

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

October 14, 2003

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Grandstaff, at 9:30 a.m., on October 14, 2003, in the Board Room of the OWRB Offices, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof.

A. Invocation.

Member Ervin Mitchell gave the invocation.

B. Roll Call

Board Members Present

Grady Grandstaff, Chairman
Glenn Sharp, Vice Chairman
Ervin Mitchell, Secretary
Harry Currie
Lonnie Farmer
Jack Keeley
Richard McDonald
Richard Sevenoaks

Board Members Absent

Bill Secrest

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Jim Schuelein, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Mike Mathis, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Kathy Christian, Optima, OK
Roan Rinehart, City of El Reno, OK
Cathie Arnold, Norman, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Keith McDonald, Wells Nelson, Oklahoma City, OK
Bobby McSpadden, Sardis Lake Water Authority, Clayton, OK
Anita Anderson Earnest, Lincoln County Rural Water District #14, Agra, OK
Kim Owens, Town of Canton, OK
Roger Owens, Town of Canton, OK
Mike Spear, Town of Canton, OK
Erin Israel, GIT, Inc., Oklahoma City, OK
Richard Landes, Landes Engineering, Perkins, OK
Martha Ober, BancFirst, Oklahoma City, OK
David Griesel, El Reno, OK
Mike Ray, House of Representatives Media, Oklahoma City, OK
Susan Krug, Office of the Attorney General, Oklahoma City, OK
Jim Barnett, Kerr Irvin Rhodes Ables, Oklahoma City, OK
Sandra Cushing, representing Ronald Griesel, El Reno, OK
Ron Greisel El Reno, OK
Jim Lockett, El Reno, OK
Steve Fox, City of El Reno, OK
Ann Keeley, Ada, OK

C. APPROVAL OF MINUTES

Chairman Grandstaff stated the draft minutes of the September 9, 2003 Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were deletions or additions.

Mr. Mitchell moved to approve the minutes of the September 9, 2003, Regular Meeting, and Mr. McDonald seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp,
Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Secrest

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, began his report announcing the great news regarding the Financial Assistance program's triple-A rating on the Drinking Water SRF bond issue that will close on October 29, 2003. Mr. Smith highlighted the significant achievement saying the OWRB is the highest rated entity in Oklahoma, and a higher rating than the Texas program. He talked about the history of the program, and why it has been able to achieve such a rating under the leadership of Joe Freeman--chief of the division--the division staff, and the Board's involvement and oversight, and he highlighted other aspects of the program that provides the type of security the rating agencies evaluate for the rating earned. Mr. Smith complimented

Mr. Freeman and his staff for their work in assuring the excellent ratings achieved by the Board's bond issues.

Mr. Smith stated the November board meeting would be held on November 4, at 9:30 a.m. at the Board's offices, followed by the opening session of the Governor's Water Conference at 1:30 p.m. on November 4 at the Cox Business Center with a Symposium on the Arbuckle-Simpson Aquifer. A full-day conference program will be held on November 5, 2003, at the Cox Center. He talked about the conference program highlights.

Mr. Smith said he met with the MESONET External Advisory Board on September 30-October 1; the Lake Texoma Advisory Committee on October 6-7; and Dean Couch attended the Western States Water Council Indian Water Rights Symposium on October 6-7. He said the National Rural Water Association will be meeting in Oklahoma City the week of October 20; Oklahoma State University is sponsoring a "Water 2003" Conference on October 29-30 several OWRB employees are participating in; he will be traveling to Amman, Jordan, to participate in an University of Oklahoma grant program on Peace Studies to facilitate water talks; and the Settlement Conference regarding the Corps of Engineers and Sardis Reservoir had been postponed to October 24.

Mr. Smith concluded his report by introducing Ms. Leslie Nance, OWRB Employee of the Quarter.

Following Mr. Smith's presentation, Chairman Grandstaff congratulated Mr. Smith on his 25-year anniversary with the Oklahoma Water Resources Board, and presented the 25-year pin and certificate.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Town of Optima, Texas County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Town of Optima, located in the Panhandle County of Texas County, has a population of 266 and is served water by two existing water wells located within the town limits; however, only one well is operable, and there is no back up water source. It is a requirement of the Oklahoma Department of Environmental Quality that a community depending on one well must have another operating well available. In order to correct the situation, and to comply with the ODEQ regulation, the town intends to use the inoperable well and replace the pump, column pipe, reconnect the electrical system, and treat the new well. The estimated cost of the project is \$19,783.25, and will be funded with \$2,967.58 in local funds and the requested OWRB Emergency Grant of \$16,816.27. Staff recommended approval of the request.

