

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

October 11, 2005

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 10:30 a.m., on October 11, 2005, in the Jack Kaufman Room of the Holiday Inn Express, 701 Holiday Driver, Tahlequah, 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

Mr. Secrest provided the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

Harry Currie

Staff Members Present

Duane A. Smith, Executive 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

Randy Nelson, Chouteau Public Works Authority, Tulsa, OK
Renee Tide, Stillwell-Westville Newspaper, Tahlequah, OK
Bryce S. Kennedy, Kremlin-Hillsdale Application, Enid, OK

Cheryl Dorrance, Oklahoma Municipal Utility Power/Oklahoma Municipal League,
Oklahoma City, OK

Arnella Hendricks, Oklahoma House of Representatives Staff, Oklahoma City, OK

Kelly Burch, Office of the Attorney General, Oklahoma City, OK

Jeff Morris, Westville Utility Authority, Westville, OK

Rachelle McGowen, Westville Utility Authority, Westville, OK

Randy Hoeman, Kay County Rural Water District #6, Gerber, OK

Marvin Klufor, Kay County Rural Water District #6, Tonkawa, OK

Keith Harris, Town of Chouteau, OK

Jerry Floyd, Town of Chouteau, OK

Richard Kunze, Citizen Potawatomi Nation, Shawnee, OK

Sandra Lee, City of Tishomingo, OK

Mike Schultz, Kremlin-Hillsdale, Kremlin, OK

Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK

Bud Ground, Public Service Company, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the September 13, 2005, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were changes.

Mr. Nichols moved to approve the minutes of the September 13, 2005 Regular Meeting, and Mr. Farmer seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Currie

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, introduced Representative John Auffet of Stillwell attending with the Westville officials, and he serves on the Environment and Natural Resources in the House of Representatives. Mr. Smith also introduced Ms. Kelly Burch of the Attorney General's office, and Cheryl Dorrance with the Oklahoma Municipal League. He thanked Mr. Ed Fite and Mr. Archie Peyton for their generous hospitality during the Board's visit to the area.

Mr. Smith stated to the members that he attended the OML conference in Tulsa where Richard Sevenoaks spoke about water planning, and he complimented Mr. Sevenoaks on his presentation.

Mr. Smith said he and Mark Nichols had traveled to Washington, D.C., to visit with Oklahoma's Congressional Delegation, and specifically about issues involving the Lugert-Altus Irrigation District on the Red River Chloride Control Program. Senator Inhofe's staff has been very supportive, and the trip was to visit about the benefits augmenting water supplies in southwest Oklahoma through the Chloride Control Project on the Elm Fork. He said that while the issue has been somewhat controversial in the past, the members of the District have put their own dollars into conservation, lining canals, and installing drip irrigation systems to manage the water available, and with that now trying to move forward with augmenting supplies. The funding request is \$3 million over the next three years to do the study and additional technical work such as deep well injections rather than brine pits. He said it would be a very

worthwhile project as there is a 100-box car trainload of salt per day flow into Lake Texoma, and while there is a small portion from the Elm Fork, if that stream is cleaned up additional a significant amount of water is available for use resulting in a potentially large impact. Another issue discussed with the delegation is the WRDA Bill (Water Resources Development Act) that is a Corps of Engineer's bill. The Corps has supported with the OWRB to allow in-kind services instead of cash flow. The Corps is downsizing and wants to contract back to the state so there could be reverse flow of money from the federal government to the states on some programs. Sardis was also a topic; a conference call was held on October 4 with the Attorney General's office about a settlement. The judge ruled the contract is valid, but he did not indicate retribution, or how payment is to be made, so essentially, the federal government wants cash, the state wants to have the sell of water to be the payment, so there was no settlement. He said there was discussion with Senator Inhofe about relief regarding Sardis in the WRDA bill, patterning after what Edmond did with Lake Arcadia, and that is the state pays the principal amount and the federal government waives the interest and penalty. The principal owed on Sardis is about \$39 million, and the Corps has asked for the principal, interest, and penalty totaling about \$60 million. As the interest continues to grow it will become virtually impossible for communities to contract for the storage.

The Arkansas-Oklahoma Arkansas River Compact Commission met in Tahlequah in late September. The Kansas-Oklahoma Arkansas River Compact met in early October. Mr. Smith stated Kansas has been very proactive in working with water quality standard and compliance issues over the border. He said they are not interested in the disagreements that Oklahoma and Arkansas have had, and as an example, 60% of Grand Lake watershed is in Kansas and in order to protect Grand Lake, Kansas needs to be part of the solution. He said that Derek Smithee has been working diligently with his counterpart in reviewing the monitoring and standards work performed by the OWRB and work with the TMDL process, all of which are proving to be very productive in avoiding future controversy between the states. Kansas has not agreed to a phosphorous limit, but neither has a limit been proposed; Kansas is ahead of Oklahoma in some aspects of water planning and the consideration of a limit may not be as controversial.

