

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

April 10, 2012

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 April 10, 2012, 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 April 3, 2012, at 1:30 p.m., at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Lambert called the meeting to order, and asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

Linda Lambert, Chairman
Ford Drummond, Vice Chairman
Tom Buchanan, Secretary
Marilyn Feaver
Ed Fite
Rudy Herrmann
Kenneth Knowles
Richard Sevenoaks

Board Members Absent

Bob Drake

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

Others Present

Rebecca Poole, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Eddie Rhanolon, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Dave Taylor, Waurika Master Conservancy District, Waurika, OK
Steve Thompson, American Farmers and Ranchers, Oklahoma City, OK
Brian Woodard, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Angela Thompson, Wells Nelson & Associates, Oklahoma City, OK
Kelly Schwarz, Arledge & Associates, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Jeremiah Buettner, Oklahoma City, OK
Pennie Embry, Oklahomans for Responsible Water Policy, Eufaula, OK
Kay Hagerman, Baldwin Farms, Geary, OK
Charlotte Sanders, Baldwin Farms, Elk City, OK
Jerry L. Sanders, Elk City, OK
Edward Swaim, Arkansas Natural Resources Conservation Commission, Little Rock, AR
Rob Smith, Springdale, AR
David Nickell, City of Chandler, OK
James Nelson, City of Chandler, OK
Melinda McCoy, EPA Region 6, Dallas, TX
Tom Lay, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Carissa King, Baldwin Farms, Clinton, OK
Bill Shewey, Enid, OK
Ed Wells, Wells Nelson & Associates, Oklahoma City, OK
Mark Derichsweiler, Oklahoma Department of Environmental Quality, Oklahoma City,
OK
Robert Shelton, City of Tulsa, OK
Deena Suddath, BancFirst, Oklahoma City, OK
Tom Lui, Bank of America Merrill Lynch, NYC, NY
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Bodie Bachelor, Centennial Law, Durant, OK
Cara Cowan Watts, Cherokee Nation, Tahlequah, OK

C. APPROVAL OF MINUTES

Chairman Lambert stated she would entertain a motion to approve the minutes of the March 13, 2012, Regular Meeting. She asked if there were corrections; there were none.

Mr. Drummond moved to approve the minutes of the March 13, 2012 meeting, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

D. EXECUTIVE DIRECTOR'S REPORT

Executive Director J.D. Strong began his report asking members and others to continue to keep Mr. Bob Drake's family in prayer as he lost his wife and brother-in-law very recently and unexpectedly in isolated events. He also announced that Mr. Kyle Arthur will be leaving the OWRB for Chesapeake, and he and the Board members recognized his work on the Oklahoma Comprehensive Water Plan.

Mr. Josh McClintock addressed the members and noted the prepared legislative report. He said that the session is getting closer to the end, and the list of measures the agency is tracking is getting much shorter; the bills listed are those that are still in the process. He said Thursday is the deadline to get double-assigned House bills out of Committee, and April 26 is the deadline for measures to be out of the opposite House. He highlighted HB 2835 regarding gray water, HB 2836 regarding floodplain management, the Speaker's HB 3055 regarding conservation by 2060, and HJR 1085 regarding infrastructure financing which sends to the vote of the people a ballot question setting up a new mechanism for leveraging capacity for the Financial Assistance Program. Mr. McClintock said that staff had been spending time briefing members on the complicated proposal but legislators are supportive for financing the program without annual appropriations. Mr. Buchanan asked about funding for monitoring; Mr. McClintock said that bill had been double-assigned and the amount had been stripped out but it is expected to be addressed in the agency's appropriation bill; the issue is still alive. Mr. Buchanan asked where the \$2 million number came from, and Mr. Strong answered it came from an early draft of the Water Plan, and staff has since reduced the number somewhat; it was unusual for a number to have been in the original bill as the actual dollar amount for monitoring should be in the agency appropriation, but he appreciated the legislative support for monitoring. Ms. Feaver asked about the regional planning group legislation; Mr. McClintock explained it moved from the House to the Senate Energy Committee which has not heard the bill. Mr. Strong explained the status of other regional planning measures; there is no regional planning bill alive right now. Mr. Fite asked about other initiatives from the OCWP; Mr. Strong answered the technical studies and funding for instream flow process (4 years), and those issues are still on the table. The Legislature associates monitoring and technical studies, and supports maximum annual yield studies and stream water modeling for permitting, which is still being discussed. Mr. McClintock added appropriations are not discussed until mid-April to mid-May.

Mr. Strong said he and Mr. McClintock had traveled to Washington, D.C. for the Western States Water Council and Interstate Council on Water Policy Roundtable. He said they received good updates from the Administration on a number of issues, and were able to visit with several Oklahoma Congressional members and staff.

He said there have been a series of meetings regarding blue-green algae at the Capitol and Mr. Smithee and his staff has been involved in developing a monitoring plan and strategy prior to an outbreak. He said it is hoped that the same conditions will not be same this year. The Pit Water Technical group met March 26 and continues to work on the technical details that will form the basis of rules to be proposed in the 2013 rulemaking.

The Academy for State Goals will host a water summit on April 11 at the OCU Meinders School of Business; Mr. Strong and Mr. Buchanan are both on the agenda, along with other state officials. The Red River Compact Commission will meet in Austin, Texas, April 17-18; the ORWA meets April 17-19; 17th Anniversary of the Murrah Building Bombing April 19, as well as ScienceFest at the Zoo. The pre-hearing on the Arbuckle Simpson Aquifer will be held on

May 9 at the Pontotoc County Technology Center beginning at 9:00 a.m., and the hearing will be held at the Expo Center at Sulphur on May 15. Mr. Strong concluded his report noting the distributed information about expenses and the OWCP as requested by members. He said the OCWP expenditures regarding state dollars had been provided at previous Board meetings and shows the categorized expenditures by fiscal year, which is accounted for to the penny. Staff has added to that information approximate figures on what other partners spent on the OCWP through March 31, 2012, which totals \$11.4 million. Money is still being spent on printing and other wrap-up items; and the number is expected to go up slightly, as it has been called a "\$12 million dollar plan" throughout the planning process. Mr. Strong said there will be a much better accounting of all the expenditures once the State Auditor completes the audit, which was requested last fall and staff has met with the Auditor's office to "kick off" the audit. There was no end date but it is expected to be completed late summer or fall with a final report that will provide more exact figures including what the partners spent. For example, he noted the U.S. Army Corps of Engineers spent almost \$2.8 million over the past five years on the water plan--by far the biggest federal partner.

