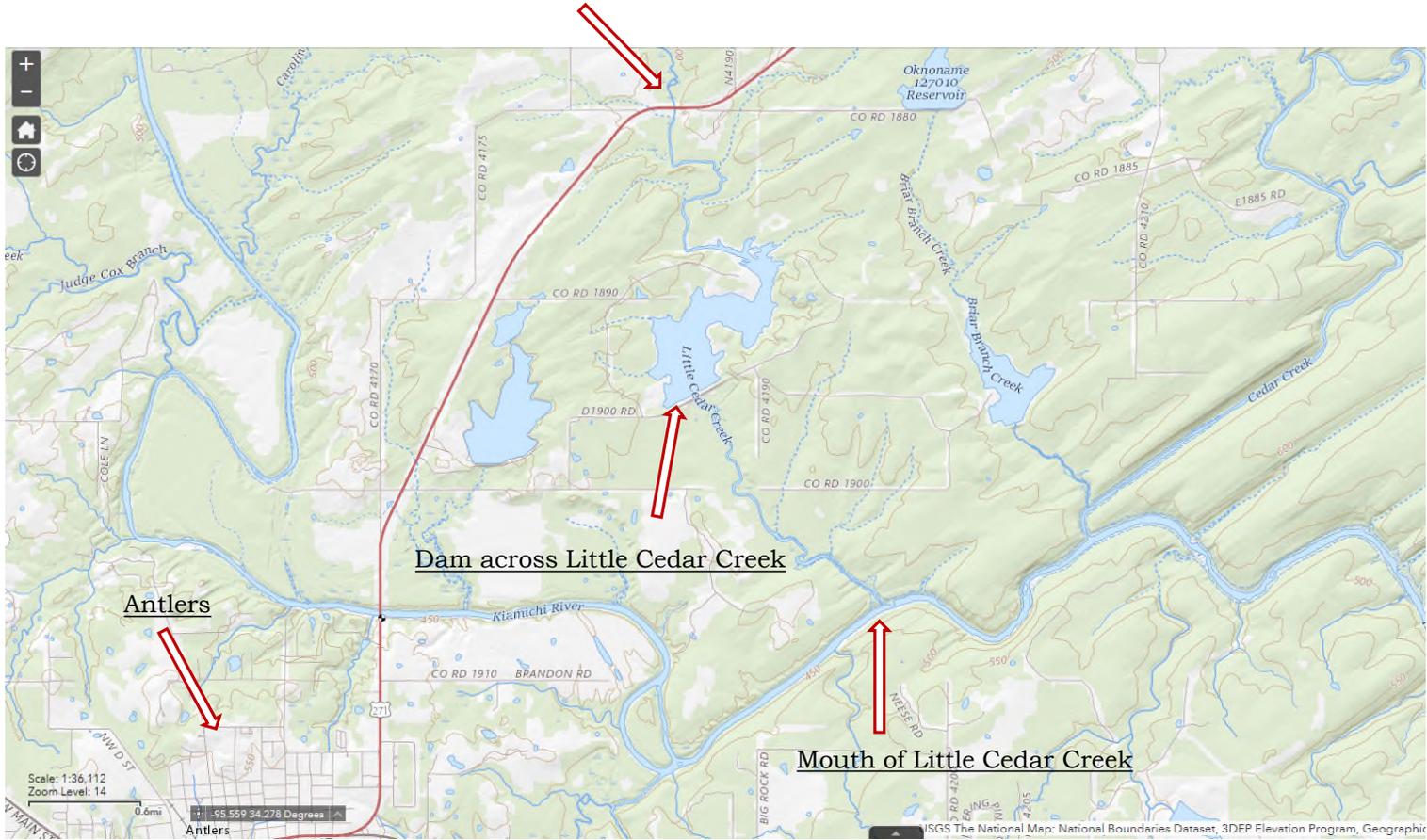
The 5 largest tributaries to the Kiamichi River are Jackfork Creek, which is dammed up to form Sardis Lake, followed by, in no particular order, Ten Mile Creek, Big Cedar Creek, Pine Creek and Buck Creek.