The Rural Economic Development Initiative, or REDI, group of the House of Representatives, will meet in Miami on October 12. The focus of this meeting is water infrastructure, and Mr. Smith said he is on the agenda to speak, as well as the Oklahoma Rural Water Association, the Municipal League, and others will be talking about water infrastructure needs in Oklahoma, and is an opportunity to get the message across of the need for financing for infrastructure.

The Citizens for the Protection of the Arbuckle-Simpson Aquifer, or CPASA, are holding its annual meeting in Tishomingo on October 13. Mr. Smith and Ms. Noel will be visiting with the group about the activities of the study. One of the big components of the study is the completion of a deep well, hoped to be drilled at 3,000 feet. There have been some problems develop after about 1,200 feet when the drill bits were breaking, there wasn't a large enough compressor to force the cuttings, and water than anticipated was encountered at a shallow depth. He said a large oilrig is needed, but there aren't funds for that. Mr. Smith said that originally it was stated that \$5.5 million is needed for the study, and said we will not see that entire amount, but the USGS has put in additional money, the Kerr Laboratory and OSU and OU have made a contribution through staff time into the project, and different types of study are being conducted that was never dreamed at the beginning, and has been fascinating to see the group utilize resources to obtain information. For example, it as has been discovered that the water in the Vendome well is over 30,000 years old, and the information that is discovered is going to be used to develop a very productive management scheme for that aquifer. Mr. Smith

said he is very optimistic that the study will come in on time, on budget with a management plan that will protect the springs.

The Western States Water Council will meet in San Antonio next week. A cooperative meeting with the Interstate Council on Water Policy is scheduled, which the OWRB is also a member; and there is a Water Financing Workshop scheduled to discuss with other states about water financing.

Mr. Smith concluded his report reminding everyone to attend the Governor's Water Conference on November 1-2, 2005, at the Cox Business Center. The November Board meeting will be held on November 1, at 9:30 a.m.

Chairman Herrmann added that he had the opportunity to attend the OSU Water Conference and said the panel of presenters on the Arbuckle-Simpson study talk about what they are finding and what they are doing and are making tremendous progress, and they did a very good job of outlining what the next step in the study is; a good mid-course update on the project.

2. FINANCIAL ASSISTANCE DIVISION

Mr. Freeman, Chief, Financial Assistance Division, stated he would change the format somewhat today. He would present to the Board items 2.A.-C., and 2.E. for one vote following a brief presentation on each; followed by 2.F-2.-I as separate items, and finally item 2.D.

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water District #6, Kay County, Oklahoma. Recommended for Approval. Mr. Freeman said that wells north of the Salt Fork River serves the northern portion of the District that includes service to the towns of Hunter and Douglas. The water line that crosses the river has become exposed as a result of heavy rain fall over the past few years and is on the verge of breaking, leaving the northern portion of the District without water. To correct the problem, the District will install 1,400 feet of 10-inch pipe installed by directional drilling. It is estimated the project will cost \$166,768.00 and will be funded with a grant requested of the Board, along with \$112,000.00 of District funds. Mr. Marvin Klufa and Randy Holman were present representing Kay County RWD #6.

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Sulphur Municipal Authority, Murray County, Oklahoma. Recommended for Approval. Mr. Freeman said this grant request from the Sulphur Municipal Authority is because the city has experienced recurring wastewater overflows of a sewer line at the crossing of Rock Creek. This has resulted in Sulphur being placed under a consent order by the Department of Environmental Quality. In order to correct the problem, a new siphon and 140 feet of 16" sewer line will be put in place. The project will be funded with \$63,657.50 of City funds, and the OWRB grant request.

C. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for City of Stroud, Lincoln County, Oklahoma. Recommended for Approval. Mr. Freeman said the City of Stroud has made a request for a \$24,000 emergency grant. This past May, Stroud experienced a major leak in their raw water transmission line from the lake to the water treatment plant. Besides being the raw water supply source for Stroud, it is also the water supply source for Kendrick. The project to correct the situation includes 320-feet of 12" pipe, and related appurtenances. The project funding is \$4,356.29 local funds, and the OWRB emergency grant request.

E. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Morrison Public Works Authority, Noble County, Oklahoma. Recommended for Approval.

Mr. Freeman said this emergency grant request by the Morrison Public Works Authority is because Morrison is under a consent order by the Department of Environmental Quality to upgrade its wastewater lagoon. During the rehabilitation of the southeast lagoon, the construction crew encountered groundwater, and the Authority is unable to put the lagoon back into service without contaminating the groundwater. The Authority proposes to resolve the problem by adding a clay liner. The estimated project cost is \$68,272.00, with funding provided by \$11,075.00 of local funds and the requested OWRB emergency grant of \$57,197.00.

Mr. Freeman said that staff recommended approval of the emergency grants as presented.

