

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

January 10, 2006

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on January 10, 2006, in the Board Room of the Oklahoma Water Resources Board offices, 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. The agenda was posted on January 3, 2006, at 5:30 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Mr. Currie provided the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

None

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

Blaine Shuttleworth

Mike Owens, Save Our Water-Lake Eufaula

Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK

Patricia Billingsly, Oklahoma Corporation Commission, Oklahoma City, OK

Tim Baker, Oklahoma Corporation Commission, Oklahoma City, OK

Bob Kellogg, Shipley & Kellog (Russell & Sherry Barby), Oklahoma City, OK

Summer Holkyman, Capitol Network News, Oklahoma City, OK

Steven Jolly, Arbuckle Master Conservancy District, Davis, OK

Ellen Phillips, Attorney General's Office, Oklahoma City, OK

Donna McSpadden, Clayton, OK

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

Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK

Karen Weldin, Save Our Water Lake Eufaula, Stigler, OK

Susanne Bain, Save Our Water Lake Eufaula, Stigler, OK

Jill Daugherty, Office of U.S. Representative Tom Cole, Ada, OK

Mae Brown, Rogers County Rural Water District #4, Talala, OK 74080

Ed Whitaker, Rogers County Rural Water District #4, Oologah, OK

Tom McKinzie, Save Our Water Lake Eufaula, Porum, OK

Mary Smith, Save Our Water Lake Eufaula, Yukon, OK

Dee Doty, Save Our Water Lake Eufaula, Edmond, OK

Harold Foster, Save Our Water Lake Eufaula, Eufaula, OK

Brian Kellog, Rogers County Rural Water District #4, Talala, OK

Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK

Rick Pearce, Ryan Whatley, Oklahoma City, OK

Mary Ellen Terns, McAfee & Taft, Oklahoma City, OK

Russell & Sherry Barby, Laverne, OK

Goldie Barby, Knowles, OK

Mark Johannesberg, Kiowa Tribe, Carnegie, OK

Chuck Shipley, AMCD & Cities, Tulsa, OK

Jeff Dewey, DFD, LLC., Cimarron, KS

Steve Dewey, DFD, LLC., Cimarron, KS

C. APPROVAL OF MINUTES

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

There were no amendments to the minutes as proposed, and Mr. Currie moved to approve the minutes of the December 13, 2005 Regular Meeting, and Mr. Nichols seconded.

AYE: Currie, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: Fite

ABSENT: Farmer

(Mr. Farmer joined the meeting at 9:45 a.m.)

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane A. Smith, Executive Director, began his report with an update of activities surrounding the solicitation of support for financing of the OWRB Financial Assistance Programs and Comprehensive Water Plan activities. He said he has had several meetings including Senator Fisher who is the co-author of a bill that has been pre-filed (with Sen. Corn, and companion bill in the House with Reps. Winchester and Armes) and takes the gross production tax (GPT) REAP account water projects fund and divides half and half between the OWRB and the Conservation Commission, and eliminates the cap from the fund, which is currently capped at \$6.8 million. If GPT revenues stay at the current level, it is estimated that funds could bring in 11-12 million dollars. With that would be funding for the Financial Assistance Program and the Comprehensive Water Plan. There have been a number of support letters from rural water districts and also from cities. The first budget committee meeting is February 2 and competition with the REAP fund now is rural fire protection. Mr. Secret added that the Rural Water Districts have been asked to send the resolutions to their Senators and Representatives.

Mr. Smith updated the members on the Arbuckle-Simpson activities noting the Peer Review and Technical Group met. That group includes the OWRB staff, Oklahoma University and Oklahoma State University staffs, EPA and USGS staff, and citizen liaisons all that are managing the study of the aquifer. He said a new subcommittee of the group has been established that will look at the impact at the springs and rivers, and will be chaired by Derek Smithee. The idea is to define what the acceptable impact to the river is that will translate back into the groundwater modeling to see how much water can be pumped to protect the streams and rivers. The first meeting of the group will be January 31, 2006, in Sulphur. The group will begin looking at what "degrade" is, and look at what the fish need, what types of impact can be made and still maintain the environment community. This is a very important part of the study, and this group will report to the Technical Review Team.

