

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
January 15, 2013

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman F. Ford Drummond at 9:30 a.m., on January 15, 2013, in the Second Floor Board Room of the Oklahoma Water Resources Board Offices, located at 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 January 11, at 3:00 p.m., at the Oklahoma Water Resources Board's offices.

A. Roll Call

Board Members Present

Ford Drummond, Chairman
Linda Lambert, Vice Chairman
Tom Buchanan, Secretary
Marilyn Feaver
Ed Fite
Rudy Herrmann
Jason Hitch
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
Mary Schooley, Executive Secretary
Josh McClintock, Director of External Affairs

Others Present

Peter Burck, US Fish & Wildlife Service, Albuquerque, NM
Alan Woodcock, US Fish & Wildlife Service, Tulsa, OK
Johnny Parker, Martin Marietta Materials, Mill Creek, OK
Brian Woodward, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer (CPASA),
Durant, OK
Cody Holcomb, City of Ada, OK
D. Craig Shew, City of Ada, OK
Luke Martin, Capitol Group, Oklahoma City, OK
Dick Scalf, City of Ada, OK
Thomas J. Enis, Williams Estate, Oklahoma City, OK
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK
P. Billingsly, Oklahoma Corporation Commission, Oklahoma City, OK
Marty Smith, Bokchito, OK
Angela Thompson, Wells Nelson & Associates, Oklahoma City, OK
Lewis Parkhill, City of Tishomingo, OK
Jeff Bigley, City of Broken Arroe, OK
Jim Hunter, Hunter Cattle Co/CPASA, Oklahoma City, OK
Chris Phillips, Chickasaw Nation, Ada, OK
Jason Aamodt, Citizens for the Protection of the Arbuckle Simpson Aquifer, Tulsa, OK
Christy Harper, Public Finance Law Group, Oklahoma City, OK
April Wittcop, ESFO Tulsa, OK
Johnathan Gourley, CPASA, Oklahoma City, OK
Floy Parkhill, CPASA, Tishomingo, OK
James Swain, BGCO, Davis, OK
Travis Bennett, Holcom, Ada, OK
Christine Southern, eCapitol, Oklahoma City, OK
Kim L. Peterson, City of Guymon, OK
Peter A. Fahmy, National Park Service, Denver, CO
Krystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer
Ken Meyers, CPASA
Shawn Howard, Citizen Potawatomi Nation
Steve Vannoy, OWRB Contractor Council, Nicoma Park, OK
Bill Clark, Roff, OK
Charles Ross, Roff, OK
Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK
Lydia Leslie, Leslie Engineering, Edmond, OK
Keith Beatty, Isch & Assoc., Edmond, OK
Rodney Armstrong, Fairfax Golf, Edmond, OK
Mike Wofford, OKAA/TXI, Oklahoma City, OK
Vicki Reed, Department of Environment Quality, Oklahoma City, OK
Michael Taylor, Department of Environmental Quality, Oklahoma City, OK
Joe Long, Department of Environmental Quality, Oklahoma City, OK
Jim Dunegan, City of Durant, OK
Tommy Kramer, City of Durant, OK

Allan Brooks, Public Finance Law Group, Oklahoma City, OK
William R. Rapier, Ashby Investment, Plano, TX

B. APPROVAL OF MINUTES

Chairman Drummond said the draft minutes of the December 18, 2012, Regular Meeting had been distributed, and he asked if there were corrections to the minutes. There were none, and he stated he would entertain a motion to approve the minutes.

Ms. Lambert moved to approve the minutes of the December 18, 2012 meeting, and Mr. Herrmann seconded.

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

C. EXECUTIVE DIRECTOR'S REPORT

Mr. Strong began his report stating it is a momentous day, not only because of the public hearing on the rulemaking process, but also because it is General Counsel Dean Couch's last Board meeting. A reception was held prior to the meeting in Mr. Couch's honor, and Mr. Strong presented to Mr. Couch a "Resolution of Appreciation" from the Board and staff. Mr. Strong noted a reception for staff, friends and colleagues to honor Mr. Couch will be held on January 31 in the OWRB Board room.