Mr. Farmer moved to approved items 2.A., 2.B., 2.C., and 2.E., and Mr. Secrest seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Currie

F. Consideration of and Possible Action on a Proposed Order Approving Loan for Tishomingo Municipal Authority, Mayes County. Recommended for Approval.

Mr. Freeman stated that the Tishomingo Municipal Authority had made an application for a \$810,000.00 Clean Water State Revolving Fund loan to correct major lift station problems that have resulted in an enforceable order being placed upon it by the Department of Environmental Quality. The project consists of improvements to 11 lift stations; with some stations receiving the installation of remote transmitting units, control systems, and small grinder stations, as well as rehabilitating the main lift station and adding standby generators and SCADA connections and programming, and other appurtenances. Mr. Freeman noted provisions of the loan agreement, and said it is estimated Tishomingo will save approximately \$280,000.00 by borrowing from the Board. Staff recommended approval of the loan request.

Mr. Sandra Lee, acting city manager, and Rick Smith, financial advisor, were present in support of the application.

Mr. Nichols moved to approve the loan to the Tishomingo Municipal Authority, and Mr. Keeley seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Currie

G. Consideration of and Possible Action on a Proposed Order Approving Loan for Chouteau Public Works Authority, Mayes County. Recommended for Approval.

Mr. Freeman said the Chouteau Public Works Authority made an application to the Board for a Clean Water State Revolving Fund loan in the amount of \$1,985,700.00 for major improvements to its wastewater treatment plant to meet two new permit requirements. He noted provisions of the loan agreement, and said that since 1988, Chouteau's water connections had increased by 18% and the sewer connections by 13%; and since 1970, the population has nearly doubled. It is estimated that Chouteau will save approximately \$700,000.00 by borrowing from the Board.

Mr. Jerry Floyd, Mr. Keith Harris, and Mr. Randy Nelson, were present in support of the loan request.

Mr. Fite moved to approve the loan to the Chouteau Public Works Authority, and Mr. Secrest seconded.

Chairman Herrmann asked the debt-coverage ratio; Mr. Freeman responded the debt-coverage ratio is at 1.26-times.

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

H. Consideration of and Possible Action on a Proposed Order Approving Loan for Minco Municipal Authority, Grady County, Recommended for Approval. Mr. Freeman said the Minco Municipal Authority had requested a State Loan Program Revenue Bond loan in the amount of \$2,500,000.00. Minco has requested the loan to refinance a 1999 utility system revenue bond issue and to fund engineering studies for the water system. The 1999 bond issue was for refinancing prior debt that was for improvements to the city's sanitary sewer system and proceeds were also for construction of a reverse osmosis water treatment plant. Mr. Freeman noted the provisions of the loan agreement. Their current debt-coverage ratio stands at approximately 1.3-times. It is estimated Minco will save approximately \$270,000.00 by borrowing from the Board. Staff recommended approval of the loan request.

Mr. Rick Smith and Mr. Worley Aiken, financial advisors, were present in support of the application.

Mr. Secrest moved to approve the loan to the Minco Municipal Authority, and Mr. Nichols seconded.

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

I. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Edmond Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman said this request by the Edmond Public Works Authority is for a six-months extension of time for the obligation of loan funds. He said in October 2004, the Board approved a \$21,999,232.00 Drinking Water SRF loan for water system improvements. The improvements are inclusive of two one million gallon water storage tanks, two 3,000-gallon per minute pumps, two 500-gallon per minute pumps, and six miles of 24" transmission line. He said Edmond has been closing the loan in phases in conjunction with its "2020 Master Water Plan." To date, Edmond has closed on approximately \$15.3 million of the loan proceeds and will be closing on the remaining \$6.7 million in two additional phases. Mr. Freeman noted provisions of the loan agreement; the debt-coverage ratio stands at 3.475, and it is estimated Edmond will save approximately \$4.5 million in overall interest rate savings by borrowing these proceeds from the Board. Staff recommended approval.

Mr. Farmer moved to approve the extension of time for obligation of funds to the Edmond Public Works Authority, and Mr. Keeley seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Westville Utility Authority, Adair County, Oklahoma. Recommended for Approval. Mr. Freeman said the Westville Utility Authority has requested an emergency grant in the amount of \$100,000.00. Westville is under a consent order from the Department of Environmental Quality

for an upgrade of its wastewater treatment facility, which discharges into Barren Fork River. The Barren Fork is a designated scenic river and is included in Oklahoma's list of impaired waters. Monitoring results shows violations for all three-indicator organisms specified in the Water Quality Standards. To correct the situation, it is proposed that an SBR treatment plant including an Ultra-Violet disinfection system be constructed. The project costs is estimated at approximately \$2,830,000.00 with funding being from the OWRB emergency grant, a \$680,480.00 Rural Development loan, a \$1,950,000.00 Rural Development grant, and the OWRB REAP grant of \$99,969.00. Staff recommended approval.