Mr. Smith reported that last month Mr. Chuck Shipley came to the Board meeting and wanted to come before the Board under "New Business" but it was determined the matter could not be discussed at the Board meeting. Since that time, Mr. Smith stated he had contact with Mr. Shipley, who sent a letter outlining concerns which Mr. Smith said he could not talk about to the Board in detail. He wanted to inform the Board that the process is working to address Mr. Shipley's concerns. The hearing examiner will hear evidence on the impact of the mine dewatering on the impact of streams in the Arbuckle-Simpson. Mr. Smith stated he had visited with Mr. Shipley on January 9th, who indicated then he was satisfied with the way in which the matter is being handled. The other concern is open boreholes, which is being handled through a complaint process through the Department of Mines and the Department of Environmental Quality. He said the concerns are being addressed; Mr. Shipley is not on the agenda to talk about those concerns, and he said that while he cannot discuss the details, he wanted the Board to have some comfort that the matter is being aggressively addressed.

In regard to the proposed fee increase, Mr. Smith said the proposal has not been met with open arms. He said Oklahoma Farmer's Union comments concerned modifying the proposal, i.e., is there a way to have a graduating scale in fees based on use, or setting a maximum or cap if a landowners has several permits. He said he is open for any discussion and compromise and that discussion is ongoing. Mr. Smith stated he has a meeting with Farm Bureau and he had received a call from former OWRB member Ervin Mitchell who is now a Farm Bureau Director. Currently, there is no fee on the groundwater permit and there is a \$10-\$25 on stream water permits. The proposal is \$100 for each type of permit. Mr. Smith stated that in the agency's budget request are the funds that would be the fees; hopefully those organizations that oppose the fee increase would be supportive of a legislative appropriation. The rules hearing is on January 17 where formal comments will be accepted.

Mr. Currie asked the estimated cost of the permitting program; Mr. Smith responded that approximately \$1.5 million is necessary to operate the permitting program, and \$1.1 would be derived from the new fees, currently there is a support of about \$300,000 for the permit program that comes from sources other than the annual fee. He reminded the members it had been considered to raise the application fees incrementally, but the agency does not process enough permit applications annually to support the ongoing administrative load that happens each year with the current permit applications—there are over 11,000 permits maintained each year, and we learned on April 19, 1995, that paper cannot be maintained long-term, and people are depending on the water rights for their property rights for loans, etc. Maintenance of the permit includes examining water use, conducting groundwater basin studies, supporting the streamgaging program, determining how much is available to be used, and doing technical evaluation on interference on wells are outside of the application fee. It is estimated that an application would cost several thousand dollars if the entire administrative burden were put on the application. He said if we don't get a fee increase, there will have to be some changes in how we handle permits—ie, if we are unable to hire technical people to evaluate the permit, then the law needs to be clear that we are not expected to look at that. For example, regarding the Arbuckle-Simpson study, we are expected to evaluate if there is interaction between groundwater and surface water and to restrict pumpage and to manage water in such a way that we're protecting the streams that requires technical expertise and streamgaging to do that, and if there aren't funds to support that, then technically we are not going to be able to make those determinations. As the controversies grow the more responsibility will be upon the OWRB to make sure the water is managed properly, and without the resources to do that, we will be unable to do it. He said there has not been any fee increase since 1995.