There were no other comments or questions. Chairman Lambert noted the list of new OWRB Ad Hoc Committee member assignments.

E. Monthly Budget Report

Ms. Amanda Storck addressed the members and said the agency has total budgeted funding of 47% remaining, with 25% of the fiscal year remaining. She said the budgeting process for FY2013 has begun; the Divisions will be preparing the budget worksheets for the next five weeks and throughout the remainder of the legislative session.

Chairman Lambert asked the percentage cut the agency is expecting to have to work within, and Mr. Strong answered the agency has not been given a number, and as mentioned earlier, the budget discussions don't usually begin until mid-April, but so far he expected a flat budget, but is hopeful for an increase for the technical studies, monitoring, and instream flow work. Ms. Storck said that typically the first few weeks staff is working on personnel, non-appropriated revenue, ongoing fiscal year contracts, and will wait until the end to plug in appropriations figures. Scenarios of 3%, 5%, and 10% were worked earlier at the planning sessions, but since the agency's budget is 1/3 state, 1/3 revolving, and 1/3 federal. She said staff can work on the revolving and federal funds while waiting on the state figures.

Mr. Herrmann said almost 3/4 of the year is passed, and yet there is almost 1/2 budgeted amounts are remaining--he asked if the staff expected the gap to close or will there be shortfalls on the revenue side? Ms. Storck explained those are budgeted revenues and are pass-through revenues that have been processed, also there are expenditures where the money has been received but not yet spent -- the budgeted column is always going to be larger than what is actually spent. Mr. Strong said, yes, the gap will close, which Ms. Storck said is usually the first few months of the next fiscal year when the books are closed for the previous year.

There were no further questions by members.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Chandler Municipal Authority, Lincoln County. Recommended for Approval. Mr. Freeman stated this item is a \$1.3 million loan request by the Chandler Municipal Authority. He said that Chandler is requesting the loan to replace 7,000 feet of 8-inch sewer line, 1,146 feet of 12-inch sewer line, rehabilitate two lift stations and replace 48 manholes. Mr. Freeman said the loan will be funded through the Clean Water State Revolving Fund, and he noted provisions of the loan agreement. He said that Chandler's water and sewer connections have increased approximately 4% over the last ten years, and the debt coverage ratio stands at approximately 1.44-times. Staff recommended approval.

Mr. James Melson and Mr. David Nickell were present in support of the loan application. Chairman Lambert asked if the sales tax had been approved, and Mr. Melson said the tax is in place.

Mr. Herrmann moved to approve the CWSRF loan to the Chandler Municipal Authority, and Mr. Buchanan seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman said this item is a \$4.3 million Clean Water State Revolving Fund loan request by the Tulsa Metropolitan Utility Authority. The Tulsa TMUA is requesting the loan for three equalization basin improvements, to replace the Haikey Creek Wastewater Treatment Plant chlorine and sulphur dioxide gas disinfection process equipment with a non-gas system, for Haikey Creek lift station improvements, and for engineering for unsewered areas within the TMUA system. Mr. Freeman described the loan provisions, and said Tulsa has been a loan customer of the Board's for twenty-two years and its debt coverage ratio stands at approximately 1.5-times. Staff recommended approval.

Mr. Bob Shelton, City Engineer, was present to support the loan application. Mr. Sevenoaks said that Haikey Creek wastewater treatment plant is owned by the Regional Metropolitan Utility Authority, a 50% partnership between Broken Arrow and Tulsa.

Mr. Drummond moved to approve the CWSRF loan to the Tulsa Metropolitan Utility Authority, and Mr. Herrmann seconded.

AYE: Buchanan, Feaver, Knowles, Herrmann, Fite, Drummond, Lambert

NAY: None

ABSTAIN: Sevenoaks

ABSENT: Drake

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Enid Municipal Authority, Garfield County. Recommended for Approval. Mr. Freeman said this item is a \$6,080,000.00 loan request by the Enid Municipal Authority. The Authority is requesting the loan to construct two elevated water storage tanks

with a combined capacity of 1.75-million gallons and a booster pump station. The loan will be funded through the Drinking Water State Revolving Fund Loan program, and Mr. Freeman noted provisions of the loan agreement. He said that Enid has been a long-time loan customer of the Board's and currently has six loans with the Board with a combined outstanding principal balance of approximately \$46.3 million dollars. Enid's debt coverage ratio stands at approximately 1.84-times. Staff recommended approval.

Mayor Bill Shewey, Mr. Robert Hitt, Director of Engineering; and Ms. Joan Riley, Assistant City Manager, were present in support of the loan application.

Mr. Sevenoaks asked about the raw water source, and Mayor Shewey answered the City of Enid's water comes from 132 operating groundwater wells. Mr. Buchanan asked with the \$.01 sales tax, what is the city's total sales tax, and Mayor Shewey answered it is \$.03.5 cents. Mr. Herrmann asked about the notation regarding ARRA funds, and Mr. Freeman said that is an error; there are no ARRA funds involved.

There were no other questions, and Mr. Fite moved to approve the DWSRF loan to the Enid Municipal Authority, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

D. Report by Board Audit Committee and Report of and Possible Action on Audits of Oklahoma Water Resources Board State Loan Program Revenue Bonds and Clean Water State Revolving Fund Program (CWSRF) Financial Statements as of June 30, 2011 and 2010 Audits of the CWSRF Administrative Fund and the Drinking Water Treatment Loan Administrative Fund as of June 30, 2011 and 2010.

Mr. Freeman stated to the members this item is for the report of the Board's Audit and Finance Committee that met in March; committee members are: Mr. Drummond as Chair, Mr. Knowles, Mr. Buchanan and Mr. Sevenoaks. During the meeting, the Committee reviewed the following items: the Auditor's management letter as well as the EPA annual evaluation of the Board's operation of the Clean Water State Revolving Fund Loan Program, review of the Board's most recent arbitrage rebate reports, reports required to be filed with the National Repository, the three bond rating agencies and the Board's standby bond purchase agreement bank. Mr. Freeman said the Committee also reviewed the loan documentation exception reports, as well as the procedures, and the policies regarding and balances of the debt service reserve funds were discussed. A review of the Board's investment portfolio and the standby bond purchase agreement was conducted. He said it was reported that out of the 448 outstanding loans with the Board only one is past due, and currently 97% of the Board's borrowers are meeting their debt coverage ratio requirements of 1.25-times. Fifteen borrowers, or approximately 3.3%, are not meeting the Board's minimum requirements based upon their most recently audited financial statements; 14 had implemented corrective action to return to compliance with the Board's requirements.

