

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**July 12, 2005**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Mark Nichols at 9:30 a.m., on July 12, 2005, in the meeting room of the Oklahoma Water Resources Board, located in offices of the OWRB 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**

Mark Nichols, Vice Chairman  
Bill Secrest, Secretary  
Lonnie Farmer  
Harry Currie  
Ed Fite  
Jack Keeley  
Kenneth Knowles  
Richard Sevenoaks

**Board Members Absent**

Rudy Herrmann, Chairman

**Staff Members Present**

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

**Others Present**

Damon Springer, Oklahoma Department of Wildlife Conservation, Oklahoma City, OK  
M.B. Geiger, Longdale, OK  
William A. Geiger, Longdale, OK  
Howard Ross, Ringwood, OK  
John Fitch, Edmond, OK  
Marsha Cusack, Oklahoma Department of Food, Forestry and Agriculture, Meno, OK  
Dean Reimer, Ringwood, OK  
Cecil Wildman, Pawnee County RWD #5, Stillwater, OK  
Ward Nelson, Edmond, OK  
Dr. Geiger, Piedmont, OK  
Dan Elsener, Tipton, OK  
Woody Killian, Ringwood, OK  
Warren Lovelady, Ringwood, OK  
Hugh Leven, Kay County RWD #5, Newkirk, OK  
Gerald Boyer, Jr., Kay County RWD #5, Newkirk, OK  
Terry L. Morton, Kay County RWD #5, Newkirk, OK  
Jim Hinton, Kay RWD #5, Newkirk, OK  
Phillip Schrahl, Ringwood, OK  
Lois McGuire, Longdale, OK  
Jacque Steinback, Longdale, OK  
Charlotte Schrahl, Ringwood, OK  
Robert M. Jones, Capitol West, Oklahoma City, OK  
Jim Barwick, Assistant Attorney General, Oklahoma City, OK  
Victor Bailey, Fairview, OK  
Jay E. Leiere, Ringwood, OK  
Alberto Leierer, Ringwood, OK  
Lavina Jackson, Ringwood, OK  
Jerry Goodale, Ringwood, OK  
Darlene Goodale, Ringwood, OK  
Verda Jean Schrahl, Ringwood, OK  
Richard Schrahl, Ringwood, OK  
Herman Black, Ringwood, OK  
Melvina Allen, Ringwood, OK  
Ula L. Allen, Ringwood, OK  
Rodney Schrahl, Ringwood, OK  
Keith McDonald, Wells Nelson, Oklahoma City, OK  
Ricky Pearce, Ryan Whatley Coldiron, Oklahoma City, OK  
Deanne Atkinson, Oklahoma Environmental, Enid, OK  
John Haworth, Ringwood, OK  
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK  
Gene Whatley, Oklahoma Rural Water Association, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

Vice Chairman Nichols stated the draft minutes of the June 14, 2005, Regular Meeting has been distributed. He said he would entertain a motion to approve the minutes unless there were changes.

Mr. Currie moved to approve the minutes of the June 14, 2005 Regular Meeting, and Mr. Fite seconded.

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

#### **D. EXECUTIVE DIRECTOR'S REPORT**

Mr. Duane Smith, Executive Director, addressed the members and stated that Chairman Rudy Herrmann was out of the country and he welcomed Vice Chairman Nichols as chair of the meeting.

Mr. Smith said that on June 27 several officials from Oklahoma met with Kansas officials to discuss border issues, and the talks primarily centered on Grand Lake; most of the watershed of Grand Lake is in Kansas. He said Oklahoma is looking at evaluating Grand Lake as an impaired water in Oklahoma, and he was encouraged by the attitude of the Kansas officials. Tar Creek is also a big issue for Grand Lake and Kansas. Kansas and Missouri officials are looking at water supply issues in southeast Kansas and southwest Missouri involving the Roubidoux, or Ozark Plateau. He said there are no historical controversies with Kansas, and it is good to have these type meetings before one occurs. Mr. Sevenoaks asked about the impairment status when involving the Grand River Dam Authority. Mr. Smith explained the impaired status is with the Environmental Protection Agency and the agencies are looking at that together to make sure it is an appropriate decision and what would the impact be to an impairment designation and what resources would come to bear for improvement. He said the state is interested in bringing in federal dollars to the mix in order to improve the water quality, i.e., septic systems, etc. Mr. Currie asked about the depletion of the aquifer, and Mr. Smith responded there are several cities, as well as Joplin, Missouri, experiencing development that are causing a depletion of the aquifer; additional water sources are being looked at. He talked about the geography of the aquifer and recharge and that further study of the aquifer is needed to determine what water is available. He said there are several different issues involving the aquifer and the different states and that Mike Mathis is participating with the study group.

Mr. Smith stated that the past months the agency has been working on goals and objectives, division budgets, the agency budget, and he will make a presentation at the August Board meeting on the update of the agency's High Priority Programs for the coming year, and associated action plans included in the updated Strategic Plan. He said 27 members of the agency's management team meet each year to develop the priorities and plan.

