

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
July 12, 2011

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Acting Chairman Joe Taron at 9:35 a.m., on July 12, 2011, at the Oklahoma Water Resources Board, 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, 2011 at 5:15 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Acting Chairman Taron asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

Marilyn Feaver
Ed Fite
Kenneth Knowles
Richard Sevenoaks
Joe Taron, Secretary
Tom Buchanan

Board Members Absent

Rudy Herrmann,
Linda Lambert, Chairman
Ford Drummond, Vice Chairman

Staff Members Present

J.D. Strong, Executive 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
Amanda Storck, Chief, Administrative Services Division

Kyle Arthur, Director of Planning
Josh McClintock, Director of Government and Public Affairs
Mary Schooley, Executive Secretary

Others Present

Amy Ford, Citizens for Protection of Arbuckle Simpson Aquifer, Durant, OK
Allen Havens, Grady County Rural Water District #3, Bradley, OK
Juanita Havens, Grady County Rural Water District #3, Bradley, OK
Mary Anne Campbell, Grady County Rural Water District #3, Bradley, OK
Becky Thomas, Grady County Rural Water District #3, Bradley, OK
Pennie Emery, Oklahoma for Responsible Water Policy
Tom Caldwell, City of Broken Arrow, OK
Ben Oglesby, Municipal Finance Services, Edmond, OK
Don Kiser, Edmond, OK
Phil Brown, Nicoma Park, Stillwater, OK
Rex Ann Lawson Freeman, Lawson Water Rights, Pauls Valley, OK
Barney Austin, INTERA, Austin, TX
Erin Boeckman, eCapitol, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Jim Lindsey, Cherokee County Rural Water District #3, Tahlequah, OK
Dr. Leonard Wilkins, Cherokee County Rural Water District #3, Tahlequah, OK
Tom Lay, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Ken Senour, Guernsey Inc., Oklahoma City, OK
Candy Staring, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Rebecca Poole, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Leslie Smith, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Earl Burson, Harrah, OK
Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Shawn Lepard, COWRA, Oklahoma City, OK
Deene Suddath, BancFirst, Oklahoma City, OK
Allan Brooks, Public Finance Law Group, Oklahoma City, OK
Nate Ellis, Public Finance Law Group, Oklahoma City, OK
Charlette Hearne, Oklahomans for Responsible Water Policy, Broken Bow, OK
Ginecia Hearne, Oklahomans for Responsible Water Policy, Broken Bow, OK
Kinsey Money, Oklahoma Farm Bureau, OK

C. APPROVAL OF MINUTES

Chairman Taron stated the draft minutes of the June 14, 2011, meeting had been distributed. He said if the members had an opportunity to review the draft minutes he would accept a motion. There were no corrections, and Mr. Knowles moved to approve the minutes of the June 14, 2011, Regular Meeting, and Mr. Buchanan seconded.

AYE: Buchanan, Fite, Sevenoaks, Knowles, Taron
NAY: None
ABSTAIN: Feaver
ABSENT: Herrmann, Lambert, Drummond

D. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, Executive Director, noted that the new OWRB Chairman Linda Lambert is out of town, and Dr. Taron would chair the meeting in her absence. He said there had not been much activity legislatively, and he provided a brief report updating the members on the Joint Committee on Water, which will review the water plan. Mr. Strong said he has had several meetings with the legislators and looked forward to working with the Committee.

Mr. Strong, Mr. McClintock and their counterparts from the states of Texas and Kansas traveled to Washington, D.C. to meet with the U.S. Army Corps of Engineers, and the States' Congressional Delegations; the meetings were focused on how the COE manages reservoirs in the Southwest Division, which has 75% of the water supply reservoirs in the country--our region has a strong emphasis on reservoirs designed for water supply yet that is a low budget item for the COE nationally. They also met regarding the funding mechanism for priority funding in state water plans rather than the traditional earmarks. He said news was received today about federal cuts, in particular in the financial assistance area; the House Appropriations report showed increases in the USGS water program, including \$217.5 million above the President's proposal for the stream gaging program.

Mr. Strong said that staff is busy with preparations regarding the Water Plan, but also with the significant drought situation in the state--now 1/3 of the state in the most significant drought category, and all the state is in some level of drought. The Planning and Management Division is assisting citizens with how to manage water in areas that are going dry, and are dusting off the 1997 State Drought Plan (a recommendation of the 1995 Water Plan), and are fielding hundreds of complaints. The drought situation underscores the need for long-range planning.

Management staff will be conducting its annual retreat at the Chickasaw Cultural Center on July 22, the Semi-Annual Environment Coordination meeting will be with the Corps of Engineers and Oklahoma Environment Cabinet on July 25, and July 27-29 Mr. Strong will be attending the Western States Water Council quarterly meeting in Bend, Oregon, where he will take the helm of the Water Quality Committee. There is a lot of activity common among the Western States, including drought, flooding, and EPA guidance and Corps guidance regarding activities of the Obama Administration.

Mr. Buchanan asked about the meeting with COE, and Mr. Strong said the COE was very receptive in regarding to several issues.

Acting Chairman Taron asked that the Agency Budget Report, item 6. be considered to allow Ms. Storck to do work on the agency budget.

6. AGENCY BUDGET REPORT

Ms. Amanda Storck stated to the members that the agency has 26% of revenue remaining at the end of the fiscal year, and there are several outstanding invoices for June. Mr. Strong said there would not be a carryover of 26%, but that there is no deficient for this fiscal year. Ms. Storck added that the Administration Division has been very busy moving to the new PeopleSoft-based Projects systems just before the 4th of July, and all employees are using the time and labor system that will flow through the financial system. The budget is due on July 15, and she is also working with OSF on the IS consolidation issues. Mr. Strong expressed kudos to Ms. Storck and her staff for the overtime required to get the agency onto the system, which is in line with the Governor's request to consolidate these functions of state government; the OWRB was already moving toward merging onto that system.

Acting Chairman Taron called on Mr. Freeman to present the Financial Assistance Division items.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Nicoma Park Development Authority, Oklahoma County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item is a request by the Nicoma Park Development Authority located in Oklahoma County. He said Nicoma is requesting a \$351,000.00 Clean Water State Revolving Fund Loan for constructing approximately 2,000 feet of 8-inch waste water line. He noted the provisions of the loan agreement, and said the Authority has two loans with the Board that will mature next summer. Mr. Freeman said that Nicoma Parks debt coverage ratio stands at approximately 1.34-times. Staff recommended approval.

Representing the Nicoma Park Development Authority was Mr. Robert Pittman, Mayor; and Mr. Phil Brown, Engineer. Mayor Pittman commended Mr. Freeman's staff for their communication and cooperation.

Mr. Buchanan moved to approve the Clean Water SRF loan to Nicoma Park Development Authority, and Mr. Fite seconded.

There was no further discussion and Chairman Taron called for the vote.

AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron

NAY: None

ABSTAIN: None

ABSENT: Herrmann, Lambert, Drummond

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Harrah Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman stated the Harrah Public Works Authority in Oklahoma County has requested a \$650,000.00 Drinking Water State Revolving Fund Loan to construct approximately 6,758 feet of 12-inch water line. He noted provisions of the loan agreement, stating that Harrah has two outstanding loans with the Board. He said that over that past ten years, the water

connections have increased over 25% and sewer connections by 18%. Based on a 20-year amortization, Harrah's debt coverage ratio stands at approximately 3.14-times. Staff recommended approval.