Mr. Jeff Morris, general manager; Ms. Rochelle McGowan, town clerk; and Representative John Auffet were present in support of the grant application.

Mr. Smith commented that Westville is a classic example of a small community that is in a scenic river where there are additional standards. There are 827 people needing to finance a \$2.8 million project, and they are paying a tremendous burden for clean water. He bragged on the citizens and the city officials who have been working to make the important project happen.

Mr. Fite moved to approve the emergency grant to the Westville Utility Authority, and Mr. Secrest seconded.

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

3. SUMMARY DISPOSITION AGENDA

Chairman Herrmann 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 for the transfer of items; however, Mr. Mathis requested that items G.1., regular groundwater permit #2005-551, and item J. 1., regular stream water permit #2005-014 be withdrawn from the Board's consideration due to publication errors.

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.P.

Mr. Nichols moved to approve the Summary Disposition Agenda as amended, and Mr. Fite seconded.

AYE:	Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann
NAY:	None
ABSTAIN:	Secrest on item 3.D.5.
ABSENT:	Currie

The following items were approved:

- C. Consideration of Approval of the Following Application for Amendment to Scope of Project for REAP Grant in Accordance with the Proposed Order Approving the Grant:

<u>REAP Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
GGEDA				
1.	FAP-03-0039-R	Bluejacket Public Works Authority	Craig	amend scope

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

1. Consideration of Contract for Volunteer Monitoring with the Grand Lake Association.
2. Consideration of Amendment to Monitoring Contract with the Office of the Attorney General for Additional Work in the Illinois River Basin.
3. Consideration of Amended Joint Funding Agreement with the U.S. Geological Survey for Illinois River Monitoring.
4. Consideration of Software Assurance Agreement with Stellant Inc. for Document Imaging Maintenance and Support Services.
5. Consideration of Amendment of Contract with the Oklahoma Rural Water Association for Training and Technical Services.

- E. Applications for Temporary Permits to Use Groundwater:
None

- F. Applications to Amend Temporary Permits to Use Groundwater:
1. City of Norman, Cleveland County, #1978-503
 2. Dean & Saska Koch, Caddo County, #1997-617
 3. Milo-Woodford RWSG&SWMD, Carter County, #2002-612

- G. Applications for Regular Permits to Use Groundwater:
1. *George F. & Clara Huebsch, Marshall County, #2005-551 withdrawn*
 2. Chickasaw Nation, Love County, #2005-553
 3. Chickasaw Enterprises, Commerce Division of the Chickasaw Nation, Love County, #2005-554

- 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. *Hanson Aggregates West, Inc., Love County, #2005-014 withdrawn*

K. Applications to Amend Regular Permits to Use Stream Water:

1. Lacey Weger, Bryan County, #1999-022B

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Rita Blanca Groundwater & Well Service DPC-0657
 1. Operator: John L. "Rusty" Gilmore OP-1459
 - Activities: Groundwater wells, test holes and observation wells
Monitoring wells and geotechnical borings
Pump installation
 2. Operator: Winston Gilmore OP-1460
 - Activities:
Pump installation
2. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: Clark K. Johnson DPC-0515
 1. Operator: Clark K. Johnson OP-0953
 - Activities: Monitoring wells and geotechnical borings
 2. Operator: Charles B. Hinkle OP-1265
 - Activities: Monitoring wells and geotechnical borings
 - b. Licensee: Citizen Potawatomi Nation DPC-0641
 - Operator: Carrol Draper OP-1436
 - Activities: Monitoring wells and geotechnical borings
Heat exchange wells
 - c. Licensee: E.T. Water Services DPC-0655
 - Operator: Phillip Thomas OP1458
 - Activities: Groundwater wells, test holes and observation wells

M. Dam and Reservoir Plans and Specifications:

1. City of Tulsa/Tulsa Metropolitan Utility Authority, Spavinaw Dam, Mayes County, DS-05-07

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

1. Oklahoma State Parks/Department of Tourism, Mayes County, FP-05-09

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the October 11, 2005 packet of Board materials

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

Mr. Kent Wilkins addressed the members and said his presentation today is to bring the members up to date about activities and laws regarding the Well Driller's program. He said that

the program licenses four activities, (1) groundwater wells, (2) monitoring wells, (3) pump installation, and (4) geothermal well drilling. Currently, there are approximately 350 licensed firms, and about 650 licensed operators. Mr. Wilkins stated that in regard to groundwater protection, the well drillers and pump installers are at the forefront of protection, and if they don't do their job correctly, the groundwater is jeopardized, therefore, it is a very important program. He said huge steps have been made within the last few years. In the late '90s, the Well Drillers and Pump Installers Advisory Council was created. It is a formal group of industry representatives along with the OWRB Executive Director, who advise the Board on proposed rule changes, changes in the direction of the program, and make recommendations about expenditures from the Indemnity Fund.