An interim Task Force has been recommended, with status still pending, on Environmental Agency Reorganization by Representative Brian Bingman. He read the purpose of the study as stated in the request, and includes all environmental agencies, except the Conservation Commission, the Corporation Commission, and the Department of Agriculture, leaving the Department of Environmental Quality and Water Board as the focus. The members named to date are Mr. Smith, Mr. Thompson (DEQ) and Bobbie Stem, lobbyist for Capitol Gains. Mr. Smith stated the agency is always interested in improving efficiencies and effectiveness.

Mr. Smith stated he would be attending the Western States Water Council meeting in Seattle, Washington the remainder of the week. A tour and the quarterly meeting, along with a Water Management Data and Collection workshop is scheduled where states will be making presentations. He said that he has looked at the other states, and Oklahoma is slightly behind the curve on data management. He hoped as a result of this meeting to be able to make

recommendations to the Board possibly about legislative activity particularly in streamgaging data collection activities that the state desperately needs to maintain. With the budget for the next year, it looks as though a lot of data will be lost that is needed for good water management.

On July 19, 2005, the OWRB will meet with the Department of Environmental Quality to discuss the Financial Assistance Program. He said that Mr. Thompson has talked with him about the need for money to rural communities for water and wastewater infrastructure that the Board has been "preaching" for years. He said the goal as a result of the meeting is to have as a number-one goal of the OWRB and the DEQ for the coming year to be improvement of water and wastewater infrastructure and the funding the of the financial assistance programs. The Board has had that as a top priority for three years but has been unsuccessful in getting the \$25 million needed so that the Board can provide the \$4 billion of need that Oklahoma communities have for the next twenty years. He said the strategy is to bring the DEQ and the Secretary of Environment into the mix, have a legislative priority supported by the Governor in his budget request, recruit legislators before the session begins and make another special emphasis this year for our financial assistance program and putting money into the reserve. He said he has visited with Rudy Herrmann about creating a Board ad hoc legislative committee to work with him at the Capitol to advance these issues. He said he looked forward to visiting with the DEQ, and hearing presentations from Chris Cochran of Capitol West and Joe Freeman and his staff. Mr. Smith concluded his report.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #5, Kay County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the Board members that this item is a \$180,000.00 loan request from the Kay County Rural Water District #5. The District is requesting the loan in order to construct a 22,000 gallon standpipe and the loan will be funded through the Board's bond series 2003 State Loan Program Revenue Bond Issue and secured by a lien on the District's water revenues. He noted provisions of the loan agreement. Mr. Freeman said the District has approximately a 1.88-times debt coverage ratio, and it is estimated the District will save approximately \$78,800 in interest expense by borrowing from the Board. Staff recommended approval.

Mr. Gerald Boyer, Jim Hinton and Terry Morton, District Board members, and Mr. Hugh Levitt, District Manager were present in support of the application.

Mr. Secrest moved to approve the loan to the Kay County RWD #5, and Mr. Farmer seconded.

Mr. Sevenoaks asked about the S&P rating fee request. Mr. Freeman answered S&P reviews the loans on the state loan program to ensure no more than 20% non-investment grade loans are approved, and a \$2,500 fee per loan is charged by S&P for the review which cost is passed along to the borrower.

Vice Chairman Nichols called for the vote.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols

NAY: None

ABSTAIN: None

ABSENT: Herrmann

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Duncan Public Utilities Authority, Stephens County. Recommended for Approval. Mr. Freeman stated that the Duncan Public Utilities Authority has requested an \$8,055,000.00 Drinking Water State

Revolving Loan Fund loan for water treatment plant improvements. Mr. Freeman noted provisions of the loan agreement. Mr. Freeman said the loan would be used to cover clarifiers and filters, add a new acid feeding/storage system, rehabilitate existing clarifiers and filters; clean existing lagoons; and construct a new administration/laboratory building, along with other improvements. Duncan has been a good, long-term customer of the Board's and currently has four outstanding loans with the Board. The estimated debt coverage ratio stands at 1.9-times, and it is estimated that Duncan will save approximately \$2.3 million in interest expense by borrowing from the Board. Staff recommended approval.

Mr. Keith McDonald, financial advisor, was present in support of the loan application.

Mr. Sevenoaks asked if Duncan had a 5-year Master Plan; Mr. McDonald responded the city did have a plan. This loan will finance one of the final stages of this plan and is developing a new Capitol Improvement Program. Mr. Currie asked about the four other loans, and Mr. Freeman indicated the amounts owed through those obligations totaled around \$10 million.

Mr. Sevenoaks moved to approve the DWSRF loan to the Duncan Public Utilities Authority, and Mr. Fite seconded.