Representing Harrah was Mr. Earl Burson, City Manager; Mr. Bill Myers, Engineer; and financial advisor from Municipal Finance Services. Mr. Burson also commended Mr. Freeman and his staff for their assistance. He said this project will loop the water system and add new customers.

Ms. Feaver asked about the 3-cent sales tax dedicated, and Mr. Burson responded one cent is dedicated to capital improvements. Mr. Freeman commented the Board will take the lien based on the 3-cents as it helps to meet the 1.25-debt coverage without raising rates. Mr. Burson said the city is now in a position where it does not have to subsidize its water system. Mr. Buchanan applauded the community for raising rates in today's economic climate and asked if the rural area was currently individual supplies and not on a rural water district, and Mr. Burson responded that is correct.

Mr. Sevenoaks moved to approve the Drinking Water SRF loan to the Harrah Public Works Authority, and Mr. Buchanan seconded.

AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron
NAY: None
ABSTAIN: None
ABSENT: Herrmann, Lambert, Drummond

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Rural Water District No. 3, Cherokee County. Recommended for Approval. Mr. Freeman said this item is a request for a \$3,300,000.00 Drinking Water SRF loan for Cherokee county Rural Water District #3. He said the District is requesting the loan to refinance bonds originally incurred in 2009 for the purposes of funding the construction of a 0.4 MGD microfiltration water treatment plant. He noted provisions of the loan agreement, and said the District has had strong growth with an increase in connections of 46% over the past ten years. The District will have gross savings of over \$400,000.00 by refinancing the bond issue with the OWRB loan; its debt coverage ratio stands at a good 1.9-times. Staff recommended approval.

Dr. Leonard Wilkins, Chairman and Mr. Jim Lindsay were present representing the District.

There was no discussion by the Board members.

Mr. Sevenoaks moved to approve the Drinking Water SRF loan to Cherokee County RWD #3, and Mr. Buchanan seconded.

AYE: Feaver, Buchanan, Sevenoaks, Knowles, Taron
NAY: None
ABSTAIN: Fite due to conflict
ABSENT: Herrmann, Lambert, Drummond

D. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Broken Arrow Municipal Authority, Tulsa County. Recommended for Approval. Mr. Freeman said this request by the Broken Arrow Municipal Authority is a request for an extension of time to close a Clean Water SRF loan approved by the board in July

2010. Mr. Freeman said the loan should be ready to close at the end of the month. He said the loan was for \$5,735,000.00 for a lift station, 14,550 feet of 18-inch force main, and 10,752 feet of sewer line. He noted provisions of the loan agreement, and stated staff recommended approval.

Representing Broken Arrow was Mr. Tom Caldwell, Financial Director, and financial advisors from Municipal Finance Services.

Mr. Sevenoaks moved to approve the extension of time for obligation of funds, and Mr. Fite seconded.

AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron

NAY: None

ABSTAIN: None

ABSENT: Herrmann, Lambert, Drummond

E. 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 Programs, and Issues of Indebtedness, and Authorizing Members to Act as Assistant Secretary. Recommended for Approval. Mr. Freeman said this last item is for approval of a resolution that will authorize certain individuals to sign and act on behalf of the Board regarding the Board's financial assistance program and the state revolving fund loan program. The resolution also names each member, except the Chairman, as Assistant Secretary, in the absence of the Secretary, and allows the Board's Trustee Bank, BancFirst, EPA and others to know the Board's composition and to have signatures on file for verification. He added the form of the resolution is no different than previously signatory resolutions approved by the Board, with the exception of the addition of Tom Buchanan to the Board.

Mr. Fite moved to approve the resolution, and Mr. Sevenoaks seconded.

AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron

NAY: None

ABSTAIN: None

ABSENT: Herrmann, Lambert, Drummond

Mr. Tom Buchanan asked about loan defaults. Mr. Freeman said the Board's audit committee reviews annually any problems, currently there is one loan and that is past due and the Board has been working with them for several years. He said sometimes a loan may be past due and there is a collection procedure.

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.

Chairman Taron asked if there were requests to move any items to the Special Consideration agenda. There were no requests to transfer items from the Summary Disposition Agenda to the Special Consideration Agenda.

Ms. Julie Cunningham asked the Board to withdraw from consideration item 3.I.5., application for regular permit to use stream water, #2011-028, Virgil Keith McDonald.

Mr. Sevenoaks asked about item 3.D.2., memorandum agreement with Grand River Dam Authority for water monitoring. He asked if there were monitors for phosphorous and nitrogen in the streams there, and Mr. Smithee answered, no. This agreement is for dissolved oxygen monitoring in the lake, in front of the dam and below the lake for compliance with the FERC. The OWRB does monitor for phosphorous and other nutrients under the BUMP program, but GRDA does not pay for that monitoring, it has its own program for phosphorous and nutrients. Mr. Sevenoaks asked about the blue-green algae outbreak, and Mr. Smithee said there are blue-green algae blooms every summer, but this summer has been particularly bad. Mr. Strong said there had been a large influx of nutrients with spring rains, lack of rains and wind, and extreme heat -- "the perfect storm." The members asked about lack of electricity or bypassing due to tornado damage, poultry houses in the area, and monitoring of Tulsa lakes.

Acting Chairman Taron asked for a motion on the withdrawal of item 3.I.5. Mr. Buchanan so moved, and Mr. Fite seconded.

- AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron
- NAY: None
- ABSTAIN: None
- ABSENT: Herrmann, Lambert, Drummond

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

Chairman Taron asked for a motion on the Summary Disposition Agenda. Mr. Fite moved to approve the Summary Disposition Agenda, and Mr. Buchanan seconded.

- AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron
- NAY: None
- ABSTAIN: None
- ABSENT: Herrmann, Lambert, Drummond

The following items were approved:

C. Financial Assistance Division Items:

1. Rural Economic Action Plan (REAP) Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
ACOG				
a.	FAP-07-0041-R	Rural Water, Sewer & Solid Waste Management District #1	Canadian	\$ 99,918.00

ASCOG				
b.	FAP-10-0021-R	Rural Water District #3	Grady	139,000.00
EODD				
c.	FAP-01-0067-R	Rural Water District #5	Sequoyah	80,000.00
GGEDA				
d.	FAP-09-0033-R	Copan Public Works Authority	Washington	99,990.00
INCOG				
e.	FAP-10-0007-R	Hulah Rural Water District #20	Osage	87,000.00
KEDDO				
f.	FAP-10-0013-R	Keota Public Works Authority	Haskell	96,000.00
OEDA				
g.	FAP-07-0020-R	Rural Water, Sewer & Solid Waste Management District #3	Dewey	95,000.00
SWODA				
h.	FAP-10-0022-R	Duke Municipal Authority	Jackson	141,000.00

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

1. Joint Funding Agreement with the USGS for the project “Technical Assistance for the Management of the Arbuckle-Simpson Aquifer, South-Central Oklahoma”.
2. Memorandum Agreement with Grand River Dam Authority and USGS for water monitoring and data collection.
3. Memorandum Agreement with Poteau Valley Improvement Authority and USGS for water monitoring and data collection.
4. Memorandum Agreement with Arkansas-Oklahoma Arkansas River Compact Commission and USGS for water monitoring and data collection.
5. Memorandum Agreement with Hardage Site Remedy Corp. and USGS for water monitoring and data collection.
6. Memorandum Agreement with the City of Altus and USGS for water monitoring and data collection.
7. Memorandum Agreement with Lugert-Altus Irrigation District and USGS for water monitoring and data collection.
8. Memorandum Agreement with the City of Ada and USGS for water monitoring and data collection.