In 2001, this group and the OWRB re-started the Oklahoma Groundwater Association that had waned in support and interest in the 1980s. The group now recently conducted its fourth annual conference, with 147 members. In 2004, the Council passed a continuing education requirement for all well drillers and pump installers. Workshops were organized, but those who needed to attend did not. The requirement is for four hours of continuing education per year on a two-year basis. There has been a good response from the industry. Education is the direction the group wants to go in order to maintain compliance. There are a few drillers that resist, and recently through work with the agency's General Counsel, the District Attorney and Johnson County filed misdemeanor charges against an unlicensed driller that resulted in sentencing the driller to five years probation, 14 days in the county jail and monetary restitution of \$6,000 to the well owner. As a result, the District Attorney expressed a desire to have more teeth in the law, and that is something the Council will be reviewing this next year. Mr. Wilkins concluded his report with an overview of the regulations for filing well drill logs.

Mr. Smith commented that Mr. Wilkins is a geologist and has done a remarkable job working with the drillers to being compliance. He said the biggest complaint licensed drillers have is the lack of enforcement on other drillers and, one of the biggest violations is the lack of a cement seal. That is an effort that will be reviewed through the Council, which he anticipated would recommend legislation. There were general questions by the members about fee structure, filing logs electronically and public data search, the prevalence of unsealed and abandoned wells, the capability to plug abandoned or contaminated wells, and the need for additional field personnel.

5. SPECIAL CONSIDERATION

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

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

A. Application for Regular Permit to Use Groundwater No. 2005-526, Kremlin Hillsdale Rural Water District No., 1, Garfield County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members this item is the consideration of an application by the Kremlin-Hillsdale Rural Water District No. 1 in Garfield County for a regular groundwater permit. The applicant proposed to take and use 60 acre-feet of groundwater per year for municipal and rural water supply. The water is to be taken from one well located on 120 acres of dedicated land overlying the Enid Isolated Terrace Groundwater Basin. The maximum annual yield and the equal proportionate share have been determined for the basin, and each landowner is entitled to 0.5 acre-foot of water per acre of land dedicated. The water will supply approximately 111 households and 140 pasture taps, plus the towns of Hillsdale and Kremlin.

Mr. Mathis stated the primary issue is the well spacing in the studied basin. The applicant has an existing groundwater permit which authorizes 240 acre-feet from four wells. In 1996, one of the wells became contaminated and eventually had to be plugged. Nitrates were discovered in two of the other production wells, and very close to the MCL level for public water supply, 10 mpl. As a result, the applicant initiated an investigation for other sources and locations for a well field for their water supply. Four test wells were drilled for suitable well production, and the most favorable well is the subject of the application. The proposed well has a saturated thickness of approximately 27 feet, indicating a relatively thin zone of water; the range is from 30 feet to about 57 feet where redbed was encountered. There is an estimated well yield of 175 gallons per minute for this location; the three other test wells did not produce enough water to warrant further investigation for public water supply purposes.

Mr. Mathis stated that applicant's well pumps about 80 gallons per minute; however the applicant does not want to be limited to that amount due to times of peak demand and the need to pump at a higher rate. Possibly, the water may be needed for blending purposes due to the high nitrate and Safe Drinking Act requirements. A well driller is experienced in drilling wells in the Enid Isolated Terrace for all water use purposes testified at the hearing that he had not seen nor is aware of any occasion where wells in the aquifer have caused problems in neighboring wells within close proximity. Global positions readings were conducted by staff on both the applicant's well and the adjacent protestant's well; three of the protestant's wells were found inside the 1320-foot spacing distance from 490 feet, 565 feet, and 1,180 feet away. Protestant's are concerned the use of the well will adversely draw down the groundwater in their wells, and provided expert testimony to support the contention. The witness is the former director of public services for the City of Enid and is familiar with the groundwater basin. He conducted draw down analysis, and entered that evidence into the record. Based on his analysis for the protestant's well, and pumping at 20 gallons per minute for twenty-four hours the draw down would be about six feet, and he recommended the applicant's well be limited to 75-80 gallons per minute for protection. The hearing examiner looked at the draw downs, considered the basin study conclusions and aquifer perimeters, and assumed the full 175 gallons per minute found the pumping rate was found to produce less than a two-foot draw down. Mr. Mathis stated staff recommended approval of the application.

2. Presentation and discussion by parties. Mr. Jim Barnett, representing the applicant, addressed the Board members and introduced Mr. Mike Schultz who is the Vice-Chairman of the District. He stated the District has been attempting to find additional water supply for several years, beginning in 1999, and hired Mr. Barnett in 2001, and it has been a long and difficult path. He said there was difficulties in negotiating the lease, a pollution incident involving hydrocarbons, have not successfully found a well and have been through the hearing,

and the order is one that he and his client agree on 100 percent. The hearing examiner did an excellent job of filtering the information, and the conditions placed on the permit are reasonable, and supported by the evidence, and in regard to the condition of plugging a well, that well has been plugged and the report has been filed. Mr. Barnett stated the Rural Water District needs the water, and he asked for the Board's favorable consideration.