Ms. Kathy Christian was present representing the Town of Optima.

Mr. Mitchell moved to approve the emergency grant request to the Town of Optima, and Mr. McDonald seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp,
Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Secrest

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Canton Public Works Authority, Blaine County, Oklahoma. Recommended for Approval. Mr. Freeman said this \$22,440.00 emergency grant is requested by the Canton Public Works Authority. He said the town had experienced a sewer line collapse and raw sewage flowed into

the North Canadian River. The project consists of installing approximately 600 feet of new 8-inch PVC sewer line. The total cost of the project includes pipe, manhole, asphalt cutting and repair, household services, and engineering fees, and funding is to be provided through \$3,960.00 in local funds and the requested OWRB emergency grant of \$22,440.00. Staff recommended approval of the request.

Mr. Mitchell moved to approve the emergency grant to the Canton Public Works Authority, and Mr. Sharp seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp,
Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Secrest

C. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water and Sewer District #4, Lincoln County, Oklahoma. Recommended for Approval.

Mr. Freeman stated the Lincoln County RWD #4 has made a request for a \$100,000.00 emergency grant. The District's 900 customers are supplied water from wells along with purchased water from Lone Chimney Water Authority. The customers in the southern portion of the District have been experiencing an inadequate water supply and pressure. In order to solve the problem, the District has proposed to purchase water from the City of Chandler. The project will consist of installing 26,500 feet of 8-inch and 10,300 feet of 6-inch PVC waterline, directional bores and associated casings, gate valve and a master meter, and pump station. It is estimated the cost of the project will be \$464,999.00, with funding provided by \$235,000.00 OWRB loan, a Department of Commerce CDB Grant of \$129,999.00, and the requested OWRB Emergency grant of \$100,000.00. Staff recommended approval of the emergency grant request.

Ms. Bonita Anderson, District Manager, was present in support of the emergency grant request.

Mr. Sevenoaks moved to approve the Emergency Grant to the Lincoln County RWD #4, and Mr. Currie seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp,
Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Secrest

D. Consideration of and Possible Action on a Proposed Order Approving Loan for Perkins Public Works Authority. Recommended for Approval.

Mr. Freeman said to the members that this \$180,000.00 loan request is from the Perkins Public Works Authority. The loan is for long-term refinancing of an interim bank loan used for water line extensions. The loan will be funded through the revenue bond loan program, and Mr. Freeman noted provisions of the loan agreement. Staff recommended approval of the application.

Mr. Skip Landes, project engineer, was present in support of the loan application.

Mr. Farmer moved to approve the loan application to the Perkins Public Works Authority, and Mr. McDonald seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp,
Grandstaff
NAY: None
ABSTAIN: None
ABSENT: None

3. SUMMARY DISPOSITION AGENDA

Chairman Grandstaff stated that any item listed under this Summary Disposition Agenda may, at the request of any member of the Board, the Board’s staff, or any other person attending this meeting, be transferred to the Special Consideration Agenda. Under the Special Consideration Agenda, separate discussion and vote or other action may be taken on any items already listed under that agenda or items transferred to that agenda from this Summary Disposition Agenda.

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

There were no requests to transfer items; however, Mr. Currie asked about work being conducted at Lake Wister. Mr. Smithee responded that there are several studies underway at Lake Wister, and he would be making a presentation later in the agenda on the current activities on lakes studies.

Mr. Schuelein asked that agenda item 3.D. 4. and 3.D.5. be withdrawn from the Board’s consideration. He also mentioned that item 3.D.9., a contract on Lake Wister between the Corps of Engineers and the OWRB, was not available at the time the meeting materials were prepared. He said the 80-page document is available today if any of the members wanted to look at it, or he would address any questions. There were no questions.

Mr. Currie asked about the contract with Weather Decision Technology regarding the Weather Modification Program. Mr. Mathis responded this contract concerns the research program, and there is actually no operational cloud seeding at this time. This is a cooperative effort with the State of Texas and the primary focus is along Oklahoma’s western border.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on the Summary Disposition Agenda and Action on items and Approval of Items 3.C. through 3. N.

There being no other questions regarding any items on the Summary Disposition Agenda, Mr. Currie moved to approve the Summary Disposition Agenda as amended, and Mr. Farmer seconded.

- AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp, Grandstaff
- NAY: None
- ABSTAIN: None
- ABSENT: Secrest

The following items were approved:

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

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

D. Contracts and Agreements Recommended for Approval

1. Consideration of Professional Services Agreement with W. Kenneth Morris for Work Related to Oklahoma Floodplain Management Program.

2. Consideration of Agreement with Critical Technologies, Inc for On-line Data Storage and Retrieval.
 3. Consideration of Interagency Agreement with the Oklahoma Climatological Survey for Drought Monitoring.
 4. ***Consideration of Intergovernmental Agreement with the U.S. Department of Agriculture, Agricultural Research Service for Drought Monitoring. Item withdrawn***
 5. ***Consideration of Interagency Agreement with the Oklahoma Department of Public Safety – Oklahoma Highway Patrol for Temporary Traffic Control. Item withdrawn***
 6. Consideration of Amendment to Drinking Water State Revolving Fund Interagency Agreement with the Department of Environmental Quality.
 7. Consideration of Cooperative Agreement with the Oklahoma Conservation Commission for Work Related to Stillwater Creek Watershed Implementation Project.
 8. Consideration of Interagency Agreement with the Office of the Secretary of Environment for Work Related to Mapping of Wetlands in Oklahoma.
 9. Consideration of Intergovernmental Agreement with the U.S. Army Corps of Engineers, Tulsa District, for Work At Lake Wister.
 10. Consideration of Professional Services Contract with Weather Decisions Technology for Evaluation of Weather Modification Program.
- E. Applications for Temporary Permits to Use Groundwater:
1. Material Producers, Inc., Murray County, #2002-551
 2. Sue Sue Bermuda Hybrids, Inc., Wagoner County, #2003-547
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. Johnny L. & Rita N. Wilson, Greer County, #2003-507
 2. Choctaw County Rural Water and Sewer District No. 1, Choctaw County, #2003-544
- H. Applications to Amend Regular Permits to Use Groundwater:
None
- I. Applications to Amend Prior Rights to Use Groundwater:
None
- J. Applications for Term Permits to Use Stream Water:
1. John Boyd McMahan, Jackson County, #2002-025

K. Applications to Amend Regular Permits to Use Stream Water:
None

L. Well Driller and Pump Installer Licensing:

1. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: Moore Drilling, Inc. DPC-0140
Operator: Harvey M. Moore, Sr. OP-0220
Activities: Pump Installation
 - b. Licensee: Pratt Well Service, Inc. DPC-0621
Operator: Steven E. Ezell OP-1360
Activities: Monitoring wells and geotechnical borings
 - c. Licensee: D.C. Pump Service DPC-0282
Operator: Dustin L. Gieser OP-1362
Activities: Pump Installation

M. Dam and Reservoir Plans and Specifications:
None

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

1. Oklahoma Department of Transportation, Logan County, FP-03-09
2. Oklahoma Department of Transportation, Seminole County, FP-03-10
3. Oklahoma Department of Transportation, Payne County, FP-03-11
4. Oklahoma Department of Transportation, Pottawatomie County, FP-03-12
5. Oklahoma Department of Transportation, Pottawatomie County, FP-03-13

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

A. Update and Discussion About Ongoing Activities Related to Water Quality Programs Division's Lakes Studies. Mr. Derek Smithee, Chief, Water Programs Division, addressed the members and introduced the Lakes Studies Section staff. Mr. Smithee made a PowerPoint presentation, stating that the Clean Water Act prescribed that lakes work be done since 1980, under section 314 of the Act. He said that since that time, Oklahoma has completed 26 lake projects and funding ended in 1995. However, the OWRB staff has continued to maintain work through internal efforts and partnerships with other entities.

Mr. Smithee said that studies are conducted on the state's lakes that are identified through the "impaired water bodies" list, and are generally concerned with public water supplies, recreational benefits, as well as wildlife habitat benefits. Typically, the state's lakes located in the west suffer from organic turbidity, and the lakes in the east have issues with algae. Six studies were published last year, and each is reported as a three-tier program: (1) diagnostic, (2) feasibility, and (3) in-lake restoration.

