

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

December 8, 2009

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudolf J. Herrmann at 9:30 a.m., on December 8, 2009, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The December 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 December 1, 2009, at 4:45 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Rudy Herrmann asked Mr. Fite to give the invocation.

B. Roll Call

Board Members Present

Rudy Herrmann, Chairman

Linda Lambert, Secretary

Ed Fite

Jack Keeley

Kenneth Knowles

Richard Sevenoaks

Joe Taron (Dr. Taron was not present at the roll call; however, he joined the meeting at 9:35 a.m.)

Board Members Absent

Mark Nichols, Vice Chairman

Ford Drummond

Staff Members Present

Duane A. Smith, Executive Director

David Dillon, Assistant Director

Dean Couch, General Counsel

Joe Freeman, Chief, Financial Assistance Division

Julie Cunningham, Chief, Planning and Management Division

Derek Smithee, Chief, Water Quality Programs Division

Mary Lane Schooley, Executive Secretary

Mike Melton, Executive Administration Division
Kyle Arthur, Director of Planning

Others Present

Allan Brook, Public Finance Law Group, Oklahoma City, OK
Matt White, City of El Reno, OK
Roger Rinehart, City of El Reno, OK
Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK
Mike Mathis, Chesapeake Energy, Oklahoma City, OK
Ken Senour, C H Guernsey & Co., Oklahoma City, OK
Tony Rivera, City of El Reno, OK
Mike Wofford, Doerner Saunders Daniel Anderson, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Chris Gander, BOSCO, Oklahoma City, OK
Mike Crews, City of Sulphur, OK
Barbara Bailey, Bank of Oklahoma, Oklahoma City, OK
Bill Strecker, Bank of Oklahoma, Oklahoma City, OK
Bob Kellogg, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Steve Tolar, HUB Engineers, Broken Arrow, OK
Stanley Day, Tahlequah Public Works Authority, Tahlequah, OK
Patty Thompson, Drinking Water State Revolving Fund Program, Department of
Environmental Quality, Oklahoma City, OK
Rebecca Poole, DWSRF, Department of Environmental Quality, Oklahoma City, OK
Vicki Reed, DWSRF, Department of Environmental Quality, Oklahoma City, OK
Don Kiser, Oklahoma City, OK
Derek Engminger, Oklahoma City, OK
Bodie Bachelor, Centennial Law, Duncan, OK
Whitney Weingartner, Office of the Attorney General, Oklahoma City, OK
LV Watkins, Muskogee, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the November 10, 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. Keeley seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, greeted the members and said that he had received notification the rating agencies had once again rated the OWRB Financial Assistance Program AAA, which provides the best rates for the borrowers--those communities here today--and he looked forward to the program continuing at the lowest rates possible. To Mr. Freeman and his staff in particular, Mr. Smith said it has been a lot of work getting all of the details ready and presenting to the rating agencies, along with the team of professionals that has been put together, all have done an outstanding job, and that is an indication that everything really looks positive in that area. He said the agency is anticipating more stimulus money or appropriations for water projects, totaling perhaps \$20 billion nationwide--Oklahoma's share will be approximately 3-times what was received this year. Mr. Smith notified the cities and associated organizations to get the communities ready to go, start now working on projects, especially if there is an order from DEQ.

Mr. Smith said the agency had attended a Performance Review/Budget Committee with the Senate and the House meeting is soon. He said the Committees are not interested in the budget request, but how the agency will take a 5%, 10%, 15% and 20% cut. The agency strategy is that certainly those cuts hurt, but we will do everything possible to bring in federal dollars and fee money that can be used as efficiently as possible; also, reducing travel, employee vacancies, and then eventually cutting programs and services, if necessary. Other areas that will be impacted will be delays in processing, less technical evaluation, data programs will suffer all because there may not be people or dollars to support those--that's the downside. The positive side to government going through this type of budget cycling is that during the downtimes we prioritize the most important programs at the OWRB, and make sure those programs survive, and when the dollars return, we are then focused in a fresh direction--that's the message to the Legislature.

However, Mr. Smith emphasized the Financial Assistance Program will not receive cuts as it does not receive state appropriations; it is all fee-based supported, and is one reason the OWRB receives a triple A rating, because of the track record the Board has in maintaining the loan and grant portfolio, ensuring the engineering and environmental is done, audits are performed, and all the matters that are tracked over the period of a loan. To send a message the budget cuts will hurt the maintenance of the program will hurt the agency's ability to maintain the AAA rating. Mr. Smith complimented the Division Chiefs for their efforts to examine ways to maintain the high level programs with less money.