9. Memorandum Agreement with the City of Moore and USGS for water monitoring and data collection.
 10. Interagency Agreement with the Oklahoma Department of Wildlife Conservation for the Vegetation Project at Fort Cobb Lake.
 11. No-Cost Time Extension Agreement with Oklahoma State University for State Water Plan Assistance in connection with the update of the Oklahoma Comprehensive Water Plan.
 12. First Amended Agreement with First Southwest Company to provide additional compensation for financial advisor services in connection with the Board's Financial Assistance Programs.
 13. Memorandum Agreement with the City of Lawton and USGS for water monitoring and data collection.
 14. Fourth Amended Agreement with Charles T. Dumars for professional legal services.
 15. Memorandum Agreement with Fort Cobb Reservoir Master Conservancy District and USGS for water monitoring and data collection.
 16. Interagency Agreement with the Oklahoma Department of Agriculture, Food and Forestry for the purpose of collecting groundwater samples at licensed managed feeding operations.
- E. Applications for Temporary Permits to Use Groundwater:
1. Chris Klaassen, Blaine County, #2011-537
 2. Darrell & Debora Dunn, Jackson County, #2011-542
 3. Jerry W. & Marie L. Loula, Caddo County, #2011-544
 4. Patrick J. Brueggen and Joseph & Mary Ann Brueggen, Canadian County, #2011-549
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. Arbuckle Adventures, L.L.C., Murray County, #2011-515
 2. Paul F. Burkner and Charles M. Burkner, Cimarron County, #2011-531
 3. Rio Rojo Enterprises, L.L.C., Tillman County, #2011-532
 4. Gerald & Mary Swecker, Cimarron County, #2011-536
 5. Bernice Compton Family Trust, Cimarron County, #2011-538
 6. Hood Ranch, Inc., Texas County, #2011-540
- H. Applications to Amend Regular Permits to Use Groundwater:
1. John C. & Loreta M. Henderson, Cimarron County, #1979-609

2. Gaillard-Gaillard & Flowers, Cimarron & Texas Counties, #2002-503
- I. Applications for Regular Permits to Use Stream Water:
 1. Carlton Landing Association, Inc., Pittsburg County, #2010-031
 2. Oklahoma State University, Payne County, #2011-004
 3. McVey Cattle Company, L.L.C., Grady County, #2011-011
 4. Robert C. Ross, Jr. dba Ross Farms, Muskogee County, #2011-013
 5. *Virgil Keith McDonald, Coal County, #2011-028* *Item withdrawn*
 - J. Applications to Amend Regular Permits to Use Stream Water:
 1. Pointe Vista Development, L.L.C., Marshall County, #1956-078B
 2. Pointe Vista Development, L.L.C., Marshall County, #1982-062
 3. Pointe Vista Development, L.L.C., Marshall County, #1997-008
 - K. Applications for Term Permits to Use Stream Water:
None
 - L. Reductions/Cancellations of Stream Water Rights:
 1. Defaults (Uncontested)
 - a. Richard J. & Mary Elizabeth Helton, Coal County, #1999-026
 - b. Jerry Standridge, Garvin County, #1974-347
 - c. Russell Taylor, Grady County, #1970-261C
 - d. Russell Farms, Garvin County, #1964-871
 - e. Joe & Niconia Nelson, Grady County, #1963-160
 - f. Ernest & Mary Cunningham, Grady County, #1996-042
 - g. Robert & Marcia Williams, Grady County, #1992-002
 - h. Robert Pratt & Phillip Pratt, Garvin County, #1952-603
 - i. Frances Sprowls Huff, William Sprowls, Linda Sprowls Castree & James Sprowls, Roger Mills County, #1998-002
 - j. Double O Farms, L.L.P., Grady County, #1997-027
 2. Corrections/Excuses Accepted
 - a. Jane Lawson and RexAnn Lawson Freeman, Garvin County, #1954-067
 - b. Robert M. & Susan E. Reinauer, Pontotoc County, #2002-004
 - M. Well Driller and Pump Installer Licensing:
 1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Joshua D. Manning DPC-0823
 1. Operator: Joshua D. Manning OP-1839
 - Activities: Groundwater wells, groundwater test holes and observation wells
 - Pump installation
 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
 - a. Licensee: Mike's Water Well Service DPC-0700

1. Operator: Chad W. Becker OP-1837
 Activities: Groundwater wells, groundwater test holes and observation wells
 Pump installation
2. Operator: Michael Oefelein, Jr. OP-1838
 Activities: Pump Installation

N. Dam and Reservoir Construction:
 None

- O. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma Department of Transportation, Creek County, #FP-11-26
 2. Oklahoma Department of Transportation, Creek County, #FP-11-27

P. Applications for Accreditation of Floodplain Administrators:
 Names of floodplain administrators to be accredited and their associated communities are individually set out in the July 12, 2011 packet of Board materials.

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

A. Review of Oklahoma Comprehensive Water Plan activities. There was no presentation or discussion.

B. Review and Discussion of Schedule Relating to Consideration of Draft Update and Possible Action to Accept or Revise Schedule. Mr. Strong reviewed the schedule as presented at the June Board meeting saying the Governor's' Water Conference is scheduled for October 18-19 at the Embassy Suites in Norman, and final approval of the plan is scheduled for the October Board meeting, which is scheduled for October 17. Working back from that date, it is an aggressive schedule to continue discussion of the recommendations by staff, and discussing the three recommendations today, reserving the Infrastructure Financing for the August meeting. Also at the August Board meeting, staff anticipated review of all of the key recommendations including input, if any, of the Board's comments at the meeting and in the interim; as well as the full draft of the executive report, introductory comments on water law, etc., and the critically important 13 watershed basin reports. Mr. Strong said it would be a long Board meeting, there could be two meetings, but he recommended the Board do everything possible to finalize the water plan at the August meeting so that modifications can be incorporated as far in advance as possible of the September Board meeting where the opportunity for public to comment will be allowed; the October presentation for the final product and vote. There was no discussion on the schedule.

C. Review and Discussion of Additional Draft Water Policy Recommendations

(PowerPoint presentation slides were presented and appear below, and may be attached to the minutes.)

1. Water Management and Supply Reliability. Ms. Julie Cunningham addressed the members and stated water allocation and use philosophy and statutes vary greatly from State to State. Primary Issues discussed at national groups include the various approaches by states: private ownership of water vs. public ownership and allocation—easier for state to administer/enforce, less private control; passive vs. active water management—detailed up-front analysis of water availability and associated cost by State vs. over appropriation and back-end management/enforcement (i.e. Colorado); and utilization vs. conservation for future users--where's the balance.