Mr. Freeman said the Committee requested that Mr. Kelly Schwartz from the Board's auditors with John M. Arledge Associates review the audits with the Board.

Mr. Schwartz addressed the Board and distributed an audit results summary. He said he will review the results of the 2011 audits, noting the three areas which were addressed in the

Financial Assistance Program: the bond series (FAP Program), the Clean Water State Revolving Fund Program, and the Administrative Funds (CWSRF & DWSRF) which encompassed the scope of the audit engagement. This included that the Financial and Yellow-Book Compliance was performed. Mr. Schwartz said he specifically wanted to note there were no changes in financial reporting requirements for FY2011. The results of the audits and financial highlights concluded that for the Bond Issue Audits, the State Revolving fund (CWSRF), and the CWSRF and DWSRF Loan Administrative Funds, all three programs received unqualified Auditor's report, and the "Yellow Book" compliance Report noted no law or regulations violations and no internal control findings. Mr. Schwartz reviewed the Summary and Financial Changes for the bond issues, the State Revolving Fund (CWSRF), and the CWSRF and DWSRF Loan Administrative Funds which included total assets, total liabilities, total net assets, total interest income, total interest expense, other operating expenses, transfers out for each program, and increase (decrease) in net assets (see report). He concluded his report noting the Required Communications Letter to the Board was reviewed with the Audit Committee and those communications were made recapping the ten key areas associated with the performance of the audit, and no issues or other concerns were expressed at that time.

Mr. Sevenoaks asked about the impact of the Lawton Securities, and Mr. Schwartz responded that fluctuation is by the interest rates; that was a fixed interest bond that was purchased so as the market goes up or down with interest rates, the fair value of that item will go up or down each year.

Mr. Drummond said that the committee meeting was very thorough and uneventful, a compliment to the FA division and the good relationship with the auditors. Chairman Lambert asked about the lack of Gross Production Tax in the Bond Issue report for 2010. Mr. Freeman answered that those funds were used as part of the SRF state matching funds for 2011, and the audit was conducted in 2010, when no GPT funds were used. The GPT funds are also being used as reserve funds for the State Revenue Bond Loan program (FAP); some years that match is used in the SRF (such as in 2010), some years it is used in the FAP.

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

Mr. Drummond moved to approve the report, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

E. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman asked Mr. Herrmann, Chair of the Finance Committee, to report on the recent meeting of the Board's Ad Hoc Finance Committee. Mr. Herrmann stated the Committee -- which members are Marilyn Feaver, Linda Lambert, Ed Fite (by phone) and Mr. Herrmann -- met the previous day with Financial Advisor Ann Burger Entekin, staff members, and members of the state bond advisor's office. The Committee conducted a very thorough review of activities over the next 12 or so months regarding FAP loans and SRF funding. He said the Committee reviewed bond counsels and investment banker proposals for both the Financial Assistance Program and the State Revolving Fund. He said

staff has a thorough process for requests for proposals which are then reviewed thoroughly against rigorous criteria and which staff recommendations are then reviewed by the Committee. He said there are four motions today that will be action for the recommendations by the Committee.

Mr. Freeman said this item (2.E.) is for selection of bond counsel for the State Revenue Bond Loan Program, also known as the FAP Loan program. He said staff requested proposals from 24 firms and received proposals from the Centennial Law Group and the firm of Andrews Kurth. He said the review criteria used based on the experience with new money revenue bond issues, state and local bond issue experience, the experience of the assigned attorneys and fees quoted for their services. He said Mr. Herrmann would make the motion on behalf of the Finance Committee

Mr. Herrmann moved that in the matter of the selection of bond counsel for the Board's State Revenue Bond Loan Program, referred to as the Financial Assistance Program, the Finance Committee recommends, and he so moved, that the Board select the firm of Centennial Law Group to serve as bond counsel to the Board. Ms. Feaver seconded the motion.

There were no questions or comments and Chairman Lambert called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

F. Consideration of and Possible Action on Selection of Investment Banker(s) in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman stated this item is for the selection of investment bankers for the State Revenue Bond Loan Program, better known as the FAP. He said staff distributed 36 requests for proposals from underwriting firms and five firms submitted proposals for Senior and three firms submitted proposals for Co-Manager only. The Senior Manager proposals were received from George K. Baum, BOSCO, Baird, Wells Fargo and Stifel Nicolaus. Co-Manager only proposals were received from Edward Jones, Wells Nelson & Associates, and Fidelity. The proposals were reviewed by staff and the State Bond Advisor's Office, and reviewed with the Finance Committee at yesterday's meeting. He said Ms. Feaver would present the motion on behalf of the Committee.

Ms. Feaver stated that in the matter of the selection of investment banker for the Board's State Revenue Bond Loan Program the Finance Committee recommends, and she so moved, as follows: (1) that the Board select the underwriting firm of BOSCO to serve as investment banker to the Board, and (2) that the Board select the firm of Wells Nelson & Associates to serve as Co-Managing Investment Banker to the Board. Mr. Drummond seconded the motion.

Chairman Lambert asked if there were questions or comments on the motion to approve the selection of investment bankers for the Financial Assistance Program. Mr. Buchanan asked because there are 36 proposals sent and only received five and three responses, is that a concern or is that adequate interest. Mr. Freeman said for that program, it is more than usually received, and yes, that is adequate interest.

There were no other questions or comments, Chairman Lambert called for the vote.

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

NAY: None
ABSTAIN: Herrmann regarding the vote for BOSC
ABSENT: Drake

G. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of One or More Obligations to Provide Funding for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund Loan Programs. Recommended for Approval. Mr. Freeman said this item is for the selection of bond counsel for the State Revolving Fund Loan Program. He said staff requested proposals from 24 firms and received proposals from Gilmore Bell, Peck Shaffer, The Centennial Law Group, McCall Parkhurst and Horton, and Andrews Kurth. He said the proposals were reviewed based on SRF bond issue experience, new money and pooled revenue bond issue experience, revolving loan fund experience, the overall experience of the assigned attorneys and tax counsel capabilities. The proposal was reviewed by staff, the State Bond Advisor's office, and your Financial Advisors at FirstSouthwest. He said Mr. Herrmann will make a recommendation on behalf of the Committee.

Mr. Herrmann stated that in the matter of selection of bond counsel for the Board's State Revolving Fund Program Revenue Bonds, the Finance Committee recommends, and he so moved, that the Board select the firm of McCall Parkhurst and Horton to serve as bond counsel to the Board. Ms. Feaver seconded the motion.

