

# OKLAHOMA WATER RESOURCES BOARD

## OFFICIAL MINUTES

May 12, 2009

### 1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Mark Nichols at 9:30 a.m., on May 12, 2009, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The May 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 May 5, 2009, at 5:15 p.m. at the Oklahoma Water Resources Board's offices.

### A. Invocation

Chairman Mark Nichols asked Mr. Ed Fite to provide the invocation.

### B. Roll Call

#### **Board Members Present**

Mark Nichols, Chairman  
Rudy Herrmann, Vice Chairman  
Linda Lambert, Secretary  
Ford Drummond  
Lonnie Farmer  
Ed Fite  
Jack Keeley  
Kenneth Knowles  
Richard Sevenoaks

#### **Board Members Absent**

None

#### **Staff Members Present**

Duane A. Smith, Executive Director  
Dean Couch, General Counsel  
Joe Freeman, Chief, Financial Assistance Division  
Monte Boyce, Comptroller  
Julie Cunningham, Chief, Planning and Management Division  
Derek Smithee, Chief, Water Quality Programs Division  
Mary Lane Schooley, Executive Secretary  
Kyle Arthur, Director of Planning  
Mike Melton, Executive Administration Division

**Others Present**

Josh McClintock, McClintock & Associates, Oklahoma City, OK  
Steve Hall, Town of Adair, OK  
Terry M. Saul, Sequoyah School, Claremore, OK  
Thomas & Sharon Snider, Clinton, OK  
Peter Seikel, Perkins, OK  
Mel Miller, Perkins, OK  
Tres Savage, eCapitol.net, Oklahoma City, OK  
Ron Gooch, Perkins/Pawnee/Harrah, OK  
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utilities Providers,  
Oklahoma City, OK  
Mike Wofford, Oklahoma City, OK  
Matt Brown, AECOM Water, Lakewood, CO  
Lee Lindeen, AECOM Water, Lakewood, CO  
Preston Wilson, AECOM Water, Lakewood, CO  
Earl Burson, Harrah, OK  
Charles Swinton, BancFirst, Oklahoma City, OK  
Church Shipley, Arbuckle Master Conservancy District, Tulsa, OK  
Bob Kellogg, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Nichols stated the draft minutes of the April 14, 2009, Regular Meeting had been distributed. He stated he would accept a motion to approve the minutes. Ms. Lambert moved to approve the minutes, and Mr. Herrmann seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, welcomed the members and noted the lake levels as reported on the website; he said the forecast for the next few weeks could create serious flooding activities, for example, Lake Texoma is ten feet above flood pool. He began his report with an update on legislative activities, and in particular regarding proposed language about the processing of out-of-state permits. He distributed the latest draft language and reviewed with the members the changes in the law, referring to the appropriate sections of statutes. He said he is working with a number of people; legislators, Tribes, Chamber of Commerce and others in trying to come to consensus on what the bill would say. He explained the strategy and also the feedback in support and opposition of the bill.

Mr. Smith described the provisions of the bill, also addressing questions by members: making the statute apply to all pending applications (whether the statute passes after an application is made), using language expressing a concept such as New Mexico to maintain adequate supplies for the state's water and meeting six elements before the permit can be approved (which has been upheld through federal district court), and a 7th element regards compacted water (through interstate water compacts) and addresses the commerce clause. Mr. Smith explained that compacted waters and non-compacted waters are two distinctively different legal arguments--compact waters is that water that is apportioned by a compact (all water in the Red River basin is compacted). Continuing, Mr. Smith noted provisions regarding out-of-state uses cannot impact state's ability to meet obligation under any interstate stream compact, or anyone claiming rights under federal law (Tribes), out-of-state permits will be reviewed every ten years in order to coincide with update of state water plan and changes can be made to the permit, and Oklahoma's present and future needs will be met first from water apportioned under an interstate compact (the legislature's statement that Oklahoma uses will be protected before any other out-of-state use).

