

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
December 13, 2011

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Linda Lambert at 9:30 a.m., on December 13, 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 December 6, 2011 at 5:40 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Lambert asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

Linda Lambert, Chairman
Ed Fite
Rudy Herrmann
Kenneth Knowles
Richard Sevenoaks
Tom Buchanan

Board Members Absent

Ford Drummond, Vice Chairman
Joe Taron, Secretary
Marilyn Feaver

Staff Members Present

J.D. Strong, Executive Director
Dean Couch, General Counsel
Jennifer Wasinger, 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

Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Nana Lance, Sulphur, OK
Robert Jones, town of Calvin, OK
Dale Jackson, Clayton, OK
Jim Long, Pushmataha County, Clayton, OK
Kim Winton, US Geological Survey, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Rebecca Arnold, Oklahomans for Responsible Water Policy (ORWP), Coalgate, OK
Elaine Merritt, ORWP, Coalgate, OK
Jim Cox, ORWP, Coalgate, OK
Johnny Ward, Coal County, Coalgate, OK
Miguel Cole, ORWP, Coalgate, OK
Krystina Hollarn, Citizens for the Protection of Arbuckle Simpson Aquifer (CPASA),
Tulsa, OK
Jason Aamodt, APOW/ORWP, Tulsa, OK
Mike Brittingham, Pushmataha County, Moyers, OK
Charlette Hearne, ORWP, Broken Bow, OK
Pennie Embry, ORWP, Eufaula, OK
Debbie Leo, ORWP, Moyers, OK
Jerry Duncan, Pushmataha County, Antlers, OK
Ed Parks, City of Davis, OK
Roger Pulley, City of Davis, OK
Amy Ford, CPASA, Durant, OK
Monty Montgomery, Bryan County, OK
Jerry Johnston, Braman, OK
Chris Phillips, Chickasaw Nation, Ada, OK
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK
Angela Thompson, Wells Nelson & Associates, Oklahoma City, OK
Robert Shelton, City of Tulsa, OK
Rebecca Poole, Department of Environmental Quality (DEQ), Oklahoma City, OK
Vicki Reed, DEQ, Oklahoma City, OK
Don Faulkner, ORWP, Talihina, OK
Michael Taylor, DEQ, Oklahoma City, OK
Eddie Rhandour, DEQ, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Dave Taylor, Waurika Master Conservancy District, Waurika, OK
Dick Scalf, City of Ada, OK

C. APPROVAL OF MINUTES

Chairman Lambert stated she had noted a few non-substantive grammatical changes to the draft minutes of the November 8, 2011, Regular Meeting. She said with those few changes

she would entertain a motion to approve the minutes as amended. Mr. Buchanan moved to approve, and Mr. Herrmann seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Executive Director J.D. Strong, prior to his report, asked Mr. Josh McClintock to provide the legislative update. Mr. McClintock noted the prepared written report which was distributed. He said the Senate Appropriations Chairman, David Myers, had passed away in November, and Senator Clark Jolley had been appointed to serve as chairman of the committee and Senator Ron Justice to serve as vice chair. Senator Justice has served as the OWRB Appropriations Committee Chairman and so is familiar with agency programs; staff will be meeting with him prior to the legislative session beginning. He said that the deadline for legislation requests is December 9, and December 29 is the deadline to provide language for the measures; he said he understood there would be several water bills this upcoming session. On the federal level, Congress is working to wrap up action on the nine appropriations bills, the report was to be filed today. He added Mr. Joe Freeman is, at this moment, testifying before the Senate Environment and Public Works Committee Subcommittee on Water and Wildlife, which is holding a hearing on infrastructure. At Senator Inhofe's request, Mr. Freeman attended to give a state perspective; there will also be municipal representatives as well as EPA representatives. Chairman Lambert said the testimony will confirm the water plan.

Mr. Strong also commented about the testimony by Mr. Freeman and the several organizations he is representing along with the OWRB; the OWRB was invited because of its leading state financing programs in the Nation, and because of the work done on the Water Plan update, providing information on the daunting task of future infrastructure needs.

Mr. Strong said the Joint Legislative Water Committee had not met at the Capitol, but conducted public input meetings in Idabel and Woodward. He was not aware of the Committee's future plans. Regarding proposed legislation, he said he has had several requests about how to move some of the OCWP recommendations forward including bill language to appropriations, in particular infrastructure financing, and including the budget request that concerns monitoring, technical studies on groundwater and surface water, instream flow, etc. The Infrastructure Finance Workgroup met again on November 30; the group has been convened to help refine what proposal might be provided to the Legislature to address the \$81 billion dollars in wastewater and drinking water infrastructure needs over the next fifty years. He said the group is beginning to believe the best option to address the need without needing additional appropriated dollars is a state-backed loan program, putting up a credit reserve to "stand in the gap" if there were ever any defaults, as opposed to actual cash.