Regardless of management scheme, reliability of water supply at the local level remains a fundamental issue: is it available when you need it. Ms. Cunningham said there are two recommendations, and she will also discuss the management of aquifers as to the issue of temporary permits or turning those permits to regular after the maximum annual yield.

Recommendations & Implementation: Water Management & Supply Reliability

(a) To address projected statewide and regional increases in consumptive demands for water and effectively administer a water management program that ensures reliable supply for all users, the OWRB should implement the following recommendations, considering regional variations when appropriate:

The OWRB should organize a workgroup of water users, researchers and other experienced professionals to investigate the utility, impacts and appropriateness of transitioning from an average annual to a seasonal stream water allocation program.

(b) The OWRB should conduct a prioritized comprehensive hydrologic evaluation of groundwater basins across the state to characterize valid groundwater/surface water interactions, as well as commission a stakeholder workgroup to evaluate the suitability of a potential conjunctive management program in Oklahoma

Regarding the Seasonal Stream Water Rights Allocation, Ms. Cunningham explained that under Oklahoma Stream Water Law, stream water is considered publicly-owned, subject to appropriation by OWRB; provides “first in time, first in right;” protects domestic (riparian) users from interference from appropriative users; requires OWRB to determine if unappropriated water is available. She said though, how do we determine that? Now, the Board's rules require the issuance of permits based upon average annual water availability. She showed a hydrograph of the Poteau River's annual flow, which is a typical example, saying that what occurs is a lot of water in the stream in the Spring, but with a tremendous reduction in the summer months, and then goes back up. The graph showed the average annual yield. The OCWP technical studies shows a clearer picture, and the example was basin #9, the Muddy Boggy, and indicated the legal availability of water--showing the shortages of surface water for 2060, and 17% of major shortages can be anticipated in the summer months. Another graph shows when the water is used, and this year because of the drought, OWRB staff is anticipating major water problems.

The current permitting system is less complicated because of up-front calculations/permit conditions, but with the seasonal permitting system, Ms. Cunningham said there would be two

different permitting time frames so water could be taken during the raining, high flow months, but in the summer, there could be levels of cutting back during the high heat months. The current system overestimates water actually available during high-demand, low-flow conditions, the water source is unreliable, and requires more active water right administration (complaints/conflict response and enforcement). She said it is much more difficult to assess if the downstream senior water right holder has enough water in the stream during the summer months than it is to have a junior water right have a permit that does not allow taking water during those months. Comparing the current system to a seasonal system, Ms. Cunningham said enforcement is much easier with a seasonal system, it is more complicated up-front calculations/permit conditions, more accurately and efficiently appropriates water, provides greater assurance of availability, and reduces over-appropriation of water and need for costly enforcement/complaints response. Estimated enforcement costs with the current system is: 2006 Drought Interference Complaints = \$47,000, 2010 Domestic User Case = \$9,000 (excluding legal), 2011 Drought Interference Complaints (ongoing) = \$60,000-\$100,000. Staff proposes to ask a workgroup to look at it and make suggestions.

Mr. Strong interjected, under the current system, water is available, and the hydrograph shows times of use and there will be an increasing probability of gaps, this is the type of data information available in the watershed reports. Mr. Sevenoaks asked about funding the workgroup, and Mr. Strong answered workgroups are convened all the time, and it is just a cost of doing business and to get stakeholder input into decision making. But, with 17% budget cuts over the past three years and if it gets worse, the agency will not be able to bear too many more of those costs going forward, but it does bring up the point there are some things we are ready to implement today that are big price tag items and some things that require additional planning, research and development, and which also gets into part of the budget request process and whether we can receive additional funding to do those projects. Mr. Sevenoaks said it was his understanding the Board would be presented a set of recommendations and a final draft presented at the Governor's Water Conference, and he asked if these groups would be finished with their analysis by that time, versus the Board making a decision now. Mr. Strong said the Board has the option of skipping the stakeholder input process and jumping to the conclusion; Mr. Sevenoaks said the agency has spent five years talking with the public and he felt it is decision time, that the Board develop the final plan, receive public input in September one more time because he did not want to "kick the can down the road" and years from now the recommendation has been forgotten. Mr. Strong said staff is prepared for that on many things, such as the next presentation on surplus water, but Mr. Sevenoaks said he would like to go ahead instead of having more workshops and more stakeholder input—we've done that—he'd like to go ahead and make a decision and support staff recommendation to go to a seasonal average. Mr. Strong said the staff recommendation is to get additional input from the people who are going to be impacted by this decision and make sure we understand exactly how it would work and if there is a way to do it that would be most beneficial to permit users of water. Mr. Sevenoaks viewed that as asking people to make offsite storage, this has been a problem as long as he has been on the Board and there is an obvious solution, we've done the input, and his recommendation is to skip to the end game and make it part of the plan.

Mr. Strong answered October will be the opportunity for the Board to vote on the final recommendations as a Board. Staff will be bringing all the recommendations to the Board in

August and September slightly revised and maybe in this case, “option A” and “option B,” and Mr. Sevenoaks asked if the stakeholder groups could meet in the next two months to obtain the information needed, and Mr. Strong answered, no. He explained that the options could be presented for the Board to vote on could be “A” convene a stakeholder group to determine to explore the issue, if it can be done, what are the costs associated in building off-stream storage and is that too burdensome, etc., or option “B” we recommend moving to a seasonal flow permitting system. Mr. Sevenoaks said basically there won’t be permits issued when there isn’t any flows, and those who have a permit are grandfathered, but he agreed that is an acceptable approach.

Ms. Cunningham concluded the presentation on the first part of the recommendation stating the potential options: coordinate with in-stream flow advisory committee work, allow stakeholders to determine appropriateness based on cost-benefit, spatial considerations, etc., and conduct demonstration or pilot study to assess implementation.

Moving on to part b of the recommendation, Ms. Cunningham read,

To address projected statewide and regional increases in consumptive demands for water and effectively administer a water management program that ensures reliable supply for all users, the OWRB should implement the following recommendations, considering regional variations when appropriate:

The OWRB should organize a workgroup of water users, researchers and other experienced professionals to investigate the utility, impacts and appropriateness of transitioning from an average annual to a seasonal stream water allocation program.

The OWRB should conduct a prioritized, comprehensive hydrologic evaluation of groundwater basins across the state to characterize groundwater/stream water interactions, as well as commission a stakeholder workgroup to evaluate the suitability of a potential conjunctive management program in Oklahoma.

Ms. Cunningham said that staff added the recommendation that there should be more detailed study by the people that it will affect. Mr. Sevenoaks asked for the option for a recommendation, he said the Legislature will have an opportunity to review, but he wanted to see the Board say what five years of work has done.