Regarding amendatory language, Mr. Smith reviewed those changes that included items that Tarrant County has specifically listed in its petition in regard to how the State of Oklahoma is biasing against out-of-state users arbitrarily and that is unconstitutional under the commerce law. Amendatory language is that which has been stricken or underlined in the draft; remaining language is currently in the statute. Continuing, Mr. Smith noted stricken language that regards legislative approval over contracts--indicating there is an arbitrary legislative approval over contracts. He said opposition to the language is the removal of legislative oversight of the out-of-state permit, and that is the crux of the lawsuit, and is a conflict that will have to be resolved. Other amendatory language regards the Water Storage Commission and is clean up language, the addition of the word "residents" in dealing with the compact and vested rights to the detriment of Oklahoma citizens, and language that rural water districts cannot take water out of the state on an existing permit but would have to return through the new review; additional amendments regard consent of the legislature as earlier in the document. He said the Governor's office and southeast Oklahoma legislators are uncomfortable with the repealer language that takes the legislative oversight off the OWRB when dealing with out-of-state entities. He said that is a matter to be worked out.

Mr. Smith reiterated that this is a proposal and is in conference, there is no bill with this language but is a discussion piece. There will need to be a conference committee report and come out of committee as a piece of legislation, which will have to happen within the next two weeks. A current vehicle is authored by Senator Bingman and Representative DeWitt. Mr. Smith said he would be meeting with House Democratic Caucus today and the Senate Democratic Caucus Wednesday morning, and he has already met with the Republican caucus. Mr. Charles Dumars will arrive today and meet with the legislators and work will continue on this matter.

Mr. Sevenoaks congratulated Mr. Smith and staff in being proactive and taking the Board's position to the Legislature in handling the constitutional issue of the moratorium, putting a process in place to deal with all entities; he said the Board has done its duty in pushing forward what it believes should be done, and other members agreed. Mr. Smith commented about Mr. Dumars and his experience in water issues and interstate commerce issues, and a contract is on the meeting's agenda, but if the legislature doesn't provide the funding, there will be no contract,

and he believed there would be funding. Mr. Sevenoaks asked if there is any other legislation that is coming out that deals with the moratorium, and Mr. Smith said to his knowledge there is not. Mr. Keeley asked if the bill passed this afternoon, what procedures would need to be put in place and Mr. Smith said he believed the Tarrant County case would move forward, and the OWRB would have to have rules in place to implement the statutes, and there would be a lot of work to be done to pass an out-of-state permit. He said discussion of the document is to tell people what the Board believes is the best course of action, and if the Legislature chooses to follow it or not, the Board will live within whatever rules it prescribes. He reiterated the proposal has nothing to do with a water sale, and is not a step forward for a water sale to Texas; the Governor has been very clear we are not to do that, and we will not and won't be working on a sale. The proposal is what the Board believes is the best foot forward to protect Oklahomans in our use of water. He said staff would keep the Board apprised of any activity regarding the proposal as it becomes known. There were brief questions by the Board.

Mr. Smith said that the Red River Compact Commission met on April 28, and he attended. A very important rule determination the Commission will be making regards Lake Texoma. He explained that when Lake Texoma was built, the Federal Government approved uses of water out of Lake Texoma, "flood control and other uses." The Corps of Engineers then contracted the entire conservation pool except for a small portion to Southwest Power Administration, a federal agency, so the 1.4 million acre-feet of water in the conservation pool is under contract with the federal government and is used to make power. The compact apportions the water in Lake Texoma, 50% to Oklahoma, 50% to Texas. Now the COE is conducting a reallocation study, and Texas wants to use more water from Texoma for municipal use. The study says that 150,000 acre-feet of water for agriculture, irrigation, or municipal supply is for the State of Texas, and the same is for use in the State of Oklahoma, deducting 300,000 acre-feet from the hydropower contract. There is another provision of the compact that says any use of water by the United States -- Southwest Power is an entity of the US -- is credited to the state that derives the benefit. So, in the accounting of who uses the water, the consumptive use and permits and contracts with the COE is considered use of water by the United States. The COE has now evaluated that and says that all of the hydropower that is developed at Lake Texoma is 100% is used in Texas. The plain reading of the compact would be that the water that is used to derive the hydropower is credited to Texas -- 1.4 million a.f. -- and one half of that water is for Oklahoma. Staff is looking at what that means, whether there is a violation of the compact, and if so, what are Oklahoma's remedies. Inquiry has been made to the COE and once answered, will take appropriate action on behalf of the State of Oklahoma to make sure our part of Lake Texoma is protected.