Mr. Strong said he met in Washington, D.C. with the states of Texas and Kansas and the Corps of Engineers on Tri-State issues with reservoir management; he met with American Farmers and Ranchers Policy Board; he had a preliminary meeting with state auditors to set up an audit on the water plan --there are a few expenditure remaining and with their workload it may be March before it could be started; but he will receive an estimated cost for completion.

Mr. Strong concluded his report stating the first round of Court Mediation on the lawsuit with the Choctaws and Chickasaws will be on Thursday, December 15. There were no questions.

E. Monthly Budget Report

Ms. Amanda Storck addressed the members and said the prepared budget report indicates there is 71% of funding remaining, with 58% of the fiscal year remaining.

There were no questions by members.

2. FINANCIAL ASSISTANCE DIVISION

Ms. Jennifer Wasinger, Assistant Chief of the Financial Assistance Division, will present the Division matters in the absence of Mr. Joe Freeman.

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Calvin Public Works Authority, Hughes County. Recommended for Approval. Ms. Jennifer Wasinger stated to the members this first item is an \$83,700.00 Emergency Grant request by the Calvin Public Works Authority. The community's primary lift station has failed forcing the city to use a portable pump on a trailer to manually pump wastewater to the treatment lagoon. The proposed project consists of constructing a new lift station with gravel access, and a standby power source with an automatic transfer switch. The estimated project costs consists of \$192,293.00, with funding provided by \$28,844.00 in local funds, \$79,749.00 from a Department of Commerce Community Development Block Grant and the requested OWRB Emergency Grant of \$83,700.00. Staff recommended approval.

Mr. Robert Jones, City Manager, and Ms. Linda Bennett, Town Clerk, were present in support of the Emergency Grant Request.

There were no questions or discussion. Chairman Lambert asked for a motion to approve the emergency grant.

Mr. Herrmann moved to approve the emergency grant to the Calvin Public Works Authority, and Mr. Sevenoaks seconded.

AYE: Herrmann, Fite, Buchanan, Sevenoaks, Knowles, Lambert

NAY: None

Abstain: None

ABSENT: Drummond, Taron, Feaver

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Tahlequah Public Works Authority, Cherokee County. Recommended for Approval. Ms. Wasinger stated this item is for the consideration of a \$1,680,000.00 Drinking Water State Revolving Fund Loan request by the Tahlequah Public Works Authority, located in Cherokee County. The Tahlequah PWA is requesting the loan to fund the installation of an automatic meter reading system composed of 6,300 water meters, computer software, and data collection devices. Ms. Wasinger noted provisions of the loan agreement. Tahlequah has one outstanding loan with the Board in the amount of \$12.6 million. Tahlequah's population has increased 50% over the past 20 years, and its water and sewer connections have increased over

25% over the last ten years. The city's debt coverage ratio is a strong 3.4-times. Staff recommended approval of the loan request.

Mr. Rick Smith, Municipal Finance Services, Inc., represented the Tahlequah PWA.

Ms. Lambert asked if the City had contacted other communities that have installed these systems and Mr. Smith responded that they had. He added many systems are still being installed and the full results of their effectiveness are not in, although Enid has indicated the project has been a money maker with the ability to be more accurate in the registration of the water. Mr. Herrmann asked about the term of the loan and life of the meter system, and Mr. Smith answered the loan is for ten years, and the life of the system is about 15-20 years.

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

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

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Davis Municipal Authority, Murray County. Recommended for Approval. Ms. Wasinger stated this request for a Drinking Water SRF loan is by the Davis Municipal Authority located in Murray County. She noted a change was made in the loan amount requested based on the bid opening which occurred after the meeting information was initially provided. The requested loan amount has increased from \$8,295,000.00 to \$9,995,000.00. The loan is being requested to construct a new clear well, demolish the existing clarifier and replace it with two new clarifiers, install new high service pumps, and make improvements to the existing lagoons. Ms. Wasinger noted the provisions of the loan agreement. She said that Davis has been a loan customer of the Board's for 20 years, and currently has one outstanding loan with the Board with a balance of \$186,000.00. The DMA debt coverage ratio stands at approximately 1.32-times. Staff recommended approval.