There was discussion from the Board members about the Farm Bureau's concerns, and how the OWRB program rates along with other states' fee structures. Mr. Smith concluded his remarks saying the important message to the citizens is that the OWRB is efficient with the use of its money, and is professional in how we do it.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #4, Rogers County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a \$2,105,182.66 loan request from Rogers County Rural Water District #4. The District is requesting the loan proceeds for filter modifications, an equalization basin, rehabilitation of an existing clear well, constructing two back-wash ponds, install a two-million gallon per day water treatment unit and associated items related to the project. He noted provisions of the loan agreement, and said the District has been growing rapidly with a customer base increasing by nearly 50% over the last ten years to an excess of 2,600 customers. The District has been a customer of the Board's since 1996, its debt coverage ratio stands at approximately 1.55, and it is estimated there will be a savings of approximately \$780,000.00 by borrowing from the Board. Staff recommended approval of the loan request.

Mr. Ed Whitaker, Chairman; Mr. Mac Brown, Secretary-Treasurer; and Brian Kellog, Engineer, were present in support of the loan application.

Mr. Secrest moved to approve the loan to the Rogers County Rural Water District #4, and Mr. Fite seconded.

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

ABSTAIN: None
ABSENT: None

Mr. Currie asked about the earnings on the emergency grant account.

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. Mr. Smithee asked that item 3.D.3. be withdrawn from the Board 's consideration.

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.

Mr. Sevenoaks asked about item 3.D.4. concerning the contract with the Grand River Dam Authority. Mr. Smithee responded that two stream gages will be installed, one below Hudson Lake and one on Hwy 69A bridge two miles below Hudson Lake both monitoring for DO, temperature and other parameters as required according to the FERC re-licensing agreement.

There being no further discussion, Mr. Fite moved to approve the Summary Disposition Agenda as amended, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

C. Consideration of Approval of the Following Applications for REAP Grant and Amendment to Scope of Project for REAP Grant in Accordance with the Proposed Orders Approving the Grants:

<u>REAP</u> <u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount</u> <u>Recommended</u>
ASCOG 1.	FAP-05-0032-R	Terral Public Works Authority	Jefferson	\$99,999.00
INCOG 2.	FAP-01-0054-R	Burbank Public Works Authority	Osage	amend scope

- D. Consideration and Possible Action on Contracts and Agreements. Recommended for Approval.
1. Consideration of Amendment to Joint Funding Agreement with the U. S. Geological Survey for the Federal-State Cooperative Program. *Item withdrawn*
 2. Consideration of Master Agreement for Products and Services with Black Box Network Services for On-Site and Remote Phone System Maintenance. *Item withdrawn*
 3. Consideration of Intergovernmental Agreement with the U. S. Army Corps of Engineers for Water Quality Monitoring in Southwestern Oklahoma. *Item withdrawn*
 4. Consideration of Interagency Agreement with the Grand River Dam Authority for Water Quality Monitoring Near Lake Hudson.
 5. Consideration of Lease Renewal Agreement with Shepherd Mall Investors, Inc for Office Space for the Oklahoma City Office.
 6. Consideration of Resolution To Authorize the Chairman to Enter into Agreement with the Oklahoma City Renaissance Hotel and Cox Convention Center to Host the 2006 Oklahoma Governor's Water Conference.
 7. Consideration of Interagency Agreement with the Office of the Secretary of Environment for Wetlands Monitoring and Revegetation Work at Lake Stanley Draper.
- E. Applications for Temporary Permits to Use Groundwater:
1. Wilmot Farm, L.L.C., Harper County, #2005-539
 2. Wilmot Farm, L.L.C., Harper County, #2005-544
 3. Jim W. & Judith A. Carter, Canadian County, #2005-568
 4. Arcadia Public Works Authority, Oklahoma County, #2005-574
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. Wilmot Farm, L.L.C., Beaver County, #2005-545
 2. Wilmot Farm, L.L.C., Harper County, #2005-546
 3. Roy Henry & Angela Kay Heinrich, Canadian County, #2005-569 *Item withdrawn*
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Robert & Ramona McCord, Tillman County, #1976-674
- I. Applications to Amend Prior Rights to Use Groundwater:
None
- J. Applications for Regular Permits to Use Stream Water:
None