The five ongoing studies, funded through various sources include: Lake Thunderbird, Lake Wister, Lugert-Altus Reservoir, Lake Carl Blackwell, and Grand Lake O' the Cherokees. Mr. Smithee describe the work that is being conducted at each lake, the problems encountered at each lake, the restoration recommendations, and the importance of the partnerships with such entities as other State of Oklahoma agencies, Corps of Engineers,

Poteau Valley Improvement Authority, City of Tulsa, City of Norman, and the Bureau of Reclamation. (Further information can be obtained at the OWRB website.)

5. SPECIAL CONSIDERATION

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation, or proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

A. Application for Regular Permit to Use Groundwater No. 2002-562, Ronald K. Griesel, Canadian County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that this item is for the consideration of a regular groundwater permit for Ronald Griesel in Canadian County. The applicant has requested a permit to take and use 400 acre-feet of groundwater per year for commercial sale for municipal and rural water use in Canadian and Oklahoma Counties. He said the water is to be taken from 12 wells located on 400 acres of land overlying the North Canadian Phase II basin in Canadian County for which the completed basin study determined the equal proportionate share to be one acre-foot of water per acre of land dedicated. Mr. Mathis stated the applicant currently has no agreements with any public water suppliers. The proposed and existing wells are required to be in compliance with the requirements of the Department of Environmental Quality, governing construction and operation of public water supply systems.

Mr. Mathis stated there are two major areas of concern regarding this permit application. Regarding well spacing, the City of El Reno was a protestant and claimed that in several instances, the applicant was seeking authorization on well locations that were less than 1320 feet from the city's existing wells. Upon evaluation of the information, the OWRB staff adjusted the proposed findings and conclusions to approve the 10-acre tract locations where a portion of the tract could be 1320 feet away. He said the well-spacing rule does apply, and that has been stated specifically in the proposed order and conditions of the permit.

A second issue that was a major focus of the permit regards ownership of land. Mr. Mathis stated that in this case there were disputes about the applicant's land and the city's land. The locations are in a rural area where there are few landmarks; the city identified three wells it had been using for several years and the applicant contended he owned the land described in the correction deed which included well sites number 5 and 6. However, during the hearing, the applicant conceded that well number 7 was not located on his land according to his own survey. The City further contended that in any case, the city owns wells 5,6, & 7 and the land where they are located under the provisions of adverse possession. Mr. Mathis stated that at the hearing various surveys were submitted showing differing lines, and the hearing examiner had to wrestle with that issue along with the fact that the City has been using the wells. In

Conclusions of Law number 5. (b), the order states the applicant owns the land which the applicant has dedicated to this application based on the instrument provided in the hearing; however, the evidence did indicate the uncertainty and dispute over wells 5 and 6 is beyond the Board's limited jurisdiction to determine in this proceeding. He said the Board order concludes that the portion of the application that requests authorization of wells 5 and 6 should not be approved at this time, but in the event that the applicant in the future files with the Board a final judgment of a court of competent jurisdiction that determines that the applicant owns well 5 and well 6 or both, then in that event the permit may be administratively amended to add such well or wells to the permit's authorization.

Mr. Mathis stated that in summary, the record showed the application to be in compliance with Oklahoma Groundwater Law, and staff recommended approval of the application with the conditions specified in the order.

2. Discussion and presentation by parties. Chairman Grandstaff invited Mr. Jim Barnett, representing the protestant, to address the Board. Mr. Barnett stated he and Mr. Roger Rinehart, attorney for the City of El Reno, were present representing the city in this matter. He stated he would address three issues stated in the exceptions filed to the proposed order. Mr. Rinehart will address a fourth issue.

First, Mr. Barnett stated that most importantly it is his contention that the Board is without authority and jurisdiction to determine ownership of land, specifically, the piece of land on the border between the City of El Reno's existing well field and Mr. Griesel's property. He said that the Board's General Counsel stated in a memorandum that the Board has limited authority to establish ownership in the first instance, or resolve ownership questions, and that resolution of dispute of property ownership is within the jurisdiction of district courts in Oklahoma, and accordingly, the OWRB prior orders cannot themselves establish or change property rights. He said the counsel's memo stated it has long been the OWRB's position the OWRB cannot make binding determinations as to title to land, or interest therein. Mr. Barnett agreed with the statement; however, in the proposed order the staff is asking the Board to do exactly the opposite of Mr. Couch's statement, and to determine ownership of land in finding of fact 4.C., and he read, "the Board finds as a matter of fact, for purposes of determining the issue of whether the applicant owns the dedicated land, that the applicant owns the surface of the land within Tract 6 as described in the Correction Deed." Mr. Barnett stated it is his contention that the Board is doing exactly what Mr. Couch stated it cannot do and that is to determine that Mr. Griesel owns the City of El Reno's property.