Mr. Strong continued his remarks by stating the introduction of legislative measures deadline is January 17, and he will be participating in a conference call regarding legislation as a follow-up to the state question on infrastructure financing. The Legislature will convene on Monday, February 4, 2013, and he invited Mr. Josh McClintock to present the prepared legislative report to the members. Mr. McClintock updated the members on federal activities prior to the state report; he noted the legislation passed regarding the Lake Thunderbird Fish and Use Act, which the President signed, which regards the Central Oklahoma Master Conservancy District operation and the ability for the District (through the Bureau of Reclamation) to pursue other sources of water for Norman, Midwest City and Del City. It does not affect the State's permitting process or water quality requirements. Additionally, Congress is preparing for the Water Resources Development Act, and Senator Inhofe is no longer the ranking Republican on the Senate Environment and Public Works Committee as his term expired, but he is still on the committee, and also the Armed Forces Committee. Senator Boxer of California is hoping to have the WRDA bill out by the end of January.

Regarding the State Legislature, Mr. McClintock said most of the bills on the list are shell bills for general government, water bills (21), and other environmental measures. He reviewed the list and the language in certain bills of interest: SB 2, SB 6, SB 17, SB 18, SB 83, SB 305 and 306, SB 348. He expected the measures to be filed by the House this week. Mr. Strong added several bills regard the same subjects as the Board will be dealing with in the

rulemaking process – pit water and sole source aquifer designation. He introduced Senator Simpson who was in attendance.

Mr. Strong continued his report stating the Supreme Court had decided to review the Tarrant Case; the deadline for briefs are Feb. 9, Feb 26, March 21st, March 28, and April will be set aside for oral argument (same month as the annual meeting of the Red River Compact Commission), and hopefully a decision by June. The Chickasaw/Choctaw mediation continues; both cases will be discussed at the executive session later in the meeting.

Mr. Strong updated the members on the deteriorating drought situation across the state and the 90-day outlook is not showing improvement. He talked about the area reservoirs where water supplies are beginning to dry up and those particular situations: Altus, Pine Creek, and Canton (and withdrawals by Oklahoma City). He said the balancing act becomes difficult in these situations and is becoming prominently discussed, particularly with water rationing for some municipalities.

He will be speaking on a panel with Oklahoma Corporation Commissioner Dana Murphy at the Anadarko Basin Oil and Gas Conference in Houston on January 24-25, and the agency's budget hearing is scheduled for January 24. The next OWRB meeting will be held on February 19, 2013 at 9:30 in Oklahoma City, and the March meeting will be held on March 19 at 1:30 p.m. (OWRB Board room) with "Water Appreciation Day at the Capitol" being held from 9:00 am.- 2:00 p.m. that same day.

D. Monthly Budget Report

Ms. Amanda Storck addressed the members and referred to the distributed budget report through the month of December 2012. She said there is 69% of the agency funding available and 50% of the fiscal year remaining. Ms. Storck reported staff had begun resolution of the grants project problem with the State's new accounting system; the deadline is May.

Ms. Lambert asked about the items that indicated 100%, and Ms. Storck said those items remain funded at 100%; there are several funds that have not been able to be billed yet, but that billing process is beginning and there should be a change next month. Mr. Sevenoaks asked about the federal funds category and if the projects are being held up until the billing can be done, and Ms. Storck responded that the work is being done, and billing will follow.

Ms. Storck concluded her report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for The Elgin Public Works Authority, Comanche County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$1,259,700.00 loan request from The Elgin Public Works Authority located in Comanche County. He said Elgin is requesting the loan to refinance a Rural Development Loan to improve its water facility and to increase capacity and storage. He said the loan was used to construct a one-half million gallon elevated storage tank, rehabilitate one water well, and install 13,640 linear feet of water line. He said the loan will be funded through the Drinking Water State Revolving Loan Fund, and he noted provisions of the loan agreement. He said that Elgin is a good, current loan customer of the Board's, and has one outstanding loan with the Board.