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

- L. Well Driller and Pump Installer Licensing:
 - 1. New Licenses, Accompanying Operator Certificates and Activities:

a. Licensee:	Precision Well Service	DPC-0700
Operator:	Mike Oefelein	OP-1468
Activities:	Groundwater wells, test holes and observation wells 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:
None

- O. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the January 10, 2006 packet of Board materials

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

A. Update on the Water Quality Standards (Chapter 45) and Water Quality Standards Implementation (Chapter 46) Revision. Chairman Herrmann stated Mr. Smithee would update the members on the Water Quality Standards Implementation revision process following the update at the December meeting. He reminded the members that they would not be voting on the proposed changes at this meeting, and he encouraged the members to contact Mr. Smithee over the next thirty days with any comments or questions.

Mr. Smithee addressed the members and stated he had at the previous meeting reviewed in some detail the myriad water quality standards and implementation rule changes and justification associated with those. A hearing was conducted in response to the proposals and has been in the formal comment period for the past fifty days. He said staff has received somewhere in the neighborhood of over 200 individual comments through e-mails, written letters, postcards and as a final analysis staff had two significant revisions to the ultimate proposal for the Board's consideration. First, there were several requests to defer comment to EPA on a use assessment protocol change regarding impacts of sediment to aquatic life; that recommendation has been withdrawn. The second significant change involves the original request to remove three beneficial uses: navigation, hydropower, and municipal and industrial process cooling water. The Department of Environmental Quality expressed being somewhat uncomfortable in removing those uses, so that matter will be deferred as well. Mr. Smithee stated staff received significant comment in support of the chlorophyll-A criterion and that recommendation will go forward. Mr. Smithee stated distributed a final copy of the "strike-out, underline" version of the proposal and the comment responsiveness summary.

Chairman Herrmann said he had reviewed the comment summary and was encouraged by the large number of comments from a variety of constituents, indicating the openness of the

process, and that staff had responded to the comment. Chairman Herrmann invited any public comment; there were no comments from any member of the public.

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 to Amend Regular Permit to Use Groundwater No. 1999-519, DF&D LLC, Harper County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that this application by DF&D, LLC is to amend regular groundwater permit #1999-519. The applicant has an existing regular permit authorizing use of 5,408 acre-feet of groundwater per year for irrigation use. The application to amend requests deleting 960 acres of the currently dedicated land and the addition of another 960 acres of land, deleting the four authorized well locations and adding three new locations. Mr. Mathis stated the evidence indicated the additional land overlies at least two groundwater basins – the North Canadian Phase I, and the Ogallala-Rush Springs Sandstone (not the same as the Ogallala in the Panhandle). The Board has determined the maximum annual yield (MAY) in the North Canadian Phase I to be one acre-foot of water per acre of land dedicated.

The protestants contended the Board could not issue or amend the permit as a regular permit from the North Canadian Phase I basin because the maximum annual yield order is over 20 years old and the MAY has not been updated since its determination in 1983. The law in effect at that time did not establish a deadline upon which the MAY order would expire and provisions of § 1020.4 and §1020.5 that were in effect in 1983 were subsequently amended effective September 1993, and in part read that at least every twenty years after issuing a final order determining the MAY the Board shall review and update if necessary the hydrologic surveys. Section 1020.5 also reads the MAY of each major groundwater basin or subbasin shall be based upon a minimum basin or subbasin life of 20 years from the effective date of the order establishing final determination and MAY. However, Mr. Mathis stated that whatever effective date of the 1993 amendments had, does not effect the original MAY order and did not result in the imposition of a term limit upon the 1983 MAY order. He said the conclusion of that order is valid, and effective more than 20 years, and as such the regular permit is proper.