The next 5 largest tributaries would probably include Frazier Creek, Walnut Creek, Rock Creek, Gates Creek, and Little Cedar Creek.

In the early 1980's a fellow who owned a large ranch which Little Cedar Creek flowed through dammed it up. The result was a large lake about a mile and a half north of the Kiamichi River.

See the next slide.

Highway 271 bridge across Little Cedar Creek



Map view of the area north of Antlers showing Little Cedar Creek



Satellite view of the area north of Antlers showing Little Cedar Creek

Some Little Cedar Creek History...

Until it was dammed up, Little Cedar Creek was a clean, clear, free-flowing, untrammelled creek. During heavy rains, or in the winter, we could hear the water ROARING down it from almost a mile away. We were forever fixing fences due to the floods. On the plus side however, there were a couple of good, gravel-and-rock-ledge-bottomed swimming holes we knew about. Additionally, we could back up to those and dip water out-and-up into 55 gallon barrels in the back of the pickup. That clear water could then be used for anything from siphoning out and watering the garden to being used for cattle spraying.

One spring in the mid-1970's I was wading up the creek and fishing in the general vicinity of where the dam is now. Near a deep pool I caught an approximately 5 inch alligator gar on a treble hook. I remember that because I was unable to get him unhooked without blood-loss! I tell that as evidence of the Creek, even that far upstream, being aquatically/biologically in contact with the Kiamichi River.

The next 4 slides were taken on Little Cedar Creek north of the Highway 271 bridge. They are indicative of the quality of the total length of the creek in its original state. In other words, this is what the whole creek looked like before it was dammed up.

LCC, OS, Slide 1



LCC, OS, Slide 2



LCC, OS, Slide 3



LCC, OS, Slide 4



Some Little Cedar Creek History... (continued)

The Highway 271 bridge plays a critical role in the history of the creek. See the next slide...



Highway 271 bridge across Little Cedar Creek.

From road surface to bottom of creek: 23 ft

Some Little Cedar Creek History... (continued)

At the time the lake was built, the spillway was designed in such a way that the normal lake level was half or more up to the bottom of this bridge. Maybe 2/3rds of the way up. Made of very large poured concrete slabs, it was designed in such a way that water could run over it from the lake and then down smooth concrete into the bed of the creek. And, in such a way that it was possible to drive along the dam, across the spillway, and up a hill onto the other side of the ranch. Water and tires never touched dirt. Regrettably, it was designed and built too high.

In the mid-1980s myself and some other guys were fishing on the lake in aluminum boats when a hard spring rainstorm with lightning came up. We motored up under this bridge and, as the creek was flowing over the spillway, we held on to the girders under the bridge to keep from the current from carrying us back out into the rain.

In the late 1980's, however, during a very wet time, the creek got up to near the level of the concrete girders. Dead trees were floating down the creek and the State Highway Department was afraid the bridge might wash out. Consequently, they made the lake owner cut the spillway in order to lower the lake level.

He basically went in with a Trachoe and tore up the concrete slabs.

30-plus years later, lets see what the lake and the spillway look like today...



View from the south, looking north.
The trees with the light green leaves flank the original creek channel.



Looking north-east. The road along the top of the dam continues past what used to be the spillway.



Where the spillway used to be.

The whole hillside is made of shale. All the light colored "material" you see there is shale. Also note the permanent turbidity in the two areas of water.





Fragments of the concrete slabs that made up the original spillway.



More shale erosion.



The gorge continues on for a quarter-mile or more.



Deep erosion where the lake enters the spillway channel.



Looking northwest, this view encapsulates the effects of over 30 years of untrammeled shale erosion.

Some Little Cedar Creek History... (continued)

Because the water level of the lake had to be lowered, the spillway was cut without any consideration for anything downstream. Consequently, over the course of over 30 years, vast quantities of shale has washed down Little Cedar Creek.