Mr. Smith updated the members on the meetings he recently attended including the National Drinking Water Advisory Council, the Climate Ready Utilities Workgroup, the Oklahoma Academy for State Goals as regards the Oklahoma Comprehensive Water Plan, and the upcoming meeting of the Water Research Institute Executive Committee.

Mr. Smith concluded his report announcing the retirement activities of Mr. Dave Dillon on December 21-22.

2. FINANCIAL ASSISTANCE DIVISION

Prior to Mr. Freeman's presentation, Chairman Herrmann stated the Supplemental Agenda Items included actions for the Financial Assistance Division, which would be considered under this section of the meeting. Additionally, a New Business item concerning an item on the agenda would also be considered.

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for El Reno Municipal Authority, Canadian County. Recommended for Approval. Mr. Freeman stated this item is a \$3,112,327.42 Drinking Water State Revolving (DWSRF) loan request from the El Reno Municipal Authority. El Reno is requesting the funding to lay approximately 31,000 feet of new PVC pipe, and structural improvements of the clearwell located at the water treatment plant. Mr. Freeman said the loan would be funded through the DWSRF program, and any additional ARRA funds as they become available. He noted provisions of the loan agreement; the debt coverage ratio stands at approximately 2.3-times. Staff recommended approval of the loan request.

Mayor Matt White, City Manager Tony Rivera, City Attorney Roger Rinehart, and financial advisors were present in support of the loan application.

Ms. Lambert moved to approve the DWSRF loan request to the El Reno Municipal Authority, and Dr. Taron seconded.

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

Mr. Sevenoaks asked if the funding included ARRA funds; Mr. Freeman said that at this time all the ARRA money has been committed, but the Board order is written so that should any of the funds become available, that will be made available to the Municipal Authority. No further approval is required by the Board. Mr. Smith added that regarding the ARRA funding, if states don't meet the requirement and can't spend some of the money, it may come back to the "pot" and redistributed. Board staff has tried to prepare the communities to receive ARRA funds if it becomes available. At this time, all of the Oklahoma money has been committed, but unforeseen circumstances can happen.

Chairman Herrmann noted that this structure has been in place in every ARRA funded project the Board has approved since May, and now provides flexibility. Mr. Freeman explained how the process would work as the Board closes loans by the end of the month.

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Sulphur Municipal Authority, Murray County. Recommended for Approval. Mr. Freeman said that on Monday, December 7, he was informed about some additional information after bids were received by Sulphur, and was advised that changes less than 24-hours before the Board meeting would need to be considered as "New Business." This matter was already on the agenda, but the amount of the loan will change, and that would be considered under New Business as it was not known before 24 hours before the meeting.

Mr. Freeman said originally this item was a \$7 million loan to the Sulphur Municipal Authority. As a result of bids being received and coming in higher, the loan amount has increased to a \$10.2 million dollar loan request. Funding is being requested for a collection system overflow and high inflow into the wastewater treatment facility. The project will be funded through Clean Water SRF loan funds and ARRA funds. Mr. Freeman note provisions of the loan agreement. He said that as a result of the increased size of the loan in discussions with city officials on Monday, in order to qualify for the loan, staff has requested the addition of a 1/4-cent sales tax from the community. The water, sewer and sanitation revenues are already

obligated. The loan will mature within 20 years of the completion of construction, and with the revenues pledged from sales tax, the debt coverage ratio stands at approximately 1.33-times. Staff recommended approval of the funding request.

Mayor Karen Duck, Vice Mayor Mike Crews, City Manager Bill Holley, Engineer Bill Myers and Don Kiser, bond counsel, were present in support of the CWSRF loan request.

Mr. Sevenoaks said he agreed wholeheartedly with the loan to Sulphur, he did have difficulty approving a roughly 40% increase on a change order; he suggested approving the \$7 million now and come back for the additional amount next month. Chairman Herrmann and the other members agreed it was late notice for a large amount of money. Ms. Lambert was concerned it may set precedence. Mr. Freeman stated his agreement, and would've normally removed the item from the agenda for approval the next month. However, he said he spent time with the city in a rush to protect their receipt of ARRA funds; staff was trying to help the community with the \$2 million ARRA funds or they can't afford the project.