There were no comments or questions on the proposal, and Chairman Lambert called for the vote.

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

H. Consideration of and Possible Action on Selection of Investment Banker(s) in Connection with the Issuance of Obligations to Provide Funding for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund Loan Programs. Recommended for Approval. Mr. Freeman said that this item is for the selection of investment bankers in conjunction with the Board's State Revolving Fund Loan Programs. He said staff anticipated bringing to the Board for approval in the next few months new SRF debt issuances in the \$100 million range. Staff requested proposals from 36 firms, and five firms submitted proposals for Senior Manager and eight firms submitted proposals for Co-Manager.

Mr. Freeman said that proposals for Senior Manager were received from George K. Baum and Company, J.P.Morgan, Bank of America Merrill Lynch, RBC Capitol Markets, and Wells Fargo. Proposals for Co-Manager were received from Edward Jones, BOSC, Fidelity, Baird, Guggenheim, Stifel Nicholas, Jackson Securities and Wells Nelson & Associates. The proposals were reviewed by staff, the State Bond Advisor's office, and the Board's Financial Advisors with First Southwest based on the underwriting firms' relevant experience, marketing, distribution capabilities, and the quality of the proposed financing plan. He said that based on the review, a recommendation was made to the Committee to interview J.P. Morgan and Bank of America Merrill Lynch. The Committee discussed the proposals and held interviews at the meeting. He said Ms. Feaver will make a recommendation on behalf of the Committee.

Ms. Feaver stated that in the matter of selection of investment bankers for the Board's State Revolving Fund Loan Program Revenue Bonds the Finance Committee recommends, and she so moved, as follows: (1) the Board select the firm of Bank of America Merrill Lynch to serve as Senior Managing Investment Banker for the Board, and (2) the Board select the firm of J.P. Morgan, BOSC, and Wells Nelson and Associates to serve as Co-Managing Investment Bankers to the Board. Mr. Fite seconded the motion.

Chairman Lambert asked if there were questions or comments regarding the selection of investment bankers for the State Revolving Funds for Drinking Water and Clean Water. There were none, and she called for the vote.

A YE: Buchanan, Feaver, Knowles, Sevenoaks, Herrmann, Fite, Drummond,
Lambert
NAY: None
ABSTAIN: Herrmann regarding the vote for BOSC
ABSENT: Drake

Chairman Lambert expressed the Board's appreciation to Mr. Freeman and the Board's sterling staff for all of the work that has been done to prepare for this decision.

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 listed.

Chairman Lambert noted there were two items removed on the posted agenda, and said Ms. Cunningham had two other items. Ms. Cunningham stated E.1. (Oak Hills Water Systems) needed to be deferred to next month for the hearing process, and L.2.c., should be deferred because the well driller has not completed all requirements for testing.

There were no requests, comments, or questions about items on the Summary Disposition Agenda.

Chairman Lambert asked for a motion to approve the Summary Disposition Agenda with the two additional items deleted. Mr. Buchanan so moved and Mr. Sevenoaks seconded the motion.

A YE: Buchanan, Feaver, Knowles, Sevenoaks, Herrmann, Fite, Drummond,
Lambert
NAY: None

ABSTAIN: Mr. Herrmann on item E.8.
 ABSENT: Drake

Mr. Buchanan asked about contracts where the agency does work for other entities, and if there is staff follow-up on the costs, and Mr. Strong responded the agency cannot exceed the contract amount approved by the Board. He said if there is a cost increase, the Board will have to approve an amendment to the contract amount.

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>
NONE				

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

1. Interagency Agreement with Grand River Dam Authority for the 2012-2013 Floating Wetland Pilot Project on Grand and Hudson Lakes.
2. Interagency Agreement with Grand River Dam Authority for 2012 Fish and Wildlife Mitigation Activities within the Grand River Basin.
3. Contract with Oklahoma Ground Water Association to provide continuing education services to licensed well drillers and pump installers.
4. Intergovernmental Agreement with Central Oklahoma Master Conservancy District for water quality monitoring at Lake Thunderbird.
5. Memorandum of Agreement with Oklahoma 4-H Foundation, Inc. for sponsoring the 2012 Oklahoma 4-H Round-Up Speech Contest.
6. Amendment to Interagency Agreement with Oklahoma Corporation Commission to Provide for Plugging Certain Water Wells to Prevent, Control or Abate Pollution of Groundwater.

E. Applications for Temporary Permits to Use Groundwater

- 1. *Oak Hills Water Systems, Inc., Bryan County, #2011-636 Item withdrawn*
- 2. *Arlan Jordan, Harper County, #2011-648 Item withdrawn*
- 3. Glenn Fulkerson, Roger Mills County, #2011-657
- 4. Fredrick J. & Mary Kathryn Lorenz, Major County, #2011-674
- 5. J. L. Phelps, Caddo County, #2012-505
- 6. Navajo Independent School District I-001, Jackson County, #2012-507
- 7. McIntosh County RWD #6 aka Vivian RWD #6, McIntosh County, #2012-508

8. Public Service Company of Oklahoma, Tulsa County, #2012-518
 9. Michael & Brenda Whitley and Christopher & Shana Whitley, Caddo County, #2012-525
 10. J. D. & Janice Wardrop, Woods County, #2012-532
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Troy & Rebecca Lotspeich, Beaver County, #1974-248
- G. Applications for Regular Permits to Use Groundwater:
- 1. Michael & Kathy Lee Martin, Greer County, #2011-582 *Item withdrawn*
 - 2. Gerald M. Wallace Living Trust, Tillman County, #2011-621
 - 3. James & Jeanette Beard, Beaver County, #2011-632
 - 4. William W. & Tracy R. Woolman, Cimarron County, #2011-675
 - 5. Perry Castonguay, Blaine County, #2011-678
 - 6. Beer Farms, Inc., Texas County, #2012-517
 - 7. Gary D. Millspaugh Revocable Trust, Custer County, #2012-535
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Pawnee County RWD #2, Pawnee County, #1985-645
 2. I P Eat Four, L.L.C., McCurtain County, #2011-633
- I. Applications to Amend Prior Rights to Use Groundwater:
1. Brown Partnership, Cimarron County, #1955-549
- J. Applications for Term Permits to Use of Stream Water:
1. George & Elizabeth Harrington, Choctaw County, #2011-070
 2. John Brandon, Pushmataha County, #2012-005
- K. Forfeitures (Reductions) of Stream Water Rights:
- None
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:

a. Licensee: Pier Drillers, Inc.	DPC-0854
1. Operator: Wade Williams	OP-1910
Activities: Groundwater wells, test holes and observation wells	
Monitoring wells and geotechnical borings	
Pump Installation	
Heat exchange wells	
 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:

a. Licensee: Harmon Water Well Service, Inc.	DPC-0093
1. Operator: Chance Sneed	OP-1907
Activities: Groundwater wells, test holes and observation wells	
b. Licensee: G-2 International, LLC	DPC-0371
1. Operator: Jack Petruzzi	OP-1906
Activities: Monitoring wells and geotechnical borings	
 - c. Licensee: CP-Masters, Inc. *DPC-0479*