Mr. Smith continued his report announcing the recognition by the Secretary of Interior, Secretary Salazar, of 26 awards for conservation partnerships across the United States. The study on the Arbuckle Simpson with the Bureau of Reclamation, the bill authored by Senator Paddock that created the recharge committee and the proposal for lands dedicated by the Harold Wingard family, the work with the Chickasaw Nation, the Oklahoma Climate Survey, the OWRB, and Kerr Lab received one of those awards. A ceremony and reception was held in Washington, D.C, and going forward, Mr. Smith said that Mr. Arthur is working with the group to put together a challenge grant that's a minimum of one million dollars that would be used to implement that recharge project in the Arbuckle Simpson. The challenge grant is for projects that

reward collaborative efforts to manage water resources and divert water crises. Matching funds/in-kind services are required by the state.

Mr. Smith reminded the members that May 14-15 will be the Water Science Seminar at the Springlake MetroTech in Oklahoma City. He described the program and complimented the technical team which will be making presentations. This seminar will move into the next phase of the summer workshops.

Mr. Smith said he would be attending the National Drinking Water Advisory Council in Seattle, Washington. Following, he would be speaking to the Bureau of Reclamation and Corps of Engineers meeting regarding the Oklahoma Comprehensive Water Plan. He added it is a good opportunity to tell our story; the federal agencies are beginning to pay attention, but it is difficult for them to get out of their usual way of doing business. He said through work with the Oklahoma Congressional Delegation, done with purpose and vision and mission, the OWRB is in a better place. He added with the state legislature, the REAP account water projects fund is how the OCWP is being funded, and the proposal this year is to extend the deadline another five years. Mr. Smith said he is very optimistic that will be successful.

Mr. Smith stated the agency budget is expected to be cut by 8.75%, or \$387,000 from state-appropriated dollars. Additionally, there is an anticipated \$150,000 decline in temporary provisional permit applications due to decline in oil and gas activity, \$75,000 for increase in rent costs, retirement benefits and insurance increases, potentially; the agency is looking at a reduced \$800,000. He says it gives the agency the opportunity to prioritize dollars and programs. He said the agency will do its best to keep the level of effort going and keep the work product high, and he would have a proposal to present to the Board in the future. Next year will be even more difficult.

Mr. Smith concluded his report with an update on the agency's stimulus package activities, saying the Financial Assistance Division is expecting 40 applications for ARRA dollars, and with that, there is more and more reporting requirements. There is 70%-30% target, but also want every community that is "shovel ready" to be able to receive some stimulus money. He explained there guidelines and a process in place but staff wants to make sure the money gets out the door. He said an RFP has gone out and the Board's Finance Committee will be meeting prior to the June meeting.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a proposed Order Approving Emergency Grant for Sequoyah Public School, Rogers County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$100,000.00 emergency grant request from the Sequoyah Public School, located in Rogers County. The school has outgrown its total retention lagoon system and has received a consent order from the Department of Environmental Quality for unauthorized discharges that could affect downstream water supply sources. In order to return to compliance, the school will be modifying its existing lagoon system and install a land application system. It is estimated the project costs are approximately \$204,160.00, and will be jointly funded with a \$40,000.00 Grand Gateway Economic Development REAP grant, \$64,160.00 in local school funds, and the requested OWRB grant. Staff recommended approval.

Mr. Terry Saul, School Superintendent, was present in support of the application.

Mr. Herrmann moved to approve the emergency grant to the Sequoyah Public School, and Ms. Lambert seconded.

