

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**June 8, 2004**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Pro Tempore Ervin Mitchell at 9:30 a.m., on June 8, 2004, 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 Harry Currie gave the invocation.

**B. Roll Call**

**Board Members Present**

Ervin Mitchell, Chairman Pro Tempore  
Bill Secrest, Secretary  
Harry Currie  
Lonnie Farmer  
Rudy Herrmann  
Jack Keeley  
Mark Nichols

**Board Members Absent**

Richard Sevenoaks

**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, Water Quality Programs Division  
Mary Lane Schooley, Executive Secretary

**Others Present**

Robert M. Jones, Capitol West, Oklahoma City, OK  
Fred Siems, Mustang, OK  
Tom Preston, Mustang, OK  
Craig Brown, Alan Ritchey Materials Co., Valley View, TX  
Martha Ober, BancFirst, Oklahoma City, OK  
Jim Barnett, Kerr Irvine Rhodes and Ables, Oklahoma City, OK  
James Gammill, Oklahoma Rural Water Association, Oklahoma City, OK  
Curt Shelwire, Morgan Stanley, Austin, TX  
Lori Peterson, Farm Bureau, Oklahoma City, OK  
Tina Walker, Farm Bureau, Oklahoma City, OK  
Jack Money, The Oklahoman, Oklahoma City, OK  
Steven Netter, City of Cherokee, OK  
Gary Darrow, Mustang, OK  
Mike Dillard, Mustang, OK  
Lisha Banning, Town of Tyrone, OK  
Perry L. Streebin, City of Heavener, OK  
Worley Aitken, Municipal Finance Services, Edmond, OK  
Steven Jolly, Arbuckle Master (Conservancy District), Davis, OK  
Kentley McCullar, Rural Water District #5, Muskogee County, Muskogee, OK  
T.A. Staton, Rural Water District #5, Muskogee County, Muskogee, OK  
Johnny Kuhlman, Mustang, Ok  
Karen Weehunt, GIT, Oklahoma City, OK  
Tom Liu, UBS, New York, NY  
Bobby & Donna McSpadden, Clayton, OK  
Karen Hawkes, Cherokee, OK

**C. APPROVAL OF MINUTES**

Chairman Mitchell stated the draft minutes of the May 11, 2004, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were additional changes.

Mr. Secrest moved to approve the minutes of the May 11, 2004, Regular Meeting, and Mr. Keeley seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

**D. EXECUTIVE DIRECTOR'S REPORT**

Mr. Duane Smith, Executive Director, greeted the members and said that there is still one vacancy on the Board that was not filled before the close of the legislative session. He said that while we await the Governor's appointment to that position, Mr. Herrmann and Mr. Farmer were confirmed at the end of the session. He said he and staff had met with Mr. Herrmann for orientation to the Board, and he thanked Mr. Herrmann for his enthusiasm, and energy, and he looked forward to working with him.

Mr. Smith asked Mr. Mike Melton to present to the Board members a summary of legislative activities. Mr. Melton distributed a written summary of the actions and status of measures at the end of the legislative session on May 28. Mr. Melton stated the Governor had until the 12<sup>th</sup> of May to sign the agency's appropriation bill. He said the appropriation bill was passed early on in the session, appropriating \$4.1 million from the general revenue funds, which was about a \$100,000.00 increase from the previous year, and mainly to cover the cost of state employee pay raises. He said the \$2.2 million was appropriated for the REAP grant program, and the Tourism and Recreation bill contained the funding for the loan repayment to the OWRB on the infrastructure improvement to state lodges. The legislature also approved, through the gross production tax Rural Economic Action Plan, funding for the Grand Lake studies and North Fork of the Red River studies, and \$500,000 for the Arbuckle-Simpson study, and authorized the Board to expend funds as they become available from any source to assist the South Pittsburg County Water Supply Trust Authority to provide water to communities served by the Authority. Mr. Melton distributed a final report, commenting about the status of measures affecting the OWRB.