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|---------------------------------------|----------------|----------|
| 1. Operator: Larry Higgins | | OP-1904 |
| Activities: Cathodic protection wells | | |
| 2. Operator: Mike Higgins | | OP-1905 |
| Activities: Cathodic protection wells | Item withdrawn | |
| d. License: B & H Construction | | DPC-0765 |
| 1. Operator Devin Crossland | | OP-1908 |
| Activities: Heat exchange wells | | |
| 2. Operator: Charles Sanders | | OP-1909 |

M. Dam and Reservoir Construction:

1. Lightning Creek Holding Pond A (OKC), Cleveland County, #OK11070
2. Ft. Cobb Lateral Watershed Site No. 10, Caddo County, #OK20591
3. Broken Arrow East Pre-sedimentation Basin, Wagoner County, #OK30393

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

None

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the April 10, 2012 packet of Board materials

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

There were no items of agency matters for presentation to the Board.

5. SPECIAL CONSIDERATION

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

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

A. Application for Amendment to Regular Groundwater Permit No. 2004-556, Donald R. & Lavonne Boyd, Beckham County:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members this item is for the consideration of an application to amend a regular permit to

use groundwater in the name of Donald and Lavonne Boyd. The request is to add 160 acres of land, and 160 acres of water to irrigate the additional land, and one new well in Beckham County. The record shows the applicant has met the four points of law, the applicant owns the land, the land overlies the North Fork of the Red River Alluvium Terrace Groundwater Basin for which the maximum annual yield and equal proportionate share has been determined at one acre-foot per acre of land; irrigation is a beneficial use, and waste will not occur. Because it is a studied basin, the well spacing requirement applies requiring 660 feet between any authorized wells. The applicant's proposed well in this case is 520 feet away and the Oklahoma Groundwater Law provides for a spacing exception if certain tests are met recognizing that each landowner is entitled to his/her equal proportionate share of the basin. Ms. Cunningham reviewed the Board's rules regarding exceptions: no objection by adjacent landowner, the amount of dimensions of the land dedicated precludes drilling 660 feet away; the well was drilled, completed and used prior to the date of the MAY determination, and the amount of groundwater available in locations that meet the well spacing is insufficient for the purposes to be authorized. In this case, the last condition applies as the landowner used several test hole locations in the original application (this is an amendment to add a well), which other locations proved to be low and unproductive.

Ms. Cunningham stated that the application was protested by Baldwin Farms, L.L.C., owned by Charlotte Sanders and Kay Hagerman and the primary issue was proximity of the Applicant's wells to the Protestant's domestic well which is used for watering cattle. The Protestant's representative testified at the hearing that their father had to haul water for the cattle in drought times, and staff respectfully recognized the Protestant's understandable concern; however, regardless of the cause of the well running dry the result remains that the Boyd's additional well satisfies the well spacing exception rule, and they are entitled to their equal proportionate share. The Oklahoma Groundwater Law allows for the mining for the utilization of the resource, and the hearing examiner found there is no basis to find that the requested permit amendments would unlawfully or impermissibly deplete the groundwater basin. She said it is her understanding the Boyds have actually talked with the Protestants and there may be alternate water supplies and that discussion could be allowed.

Another issue was validity of the original notice in 2004 applicant. During the hearing, the Applicant, Mr. Boyd, responded he notified Mrs. Sanders and Mrs. Hagermans' father, Mr. Ervin Baldwin, who raised no objection. Mr. Boyd believed Mr. Baldwin was the actual landowner, but the ownership of land had been transferred to his two daughters prior to the notice. The Board notes that in 2004, Mr. Baldwin was running the cattle operation on that land and as the father of the owners, he was more than an ordinary lessee, and was an agent who had apparent authority to make business decisions on behalf of the those owners. Regardless of that fact, the hearing examiner explains in conclusion of law no. 14 that the factual and legal analysis with respect to the original well and protested well are the same as the analysis for this permit amendment before the Board today to add the well; the applicant would have satisfied the permanent well spacing exception, resulting in approval of the original application for the original well.

Chairman Lambert stated then, that regardless of the notification, the end result would have been the same, the application would have been approved according to groundwater law, and Ms. Cunningham said for meeting the well spacing requirement that is correct. Ms. Cunningham said the record showed the Boyd's have satisfactorily passed the test set out in statute, they are

entitled to the equal proportionate share of the groundwater basin, and staff recommends approval of the proposed findings of fact, and conclusions of law, and Board order.

2. Discussion and presentation by parties - Ms. Cunningham stated that Mr. and Mrs. Boyd are in attendance with their attorney, Mr. Jeremiah Buettner. The Protestants are also here, Charlotte Sanders and Kay Hagerman, represented by their attorney, Ms. Carissa King.

Chairman Lambert asked if the members had questions, and Mr. Buchanan asked for clarification on the acceptance of the well spacing issue. Ms. Cunningham said that in an alluvium and terrace deposit, the spacing required is 660 feet, unless an exception can be met, and the applicant has applied for the exception. Oftentimes, a well has to be drilled closer than the 660 feet because the land does not support moving the well further away, and in those cases the private property aspect of the law applies and says that the owner of land is entitled to the equal proportionate share and that is the purpose of the exception. Mr. Sevenoaks said he wasn't comfortable the owners were not notified, and he asked if there is precedence we would notice an agent. Mr. Couch answered that is legally sound reasoning, and in this case the applicant notified in the original application, the father--who for all intents and purposes-- was operating as the previous owner and on behalf of these technical owners, and that is an adequate way to address that, through an agency imputing that notice to the technical owners.

Chairman Lambert asked Ms. Cunningham to speak to the initial discussions of some resolution in regard to the applicant offering to drill a new well. Ms. Cunningham said that parties can work out a way for both to have water, i.e. cities drill a deeper well, and in this case the parties have been communicating, although that is not in the hearing record. The applicant has expressed a desire to get the Protestant water.