AYE: Fite, Drummond, Knowles, Lambert, Sevenoaks, Keeley, Herrmann, Farmer, Nichols

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Funding Application for Adair Municipal Authority, Mayes County. Recommended for Approval. Mr. Freeman stated this \$1.4 million funding request by the Adair Municipal Authority will upgrade its wastewater treatment system with the installation of a decant structure, irrigation system, new lift station, two new lagoon cells, and a new aerator and discharge structure. Mr. Freeman said the project will be funded with Clean Water SRF loan funds, and ARRA funds will be made available in an amount not less than 20% of the project's cost, with a targeted goal of 30%. He said the loan will bear a fixed interest rate and .5 administrative fee; the ARRA funds will be in the form of principal forgiveness. Mr. Freeman noted other provisions of the loan agreement-- this first loan with the Adair MA which has a debt-coverage ratio of 1.8-times. Staff recommended approval of the funding application.

Mr. Steve Hall, Mayor; Ms. Kim Konsoon, Town Clerk; and financial advisors from Municipal Finance Services, Inc. were present in support of the application.

Mr. Fite moved to approve the application to the Adair Municipal Authority, and Mr. Drummond seconded.

AYE: Fite, Drummond, Knowles, Lambert, Sevenoaks, Keeley, Herrmann, Farmer, Nichols

NAY: None

ABSTAIN: None

ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving Funding Application for Perkins Public Works Authority, Payne County. Recommended for Approval. Mr. Freeman stated to the members that this item is a \$7.2 million funding request from the Perkins PWA, located in Payne County. He said the funding is requested to upgrade the wastewater treatment plant to a sequential batch-reactor treatment system, which will include new headworks, new sludge handling equipment, a new lab building, and ultraviolet disinfection system, a new sewer outfall line and a flow equalization basin. The project will be funded with Clean Water SRF loan funds, and ARRA funds in an amount not less than 20% of the project cost, with the target goal of 30% ARRA funding. Mr. Freeman noted provisions of the loan and funding agreement. The water and sewer connections have increased over 50% since 2000, and the debt-coverage ratio stands 1.7-times. Staff recommended approval.

Representing Perkins was Mayor Mel Miller, Peter Seikel, City Manager, and Paul Smith, Financial Advisor.

Mr. Drummond moved to approve the funding application for the Perkins Public Works Authority, and Ms. Lambert seconded.

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

Mr. Freeman requested that Chairman Nichols allow the Board to consider the Supplemental Agenda item concerning Harrah at this time, and Chairman Nichols agreed.

7.A. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for Harrah Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman stated that at the April Board meeting, the Board approved the \$1,630,000 funding request to the Harrah PWA for improvements related to its wastewater system. He said that subsequent to approval, Harrah received bids on the project, which came in higher than the estimates for the project. As a result, Harrah's request for an increase in funding to \$1,930,000.00. All other terms of the Board's order remain in place. The loan will be funded with a combination of Clean Water SRF funds and ARRA funds, and will mature within 20 years of completion of construction, and secured with water and sewer revenues as well as an increased sales tax. The debt coverage ratio is estimated at 2.25-times. Staff recommended approval.

Mr. Earl Burson, City Manager, and Mr. Rick Smith, Financial Advisor, were present in support of the request.

Ms. Lambert moved to approve the request for increase in funds, and Mr. Herrmann seconded.

Mr. Herrmann asked what drove the increase in costs; Mr. Freeman said the bids as well as the requirements of the Davis-Bacon acts that increased the amount by 5%.

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

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

Any item listed under this Summary Disposition Agenda may, at the requested of any member of the Board, the Board's staff, or any other person attending this meeting, may be transferred to the Special Consideration Agenda. Under the Special Consideration Agenda, separate discussion and vote or other action may be taken on any items already listed under that agenda or items transferred to that agenda from this Summary Disposition Agenda.

#### **A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items.**

There were no requests to transfer items from the Summary Disposition Agenda to the Special Consideration Agenda. Mr. Smith noted the contract with Mr. Charles Dumars, which

would only be in place if the legislature provides the funding. Ms. Cunningham asked that item 3.K.7., permit #1966-281 for Katherine Thiessen, 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.**

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Nichols asked for a motion.