Elgin has experienced a 70% increase in water connections, and 50% increase in sewer connections over the past several years, and its debt coverage ratio stands at approximately 1.5-times. Staff recommended approval.

Chairman Drummond asked and Mr. Freeman clarified that this is one of the loans that was in process at the time the Board agreed to no longer refinance loans with Drinking Water SRF funds. Mr. Herrmann asked if there were restrictions regarding refinancing other loans with DWSRF funds, and Mr. Freeman said the loans must comply with SRF standards.

Representing Elgin at the Board meeting was Mayor Larry Thoma.

Ms. Lambert asked how much was saved in interests costs with the refinancing, and Mr. Freeman responded that over the life of the loan, the Authority will save about \$800,000.00.

Mr. Herrmann moved to approve the Drinking Water SRF loan to The Elgin Public Works Authority, and Ms. Lambert seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

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 Drummond asked if there were changes to the Summary Disposition Agenda items. There were no changes to the agenda, and Chairman Drummond said he would entertain a motion.

Mr. Buchanan moved to approve the Summary Disposition items as presented, and Mr. Hitch seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

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. No-Cost Time Extension Agreement with Oklahoma State University Department of Natural Resource Ecology and Management for Phase III assessment of oxbow wetlands and lakes in Oklahoma.
2. Amendment of Joint Funding Agreement with U.S. Geological Survey to provide extension and additional funding for the project "Garber-Wellington Aquifer Management, Central Oklahoma".

E. Applications for Temporary Permits to Use Groundwater:

1. ONEOK Hydrocarbon L.P., Grant County, #2012-630

F. Applications to Amend Temporary Permits to Use Groundwater:

1. City of Medford, Grant County, 1977-778

G. Applications for Regular Permits to Use Groundwater:

None

H. Applications to Amend Regular Permits to Use Groundwater:

1. Gordon & Patricia Miller, Canadian County, #1975-899

I. Applications to Amend Prior Rights to Use Groundwater:

None

J. Applications for Regular Permits to Use Stream Water:

None

K. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- a. Licensee: GWM Enterprises, Inc./dba Roddy Qualls Environmental
Drilling DPC-0857
Operator: Roddy Qualls OP-1639
Activities: Monitoring wells and geotechnical borings
- b. Licensee: Chris Holloway DPC-0855
Operator: Chris Holloway OP-1951
Activities: Groundwater wells, groundwater test holes and observation wells
Monitoring wells and geotechnical borings
Pump installation

2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:

- a. Licensee: Sahara Water Services, LLC DPC-0781
1. Operator: Logan Lee Pollock OP-1950
Activities: Groundwater wells, groundwater test holes and observation wells
Pump installation

L. Dam and Reservoir Construction:

1. Ada City Lake, Pontotoc County, #OK11028
- 2. *Fairfax Golf Course Development, Oklahoma County, #OK30445* Item added

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

1. Oklahoma Department of Transportation, Cherokee County, #FP-12-35
2. Oklahoma Department of Transportation, Comanche County, #FP-12-36
3. Oklahoma Department of Transportation, Osage County, #FP-12-37
4. Oklahoma Department of Transportation, Osage County, #FP-12-38
5. Oklahoma Department of Transportation, Osage County, #FP-12-39
6. Oklahoma Department of Transportation, Ottawa County, #FP-12-40

N. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the January 15, 2013 packet of Board materials.

4. PUBLIC HEARING ON PROPOSED NEW AND AMENDED PERMANENT RULES OF THE BOARD

This public hearing is an opportunity for interested persons to present oral or written argument, data, and views on the new and amended rules of the Board which are being proposed in the Chapters of Title 785 of the Oklahoma Administrative Code specified below. Other than this public hearing, no action will be taken by the Board on the proposed rules at the January 15, 2013 meeting. The proposed new and amended rules are expected to be scheduled for consideration and possible adoption or other action by the Board at its February 19, 2013 meeting.