Secondly, Mr. Barnett stated in regards to well spacing, the City's existing well field has been in existence for many years, before statehood, and has a 1901 prior right on the NW 1/4 of Section 33. Numerous wells have been drilled over the 100-years, many of which are still there, many that are not, and some locations are not really known. He said he didn't believe it was appropriate for the Board to take a snapshot in time on the date that Mr. Griesel filed his application and decide that only the wells that are in the 10-acre tract are deserving of well-spacing protection. He said he believed that the entire dedicated land to a prior right is entitled to protection, and do not believe it is appropriate to authorize a well on the border of a prior right piece of property. Additionally, on the east side of Mr. Griesel's property, is another piece of property purchased by El Reno to develop a well field, and the wells that the applicant has proposed are in a location that would preclude the City, under the well-spacing rule, to fully develop that field as planned. Mr. Barnett said the "one size fits all" of 1320 ft. well spacing is not justified in this matter, and it was suggested at the hearing that a distance of about 660-feet would be adequate (for wells 5,6, & 7).

Thirdly, Mr. Barnett stated that well 7 is on land owned by the City of El Reno, but the order purports that even though the well has been there for many years, it is not entitled to any kind of well spacing protection. He said that conclusion was reached because the well is not in

the NW 1/4 but rather on a small sliver of land owned by the City in the NE 1/4. He disagreed, stating the well qualified fully as a replacement well for well locations that are clearly authorized under the prior rights, permit number 84-516. He said regarding wells 5 and 6, those wells no longer exist; they have been plugged and abandoned and he did not think it appropriate for the Board to be directing Mr. Griesel to do work on the city's well, and to trespass on city property, putting both Mr. Griesel and the Board at risk on a takings claim. He said it is his earnest belief that the Board send the matter back to the hearing examiner for further consideration, and that the order before the Board today is not complete or accurate and seriously misconstrues the Board's authority.

Mr. Rinehart addressed the Board stating he was present on behalf of the City of El Reno, and specifically regarding the Board's significant financial involvement in the City's water well fields and water plant improvements. He said the Board's record will verify that in July 2002 the Board loaned \$570,000.00 to the city to acquire property which is east of Mr. Griesel's property for expansion of the well field. There are several wells on-line there, and the city has plans for future development. In December 2002, the Board authorized a loan of \$1,635,000.00 for well field development, easements, pipeline, etc., and in May 2002, the Board made permanent financing for \$4,879,000.00 for the water treatment plant expansion and improvements; a total of over \$7 million investment in the community. Mr. Rinehart stated he believed the approval of the application seriously jeopardizes work done by the city through the OWRB for drinking water treatment and production, and may in fact impair the city's ability to provide debt service on the loans from the Board. The improvement made over the past few years have allowed the city to provide quality water to its citizens without rationing for the first time in a number of years. On behalf of the city, Mr. Rinehart strongly urged the Board to reject the proposed order.

Mr. Sevenoaks asked for understanding about the issue of well-spacing and well field development. Mr. Barnett responded that when the Board established prior rights it was based on 26 wells, although he is confident that at any one time, the city probably did not have 26 operating wells. He said that in 1989, Mr. Griesel purchased part of the NE 1/4 of Section 33, immediately adjacent to the city's well field and at about the same time, El Reno purchased property on the east side, which is the property Mr. Rinehart referred to and where four wells are drilled at this time, but are not close to the property line. In order to develop that well field, the city moved all the well locations, honoring the well locations proposed in Mr. Griesel's application. He said that if the Board approves those locations, without reference to any well spacing, the city will be forever precluded from moving any wells closer and fully developing the well field in the way it was proposed to be done and the engineers had projected. Mr. McDonald asked if the applicant would harm the city, and Mr. Barnett answered that the city would not be able to develop the land in the new field, and more importantly, because Mr. Griesel will have well spacing on his proposed wells, the city would not be able to put any additional wells on the existing well field either. Mr. McDonald asked what Mr. Griesel planned to do with the water, and Mr. Barnett answered Mr. Griesel said he would sell it to El Reno, Oklahoma City and rural water districts in the area.

There was further discussion about the locations of wells 5 and 6, the ill assumption of that correction deed that the land was contiguous, and the dispute of land ownership between the city and the applicant, and the contrary opinions of the surveys. Mr. Barnett stated he is asking the Board to reconsider because he believed that if the well spacing is reviewed, both the city and Mr. Griesel can have the wells each need.