Chairman Herrmann said had the information been known 24 hours later, it would've had to wait until the January meeting—does that jeopardize the city's ability to access ARRA funding? Mr. Freeman said the deadline for getting all of the loans closed is December 31, because after that time, staff will review all the closed loans, if contracts are out, and allows four weeks to get the money allocated. Mr. Sevenoaks was concerned about proper notice and asked if the Board could give the Chairman authority. Mr. Dean Couch, General Counsel, interjected had the information come in before 9:30 on Monday, the posting requirement is 24 hours, which was done, and he discussed with Mr. Sevenoaks the posting requirements but the members would not be aware of the change in dollar amount; he said the New Business item is on the agenda just for these matters. Emergency meetings have a separate set of requirements.

Ms. Lambert said there are two issues: one procedural, and one substantive. She agreed with the substance of the proposal, and her understanding is that the Board is considering the matter so that the City of Sulphur can still be eligible for the ARRA funds. She said she would be comfortable with the motion, with the caveat that the reason, if the Board does do it, is to meet the ARRA deadline for the benefit of Sulphur, but not to put the Board in a position to have a bid come in “over the top” and still post the 24 hour notice; this is a unique situation. Chairman Herrmann said it is his sixth year on the Board, and this is the only time a matter as missed the “9:30” trip wire, and were it not for the ARRA timetable, would be considered in another 30 days. Ms. Lambert said that if the Board is to do it, the reason should be included in the official minutes.

Chairman Herrmann asked why the bids came in 40% high, and if the city were to re-bid, what would be the possibilities? He said he was concerned about a scramble for money and possibly tripping over a \$1 million savings opportunity.

Mr. Bill Myers, engineer for Sulphur, stated that since July of 2008 there has been a trend where construction costs were coming in below the budget, projects were approved for a certain amount and four or five projects presented to the Board were below the budget. He said in this particular, complex project, original estimates were put together, looking at the December 31 deadline, and advertised the project for 32 days and five bids were received. He said he hoped the trend was not going upward, and he might be able to do some “value engineering” but the project was developed to take the city beyond the 20-year life of the loan; the last project was done in 1988.

Mr. Keeley stated he agreed with Mr. Sevenoaks, and he asked the bottom-line consequence, and Mr. Freeman said the City would have to come back and borrow the \$2.2 million dollars, and they may not be able to afford a \$10 million loan if they were to have to repay the \$2.2 million. Chairman Herrmann said they would not be able to meet the debt coverage without the ARRA money.

Mr. Sevenoaks suggested approving the \$7 million, and in January amending the motion to include the additional amount. Mr. Freeman discussed the scenario, that the 10% would be \$1.4 million in ARRA for a \$7 million loan, but that all the funding had to be in place to award the contract according to state law, and contracts could not be executed and the loan closed by the December 31 deadline. Mr. Couch mentioned a Special Meeting of the Board may be possible in order to meet the deadline, but would put a burden on the nine members to have a special meeting just for the one loan.

Ms. Lambert said the purpose of the Board is to help the communities and this is a unique and hopefully one-time situation, and while we always want to follow procedure to the extent possible, there are sometimes extenuating circumstances that a particular community might not be able to benefit from if an exception isn't made. She felt the City of Sulphur, in good faith, had done the best it could and there seemed to be good reason; there is the complication of coming up against the 11th-hour timeline.

Ms. Lambert moved to approve the loan as amended for \$10.2 million. She asked the official minutes reflect that the Board's consideration of the loan at this time is because of the ARRA deadline so that Sulphur could receive the amount of ARRA funds needed in order to get the project funded.

Mr. Couch interjected it is out of an over-abundance of caution, as the regular agenda item, 2.B., is posted and there is no procedural or Open Meeting Law problem whatsoever. The request was made that if it is revised would it be able to be addressed by the Board, and he felt it could be noted for the record as part of a New Business item because it wasn't known about 24 hours before, and note as part of the revision, a New Business item consideration, that probably could have been simply a revision to that which is posted which does not have a dollar figure in it, that is in the Board packet as a draft order for discussion, and the over-abundance of caution is that the revision be a New Business item since the revised order was not posted.

Chairman Herrmann stated the motion is to approve the amended order, with the clear understanding this is unique to meet the ARRA fund deadline. Mr. Keeley seconded the motion.

Chairman Herrmann stated the Board is meeting all of the public due process requirements; it is an increase of \$3 million, without advance notice to Board members.