Mr. Strong, speaking to Mr. Sevenoaks' questions, pointed to conclusion of law no. 14, that regardless of the notice issue, the result would be the same. He said he understood that, but he is sensitive to notice.

Chairman Lambert invited the representatives of the Applicant and Protestant to speak to the Board.

Mr. Jeremiah Buettner, representing Mr. and Mrs. Boyd, said to the members that Ms. Cunningham had done an excellent job summarizing the order describing the legal test for allowing an amendment for the use of water. The practical effect of the denial would be preventing the irrigation of 160 acres. The issue of the notice is not an issue for the current application, but the application in 2004. The logical argument is that if notice had been given, there would have been a protest, the initial permit would not have been issued and that would mean the 120 acres would not have been irrigated, making 280 acres not being irrigated. The record is clear that the evidence shows all the legal tests for the amendment have been satisfied and he asked the Board to issue the permit.

Mr. Sevenoaks asked if the notice for the current permit (amendment) was given correctly, and Mrs. Sanders and Mrs. Hagerman received notice. Mr. Beuttner answered that is correct.

There were no other questions and Chairman Lambert invited the Protestant's representative to speak to the Board.

Ms. Carissa King stated she is objecting to the proposed order on a couple of points. First, they object to the location exception which is based on it being inequitable and unreasonable to drill different wells since they have the test well which was drilled on the assumption that it would be approved. She said approving the test well is doing the same harm to her clients as the Applicant says has occurred to them--they have a well that has run dry due to the initial well and the new well will not help that. The previous well is 162 feet away from her client's well that has

been in place since the 1960s, and the proposed well is 520 feet away. She did not believe there was substantial evidence that would support the proposed well being authorized and they are not aware of test wells drilled elsewhere on the 160 acres. Secondly, regards the notice issue for the application in 2004--they understand the argument is that the notice was given to Mr. Ervin Baldwin, the father of the owners' this property, as an agent. She said there was a misassumption the father was running cattle on the land but he had turned the entire operation over to the daughters and he may have assisted them from time to time, but he was not an agent. She noted agency law and said the principals did not exert any manifestation to a third party for their father as an agent on their behalf. She believed the notice issue warrants consideration because the clients were not given an opportunity to object 2004. Regardless of whether it would have been approved, they would've liked the opportunity to object to that well, and they do so now due to the current hardship.

Chairman Lambert asked if there were questions of the Protestants. There were none; however, she said she understood that, while not a part of the official hearing, the Applicant has offered to drill a new well. Ms. King said that is correct; however, their communication had not been answered but that is something they would consider. Mr. Sevenoaks said the Board prefers neighbors find a compromise, and that seems logical. Chairman Lambert asked the Applicant if that is an option they are open to discuss, and Mr. Beuttner responded that it is, that resolution is what they are after, and they are open to additional discussion. After some discussion by the members, Applicant and Protestant about finding a resolution, Chairman Lambert said there are two choices today, the Board can render a decision or the parties can get together and find what would work for each of them, and the board is willing to do either.

Ms. Hagerman wished to make a statement to the Board. She said she (and her sister) respected their father who passed away in 2009. They operated their business and while he may have offered advice, he never represented them.

Chairman Lambert called for a recess to allow the parties to meet. The Board will return in five minutes. (10:45 a.m.)

3. Possible executive session - the Board did not vote to enter executive session.

4. Vote on whether to approve the proposed order as presented or as may be amended, or vote on any other action or decision relating to the proposed order.

Chairman Lambert called the meeting back to order at 11:00 a.m. and stated the parties had reached an agreement.

Ms. King stated the agreement is: (1) the Applicant will drill a well for the Protestants, the parties will agree on the driller, (2) the depth will be to bedrock, (3) the location of the well will be in the same vicinity as the client's current well, (4) no additional well will be drilled by the Applicant within 660 feet of this new well, and (5) the Applicant will contact the driller immediately and will either pay the driller directly or work with the clients and submit invoices to the Applicant.

Chairman Lambert stated the Board will consider that the "good neighbor policy" is in effect, and that the Protestant and the Applicant have agreed to these stipulations.

Ms. King said they would withdraw based on the condition these points will be met, and Mr. Beuttner agreed. Mr. Couch said that withdrawing the protest could have the effect of making moot the written proposed findings and conclusions. He said he understood it would be approved as if there is a protest, as that would properly reflect in the permanent record exactly what has happened to now. Chairman Lambert said the Board is not withdrawing the protest, but

approving the application, based on the conditions the Protestant and Applicant have agreed to privately.

Mr. Sevenoaks so moved (to approve the permit with the agreed conditions), and Mr. Herrmann seconded. There were no questions or discussion, and Chairman Lambert called for the vote.

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

Mr. Buchanan commented about the process of permitting and staff pointing to the letter of the law, but laws need to be changed as people change, and if laws need to be changed this body cannot do so, but that is done at the Capitol.

Chairman Lambert applauded the Boyd and Baldwin families for coming to an agreement, showing the ability and desire to come together which is what good neighbors do. Mr. Herrmann stated the Board implements the laws of the State as they are on the books, but wants to be proactive and encourages progress, but can only work within the law.

Mr. Buchanan asked about the Brown Partnership in Cimarron County, and he asked about the water amount (Item I.1., #1955-549). Ms. Cunningham said that is a prior right issue; Mr. Couch added that is an amendment to a prior right.

B. Consideration of and Possible Action on Final Report of the Oklahoma Scenic Rivers Phosphorus Criteria Review

1. Summary - Mr. Derek Smithee, Chief, Water Quality Programs Division, addressed the members and presented a PowerPoint illustration of the history of this matter. He showed the six state scenic rivers, all of which border with the State of Arkansas. It has been recognized that all six have enrichment issues, and in the late 1990s, Oklahoma set about trying to correct some of the issues after noticing problems, and at the same time, the Environmental Protection Agency provided three mechanisms to develop numerical nutrient criteria, and for discussion today he would be speaking exclusively to total phosphorous. Options were to adopt EPA's number, conduct site-specific study and developing site-specific criteria, or look at reference values and water quality information on similar streams and make a statistical comparison. He said Oklahoma chose to establish the phosphorous criteria looking at reference conditions -- looking at the worst of the best rivers in the United States -- and established the phosphorous criteria of .037. A numerical criterion was promulgated in the Oklahoma Water Quality Standards in 2002, a thirty-day geometric mean of 0.037mg/l of total phosphorous, and an amendment was added to allow full implementation for compliance in 2012. EPA approved the criteria in 2003, calling it scientifically defensible and protective.