The next four slides are from our place, a half mile downstream from the dam...



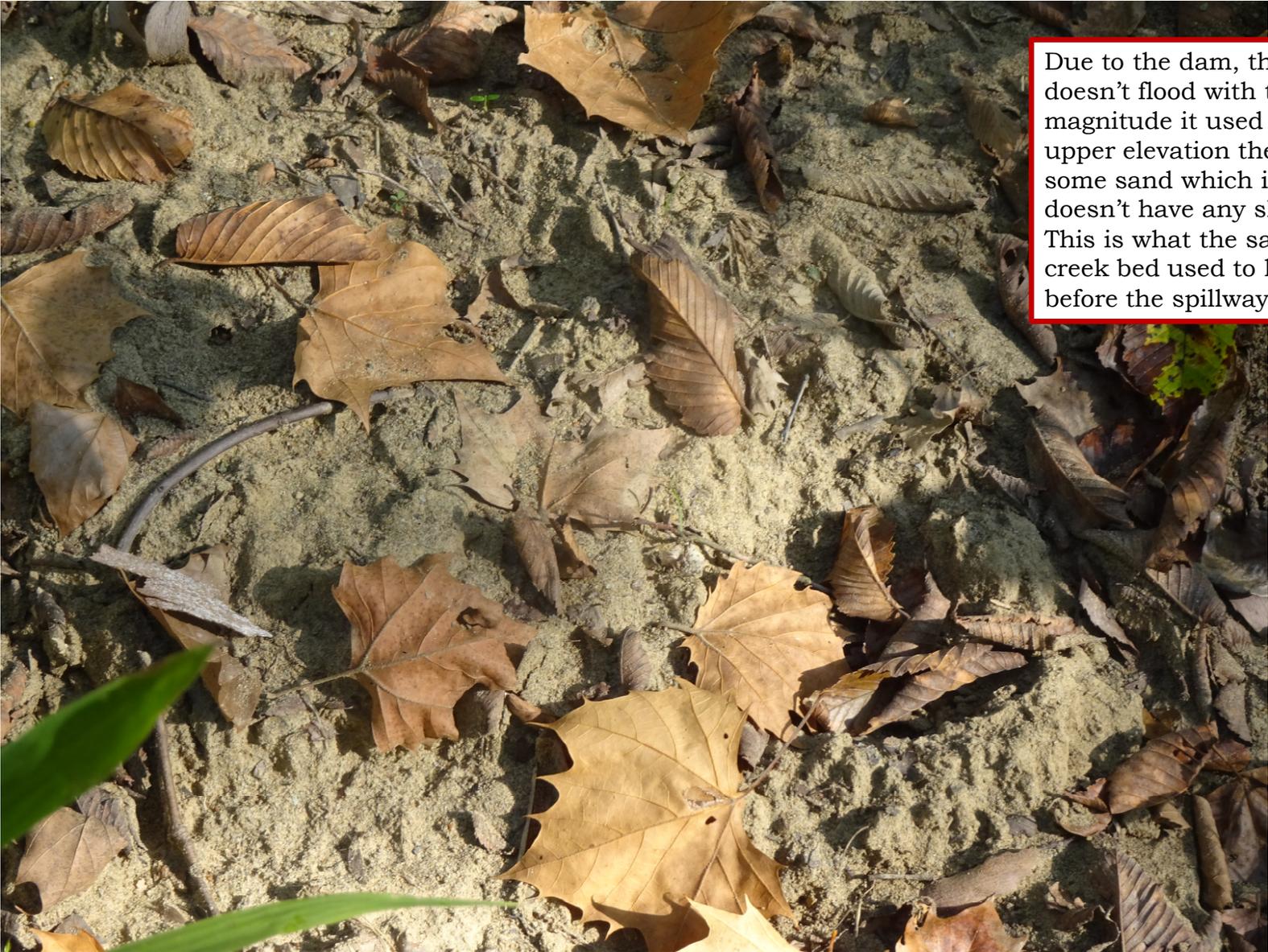
One of our former swimming holes, from the roots of the trees on the right to near the vegetation on the left. Almost completely filled in.