Mr. Fite asked Mr. Freeman if he was comfortable with the proposal. Mr. Freeman answered that he is especially from a debt-coverage point of view and the addition of the sale tax revenue, without that it would not have been brought it to the Board. He said his concern was that he expressed to the Board members in that there have been three years worth of projects approved in one year, and with projects being out and only so many construction companies, that there would be an increase in construction costs.

Mr. Fite asked if there were possible ramifications from other communities that would say the Board made an exception; why wasn't it given to them? Mr. Freeman said this is the last meeting to consider ARRA funding, and he hoped not. Chairman Herrmann added that if it were any other city with the same fact situation that came to the Board, there would be the same discussion.

Mr. Sevenoaks said the new order before the Board includes the sales tax caveat and that is what the vote is on. He asked the debt coverage, and Mr. Freeman answered 1.33-times.

There being no other questions, Chairman Herrmann stated there is a motion and a second, and he called for the vote.

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

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Tahlequah Public Works Authority, Cherokee County. Recommended for Approval. Mr. Freeman stated to the members that this item is a \$16,320,000.00 funding request from the Tahlequah Public Works Authority. Tahlequah is requesting the funding to construct a 1.5 MGD water treatment plant, a raw water intake structure at Tenkiller Lake, and 18-inch raw water line to the new treatment plant, and 10.5 miles of 20-inch treated water line from the plant to the town, and a clearwell and high service pump station. The project will be funded with DWSRF loan funds and ARRA funds should they become available. Mr. Freeman noted provisions of the loan agreement; Tahlequah's water and sewer connections have increased over 20% since 2000 and its debt coverage ratio stands at approximately 2.89-times. Staff recommended approval.

Mr. Stanley Day, General Manager; Mr. Steve Tolar, consulting engineer; and Mr. Rick Smith, financial advisor, were present in support of the loan request. Mr. Day informed the Board a general election by the general populace was required and held in August for the loan issue, and was passed by a margin of 75% of the population.

Mr. Sevenoaks asked about a lake authority that had attempted a regionalization system; and he asked if this is part of that concept. Mr. Day answered he is a member of the Tenkiller Utility Authority, it is not part of this project, and he wasn't sure that project would come to fruition due to the lack of systems and lack of water storage rights and lack of water rights as a whole. Mr. Sevenoaks asked about the size of the treatment plant and the water line.

Mr. Fite moved to approve the DWSRF loan to the Tahlequah Public Works Authority, and Dr. Taron seconded.

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

Chairman Herrmann asked the Board to consider the Supplemental Agenda items at this time.

Mr. Duane Smith commented to the members about the small and medium sized communities and he complemented the communities such as El Reno and Sulphur, for working on a long-term plan, and the Tenkiller Authority for looking at a regional plan. Mr. Stanley Day responded.

7. Consideration of Supplemental Agenda Items, if any.

A. Consideration of Approval of the Following Financial Assistance Division Proposed Order, Recommended for Approval:

Increase in Obligation of Funds

1. ORF-07-0014, Frederick Public Works Authority, Tillman County, \$4,500,000.00. Mr. Freeman explained this request by the Frederick Public Works Authority is for a \$400,000.00 increase in funds as a result of bids coming in higher than the engineer's estimate. The request will increase the funding to \$4.5 million. The project is to construct a one million gallon clearwell, a chemical feed building, water line, renovate two clarifiers and replace rapid mix spreader. In addition, the proceeds will be to modify filter effluent pipe and service pump station, installing an altitude valve in the water storage tank, and installing a chlorine and chemical feed system. He reviewed provisions of the loan agreement, and stated that even with the increase in the cost of the project, Frederick debt coverage stands at approximately 2.1-times. Staff recommended approval.

Mr. Rick Smith, Financial Advisor, was present in support of the loan fund increase. He said the increase is under 10%, and due to the isolated area.

Mr. Fite moved to approve the increase in obligation of funds to the Frederick PWA, and Ms. Lambert seconded.

AYE: Fite, Lambert, Keeley, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Nichols, Drummond

2. FAP-07-0054-R, Town of Hydro, Caddo County, Change of Scope Only. Mr. Freeman stated this item regards an REAP grant that normally appears on the Summary Disposition Agenda. He said staff has been working with the Town, and the original project was a lagoon project, but was not able to get DEQ approval and therefore redesigned the project and now have an additional project which was not approved by DEQ. He said in order to save the grant money staff recommended that the scope be changed to a project that is approvable by DEQ. He said the engineer is working on the project; the first project was in a floodplain.