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

AYE: Fite, Drummond, Knowles, Lambert, Sevenoaks, Keeley, Herrmann, Farmer, Nichols

NAY: None

ABSTAIN: None

ABSENT: None

**The following items were approved:**

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

<b>REAP</b>				<b>Amount</b>
<b><u>Item No.</u></b>	<b><u>Application No.</u></b>	<b><u>Entity Name</u></b>	<b><u>County</u></b>	<b><u>Recommended</u></b>
SODA				
1.	FAP-08-0016-R	Bokchito Public Utilities Authority	Bryan	\$99,999.00
SWODA				
2.	FAP-03-0005-R	Olustee Public Works Authority	Jackson	91,540.00

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

1. Agreement between Oklahoma Water Resources Board and Oklahoma City Water Utilities Trust for the Vegetated Wetland Project at Lake Stanley Draper.
2. Professional Services Contract between Record Solutions, Inc. and OWRB.
3. Interagency Agreement between OWRB and the Department of Environmental Quality for sharing office space at the OWRB's McAlester and Woodward offices.
4. Professional Services Engagement Letter with Crawford & Associates, P.C. to provide accounting services related to the Board's financial assistance programs.
5. Third Extended and Amended Agreement with American Municipal Tax-Exempt Compliance Corp. for arbitrage rebate calculation and consulting services.

6. Professional Services Engagement Letter with John M. Arledge & Associates, P.C. to provide auditing services related to the Board's financial assistance programs.
  7. Professional Services Engagement Letter with Coon Engineering, Inc. to provide engineering services related to the Board's financial assistance programs.
  8. Contract between OWRB and Oklahoma Ground Water Association to provide specialized training for licensed well drillers and pump installers.
  9. Renewal of Lease Agreement for OWRB Lawton office space.
  10. Renewal of Lease Agreement for OWRB Woodward office space.
  11. Cooperative Agreement between OWRB and The Bureau of Reclamation for the South Central Regional Assessment Special Study.
  12. Lease Agreement with Department of Central Services for renewal of OWRB Tulsa office.
  13. Resolution Authorizing Chairman to Sign Agreement and Contract with the Sheraton/Reed Center for Services Provided for the 2009 Governor's Water Conference and Water Research Symposium.
  14. Professional Services Contract with Charles T. Dumars.
- E. Applications for Temporary Permits to Use Groundwater:
1. D. H. Entz Living Trust, Caddo County, #2008-559
  2. Triple S Farms, L.C., Custer County, #2009-505
- F. Applications to Amend Temporary Permits to Use Groundwater:  
None
- G. Applications for Regular Permits to Use Groundwater:
1. Craig H. & Athena Hisaw, Garvin County, #2009-502
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Kyle & Linda Martin Farms, L.L.C., Texas County, #1976-525
  2. Glen K. Wallace Living Trust, Greer County, #2005-565
- I. Applications to Amend Prior Rights to Use Groundwater:  
None
- J. Applications for Term Permits to Use Stream Water:
1. St. Mary Land & Exploration Co., Atoka County, #2009-002

K. Forfeitures of Stream Water Rights:

1. Bill R. McVey, Grady County, #1966-427
2. Eldoris Gorst, Grady County, #1977-057
3. Judy Beth Collum-Young, Grady County, #1982-128
4. Claudus Smith/Les Moore, Grady County, #1985-029
5. Duffy Linton, Grady County, #1989-006
6. Stanford Estate/J.P. Reimer, Washita County, #1964-982
7. *Katherine Thiessen, Washita County, #1966-281 item withdrawn*
8. Roy or Cecil Bearden, Grady County, #1988-035

