

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

July 11, 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 July 11, 2006, in the meeting room of the Oklahoma Water Resources Board, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on July 5, 2006, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked Mr. Bill Secret to provide the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

Ford Drummond

Staff Members Present

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

Others Present

Donna McSpadden, Sardis Lake Water Authority, Clayton, OK
Kristin Lanna and Kevin Wright, SA&I
Virgil Mayabb, Skiatook Public Works Authority, Skiatook, OK
Martin Tucker, Skiatook Public Works Authority, Skiatook, OK
Barbara Bailey, Bank of Oklahoma, Oklahoma City, OK
Paul Hodge, Municipal Finance Services, Edmond, OK
Jeff Packham, Journal Record, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Doug McCleary, Tishomingo Municipal Authority, Tishomingo, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
David Sadler, Edmond, OK
Don E. Hicks, Osage County Rural Water District No. 2, Ponca City, OK
Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Jack Yates, Tishomingo Municipal Authority, Tishomingo, OK
Paul Smith, Oklahoma City, OK
Larry Edmison, Sierra Club, Oklahoma City, OK
Tim Williams, UBS, New York, NY
DC Anderson, Broken Arrow, OK
Don Kiser, Fagin Brown Bush Tinney Kiser, Oklahoma City, OK
Clem Burdick, Edmond, OK
Steven Jolly, Arbuckle Master Conservancy District, Davis, OK
Connie Rudd, National Park Service, Sulphur, OK
Tim Peterson, First Southwest, TX
Anne Burgen, First Southwest, TX
Judy King, Oklahoma Senate Staff, Oklahoma City, OK
Mason Mungle, Oklahoma Farmers Union, Oklahoma City, OK
C.I. Maxwell, Tishomingo, OK
Darrell Walker, Tishomingo, OK
Catherine Walker, Tishomingo, OK
John Griffin, Meridian Aggregates; Crowe & Dunlevy, Oklahoma City, OK
Mark Walker, Meridian Aggregates; Crowe & Dunlevy, Oklahoma City, OK
Charles W. Shipley, Arbuckle Master Conservancy District/Cities; Shipley & Kellog,
Oklahoma City, OK
Robert D. Kellog, Arbuckle Master Conservancy District/Cities; Shipley & Kellog,
Oklahoma City, OK
Thomas Enis, Williams Estate; Fellers Snider Blankenship & Tippens, Oklahoma City,
OK
Jason Aamodt, Citizens for the Protection of the Arbuckle-Simpson Aquifer; Tulsa, OK
Alan R. Woodcock, U.S. Department of Interior
Laurie Williams, Williams Estate
Clyde Runyan, Mill Creek, OK
Marty Smith, Sherman, TX
Duane Winegardner, Cardinal Engineers, Oklahoma City, OK
Dan Becker, Dolese Brothers, Oklahoma City, OK
Mark Helm, Dolese Brothers, Oklahoma City, OK
Larry Johnson, Mill Creek, OK
Dale Cottingham, Hanson Aggregates Inc., Oklahoma City, OK

Amy Ford, Citizens for the Protection of the Arbuckle-Simpson Aquifer, Durant, OK
 Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK
 Bill Brunk, Citizens for the Protection of the Arbuckle-Simpson Aquifer, Fittstown, OK
 Jerry Grelch, Hanson Aggregates, Irving, TX
 Floy Parkhill, Citizens for the Protection of the Arbuckle-Simpson Aquifer, Tishomingo, OK
 Billie Brown, Sierra Club, Oklahoma City, OK
 Tony Thornton, The Oklahoman, Oklahoma City, OK
 Caroleen Corman, Oklahoma Department of Mines, Oklahoma City, OK
 Mark Secrest, Oklahoma Department of Mines, Oklahoma City, OK
 Jason Nelson, Chickasaw Nation, Oklahoma City, OK
 John Skogland, San Antonio, TX
 Arnella Hendricks, Chickasaw Nation, Oklahoma City, OK
 Shannon Shirley, Mill Creek, OK
 Reg Robbins, Mill Creek, OK
 Helen Thompson, Citizens for the Protection of the Arbuckle-Simpson Aquifer, Ardmore, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the June 20, 2006, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. There were no amendments to the minutes as proposed, and Mr. Nichols moved to approve the minutes of the June 20, 2006, Regular Meeting, and Mr. Knowles seconded.

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

D. EXECUTIVE DIRECTOR’S REPORT

Mr. Duane Smith, Executive Director, addressed the members and began his report saying the Tulsa Metropolitan Utility Authority declared May 20, 2006, “Richard Sevenoaks Day” in Tulsa recognizing his twenty-year service on the Authority’s Board.

Regarding a legislative update, Mr. Smith spoke about the Comprehensive Water Plan. He said the agency is taking a three-pronged approach to the development of the plan. First, an assessment of all community and rural water district water lines across the state, of which the Central Oklahoma Governments have largely completed the municipal lines, and now rural water district lines are needed. The OWRB will put together a GIS map of all the water lines in the state and be able to look at periods of time, i.e., 5, 10, 15 years, and anticipate when those lines would need to be replaced and estimate the approximate cost of replacement, and obtain a picture of statewide needs for water and wastewater infrastructure. Secondly, reasonable population projections will be added and compared to the current infrastructure to determine whether the future needs can be met over the next 50-100 years. Engineering work will be needed and the OWRB would probably need to contract with engineering firms, matching dollars from the U.S. Corps of Engineers, Bureau of Reclamation, and Tribes. This year, for the

\$1.2 million appropriated, it is estimated that amount will be doubled with match money for both those phases. Thirdly, there needs to be a discussion on what the State's water policy ought to be, and a review of the current water law. He said the Board would be seeing over the next few months a series of contracts going out for the implementation of the plan; the Legislature for the first time has appropriated significant dollars for development of the plan, and he said staff is excited about delivering a product.

Mr. Smith asked Mr. Dean Couch, OWRB General Counsel, to update the members on the ongoing lawsuits involving the Board. Mr. Couch distributed a summary of the Jacobs and Roos V. Smith and OWRB and Heldermon V. Wright cases, and briefly discussed the status of each with the members.