Ms. Cunningham said the public recommendation is for a comprehensive evaluation of priority stream water and alluvial systems with statewide focus on interactions between local stream water and groundwater, and stream water maintenance requirements, and minimum 20-year updates required. The OWRB assessment acknowledges significant interactions in certain systems, and should determine applicability and frame policy. If conjunctive management is warranted, it would require consistent funding for studies and hydrologic model development, not part of a usual study, and the OWRB “Water-Related Research” recommendation is that research is needed to better understand the interactions between stream water and groundwater in the state’s alluvial aquifer and stream systems. She said these interactions exist and they are complex, challenging, and data-intensive and she explained gaining streams is where GW discharges to streams, losing streams are where SW recharges the aquifer. In Oklahoma, groundwater “mining law” allows GW depletion, but also leads to loss of perennial streams in certain areas (e.g., Ogallala and Beaver River in Texas/Beaver Counties), many states recognize SW/GW interaction and restrict groundwater development to protect stream flows such as

Kansas: two-threshold system (1) restrictions, (2) closes aquifer to new development, Oregon, Washington: GW permits junior to SW, and Colorado: in alluvium terrace, if analysis over interference threshold, permit application denied, Idaho, Montana, New Mexico, Wyoming: recognize and have some form of conjunctive use management to protect stream flow.

The Arbuckle Simpson Study was the first study to formally assess interactions to establish maximum annual yield (MAY) to protect stream and spring flow. Regarding the Ogallala, there is limited specific research conducted, established connection and are losing perennial streams. Other past GW hydrologic studies have shown interactions, however no formal analysis, include the North Canadian River, Arkansas River sand and gravel deposits that parallel streams, and Rush Springs, Blaine Gypsum.

Ms. Cunningham said the present situation is that all stream water permits depend on base flow, i.e., Oklahoma City holds water rights to Canton Lake supply. However, in times of low base flow, only 50% of water released is lost before it reaches Lake Overholser. She said that 81% of public water systems depend upon reservoirs for supply and the majority of reservoirs depend upon base flows from streams for yield. For future need, staff is interested in identifying and quantifying interactions across the state to make informed management decisions and develop fair management schemes. Staff sees the options to propose are to conduct routine studies as part of MAY hydrologic studies which increases MAY study costs approximately 15%, but is a major portion of the study, especially in the alluvium terrace aquifers. The public recommended unstudied and 20-year updates; prioritize on hotspots, etc. and other technical analysis that came from the OCWP.

Mr. Sevenoaks asked if staff was presenting options and not recommendations; Mr. Strong responded that on both of these, we are talking about potential major changes to groundwater law and surface water law in Oklahoma and it was worth not being too hasty in that decision. Secondly, on the conjunctive management discussion, there has been extensive study on the Arbuckle Simpson and clearly there is a significant relationship between groundwater and surface water. Every other analysis of groundwater/surface water interaction in this state pales in comparison, so there is a data collection component that needs to occur still. Secondly, much like the seasonal permitting issue, with additional input from stakeholders it would behoove us to do that in a way that makes most sense to Oklahoma. He said regarding the excess and surplus water issues there has been criticism we are “kicking the can down the road,” and with the majority of the recommendations we are not doing that, but in this situation it makes sense. In August and September we can give it more thought as to whether it is right now, or needs more study. The data and public input suggests we should go in this direction, and we did not assemble a workgroup (such as for tribal issues and instream flow) to study under the umbrella of the Water Plan, but Mr. Strong said in his mind, there should be ongoing stakeholder input beyond the finalization of the Water Plan.

Ms. Cunningham added that staff could present how it proposed to prioritize comprehensive hydrologic evaluation of groundwater basins across the state to characterize groundwater/stream water interactions. Mr. Sevenoaks asked that staff present three options: proceed as staff suggests, leave it alone, and an additional plan that would allow some i.e. instream flow, temporary permits, to preserve the water.

Ms. Cunningham said she wanted to also address the discussions from last month, and particularly the idea of MAY and converting temporary to regular permits. Mr. Strong said the

slides were prepared in response to (Mr. Sevenoaks) suggested not issuing more permanent permits based on the MAY, and Mr. Herrmann asked about establishing equal proportionate share in basins based upon the 50 year planning horizon of the Water Plan, or some longer time horizon as opposed to 20 year life.

Ms. Cunningham continued saying that current law policy is an “utilization” law, (regulated depletion), but there are conservative estimates of a minimum basin life of 20 years with simulated pumping of potential EPS scenarios, assuming 100% development (all lands pumped – which there are none currently). Mr. Strong said that when a MAY is set, it is based upon a 20-year basin life, but also based on the assumption that every acre overlying the aquifer has a well pumping at full capacity, and for example, the Ogallala—the most developed aquifer—only 15% of the land over the Ogallala in Oklahoma is developed. Ms. Cunningham said the previous law was a “conservation” law, and in 1973 the law changed to utilization. Mr. Dean Couch, General Counsel, explained the groundwater law of reasonable use prior to 1949, not a good way to manage, and was determined by a court. After the war and the understanding of the use of groundwater, the legislature adopted the appropriation system, similar to stream water—priority in time, but also added restrictions for a critical groundwater area to be determined by the agency, and other restrictions specified by law, to pump the recharge rate, the safe yield for the basin. The three Panhandle counties, overlying the Ogallala, is 1/4-1/2 inch annual recharge for each acre, and to pump up 200-400 feet (to the surface) and the only amount of water allowed to pull up is a 1/4-inch when the agriculture industry says 24 inches of added water is needed, that’s a long way—and that law would not be implementable in the Panhandle at all, so it was never implemented with public support. Applications were filed, a few permits issued in other parts of the state, but because critical yield was never actually put into place with restrictions on permitted volumes, it was not implemented as a feasible matter. So, it was changed to what we have now, with that word change from “conservation” in the previous policy to a policy change to “utilization” along with other substantial changes in other provisions of the groundwater law, and recognized by the Supreme Court—the old law had restrictions but that is not what the legislature provides now. The old law was not implemented because in areas where it mattered, there were no studies to determine groundwater critical areas so the law was ignored to avoid the conservation requirement.

Mr. Sevenoaks mentioned allowing areas like the Panhandle being pumped until it was dry, and Mr. Strong said that would violate the Board’s legal duty, and it is a studied basin. Mr. Sevenoaks said the studied areas can remain the same but the other unstudied areas could remain temporary. Mr. Strong said through the Western States Water Council the states have discussed ways to get together and talk about how to manage that aquifer. There was conversation about the Texas law; studied basins are the only basins that have permanent right; do we conduct good studies and are the variables valid; change to real-world assumptions and see what the numbers are; that the technical analysis of the Water Plan have revealed the phenomenal groundwater resources of the state still untapped, the Board can make recommended modifications to the law; to regulate the Ogallala could put Oklahoma at a disadvantage and that local and statewide planning groups could let the people in the Panhandle self-regulate; energy costs can have an impact; and do we regulate so that there is no economic benefit to the state.

Ms. Cunningham concluded her presentation stating that under the current law we could issue only temporary permit, but the problem is that the two acre-feet could be more than the

capacity of the basin and could inadvertently deplete the basin, the two acre-feet could be lowered. Once set, if a new study shows less water is available, the EPS could be decreased for new users. Other possible options under current law: increase minimum basin life to 50 or 100 years, adjusting computer models to limit MAY and EPS, clarify that regular permit issuance = EPS “allocation,” after MAY update, law says can “increase but not decrease amount allocated,” existing regular permits for original EPS grandfathered, only new regular permits subject to new decreased EPS, and other options under current law: voluntary Conservation, and mandatory metering.