Representing the Davis Municipal Authority was Mayor Ed Parks, City Manager Roger Pulley, and Engineer Mike Graves.

Mr. Sevenoaks asked what is the raw water source; Mr. Parks answered Lake of the Arbuckle. Mr. Buchanan asked the total on the cent charge, which is three cents total Mr. Parks said. Mr. Herrmann said that roughly the loan will cost citizens \$3,700 per person and he asked if that is a reasonable investment for the upgrade; Ms. Wasinger stated that it is. And, Mr. Sevenoaks asked if there were water districts the Davis MA sold water to, and Mr. Parks said there are two districts.

There were no other questions, and Chairman Lambert asked for a motion to approve the loan.

Mr. Buchanan moved to approve the Drinking Water SRF loan to the Davis Municipal Authority, and Mr. Knowles seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Ms. Wasinger stated this item is for a \$16,700,000.00 Clean Water SRF loan request for the Tulsa Metropolitan Utility Authority. The Authority is requesting the loan for three projects: (1) expand the Lower Bird Creek wastewater treatment plant from 2 MGD to 4 MGD (including administration building, head works building, disinfection, aeration, and other improvements); (2) the Port South Lift station replacement of process pumps, construct excess flow diversion, chemical and feed system and other control system improvements; and (3) North Side Waste Water treatment plant expansion of the sludge processing capacity, new polymer feed storage system and control system improvements. The loan will be funded through the Clean Water SRF loan program, and Ms. Wasinger noted the provisions of the loan agreement. The Tulsa TMUA has been a loan customer of the Board's for 20 years; there are currently twenty loans outstanding. Staff recommended approval.

Mr. Bob Shelton, City Engineer was present in support of the loan application.

Mr. Herrmann asked the total outstanding balances of the loans and the debt coverage ratio. Ms. Wasinger answered the total is \$188 million from both the Clean Water and Drinking Water funds, and the debt coverage is at 2.42-times.

There were no other questions, and Chairman Lambert asked for a motion.

Mr. Fite moved to approve the Clean Water SRF loan to the Tulsa Municipal Authority, and Mr. Herrmann seconded.

AYE: Herrmann, Fite, Buchanan, Knowles, Lambert

NAY: None

Abstain: Sevenoaks

ABSENT: Drummond, Taron, Feaver

3. SUMMARY DISPOSITION AGENDA ITEMS

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

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

There were no requests to transfer items from the Summary Disposition Agenda to the Special Consideration Agenda.

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 Lambert asked if there were any other changes to the Summary Disposition Agenda in addition to those noted on the agenda. Ms. Julie Cunningham asked that item E.J.1., Town of Muldrow #2011-033 be withdrawn from consideration at this time.

There were no other changes, and no questions or discussion. Chairman Lambert asked

for a motion to approve the Summary Disposition Agenda as amended.

Mr. Herrmann moved to approve the Summary Disposition Agenda, Mr. Knowles seconded.

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

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>
COEDD				
a.	FAP-10-0020-R	Calvin Public Works Authority	Hughes	\$ 99,999.00
GGEDA				
b.	FAP-11-0032-R	Town of Adair	Mayes	99,000.00
KEDDO				
c.	FAP-11-0005-R	Fort Towson Public Works Authority	Choctaw	99,000.00
NODA				
d.	FAP-09-0022-R	Town of Braman	Kay	79,999.00
SODA				
e.	FAP-09-0028-R	Wapanucka Public Works Authority	Johnston	99,999.00
SWODA				
f.	FAP-09-0018-R	Lone Wolf Public Works Authority	Kiowa	90,400.00

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

1. Interagency Subagreement with Oklahoma State University Department of Natural Resource Ecology and Management for the Oxbow System Assessment and Protocol Development – Phase III.
2. Memorandum Agreement with Department of Environmental Quality for lake monitoring and USGS/OWRB Stream Gaging Cooperative Program Support.
3. Intergovernmental Agreement with City of Broken Arrow for Cooperating Technical Partners – Broken Arrow Creek Project.
- 4. *Joint Funding Agreement with USGS for the Stream-Flow Monitoring of Seven Stream-Flow Sites in the Upper Washita River and Cobb Creek Basins. Item added*

- 5. *Interagency Agreement with Oklahoma Corporation Commission to Provide for Plugging Certain Water Wells to Prevent, Control or Abate Pollution of Groundwater. Item added*