Mr. Smith announced the agency had received its Purchase Card, or Pcard, Audit from the Department of Central Services (distributed to each member). He said the agency has "passed with flying colors" with notation of a few minor comments about details when the agency first began using the purchase cards, which have been changed. He said the audit period was March 2005 to February 2006, and during that time, \$18,000 in goods and services were purchased and the agency realized a savings of \$2,600 in staff time by using the card versus generation of purchase orders and payment vouchers, and a per-transaction savings of about \$16.00. He said there are very strict limits on what can be purchased, OWRB personnel take financial matters and use of the card very seriously, and the value is the savings to the agency. He added the audit was no cost to the agency.

The Canton Lake Advisory Committee met recently with the OWRB and City of Oklahoma City to agree upon a release. The lake is owned by the City of Oklahoma City for water supply and water is released from the lake through the North Canadian River to Lake Hefner when water levels are low. He explained that because of some conflict with recreation interests several years ago, an advisory committee was formed comprised of members of the local area, Corps of Engineers, Lake Hefner interests are represented, Oklahoma City and the OWRB. A plan for releases was developed to protect the walleye spawn and recreation interests at Canton, and at Lake Hefner as well. The agency issued a press statement on the recent release.

Mr. Smith also mentioned the Town of Westville had scheduled a groundbreaking on July 12 on its waste treatment plant. He said this is a major success not just for the OWRB, but also for other state agencies, the scenic rivers, and for the citizens of Oklahoma. He said it all started with the .037 phosphorous limit set by the OWRB a few years ago, triggering a number of events on point source implementation in Oklahoma and in Arkansas by the cities, and the worry was the smaller cities having the ability to pay. He said the OWRB and DEQ have been working with the community to develop the \$3.5 million project involving a Rural Development loan and grant and the OWRB REAP grant and Emergency grant; a major hurdle in environmental protection for the scenic rivers.

The Tulsa Port of Catoosa and the U.S. Corps of Engineers conducted a Navigation Conference where Mr. Smith spoke regarding drought conditions. He said last year in response to concerns by the navigation industry the OWRB passed a rule the OWRB would not permit any flows released by the COE for navigation; meaning once a release is made, the Board would not go downstream and permit part of the navigation flow for beneficial use, that flow will stay in the river as intended for navigation use, except on an emergency basis. He said that as we experience drought, and drinking water for example is needed, the OWRB will issue emergency permits, as will the COE, to address that need.

Mr. Smith announced he would be attending the Western States Water Council quarterly meeting in Colorado, and at that meeting will assume the Chairmanship of the organization, which is a two-year term. He said one of the major topics for the Council is the support for data collection, such as the US Geological Survey's streamgaging and snowdrift programs. He said

the WSWC has been able to have an impact with Congress for additional funding; however, when budgets are cut, data collection activities are affected, but that is what is needed to make good decisions, and that's a battle fought both state and federally.

The Bureau of Reclamation has received \$3.5 million for all the states for drought assistance. The Bureau works primarily in the 18 western states, and staff is confident some of those dollars will be available for Oklahoma, and will work with the Bureau in situations where a water well could be located in strategic areas for rural fire protection, for instance.

Mr. Smith concluded his report announcing the Governor's Water Conference dates have changed to November 13-14, 2006, at the Cox Convention Center to avoid conflicts with the Oklahoma Academy Town Hall that will be looking at water issues over the next 100 years. He saw that discussion flowing into the conference agenda that will be addressing water planning and implementation.

Mr. Secrest asked if the Legislature had appropriated money for the water study. Mr. Smith responded that this year, the Legislature split the gross production tax REAP account water projects fund into three parts: one-third to the OWRB for water planning and financial assistance program (\$2.6 million), one-third to the Conservation Commission for cost-share activities, and one-third to the Department of Tourism for water and waste water infrastructure. The appropriations split is for a five-year period; that would mean \$1.3 million for five years to do the water plan. The estimated cost was \$6.5 million.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water, Sewer and Solid Waste Management District #3, Osage County.

Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this \$44,200.00 emergency grant request is from Osage County Rural Water District #3. He said the District's main transmission line from Ponca City has become severely exposed due to erosion that has recently been discovered. The line is on the verge of collapsing. In order to correct the problem, the District will install approximately 500 feet of line about 15 feet below the existing line. The District's engineer estimates the project will cost about \$52,000.00 and will be funded by the \$44,200.00 emergency grant requested of the OWRB, and \$7,800.00 in district funds. Staff recommended approval of the grant request.

Mr. Don Hicks, District Board member, was present in support of the emergency grant request.

Mr. Secrest moved to approve the emergency grant to Osage County RWD #3, and Mr. Fite seconded.

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

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

Mr. Freeman said this item is for the \$3,968,000.00 Drinking Water State Revolving Fund Loan request from the Skiatook Public Works Authority. He said that Skiatook is requesting the loan in order to construct a three-million-gallon per day water treatment plant. The plant will be designed to expand to five mgd. Mr. Freeman noted the provisions of the loan agreement, and said the water and sewer connections had increased about 30% since 1994. Skiatook Public Works Authority has been a

loan customer of the Board's since 1996, and its debt coverage ratio stands at approximately 3.3-times. It is estimated that the Authority will save \$1.2 million in interest expense by borrowing from the Board. Staff recommended approval of the loan.

Mayor Virgil Mayabb, Town Administrator Martin Tucker, and Paul Smith, financial advisor, were present in support of the loan application.

Mr. Nichols moved to approve the loan to the Skiatook PWA, and Mr. Secrest seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drummond

Mr. Smith commented that he was at Skiatook Lake recently and met with the Corps of Engineers on an update on Corps programs in Oklahoma, and one is the development at Skiatook Lake, and the Clean Marina program. He thanked Mr. Martin Tucker for hosting the event and complimented the city on the great things it's doing.

C. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for Tishomingo Municipal Authority, Johnston County. Recommended for Approval. Mr. Freeman said this item is a request from the Tishomingo Municipal Authority for a \$305,000.00 increase in the \$810,000.00 loan that the Board approved in October 2005. The original loan was for improvements to eleven lift stations, and Tishomingo is requesting the increase as a result of adding construction of a chlorination/de-chlorination facility at its wastewater treatment plant and bids came in above the engineer's estimate on the lift station project. Mr. Freeman noted provisions of the loan agreement. Tishomingo has been a borrower of the Board since 1986, and currently has two outstanding loans with the Board; the debt-coverage ratio stands about 1.3-times. It is estimated Tishomingo will save approximately \$385,000.00 by borrowing from the Board. Staff recommended approval.

Mr. Jack Yates, City Manager, and Paul Hodge, financial advisor, were present representing the Tishomingo Municipal Authority's loan application.

Mr. Fite moved to approve the loan request to the Tishomingo Municipal Authority, and Mr. Sevenoaks seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drummond

D. Consideration of and Possible Action on Proposed Resolution Authorizing Certain Individuals to Sign and Act on Behalf of the Board Regarding the Board's Financial Assistance Program, State Revolving Fund Program, and Issues of Indebtedness, and Authorizing Members to Act as Assistant Secretary. Recommended for Approval. Mr. Freeman stated this item is for the consideration of a resolution that authorizes certain individuals to sign and act on behalf of the Board regarding the Board's Financial Assistance Program and State Revolving Fund Program. He said the resolution also names each Board member, except the Chairman, as assistant secretary in the absence of the secretary. The resolution allows the Trustee Bank, Bank First, to know the Board's composition, and to have signatures on file for verification. The resolution is the same as approved in the past, with the exception of changing Board members from Harry Currie to Ford Drummond. Staff recommended approval.

Mr. Secrest moved to approve the resolution, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: None
ABSENT: Drummond

Mr. Smith noted there were several members of the audience from Tishomingo, and he appreciated the city's effort to keep the Arbuckle-Simpson aquifer clean.

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.

Chairman Herrmann read the statement above and asked for requests to move items. Mr. Chuck Shipley, representing the Arbuckle Master Conservancy District and six cities relying upon the Arbuckle-Simpson Aquifer for drinking water, requested that the item D.1. "Joint Funding Agreement with the U.S. Geological Survey to Investigate the Water Resources of the Arbuckle-Simpson Aquifer" be transferred to the Special Consideration agenda in order to have some discussion on some of the aspects under that topic.

Chairman Herrmann approved the request considering the discussion scheduled later on the agenda. There were no other requests to move items.

Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members he would like to withdraw consideration of item 3.I. "Application to Amend Prior Rights to Use Groundwater," permit application #1970-357, due to a publication error.

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

There being no further questions or action regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Nichols moved to approve the Summary Disposition Agenda items as amended, and Mr. Knowles seconded.

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

The following items were approved.

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

REAP				Amount
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
ASCOG				
1.	FAP-04-0048-R	Indiahoma Public Works Authority	Comanche	\$99,990.00

EODD					
2.	FAP-04-0031-R	Rural Water District #21	Okmulgee	107,000.00	
OEDA					
3.	FAP-05-0030-R	Shattuck Municipal Authority	Ellis	50,000.00	
SWODA					
4.	FAP-04-0018-R	Dill City Public Works Authority	Washita	111,000.00	

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

1. *Joint Funding Agreement with the U.S. Geological Survey to Investigate the Water Resources of the Arbuckle-Simpson Aquifer—moved to item 5.B.*
2. Joint Funding Agreement with the U.S. Geological Survey to Cooperate in Monitoring Streamflow Site in the Upper Washita River Basin.
3. Fourth Renewal and Amendment Agreement with the University of Oklahoma through its Sam Noble Museum of Natural History for Identification of Fish Species
4. Addendum to Agreement with Oklahoma City Renaissance Hotel and Cox Convention Center to Host the 2006 Oklahoma Governor's Water Conference.

E. Applications for Temporary Permits to Use Groundwater:

1. Healdton Golf Course, Inc., Carter County, #2005-538
2. Thumbs Up Ranch, L.L.C., LeFlore County, #2006-511
3. Bridgeport Public Works Authority, Caddo County, #2006-529
4. Lenard & Melba Briscoe, Kingfisher County, #2006-535
5. Jerry Harvey, Todd Harvey and Scott Harvey, Caddo County, #2006-540

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. Jeff & Jeri Slatten, Beaver County, #2006-534

H. Applications to Amend Regular Permits to Use Groundwater:

None

I. Applications to Amend Prior Rights to Use Groundwater:

1. *Thomas Public Works Authority, Custer County, #1970-357 withdrawn*

J. Applications for Regular Permits to Use Stream Water:

1. L. Ray Wood, Choctaw County, #2006-015

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

1. Western Farmers Electric Cooperative, Choctaw County, #1977-160

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Brothers Pump DPC-0728
Operator: Paul Thompson OP-0618
Activities: Pump installation
 - b. Licensee: AVI Drilling and Geological, LLC DPC-0730
Operator: Tony Mills OP-0889
Activities: Monitoring wells and geotechnical borings
2. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: Donaldson Electric DPC-0443
(1) Operator: Robert Downing OP-1497
Activities: Pump Installation
(2) Operator: John Wyrick OP-1498
Activities: Pump Installation
 - b. Licensee: Howard Drilling Co. DPC-0105
(1) Operator: Travis Winters OP-1499
Activities: Pump installation
(2) Operator: Kevin McDowell OP-1500
Activities: Pump installation
(3) Operator: Cecil Tedder OP-1501
Activities: Pump installation
(4) Operator: Kyle Mills OP-1502
Activities: Pump installation
(5) Operator: Jay Osborn OP-1503
Activities: Pump installation
(6) Operator: David Howard OP-1505
Activities: Pump installation
(7) Operator: Maton McLemore OP-1506
Activities: Groundwater wells, test holes and observation wells
 - c. Licensee: Dunlap Drilling DPC-0732
Operator: Jesse Dunlap OP-1510
Activities: Groundwater wells, test holes and observation wells
Pump installation
 - d. Licensee: Lehl & Son Water Well Drilling DPC-0124
Operator: Noel Mark George OP-1508
Activities: Groundwater wells, test holes and observation wells
 - e. Licensee: Associated Environmental Industries Corp. DPC-0269
Operator: Ryan Poeling OP-1509
Activities: Monitoring wells and geotechnical borings

M. Dam and Reservoir Plans and Specifications:

1. City of Coalgate and NRCS, Caney Coon Creek Watershed Site No. 2-M (Coalgate Lake), Coal County

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

1. Oklahoma Department of Transportation, Craig County, FP-06-05

- O. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the July 11, 2006 packet of Board materials.