Mr. Currie asked about the lack of funding for the Statewide Water Plan and if the sale of water was the reason it wasn't funded. Mr. Smith responded that those issues might be tied together for some people. He said that in the end the controversy came over who will be on regional committees of the water plan, but he said the Governor's office was very supportive and left it to Senator Crutchfield and Representative Hilliard to try to sort through the details. He said that in committee there were 22 amendments to the bill, so there was lots of interest, and he expected it will be considered again. Mr. Smith stated he had spoken with Secretary of Finance Scott Meacham about putting together a budget for what would be encompassed in a comprehensive study as well as financing the OWRB Financial Assistance Programs as part of the Higher Education bond issue. Mr. Currie asked what the estimate of time for implementation would be; Mr. Smith answered that it would probably take about 1-1/2 years. He said the agency had requested \$6.5 million to do the water plan, matching that amount with federal money to make \$10 million; he said it would be a huge effort, but clearly one that needs to be done.

Mr. Smith stated he participated in the awards ceremony for the Oklahoma Water Watch Volunteer program; GRDA director Kevin Easley was a featured speaker, and he mentioned that historically GRDA has focused on the power end of its operation, and now planned to turn attention to water quantity and quality protection, and they also have hired Dr. Darrel Townsend as a full time biologist for GRDA. Rudy Herrmann also attended.

Mr. Smith mentioned upcoming meetings with the U.S. Corps of Engineers, a Special meeting of the Arkansas-Oklahoma Arkansas River Compact Commission regarding the new monitoring plan, City of Sallisaw regarding water rights from Tenkiller Lake, and meeting with Lugert-Altus Irrigation District regarding water rights in a water short area. He suggested the Board, during next year's rulemaking process, should review how the agency issues stream water permits for irrigation during July and August on annual flows.

Mr. Smith mentioned the agency personnel is preparing the goals and objectives and management team will meet on June 18 at a strategic planning session to identify high priority programs and to review the plan. He invited Board members to attend as well.

Mr. Smith concluded his report with personnel notes: Ms. Virginia Roy will be retiring at the end of June after 14 years of service, and he introduced Ms. Mary Nell Brueggen as the OWRB Employee of the Quarter.

## 2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water District #5, Muskogee County, Oklahoma. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this request from the Muskogee County RWD #5 is in the amount of \$100,000.00. He said there is an area within the District service area currently served by domestic wells that have become contaminated. The District proposes to extend 42,000 feet of 4-inch PVC line and related appurtenances and construction to serve the households with potable water. He said the total estimated cost is \$342,435.00 with funding from an OWRB loan of \$242,435.00 and the \$100,000.00 OWRB Emergency grant. Staff recommended approval of the grant request.

Mr. T.A. Stanton, District Board member, and Kentley McCullar, District Manager, were present in support of the grant request.

Mr. Secrest moved to approve the emergency grant to the Muskogee County RWD #5, and Mr. Herrmann seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

B. Consideration of Possible Action on a Proposed Order Approving Loan for Cherokee Development Authority, Alfalfa County, Oklahoma. Recommended for Approval. Mr. Freeman stated that this \$1,455,000.00 Drinking Water State Revolving Fund Loan Request is from the Cherokee Development Authority, located in Alfalfa County. He said Cherokee is requesting the loan to construct a one million-gallon-per-day reverse osmosis water treatment plant, plant building, approximately 22,000 feet of water distribution line, a raw water storage tank and pumping system, and other appurtenances. Mr. Freeman noted provisions of the loan agreement, and stated that by borrowing from the OWRB, Cherokee will save approximately \$640,000, or \$2.72 per tap per month. Staff recommended approval.

Mayor Karen Hawkins, and City Manager Steve Netter were present in support of the loan application.

Mr. Mark Nichols moved to approve the DWSRF loan to the Cherokee Development Authority, and Mr. Herrmann seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Miami Special Utility Authority, Ottawa County. Recommended for Approval. Mr. Freeman stated this item is for the consideration of a Clean Water State Revolving Fund loan to the Miami Special Utility Authority in the amount of \$1,820,000.00. He said the request is to refinance a portion of \$8,950,000.00 obtained from the Board in December 2001. The interim construction loan was for building a 3.5 million gallon sequencing-batch reactor wastewater treatment plant. Mr. Freeman noted that \$1,820,000.00 would be funded from the Clean Water State Revolving Fund loan program, and \$2,125,000.00 will be funded through the OWRB Series 2003A State Loan Program Revenue Bond Issue. Mr. Freeman noted provisions of the loan agreement, and said that by borrowing through the Board, Miami will save approximately \$3.2 million in debt service over the 20-year life of the loans. Staff recommended approval.