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

C. Consideration of and Possible Action on Proposed Resolution Authorizing Staff to Request Proposals from Firms to Serve as Financial Advisor to the Board in Connection with the Board's State Revenue Bond Loan Program, the Clean Water State Revolving Fund Program, and the Drinking Water State Revolving Fund Loan Program. Recommended for Approval. Mr. Freeman stated this item is for the consideration of a resolution to authorize staff to consider a proposal for financial advisor services for an issuance of debt for at least \$100 million for the Board's State Revolving Fund Loan Program. In addition, the request will include advisory services with regard to the development and operating policy and procedures such as, but not limited to, loan review criteria, continuing disclosure covenants, interest and administrative fee methodology as well as cash flow analysis for the state's four-year state revolving fund loan program, also known as the FAP.

Mr. Freeman explained the request is being made at this time because there are approximately \$75 million in unobligated funds from the Board's series 2004 SRF bond issue, and there is in excess of \$113 million of DWSRF project identified for this fiscal year alone. Additionally, the request includes approval to proceed with a new bond issue for the FAP state loan program for which financial advisor services will not be requested; the anticipated amount of the FAP bond issue is a minimum of \$50 million dollars. Mr. Freeman stated staff recommended approval.

Mr. Currie moved to approve the resolution authorizing staff to request proposals for financial services in connection with the Board's financial assistance programs, and Mr. Farmer seconded.

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

### 3. SUMMARY DISPOSITION AGENDA

Vice Chairman Nichols 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 to the Special Consideration Agenda. However, Mr. Jim Schuelein asked that three items be withdrawn from the Board's consideration: 3.D.5., 3.D.8., and 3.D.9. There were no other amendments to the Summary Disposition Agenda.

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

There being no other requests regarding Summary Disposition items, Mr. Farmer moved to approve the Summary Disposition Agenda as amended, and Mr. Fite seconded.

Mr. Currie asked about the REAP grant to the City of Bridgeport and the city's source of its existing loan; Mr. Freeman responded it is from a local bank. Mr. Currie also asked about the water rates and the purpose of the grant requested because of disrepair to the system. He was concerned about the low amount of money the citizens were paying for water and sewer rates and receiving grant dollars when other cities paid higher rates.

AYE: Currie, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Farmer  
 NAY: None  
 ABSTAIN: Secrest on 3.D.1.  
 ABSENT: Herrmann

#### **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>
<b>ASCOG</b>				
1.	FAP-04-0033-R	City of Bridgeport	Caddo	\$58,200.00
<b>COEDD</b>				
2.	FAP-04-0010-R	Rural Water District #5	Pawnee	79,999.00
<b>GGEDA</b>				
3.	FAP-03-0039-R	Bluejacket Public Works Authority	Craig	79,900.00
4.	FAP-04-0003-R	Locust Grove Public Works Authority	Mayes	99,999.00
<b>KEDDO</b>				
5.	FAP-04-0046-R	Rural Water District #5	Pushmataha	99,000.00
6.	FAP-01-0060-R	The Wright Public Works Authority	McCurtain	99,999.00

NODA	7.	FAP-00-0055-R	Kremlin Public Works Authority	Garfield	81,000.00
OEDA	8.	FAP-04-0061-R	Forgan Public Works Authority	Beaver	87,600.00
SODA	9.	FAP-04-0011-R	Dougherty Public Works Authority	Murray	92,200.00

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

1. Consideration of Agreement with the Oklahoma Rural Water Association for FY-2006 Technical Assistance and Training.
2. Consideration of and Possible Action on Renewal of Contract for Services with the Oklahoma Department of Public Safety for Trooper Services while working on Oklahoma Bridges.
3. Consideration of Joint Funding Agreement with the U. S. Geological Survey for the FY-2006 Federal-State Cooperative Program.
4. Consideration of Interagency Shared Services Agreement with the Office of the Governor for the Office of the Secretary of Environment.
5. *Consideration of Interagency Agreement with the Oklahoma Department of Environmental Quality for Laboratory Analyses. Item withdrawn*
6. Consideration of Interagency Agreement with the Central Oklahoma Master Conservancy District for Continuing Water Quality Work at Lake Thunderbird.
7. Consideration of Interagency Agreement with the Central Oklahoma Master Conservancy District for Work Related to Nutrients and a Water Budget for Lake Thunderbird.
8. *Consideration of Interagency Agreement with the Central Oklahoma Master Conservancy District for Monitoring of Tributaries at Lake Thunderbird. Item withdrawn*
9. *Consideration of Interagency Agreement with the Oklahoma Department of Agriculture, Food and Forestry for Monitoring of Groundwater Near Licensed Managed Feeding Operations. Item withdrawn*

E. Applications for Temporary Permits to Use Groundwater:

1. Frank H. & Scharleen Carpenter, Greer County, #2004-524
2. City of Norman Utilities Department, Cleveland County, #2005-504
3. Tommy & Beatriz McDonald, Harmon County, #2005-528
4. Tommy & Beatriz McDonald, Harmon County, #2005-529