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

There were no items of discussion by the Board.

5. SPECIAL CONSIDERATION

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

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

A. Application for Temporary Permit to Use Groundwater No. 2002-602, Meridian Aggregates Company, A Limited Partnership, Johnston County.

Prior to presentation of the permit application, Chairman Herrmann outlined the rules of engagement for presentation and consideration this complex and controversial subject. He said Mr. Mathis will make a brief overview of the proposed order that has been distributed and read by the Board members. He said the applicant would be given 15 minutes for comments in support of the application; the protestants will have 15 minutes for their comments. He said there a many protestants in attendance, and he asked that they organize and decide how to allocate that time among themselves. Then the applicant will be given 10 minutes for rebuttal to any comments by the protestants, the protestants will then be given 10 minutes to respond to any further comments by the applicant, and 10 minutes will be allotted for questions and discussion by Board members. He said the comments made should "shed light, not heat" upon the matter, and should add to the Board's understanding of the critical issues before it, and he also asked that there be a prevailing theme of professionalism and mutual respect. Chairman Herrmann asked Mr. Couch to make comments about boundaries provided through the Administrative Procedures Act and due process.

Mr. Couch stated that for purposes of oral argument and presentation directed at the proposed findings and conclusions, no new evidence shall be presented, as the proceeding is not a hearing but a discussion of a proposed findings and conclusions that the hearing examiner prepared after reviewing the evidence and hearing the testimony. He said this is not the place

for new evidence i.e., maps, charts or other information, although evidence that was submitted can be pointed out for clarification or emphasis but nothing new added. He said he also understood that through filings made, there are several groups or entities very interested in the proposed action by the Board but they are not parties; did not participate, and have not been involved, yet submitted documents entitled "exceptions." But for clarification Mr. Couch termed them as "comments" as the rules and Administrative Procedures Act clarifies and specifies, and as regards the oral argument and presentation, that is for the parties and not for the non-party filing. Chairman Herrmann adjourned the meeting for a 10-minute break for the parties to organize for presentation.

1. Summary. Upon reconvening the meeting, Chairman Herrmann asked Mr. Mike Mathis to provide an overview of the facts of the application, protest, and hearing with a prepared PowerPoint Presentation.

Mr. Mathis stated the application is by Meridian Aggregates Company, temporary groundwater number 2002-602, located in Johnston County. He said there were multiple days of hearing conducted, carts full of boxes of evidence presented, and he provided information on the general location of the project location and well site, and the permit request to withdraw 1400 acre-feet of groundwater per year for mining for aggregate washing and dust control operation. He said the water is proposed to be taken from one well located on 700 acres of land dedicated for which there is a lease and overlies the Arbuckle-Simpson groundwater basin. A maximum annual yield has not been determined for the aquifer, therefore, it is a temporary permit, and under the groundwater law, the applicant is entitled to take up to two acre-feet per acre. The groundwater basin is designated by the Environmental Protection Agency as a sole source aquifer, triggering the provisions of Senate Bill 288 requiring a determination whether the proposed use is likely to degrade or interfere with the springs or streams emanating in whole or in part from the sole source basin.

Mr. Mathis explained the four points of law which are referred to by the hearing examiner, and in this particular application overlying a sole source groundwater basin, an additional point has to be considered: the land is owned or leased, overlies a fresh groundwater basin, intended use is beneficial, waste would not occur, and sole source basin protection.

Regarding beneficial use, Mr. Mathis explained the company produces aggregate at its North Troy Quarry, and there is an approximate need for about 1425 acre-feet of water for washing the aggregate. Currently, the company holds a stream water permit (#2004-33) in the amount of 1425 acre-feet, and storm water that falls and flows throughout the process water pond is used, and groundwater infiltrates into the mining pit. Essentially, the application for the groundwater is a supplemental source of water if the Mill Creek water availability is inadequate during dryer years.

Regarding the issue of waste by pollution, the Oklahoma Department of Mines issues a permit for the mining operation itself. The Oklahoma Department of Environmental Quality has multiple permits and authorizations for the storm water discharge and retention lagoon, and air quality emissions for dust control. The applicant stated it would use a licensed water well driller in drilling the new well to meet construction standards.

Mr. Mathis stated there was a complaint during the process of the application relating to open bore holes at the site and the potential for pollution that became a contentious issue. The complaint was processed as a traditional complaint, and the executive director during the process formed a Technical Committee to investigate which was comprised of the OWRB, ODM, ODEQ, and an environmental consultant from both the applicant and the protestants, as well as OSU professor who has been involved in the Arbuckle-Simpson study. Mr. Mathis said the Committee worked diligently, shared information, developed a field investigation strategy, documented findings, and published a written report. Mr. Mathis detailed the findings in the report: how wells were detected, what was detected, how they were plugged, and where they

were located. The conclusion stated the status of 26 of the borings was not able to be determined, but that potential for pollution through those borings was low as evaluated through the ODEQ spill prevention, control and counter measure plan required as part of the permit requirements, for the operations and is designed to provide protection for any spills and activities. Recommendations by the Committee included: require additional monthly water quality sampling at the windmill well, the quarry pit sump pump, and the groundwater well for at least two years. Sampling for total petroleum hydrocarbon (TPH) as a condition of the ODM permit, as well as coordination with the OWRB if TPH is discovered, and a remediation plan would be put into place.

Mr. Mathis spoke to the issues of the sensitive sole source groundwater basin, including the proximity of several springs within 5 miles; he showed pictures of each, and stated that during the process of the hearing the applicant, the National Park Service, and US Fish and Wildlife came to a stipulation agreement that Meridian would limit the use of groundwater only when other sources are not available, monitoring would be conducted in the area on the flows of streams, and water quality sampling in springs and wells in the vicinity. A technical review panel would be formed regarding the monitoring and results to determine if changes need to be made to be protective. Only these parties agreed to the stipulation agreement.