A half-mile south of the lake dam. This is one of the results of shale erosion.

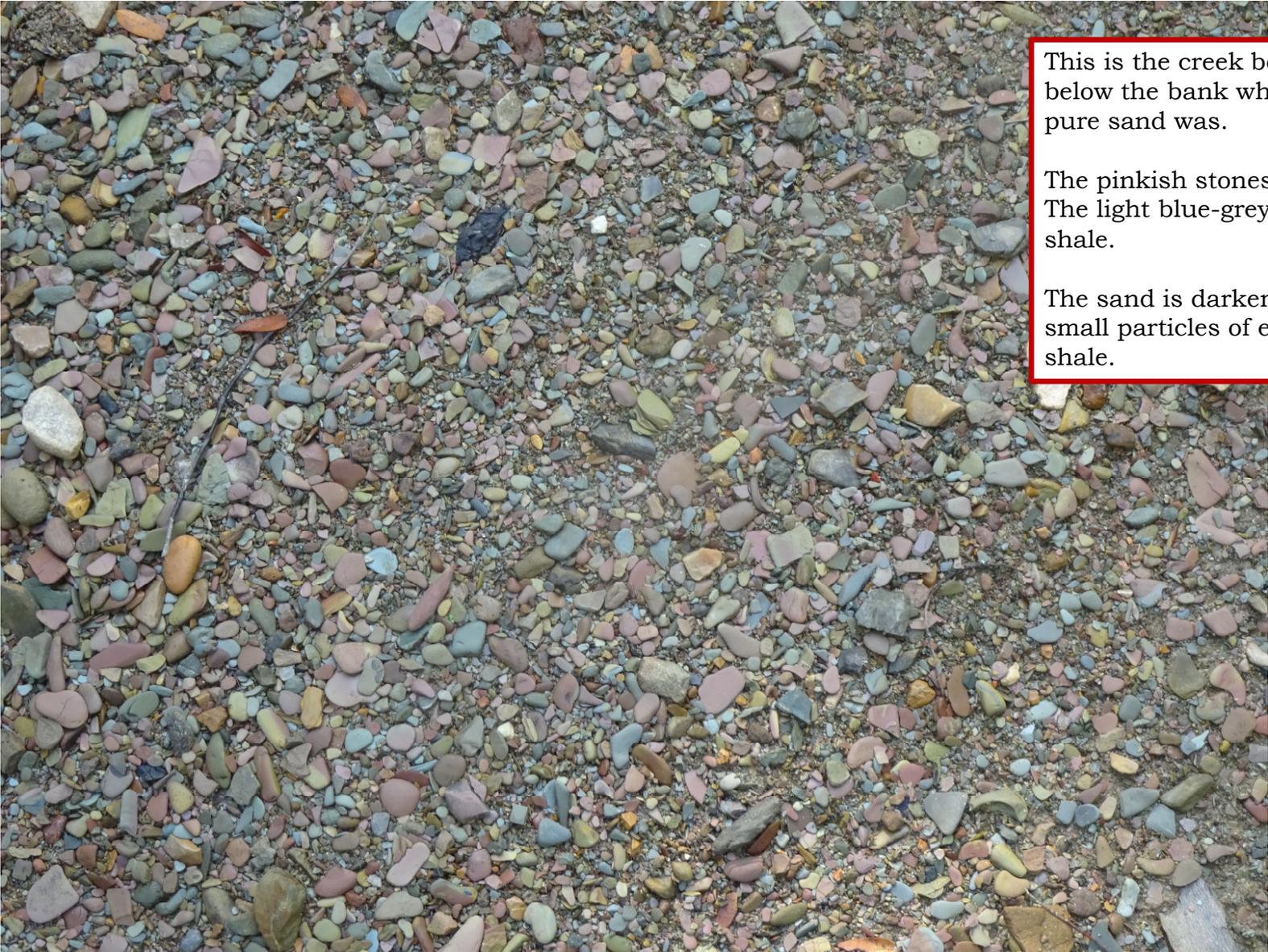


What the bed of the creek looks like now.