Mr. Rick Smith, Municipal Finance Services, was present in support of the loan application.

Mr. Herrmann moved to approve the loan to the Miami Special Utility Authority, and Mr. Secrest seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

D. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Rush Springs Municipal Improvement Authority, Grady County. Recommended for Approval. Mr. Freeman stated that this request by the Rush Springs Municipal Improvement Authority is for an extension of time to close its loan with the Board. He said that the Board originally approved the loan to the Authority on June 10, 2004, and the one-year time period is expiring. He said, though, that Rush Springs is experiencing delays in closing its loan as a result of waiting on a release of Community Development Block Grant funds. It is anticipated that those fund will be received by the end of June. Mr. Freeman reminded the members that the \$565,000.00 loan is to upgraded two wells, plugging an old well, drill a test well for a new well, and increase the size of the existing standpipe. All other terms of the loan will remain the same. Staff recommended approval.

Mr. Dick Jones, Trustee, and John Wolfe, Municipal Finance Services, were present in support of the loan extension.

Mr. Nichols moved to approve the extension of time for obligation of funds, and Mr. Keeley seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

E. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Enid Municipal Authority, Garfield County. Recommended for Approval. Mr. Freeman stated this item is also a request for an extension of time to close a loan by the Enid Municipal Authority. The \$2.7 million loan was originally approved last June for the rehabilitation of a basin, rebuild sludge belt presses, constructing a new lime stabilization unit, rebuilding a thermal stabilizer, filter exhaust and undigested sludge pump. In addition, Enid will be upgrading its screen sludge storage areas. Enid is requesting the extension as a result of needing approval from the Department of Environmental Quality to approve Enid's sludge management plan. Besides the extension of time, all other terms and conditions of the loan will remain in place. Staff recommended approval.

Mr. John Wolfe, Municipal Finance Services, was present in support of the request.

Mr. Herrmann moved to approve the extension of time for obligation of funds to the Enid Municipal Authority, and Mr. Farmer seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

F. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of Obligation to Provide Funding for the Clean Water and Drinking Water State Revolving Fund Loan Programs. Mr. Freeman said that in March 2004 the Board authorized

staff to begin the process of additional debt issuance for the Clean Water and Drinking Water Statewide Revolving Fund loan programs. He said staff distributed requests to 17 bond counsel firms; only one response was received from the Fagin, Brown, Bush, Tinney, and Kiser firm. Members of the Board's Ad Hoc Finance Committee—Mr. Mitchell, Mr. Secrest, Mr. Farmer, Mr. Herrmann—were consulted regarding the Fagin proposal. As a result, Mr. Freeman recommended the Board retain the services of the Fagin Firm to provide bond counsel services on this issue.

Mr. Secrest moved to approve selection of the firm of Fagin, Bush, Tinney and Kiser for bond counsel services, and Mr. Keeley seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

G. Consideration of and Possible Action on Selection of Underwriter in Connection with the Issuance of Obligation to Provide Funding for the Clean Water and Drinking Water State Revolving Fund Loan Program. Mr. Freeman stated it is anticipated that the range of the bond issue for the Clean Water and Drinking Water State Revolving Fund loan program bond issue will be in the range of \$160 million, the largest single bond issue the Board has ever undertaken. Staff requested proposals from 18 firms, and received eight responses for senior manager, and four responses for co-manager. The proposals received for senior manager were A.G. Edwards, CitiGroup, Morgan Stanley, UBS Financial Services, Piper Jaffray, Oppenheim, J.P. Morgan, and Dane Raucher. The proposals received for co-manager were from Edward Jones, Capitol West Securities, Bank of America, and Stephens.

Mr. Freeman stated that the OWRB staff, along with the Board's financial advisors from Public Financial Management, reviewed the proposals based on relative experience, marketing, distribution capabilities, quality of the proposed financing plan, general information, and fees. A list of four firms were presented to the Board's Finance Committee, which met on June 7, 2004, with representatives of CitiGroup, UBS Financial Services, A.G. Edwards, and Morgan Stanley. He said that Mr. Farmer would make the recommendation to the Board.