- F. Applications to Amend Temporary Permits to Use Groundwater:  
None
- G. Applications for Regular Permits to Use Groundwater:
1. William C. Chapman, Johnston County, #2003-585
  2. Grewell Family, LLC, Texas County, #2005-527
  3. Wearmouth Farms, Inc., Tillman County, #2005-530
  4. City of Bethany, Canadian County, #2005-536
- H. Applications to Amend Regular Permits to Use Groundwater:  
None
- I. Applications to Amend Prior Rights to Use Groundwater:  
None
- J. Applications for Regular Permits to Use Stream Water:
1. City of Edmond Parks & Recreation Department, Oklahoma County, #2005-005
  2. MBR Sod of Texas, Inc., Love County, #2005-012
- 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: Cherokee America Drilling	DPC-0060
Operator: Charles E. Smith	OP-1447
Activities: Monitoring wells and geotechnical borings	
b. Licensee: Howard Drilling Company	DPC-0105
Operator: Phillip Howard	OP-1448
Activities: Groundwater wells, groundwater test holes and observation wells Monitoring wells and geotechnical borings Pump installation	
c. Licensee: Loman Drilling, Inc.	DPC-0127
Operator: Scott Warnock	OP-1449
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, Creek County, FP-05-05
- O. Approval of Applications for Accreditation of Floodplain Administrators:
1. Names of floodplain administrators to be accredited and their associated communities are individually set out in the July 12, 2005, packet of Board materials

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

There were no questions or discussion about agency work or other items of interest.

#### **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. Motion to Reconsider Application of the Town of Longdale for Permit No. 2002-552 to Use Groundwater:**

1. Discussion and presentation by parties – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that this item is for the reconsideration of a permit issued by the Board at the June 14, 2005, Board meeting. He said the Longdale permit is located in Blaine County, and authorizes Longdale to use 60.9 acre-feet of groundwater per year from two wells located in the North Canadian Alluvium and Terrace Deposits Groundwater Basin. The maximum annual yield for the basin was approved in 1983, authorizing one acre-foot of water per acre of land dedicated. On June 24, 2005, a Motion to Reconsider was received, and subsequently received a revised amended Motion to Reconsider. Mr. Mathis stated both the permit holder and the party requesting reconsideration were present.

Mr. Jim Barnett, representing the City of Longdale, was present as was Mr. Nelson representing the applicants for the Motion to Reconsider, the Geigers. Mr. Nelson approached the members and stated he had filed the motion and intended to supplement the application with expert report regarding lowering of the water table. Mr. Nelson said the expert is out of town and he had not received notice the item was on the Board meeting agenda until today, and he was not prepared to make his presentation. He said he didn't believe the city had 60.9 acres, and he had asked the expert to do a study on the 1973-1975 report. He asked the Board to delay consideration until another time so that he can make a proper presentation.

Mr. Sevenoaks asked about the process of notice. Staff explained that the Board's rules state a Motion to Reconsider must be filed within 10 days of a Board decision on an application, which the motion was filed within the time frame.

Mr. Barnett stated staff could respond to the notice issue, but regarding the request for reconsideration, staff had prepared a memorandum to the Board members and it fairly addressed the legal aspects of the motion, but it did not raise any new matter or issues that would make an argument that they are entitled to reconsideration. The statute provides a list of

issues that are the basis for reconsideration under the Administrative Procedures Act, and the protestants raised none of those, and the closest perhaps is the issue whether new evidence, which there is none, but in the motion two sections of the USGS report on the North Canadian River were mentioned, but neither have any applicability to the instant matter. The USGS report is used for the determination of the equal proportionate share and the simulations 3. and 4. that is referred to uses 1.4 acre-feet but the Board's order establishing the EPS was set at 1.0 acre-foot, so these simulations were shown to stress the aquifer and see how much could possibly be pumped and have no relation to reality as it relates to the actual numbers that were set at 1.0 a.f. Secondly, he said the issue of pollution was a result of mischaracterizing the findings of the report and he referred to page 4. where it is stated if the water is lowered to a certain level, there is a possibility there could be some minor pollution, but "pollution caused in this manner would probably be of limited extent." There is no evidence in the record before the Board that anything Longdale is proposing to use with their well is going to cause pollution of the aquifer. Mr. Barnett stated that staff recommendation the motion to reconsider be denied is appropriate and he asked that the Board deny the request.

Mr. Sevenoaks stated his concern of the notice issues and he asked staff to respond. After some discussion about the Board's process following approval of a permit, it was determined that it is the practice of the Board that if an application is filed properly, it will be heard at the next Board meeting. The Motion to Reconsider by the protestants in this matter was filed properly and timely, and therefore was scheduled for this meeting. However, there was no formal notification to Mr. Nelson in response to his request and that the matter would be on this month's Board agenda.

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

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

Mr. Sevenoaks moved to table the Motion of Consideration until the August meeting, and Mr. Fite seconded.

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

B. Application for Regular Permit to Use Groundwater No. 2005-503, Roy L. Ryan, Tillman County:

1. Summary – Mr. Mathis said the applicant requested a permit to take and use 480 acre-feet of groundwater per year for the irrigation of crops. The water is to be taken from eight wells located on 480 acres of dedicated land that overlies the Tillman Terrace Groundwater Basin in Tillman County. The maximum annual yield has been previously determined by the Board to be one acre-foot of water per acre of land dedicated. Mr. Mathis stated this item had been tabled at the June meeting to allow the parties to meet and discuss an equitable solution. He said he understood there had been dialogue, and yielded to the Chairman to invite the parties to make comments.