Mr. Ron Griesel addressed the members and stated that regarding the survey, there had only been one and that is his survey. Mr. McDonald asked if he intended to sell the water; Mr. Griesel answered he would like to sell the water to El Reno, that he had hired a hydrologist who determined the greatest source of water is under his property, just to the west of well 7.

Mr. Currie asked if the Board is acting as a referee. Mr. Dean Couch, OWRB General Counsel, responded that regarding the ownership issue, the Legislature specifies that the Board must determine that the applicant owns or leases the property. In making that determination, for purposes of an application for groundwater, the ownership issue is simply to comply with that requirement and to look at whatever deeds and other documents are submitted. To look at disputes, such as the one that has arisen here with the survey question, other principles of real property interest and ownership could be triggered, such as adverse possession. He said he views the Board's authority given by the Legislature and looks at other laws regarding the Board's authority and what the rule says. The proposed findings of fact and conclusions of law indicate what Mr. Griesel owns, based on evidence presented by such as deeds and surveys and information used by the hearing examiner. He said a district court of general jurisdiction might determine that which actually can reflect ownership in a file of record and it would be clear of the true property ownership; but, the district court, not the OWRB, is the final arbiter. He said the proposed order directs that a final adjudication is required before authorizing use of wells 5 and 6 would be made by the Board. Mr. Couch said in regards to well spacing, the rule would have to be changed to be different than the current 1320 feet; however, the statute clearly allows for exception to the rule if it is shown an impact would not occur. Regarding well 7, Mr. Couch stated that well is not included in the prior right, and is not in the NW 1/4, but it is in the NE 1/4. As to the protestant's statement that it is a replacement well, it may have replaced a well in the NW 1/4, but it must have the same location, and it is in the NE 1/4, it is therefore not an authorized replacement well, and not available for well spacing protection.

Following some brief discussion for clarification about the information presented to the Board, Mr. Grandstaff asked Mr. Griesel if he would be willing to make as a condition of the permit, that he would not protest any exception application by the city in the future. Mr. Couch added it would have to be made clear what the agreement is, but that could be made part of the order. Chairman Grandstaff, Mr. Barnett, Mr. Griesel, and Mr. Couch made comments about whether Mr. Griesel could or should agree to such a condition.

Mr. Smith interjected that the Board has not approved use of the well until the court makes a determination about ownership. If well spacing is applied, and the well is determined to be owned by the city, then one of Mr. Griesel's wells that is approved would not be valid, and if it is determined to be owned by Mr. Griesel, then the city won't be able to develop the well field, unless it can show evidence to get a location exception. He said if Mr. Griesel wants to help El Reno, then the well spacing shouldn't be an issue.

Mr. Sevenoaks stated the option that the Board could approve the order as written, and El Reno can come back to the Board with a request for well spacing exception, providing evidence. Mr. Smith said that is the preferred process, but if well 7 is not an approved well, the well spacing may not be an issue. Mr. Mitchell stated it isn't Mr. Griesel's problem whether the Board has made loans to El Reno, and he doesn't want to see either party trod on the other, but wants to provide help according to the Board's rules.

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

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

Mr. Sevenoaks moved to table this application #2002-562 to Ronald K. Griesel in Canadian County, until such time as the hearing examiner can review evidence presented by the City of El Reno and look at the possibility of looking at exceptions to the Board's current rules and procedures regarding well spacing, and to bring back to the Board to review what well El Reno will have and that Mr. Griesel will have the wells he has requested. Mr. McDonald seconded.

Mr. Couch was concerned about sending the matter to the hearing examiner on a matter that has not been presented; there is no well location exception application by the City of El Reno.

Mr. Smith stated that well spacing was an issue at the hearing and in context of Mr. Sevenoaks' motion, he suggested the matter go to the hearing examiner to gain evidence on what the well spacing should be in this particular area, and make some recommendation to the Board .

Mr. Couch stated the motion then is to table and remand the matter to the hearing examiner for another hearing with respect to potential appropriate well spacing in the area, and to take evidence about that including hydrology and geology and other matters that would apply to well spacing. Mr. Smith stated that to table the matter would not harm either party.

Chairman Grandstaff called for the vote.