Mr. Farmer stated that in the matter of selection of underwriters to the Board for the proposed series 2004 revolving fund revenue bonds debt issuance, the Finance Committee recommends, and he so moved, as follows:

The Board selects the underwriting firm of UBS Financial Services to serve as Senior Managing Investment banker to the Board, and the Board select the underwriting firms of Capitol West and Oppenheim to serve as co-managing underwriters to the Board. Mr. Herrmann seconded the motion.

Mr. Currie asked where the firms are located. Mr. Mitchell answered that UBS is from New York, and Capitol West and Oppenheim are from Oklahoma City.

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

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: None  
ABSENT: Sevenoaks

Mr. Currie asked an additional question about Muskogee RWD #5 well situation, and the manager answered the test showed coliform contamination.

Mr. Smith added regarding the selection of underwriters for this bond issue, that the Finance Committee spent all day interviewing underwriters, and this particular issue is not like

the other issues the Board has done because cross-collateralization of the Drinking Water and Clean Water programs and new to EPA—Oklahoma is the first state to come to them with this program—but the applicants are the best of the best in the underwriting business and have experience with many other states on these type of issues. He said the rating process established over the years has served the Board well in this process. He said that at the beginning of the program the selection of bond counsel and underwriter was the most difficult, and over the years, with the help of Jim Joseph, State Bond Advisor, the Board now has as good a system anywhere on the evaluation of underwriters and bond counsels. He said that several people score the proposals, and the ratings in this instance are the same, which lends credibility to the rating process. He said he is proud of staff about how we review the proposals, and we have selected a great management team to continue the success of the Board's financial assistance program.

Chairman Mitchell commented that the Finance Committee members met from 9:30 a.m. until 4:00 p.m. and lunch was brought in during the interview process. He said that the idea of cross-collateralization is something new to EPA Region 6 and its possible there may be some problems with approval, but it will happen. He wanted the Board members to be aware that this particular issue is somewhat different. He anticipated the process would move along as expected.

### **3. SUMMARY DISPOSITION AGENDA**

Chairman Mitchell 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. Secrest asked a question about item 3.K., proposed orders for informal disposition. Mr. Mathis responded this item regarded the administrative reduction and cancellation of stream water rights; he said that hearings were conducted and the parties were notified but did not appear to provide information to retain the water right.

Mr. Currie, regarding the contracts on item 3.D., asked about the Joint Funding Agreement with the USGS regarding the Arbuckle-Simpson Aquifer study, the contract renewal with Oregon State University for ecoregion refinement and delineation, and the agreement to provide arbitrage rebate services with Berens-Tate. Mr. Schuelein responded that the USGS received additional cost-share dollars and they have increased the amount of funding that is available for the Arbuckle-Simpson project. Mr. Smithee answered that the OWRB has entered a contract with Oregon State University at Corvallis and the EPA to do ecoregion refinement work. Mr. Freeman answered that the Board must retain Arbitrage Rebate services to do calculations on what the Board pays the IRS, it is done on an annual basis, but it is paid once every five years on the bond issues; this year is with Berens-Tate.

**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 were no other questions pertaining to items on the Summary Disposition Agenda. Mr. Currie moved to approve the Summary Disposition Agenda, and Mr. Nichols seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell  
NAY: None  
ABSTAIN: Secrest on item 3.D.8. (ORWA agreement)  
ABSENT: Sevenoaks

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:**

<b>REAP Item No.</b>	<b>Application No.</b>	<b>Entity Name</b>	<b>County</b>	<b>Amount Recommended</b>
EODD				
1.	FAP-02-0026-R	Rural Water District #13	Cherokee	\$135,000.00
OEDA				
2.	FAP-02-0049-R	Tyrone Public Works Authority	Texas	99,714.58

**D. Contracts and Agreements Recommended for Approval**

1. Consideration of Agreement with the Grand River Dam Authority for Water Quality Work at Grand Lake.
2. Consideration of Lease Agreement with the Department of Central Services for Office Space in the Kerr State Office Building in Tulsa.
3. Consideration of Amendment to Joint Funding Agreement with the U. S. Geological Survey for Project Investigations of the Arbuckle-Simpson Aquifer.
4. Consideration of Contract Renewal Agreement with the Oregon State University for Ecoregion Refinement and Delineation.
5. Consideration of Intergovernmental Agreement with the Department of Environmental Quality for Sharing Office Space in McAlester and Woodward.
6. Consideration of Agreement to Provide Services as Arbitrage Rebate Consultant with Berens-Tate Consulting Group.
7. Consideration of Interagency Agreement with the State Department of Environmental Quality for the FY-2005 Drinking Water State Revolving Fund Program.
8. Consideration of Agreement with the Oklahoma Rural Water Association to Provide Technical Assistance and Training.