Mr. Smithee said that running parallel was a "Statement of Joint Principals and Actions" between Oklahoma, Arkansas, and EPA whereby Oklahoma agreed to reconvene a workgroup and by 2012 re-evaluate the .037 phosphorous criteria to see if new science or information had been developed in the intervening ten years to incentivize the promulgation of a new nutrient criteria. An EPA grant was approved to facilitate the task, requiring the establishment of a workgroup (TAG) comprised of officials of both states and EPA. Mr. Smithee facilitated the workgroup and noted the members from both states and the agencies they represented. He said

the group met and reviewed work conducted mostly by the Oklahoma Water Resources Board Water Quality Standards team. The work began in 2012, several advisory meetings were held, along with a public meeting in Tahlequah, Oklahoma, last year, and through additional conference calls, etc., the group reached resolution in February 2012.

Mr. Smithee said the process was to look at the best available scientific information, and the group did a wide and vigorous nationwide search and exhaustive evaluation which is included in Appendix A of the final report (provided), focusing on 10 studies, which he briefly described. Through evaluating the ten studies, Mr. Smithee said it appeared the workgroup that the strike zone or algae response is essentially between 0.02, and 0.034; the Oklahoma 0.037 phosphorous criteria is within that strike zone. The number could have been established at 0.02, or 0.04 depending on where along the response curve you want to establish the criteria, but the workgroup was not to establish a criterion, but to confirm or refute the 0.037 that is in place. The group was not able to look at how the number is applied, but was able to affirm the 30-day geometric mean as the proper vehicle to implement that criterion for permits and compliance and monitoring.

Mr. Smithee said he had hoped, but it was not possible, to achieve a consensus among the group. There is a Majority Report where six members of the advisory group (TAG) says the criteria is in the strike zone, and a Minority Report where two members did not agree it is in the strike zone, both have been provided, along with a letter requesting the report be provided to the Board. He said the Majority Report found that the 0.037 total phosphorous criterion is in the acceptable range, and the recommendation is that no change in the criterion is necessary due to the fact that the best scientific information currently available supports that criterion. He said the group had wholesome discussions, and he hope that everyone would agree the process was clean as straightforward. He recommended the Board hear public comments, and said that the majority recommendation, including from the OWRB staff, is that the 0.037 is in the strike zone and should be affirmed.

2. Discussion by Board Members. Chairman Lambert asked if there were questions or comments by members. Mr. Sevenoaks stated he is the only Board member that was here ten years ago and when the process first started, there was a tremendous lack of historical science, although it was known that phosphorous was a problem, we didn't understand high flow events, for example. He said the Board did not want a legal argument with our neighbor, Arkansas, and agreed to the ten-year implementation to get comfortable with it and allocate the dollars for wastewater treatment, and in most cases that has been done and the Illinois River has benefitted. He said now it has been studied comprehensively for ten years and the review is an important step to make sure we were within strike zone. He is totally satisfied with the whole process, and satisfied we have given our neighbors time to understand what we were doing and where we were going; allowing ten years to be ready, which they have done in many cases. He said he was wholeheartedly pleased with the whole cycle and it is time to move forward.

There were no other comments by Board members.

3. Public Comment. Chairman Lambert invited members of the TAG to make comments, either the Majority Report representatives or Minority Report representatives. She noted those from Arkansas in the audience: Rob Smith, Steve Drown, Ryan Benefield, Ellen Carpenter, and Ed Swaim. She asked if there would be one speaker from the Minority making comments to the Board, and asked that ten minutes be allowed for public comment. She shared that the Board has read the Technical Advisory Group Majority Report, all of the letters, in support of the standard from both state and federal agencies, and as the Minority Report. She

asked the comments to be contained -- to not content but illumination or refutation of the information in the reports.

1. Mr. Steve Drown, Arkansas Department of Environmental Quality, addressed the Board and distributed a printed Power Point presentation regarding the Minority Report by the Arkansas TAG members. He said the information is not different, but a summary of the recommendations of the Board. He said he appreciated the opportunity to participate, the OWRB staff should be commended for the work, and it was a well-done process. He highlighted the history, and reviewed the recommendations of the Minority Report:

- That the implementation of the 0.037 standard be delayed ten years for additional work on scenic rivers in Oklahoma because it still isn't known what is occurring in the scenic rivers because there is not site-specific data regarding the aquatic community;
- EPA is conducting a watershed model which may lead to more TMDLs and they would like that to be completed;
- Legacy phosphorous is still in the watershed;
- Conduct further evaluation of the 25% exceedance frequency, and consistency in criterion and assessment;
- States' requirement of nutrient management plans with utilization of phosphorous index for land application of litter should to be developed; and
- Need additional time to upgrade treatment plants to meet lower than 0.10 permit limit

Mr. Drown talked about the phosphorous charts he distributed regarding the gages on Saline River near Sheridan, Current River near Pochahontas, Eleven Point River at US Highway 62, and Buffalo River at HWY 65, all of which showed the .037 being exceeded.

Mr. Sevenoaks asked about the delay for meeting the numbers regarding treatment plants. Mr. Strong said that there are talks going on at high levels between Arkansas and Oklahoma that hopefully will result in amicable agreements between the two states in terms of moving forward. It was unprecedented to have an implementation schedule to be included in the Standards, as it is typically done through permit compliance schedules, which can still be done. The Majority Report says the number is still sound and defensible, and he said we are always open to new information and data. If additional studies suggest a different number, that will not be ignored, and the Standards go under review every year. There are opportunities through the normal Clean Water Act course for additional implementation time; EPA has agreed to put permits on hold until the TMDLs are developed, and an implementation schedule will be developed which is not unusual. The discussions going on now are positive, and it is hopeful the States can work out an agreement that avoids litigation.

Mr. Sevenoaks complimented our neighbors for the effort that has been put forth, and Mr. Strong added they should be complimented on the millions spent to reduce phosphorous over that last ten years in Arkansas and on the Oklahoma side as well, both voluntary conservation programs and also point source controls.

Chairman Lambert invited others to add comments that had not been expressed. The following persons spoke to the Board:

2. Mr. Rob Smith, representing the Northwest Arkansas Council and the Northwest Arkansas Intergovernmental Working Group on Water and Wastewater Issues, commented that the northeastern side of Oklahoma is very reliant on northwest Arkansas --water supply and water treatment --as well as workforce. To achieve .1 the five cities would have to spend another

\$100 million; and he noted the cost of upwards of \$225 million spent so far (EPA mentioned a figure of \$300 million), and asked that economic consequences be kept in mind.