Mr. J.D. Strong said the Board had been provided the proposed changes to the rules, and today is the public hearing on those rules. He asked Mr. Jerry Barnett to inform the members about the rulemaking process according to the State Administrative Procedures Act. He said that each of the OWRB Division Chiefs will summarize the proposals and written comments received. The deadline for comments was Monday, January 14 at 5:00 p.m., and all the written comments have been provided to the members which they will have an opportunity to review prior to taking action at the February Board meeting, so it is not necessary for those speaking today to reiterate comments previously made.

Mr. Barnett stated that the process for Chapter 45 and 46 is somewhat different than the other chapters as those are also subject to federal notice requirements under the Clean Water Act which includes a 45-day notice period; state law governing the other chapters requires a 30-day notice period. He indicated the dates when notice was made of the amendment and proposed rules for all chapters, that the notice prescribed the comment period, and that a hearing would be held at today's Board meeting. He said the practice has been the Board will conduct the hearing and allow thirty days to consider the comments and take action at a future Board meeting.

Mr. Strong added that out of abundance of caution and by Supreme Court Order, today the Board will not hear or consider the proposed amendment regarding well spacing--Title 85 Chapter 30 Section 3-6. Well spacing rules and implementation of Senate 288 are subject to further order of the Supreme Court and any hearing, consideration or action by the Board on that

portion of the proposed amendments is postponed until the February 19, 2013, Board meeting. Because of a stay issued by the Supreme Court regarding the Board considering the maximum annual yield at this point in time, staff determined it would be best to continue consideration of that portion of the rules until the next meeting, or until there is further order from the Court.

A. Proposed Amended Rules in Chapter 25. Dams and Reservoirs

1. Summary of proposed amended rules – Ms. Julie Cunningham, Planning and Management Division, stated to the members there are 4,700 dams regulated by the OWRB in cooperation with the Oklahoma Conservation Commission (OCC) and the Natural Resources Conservation Service (NRCS) regulation of 2,100 federal dams. Working with these two agencies, the staff proposed amendments to clarify dam classifications, spillway performance standards, requirements for plans and specifications, and add terms and citations to references, and remove unnecessary requirements on dam owners. She said the rules would add terms and citations to technical references for consistency with statutes, provide new definition for agriculture-exempt dams, add a size limitation, adding design flood and minimum requirements for dams designated high hazard, provides for a waiver for dams constructed after 1973 with approval, adding hydrologic and hydraulic analysis when there is substantial changes to the agency approved plans and specifications, adding a requirement for more frequent inspection for high hazard if previous inspections indicate unsatisfactory assessment, adding requirement for inspection after an earthquake, requiring inspection within 48 hours after an emergency or natural disaster, and removing unnecessary language requiring notification about scheduled inspections.

Ms. Cunningham stated the Oklahoma Independent Petroleum Association submitted comment regarding definition of agriculture-exempt dams, that those waters should not be restricted from other uses. The City of Broken Arrow is present to comment regarding breach criteria.

Mr. Tom Buchanan said the agriculture-exempt definition doesn't keep the water from being used for other purposes, but you would lose the exemption if it used for other purposes. Ms. Cunningham stated that is not the intention, but to set a limitation on size.

Mr. Strong said the Board could consider a revision to the proposed rule; he said many comments were received at 5:00 p.m. or after 5:00 p.m. and staff has not had time to analyze, but there will be 30 days to review.

There were no other questions by Board members.

2. Comments on the proposed amended rules. Mr. Jeff Bigby, City of Broken Arrow, submitted written comments and spoke to the Board about his support for dam regulation and maintenance for downstream safety, but was concerned about the proposed amendments regarding the requirement about average daily traffic for a downstream roadway for setting of a dam classification. He was also concerned about the waiver for post-1973 dams. He asked the Board to consider postponing consideration until after meeting with public and private dam owners and municipalities about the implementation and phase-in of the requirements. He was concerned about the hydrologic and hydraulic analysis requirement for homeowner associations and small dam owners. The members asked about the number of dams in Broken Arrow affected, how the requirement was determined, and whether the Department of Transportation provided guidance on the traffic analysis.