- E. Applications for Temporary Permits to Use Groundwater:
  1. Lavonne Kroecker, Major County, #2003-612
  2. Bill Roberts, Inc., Oklahoma County, #2004-513
  3. Chesapeake Energy Corporation, Oklahoma County, #2004-520
  4. Heavener Utility Authority, LeFlore County, #2004-533
  5. Shawn & Marsha Cusack, Major County, #2004-536
  
- F. Applications to Amend Temporary Permits to Use Groundwater:
  1. Eddie Joe & Donna R. Norton Trust, Greer County, #1999-573
  
- G. Applications for Regular Permits to Use Groundwater:
  1. City of Mangum, Greer County, #2003-587
  2. Roy, Kenneth & Brian Mitchell, Texas County, #2003-592
  3. Roy, Kenneth & Brian Mitchell, Texas County, #2003-594
  4. Roy, Kenneth & Brian Mitchell, Texas County, #2003-595
  5. N. Dale Hill, Texas County, #2004-510
  6. D F & D, LLC, Beaver County, #2004-519
  7. Mike Bonewitz, Tillman County, #2004-526
  8. Vici Public Works Authority, Dewey & Woodward Counties, #2004-532
  9. Kevin & Angela Wallace, Beaver County, #2004-534
  10. Johnny N. & Melanie Moore, Texas County, #2004-535
  
- H. Applications to Amend Regular Permits to Use Groundwater:
  1. City of Elk City, Beckham County #1979-568
  
- I. Applications to Amend Prior Rights to Use Groundwater:  
None
  
- J. Applications for Regular Permits to Use Stream Water:
  1. Robert Cook's Green Acre Sod Farms, Inc., Bryan County, #2004-005
  2. Alan Ritchey Materials Company, LC, Bryan County, #2004-007
  3. Keith Hall, Jefferson County, #2004-008
  
- K. Proposed Orders for Informal Disposition by Default for Administrative Reductions and Cancellations of Rights to Use Stream Water:
  1. Paul R. Henry, Rogers County, #1953-316
  2. Town of Okay, Wagoner County, #1963-154
  3. Verdigris Valley Farms, Wagoner County, #1967-610
  4. Verdigris Valley Farms, Wagoner County, #1967-752
  5. Public Service Company of Oklahoma, Rogers County, #1977-141
  6. Verdigris Valley Farms, Wagoner County, #1980-164
  7. Verdigris Valley Farms, Wagoner County, #1980-165
  8. Town of Coweta, Wagoner County, #1980-184
  9. Larry E. Swan, Rogers County, #1982-059
  10. Walter Thrun, Rogers County, #1983-079
  11. D. M. Sokolosky, Rogers County, #1988-028
  12. Robert J. Blair, Wagoner County, #1992-014

- L. Well Driller and Pump Installer Licensing:  
 New Operators and/or Activities for Existing Licenses:
- |    |   |          |
|----|---|----------|
| 1. | Licensee: Davis Environmental Drilling, L.L.C.                  | DPC-0197 |
|    | Operator: Bobby Yost  | OP-1403  |
|    | Activities: Groundwater wells, test holes and observation wells |          |
|    | Heat exchange wells   |          |
| 2. | Licensee: Allen's, Inc.   | DPC-0351 |
|    | Operator: Mitch Malkuch   | OP-1404  |
|    | 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:
- Oklahoma Transportation Authority, Comanche County, FP-04-04