Mr. Mathis stated the protestants also asserted that the permittees withdrawal from the wells would cause a lowering of the groundwater elevation along a portion of the Beaver River

and would have a significant negative impact on surface water in the river. Over objection of the permittee, protestants produced testimony and documentary evidence by an expert in environmental engineering that when its employed, a computer model would utilize several premises which the witness gathered information from the application-- well logs, records, and publications by the US Geological Survey and other government agencies on the characteristics of the groundwater basin. The permittee produced a report of a different expert that asserted some of the assumptions by the protestants' expert were flawed and therefore the results are not valid. The permittee's counsel argued that the effect of the applicable law does not support the contentions in the case and that flow is irrelevant to this matter. Upon evaluating the evidence, the protestants' computer modeling does appear to have some valid assumptions; however, in the most favorable light the information did not substantiate that significant impacts would occur in the river area.

Mr. Mathis stated that the Board finds the permittee's groundwater withdrawal will not cause an adverse impact on the flow in the Beaver River sufficient to warrant denying or imposing restrictions on the proposed amendments to the permit. Protestant's also contended that the withdrawal would reduce the flow of the river and would constitute prohibited impairment of the beneficial uses of water in the Beaver River that is designated under the Oklahoma Water Quality Standards. Although the permittee's proposed groundwater withdrawal is not contrary to the provisions of the law, and recognizes parameters of the Water Quality Standards (WQS), clearly there is hydrologic connection there so if actual pumping in the future is shown to stop or substantially reduce the flow of the river, an analysis could be made at that time through field investigation as to whether a violation of WQS does actually exist in that case.

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

2. Discussion and presentation by parties. Chairman Herrmann recognized the attorneys representing the applicant and the protestants, and asked the applicant to summarize the application in five minutes and the protestants to respond in five minutes.

Mr. Jim Barnett, representing the applicant, addressed the members and introduced the permittee. He stated that basically, while he did not concur 100% in the dictum in the order, he does agree with staff's conclusion and recommendation as far as approval of the order.

Mr. Bob Kellog, representing the protestants, approached the Board members and introduced his clients Russell and Sherri Barby and Goldie Barby, and he described where the Barbys live in relationship to the applicant's land and the Beaver River, and said he represented several other protestants as well. He stated that Dr. Tom Alexander who conducted the modeling for this matter would be in attendance soon. He said this case would have a tremendous amount of impact on the future of Oklahoma water, and while he was not asking for denial, he did ask that the application not allow the Beaver River to dry up, as shown by the modeling draw down of up to 9 feet at the property line from the cone of depression, and currently the Beaver River is not two feet deep. He talked about the connectivity of stream water and groundwater of the area and he likened "lady justice" holding the scales with groundwater on one side and stream water on the other and if she tells you that the water is not related, then justice is blind, and he attempted to take off the blinders through discussion of the conservative modeling conducted by Dr. Alexander contending the water from the river would be sucked into the well leaving the river only muddy. He added that modeling is a way to tell the future, and while no one knows exactly what would happen, but the best tools available tell the Beaver River will go dry, although the model did not say how long it would take.

Mr. Kellog asked the Board to make the permit temporary for three reasons: (1) the maximum annual yield is out of date factually and legally; (2) the original permit approved in 1999 to Julius Christian authorized 2480 acre-feet of water from 2,600 dedicated acres, and

there have been several amendments that have resulted in a total of 5,408 after the MAY determination expired; and (3) there is no mechanism in the order to allow the proceeding to be reopened if it is found that a change in flow as a result of pumping violates any of Oklahoma's WQS. He said a temporary permit would allow the reopening of the proceeding. He had also mentioned that one of the wells needed to be re-drilled and he didn't believe that would be necessary since the two formations are interconnected, but to use the existing well so that the water is withdrawn from the lower zone and not the upper zone. Mr. Kellog concluded his remarks.

Chairman Herrmann asked Mr. Mathis to address the hydrology issues. Mr. Mathis responded that the review of expert information provided was a reasonable evaluation based on available evidence around the area of usage but there is some concern that it was not a regional evaluation considering other uses in the area such as cycles of drought and rainfall, and surface water diversions to give more than just a snapshot in time and so looking at it from a long-term standpoint and a more extensive look staff did not find the evidence to be substantial enough to recommend conditions on the permit. He also reminded the members the groundwater concept contemplates mining with the water level decreasing over time.