The pinkish stones are shale.
The light blue-grey stones are shale.



Due to the dam, the creek doesn't flood with the magnitude it used to. On an upper elevation there is still some sand which is pure and doesn't have any shale in it. This is what the sand in the creek bed used to look like before the spillway was cut.



This is the creek bed just below the bank where the pure sand was.

The pinkish stones are shale. The light blue-grey stones are shale.

The sand is darker due to small particles of eroded shale.

Some Little Cedar Creek History... (continued)

As the crow flies, the mouth of Little Cedar Creek is a little over a mile and a half from the spillway. Before the dam was built and before the spillway was cut, it was a clear, gravelly creek similar to what the creek still looks like north of the Highway 271 bridge.

Over the 30-plus years of shale eroding from the cut spillway, the naturally-occurring sand and sandstone gravel have ground the softer shale up. This has resulted in "shale dust" in the form of mud being washed downstream.

The next five slides are from the mouth of Little Cedar Creek as it appeared this summer ...











Some Little Cedar Creek History... (continued)

Compare and contrast the mud here at the mouth of Little Cedar Creek with the gravelly, rocky bottom of the creek north of the lake. Compare and contrast the water clarity here at the mouth of Little Cedar Creek with the water clarity north of the lake.

The difference is due solely to the over the 30-plus years of shale eroding from the cut spillway. The "shale dust" mud is probably FEET deep here at the mouth. Because of this and because of all the deep pools being filled with material washed out from the spillway gorge, the lower mile and a half of Little Cedar Creek is now essentially "dead". No fish, no "biological connection" to the river remains.

If you go to Google Maps and type in "Antlers, Oklahoma" a similar map to the one which began this section will appear. If you scroll it to the right several miles, past a large jag or bend in the river, you will arrive at the mouth of Little Cedar Creek. Now, click on the "Satellite View" logo in the lower left corner. The map will turn into a wet-weather, winter-time satellite view of the mouth of little Cedar Creek. Zoom in, pretty close. When you do you will see what is on the next two slides...



See the water discoloration?
This is shale-laden mud
washing out of Little Cedar
Creek in rainy weather into
the Kiamichi River.

Little Cedar Creek

Kiamichi River

river



A closer look.

Little Cedar Creek

Kiamichi River

Kiam

Some Little Cedar Creek History... (continued)

"The Moral of the Story" is this: shale is very soft and over time breaks down into microscopic particles. Because of this and its effects, it can kill a water body. This isn't speculative. This isn't theoretical. These pictures and my life-experiences, recounted here, prove what can happen when unrestrained geological materials are allowed to wash into flowing streams in our part of the world.

There is no need for another "experiment" of this nature. One has already been tried. And failed.