Vice-Chairman Nichols asked for a vote to remove the item from the table. Mr. Fite moved that application 2005-503 be removed for consideration, and Mr. Keeley seconded.

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

2. Discussion and presentation by parties. Mr. Barnett, representing the applicant, stated to the members that there was not much to offer outside of the agency resolution. He said he had visited with Mr. Walker, counsel for the protestant, and while they were close to a “meeting of the minds” it didn’t happen. He spoke to the issues that may have led to the Board’s motion for continuance and approval last month. He reiterated the points he made at the June meeting including staff’s excellent job of the draft order, the Executive Director’s job of explaining the Board’s role in the process, and added explanation about the validity of the determination of the one acre-foot per acre maximum annual yield and that the aquifer once was but is no longer “in trouble” and has been in good shape for some time because of the equal proportionate share being set a one acre-foot per surface acre. Mr. Barnett explained that his client needed the water; he had invested a considerable amount of money by purchasing the land, purchasing three high-efficiency irrigation systems all with the reasonable expectation that he would obtain a permit for his own water to irrigate his own land, because he meets all the requirements of law, and there is no basis for denying the permit. He said Mr. Ryan also believed he would be issued the permit because in 1999 a neighbor had applied for a permit on a different farm in Tillman County that violated the well spacing distance and after Mr. Ryan’s protest, the Board approved the permit. Mr. Barnett said it is inappropriate and contrary to law for the Board to deny a right to his own water.

Mr. Mark Walker, representing the protestants, thanked the Board for the opportunity for the parties to work on an agreement. He didn’t reveal the nature of the discussions, but did say what the protestant’s proposed. He explained the applicant had asked for eight wells all located within a concentrated area, withdrawing the full 480 acres-worth from an area that comprises about 8% of his land area, which has been the crux of the matter from the beginning. He talked about the evidence presented showing dewatering of the wells, and the proposal by the protestants that the applicant agree to restrict withdrawal of water from the wells in the center of the forty acres, and that the peripheral wells would only be used if there were mechanical problems with the wells in the center. He said Mr. Ryan testified that the center wells would be adequate to operate the three irrigation systems, and he asked the Board to impose that condition in the permit—or something reasonable that is similar. As at the June meeting, Mr. Walker talked about the Board’s authority in such instances, the Messer-Bowers Case, reasonable use, and whether the hearing examiner considered the evidence of dewatering. Mr. Walker asked the Board to modify permit to consider reasonable use.

Mr. Sevenoaks asked how close are the neighbors in reaching an agreement. Mr. Walker responded the protestants proposed keeping only seven wells (the eighth was not yet drilled), and to just use the center wells unless there were mechanical problems. He said the applicant had responded they would use the center wells, but would use the peripheral wells when needed, and not only because of mechanical problems. He said he felt the problem was that the applicant did not want that language in the order and do not want a written agreement.

Mr. Barnett responded he was the attorney of record in the Messer-Bowers case and Mr. Walker’s representation of the facts is far from reality. He said the bottom line was in Messer-Bowers that the applicant agreed with the Board and was not instructed but volunteered to reduce the number of wells. He said the applicant in the case did not file an appeal to the Supreme Court, but that the protestants did, and the Court blessed the Board’s agreement with the applicant, which is set out in the proposed order by the hearing examiner in this application. Mr. Barnett stated in regard to the possible agreement, the client was agreeable to not drill the eighth well, and is agreeable to instructing the farm manager that when there is sufficient water to satisfy the pivots needs to utilize the interior wells first. He said in the summer time in this area, and his client believes based on his experience, there will be occasions when he will need all the wells – he said the aquifer is one that draws down in the summer and recharges; it is stable but not always at the same elevation. He said his client drilled the wells because he felt

there would be times when they would all be needed, and he can't lose a crop because he can't turn on a well because the neighbor wants to irrigate. He said his client has been concerned about having any kind of written agreement that could be used as a basis to stop irrigation when he needs to irrigate, but is willing to instruct the farm manager on an informal basis to use the interior wells first.

Mr. Sevenoaks asked if the Board approved the permit, would the voluntary agreement still hold, and Mr. Barnett responded, yes, and that he would follow up personally to visit with the client and the farm manager. Mr. Currie asked if he would put that in writing, and Mr. Barnett responded he would not enter any contract that would have to go before the County Commissioners, the Water Resources Board, or any other governmental entity in getting his own water put to his own use. Anything short of that, Mr. Barnett stated, he would be happy to do, including not drilling the eighth well.

Mr. Keeley stated there seemed to be a built-in safety factor; the applicant will stress himself quicker than stressing the neighbor, and perhaps to the point that he can't afford to pump his wells. Mr. Mathis stated that is correct, there would be an impact both ways but to the applicant first.