There was other evidence brought to the hearing by the protestants regarding the impact to springs and streams, and Mr. Mathis began with the discussion on modeling presented by the applicant. He said two scenarios of water use were presented, one for 1400 acre-feet and one for 700 acre-feet, which was a figure derived from the stipulation agreement's look at various levels of use. Results of the modeling indicated that use of 700 a.f. over ten years could result in the drawdown of 2-3 feet in the Colvert and Clement/Holder springs located 1-1/2 miles away from the applicant's well. Use of 1,400 a.f. would be 3-5 feet in those streams, and 3 feet in the Pilot springs well, located 4-1/2 miles away. The applicant's expert witness testified in their opinion that pumping 1,400 a.f. per year would not degrade or interfere with streams and springs emanating from the basin.

Mr. Mathis stated the protestant's expert modeling examined 1,400 a.f. per year and indicated there would be 6 feet of drawdown in the Colvert springs, and 4 feet in Pilot spring. The expert testified impacts could be greater due to faults in the region and particularly during dry times when the impact would be significantly greater than what was modeled, which is conflicting information, yet both the applicant and protestant suggested an impact.

With that, the hearing examiner was to evaluate the somewhat similar yet somewhat conflicting evidence, coupled with the language of Senate Bill 288... "not likely to interfere with springs and streams emanating from the basin..." The evidence was perhaps not conclusive, but indicated some level of impact. The Arbuckle-Simpson basin study has not been completed yet, so the hearing examiner reviewed the USGS circular no. 91 that provided, for that time, the best estimate of recharge being about 4.7 inches per year. Using that estimate and allocating it over the 700 acres dedicated to this application produced a figure of 274 acre-feet per year that in the hearing examiner's conclusion stated that amount would not likely interfere with stream and springs. Another contentious issue was the use of groundwater from the mining pit. There is a particular provision in the Oklahoma Groundwater Law regarding the reasonable use of groundwater, but provisions of the act shall not apply to the taking, using, or disposal of water trapped in producing mines; however, the hearing examiner determined the water in the pit is used for other aspects of operation such as dust control, therefore is not trapped, and is subject to the groundwater law. The applicant, by its own testimony, intends to take and use the water in the pit, but does not have authorization for diversion. Mr. Mathis said notice was not given in this application for such use, so this will be a matter to follow up from this particular application process.

In summary, Mr. Mathis stated that his presentation has reviewed in a sweeping fashion the multiple days of testimony and evidence, and the conclusion of the hearing examiner is that the applicant has a valid right to the dedicated land, it overlies the Arbuckle-Simpson that is a sensitive sole source groundwater basin, and mining is a beneficial use of groundwater. Approval of the application in the amount of 274 acre-feet is to be taken from one well location along with the incorporation of the monitoring and management plan for future permitted groundwater development (stipulation agreement, exhibit 1.) that will provide assurance that use is not likely to degrade or interfere with springs or stream emanating from the basin. Mr. Mathis again stated the use of water from the mining pit is not authorized under this permit, and will have to undergo its own process of proper notice. Waste will not occur by incorporating the monitoring plan described in the technical committee final report as required by the report and as specified in the order. Mr. Mathis stated with that, staff recommended approval of the findings of fact, conclusions of law, and proposed order as presented.

Chairman Herrmann then asked the Board to consider the request to transfer an item to the Special Consideration agenda.

B. Consideration of items transferred from the Summary Disposition Agenda, if any.

3.D.1. Joint Funding Agreement with the U.S. Geological Survey to Investigate the Water Resources of the Arbuckle-Simpson Aquifer. Chairman Herrmann asked for a vote to consider the funding agreement.

Mr. Fite moved to approve the agreement, and Mr. Keeley seconded.

Chairman Herrmann asked for discussion. Mr. Chuck Shipley approached the members and said he asked the item be addressed along the lines of Mr. Mathis's presentation because it would be useful for the parties as well as the Board to have an idea of progress of the study that is ongoing. There are several lawsuits depending upon the outcome and this particular question on today's action will have perspective on the status and progress. He asked that Mr. Mathis tell how the study is progressing in terms of generating the information that is expected from the study. He said OWRB staff had told him there are a number of large ranches that are refusing entry onto their ranches over the Arbuckle-Simpson and thus depriving the basis of the input into the study. He asked Mr. Mathis to say if that is the case and to identify the ranches, and is it affecting the outcome of the study?

Mr. Duane Smith responded that staff is not prepared to make such a presentation on a complete update on the study, and Ms. Noel Osborn the project leader, is not here today. The agenda item is a contract with the USGS for modeling activities and this agenda item is not intended to be an update. He said it take one day to go through the study in detail, and this particular permit application for Meridian Aggregates is not the subject of the study. He suggested the study update be an agenda item scheduled for the August Board meeting. Mr. Smith said there are some landowners that have not granted access. Mr. Keeley asked if the study updates are available, and Mr. Smith said they are available on the agency's website.

Chairman Herrmann asked if there were any further comments or questions. There were none, and he called for the vote.

AYE: Farmer, Fite, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann
NAY: None
ABSTAIN: None
ABSENT: Drummond