2. Excess and Surplus Water. Mr. Kyle Arthur addressed the members and stated he would present on the 5th of draft "Big 7" recommendations, "Excess and Surplus Water." He said he would be relying heavily on the words on the slides as they are particularly important, and the draft recommendations document emailed to the members on July 8. He said this issue and the Board's charge to look at the issue are not new but some of the issues facing it are relatively new; he will look at the definition and procedure/application processing at both the statutory and rule level, where we have been and where we are now and then where we are proposing to go next.

The slides presented are as follows, and any narrative or discussion will be interspersed during or summarized following the presentation (refer to any attachments to the minutes).

Draft OCWP Priority Water Policy Recommendations & Implementation

Excess & Surplus Water

Background:

Statutory language authorizing the development of a comprehensive water plan:

82 O.S. 1086.1 (1974)

“The people in water deficient areas benefit by being able to use excess and surplus waters.”

“The policy...is to encourage the use of surplus and excess water to the extent that the use thereof is not required by people residing within the area where such water originates.”

Mr. Arthur stated this is a clear recognition there is surplus and excess water, it was the intent of the Legislature that water be used to the benefit of the people of Oklahoma; there are water rich areas and there are water deficient areas, there must be considerations if surplus and excess water is to be moved around that the basin of origin's present and future needs are satisfied, so there must be a balance of the two.

And in 82 O.S. 1086.1 (1974 regarding the Comprehensive Water Plan and the Board's charge to establish a definition and procedure. Listed 6 Statutory Principles for the OCWP:

“Only excess or surplus water should be utilized outside of the areas of origin and citizens within ...have a prior right to water originating therein to the extent that it may be required for beneficial use therein”

“Water use within Oklahoma should be developed to the maximum extent feasible for the benefit of Oklahoma so that out-of-state downstream users will not acquire vested rights therein to the detriment to the citizens of the state.”

In 82 O.S 1086.2 (1974):

Directs the OWRB to prepare a comprehensive state water plan and decennial updates (1992) thereof, and

Additionally requires “shall include a definition of „excess and surplus water of this state“ and a recommended procedure for determining „excess and surplus water of this state,” which definition and procedure are to be developed to insure that the area of origin will never be made water deficient.”

Background 1975 Definition

In the development of the first plan delivered in 1975, these were the principals for surplus and excess water. Mr. Arthur noted the historical updates of the plan, and components of the treatment of surplus and excess water:

Submitted as a part of completed Phase I study; “...that amount which would not result in deprival of a prior right to water to any inhabitant or property owner within a major drainage system wherein water originates. Methodology as used for study purposes herein considers such prior right to extend for the ensuing 50 years.

1980 Plan:

Reaffirmed the 1975 definition, discussed the concept of “area of origin” and excess and surplus water, considered 50 years to be a reasonable planning horizon, did not expressly quantify excess/surplus water.

1995 Plan:

Did not propose a new definition/procedure; Quantified surplus water by region (8 total at that time).

Background Processing Applications for Out-of-Basin Use

82 O.S. 105.12: (Much in place in 1972, tweaked in 1988, and then most recently in 2009 with House Bill 1483 regarding in particular, out of state permits)

A.4: “If the application is for the transportation of water for use outside the stream system...the proposed use must not interfere with existing or proposed beneficial uses within the stream system and the needs of the water users therein.”

B.1: “...pending applications to use water within the stream system shall first be considered in order to assure that applicants within the stream system shall have all of the water required to adequately supply their beneficial uses.

B.2: “The Board shall review the needs within the area of origin every five (5) years to determine whether the water supply is adequate for municipal, industrial, domestic, and other beneficial uses.”

Mr. Sevenoaks asked about beneficial uses in addition to drinking water for a particular body of water. Mr. Couch responded that is a phrase very common and well-used among most all states on water use management, regulation and planning. The phrase has particular application for the appropriation doctrine, which is part of this stream water use law, and the

phrase beneficial use fundamentally shall be the basis, measure and limit for all water rights—have your priority in time for a quantified amount, but you better use it—use it or lose it--or forfeit your part, is the law based on you must have a beneficial use. Courts have looked at that phrase and about what that means and it can mean everything from making sure you have a efficient diversion works, making sure the quantity of water use for the purpose is proper according to the state law—a variety of cases talk about that particular phrase. Our understanding, he said, as a part of our law is that it does mean that which can be recognized and authorized by a permit. In this context here, questions such as what is the scope to consider what is in the basin and to protect, and what are the proposed beneficial use which can't interfere with that; it has been carefully analyzed because that word has such a significant meaning in water rights and water law in general. The extent to which what some say nonconsumptive but some might describe as instream flows—is that a beneficial use? Under current law there are several considerations for those concepts which he cannot go into at this time, but the suggestions and recommendations from the Board as part of the Water Plan will potentially be addressing some of that, but for this particular purpose, its beneficial uses is that phrase as understood to mean in the water right appropriation system.

Mr. Strong said one of the fundamental questions discussed at the last meeting, and the recommendation was from the Instream Workgroup that was assembled as part of the water plan process, and there was several steps recommended that don't include setting numbers to protect instream flows on streams today, but part of that process of reviewing how other states to do it was also part of that work it and what might work best for Oklahoma – do we protect already with domestic use set aside and other mechanisms, or do we need a more specific program, but one of the fundamental questions, he said, as part of the nonconsumptive uses of water with regard to the appropriation doctrine is, you diverting water or not as to whether it is being put to a beneficial use. Nonconsumptive uses is water particularly set aside and not diverted, but whether that is considered a beneficial use under the appropriation doctrine is questionable; but, beyond that, do you want to subject nonconsumptive uses to the appropriation doctrine, or are they superior to appropriative rights and natural protections that should be in place at a minimum. These are examples of why it is not as easy as saying we want to call nonconsumptive uses recreation, fish, etc., and beneficial uses is subject to the appropriation right, and we will start setting aside water under a permit for those uses, is that the best way to handle those needs versus what's been done already in the Barren Fork which is we can appropriate water in that system for beneficial use, but you can't take it if the flow drops below 50cfs, which is superior to an appropriation right for a beneficial use of water.

Mr. Arthur noted the statement in A.4. regarding “needs therein” and Mr. Couch explained the discussion regarding proposed beneficial uses at a time of amendment for other reasons, there was significant discussion, i.e., the City of Tulsa seeking water from Lake Tenkiller, and the proposed beneficial uses was clarified by “B.1.” and it is recognized as a proposed beneficial use if it is subject to a pending application for in basin use. Even though it was not connected there, that was the timing of the legislative amendment. It has different phrase and needs of the water users therein—the phrase water users has never been defined—the agency understands those using water better be doing it legally and therefore by permit for the needs of the water users therein, and an in-basin user has for instance an in-basin schedule of use—not using it all—are they going to continue to develop as they anticipate, that might fit the

phrase “the needs of the water users therein,” which could mean those that want to canoe, recreate, fish, on a flowing stream.

Mr. Strong said the “beneficial use” is very much a term of appropriation law across the country. Not that fishing isn’t a beneficial use of water in the grand sense, but in the legal sense should it be treated as an appropriation of water or right to fish, or maintain a fishery or is it better protected in some other manner. Mr. Couch added that for water quality purposes, the Legislature made that direct connection that describes recreation use as ‘beneficial uses to protect from pollution.’ Separate concept, but some say should be considered the same.