Mr. Sevenoaks mentioned that the legislature has given exception to the citizens of the Arbuckle-Simpson Aquifer to tie together stream water and groundwater, allowing one group of Oklahomans to have the opportunity. He asked if the mining concept allowed a user to pump all the water from an area. Mr. Mathis responded the law contemplates a mining concept over the life of the basin for 20 years, and the basin study makes a conservative assumption that theoretically every acre of land is pumping over that period of time, reducing the actual allocation per acre, giving the most protection to the private property right. He said that the study does contemplate that where there is a hydrologic connection there could be some impact. Mr. Sevenoaks was concerned that through the Board's rules one group of Oklahomans are treated differently and he termed it the "Arbuckle defense." Mr. Couch responded that is a directive of the Oklahoma Legislature to have that distinction and only in a sole source groundwater basin could there be a consideration of the effective pumping of springs and streams. He was concerned that if the Board were to make an exception in this case, there would be future cases where the Board is asked to make the same exception.

Mr. Kellogg explained that he was not raising an "Arbuckle defense" but is saying Dr. Alexander showed that water in the cut banks of the Beaver River will come out their water well, and that is not the same as stopping a spring before it gets to the river. He said he believed the Board to have the policy authority to handle that.

Mr. Jim Barnett rebutted by first stating he disagreed with most everything presented by Mr. Kellog. He said it is not a notion but a fact that in Oklahoma the groundwater law is a totally separate legal regime from the surface water law. He said groundwater is private property belonging to a landowner, and surface water is public property and the regimes are designed by the Legislature to be totally separate. He said this order was approved in 1983, and ever since that time landowners of the area have been receiving their equal ownership interest in the groundwater in that formation. There have been no horrible consequences and Mr. Kellog's presentation is one of what might happen under the worst possible circumstances and there is no basis to believe it will really happen. He said Mr. Kellog is asking the Board to ignore the law, its duties as the administrator of the law, because the law states his clients are entitled to a regular permit and Mr. Kellog is asking the Board to give them something less than they are legally entitled to, which is inappropriate. He said they are entitled to what the law provides that they will have which is a regular permit recognizing their ownership of that aquifer in the amount that they have applied for. The fact that the permit has grown only means that there has been more land over the aquifer dedicated to the permit, and each acre of land is entitled to its amount of water, its equal proportionate share. The amendment before the Board today does

nothing other than transfer 960 acres traded with the School Land Commission for other land within the same 5,000 acres. The amendment substitutes 960 acres of land for a previously dedicated 960 acres of land overlying the same basin and there is no additional allotment, and there is no additional number wells, and actually reduced the number of wells to three. They are not asking for anything their neighbors haven't received for many years. Mr. Barnett states the model looks at a small part of the basin and makes wide conclusions, and he argued the fallacy of the model and stated that it doesn't really matter because as long as the law is as it is, the Board's duty is to follow the law. He recognized that Mr. Sevenoaks' comments are correct that the Senate Bill 288 treats a part of the state differently, and that is why a lawsuit has been filed challenging the constitutionality of the law. Mr. Barnett said that until the Legislature changes the law, his clients are entitled to their water right.

Mr. Currie asked if there had to be surface water before there is groundwater; Mr. Barnett responded that no, and that most of the groundwater basins are filled through rainwater, and in this matter surface water is only public water after it reaches the cut banks of the stream. Mr. Keeley commented that he understood clearly the issues discussed, but that he is frustrated to see the conundrum as he doesn't want the landowners to lose their right, nor does he want the others to lose their streamflow, so what is bad about issuing a temporary permit?