2. Discussion and presentation by parties – Chairman Herrmann stated the applicant would have 15 minutes for presentation. Mr. John Griffin, and Mr. Mark Walker were present representing the applicant, Meridian Aggregates. He complimented OWRB staff Jerry Barnett and Carla Jennings for their conduct of the 9-day hearing. He said he had filed exceptions to the proposed order because of three concerns: (1) limitation of the permit, (2) assertion of jurisdiction over groundwater in the quarry pit, and (3) prohibition of use of groundwater in the pit. Regarding the limitation of the permit for 274 acre-feet of groundwater per year, Mr. Griffin said the main concern with the limitation is that the principles of SB 288 are being applied differently in this application than in the Sparks application. He explained in that application the hearing examiner determined from the evidence the applicant in that case presented for use to irrigate pecan trees and land dedicated, the beneficial use was 1800 a.f. per year. Taking the 27 inches needed for irrigation, times the 800 acres of trees, the Board approved the proper use of 1800 a.f. In doing so, the Board addressed the implications of SB 288, and decided that 1800 a.f. of use for irrigation of pecans trees would not degrade or interfere with stream and springs emanating from the basin. He said he then tailored the Meridian Aggregates application to the same standard as in the Sparks case. Mr. Griffin spoke of the drawdown in Sparks of 8.16 feet after ten years at the nearest spring as being consistent and not degrading. He said his evidence was that testimony of modeling was done on 1400 a.f. (requested in the application) and predicted the draw down at the nearest stream would be 5.6 feet after ten years, well below the 8.16 feet approved in Sparks, having a lesser impact that proved in Sparks. Instead, for the first time, the proposed order contemplates employing a recharge volume limitation of how much water can be used. That is not the standard employed in Sparks, and had the 4.7 limitation been applied in Sparks as it has been in this case, Mr. Griffin said Sparks would have received 625 a.f. of water, instead of 1800 a.f., giving them almost three times the water for their application than Meridian Aggregates has been given. He said the Board is tasked with applying SB 288 to every application in the aquifer, and he asked for explanation of how SB 288 is applied the same in these cases.

Mr. Griffin said he had entered the stipulation agreement with the National Park Service prior to commencement of the hearing and they agreed to limit the use to 700 a.f. in the first year and then “ramp up” the use over five years to 1400 a.f., and would install continuous monitoring stations in several wells and two streams in the area (Pennington and Mill Creeks) as well as providing water chemistry data. This information is to be presented to a technical committee chaired by the OWRB, and as the data developed, it could be determined if the applicant’s use would have any effect on the streams and springs. Part of the evidence presented, he said, concerned the use of the 700 a.f. He said the use of the 700 a.f. drawdown would be 2.8 feet, and the recharge of 4 feet would in no way impact the stream, as there would be more recharge than the effect of withdrawing. He said the proposed order does not deal with arguments for use of 700 a.f. but starts out with the request of 1400 a.f. and finds it *may* affect streams and springs and then suggests the recharge limitation of 274 a.f. He asked the Board to modify the order to address the usage of 700 a.f. and ramping up to 1400 a.f. over five years. He said lots of valuable information would be obtained, because monitoring is increased as usage is increased. The technical review panel will be continuously analyzing the data so any impact would be detected very early, and because the OWRB is involved in the monitoring, the public interest is clearly protected.

Mr. Griffin addressed the two other areas of concern about the water in the pit. He said the Board’s decision is contrary to 30 years of regulatory approach by the Board, as the Board has consistently determined it did not have jurisdiction over groundwater in quarries. He explained an Attorney General opinion given in 1978 that answered in the negative, that the OWRB is without authority to process an application or permit to take trapped groundwater from an abandoned coal mine. The opinion prompted legislative action whereby the Legislature

amended section 1020.2 to delete the words, "for non-producing" in front of "mines" expressing its intention that the OWRB does not have jurisdiction over water in active mines but does have jurisdiction over water in abandoned mines. He said if the Board's reasoning for assuming jurisdiction over water in the quarry pit is because it believes there is a regulatory gap that needs to be filled, he contended, there is no gap as the statute delegates the regulation of water in a producing mine to the Department of Mines and allocates to the OWRB jurisdiction over water in a non-producing mine. Mr. Griffin asked the Board to reconsider the assumption of jurisdiction over groundwater in the quarry, as it is contrary to law.

Regarding use of water from the pit, Mr. Griffin said the applicant has filed application asking for use of groundwater from one well, and that is what the hearing examiner said the hearing would be about when he entered the November 17 order. On January 20, the hearing examiner reversed the order allowing evidence about water in the pit and its effect, it was mailed to all parties and filed in the Sulphur library, and so notice was made of the expansion of the proceedings. He said that even more importantly, the interest of people who are concerned about the effect of use of water from the quarry pit has been more than adequate; the matter had been argued at the hearing, and opposition has been adequately represented and it would be a waste of OWRB resources to force the applicant to go back through the permitting process to be able to use water in the pit because the record has been made on that issue. He asked the Board to reconsider that part of the proposed order and allow use of water from the pit as part of this application because effectively the application was amended mid-stream by the ruling of the hearing examiner.

Chairman Herrmann invited the protestants to make their presentations. Mr. Jason Aamodt, represented the Citizens for the Protection of the Arbuckle Simpson Aquifer, addressed the members. He said the represented parties order of presentation would be himself, Mr. Enis for the Williams Estate, Mr. Shipley, and two unrepresented parties.

Mr. Aamodt recognized the members of the group in attendance, as well as Sierra Club and Save Our Water groups. He said the proposed order is very well written and thoroughly considered, but he requested two changes for clarification: page 5 and page 18 that reference to the stipulation agreement be made part of the condition of the order. He said for the purposes of appeal, he supported the Board's recommended decision in the case, and would take formal exception to all findings of fact and conclusions of law for any argument that may need to be made on appeal. He noted for the record the applicant's boreholes and statement to use unpermitted amounts of water from the mine pit would support finding of fact of waste by pollution and waste by depletion, justifying a complete denial of any use of water under this permit application. Mr. Aamodt stated the Board is an administrative body and as such can make decisions but are not bound by them, because there are different facts in difference cases and different considerations to be weighed, and flexibility is provided to an administrative agency to make different decisions. He argued significant considerations can justify the difference between the outcome of this case and the Sparks case, and that is that the water that was used for irrigation was place back onto the ground and was not used in an industrial process and taken away. He said at the hearing the applicant argued there would be no water in the pit, but at the same time argued it should be allowed to use water in the pit. Mr. Aamodt stated he supported the adoption of the recommended order.