Mr. Arthur continued explaining how the statutes reviewed above manifest in the OWRB rules, and he read:

Background-OWRB Rules

Title 785 Chapter 20 (Definition):

“excess or surplus water” shall mean that amount of water which is greater than the present or reasonable foreseeable future water requirements needed to satisfy all beneficial uses within an area of origin

785:20-5-6 Approval of application for out-of-stream system use:

In addition to quoting the aforementioned statutory provisions, it also says: (b)“Ongoing studies and information about proposed or potential needs may be used by the Board. Adequacy for future needs of water within the stream system shall be based on reasonably foreseeable prospects for use and for a period of not longer than fifty (50) years from the date of issuance of the permit for use outside the stream system.”

And as the statutes directs, the agency shall develop a definition and a procedure, and Mr. Arthur began with the explanation of the proposed definition, reading:

Excess & Surplus Water

“Excess and surplus water’ means the projected surface water available for new permits in 2060, less an in-basin reserve amount, for each of the 82 basins as set forth in the 2012 OCWP Watershed Planning Region Reports; provided that nothing in this definition is intended to affect ownership rights to groundwater and that groundwater is not considered excess and surplus water.” This reflects the technical work conducted over the past five years, and groundwater is not considered excess and surplus water.

And regarding the procedure, he read (clarifying that this calculation considers what's needed for permitting, and what the permitting system will allow, for an in-basin use or an out-of-basin use, for surface water permits):

(1)The total annual amount of available stream water for new permits in 2060 is equal to the total Surface Water Permit Availability amount as set forth in the OCWP Watershed Planning Region Reports minus the amount of the annual Anticipated Surface Water Permits in 2060 also set forth in those reports. The in-basin reserve amount is equal to 10% of the total Surface Water Permit Availability amount plus 10% of the annual Anticipated Surface Water Permits in 2060 amount.

(2)Each of the 82 OCWP watershed planning basins shall be considered an individual stream system wherein water originates (i.e., area of origin) for purposes of appropriation and permitting. (which shall never be made deficient)

(3)In considering individual applications for permits to transport and use more than 500 acre-feet of stream water per year outside the stream system wherein the water originates, the Board shall determine whether there is “unappropriated water available in the amount applied for by considering only the remaining amount of excess and surplus water calculated for the stream system where the point of diversion is proposed, and for stream systems located downstream from this proposed point of diversion. (to move water out of basin, only what's considered to be excess and surplus can be moved, not what's needed in 2060 for permits, and not the in-basin reserve amount)

*(4)For any permit for out-of-basin use, the Board will also exclude from consideration:
(a)the quantity of water adjudicated or agreed by cooperative agreement or compact to be reserved for Federal or Tribal rights, and*

(b)the quantity of water reserved for instream or recreational flow requirements established pursuant to law.

Mr. Arthur explained that these two factors are unknowns. Mr. Sevenoaks asked then if excess water would be determined without taking into consideration a. or b., then as that may come in later, it is put into the equation, and Mr. Arthur answered that is correct. He said we don't know what those numbers are, and there is a separate workgroup to look at those needs to come up with the numbers to be plugged in. Mr. Sevenoaks asked if those are the only two unknowns within a basin before excess water could be declared, and Mr. Couch answered that has been considered by staff, and the 13 watershed reports (82 basins) show how this definition through specific graphs make a numeric quantification, and for these last two unknowns to the extent there is use out of the basin, they will have to take that quantity subject to losing it if that becomes something that can't be used out of the basin, i.e., instream flow, admittedly making it difficult for an out-of-basin user to absolutely count on that number. The Legislature could provide some security and say it won't be reduced as it does now, which could be an annual amount and added conditions on the permit. The new law about out-of-state use, which is the new law also, is conditioned upon that, subject to unknown conditions once they become known, and they may have an impact. Mr. Arthur clarified the statement, "the Board will also exclude from consideration" does not mean to ignore them, but until they are not known, and the point at which they are known, that would be subtracted from the excess and surplus water that is available from that particular basin.

Mr. Sevenoaks asked if there is nothing currently in the law that a quantity is reserved for instream or recreational flow requirements, and Mr. Strong answered that is correct, except for the Barren Fork. Mr. Sevenoaks asked if that is an anticipation the Legislature will make a law, and Mr. Couch said that is a workgroup recommendation indicated that would be a first step to make a suggestion to the Legislature. Mr. Strong added that people think of the excess and surplus definition as for out of state sales, but there can be impacts to intrastate transfers, i.e., Tulsa and Oklahoma City out of basin transfers. Mr. Sevenoaks asked about treating "intra" versus "inter" basin transfers; Mr. Strong said that is the subject of a current lawsuit, and Mr.

Couch said the new law discusses in a lot more detail interstate, but that legislation does not mention excess and surplus. Mr. Arthur said that the definition of procedure being put forward is neutral to in state or out of state. Mr. Sevenoaks asked if that is because of the lawsuit, and Mr. Couch said no, it was required by law in 1974 and put in the 1975 plan and was an Eastern Oklahoma-Western Oklahoma transfer that was a huge controversy in this state to get a 1980 plan. At that point in time there was no discussion to move it out of state.

There was discussion about inter and intra and the statute reference of how applications are treated, and in 82 O.S. 105.12 the law focus is the protection of the needs of area of origin and doesn't matter where the water goes, the excess and surplus water definition arises from a separate statute designed to protect the area of origin and there is a separate statute passed that speaks to interstate compacted waters and how it should be treated, that applications are reviewed first in time-first in right, but that in-basin applications will be reviewed before out-of-basin water use and in 2009 the Legislature passed a law to address water subject to interstate compacts. Mr. Couch responded to questions regarding the Tarrant County filing of permits in 2007 that are still pending and do not have to be treated on an equal basis, but must be heard, and Mr. Strong said the presentation regards excess and surplus water and deals with all out of basin transfers both in state and out of state, and discussion of the lawsuit should be put on a future agenda.

Continuing, Mr. Arthur referred to the procedure, and slide showing the components of the calculations which are based upon surface water permit availability and the data that is available in the Comprehensive Water Plan Watershed Planning Region Reports.

Mr. Arthur explained the colored areas of the graphs (see attached on OWRB website containing graphs) that depicted the water availability determined by the formula for each basin (this presentation concerned the Beaver-Cache Region, but each watershed report in the plan has been calculated and illustrated uniformly). The green bar is the available stream water for new permits in 2060, the blue bar is the anticipated stream water permits for 2060, and the combined is the total surface water permit availability.

The in-basin reserve amount is equal to 10% of the total Surface Water Permit Availability amount plus 10% of the annual Anticipated Surface Water Permits in 2060 amount.

Mr. Arthur continued his explanation of the graph noting that the calculation is based upon the following:

- 1) Y axis of preceding chart = Total surface water availability based upon current permitting protocol (the current protocol is not changing)
- 2) "Anticipated SW Permits in 2060" includes: (what is legally obligated in 2060 for surface water) so what is in the blue bar is: Current and future permit needs through 2060 (includes demand growth); Existing out-of-basin transfers; Reservoir yield(s); Downstream future permit needs (protecting one basin down); Domestic Use set-aside; Compact obligations;"Available SW for New Permits in 2060" includes; and the difference between 1) and 2) above.