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

A. Update on Ongoing Activities of the Water Quality Programs Division. Mr. Derek Smithee, Chief, Water Quality Programs Division, stated to the Board member and audience that he wanted to review the myriad of programs the staff of the Water Quality Programs division are currently undertaking. He said the Board has most often been familiar with the approval of Water Quality Standards and Standards Implementation, however, the division is involved in a number of activities regarding water quality management in Oklahoma. Mr. Smithee said the division's budget for the past year was about \$2.6 million, with \$1.4 million being state appropriated dependable dollars, and \$1.2 million is actually grants, contracts and other methods of income that allow the staff to conduct additional work. Mr. Smithee reviewed the 30-plus grants or contracts including: promulgating water quality standards and implementation rules including the biocriteria of the state's 11 ecoregions and development of standard protocols; refining of the ecoregion boundaries (contract with Oregon State University); development of nutrient criteria; beneficial use attainability; monitoring streams and lakes; and special studies involving partners such as the Oklahoma Department of Wildlife Conservation, Central Oklahoma Master Conservancy District, Bureau of Reclamation, Central Oklahoma Master Conservancy District, Poteau Valley Improvement Authority, and Federal Energy Regulatory Commission. Mr. Smithee concluded his report.

**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 Temporary Permit to Use Groundwater No. 2003-601, Gary D. Darrow, Canadian County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that the applicant is requesting a permit to take and use a total of 204 acre-feet of groundwater per year. He said the 102 acre-feet would be for the commercial sale of bottled water, and 102 acre-feet for commercial sale for municipal and rural water supply. The water is proposed to be taken from three wells located on 102 acres of dedicated land in Canadian County overlying the Duncan Sandstone groundwater basin for which the maximum annual yield and equal proportionate share has not been determined, therefore, each landowner is entitled to two acre-feet of water per acre of dedicated land. The applicant is in the early stages of implementing the plan to sell water but he has testified he will comply with the applicable requirements of the Oklahoma State Department of Health relating to bottled water operations. The applicant has also requested authorization for municipal and rural water suppliers and while in the early stages of the process, no buyer has been identified, but he also testified he would follow the requirements of the Oklahoma Department of Environmental Quality relating to public water supply systems.

Mr. Mathis stated there was no evidence to suggest that any leaks or losses would occur as part of the application, and the applicant represented that the system will be metered and monitored daily, and any losses and leaks will be reported and repaired, and the condition regarding metering will be stated in the permit. Mr. Mathis stated that the wells were drilled in the 1970s, and there is no well log information; however, the applicant testified that he will do whatever is necessary to bring wells into compliance with state standards for the two uses that are proposed, and will assure that the wells will be constructed at the surface so as to prevent pollution, and it is recommended that the permit not be issued until the applicant files satisfactory documentation that the applicant had caused a licensed well driller to inspect each well has been inspected and verify that the construction is in such a ways as to prevent pollution of the groundwater.

Mr. Mathis stated the protestants were concerned about the applicant's withdrawal of water and the effect on their domestic wells. Many of the protestant's wells are approximately 120 feet and produce 3-5 gallons per minute. In recent years, many of the protestants have experienced water shortage and problems with the productivity of their wells in the area. He said the distances from the proposed well locations from the protestant's wells is greater than 1,000 feet and some are greater than 1,500 feet. He said it is understandable the protestants would be concerned about their groundwater supply but the evidence did not establish that the applicant would in the future impermissively or unlawfully deplete the groundwater in the area.

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

2. Discussion and presentation by parties. Chairman Mitchell asked if the applicant would like to present; Mr. Darrow stated he would make comments after the protestants spoke.

Mr. Tom Preston approached the members and stated he had lived in the area for 37 years. He said he has experienced good quality water, but low quantity, 3-5 gallons per minute,

which is not a lot for families. He was concerned about a large amount of water being withdrawn and affecting his well. He said the permit would not solve his problem of low water, so why cause more problems by approving the permit?

Mr. Mike Dillard stated to the members his well is one of the closest residents to one of the three proposed wells. He read a prepared statement asking the Board to consider the "intent" of the law, not just the "letter" of the law; the laws are out dated, and he cannot wait for an update. He said the wells in the Mustang area had dropped from 25 gallons per minute to 10 gallons per minute over the past 30 years as a result of building in the area. He said he had obtained information that the water would be withdrawn from the Canadian River alluvium and 25 gallons per minute would not be feasible, and he commented about filling his horse's water tank and his son taking a shower and there was a shortage of water. He said he did not have a problem with the applicant being entitled to the water under his land, however, if the cone of depletion affects surrounding landowners, there should be restrictions. He recommended a study of the basin, and he noted that there is a high arsenic content naturally occurring in the water sources of the area, and also other environmental problems occurring in the area. Mr. Dillard said he believed the permit to be premature and inadequate until the Board considered the following: (1) burden of proof on applicant to provide data of no anti-degradation; (2) cone of depression; (3) arsenic contamination; (4) lack of data; (5) consideration of reasonable use; (6) updating of law; and (7) hydrologic study.