3. Ms. Melinda McCoy, Environmental Protection Agency Region 6, participated in the TRAG review effort, and said their comments are contained in Appendix C of the Majority Report. She said she appreciated participating in the process and EPA approved the criterion in 2003 and said that it was protective at that time. Additional information gathered during the re-evaluation process did not indicate there is a need to revise the criterion to ensure it is protective of the use. Regarding the request for additional time for implementation, as discussions are ongoing between the states, she would not comment on that but EPA is interested in how that comes out.

Mr. Sevenoaks asked about a timetable for the TMDL, but she said she did not work in that area. Mr. Fite said there is a requirement for EPA peer review of the model, and that should take 3-6 months, so a two-year window is appropriate. Mr. Strong said perhaps the end of this year.

4. Ms. Cara Cowan-Watts, Cherokee Nation, served on the TAG for Chief Smith. She recognized the OWRB staff making sure there was a proper product. She spoke to her research in litter and the State's process in determining the 0.037, noting that phosphorous standards have been adopted by Tribal Law, and other Tribes are impacted by the scenic rivers--"running waters" as well--and she said they agree to be protective of the waters from a total phosphorous perspective. She said the TAG was told it would not consider the TMDL work, but look at nutrient impacts to the running waters only as a consideration of risk to nationally significant waters --scenic rivers. She wanted to clarify the TMDL work was not considered--but she is concerned the waters would be put at risk because now because the TMDL is relevant to the discussion. She said when she looked at the technical work it was instream nutrient risks on those scenic rivers, which is also culturally significant waters, which Oklahoma recognizes but does not have a standard to implement so this would be applicable here. It is not only nationally significant in respect to tourism dollars which northeastern Oklahoma benefits from, it impacts the Tribes culturally, and regarding instream nutrient technical work, she urged [the states to] continue to act on the scenic rivers and asks that all citizens be held accountable to the phosphorus standard.

There were no other public comments.

Mr. Fite said that the \$300 million figure represents more than what the five cities of northwest Arkansas have done, which is a remarkable job in stepping up and tackling the issue over the last ten years with planning and implementation of new wastewater treatment plants. He said the poultry companies have also put in quite a bit into pre-treatment at processing plants, moved waste out of the basin, other industries and cities have invested money and embarked on education outreach and nonpoint source work in urban areas. He said the TAG should be commended heavily for their work as politics has played a large role on both sides of the state line, and they should be complimented. A lot of effort has been moved toward the scenic rivers in the last decade.

4. Possible action on the report. Mr. Fite moved to accept the report as it has been presented today. Chairman Lambert said that with the understanding that negotiations continue and the 0.037 is still in place, and will remain in place, the Board can accept the report as given, but no action is being taken. Mr. Fite said his motion is to accept the report; the TAG has done

a championship job. Chairman Lambert asked if there is a second to simply accept the report. Mr. Sevenoaks seconded.

Mr. Buchanan asked what that meant, and Mr. Fite said to accept the report, as the politics in the coming weeks/months will generate other fruits.

Chairman Lambert said that accepting the report does not change anything. Mr. Fite said it would serve no purpose for the Board today to change something given the moving parts going on politically. Mr. Sevenoaks said the report satisfies the requirement that was initially put in place to review in ten years; it's been reviewed and the number found to be relevant. Ms. Feaver said looking at the agenda item that is all that the Board would be doing, and Mr. Strong said no action is required. Chairman Lambert said possible action to accept the report doesn't mean anything needs to change; this is accepting the Majority Report and Minority Report. Mr. Fite expressed his kudos to the TAG.

Chairman Lambert said a motion and second has been made to accept the report as presented, and she asked for any other comment or questions. There were none, and she called for the vote.

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

C. 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

Chairman Lambert stated the Supplemental Agenda item will be considered following the Executive Session, if authorized.

Chairman Lambert departed the meeting, and Vice Chairman Drummond assumed the Chair.

7. PROPOSED EXECUTIVE SESSION

Chairman Lambert

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., Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al., and Tarrant Regional Water District v. Herrmann.*

Vice Chairman Ford Drummond read the agenda item statement that the Board proposes to hold an Executive Session for the purpose of discussing *Chickasaw Nation and Choctaw Nation v. Fallin, et al., Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al., and Tarrant Regional Water District v. Herrmann*

A. Vote on whether to hold Executive Session upon determination that disclosure of the discussion of the litigation 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. Buchanan moved the Board enter Executive Session, and Mr. Herrmann seconded. Vice Chairman Drummond called for the vote.

AYE: Buchanan, Feaver, Knowles, Sevenoaks, Herrmann, Drummond
NAY: None
ABSTIN: None
ABSENT: Drake, Lambert, Fite

Statement by legal counsel advising on whether disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest.

Prior to entering Executive Session, Mr. Dean Couch, OWRB General Counsel stated that Mr. Patrick Wyrick was present. He said legal counsel advises that disclosure of the discussion of the litigation will seriously impair the ability of the Board and the State to conduct the present and proposed litigation in the public interest. He said by making the statement for the record, it would be clear the agency is in absolute compliance with the Open Meeting Law in executive session.

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

Vice Chairman Drummond designated Executive Secretary Mary Schooley to take written minutes.

C. Executive Session, if authorized.

The Board entered Executive Session at 11:50 a.m.

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

The meeting room doors were opened and the public was allowed to enter the meeting room.

Mr. Fite moved that the Board return to open meeting, and Mr. Sevenoaks seconded.

AYE: Buchanan, Feaver, Knowles, Sevenoaks, Herrmann, Fite, Drummond
NAY: None

ABSTAIN: None
ABSENT: Drake, Lambert

The Board returned to Regular Session at 12:25 p.m.

8. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.

The Board considered Supplemental Agenda item 6.A.

6. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS

A. Contracts and Agreements Recommended for Approval.

1. Memorandum Agreement with the Attorney General of the State of Oklahoma to Provide for payment of a portion of the costs in representing the OWRB Board members in the Tarrant Regional Water District v. Herrmann case.

Mr. Herrmann moved to approve Supplemental Agenda item 6.A. as included in the Board packet, and Mr. Buchanan seconded.

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

Mr. Couch stated the agreement is subject to the laws of the state, with a thirty-day out, if there is an absolute issue on funding.

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, Vice Chairman Drummond adjourned the meeting of the Oklahoma Water Resources Board at 12:26 p.m. on Tuesday, April 10, 2012.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Linda P. Lambert, Chairman

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

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Bob Drake

ATTEST:

_____/s/_____
Tom Buchanan
(SEAL)