He said staff believed that the blue bar alone does a great deal in protecting the basin of origin out to the reasonable foreseeable future (1 and 2 together is the total of the blue and green bars.)

Mr. Arthur then explained the graph indicating the excess and surplus water determination that has added 10% as a cushion against unforeseen future decreases in

availability. To make the calculation: the total stream water permit availability times 10%, plus 10% of the anticipated 2060 permit needs equals the in-basin reserve amount; the in-basin reserve is subtracted from the 2060 remaining permit availability amount to equal the excess and surplus water amount for the basin. The potential federal/Tribal rights or instream flow requirements are not included. (see slide language below) He explained staff's desire was to build a safety factor (10%) in case of extended drought, if flow decreases, or demand projections were slightly off and that was considered to be a reasonable number. This calculation is illustrated with bar graphs for each of the 82 basins in each of the 13 watershed planning region reports, and Mr. Arthur concluded his presentation summarizing the discussion with the following points:

Excess/Surplus Water Integral Changes to Existing Policy

- Defines area of origin at the 82 basin level
- Balances utilization of water for the benefit of the entire state with protection for the area (basin) of origin:
 - Considers future demands through 2060 plus 10% in-basin reserve amount
 - Considers supply available for in-basin permits and provides a 10% cushion against unforeseen future decreases in availability
 - Protects downstream basin as well as area of origin
 - Contemplates potential establishment of instream flows/recreational needs and federal/Tribal rights
 - Expressly exempts groundwater

Mr. Strong asked for thoughts and comments, and he reviewed the current permit procedure based on existing law and policy, which he said does not change, but now interjects the in-basin reserve. Mr. Couch said there are two potential reviews or safety factors as the law requires, in-basin needs reviewed every 5 years, and the 10 year update of the Comprehensive water plan. The members commented on intra-inter basin transfers and the new law, that this discussion gives legitimacy to the basin advisory groups, and that reservoir yield is considered in the formula and current permitting protocol.

3. Local and Statewide Water Planning. Mr. Arthur presented the 6th of the Big 7 recommendations that regards the Regional Planning Groups with the following slides (additional slides are attached to the minutes file). He said the Regional Planning Groups concept is not new to water planning across the country and not new to the notion of providing more grassroots input into policy and other matters that state and federal water management agencies engage in. This was the most resoundingly consistent recommendation from the Public Input Process, while there was a specific (below) recommendation; it was also referenced in many other areas as far it relates to the functions that these groups could perform. And, he read:

Regional Planning Groups

The OWRB should form a workgroup to investigate and make appropriate recommendations to the State Legislature related to the creation of at least thirteen Regional Planning Groups to assist in planning and implementing OCWP initiatives at the regional level. These regional

groups should consist of local stakeholders, as well as appropriate agency representatives, charged with developing regional water plans in a manner consistent with the OCWP and its implementation priorities. Such plans could include the identification of specific projects, studies, programs, research and other evaluations specific to addressing the needs and issues identified by Regional Planning Group participants. The State Legislature should establish regular appropriations to the OWRB to coordinate the activities of these groups

Groups Important Elements of Recommendation

Calls for formation of a workgroup to develop the Regional Planning Group concept
Proposes broad functions: Development of regional water plans, Activities focused on OCWP Implementation, Seeks consistency with the 2012 OCWP, Representation from variety of stakeholders, Seeks multi-agency participation, Calls for OWRB to be coordinating agency, Does not propose regulatory authority, Requests funding to support these functions

Why Form Regional Planning Groups?

Included in nine OCWP Recommendations (six from Public):

The State Legislature should enact legislation to create thirteen Regional Advisory Groups charged with identifying local water resource issues and developing action plans and recommendations for implementation by the OWRB. [Public Rec]

Facilitates OCWP implementation and establishes excellent groundwork for next decennial OCWP update.

Recognizes unique regional characteristics and needs: Reflects national trend in watershed-based planning (EPA, Corps, Reclamation), Prioritization of regional issues through regional water plans, Establishes feedback mechanism between OWRB/stakeholders, Local outreach on water issues

Approximately 65% of states have similar groups. Mr. Arthur spoke to the current programs in neighboring states. (see slides attached).

Positives:

Allows for “bottom up” planning, Provides for regular formal engagement on issues, Recognizes regional characteristics and needs, Collaboration providing for increased appreciation of unique stakeholder interests, Sounding board for state agency policy matters, Excellent educational/outreach forum for agencies

Potential Negatives:

Expectations must be clear or there will be disparity among regions, Must be central coordination to ensure consistency among regions and effective operation, Funding mechanisms must be fair or risk the creation of the “haves” and “have nots”

Implementation & Estimated Costs (current funding):

Colorado = \$10,000,000/year

Texas = \$3,200,000/year (\$16 million/5 years)

Kansas = \$20,000,000/year

Oklahoma = \$ 2,000,000/year :

Based upon Texas in similarity of scope, and Could be satisfied in part through leveraging state resources for federal dollars

The members liked the concept and said the groups would be very beneficial.

4. Other Policy Recommendations. There were no other recommendations discussed.

Dr. Taron asked for comments from the public, and Mr. Couch said that the schedule has been discussed previously for the benefit of the public knowing the schedule for public comment, and it could be a New Business item, but not being on the agenda, might create concern about allowing comment here rather than the September meeting for review of the final document. No comments were accepted.

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. No items. There were no Special Consideration Agenda items for the Board's consideration.

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

6. AGENCY BUDGET REPORT

The agency budget report was considered following the Executive Director's Report.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

A. Contracts and Agreements Recommended for Approval.

- 1. Amendment of Professional Services Contract with Sparks Write, Inc. for assistance with update of Oklahoma Comprehensive Water Plan and related activities.

Mr. Strong said this contract amendment is not for additional funding. Mr. Arthur stated the Department of Central Services had three concerns with the contract approved in June, and two were addressed off line, one required a slight modification. Mr. Jerry Barnett explained the modification removes the language DCS had a problem with.

Mr. Buchanan moved to approve the amendment to the professional services contract as presented, and Mr. Knowles seconded.

AYE: Feaver, Buchanan, Fite, Sevenoaks, Knowles, Taron
NAY: None
ABSTAIN: None
ABSENT: Herrmann, Lambert, Drummond

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.

Mr. Strong expressed that the agency's door is open at all times to accept comments from the public, but the September meeting is set aside specifically for comment.

Acting Chairman Taron asked Ms. Feaver to serve as secretary for this meeting.

9. ADJOURNMENT

There being no further business, Acting Chairman Joe Taron adjourned the meeting of the Oklahoma Water Resources Board at 12:45 p.m. on Tuesday, July 12, 2011.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Linda P. Lambert, Chairman

_____/s/_____
F. Ford Drummond, Vice Chairman

_____/s/_____
Edward H. Fite

_____/Absent_____
Kenneth K. Knowles

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Tom Buchanan

ATTEST:

_____/s/_____
Joseph E. Taron, Secretary
(SEAL)