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- a. Licensee: Affordable Drilling DPC-0763
    1. Operator: Alvin Eugene Ratliff OP-1692  
Activities: Groundwater wells, test holes and observations wells  
Pump installation
  - b. Licensee: McCalip & Company, Inc. DPC-0767
    1. Operator: Michael McCalip OP-1696  
Activities: Monitoring wells and geotechnical borings
    2. Operator: Damon Hipp OP-1695  
Monitoring wells and geotechnical borings
  - c. Licensee: Cook's Water Systems, Inc. DPC-0769
    1. Operator: Jeff Cook OP-1697  
Activities: Pump installation
2. New Operators for Existing Licenses:
- a. Licensee: Able Environmental Drilling DPC-0746
    1. Operator: Eric T. Haley OP-1698  
Activities: Groundwater wells, test holes and observation wells  
Monitoring wells and geotechnical borings.

M. Dam and Reservoir Construction:

None

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

1. Oklahoma Department of Transportation, Cleveland County, #FP-09-08
2. Oklahoma Department of Transportation, Delaware County, FP-09-09

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the May 12, 2009 packet of Board materials

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

- A. Update Report on Oklahoma Comprehensive Water Plan Activities. Mr. Kyle Arthur was not in attendance, and there was no report.

#### 5. SPECIAL CONSIDERATION

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

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

A. In the Matter of Stream Water Right No. 1968-434 of Maurice Garst, Stream System 1-8-3, Washita County, Oklahoma.

1. Summary - Ms. Julie Cunningham, Chief, Planning & Management Division, stated to the members that this item is a proposed reduction in a stream water right in the name of Maurice Garst, in the Boggy Creek-Washita River subbasin 1-8-3. She said a hearing was held and evidence presented about water use since 1983, supporting that the permit should be reduced by one-half due to nonuse. Therefore, staff recommended approval, based upon the findings of fact and conclusions of law, that the water right be reduced to 11-acre-feet per year for irrigation. She added the reduction of the water right due to nonuse is no bar to filing an application for additional water rights

2. Discussion and presentation by parties. There were no parties, or representatives of the parties, in attendance. Mr. Fite asked if the permit holder was in agreement with the proposed order, and Ms. Cunningham answered they are in agreement.

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 a may be amended, or vote on any other action or decision relating to the proposed order.

Mr. Fite moved to approve the reduction of water right no. 1968-434, and Ms. Lambert seconded.

AYE: Fite, Drummond, Knowles, Lambert, Sevenoaks, Keeley, Herrmann, Farmer, Nichols

NAY: None

ABSTAIN: None  
ABSENT: None

B. In the Matter of Stream Water Right No. 1983-003 of Sharon Snider, Stream System 1-8-3, Washita County, Oklahoma.

1. Summary - Ms. Cunningham explained this action regards stream water right 1983-003 in the name of Sharon Snider, located in the Boggy Creek-Washita River subbasin. She said the claimant is in attendance today; a show-cause hearing was conducted on March 20, and the claimant provided evidence that only a few acre-feet of water had been used throughout the term of the permit, and claimed water use amounted to domestic use, which does not require a permit. Based on testimony that water has not been used based on the seven-year period, the hearing examiner found the water right had been lost due through operation of law. A loss of water right due to nonuse is no bar to filing an application for additional water rights. Staff recommended approval of the findings of fact and conclusions of law supporting administrative cancellation of water right 1983-003.

2. Discussion and presentation by parties. Mr. Snider approached the members and explained that when he had applied for the water right, it was intended for industrial use and he asked to keep the right in order to sell water to oil wells. Mr. Drummond confirmed that there would not be an effect on the Snider's domestic use, and they could reapply for additional water. Ms. Cunningham stated that is correct, and Mr. Smith explained Mr. Snider could go through the long-term permit application and still be subject to the 7-year use or lose clause, or come in on a provisional-temporary permit that is good for 90 days, which is typically used for oil and gas drilling. Mr. Snider answered that oil companies don't usually want to wait for a permit, and some wells have been in existence for six months or longer. Mr. Nichols asked about the use reported in 2003, which would fall within the past seven years; however, Ms. Cunningham, answered there was no use within the seven years prior, so the right was already lost due to nonuse. Chairman Nichols asked about a waiver, and staff indicated there is no provision, as well as that would be precedent setting. Mr. Smith told Mr. Snider if he had an issue with an oil and gas company, to contact Ms. Cunningham, and staff would work to assist him in obtaining the permit. Mr. Snider asked if he made an application for industrial use, would that be subject to the 7-year use, and Mr. Smith answered that it would.