Mr. Bryce Kennedy, representing 21 landowners and a land development company, addressed the members and stated the Rural Water District has located its well across from a neighborhood development; the subdivision is not completed, and the land developer and the current landowners have a reasonable expectation of being able to place a private water well on their lots and use the well without adverse affect. He described the neighborhood as being one that is popular and is a main area where Enid is expanding. He said it is his contention that residents within the 1320 feet spacing rule have a reasonable expectation of non-interference. The protestant's alleged the location of the well violated the 1320 set back requirement, and an exception to the rule was reviewed at the hearing allowing the Board to grant a permit, notwithstanding it is within 1320 feet, if substantial competent evidence is presented to the Board and the Board determines that the well requested will not be pumped at a rate or duration that creates a cone of depression which will cause an excessive draw down in the existing wells located within the established well spacing distance (read from the proposed order). He said that at the hearing Dr. Blaine Reely, the only hydrologist that testified, found a problem; Dr. Reely was the public works director for the City of Enid, and the city is the biggest user of groundwater and his opinion is consistent with earlier studies he conducted prior to the time that he represented the protestants. Dr. Reely testified that if the District's proposed well is pumped 150 gallons per minute, there will be a significant draw down; but a pumping rate of 75-80 gallons per minute would not cause an excessive draw down. He said other than testimony from the well driller, there was no evidence to contradict that opinion. After the hearing, the OWRB staff conducted analysis of basin characteristics to come up with a contrary opinion. He said the protestants did not have an opportunity to cross examine the OWRB staff and had no opportunity to present rebuttal evidence. He said the OWRB's staff also found that a rate of 150 gallons per minute would not cause an excessive draw down. He argued the 1320 rule is important, that protestants have no other source of water, future families would have no other source of water, and Dr. Reely presented the only evidence presented on the issue at the hearing. Mr. Kennedy asked the Board to amend the order to be consistent with the testimony of the hydrologist presented at the hearing, and that the order be approved, with a change in the language from "150 gallons per minute" to "80 gallons per minute" or even 100 gallons per minute. As an alternative, Mr. Kennedy suggested the order be referred back to the hearing examiner, provide the protestant's the water analysis performed by the Board, and have the hearing based solely on that issue, allowing the presentation of new evidence so that the matter has been fully debated.

Mr. Keeley referred to the map of the land development, and said Mr. Kennedy had mentioned future water demands, and he asked if the residents had individual wells. Mr. Kennedy responded they did and there would be additional wells as the lots are sold. Mr. Keeley said, then, those domestic wells would have a greater impact at some point and would draw down each other. Mr. Kennedy responded there would be a greater impact when the private wells are developed, or the lots not sold. Mr. Secrest asked the type of wastewater system, and Mr. Kennedy responded the residents use septic systems; they are one-acre or larger lots.

Mr. Mathis responded to the comments about the staff analysis. He said that traditionally following an evidentiary hearing, staff will sift through and analyzed what is presented and provide additional information and analysis to clarify the situation so the Board can make a decision; it is consistent with what is done in many other protested groundwater

applications. He said that in the analysis, staff found that the protestant's expert modeled the draw downs in 20 gallons per minute for 24 hours, and staff analysis determined that is an extreme pumping rate for a domestic well and when calculated it totals about 28,000 gallons per day for a domestic user, which is a lot of water. Traditionally, staff looks at six acre-feet of water as a maximum domestic use that would include both household within the home, and also watering of lawns and gardens, etc. Six acre-feet per day are about 5,000 gallons per day, versus the expert's testimony of 28,000. He added that OWRB staff focuses on the applicant pumpage to see what their impact would be in adjacent areas; domestic users surrounding the area are exempt from the OWRB jurisdiction. He said the groundwater law implies that there will be depletion over time, it's an orderly depletion. He said staff looks at the basin study, which in this case is already set at .5 acre-feet of water per acre, which is a significant restriction, and that is already applied on an applicant's proposal, and then from that look at pumping rates and other factors that would impact radially out from the well, and in this instance it was the basin information, well logs in the area, the pumping rate of the applicant's well that's been discussed, with at two-foot impact at a 500-foot saturated thickness. He said staff believed the recommendation was consistent and not onerous use of groundwater that would cause an unreasonable impact. Based upon that information, he said on page 5007, item 4., finding on the well spacing, justifies the exception to the rule on the well spacing requirement.

Dean Couch, General Counsel, commented that in regard to the Administrative Procedures Act, agencies are allowed to use its expertise to evaluate the evidence that was presented, which was done by OWRB staff after the hearing. The protestants were heard, that that evidence was then evaluated.