Mr. Tom Enis, representing the Ada Sutton Williams Estate, landowner immediately to the east of the quarry location, stated to the members the representative of the estate, Ms. Laurie Williams is present and their interest is in protecting the Arbuckle-Simpson Aquifer. He, too, complimented the hearing examiner and said he supported the well-written proposed order and recommended the Board's adoption. He spoke to the issue of constitutionality that was raised in the exceptions and he said that issue is not involved here, but is before the Supreme Court. There were two other areas of concern he wished to address brought up by Mr. Griffin:

the consideration of 274 acre-feet of water is more than his evidence would support as there was evidence provided to show effect on the springs and streams. That amount does not include water taken from the pit. He said springs located on the estate that would be affected are Pilot, and Pennington Creeks. Secondly, he said regarding the Sparks case, the experts agreed that whatever was granted in Sparks could be added to whatever is granted here and "first in time" gets a better shot at the groundwater. He said the application was not amended to consider 700 acre-feet so the 1400 is what was considered, and it is clear that would cause interference. Regarding jurisdiction over water in the pit, Mr. Enis said the Board has not consistently exercised jurisdiction over mining operations, and he explained how the issue of the pit came to be part of the case as a result of their request for a declaratory ruling on the issue, changing the posture of the case. He noted an April 2005 order by the Board in a matter for Dolese Brothers requesting to take 1556 a.f. of groundwater from four sand lakes, no boreholes were involved, so there is precedent in the Board exercising jurisdiction.

Mr. Chuck Shipley, representing the Arbuckle Master Conservancy District and cities of the area, addressed the Board saying that while the hearing examiner did an amazing job, there are problems with the final outcome. He said Meridian did not file the proper reports for the wells (boreholes) and did not plug the wells and he asked the Board to set a due process hearing to consider fines upon the information found in the hearing. He asked for \$250 per day per violation, approaching \$2 million in fines. He noted page 4, paragraph 6, and page 7, paragraph 8 referring to the boreholes; and also on page 10 about holes plugged and those not found and plugged. He asked that fines and awards be made to the attorney.

Chairman Herrmann allowed rebuttal time to the applicant. Mr. Griffin approached the members and stated the protestants did not model the 700 a.f. that he had offered evidence on and there is no evidence in the record offered by the protestants to controvert what was presented. He said the argument by Mr. Aamodt that the Board is not bound by precedent is a novel one to him in law; he had never heard that, and if that is the case, then why are we here? The Board could just pick a number and apply it—he asserted, "Aren't we all here because we are trying to apply SB 288 fairly to everyone?" If we are, then he said, Meridian is entitled to at least 700 a.f. of groundwater per year because of the evidence introduced that it will not degrade or interfere and it would be monitored monthly, and he urged the Board's consideration of that request. Regarding the boreholes, Mr. Griffin said that matter had been thoroughly investigated by a technical committee including representatives of Mr. Shipley's clients, and he (Mr. Shipley) signed the final technical committee report that found that the boreholes do not pose a significant risk of pollution. He said the technical committee report recommended that Meridian adopt monitoring requirements, and that they become part of the mining permit; Mr. Griffin said that the mining permit has already been amended to impose the monitoring requirements. The boreholes are in an area that will be mined-out over a long period of time, but they have been exhaustively investigated and there has been no evidence the boreholes have been left unplugged at the surface after investigation of the technical committee, but, it was found that six that had not been properly plugged, and to assume there are 26 bore holes that have never been plugged is an assumption without a factual basis. He said, though, that whatever those facts may turn out to be, the risk of any harm to the aquifer is nil, as there will be enough monitoring of the water to be sure there is no problem.

Mr. Griffin asked the Chairman to allow comments by other industry representatives regarding the jurisdictional issue. Chairman Herrmann and General Counsel Couch stated that oral argument under the Administrative Procedures Act and the Board's rules is reserved only for parties, and they are non-parties. He urged the Board to look at the definition of the word "trapped" which is an industry concern that should be aired." The Chairman allowed the industry representatives present to stand. Mr. Couch cautioned against any comments being made by the representatives so that there would be no problem with record about who is or is

not a party, and no persons not representatives of the parties were allowed to speak and make statements into the record.

Mr. Griffin noted on page 30, paragraph 5, of the order there was a small ambiguity in the wording and asked the Board to take into consideration exactly what is being prohibited from use. He asked for clarification on whether he is authorized to take the water and move it out of the pit and store it in an impoundment and allowed to recharge the aquifer.

Chairman Herrmann offered the protestant time to rebut. Mr. Aamodt responded with three points: he agreed we are here asking that SB 288 be applied fairly and he described how law is made and applied and restated administrative flexibility of an agency; that other mining companies have come to the Board seeking invocation of its jurisdiction for the purpose of taking water from mining pits and using it; and, that the intended use of the water from a well in an unpermitted state justifies a finding of waste by depletion and a complete denial of the permit. He said the Board is being charitable to permit any water at all.

Mr. Clyde Runyan, a resident of the area stated his concern about his home and cattle dependence upon groundwater and springs, and they are now experiencing the most severe drought he has lived through. He asked for the Board to carefully consider approving use of groundwater to the mining company.

Mr. Shipley approached the members and rebutted Mr. Griffin's remarks the wells were plugged adequately, and also the location of the wells were found by a Map Quest aerial photo.

Mr. Larry Johnson, stated he was a party to the matter, and said he is a small rancher near the North Troy Quarry location. He stated his concern about water pollution; but the mining operation is deeper than the boreholes and there is potential for pollution in the mine. He is concerned about the use of water by the company from Mill Creek, and also purchasing water from the Silica Company. Mr. Couch asked Mr. Johnson to only make comments regarding evidence in the record.

Mr. Griffin asked that the PowerPoint presentation by Mr. Mathis earlier in the meeting be included as part of the record (attached).

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

Chairman Herrmann asked for any discussion by Board members. Mr. Jack Keeley stated all comments had been consistent in complimenting the hearing examiner, and that the order is understandable. He said the Board is new at interpreting SB 288, and that the intent of the well is a supplemental supply and is a reasonable thing to do, and also that both monitoring quality and quantity of the water is part of the order is good. He said if the yield is considered to be recharge and the basin is totally permitted, then there is only protection for springs and stream 50% of the time, but that is not the case. He said then, that using recharge when only a fraction of the basin is permitted, the Board is protecting springs and streams probably 80% of the time. While it is months before the yield of the aquifer will be determined, recharge is as good a number as any while temporary. Mr. Keeley said the monitoring results will not be known right away, particularly if the well isn't being pumped, and the fact that the modelers have shown different results is not surprising. That said, Mr. Keeley said the bottom line is that this is a temporary permit and a year from now it needs to be revisited, and if there are errors made today, hopefully they can be cleared up.