- E. Applications for Temporary Permits to Use Groundwater:
 1. Fletcher Public Works Authority, Comanche County, #2011-535
 2. Herb & Jana Hammack, Dewey County, #2011-593
 3. Thomas M. Entz, Caddo County, #2011-596
 4. Thomas M. Entz, Caddo County, #2011-597
 5. Russel Ivins, France Valerie Ann Ivins and Marlin & Frankie Jo Ivins, Blaine County, #2011-612
 6. Horse Creek Farms, L.L.C., Custer County, #2011-624
 7. Ron & Barbara Crain, Alfalfa County, #2011-631
 8. Raymond O. Watson Trust, Elma J. Watson, Trustee, Caddo County, #2011-637

- F. Applications to Amend Temporary Permits to Use Groundwater:
 1. Guilford J. & Marian E. Barnard, Victor D. & Marjorie J. Barnard and Hugh D. Barnard, Alfalfa County, #1974-207
 2. Johnny & Cordelia Atteberry, Blaine County, #1993-511A
 3. Eldon & Jannell Ridenour, Canadian County, #2005-568

- G. Applications for Regular Permits to Use Groundwater:
 1. Richard E. & Rebecca Sally Claggett, Texas County, #2011-567
 2. Russel Ivins, France Valerie Ann Ivins and Marlin & Frankie Jo Ivins, Blaine County, #2011-611
 3. Burgin Limited Partnership, Cimarron County, #2011-618
 4. Gerald M. Wallace Living Trust, Tillman County, #2011-622

- H. Applications to Amend Regular Permits to Use Groundwater:
 1. Larry Wayne Williams, Texas County, #1978-644

- I. Applications to Amend Prior Rights to Use Groundwater:
 1. Kent Wayman, Grant County, #1972-195

- J. Applications for Regular Permits to Use Stream Water:
 - 1. *Town of Muldrow, Sequoyah County, #2011-033 Item withdrawn*
 - 2. Jimmy Ray Capps, Pottawatomie County, #2011-049
 - 3. Cimarex Energy Co., Canadian County, #2011-050
 - 4. Raymond Duane Tiblow, Osage County, #2011-051
 - 5. Buel Dean Jobe, Osage County, #2011-052

- K. Applications for Term Permits to Use Stream Water:
 1. Don Kirkes, Pushmataha County, #2011-047
 2. Scott Elliott, Choctaw County, #2011-048

- L. Order Vacating Summary Disposition Approval of Application for Temporary Permit to Use Groundwater in names of Wayne & Dona Caulder, Major County, #2011-570

M. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- | | |
|---|----------|
| a. Licensee: Parker & Son Welding | DPC-0825 |
| 1. Operator: Brian Parker | OP-1842 |
| Activities: Pump installation | |
| 2. Operator: Ronald Dean Parker | OP-1843 |
| Activities: Pump installation | |
| b. Licensee: Barnett Water Well Service | DPC-0851 |
| 1. Operator: Darrell Barnett | OP-1879 |
| Activities: Groundwater wells, groundwater test holes and observation wells | |
| Pump installation | |
| c. Licensee: ACE Well Service | DPC-0853 |
| 1. Operator: A.C. Kuhlman | OP-1880 |
| Activities: Pump installation | |
2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
- | | |
|---|----------|
| a. Licensee: C & W Construction, Inc. | DPC-0528 |
| 1. Operator: Miguel Martinez | OP-1877 |
| Activities: Pump installation | |
| 2. Operator: Irvin Gonzales | OP-1878 |
| Activities: Pump installation | |
| b. Licensee: Sunbelt Industrial Services, LLC | DPC-0701 |
| 1. Operator: Thomas Ralph McCullough | OP-1553 |
| Activities: Monitoring wells and geotechnical borings | |

N. Dam and Reservoir Construction:

1. Sahoma Lake Dam, Creek County, #OK00566

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

1. Oklahoma Department of Transportation, Comanche County, #FP-11-38
2. Oklahoma Department of Transportation, Comanche County, #FP-11-39
3. Oklahoma Department of Transportation, Rogers County, #FP-11-41
4. Oklahoma Department of Transportation, Cherokee & Wagoner Counties, #FP-11-42

P. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the December 13, 2011 packet of Board materials

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

A. Presentation and Discussion Regarding Update on the Re-evaluation of the Oklahoma Water Quality Standards Scenic Rivers 0.037 mg/L Total Phosphorus Criterion. Mr. Derek Smithee, Chief of the Water Quality Program Division, stated to the members that this

presentation is a preview of what the Board will be presented more extensively at the January Board meeting. He reviewed that in 2002 the OWRB pursued developing a numerical phosphorous criteria to prevent excess algae build up in the six scenic rivers. As a result of promulgating the .037 number, the Environmental Protection Agency, and states of Arkansas and Oklahoma worked cooperatively to develop the "Joint Principles and Actions" which identified several items agreed to in partnership to do together. One of the items, he said, was that by 2012, the OWRB would re-evaluate the .037 phosphorus criterion, and he read the statement: "In particular, Oklahoma will re-evaluate Oklahoma's 0.037 milligram per liter criterion for total phosphorus in Oklahoma Scenic Rivers by 2012 based on the best scientific information available at that time, and with a full timely inclusion of officials from the State of Arkansas representing both point and non-point source discharges." The agreement was executed December 2003.