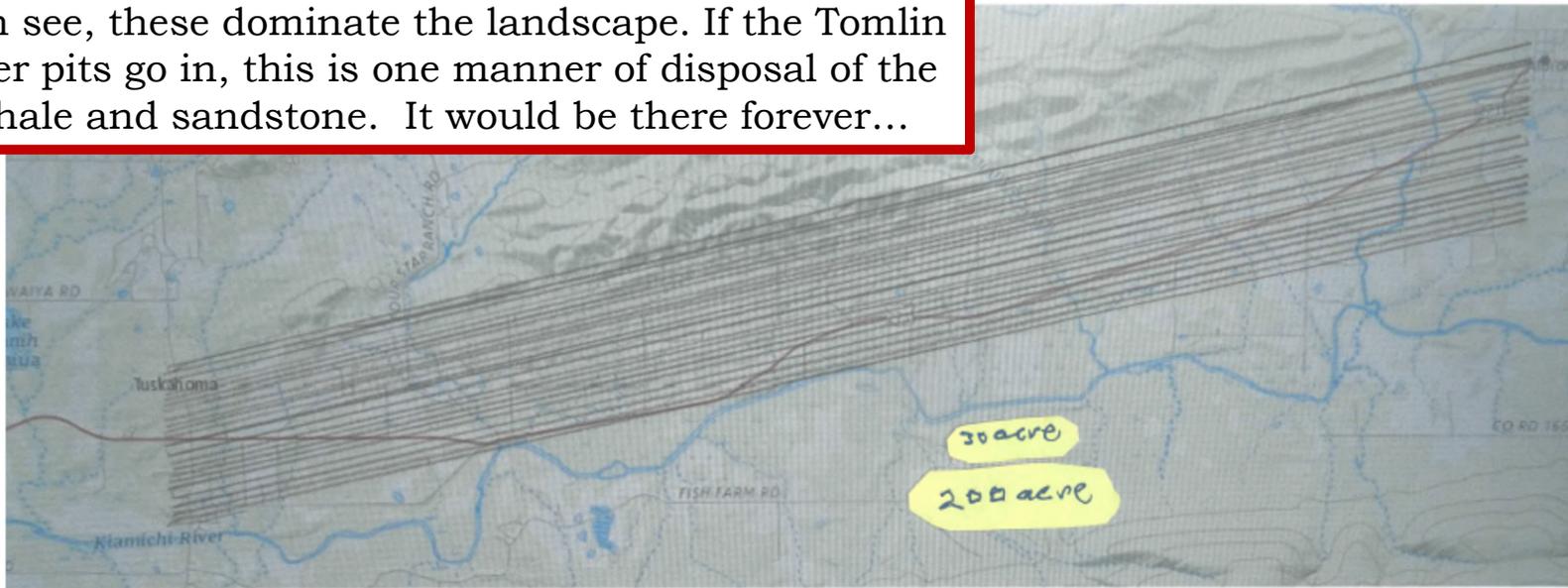
In Closing...

Directly below are the 3 slides from the top section illustrating how much sandstone and shale will be removed from Tomlins Hydropower pits and the possible "modes of deposition". Look at them again with fresh eyes. Look at the "relief" on the maps (mountains; areas of elevation). Look at the small creeks and rivulets running in to the Kiamichi River across the whole watershed.

Now, having seen what I have shown you about Little Cedar Creek, can you have any doubt that, if the Tomlin Hydropower pits are dug, the same thing won't happen to the Kiamichi River as happened to Little Cedar Creek?

I couldn't draw 46 lines, each 10.3 miles long on this map. So, instead, I drew 23 lines. Thus, each line here represents a DOUBLE-WIDE Great Wall of China, that is 10.3 miles long.

As you can see, these dominate the landscape. If the Tomlin Hydropower pits go in, this is one manner of disposal of the removed shale and sandstone. It would be there forever...



Great Wall of China:

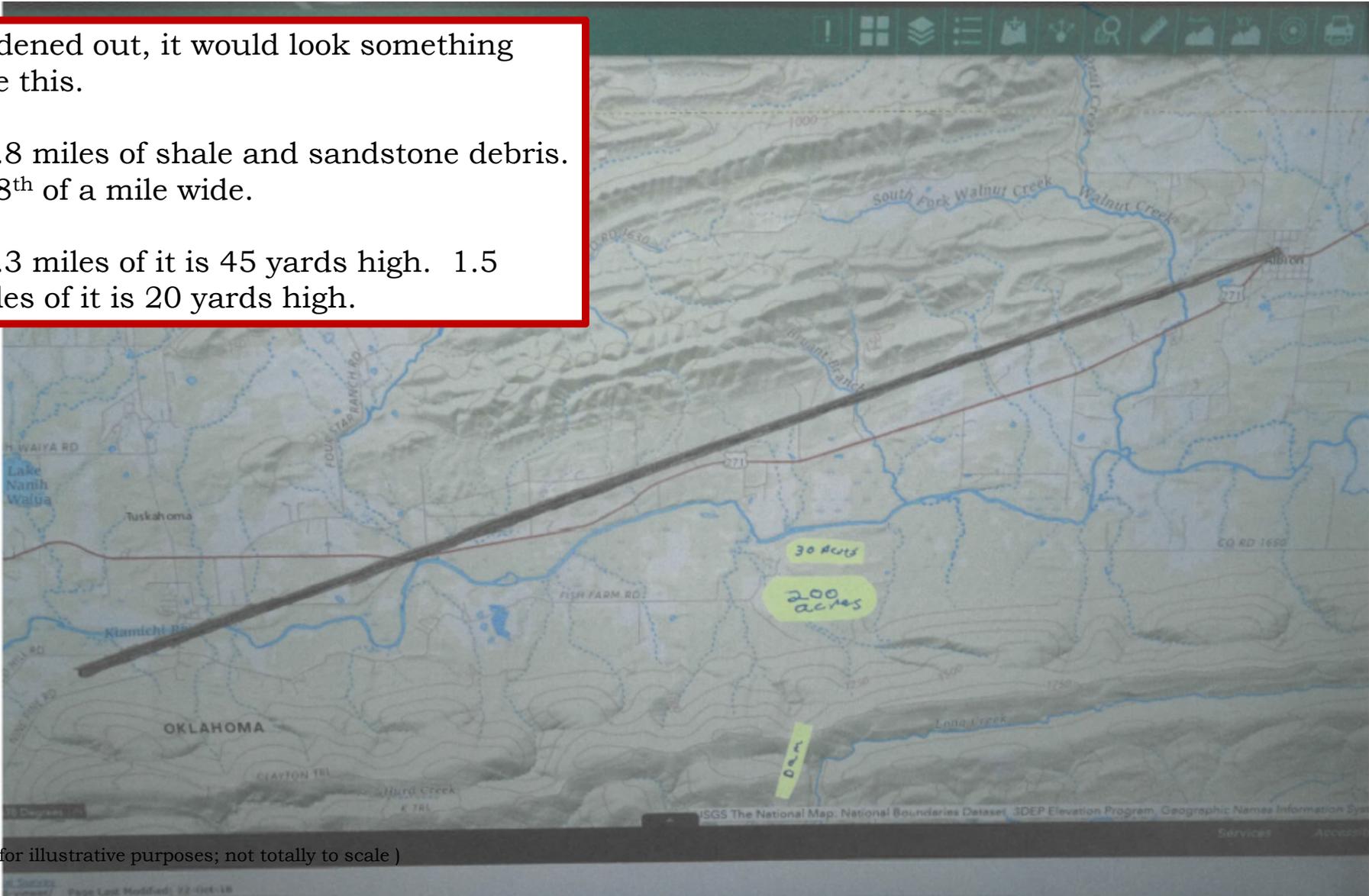
26 ft tall
16 ft wide (top)
20 ft wide (bottom)

(average dimensions)

Widened out, it would look something like this.