Mr. Jim Barnett responded that although Dr. Reely is a very skilled professional whom he has used in other matters and he highly respects, his version was not uncontroverted. Not only was Danny Eubanks (very experienced well driller) testified as to the potential draw down and impact to the well, the District's engineer provided testimony and the District's manager testified about the three wells impacted by nitrates which are located close to one another but have not had a significant draw down as pumped on various occasions. He said there were two versions of what the impact might be, he believed his version is the accurate one and staff agreed. He said in regard to the 1320 spacing rule, he believed that distance is a purely arbitrary number derived to be protective of the Ogallala and deeper aquifers, and he had provided testimony from experts at numerous hearings that that is really not the best number for the more shallow alluvium and terrace deposits and he encouraged the Board and staff to see if they can come up with a more appropriate number for each basin specifically, instead of "one size fits all."

Mr. Keeley expressed concern about wells and septic systems being placed on the same lots, but in this case he believed the recommendation is what was needed, and maybe in the future a rural water district should be looked at. Mr. Kennedy said the districts have the power of eminent domain, indicating they could have found another location for the well, and not by this subdivision.

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 order for groundwater permit no. 2005-526, and Mr. Farmer seconded.

AYE: Farmer, Fite, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Currie

B. Consideration of Findings, Conclusions and Order Approving the Citizen Potawatomi Nation Acquisition of Assets of the Pottawatomie County Rural Water District No. 3, Recommended for Approval.

1. Summary – Chairman Herrmann stated this item was tabled at the September meeting. Mr. Smith said that there were questions about whether the Attorney General's office had been contacted, and it had, and Neal Leader has sent a letter to the Board. Mr. Richard Kunze is present to talk about what the Tribe plans to do; he had met with the Tribal attorneys, so there have been a number of discussions. He suggested Mr. Kunze talk about what the Tribe wants to do in the District, and then discuss Mr. Leader's letter and the issue of waiving sovereign immunity.

2. Discussion and presentation by parties. Mr. Kunze addressed the members and said he appreciated the opportunity to attend the meeting, and he distributed a summary of the Tribal annual report that from a financial aspect illustrates a viability of definition of the tribe. He also distributed a map of the Tribal lands of original jurisdiction area that covers most of Pottawatomie County and the map of the service territory of the Rural Water District #3, demonstrating the District serves much of the Tribal area. Mr. Sevenoaks asked if the RWD is inside the tribal boundaries and inside Indian lands? Mr. Kunze responded the district is inside original tribal boundaries but not on Indian land; some land is owned by the Tribe, and some land is in trust; the point of the map is that the District is an integral part of the financial wherewithal of the territory the Tribe depends upon from its own enterprises. He said the purchase of the of assets of the water district is that it would be an acquisition or take over, but a better description is that it would be a bailout. He explained the district has experienced a number of problems beginning with the original plan to have over 600 memberships into the consumer user base of the water district, but there are only 400 members, and experienced financial difficulties; later improved the financial base, but still experiencing a shortfall of \$7-8,000 monthly in terms of the debt service. No one else or other financial institution has stepped forward. There is no management of the system other than a board of directors, and the process has been cumbersome and non-specific. There are about 95 Native American users of the system and the Tribe has already invested over one million dollars financial in the perpetuation of the water district through Indian Health Services and making connections for Native American households, installing lines, etc., to assist the water district. The reason is that the Tribe's livelihood and economic base is centered between Shawnee and Tecumseh. All of the people that live in the area is served by the District and provides some of the economic base for the support of the enterprises that the Tribe operates, i.e., First National Bank, Firelake Discount Foods, and the casino. So it is important to the Tribe for this part of the world to survive economically and to thrive economically. He said there are plans to expand the District, and he described how to connect people who have meters but not the water supply; a new cost study by the Oklahoma City Municipal Water Authority and rate increase, and the water system's lack of wherewithal to face future issues.

Mr. Kunze said the Tribe has gone through the process for approval and has been approved by the users of the water district, and the County Commissioners, and now before the Board. He asked the Board to consider the application and the circumstances involved.

Mr. Sevenoaks asked about the asset purchase agreement and the statement about sovereign government's geographical boundaries (former reservation) that include the entire geographical area currently being serviced by the Seller. He said the Attorney General refers to the fact that the water district's assets are not in Indian Country, and he asked if it is or is not Indian Country? Mr. Kunze responded that essentially, all of Oklahoma is Indian Country; there are certain parts that are not, and all of the Tribes have original jurisdictional areas. The CPN's original jurisdictional area is defined on the map. "Indian Country" per se or "Indian Property" per se is not included in the water district—the water district operates within the Tribe's original

jurisdictional boundary and there is a measure of responsibility unique to that area as opposed to the rest of the free world. All of the District operates within that boundary, but it is not operating on Indian property, and does not operate on trust land, property owned by the Tribe, or allotted lands, although there are allotted lands within the territory that is served by the District. He clarified the Tribe is not trying to acquire the water district because it believes it is in its territory.