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 a may be amended, or vote on any other action or decision relating to the proposed order

Ms. Lambert moved to approve the administrative cancellation of water right 1983-003, and Mr. Herrmann seconded.

AYE: Fite, Drummond, Knowles, Lambert, Sevenoaks, Keeley, Herrmann,  
Farmer, Nichols

NAY: None

ABSTAIN: None

ABSENT: None

C. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for further consideration.

## **6. PRESENTATION OF AGENCY BUDGET REPORT.**

Mr. Monte Boyce, OWRB Comptroller, addressed the members and stated that the agency has three line-item appropriations, one is for operations, and an 8.5% cut equals \$376,000, and adding in the other budget impacts (rent, insurance, etc.) the possible impact is \$750,000. The other two line item appropriations is the REAP grant with an impact of \$192,500, and ORWA cut of \$26,300. Mr. Sevenoaks commented about the raise in rent; Mr. Boyce answered that is a new negotiation, and there has not been an increase per square foot since 1996. Mr. Smith said the agency solicited proposals, and raising the rent here is the best option.

Mr. Boyce concluded his report stating the agency had completed 83% of the budget, expended and obligated 89%, and collected 82% by the end of April. He said the Divisions are currently working on the FY2010 budget. Chairman Nichols asked what kind of impact gas prices have had on the budget. Mr. Boyce answered for the 2009 fiscal year he budgeted \$3-\$4 per gallon, and there will be some savings; however, that savings is being used up in maintenance costs. He anticipated planning \$2.50 per gallon for the 2010 fiscal year.

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

Chairman Nichols stated item 7.A., Harrah Public Works Authority, had been previously considered.

### **B. Contracts and Agreement Recommended for Approval.**

Ms. Julie Cunningham stated items B.1., and B.2., are contracts with Sparks Write for Terri Sparks, former OWRB employee who retired and now does work on the Comprehensive Water Plan, and item 2. is a contract with Ken Morris, former OWRB employee and Floodplain Insurance Program Coordinator, who has retired and is helping with that program. Mr. Monte Boyce said item B.3. is an amendment to the current agreement with OSU on the Water Conference and allows them to reimburse us for costs associated with the conference. Mr. Derek Smithee said the item 7.4. is a subcontract with the Corps of Engineers to conduct a study on Fort Gibson Reservoir; the Grand River Dam Authority has modified its contract with the OWRB, and this is a modification to the subcontract. Staff recommended approval.

1. Consideration of Professional Services Contract with Sparks Write, Inc.
2. Consideration of Professional Services Contract with WK Morris Consulting, LLC.
3. Consideration of Amendment of Intergovernmental Agreement with Oklahoma State University for sharing costs of Governor's Water Conference and Water Research Symposium.
4. Supplemental Agreement No. 1, Grand Basin Dependable Yield Analysis between OWRB and the Department of the US Army Corps of Engineers (Tulsa District).

Mr. Fite moved to approve the four items, 7.B. 1.-4., and Mr. Herrmann seconded.

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

**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. Chairman Nichols reminded the Finance Committee members they will meet on Monday, June 8, 2009 at 1:00 p.m.

**9. ADJOURNMENT**

There being no further business, Chairman Nichols adjourned the meeting of the Oklahoma Water Resources Board at 11:10 a.m. on Tuesday, May 12, 2009.

**OKLAHOMA WATER RESOURCES BOARD**

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

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

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

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

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
F. Ford Drummond

\_\_\_\_\_/s/\_\_\_\_\_  
Vacant

***ATTEST:***

\_\_\_\_\_/s/\_\_\_\_\_  
Linda P. Lambert, Secretary  
(SEAL)