Mr. Sevenoaks asked if the Board is approving something that the staff doesn't know what it is? Mr. Freeman said he didn't know what it is; they are trying to get a project design under \$100,000.00. He said there will be a project approved because there is no option when there is a consent order. There is a one-year deadline on the obligation of funds, which is December 10. Mr. Freeman said the project that is being proposed is a land application system, the city has purchased the land and is awaiting approval by DEQ, it isn't in writing yet, and a land application system was not included in the original Board order.

Chairman Herrmann stated the Board approved the grant for a previous plan but was not approved by the DEQ, so this is to approve a related project with the same objective with the presumption it will meet DEQ approval. Mr. Freeman said the situation is that while they don't have DEQ's approval, if the Board doesn't approve a change of scope today the money will be lost tomorrow. They would have to go back through the application process; each year applications come in for REAP and they may fall out and might not get the money.

The members discussed making exceptions, and the previous agenda item that was approved; the first an SRF loan with ARRA funding and this one a REAP project. Chairman Herrmann asked if the Board is properly fulfilling its responsibilities under the REAP program by approving something based on an assumption DEQ is going to do something that the Board has no control over. Mr. Freeman answered if DEQ doesn't approve the project the money would be lost because the one-year time frame would have passed. Chairman Herrmann said then it would be subject to DEQ approval. Mr. Couch added a REAP grant has various conditions and this will have that condition about projects being approved, and it is being made before the REAP grant time frame lapses. Ms. Lambert asked if it is not approved then they have to start the process over again, and may or may not get the money; Mr. Freeman said that is correct. Ms. Lambert commented about whether there had been communication among the entity and the agencies, and Mr. Freeman said the first project was a lagoon that was located in a floodplain and so the project has now changed to land application.

Chairman Herrmann stated he would entertain a motion if there were no further questions. Mr. Keeley moved to approve the change in scope only for the Town of Hydro, and Mr. Knowles seconded.

Chairman Herrmann commented that this information came up later, and he believed Mr. Freeman was somewhat uncomfortable being in this position, but it is an issue of what is in the best interest of the community and the Board is fulfilling its fiduciary responsibility. Ms. Lambert said there are two different issues. Mr. Keeley said there will be more changes as more money is made available. Mr. Smith said that is correct, and he was surprised there haven't been more like items because of the rapid fire of this happening. He said to wait for DEQ approval, or condition upon DEQ approval, really at the bottom line doesn't make any difference. Mr. Freeman is comfortable recommending approval based on DEQ approval. Mr. Sevenoaks asked if the Board had approved a REAP grant for a project that wasn't approved by DEQ? Mr. Freeman said yes, when the Board approves a REAP grant, there is not a permit for construction, but have what the engineers are proposing. Chairman Herrmann noted the language in the order that stated the entity must comply with all rules and regulations of the OWRB grant and the DEQ. He asked if there were other questions.

Ms. Lambert expressed her concern about how the Board approves it to meet the fiduciary responsibility and to be proactive so that it doesn't happen again. Mr. Couch responded that when the Board began the REAP program, separate from the Emergency Grant program, there was an issue about how long to allow applications and the funding to remain outstanding. That loop hole closed and there are more stringent requirements, but as far as approving funding for what actual project is approved or requirement elsewhere, that is not unusual but probably more typical than having a project that is known the DEQ has signed off on and permit in hand, that is rare. In this matter, the following through to know the location of the project in a floodplain might be unusual, so the timing of this previous approval of this funding is to go to some project for Hydro, but he did not believe it is not a problem to approve grant funding before there is a final approval of the project. He said the fiduciary responsibility is to know that the funding is going to a public project that is approved. Ms. Lambert asked if this could come under an Emergency Grant and Mr. Couch that is a separate fund and he didn't think this was of an emergency nature. Mr. Sevenoaks asked why the Board can't just rely on the old approval if it was approved in 2008, and Chairman Herrmann explained it was because of the late change in scope or otherwise would have gone through the regular administrative process. Mr. Couch said

the order could be written with more flexibility and would not have to come back to the Board, but the order did have a specific project described, and felt the Board should approve the change.

There were no other questions, and Chairman Herrmann called for the vote.