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 findings of fact, conclusions of law and Board order for regular groundwater permit number 2005-503, and Mr. Sevenoaks seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols

NAY: None

ABSTAIN: None

ABSENT: Herrmann

C. Application for Temporary Permit to Use Groundwater No. 2004-587, Oklahoma Department of Wildlife Conservation, Oklahoma County:

1. Summary – Mr. Mathis stated to the members this item is for consideration of an application for a temporary groundwater permit for the Oklahoma Department of Wildlife Conservation in Oklahoma County. The applicant requests permission to take and use a total of 40 acre-feet of groundwater per year; 35 acre-feet for recreation fish and wildlife purposes and 5 acre-feet for educational uses and an office. The water is proposed to be withdrawn from one well located on 20 acres of dedicated land. The permit request overlies the Garber-Wellington groundwater basin for which the maximum annual yield and equal proportionate share have not been determined and each landowner is therefore entitled to two acre-feet of water per acre of land dedicated. The applicant proposed to use the 35 acre-feet to refill a fishing pond, wetland area and a park pond if and whenever it is necessary to keep up with evaporation losses. In conjunction with its lease with the U.S. Army Corps of Engineers, the applicant administers a variety of year-round education programs for the public on the dedicated land. Applicant's programs provide fishing clinics for children and youth in schools, Scouts and church groups, a series of wetlands education workshops, and a farm pond management demonstration project. The fishing pond is approximately  $\frac{3}{4}$  of an acre in surface area with an average depth of six feet; the farm pond is approximately the same size but a depth of two feet. Applicant will pump water only when necessary and will only use up to five acre-feet a year for educational purposes, and will use a licensed water well driller to drill the well in accordance with the Board's construction standards.

Mr. Mathis stated the protestant expressed concern the applicant's groundwater withdrawal would interfere with and cause the groundwater to be depleted in the area of the protestant's domestic well, located approximately  $\frac{1}{4}$ -mile south of the proposed well location.

The protestant also requested the applicant meter the well to which the applicant did agree, and is stated in the order and will be reflected in the permit. The protestant did not establish the applicant would deplete the groundwater.

Mr. Mathis stated the record showed the application to be in accordance with the Oklahoma Groundwater Law, and staff recommended approval of the permit.

2. Discussion and presentation by parties. Mr. Fitch, protestant, spoke to the members and stated he had no objection to the way in which the order is stated. He said it is unknown what the Garber-Wellington will yield on an annual basis and the applicant is entitled to two acre-feet per acre per year. He wanted there to be some type of metering system so accurate monitoring could be done, and they had agreed.

Mr. Jim Barrow, Assistant Attorney General, stated to the members that the Department has spent \$250,000.00 building this facility and without the groundwater, it will not be functional. He urged the Board to approve the application.

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. Fite moved to approve temporary groundwater permit no. 2004-587, and Mr. Farmer seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols

NAY: None

ABSTAIN: None

ABSENT: Herrmann

D. Application to Amend Temporary Permit to Use Groundwater No. 1980-556, Howard Reimer, Major County:

1. Summary – Mr. Mathis stated this item is for the consideration of an amendment to a temporary permit to use groundwater. He said the applicant's existing permit authorizes the use of 440 acre-feet of groundwater per year to irrigate 220 acres of dedicated land from two described well locations. The applicant is requesting use of an additional 90 acre feet of groundwater for a total of 530 to irrigate an additional 45 acres of land. The land overlies the Cimarron River Alluvium and Terrace basin; the study has not been completed, therefore, the landowner is entitled to two acre-feet of water per acre of land dedicated. The applicant will irrigate corn, soybeans, peanuts, Bermuda grass and pasture.

Mr. Mathis stated the applicant has an agreement with Crop Quest for the management of the irrigation, he will use a licensed well driller to meet the Board's minimum construction standards, and the activity of the fertilizing crops is within the jurisdictional area of environmental responsibility of the Oklahoma Department Agriculture, Food and Forestry.

Protestants were concerned about the amount and withdrawal rate of groundwater, and the number and location of the wells proposed by the applicant would deplete their water supply. Particularly in this case, the wells in section 21 are located within close proximity to one of the protestants and it is a close adjacent area. Drawdown models were used to assess the situation, and the evidence indicated that pumping the wells at the rate the applicant testified he would as compared to that which the wells are capable of pumping provided additional assurance that the results would permit the use of groundwater according with staff recommendation. The hearing examiner recommended the restrictions on the pumping rate should be in place to protect the adjacent areas from the uses of groundwater. The protestant were also concerned about any affect on the surface water of an adjacent stream in the area; and while the impact of groundwater use on streams and springs is not directly relative, restrictions on the pumping included in the order should help to alleviate some of those concerns. Protestants also argued that using groundwater to irrigate lands that are not part of the actual dedicated lands should not

be allowed; however, the groundwater law does not provide restrictions on use on dedicated lands.