Mr. Barnett responded the law doesn't contemplate it, and the Board doesn't have the authority to do that. He said that while it is allowed to update every 20 years, and the amount of water can be changed, it cannot be lowered, only increased, or otherwise there would be takings, which is unconstitutional to take private property without compensation. He said his clients have a regular permit and the changing to a temporary would take what they have and make it something less that is not acceptable or authorized.

Mr. Smith interjected and explained a temporary permit is issued by the Board before a groundwater basin study is completed, and once completed, the permit is converted to a regular permit, which may decrease the amount of water allowed to be pumped. In this instant, to go back to a temporary permit in terms of statute, would allow the pumping of more water, and Mr. Kellog is requesting a temporary permit in terms of time. A temporary permit is still a long-term permit and is only dependent upon the groundwater basin study being completed. Mr. Smith explained the points of the groundwater law that is reviewed in the permit process. He explained the provisions in the statute about allowing a change in a permit amount and what the protestants were requesting, which if it were done, would only allow an increase in amount. He said staff attempts to be sensitive to the surface water flow and have discussion about the evidence in the record about the flow, and it is staff's conclusion that there are many factors that affect surface water flow and to take this permit and decide not to approve it, would mean the Board would then not approve any permit in the alluvium because any water taken out – in other areas along alluvial deposits by cities and irrigators – have the potential to impact surface water. He stressed that is a legislative decision, and the members of the Board may not philosophically agree, but this is the order that has been followed by the Board consistently for a number of years and that is the interpretation of law set by the Board, which is why it is proposed and recommended.

Chairman Herrmann asked Mr. Smith to explain the language in order under paragraph 9.d. referring to conducting an analysis if the pumping does change the flow and violates the water quality standards. Mr. Smith responded that if there were impacts to their ability to take water they would come to the Board and file a complaint and a request for the Board to go out and evaluate that. They can go to court for property damages and if the court found the applicant is damaging the protestant, there would be avenues to go forward. If it's a water quality standards violation, that's going to be fact-specific at the time that complaint is made.

Mr. Keeley made a comment the law seemed to be contradictory as if to say, "we don't care" if there is an impact on stream flow, but if there is an impact the matter can be revisited.

Mr. Smith responded that staff tries to be conservative in the studies on the amount of water that can be pumped and the impact to streams. He said much more pumpage could be allowed in the hydrologic survey than is allowed, and less can be allowed. What is done is to say that every acre of land in the basin can take water, then there must be 15-feet of saturated thickness or it is considered there is no water in the basin (for modeling purposes), so that there can still be domestic wells pumping when high-capacity wells would not be able to, and thereby protect domestic use in the aquifer. But, we know from the model that if 100% of the acres are pumping, that river would be impacted, but, there is only 10% of the land developed and conversely staff could take that approach allowing more water to be pumped. Mr. Smith said staff believes the law is conservative; this is what the Board has approved back in the 1990s; and, this is the system of permitting.

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. Nichols moved to approve staff recommendation on the proposed findings of fact, conclusions of law and Board order as presented, and Mr. Farmer seconded.

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

NAY: Keeley

ABSTAIN: None

ABSENT: None

Chairman Herrmann commented that this matter is symptomatic of a very complex issue, where the laws do not reflect the hydrologic reality and may be an issue that should be addressed through the law that would not get into takings issue. He added these matters are going to become more sensitive as drought conditions continue.

B. Consideration of items transferred from the Summary Disposition Agenda, if any.
There were no items transferred from the Summary Disposition agenda.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Duane Smith introduced Mr. Monte Boyce, OWRB Comptroller, has worked under Mr. Jim Schuelein, former Administrative Services Division Chief, who recently retired. Mr. Boyce, who is the agency's Comptroller, will be making the budget report presentations to the Board. Mr. Boyce addressed the members and stated to the members the budget report reflects agency operations through the first half of the fiscal year, and have obligated 70%, having received 51% of its budget.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There were no 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.