AYE: Fite, Lambert, Keeley, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Nichols, Drummond

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 to the Special Consideration Agenda. However, Ms. Julie Cunningham, Chief of the Planning and Management Division, stated that item 3.K.7. is listed under the forfeiture of stream water rights. She wanted to bring to the Board's attention this item regarding Alfred Fobes, #1964-938, was actually cancelled in April and the hearing examiner later determined the staff had received a letter and there is a proposed order in the packet today to vacate the order canceling and remand back to staff. Mr. Couch explained the forfeiture had been done and this action is to cancel that forfeiture and address the issue in the letter.

Mr. Fite asked about item 3.D.2. regarding the lease for the Oklahoma City offices. He asked about getting the parking spaces expanded and signage for the agency. Mr. Smithee answered he is working on those issues with the building owners. Mr. Couch added that the agency lease is approved by the Department of Central Services with the notation about parking issues and the sign.

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 Herrmann asked for a motion to approve the Summary Disposition Agenda, as clarified.

Dr. Taron moved to approve the Summary Disposition Agenda, and Ms. Lambert seconded.

AYE: Fite, Lambert, Keeley, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Nichols, Drummond

The following items were approved:

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

REAP			Amount
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>Recommended</u>
None			

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

1. Memorandum Agreement between Oklahoma Department of Wildlife Conservation, USGS and OWRB for water monitoring and data collection.
2. Renewal of Lease Agreement with Oklahoma Property Investors II, LLC for OWRB's Oklahoma City office.
3. Cooperative Agreement with the Oklahoma Department of Wildlife Conservation for the Water Plan publication project entitled "Oklahoma Boating Access Water Atlas".
4. Adjunct Teaching Services Contract with University of Tulsa College of Law for Water Law course
5. Amendment Agreement with the Office of the Secretary of the Environment.
6. Amendment Agreement with Land & Resources Planning Associates (Chuck Dumars).
7. Contract Amendment No. 1 with the Oklahoma Rural Water Association.

- E. Applications for Temporary Permits to Use Groundwater:

1. Stephens County Rural Water District No. 4, Stephens County, #2009-554
2. Jack G. & Kimberly D. Duerksen, Washita County, #2009-557

- F. Applications to Amend Temporary Permits to Use Groundwater:

None

- G. Applications for Regular Permits to Use Groundwater:

1. Fischer Family Farms, F.L.P., Texas County, #2009-543

- H. Applications to Amend Regular Permits to Use Groundwater:

1. Max & Lois J. Mendenhall Family Revocable Trust, Texas County, #1992-587
2. Max & Lois J. Mendenhall Family Revocable Trust, Texas County, #1993-595

- O. Applications for Accreditation of Floodplain Administrators:
None

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

A. Update Report Oklahoma Comprehensive Water Plan Activities. Mr. Kyle Arthur stated to the members that he wanted to take this opportunity to provide an update on the technical work that's going on with the Water Plan. He said that those that attended the Governor's Water Conference saw a larger, extended version of this report, and he has condensed it down for today's presentation. He said that now products are getting out and results are coming in, its very exciting and interesting work is being done. Mr. Arthur said he will present the update on the technical work plan, and Mr. John Rehring, CDM, will present progress update on the Programmatic Work Plan, that document the team has been using to plot the development of the Water Plan.

Mr. Arthur, using a PowerPoint presentation, informed the members the expert technical evaluation has played a great role in the work progress he will present, primarily because many partnerships have been formed, both private sector and state and federal government, and have been very beneficial. He reviewed the goals of the OCWP, the major elements of the plan, and the timeline, moving into analysis in 2010 of water allocation modeling, supply and demand, and regional needs. He said it is important to relate back to the Programmatic Work Plan which is all-encompassing--staff wanted a broad, comprehensive document that covers everything that could be thought of that could come under the water plan, and as money became available -- both state and matching federal dollars -- to go out and contract with the Corps of Engineers. Evolution of the document was to identify tasks as we understood priorities by year so that at the end of the day, we would have a comprehensive, technical evaluation. The past year and a half, staffs has focused on supply and demand and identification of gap and now are working on exploring solutions and developing plans for the watershed and provider level to meet those long-term provider level gaps. In order to accomplish this, staff looked at dividing the state into the 35 established basins, and even further subdivided into 82 basins or subbasins.

Mr. Duane Smith commented about technical workplan developed with the Corps of Engineers, and the expeditious process of moving the technical work plan forward.