Mr. Smithee said that staff recently contacted the EPA about funding to conduct the re-evaluation and process, which was funded in 2010, and staff has put together an interagency workgroup comprised of water quality professionals from both states. Mr. Smithee has chaired the workgroup along with Ms. Shannon Phillips of the Oklahoma Conservation Commission (non-point), Ms. Shelly Chard-McClary with the Oklahoma Department of Environmental Quality, Mr. Quam Pham with the Department of Agriculture, Food and Forestry, Ms. Cara Cowan Watts with the Cherokee Nation, Melinda McCoy with EPA Region 6; and, Ed Swaim with Arkansas Natural Resources Commission (non-point), and Steve Drown with the Arkansas Department of Environmental Quality. He said that over the past year the group has met and has worked together to re-evaluate the science behind the .037, with the goal of determining if there is new science or new information that shows the criterion should be changed.

Mr. Smithee said that the final recommendation will be brought to the Board next month, but an exhaustive literature review has been conducted internationally, and people have brought information and public meetings have been held. Essentially, there are three outcomes: (1) agree that is the right number, (2) the number is refuted and a new number is needed; or (3) there is a lack of information that allows overturning the original number. He said he believed that the workgroup agrees that there is a lack of information to refute the original .037, there is no new science or the science is strong enough to say the .037 number is in the strike zone of acceptability. He said one of the criticisms on the science was the number was developed not just for the Scenic Rivers, but for the entire eco-region and we need to know the cause-effect on the Illinois River, for example. That information was discovered: how does the aquatic community respond with various concentrations of phosphorus in the system of the Illinois River.

Mr. Herrmann asked what action the Board will take; Mr. Smithee explained the criterion is in place as a rule today so the number may be affirmed, or if there is a lack of information to drive making a change, the number is already in place; Mr. Strong added to undo the rule would require a rule change. He said the Board is to be aware of the outcome of the re-evaluation process so that if it needed to, it may contemplate rule change. Mr. Buchanan asked if the number is achievable, and Mr. Strong said it is being achieved now in most of the Scenic Rivers today.

Chairman Lambert invited any comments from members of the public on the matter, and there were no comments.

B. *Presentation and Discussion of Status of Arbuckle Simpson Aquifer Study and Process of Determination of Maximum Annual Yield.* (Item added)

Prior to Ms. Cunningham's presentation, Chairman Lambert asked Mr. Strong to make a few introductory comments. Mr. Strong said to the members that Ms. Cunningham will provide an update on the Arbuckle Simpson Study, and the Maximum Annual Yield Order (MAY) process. He said members may have heard from people in the Arbuckle Simpson area who have asked to be on the Board's agenda to present a draft order for the MAY. He said while the agency wants to be accessible, for the MAY there is a statutory process much like the permitting process -- a draft goes to notice and a hearing is held affording every stakeholder and affected party to provide input prior to the Board making a final determination. He said a draft tentative order for the Arbuckle Simpson will not be presented today, but staff felt that given the interest and timing with the final publication of the study by the USGS this past month, it is timely. He said the actual input on the content should come through the hearing process, but it is important to recognize a group of water providers in the area that have worked together the past several months to come to consensus as to what they would like to see happen with SB 288. The group has prepared a draft order which has been submitted to staff, and it will be reviewed going forward. The City of Ada has passed a resolution supporting that draft order; letters have been received from the US Fish and Wildlife Service and National Park Service (with some modification). He understood there would be additional letters of support from area communities and rural water districts. Mr. Strong said that when the OWRB conducted meetings to release the tentative findings of the study and potential implementation strategies, then Director Duane Smith asked the citizens to come together and develop an implementation plan for the MAY and bring it back to the Board. This is a local issue and makes sense to have the local citizens say how they want to live under the law. This group represents the larger water providers in the area and they have come together with a consensus which will be valuable going forward. He said the Board must make sure that all parties have an opportunity before the Board prior to making a final decision on moving forward as afforded by the Administrative Procedures Act and hearing process. Mr. Strong said staff believed for that reason that no parties should present draft orders, but he would recognize the significant amount of effort that has gone into those parties coming together, whom he named in attendance. Mr. Strong noted a draft order had been mailed directly to the members, and it would be determined later as to whether that would delay the process.