Mr. Dennis Devoe stated many of his concerns had been expressed previously. He said he is concerned about the amount of water, and the time it is to be withdrawn. He is concerned about his land value and without water it depletes in worth; and, that the area is already experiencing problems.

Mr. Johnny Kuhlmann asked the Board to consider ordering the hydrologic study. He said he supported business development but the study would reveal whether the area could support the permit. Mr. Fred Siems stated to the members the other protestants had commented about the concerns he had. There were no other protestants that wished to make comments to the Board.

Mr. Gary Darrow, applicant, spoke to the members. He thanked the Board and staff for the consideration of his permit application. He said it was a "drop in the bucket" to the other matters of the Board and to the state of Oklahoma. He said as a landowner in the area, he agreed there is a water problem, and he understood the concerns presented by the protestants. He said that under the state water law, he is trying to be part of the solution, not a part of the problem. He said at the hearing there was no evidence about documented flow rates, and the staff has required the logs from the well drillers to make that determination. He said his family homesteaded in the area and he planned to remain in the area. He asked the Board to approve the permit as recommended by staff.

Mr. Herrmann asked Mr. Mathis to address the issue of the hydrologic study. Mr. Mathis stated that if the Board had been able to conduct a study, it would have better knowledge of the water situation in the area; however, because a study has not been done, the applicant is issued a temporary permit under the groundwater law and with the conditions of evaluating the construction of the wells and ensuring the protection. This area also lies under the jurisdiction of other state agencies. The staff has evaluated the application as regards the Board's rules and groundwater law. He said once a study is completed, the permits issued from the basin would be re-evaluated based upon the finding of the study. Mr. Mitchell explained that the temporary permit must be revalidated each year and at that time the protestants can come to the Board.

Mr. Smith added that the groundwater law is based upon a mining concept. He said the law anticipates the water level declining and it was not ever contemplated there would be a sustainable yield. He said when the law was written in the early 70s, the legislature had the

option to shut all pumpage down until studies are conducted, or issue temporary permits for two acre-feet per acre until a study is conducted. In this particular area, and in many cases in Oklahoma in the minor basins it is very similar to this area where there is low yield, and the Board issue permits for two-acre feet per acre. Once the study is conducted, however, it is not protective of the domestic use of the area; the purpose of the hydrologic study is to determine how much water can be pumped so there is a minimum basin life of 20 years, that's the maximum annual yield of the basin. He said that there is no priority in use, and domestic use is on equal footing with all other beneficial uses so even a study will not help the protestant's view in this matter. Mr. Smith stated the current water law is not to protect the uses that are there, but to establish the maximum annual yield to have limited declines in the water table. The Board may disagree, and he said he may have personal disagreement with what he believed the law ought to be, but that's the law. He said a study would provide well spacing, and the applicant has volunteered to provide metering since the Board cannot require it. And while staff realizes that there are real issues regarding the water use in the area, the law doesn't really protect use, and that is why staff recommends approval.

The Board members and Mr. Smith commented that they are to evaluate the use according to the law, the Board does not make the law, but ensures the law, that reasonableness is outlined and defined in the rules, and whether the Board has the authority to adjust the permit based on damage after a year. Mr. Smith said if there is more domestic use in the area, there will be more pressure on the aquifer but the Board does not permit those uses, so there is a mixture of permitted uses and nonpermitted uses that are beneficial uses that are reasonable that are being put to use, and these type of situations are why rural water was established in Oklahoma. Mr. Mathis stated, upon question of Mr. Keeley, that this is actually the Duncan Sandstone basin, and that the alluvial terrace deposits are just south of this area; he said there are no well logs on this particular site, but the well logs of the area appear to be in the Duncan Sandstone and the best available information indicate these wells are located in the Duncan.