Mr. John Rehring, CDM, addressed the members and continued the presentation as regards the progress of the Programmatic Work Plan; work that has occurred up to this time (through 2009), work that's ongoing through 2010, and also what is planned for 2011 for the water plan recommendations and findings. The work to date includes development of seven categories for demand projections, assessment of instream flows, looking forward there will be estimations of demand at the provider level, continuing work on instream flows and assessment of conservation, primarily in the municipal and industrial sectors. And, beyond 2011, he said refinement of the plan will be ongoing because as we learn more and get closer to the future, the clearer the vision becomes.

Mr. Rehring looked at how staff has addressed the total demands from 2010 to 2060: public water supply and municipal/industrial, crop irrigation, climate demand model, instream flows and environmental flows. He also addressed the Programmatic Work Plan tasks that had

been identified; what has been accomplished, what is ongoing, and what is planned for the future: Supply and Gap Analysis, Developing Evaluation Supply Alternatives (including synthesis of supply, demand and solutions, and work with partnerships), Public/Policy Component, Implementation, and Work Plan Documents and Project Coordination.

Mr. Smith said that an important part of the water plan review is to compare in ten years what has been developed for now. Chairman Herrmann said that is the difference between this plan and others, its an interactive model and can be referred to daily. There were some questions and discussion by members throughout the presentation. Mr. Arthur concluded the report announcing the dates of the Strategy Workshop planned for March 29, 2010, and the Town Hall scheduled for May 23-26, 2010.

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. Review and Consideration of Proposed Revised Purchasing Procedures. Mr. Duane Smith explained that the Department of Central Services requires the agencies to develop purchasing procedures. The proposed revised purchasing procedures are in response to an update in the state statutes regarding agency purchasing rules regarding amounts of the purchases as noted on page 4. Staff recommended approval.

Mr. Fite moved to approve the revised purchasing procedures, and Mr. Knowles seconded.

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

B. 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. Dave Dillon, Assistant Director, addressed the members and stated the agency has been requested by the Office of State Finance to submit a revised budget that reflects the 5% budget cut; each division has participated in planning for a 5%, 10%, and 15% cut, and the focus has been on questionnaires by legislative staff and Monte Boyce has been hired as a temporary employee to assist. He mentioned the revenue from the Gross Production Tax for the water planning activities is based on oil not natural gas, and remains fairly steady. There were no questions.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

The Supplemental Agenda items were considered under the 2. Financial Assistance Division matters.

8. UPDATE ON OKLAHOMA WATER RESOURCES BOARD ANNUAL RULEMAKING PROCESS.

As mentioned in the discussion at the November monthly meeting of the *process* involved in the 2010 rulemaking, staff will briefly present highlights and summaries of draft proposals that have been made available for public review and comment for the following chapters of the permanent rules. The formal public hearing to receive comments about the draft proposals (except for Chapter 50 on Financial Assistance) is scheduled before the Board members at the January 12, 2010, monthly meeting. Thereafter, final draft proposals for all chapters will be forwarded to the Board and are scheduled for consideration and action by the Board members at the February 9, 2010, monthly meeting.

Mr. Smith stated that at the November meeting staff talked about process, and since that time the proposals have gone to notice. Today, staff will briefly explain what was in the notice and there will not be a lot of discussion today. He said he is already receiving comments and next month anticipates changes. This time is meant for an update on the notice and general categories, and the January meeting will be a detailed presentation of the exact underline-strikeout version and discussion of those particular rules, with public comment. There will be draft responses made based upon the comments and the Board will have a full month before action taken at the February Board meeting. The rules proposals are available on the website.

A. Proposed Amendments to Chapter 5 – Fees - Mr. Duane Smith said that as he attended the Senate budget committee, he can say the Legislature is not in favor of fees to accommodate reductions in revenues to the agencies, but, if we don't provide revenue, there will be a reduction in services. The biggest area is a new annual fee for groundwater permits and he expected opposition. Other comments regarding fee increases proposed regard the tone of the language, a "big stick" approach--don't pay might lose permit--versus using the administrative ability of the Board to process any claim. He agreed he didn't want the tone of the Board to be necessarily

negative because we want people to comply. He said late filing fees were preferred to penalty enforcement, and so he anticipated some revisions to those proposals. He asked if the Board received comments to direct them to him and he will have discussion about where and how to shift the burden to the users of the water. Research regarding fees by other states for activities is being conducted, and Oklahoma is at the bottom of the fee structure and will probably stay at the bottom.

B. Proposed Amendments to Chapter 20 – Appropriation and Use of Stream Water – Ms. Julie Cunningham spoke to the members about proposals to streamline the permitting process, and the fees to address unauthorized use.