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

2. Discussion and presentation by parties. Mr. Jim Barnett, representing the applicant, Howard Reimer, stated to the Board that there was no fundamental objection to the recommended order before the Board, but there is one minor problem, probably a communication breakdown at the hearing. He said he was not representing the client at the time of the hearing, and at the hearing there was discussion about the three wells that might have a draw down effect on the neighbor's domestic well – Pablo Aguilar – and the applicant stated he would be willing to limit the wells that might affect that domestic well to a 150-gallons per minute. The communication seemed to indicate all three of the wells, but the applicant only meant the two closest wells to Mr. Aguilar. There is another well that is limited to 150 gallons per minute that is located over one-half mile away that would not have a draw down affect on Mr. Aguilar's well. Having said that, Mr. Barnett stated, the client has discussed the matter with Mr. Aguilar, and agreed they would drill him a new well. Mr. Aguilar is currently on vacation, and Mr. Reimer will drill well upon his return. Mr. Aguilar is the only neighbor in close proximity that may experience a draw down affect. Mr. Barnett stated that one well needs to be allowed to pump at 260 gallons per minute, or Mr. Reimer will not be able to operate the pivot system.

Mr. Sevenoaks asked how the applicant was addressing the issue of affecting streams and springs in the area. Mr. Barnett responded he is not addressing the issue because it is not applicable – that law is only applicable in the Arbuckle-Simpson and the law has not been extended statewide.

Mr. Victor Bailey, representing himself and several protestants, approached the members and stated he had represented Mr. Aguilar on a number of other matters over the years and he was unaware of the agreement with Mr. Reimer to drill a new well. He said the Board's inspector, Mr. Wicker, did not contact the 19 protestants when he made a site visit, but only Mr. Reimer, and the report reiterated Mr. Reimer's position. He said he was concerned that his client, Mr. Aguilar, was losing his domestic well, and Mr. Reimer had drilled one well that was not located on the permitted area. He also quoted Oklahoma statutes, regarding the application for unappropriated water. Mr. Bailey stated he was concerned about the draw down on neighboring wells and the inference with domestic uses. He asked that the application be denied or limited.

Mr. Barnett responded saying the protestants were correct, there was one well that was improperly noticed and had been dropped out of this order and the process will start over for that well. He said the stream water law Mr. Bailey mentioned had no application in the groundwater application, and the appropriate statute is 82 O.S. §1020.9 that states the Board shall grant two acre-feet of water per surface acre until the basin study is completed. Mr. Barnett said the hearing examiner was concerned about Mr. Aguilar's well, and that is why Mr. Reimer agreed to drill him a new one.

Mr. Sevenoaks asked if there were any existing operating unpermitted wells on the property. Mr. Barnett responded there is not; there is a provisional temporary permit for the wells. Regarding Mr. Bailey's comment he was not aware of the agreement between Mr. Reimer and Mr. Aguilar, Mr. Barnett said he was not contending that Mr. Bailey was present when his client visited with Mr. Aguilar on July 4; they are neighbors and they made the commitment directly.

Mr. Dale Folger, neighboring five of the wells on the west, said he had contacted the Board about the wells in use by the Reimers and whether they were permitted. He found that two of the wells had permits, three did not and they had been in use for three years. Board staff contacted the Reimers, who then submitted applications; a hearing was held which he attended, and he said the hearing examiner conducted the proceedings in a fair and outstanding manner. He said Mr. Reimer stated he was unaware he needed a permit, and he disputed the statement

because Mr. Reimer is recognized as a good farmer, had previously obtained the permits for two wells, and employs an agriculture consulting firm. He said he was concerned about the recommended order by the staff to authorize the use of 530 acre-feet of water to irrigate 265 acres of dedicated land, and he was confused about the calculation of water acreage and surface acreage for the needed irrigation. Mr. Folger said apparently the permit is being recommended because Mr. Reimer stated he would operate the wells at one-half capacity, and he said now it is questionable that would be carried out. He said that if the Board approves the permit, he would ask that an independent person monitor the wells or that a meter be required. He said if there is no penalty for not following the law in obtaining the necessary permits as was done in this case, then why bother to obtain a permit? He said it should not be the responsibility of the neighbors to monitor these situations. He thanked the Board for the opportunity to comment.

Mr. Sevenoaks asked if the order needed to be amended to reflect the rate of pumpage on the third well. Mr. Currie asked if the applicant would meter the wells; Mr. Barnett responded his client is not prepared to go to the expense of metering the wells when it is not required of any other farmer.

Mr. Smith asked if there were any other wells other than the Aguilar well within 1320 feet? Mr. Mathis responded there is not. He said the other wells in the area are generally about 2,000 feet in distance.