The protestants asked at what point in time does the Board consider changes in the law or that the uses are appropriate but the study needs to be done or there is a problem and something needed to be changed. Mr. Smith responded that part of Senate Bill 903 on the water plan was to look at the water law but it didn't pass, and he mentioned earlier in the meeting that anytime the water law is changed there is controversy and the emotion is extreme. He said originally the water law was based to give certainty of water rights to people, so that a city or an irrigator that would invest in infrastructure, there would be a certainty of water right so that loans were obtainable, etc., so that is how permits have been issued. He used as an example that the City of Mustang has wells in the Garber-Wellington, and the issue of arsenic has come up and so the city and others in Canadian County look to the Arbuckle-Simpson; then Senate Bill 288 is written, and the state is managing by crisis. He said the OWRB has gone on record saying it does not like managing that way and the water planning bill is a resolution to that but it didn't get to the floor of the House of Representatives after being amended in committee. So, it is extremely difficult to change the law, and the Board agreed there needs to be planning and sustainability and part of the issue in this particular area are zoning issues i.e. more housing development. He said there are a combination of issues happening but this permit is a very small piece of that and the Board has a very limited scope in this matter. Mr. Mitchell added that the Board agrees, but its hands are tied by the state law, which cannot be changed by the Board, but through the legislative process.

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. Keeley moved to approve the proposed findings of fact, conclusions of law and Board order issuing temporary permit #2003-601 to Gary D. Darrow, and Mr. Farmer seconded.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Mitchell

NAY: None

ABSTAIN: None

ABSENT: Sevenoaks

B. Consideration of items transferred from the 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 there is nothing new to report this month. The agency is winding down the fiscal year, and staff are working on the budget work program for next year, and beginning work on the budget request for FY2006. He encouraged the members to contact him if they have any questions.

## **7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.**

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

## **8. ELECTION OF OFFICERS**

Mr. Smith stated this item is for the annual election of Board offices of Chairman, Vice Chairman and Secretary. He said it is appropriate to open the floor for nominations for the Office of Chairman.

Mr. Farmer nominated Mr. Ervin Mitchell for the office of Chairman, and Mr. Currie seconded. There were no other nominations. Mr. Nichols asked that nominations cease. Mr. Mitchell called for the vote.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest

NAY: None

ABSTAIN: Mitchell

ABSENT: Sevenoaks

Chairman Mitchell thanked the members, invited their input, and said he looked forward to working with the Board over the next year.

Chairman Mitchell stated he would open the floor for nominations for Vice Chairman.

Mr. Secrest nominated Mr. Lonnie Farmer for the office of Vice Chairman, and Mr. Keeley seconded. There were no other nominations. Mr. Nichols asked that Mr. Farmer be elected by acclamation. Chairman Mitchell called for the vote.

AYE: Currie, Herrmann, Keeley, Nichols, Secrest, Mitchell

NAY: None

ABSTAIN: Farmer  
ABSENT: Sevenoaks

Chairman Mitchell stated he would open the floor for nominations for Secretary. Mr. Farmer nominated Mr. Bill Secrest for the office of Secretary, and Mr. Currie seconded. There were no other nominations. Mr. Nichols asked that Mr. Secrest be elected by acclamation. Chairman Mitchell called for the vote.

AYE: Currie, Farmer, Herrmann, Keeley, Nichols, Mitchell  
NAY: None

ABSTAIN: Secrest  
ABSENT: Sevenoaks

## 9. NEW BUSINESS

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

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

## 10. ADJOURNMENT

There being no further business, Chairman Mitchell adjourned the regular meeting of the Oklahoma Water Resources Board at 11:20 p.m. on Tuesday, June 8, 2004.

## OKLAHOMA WATER RESOURCES BOARD

\_\_\_\_\_/s/\_\_\_\_\_  
Chairman Pro Tempore Mitchell

\_\_\_\_\_  
(Vacant) Vice Chairman

\_\_\_\_\_  
Absent  
Harry Currie

\_\_\_\_\_/s/\_\_\_\_\_  
Lonnie Farmer

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Sevenoaks

\_\_\_\_\_/s/\_\_\_\_\_  
Rudolf J. Herrmann

\_\_\_\_\_/s/\_\_\_\_\_  
Jack W. Keeley

\_\_\_\_\_/Absent\_\_\_\_\_  
Jess Mark Nichols

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Bill Secret, Secretary

(SEAL)