C. Proposed Amendments to Chapter 25 - Dam Safety - Mr. Dean Couch said the OWRB rules regard non-federally supervised dams, but there are 4,000 dams across the state and approximately 150 are considered high hazard. These rules came about from a study group formed by the Legislature by legislation the past session and at the request of the Oklahoma Conservation Commission, regarding houses being built downstream of a low hazard dam and because of the potential loss of life, requiring a high hazard classification. The study group looked at those issues and other issues and particularly guidelines and how the current rules could be amended, and Mr. Bob Kellog reviewed the current rules, and the proposed rules are the result of the group recommendations.

D. Proposed Amendments to Chapter 30 – Taking and Use of Groundwater – Ms. Julie Cunningham said that basically the proposed rules are the same as for stream water regarding application and unauthorized use. Also, looking at proposals for spacing requirements in bed rock aquifers, and consistent review and analysis of well spacing and use of an internal modeling protocol that would set a minimum drawdown without impact to neighboring wells.

E. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing - Ms. Cunningham said regarding well driller licensing, the staff worked closely with the Board's Well Driller Advisory Council and recommends amendments to the rules to include direct-push technology for low cost drilling in tight locations. Also proposals for cross drilling by certain allowable online credits, and alternative surface seals standards in particular instances in sand.

F. Proposed Amendments to Chapter 45 – Oklahoma's Water Quality Standards – Mr. Derek Smithee said notice went out the mid-November for publication of proposals and those are available on the website. Those proposals contain justification documents covering natural condition exclusions, exceptions to generalized criteria rule, criteria on Nine Mile Creek, removing numerical criteria for turbidity, new numerical criteria, changes in Appendix H, and finally, general typographical changes.

G. Proposed Amendments to Chapter 46 – Implementation of Oklahoma's Water Quality Standards – Mr. Smithee there are no proposed revisions to Chapter 46, although it is conceivable someone may request changes.

H. Proposed Amendments to Chapter 50 – Financial Assistance – Mr. Joe Freeman stated he had no differences from what was presented at the November meeting, and he did not anticipate any opposition to the procedural changes to the environmental review process to coordinate EPA changes, engineering reports regarding green projects, engineering reports for non-traditional green projects as a planning document, and incorporating a rate structure for green projects.

9. PROPOSED EXECUTIVE SESSION

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a public body and its attorneys 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 a pending investigation, litigation or proceeding in the public interest, and as authorized by the Oklahoma Open Meeting Act in Section 307(B)(1) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[d]iscussing the employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee.”

Pursuant to these provisions, the Board proposes to hold an executive session for the purpose of:

1. Discussing the cases of *Tarrant Regional Water District v Herrmann*, *City of Hugo and City of Irving v. Nichols*, and *U. S. v. Oklahoma (Sardis)*, and
2. Review of the duties of the Executive Director.

A. Vote on whether to hold Executive Session – before an executive session can be convened, it must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Chairman Herrmann noted the purposes of the proposed executive session as written, and he asked if there was a motion to enter executive session.

Mr. Sevenoaks moved the Board enter executive session, and Mr. Knowles seconded.

AYE: Fite, Lambert, Keeley, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Nichols, Drummond

Chairman Herrmann stated he had asked Secretary of Environment J.D. Strong to attend, and asked Mr. Couch and Mr. Smith to attend.

B. Designation of person to keep written minutes of Executive Session, if authorized.

Chairman Herrmann asked Mary Schooley to keep written minutes.

C. Executive session, if authorized.

The Board entered the Executive Session at 12:10 p.m. on December 8, 2009.

10. VOTE ON MATTER DISCUSSED IN EXECUTIVE SESSION - Return to open meeting and possible vote on any matters discussed in the Executive Session

Chairman Herrmann reconvened the Board in Regular Session at 1:03 p.m. on December 8, 2009. There was not a quorum of members present, and there was no action by the Board regarding the matters discussed in the Executive Session.

11. 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.

The New Business item was considered under 2.B., Financial Assistance Division, Proposed Order Approving Clean Water Funding Application for Sulphur Municipal Authority, Murray County.

There were no other New Business items for the Board's consideration.

12. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 1:05 p.m. on Tuesday, December 8, 2009.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Richard Sevenoaks

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
F. Ford Drummond

_____/s/_____
Joseph E. Taron

ATTEST:

_____/s/_____
Linda P. Lambert, Secretary
(SEAL)