Ms. Julie Cunningham, Chief of the Planning and Management Division, addressed the members and said she believed they were knowledgeable about the uniqueness of the sole source aquifer. Senate Bill 288 challenged the Board to ensure the natural flow of water from the springs and streams emanating from the basin are protected. Therefore, instead of the typical MAY allowing a twenty-year draw down, the challenge was to determine how much water could be withdrawn while keeping the base relatively full. Ms. Cunningham reminded the members a Peer Review Technical Team was assembled -- Oklahoma State University, US Geological Survey, University of Oklahoma and the Environmental Protection Agency -- with special recognition to former OWRB Geologist Noel Osborn -- who ultimately came together to characterize the hydrogeology and to develop a groundwater flow model to be used to test scenarios. She said the Oklahoma Comprehensive Water Plan contemplates how valuable the maximum annual yields are, especially when developing this type of intensive flow model, and have that depth of understanding of a system. She said that the final report was published in September (2011) and staff is ready to move forward with a tentative order. She noted the

document recognized contributions by the landowners, municipalities and operators of rural water districts who provided access to wells and springs as the study would not have been possible without access to their land. Ms. Cunningham recognized other entities that contributed to the study: Cimatological Survey, Nature Conservancy, Chickasaw and Choctaw Nations, National Park Service, Hydrosphere Resources, Department of Environmental Quality and Department of Wildlife, and said it was a great collaborative effort.

Regarding public participation, Ms. Cunningham again recognized Ms. Noel Osborn's leadership and Chris Neel's work and in being available to the public. There was a very successful meeting in Ada where over 300 people attended, and there was good feedback now available on the Board's website. Staff is now in the process of putting together the recommendations, and is pleased with the continuing collaborative effort, and is taking under advisement these new suggestions.

Ms. Cunningham concluded the presentation distributing two handouts: (1) Arbuckle Simpson Hydrology Study Timeline, and (2) Next Steps in Maximum Annual Yield Determination Process, which she reviewed with the members.

Chairman Lambert reminded the members that this presentation focuses on the process of the tentative order rather than the particulars of the order itself. She asked if there were comments or questions from the Board.

Mr. Herrmann asked if the process is different from the regular rule making process and he asked for guidance on how the members should interact with people without prejudicing themselves relative to any final determines to be made. Mr. Couch responded that years ago the statute read as if it were a rule making; however, with the significant complexity and technical information included in these kinds of determinations, the Legislature has clarified that these activities/hearings are to be conducted under "Article 2 of the Administrative Procedures Act" moving from a rule making type of activity to more of what happens with a permit application: a hearing is held, information obtained from both sides, and with aspects of notice--who can and should be involved. Due process applies he said, and that is the concern about getting ahead of that without everyone having the ability to make a presentation at the appropriate time. Mr. Strong asked in regard to outside contact does the Board need to maintain some type of neutrality, and Mr. Couch answered that Article 2 of the APA is limited to ex parte communication with final decision makers; the Board members are the final decision makers. He said getting ahead of that and making presentations without all parties being able to do that in an organized fashion might trigger questions or objections as to the process being outside of what is contemplated.

Chairman Lambert stated she would entertain comments from the audience with three criteria: (1) that the comments be new information and not a reiteration of what has already been shared by staff; (2) that the comments focus solely on the process itself and not the content on the tentative order; and (3) that comments be brief (depending on the number of persons who wish to speak).

Mr. Dick Scalf, Mayor of the City of Ada, was the only person who wished to comment. Mayor Scalf addressed the members and stated that he is representing a group of several municipalities whose representatives began to meet several months ago. He said the group understands this is the beginning of the process, but wanted to inform the Board that the people that are most affected by this (determination) are together and have come to an agreement on

how to manage the aquifer. Their primary interest is sustainability; Ada has used the aquifer for 100 years, and the group is not only interested in using the aquifer but also to protect it from a quality and quantity standpoint. He named the participants and expressed their desire to work with the OWRB and move the process forward.

There were no other public comments, or comments or questions by members.

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. None.

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.

6. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

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

7. 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 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 a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing Chickasaw Nation and Choctaw Nation v. Fallin, et al. and discussing the possible authorization to legal counsel to institute suits to adjudicate all rights to the use of water in the Kiamichi River Stream System including but not limited to the Kiamichi River, all

tributaries thereof, and all reservoirs on any such stream, contained within Basins 5 and 6 of the Southeast Watershed Planning Region described in the 2012 Update of the Oklahoma Comprehensive Water Plan published by the Board (the "2012 OCWP") and the Muddy Boggy Stream System including but not limited to the Muddy Boggy Creek, all tributaries thereof including but not limited to Clear Boggy Creek, North Boggy Creek and McGee Creek, and all reservoirs on any such stream, contained within Basins 7, 8 and 9 of the Blue-Boggy Watershed Planning Region described in the 2012 OCWP pursuant to Section 105.6 of Title 82 of the Oklahoma Statutes and in compliance with 43 United States Code, Section 666.

The Board has been advised by legal counsel that disclosure of the discussion of the litigation will seriously impair the Board and state to conduct the present and proposed litigation in the public interest.

Prior to considering a motion to enter Executive Session, Chairman Lambert clarified the purpose of the agenda item. The Oklahoma Open Meeting Act allows public bodies, such as the OWRB, to convene in executive session for the purpose of discussing specific, limited items and one of those items authorized statutorily for discussion in executive session is pending litigation, which is on the posted agenda under item "7." Also, she said, included on the agenda is an item to authorize the Board's legal counsel to adjudicate the water rights in certain areas of Oklahoma as stated in a pending claim, and also outlined in the agenda item language.

Chairman Lambert stated there are two requirements the Board must meet in order to enter executive session, and the first is that the Board must be advised by its legal counsel that the disclosure of discussion within the executive session will impair the ability to process the claim, pending litigation, or to proceed in serving the public interest. Secondly, there must be an open vote by the Board to move into executive session. Chairman Lambert asked OWRB General Counsel to share with the Board the purpose of this executive session and why disclosure of information discussed in this executive session will impair the ability of this Board to proceed with the pending litigation claims and to proceed in the interest of the public.

Mr. Couch responded that he is one legal counsel for the Board and in this situation there are more, and as requested by the Board and here today are representatives of the Office of Attorney General. Mr. Couch invited the Attorney General's Office, who is more specifically representing the Board, to speak to this aspect of the Open Meeting Law about serious impairment for disclosure. Chairman Lambert introduced Mr. Patrick Wyrick, Oklahoma Solicitor General, who stated it is his advice to the Board that public disclosure of the agenda items would seriously impair the Board's ability to litigate this case, and as a result it is his advice the Board conducts these discussions in executive session. Mr. Strong reminded the members that no action can be taken in executive session; Mr. Sevenoaks asked for clarification on the agenda item language--and the Chairman confirmed the Board will not vote in executive session, but will return from executive session and vote in open session.

A. Vote on whether to hold Executive Session upon determination that it will seriously impair the ability of the Board and state to conduct the present and proposed litigation in the public interest. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Mr. Couch stated it is his recommendation to the Board then, in its discussion and the need for a motion, second and vote on whether to enter executive session, with this advice about serious impairment with disclosure. Chairman Lambert read the following statement:

"Upon the advice of our attorneys, the Board has determined that disclosure of the discussion of the pending Chickasaw Nation v. Fallin legal action will seriously impair the ability of the Board to conduct the Chickasaw Nation v. Fallin litigation in the public interest, and that accordingly, moves that the Board hold an executive session for the purpose of discussing the Chickasaw Nation v. Fallin litigation." Chairman Lambert asked for a motion.

Mr. Herrmann so moved that the Board enter executive session, and Mr. Buchanan seconded. There was no further discussion, and Chairman Lambert called for the vote.

AYE: Herrmann, Fite, Buchanan, Sevenoaks, Knowles, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Taron, Feaver

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

Chairman Lambert designated Executive Secretary Mary Schooley to keep written minutes of the executive session.

C. Executive Session, if authorized.

The Board voted to enter executive session at 10:37 a.m. on Tuesday, December 13, 2011. Following a break, the Board entered the authorized Executive Session at 10:47 a.m.

Return to open meeting and possible vote or action on any matter discussed in the Executive Session

Upon conclusion of the Executive Session (meeting room doors were opened and the public was invited to enter), Mr. Buchanan then moved that the Board come out of Executive Session and return to the open meeting of the Oklahoma Water Resources Board at 11:59 a.m., and Mr. Sevenoaks seconded.