With that, Mr. Keeley moved to adopt the findings of fact, conclusions of law and order as presented, and Mr. Fite seconded.

Mr. Sevenoaks made two comments: if the permit is temporary and will be revisited while the study is ongoing, he did not have a problem considering the 700 acre-feet because by the rules of law they are entitled to the water, considering SB 288 and how it may apply. The other point is the geotechnical borings that took place unsupervised and unpermitted, and this is not the way to conduct business especially considering the sensitive aquifer.

Mr. Smith responded to Mr. Sevenoaks concerns about the boreholes. He reviewed the process as a complaint and established the technical committee to investigate. There are still holes that cannot be found, and the assumption could be made they were done as the others which were not too standard. But, the technical committee said there was a low risk of contamination, and put into place a monitoring plan and were satisfied that the possibility of contamination to the sole source aquifer was remote, not significant, that the monitoring plan be incorporated as part of the permit. Because a license driller did not drill the holes, the OWRB filed a complaint with the District Attorney, as required by the statutes, and in that complaint outlined what happened. The District Attorney responded that he would not prosecute, but left the door open for any future violations--the key factor being the conclusion of the technical committee that the risk of pollution was low; if the facts had been different, the conclusion would have been different. Mr. Smith expressed his concern about how these matters will be handled in the future, and the OWRB will be proactive in working with the Department of Mines and the mining companies to make sure they are aware of what needs to happen.

Mr. Secrest complimented the hearing examiner, Jerry Barnett, and Lou Klaver, also staff attorney.

Chairman Herrmann asked about the precedence relative to the interpretation of the pit and the role of the Water Board. Mr. Smith responded that the Board has issued permits for mining operation pits before, i.e., Dolese Brothers. As it comes to water trapped in a producing mine, one of the outcomes if the water is not permitted, is the current law is useless and there would be no point in permitting the water well if the operation of the water in the pit was not addressed. Whether or not the court says its water in the pit, SB 288 still allows the Board to look at the operation of the mine in a way that does not impact the stream and springs. So, yes, Mr. Smith said there is precedence for the Board looking at other mining operations, and to say all have permits, probably not, but that issue will be addressed separately.

Chairman Herrmann asked about the comments made about the Sparks case and the flexibility of an administrative agency. Mr. Smith responded the evidence in the record and hearing examiner identified that there is a compounding impact with Sparks application and the mining application and every application that comes before the Board has a certain set of testimony and evidence that is presented. The recharge rate number could be different in the next case based upon what is taken, and the hearing examiner looks at that and the Board depends upon the evidence in the record at the time the permit is issued. Once the study is done, there will be a yield of the aquifer and everyone will have an amount of water. Mr. Smith said the Board could permit 1400 acre feet and monitor for impact and reduce later, or permit the recharge rate (274 a.f.) and monitor, and if there is no impact, come back and increase. He didn't believe that no one wanted the mining company to be there, but wanted the streams and springs protected, and the Board is trying to find that number, and the evidence in the record led the hearing examiner to this conclusion. Mr. Couch stated regarding the two cases, there were different circumstances, different facts and difference presentations, modeling techniques and differences of opinion.

Chairman Herrmann asked Mr. Couch to respond to the questions about "housekeeping" issues. Mr. Couch responded that in terms of the proposal before the Board, the specific requests that the condition be stated rather than incorporated by reference the National Park Service Exhibit No. 1., the monitoring plan focusing on the quantity. The order as written states the monitoring plan shall be attached to the permit. Chairman Herrmann and Mr. Couch reviewed other comments on issues, and determined there were no other actions necessary.

Chairman Herrmann asked Mr. Sevenoaks if he wished to make an amendment to the motion. Mr. Sevenoaks said there is a motion on the floor, and Mr. Keeley said there has been a lot of work on this order, and he suggested the Board accept it as is and give it a year and see what happens. He said he saw little difference in taking a small number and increasing it or a

larger number and decreasing it. Mr. Sevenoaks clarified then if there has been no impact in the year, then the Board would consider up the amount, and Mr. Keeley agreed and added there may be more information from the study that could guide the Board. Mr. Couch stated that is addressed in the order on page 5035, paragraph 7.

There being no further discussion, Chairman Herrmann asked for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Drummond

Chairman Herrmann asked about the rules that should be examined regarding the jurisdiction and involvement of the Board relative to pits. He directed Mr. Smith to work through the Ad Hoc Policy and Rules Committee of the Board and the aggregates industry to clarify and move forward.

Mr. Griffin asked about the final approved order and a signed copy, and Mr. Couch explained when the signed order would be available, but no amendments were made. Mr. Griffin then asked about whether the Board would consider staying that portion of the order regarding the use of water from the pit because of its impact to the industry and in order to do rulemaking on what the regulations will be. Mr. Smith responded he was not certain how it would impact other pits because he was not familiar with how they operate. He read the statute about coming into compliance and knowledge of waste by an employee, and he said as would be done with any use of water, the Board will work with the industry to file an application and go through the process, the use of a provisional temporary permit, or other options. Mr. Griffin was concerned about any immediate enforcement action by the Board, and encouraged work with the industry on developing the regulations.

Chairman Herrmann complimented all the participants.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce, OWRB Comptroller, addressed the members and presented the final budget report for FY'2006 through the end of June 2006. He said the agency has completed of the fiscal year, spent and obligated 87% of the actual budget, and has collected 95% of the budget. He said for FY'2007, the agency currently has a temporary budget in place allowing the agency to operate and make payroll and travel, and the target is to have the FY'2007 budget in place August first. The members asked about any carry over fund; Mr. Boyce responded the agency is allowed to carry over funds, although there is a limit of only one additional year for state appropriated dollars. There were no other questions or discussion.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

8. NEW BUSINESS

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

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

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:15 p.m. on Tuesday, July 11, 2006.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Jack W. Keeley

_____/Absent_____
F. Ford Drummond

_____/s/_____
Richard Sevenoaks

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Bill Secrest, Secretary

(SEAL)