Mr. Smith spoke to the application saying that this is an application for a temporary permit, in the Alluvium Terrace of the Cimarron River. There has been a study and a tentative order that would reduce the amount, and staff is preparing to come to the Board with an order that will actually reduce the amount of water that can be pumped. Until that time, two acre-feet is allowed, and there is no well spacing. Staff has looked at the Aguilar well and due to the substantial draw down on that domestic well, the applicant has agreed to replace that well; and the Board could not require that it be replaced. The other issue presented is that the protestants believe that the OWRB should set a priority for the domestic use over the irrigation use; however, the groundwater law does not set those preferences, and each user can take water from beneath their land: a domestic user can take water without a permit and it is still a beneficial use, an irrigator has to have a permit, but all the uses are on equal footing, and private property can be used as the owner prefers and the way those issues are handled is through well spacing, once the study is completed and then there will be a well spacing requirement of 1320 feet. There is concern about people who live in the rural area that are on domestic wells and sometimes the water tables are going down and the groundwater water law contemplates the water table going down. The OWRB's job is to make sure that each landowner that wants to use water comes in and complies with the law. He said there has been a history of violations here; the Board acknowledges that and works to get everyone legal—if a person doesn't come in to get legal, then a cease and desist order can be issued. He said that staff has recommended approval because the applicant owns the land, it overlies a fresh groundwater basin, it is a beneficial use, and the waste has been addressed from waste by depletion—the two acre-feet, and the Aguilar well—and when the four points of law are met, staff recommends approval.

Mr. Currie asked again if the applicant would consider voluntarily metering the well. Mr. Barnett responded that meters are not inexpensive and they are not fail proof and he said he would not encourage an irrigator to do it unless all the others do; why should Mr. Reimer spend more money to pump his water on his property to irrigate than any other farmer in the state of Oklahoma.

Mr. Fite mentioned water planning and the role metering could play in knowing how much water is being used. Philosophically, Mr. Smith stated there probably is a lot of support for that argument, but there is a statute that specially addresses well metering that states that before the Board can require a meter, there has to be a majority of the landowners residing in the basin vote

to meter. If the people of the Cimarron Terrace want to vote to require meters on wells, they can impose that sanction upon themselves.

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 findings of fact, conclusions or law and Board order for temporary groundwater permit number 1980-556, and including language to direct staff to make minor amendments to the findings that will address the simulation in well number 8 (page 5037), and in the order itself (page 5044) the pumping of 250 gallons per minute for the well no.

3. Mr. Keeley seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols

NAY: None

ABSTAIN: None

ABSENT: Herrmann

E. 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, stated to the members the new year began, and he pointed to the budget to actual report for FY 05, and there will be a new budget report based upon that which was approved by the Legislature and Governor. Mr. Sevenoaks asked if there was any carry over; Mr. Schuelein stated there is some, but it is reserved for paying bills that are anticipated; there is no excess carryover. Mr. Currie asked about future funding for weather modification; Mr. Mathis stated he hope there would be funding in the future.

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

There were Supplemental Agenda items for the Board consideration.

A. Consideration of and Possible Action on FY-06 Lease Agreement for Tulsa Field Office Space in the Kerr State Office Building. Mr. Schuelein explained the Department of Central Services had asked the OWRB office to move to another space in the building. This lease amount is less than in the past; he recommended approval.

Mr. Fite moved to approve the lease agreement and Mr. Farmer seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols

NAY: None

ABSTIN: None

ABSENT: Herrmann

B. Well Driller and Pump Installer Licensing. Mr. Mathis explained this is a routine licensing activities and adds an additional well driller for the Board's consideration. Staff recommended approval.

1. Licensee: Envirotech Engineering & Consulting, Inc.

DPC-0283

Operator: Steven R. Culbertson  
Activities: Monitoring wells and geotechnical borings.

OP-1445

Mr. Currie moved to approve the well driller application, and Mr. Fite seconded.  
AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols  
NAY: None  
ABSTIN: None  
ABSENT: Herrmann

C. Dam and Reservoir Plans and Specifications:

1. USDA-NRCS Bitter Creek Watershed, Site 18, Grady County, DS-05-07

Mr. Mathis stated this item is for the consideration of plans and specifications for a Natural Resources Conservation watershed site. This is a small bank stabilization/flood control structure in Grady County. Staff recommended approval.

Mr. Sevenoaks moved to approve the dam and reservoir plans and specifications, and Mr. Keeley seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Secrest, Sevenoaks, Nichols  
NAY: None  
ABSTIN: None  
ABSENT: Herrmann

**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 other New Business items for the Board's consideration. However, Mr. Nichols invited the Board to hold the August meeting in the Altus area and to tour the Lugert-Altus Irrigation system operations. Mr. Smith stated the legislature has provided funding for projects in the area that staff would like to show the Board, in addition to the irrigation district. The Board agreed to travel to Altus to conduct the August meeting.

There were discussions about traveling to Tahlequah in the fall. Mr. Smith reminded the members that the annual Governor's Water Conference is in November in Oklahoma City.

**9. ADJOURNMENT**

There being no further business, Vice Chairman Nichols adjourned the regular meeting of the Oklahoma Water Resources Board at 11:10 a.m. on Tuesday, July 12, 2005.

**OKLAHOMA WATER RESOURCES BOARD**

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

\_\_\_\_\_/s/  
Jess Mark Nichols, Vice Chairman

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

\_\_\_\_\_/Absent\_\_\_\_\_  
Jack W. Keeley

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Edward H. Fite

\_\_\_\_\_/s/\_\_\_\_\_  
Kenneth K. Knowles

ATTEST:

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

(SEAL)