AYE: Herrmann, Fite, Buchanan, Sevenoaks, Knowles, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Taron, Feaver

8. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION, INCLUDING BUT NOT LIMITED TO POSSIBLE INSTRUCTION TO COUNSEL RELATED TO THE PRESENT LAWSUIT AND AUTHORIZING LEGAL COUNSEL AT THEIR DISCRETION TO INSTITUTE SUITS TO ADJUDICATE ALL RIGHTS TO THE USE OF WATER IN THE KIAMICHI RIVER STREAM SYSTEM INCLUDING BUT NOT LIMITED TO THE KIAMICHI RIVER, ALL TRIBUTARIES THEREOF, AND ALL RESERVOIRS ON ANY SUCH STREAM, CONTAINED WITHIN BASINS 5 AND 6 OF THE SOUTHEAST WATERSHED PLANNING REGION DESCRIBED IN THE 2012 UPDATE OF THE OKLAHOMA COMPREHENSIVE WATER PLAN PUBLISHED BY THE BOARD (THE "2012 OCWP") AND THE MUDDY BOGGY STREAM SYSTEM INCLUDING BUT NOT LIMITED TO THE MUDDY BOGGY CREEK, ALL TRIBUTARIES THEREOF INCLUDING BUT NOT

LIMITED TO CLEAR BOGGY CREEK, NORTH BOGGY CREEK AND MCGEE CREEK, AND ALL RESERVOIRS ON ANY SUCH STREAM, CONTAINED WITHIN BASINS 7, 8 AND 9 OF THE BLUE-BOGGY WATERSHED PLANNING REGION DESCRIBED IN THE 2012 OCWP PURSUANT TO TITLE 82 OF THE OKLAHOMA STATUTES AND IN COMPLIANCE WITH 43 UNITED STATES CODE SECTION 666.

Language revised (italicized unbolded and italicized bolded).

Chairman Lambert then read the following statement: "The Board has determined that the best interest to the claimants to the use of water in the Kiamichi River Stream System including but not limited to the Kiamichi River, all tributaries thereof, and all reservoirs on any such streams contained within Basins 5 and 6 of the Southeast Watershed Planning Region described in the 2012 Update of the Oklahoma Comprehensive Water Plan published by the Board (the "2012 OCWP") and the Muddy Boggy Stream System including but not limited to the Muddy Boggy Creek, all tributaries thereof including but not limited to Clear Boggy Creek, North Boggy Creek and McGee Creek, and all reservoirs on any such stream, contained within Basins 7, 8 and 9 of the Blue-Boggy Watershed Planning Region described in the 2012 Update of the OCWP, will be served by determination of all rights to the use of water of such stream systems, and accordingly, the Board moves to authorize its attorneys at their discretion to institute a suit or suits on behalf of the State of Oklahoma for the adjudication of all rights to the use of water of such stream systems pursuant to title 82 of the Oklahoma statutes and in compliance with 43 United States Code Section 666."

Chairman Lambert stated she would entertain a motion. Mr. Herrmann so moved, and Mr. Buchanan seconded.

Mr. Neal Leader, Assistant Attorney General, clarified the motion is on behalf of the Oklahoma Water Resources Board, and not just the State. Chairman Lambert affirmed, and called for the vote.

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

Chairman Lambert stated the motion passes.

Mr. J.D. Strong stated he understood that this is a new process and there may be some clarification necessary about how the process works, and how it is navigated in all of the Western states. There will be information on the OWRB website about how the Congressionally recognized adjudication process works that will help folks better understand. He said the Attorney General's Office will be available. He stated that the Board has authorized its attorneys to pursue the stream adjudication, which does not necessarily mean it will or will not happen, but gives them the ability to do that which is in our best interest.

A question from the audience asked Chairman Lambert whether the public would be able to speak. Chairman Lambert responded that upon advice of the Board's legal counsel, public comment is not appropriate at this meeting. He asked for explanation by counsel of the ramification of the action, and Chairman Lambert again stated that this is a legal process and it has been advised not to do that, and the Board will follow the advice of counsel. She appreciated cooperation.

There was no further discussion.

9. 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.

10. ADJOURNMENT

There being no further business, Mr. Buchanan moved to adjourn the meeting, and Mr. Herrmann seconded.

AYE: Herrmann, Fite, Buchanan, Sevenoaks, Knowles, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drummond, Taron, Feaver

Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 12:02 p.m. on Tuesday, December 13, 2011.

OKLAHOMA WATER RESOURCES BOARD

_____/Absent_____
Linda P. Lambert, Chairman

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

_____/Absent_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Tom Buchanan

ATTEST:

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