AYE: Currie, Farmer, Keeley, McDonald, Sevenoaks, Sharp, Grandstaff

NAY: Mitchell

ABSTAIN: None

ABSENT: Secrest

B. Application for Regular Permit to Use Groundwater No. 2002-596, Roy L. Ryan, Tillman County:

1. Summary – Mr. Mathis stated this application for a regular groundwater application by Roy Ryan is in Tillman County. The applicant requests to take and use a total of 160 acre-feet of groundwater per year for irrigation. The water is proposed to be withdrawn from four wells located on 160 acres of dedicated land that overlies the Tillman Terrace Groundwater Basin, for which the equal proportionate share has been determined by Board order to be once acre-foot per acre of land dedicated. The four wells subject to the application are located within 1/4-mile of the center pivot system the water will be used for; the applicant testified a tenant lives 1-1/2 miles from the dedicated land and will be on the property on a daily basis and able to respond to any leaks.

Mr. Mathis stated the protest received from the adjacent landowner regarded the location of wells within the 1320 well spacing distance, the closest well being approximately 963 feet. Staff has evaluated the well locations and believes that pumping restrictions on the two wells within the 1320 can be protective of the adjacent landowner. With that condition in place, Mr. Mathis stated that the permit is in compliance with Oklahoma Groundwater Law, and staff recommended approval.

2. Discussion and presentation by parties. Mr. Jim Barnett, representing the applicant, stated for the record that the applicant has been waiting a long time for the permit and is anxious to get it. He said that as his attorney he did not agree with all of the provisions in the order, particularly as they pertain to the prior right well, but the applicant is not prepared to have him argue about his "water lawyer sensitivities." He said the applicant has accepted the order although he (Mr. Barnett) disagrees with the treatment of the prior right.

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

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

Mr. Sevenoaks moved to approve the application, and Mr. McDonald seconded.

Mr. Currie asked about how the pumping is monitored; Mr. Mathis stated the well is an irrigation well that the applicant testified would be pumped 200 gallons-per-minute, but would not be in use year-round. He said the adjacent landowner is motivated, and has already been in contact with the staff. Mr. Smith added the same methodology would be used in monitoring the adjacent landowners' use.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp,
Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Secrest

C. Application for Temporary Permit to Use Groundwater No. 2002-612, Milo-Woodward RWSG & SWMD, Carter County.

1. Summary – Mr. Mathis stated to the members that this permit application by Mil-Woodford Rural Water, Sewer, Gas and Solid Waste Management District in Carter County is requesting 160 acre-feet of groundwater per year for rural water supply use. He said 80 acres of land dedicated to the permit overlies the Oscar Formation and the Wellington Formation groundwater basins for which the maximum annual yield and equal proportionate share have not been determined; therefore, each landowner is entitled to two acre-feet of water per acre of land dedicated.

Mr. Mathis stated the adjacent landowner was concerned about depletion of their domestic well. However, the well completion will include sealing the upper zones which will be protective, as well as being just within 1320 feet in distance which is also protective.

Staff recommended approval of the application.

2. Discussion and presentation by parties. No representatives were present for either the applicant or the protestant.

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

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

Mr. McDonald moved to approve the permit application, and Mr. Sharp seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Sevenoaks, Sharp,
Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Secrest

D. Considerations of Items Transferred from Summary Disposition Agenda, If any.
There were no items transferred from the Summary Disposition Agenda.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report saying the budget-to-actual report in the members' notebooks reflect the agency expenditures for the first quarter of the fiscal year, the period ending September 30, 2003. There were no questions by the Board.

Mr. Currie mentioned there had been an influx of some revenues due to increased state collections. Mr. Schuelein stated the agency had received \$125,000, but there were instructions where the money was to be spent.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There were no Supplemental Agenda items for the Board's consideration.

8. NEW BUSINESS

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

There were no new business items for the Board's consideration.

9. ADJOURNMENT

There being no further business, Chairman Grandstaff adjourned the regular meeting of the Oklahoma Water Resources Board at 11:37 a.m., on Tuesday, October 14, 2003.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Grady Grandstaff, Chairman

_____/s/_____
Glenn Sharp, Vice Chairman

_____/Absent_____
Harry Currie

_____/s/_____
Lonnie Farmer

_____/s/_____
Richard McDonald

_____/Absent_____
Bill Secrest

_____/s/_____
Jack W. Keeley

_____/Absent_____
Ervin Mitchell

ATTEST:

Richard Sevenoaks, Acting Secretary

(SEAL)