Mr. Sevenoaks expressed his main concern as being jurisdictional. He said in mention of the state court, federal court, and tribal court—who has final jurisdiction on disputes? Mr. Kunze responded the first measure of jurisdiction on disputes would be to go to a manager of the district assisted by a user advisory board, if no resolution there Mr. Kunze as the Public Works Director for the Tribe would review any issues, and he hoped there could be resolution there. He said typically the Tribe's first choice is federal venue rather than state venue; it is his hope resolution would be found before seeking that, and all customers will be treated the same.

Chairman Herrmann asked Mr. Smith to speak to the Board's responsibility. Mr. Smith distributed copies of the letter from the Attorney General, and said the statute outlines the Board's responsibilities, the first being the acquisition and control without adverse affect to the contractual obligation to the district or corporation or ability or commitment to render the same level of commitment to render the same level of service to its customers it is currently rendering. He said the lawyers are consistent in saying that if there is to be absolute clarity in contractual obligations, then the Tribe has to specifically waive sovereign immunity. In this particular case in regard to adverse affect to the contractual obligation, we would have to conclude that what has been written--tribal, federal or state court is the language we have in the proposal to approve--would be adversely impacting their contractual obligations. He said it has not been made crystal clear that sovereign immunity must be waived or that matters would only go to Tribal court, its been left in a gray area. He said the Board must decide if it is okay to adversely impact contractual obligations. He said in making his recommendation other factors weigh in very heavily that the people voted, the county commissioners voted, the financial obligation that the district is under, and the agreement put together, and he did not believe it would adversely impact the contractual obligations. Mr. Smith added that if it were to go to court, he would admit it is not crystal clear whether that would be federal court or state court.

Regarding the second item of the Board's responsibility, Mr. Smith said it is staff's conclusion the Tribe has the financial ability to manage and enhance the District. Regarding (3) a change in structure and management would be detrimental—there would be change, but the operating agreement addresses the handling of complaints and the only matter is that of sovereign immunity, otherwise it is not a negative for the Tribe to work with the District or that an agreement would adversely impact the District; and (4) competence, experience and integrity of the persons who would control the operations of the District would not be in the interest of the customers—Mr. Smith said that the one matter is that of sovereign immunity and in the instance a matter has to go to court; the Board must decide.

Regarding the Attorney General's letter (from Neal Leader), it states the water district's assets are not in Indian Country, there is no express federal law to the contrary, and the Nation's operation of the District is subject of Oklahoma's laws and regulations. Mere ownership by a Tribe does not in itself make land Indian Country. Regarding that state law governs when Tribes operate outside of Indian County, sovereignty immunity is still enjoyed.

Chairman Herrmann asked for a motion to discuss the matter.

Mr. Nichols moved to allow the acquisition, and Mr. Keeley seconded. Mr. Couch added approval would be subject to the findings and conclusions and proposed order with conditions as presented.

Mr. Secrest asked if the motion waived sovereign immunity? Mr. Couch explained that the condition stated is less than the absolute express statement that Mr. Leader suggests would

be needed. On the last page of the letter, the statement that a tribal entity could be bound and taken to court, the sovereign immunity is an immunity from being sued so if a suit is filed the tribal entity does not have to appear in court because it is immune—and all sovereigns have it. He said that Mr. Leader suggests that the waiver must be from suit, liability, judgment and collection, and in the proposed order, the asset purchase agreement may be enforced in federal, state, and tribal courts; enforcement may or may not include suit, liability, judgment or collection, as that would be a decision to be determined by a court at a later time.

Mr. Smith added that the suggested language is only if the Board makes the decision that it is crystal clear that's the language we would use, but in the letter, Mr. Leader states the decision is up to the Board. And he read, "...whether a waiver, either total or limited, should be required by the Board to protect the interest of the state or Water District customers is the decision the Board has to make." Mr. Leader's language is if the Board wants total waiver, the proposed order suggests a limited waiver. Mr. Kunze said the Tribe has on occasion done the limited waiver and are hung up in a legal issue of sovereignty – that's the original jurisdictional area (on the map) but it's not the reservation of the Potawatomi, and that is what changes everything, no matter the Tribe. He said that what is at question is whether these people can continue to have rural water.

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.

Chairman Herrmann called for the vote if there were no other questions or further discussion.

AYE: Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Herrmann

NAY: Sevenoaks

ABSTAIN: None

ABSENT: Currie

C. 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 budget report prepared is for the three-month period ending September 30. The agency is operating within the budgetary limits as established by the Legislature and the Governor.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There was a Supplemental Agenda items for the Board consideration.

8. NEW BUSINESS

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

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:30 p.m. on Tuesday, October 11, 2005.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Jack W. Keeley

_____/s/_____
Harry Currie

_____/s/_____
Richard Sevenoaks

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Bill Secrest, Secretary

(SEAL)