Mr. Fite commented that there are controversial issues that come before the Board each month, and the agency has a top-notch staff that reports to the members, and he has utmost respect for the legislature. However, he felt there should be an opportunity to reduce water and he suggested the Board adopt a resolution to be transmitted to the Legislature that the Board be allowed as the state's water agency to discern whether water should go up, stay the same or go down. He said both water quality as well as water quantity are issues.

Chairman Herrmann commented that there probably have been times when members have voted the law when in their hearts they may feel another way, as was probably the case today. He said he sensed the key next step for the Board is to get the Comprehensive Water Plan funded and accomplished, and perhaps can get beyond application-specific issues and look at a broader perspective across the state and develop a framework or a more enlightened framework in which to manage the state's water resources. Mr. Sevenoaks made supporting comments and about allocating water beginning with a lower number.

Mr. Chuck Shipley addressed the Board stating he had a New Business item for the Board's consideration. He said he represented the Arbuckle Master Conservancy District, the cities of Ardmore, Davis, Sulphur, Durant, Tishomingo, and Wynnewood. Mr. Shipley stated he had attempted to appear before the Board at the December meeting under New Business and was turned aside, after which he wrote a letter requesting the two items be put on the agency agenda for today regarding the Arbuckle-Simpson matter concerning the mining permit being presently operated by Martin Marietta. He said he received a response from the Executive Director saying neither of the two items he had requested be on the agenda were appropriate, one of which is the additional water that would require a permit, and which the Executive Director said that would not be decided nor addressed on the agenda.

General Counsel Dean Couch interrupted and informed Mr. Shipley that New Business as stated on the agenda under the Open Meeting Law is authorized only for matters not known about or which could not have been reasonably foreseen prior to posting of the agenda or any revised agenda. He said what he is hearing being discussed and now hanging a map before the Board for its review and he was unclear whether it is a New Business item and it is his role to prevent the Board from violating the Open Meeting Law.

Chairman Herrmann stated that Mr. Smith addressed at the beginning of the meeting this matter and actions that are being taken by the Board and other agencies relative to concerns being expressed at the last meeting. Mr. Sevenoaks asked about Mr. Shipley's request.

Mr. Smith responded that Mr. Shipley wrote a letter requesting two items (1) the scope of the hearing, and he responded the hearing examiner would clarify his order to allow evidence on the impact, and upon visiting with Mr. Shipley, he expressed satisfaction on that issue. On the second matter of open boreholes that issue is being taken through a complaint process, an active investigation is ongoing, and is being addressed by staff. This is not new business, and the Board will have an opportunity to hear all of the facts of the case when the application comes forward. He said Mr. Shipley is trying to get that information in pieces before the Board, and there is also attorneys for Martin Marietta coming because they are aware this may happen and is not on the agenda. He said there are three more days of hearing scheduled, and it is several months away from coming before the Board. He asked Mr. Shipley to sit down.

Chairman Herrmann stated there is an administrative process ongoing and he asked Mr. Shipley to respect that. Mr. Shipley stated he insisted upon making a statement before the Board that there is an impending environmental disaster at this site. Chairman Herrmann interrupted and said the concerns Mr. Shipley has voiced have been placed in front of the appropriate state agencies that are taking the appropriate action and to go further down this path jeopardizes the rights of both parties.

Mr. Fite said he would withdraw his request for an agenda item, and allow the Board's Ad Hoc Rules Committee to address the issue and bring it back to the Board at a later date.

Chairman Herrmann asked Mr. Smith about the March meeting being held in Tulsa. Mr. Smith responded at the next meeting there would be service provider interviews and in March the Board will review rule amendments and typically there is public participation. He said April 19 is the Water Day at the Capitol, and he proposed that the Board meeting be held at 1:30 p.m. at the Capitol and then travel to Tulsa in May or June. The Board members agreed.

10. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 11:20 a.m. on January 10, 2006.

OKLAHOMA WATER RESOURCES BOARD

Rudolf J. Herrmann, Chairman

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 Secret, Secretary

(SEAL)