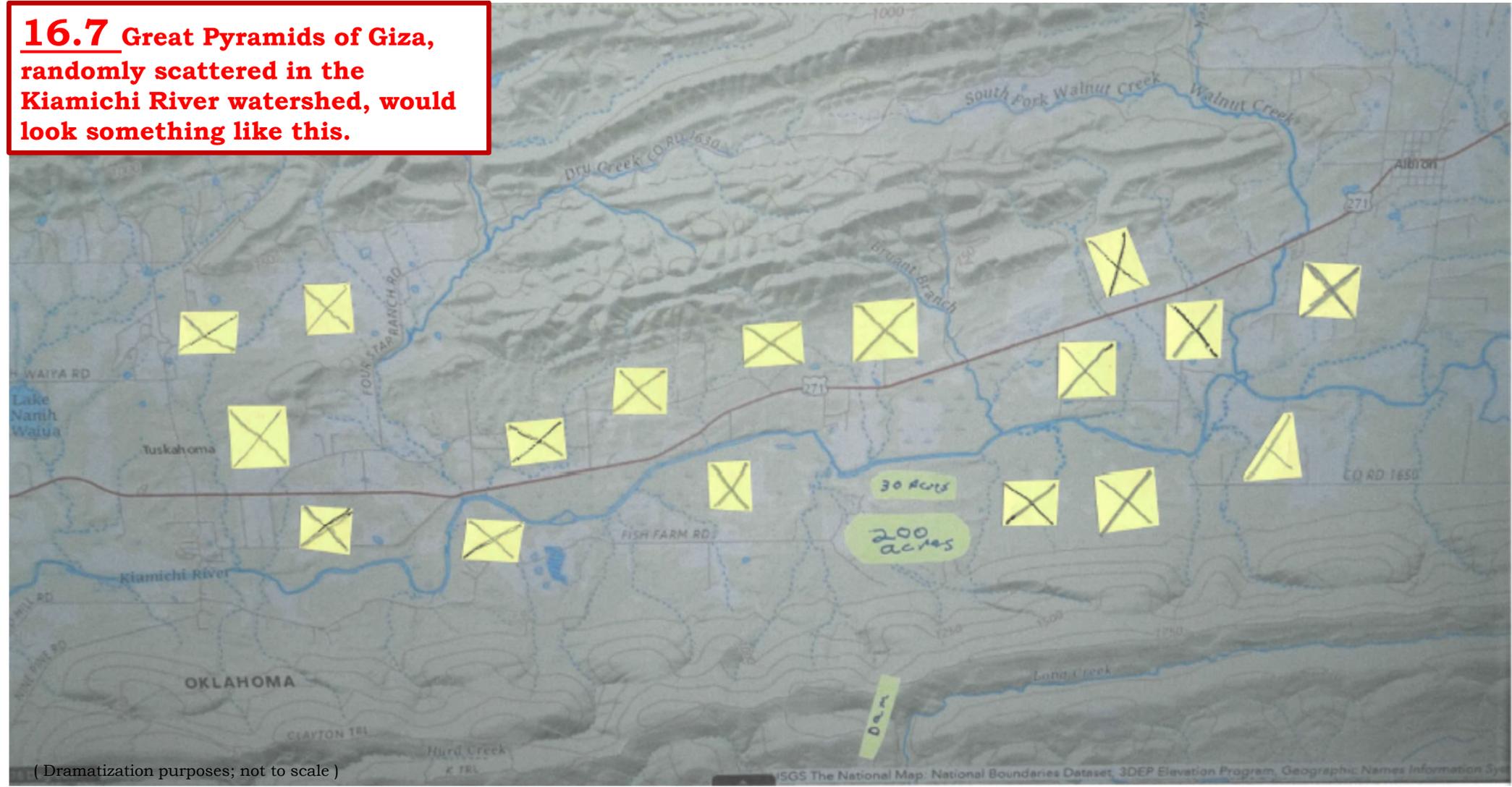
11.8 miles of shale and sandstone debris.
1/8th of a mile wide.

10.3 miles of it is 45 yards high. 1.5 miles of it is 20 yards high.



(for illustrative purposes; not totally to scale)

16.7 Great Pyramids of Giza, randomly scattered in the Kiamichi River watershed, would look something like this.



(Dramatization purposes; not to scale)

In Closing... (continued)

I have provided 5 pint Mason jars containing material for your inspection. They are:

Jar #1: weathered sandstone from within a mile of the Tomlin site.

Jar #2: shale pieces from the bed of Little Cedar Creek, a half-mile south of the spillway

Jar #3: pure white sand from an upper shelf of the same region of Little Cedar Creek

Jar #4: shale containing gravel from the bed of Little Cedar Creek

Jar #5: sand from the edge of Little Cedar Creek containing tiny particles of shale

These are meant to be opened and the material examined so that a more complete understanding may be obtained...

Thank you for your attention on this matter that is not only extremely important for Pushmataha County, but the State of Oklahoma also.