Mr. Strong stated that staff will provide further analysis on the comments and bring that back to the members next month. He said that is part of the rulemaking process, which

oftentimes begins in the summer holding meetings and getting out the proposals allowing time for the public to review and look at the impact. Ms. Cunningham said she appreciated the comments; the City of Broken Arrow is a partner with the OWRB in the Floodplain Management Program.

B. Chapter 30. Taking and Use of Groundwater

1. Summary of proposed new and amended rules – Chairman Drummond reminded participants there would not be comments received regarding the well spacing rule. Ms. Julie Cunningham said amendments to Chapter 30 included proposed provisions regarding pertinent provisions of Senate Bill 597, water trapped in a producing mine; reenactment of certain revoked permit consolidation language; and implementing the water permit application assessment provision of Senate Bill 288. The City of Enid requested the ability to consolidate permits in order to reduce the number of permit fees required each year, regarding permits in the same county over the same groundwater basin---authorized wells, use, and withdrawal rates would not change.

Ms. Cunningham said there is a proposed new Subchapter 15 and related Appendix C addressing the use of groundwater trapped in a producing mine pit that emanates from a sensitive sole source groundwater basin or subbasin (in this case, the Arbuckle-Simpson Aquifer); establish provisions regard definition of terms, mines exempt from the Act, mines not exempt from the Act, augmentation of stream water or groundwater, site-specific water management plans, monitoring and reporting, and guidelines to estimate consumptive use of pit water (implementing SB 597). Ms. Cunningham explained provisions of Senate Bill 288 in 2003 which established water management rules regarding groundwater withdrawal but conflict and litigation arose regarding other provisions of the law exempting the taking, use, or disposal of water trapped in producing mines in permitting requirements. In 2010, the Department of Mines began conducting meetings with stakeholders to discuss possible solutions with the National Park Service, industry representatives, citizen organizations, municipalities and Choctaw Nation. Ultimately, Senate Bill 597 was enacted providing new water management and permitting requirements, and following passage of the bill the group continued meeting regularly to develop rules to implement SB 597, but there was still disagreement. There has been significant work conducted over many hours to develop technical criteria, and with this input, OWRB staff drafted the proposed revision, including definitions and terms, mines that are exempt from the Act, and mines that are not exempt from the Act (from the bill language), augmentation of streamwater and groundwater, site-specific water management plan, monitoring and reporting, guidelines to establish consumptive use of pit water, and guidelines to estimate consumptive use of pit water.

Ms. Cunningham stated that generally comments were received on both sides especially related to exempt and non-exempt operations. Local stakeholders said the rules don't go far enough in requiring a site-specific water management and conservation plan. She named the commenters: Citizens for the Protection of the Arbuckle Simpson Aquifer, Oklahoma Aggregates Association, Arbuckle Aggregates, Arbuckle Karst Conservancy, Shannon Shirley, Ashby Investments, Save Our Illinois River, Floy Parkhill, US Fish and Wildlife Service, and the City of Tishomingo. She said the mining interests claim the Board went beyond its statutory authority, but many other comments regarding the implementation of time for existing mines to require 90 days, said that is not long enough. She concluded her summary stating it is a very complicated bill and very complicated set of rules and there are many comments.

2. Comments on the proposed new and amended rules by interested persons. Prior to receiving comments, Chairman Drummond stated that the Board has received written comments that have been provided, and he invited anyone who would like to supplement those today to speak; however, if someone has already voiced your comments, further reiteration is not necessary. Chairman Drummond allowed commenters three minutes to speak:

A. William Rapier, Ashby Investments, L.L.C., - company owns 5,280 acres in Johnston County, with 2,600 acres overlying the Arbuckle Simpson Aquifer. Unique area, land was acquired to mine minerals and the proposed rules are problematic to do that; the Board should be concerned about providing water to the 200 people involved in mining; concerned the amendments will put companies out of business; and the rules do not allow the use of 11 million acre-feet of water stored in the aquifer but only rainfall, which is not what the aquifer is there for.

B. Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer – written comments have been provided; met with the technical group, main goal is management of water removed from the ground. Other water users must come to the OWRB for permit except mining industry. SB 597 requires industry to manage the groundwater they remove so that it does not impact the overall health of the aquifer. She said her goal was for proper management of the water and the industry wants to remove the water without going through the permitting process, and SB 597 laid a path to do that if a site-specific water management plan is developed, making her group give up their right to due process. She said the rules do not lay out a path for the mining operations to do a site plan. The City of Ada has spent millions of dollars to put in a well in accordance with SB 288 impacts and obtain a permit, and the rules do not state clearly enough the industry is required to have a site plan; she said they are not concerned about what the water is used for, but how much is being removed.

C. Precious Braggs, Chickasaw National Recreation Area – the National Park Service is concerned about the development of the Arbuckle Simpson Aquifer and potential impacts to streams and springs of the system. Platt National Park was established in 1906 and since that time has suffered adverse impact due to development around the park. She said the rules should include that water used in the mine operation must include evaporation and all sources and that all inflow and outflow is accounted for, that discharge to a stream should not receive the same augmentation credit as groundwater diverted from the mine and placed in a recharge basin; the CNRA goal is to protect streams and springs so they continue to flow as groundwater, and that CNRA natural and cultural features are preserved.

D. Alan Woodcock, US Fish and Wildlife Service – concerned about the hatchery and wildlife refuge located on Pennington Creek – rules that allow augmentation make it difficult to receive water on Pennington Creek; he has provided written comments.

E. Cody Holcomb, City of Ada – the City recognizes the need to management the water and has initiated multi-million dollar project to renovate the system, the primary source of water is Byrds Mill Spring, with some supplemental supply by wells. The Board spent a vast amount of money and time to sustain the streams and Ada depends on that. Now, talking about water rationing is all the more reason to protect the springs. He asked all users develop and follow a plan, to have certainty in planning, and that everyone comes to the table to ensure use sustainability for everyone.

F. Lewis Parkhill, City of Tishomingo – “poster” city for the definition of sole source; residents rely on water that flows through the Arbuckle Simpson Aquifer and sustainability is important; the city has initiated a multi-million dollar water system plan; science has supported

the important concept of conjunctive use, and groundwater and surface water must be considered jointly. SB 597 brings into the regulatory environment another use --- don't want to shut down companies, want all to understand use of water and be subject of control.

G. Peter Dawson, Arbuckle Aggregates – participated in the legislative process and attended meetings with the technical workgroup that developed the legislation; he hears there should be responsible rules that will result in sustainable resource for all users; he supports that, the rules are close to statute, and he is supportive of overall process.

H. Shannon Shirley – family depends on the Arbuckle Simpson Aquifer for domestic use – disappointed by rules, unacceptable to exempt mines from developing a site-specific management plan for the millions of gallons used daily; while areas go dry they will only “just monitor and report;” she participated in water plan roundtable meetings and recommended the Board have jurisdiction over mine water, and SB 597 provided that but, now rules exempt existing uses; she urged the Board to look closer at exempting mines from discharge and augmentation, and she believed that was not the intent of the legislature.

I. Jim Rodriguez, Oklahoma Aggregates Association – active participant in discussion since began in 2010 and through 2011; SB597 was accepted as a compromise by the negotiating groups. The Association believed the rulemaking process was a good process, progress was made but no activity until the rules were drafted early winter containing things that were not discussed in the meetings. He asked for more discussion time although they believe that much of what is in the rules is excellent, and they have provided comments. The industry clearly understands that operations are regulated by SB 597, and are aware they have to account for the water through monitoring and reporting, and if they exceed the Equal Proportionate Share they are in a position to lose their exemption, so it is wrong to believe that existing mines are not regulated.

J. Dave Robertson, Murray County Rural Water District #1 – doesn't know much about mining, law and science, but knows about not having adequate source of drinking water. For fifty years he has dealt with inadequate water supply; the District serves 6,000 residents that now see that supply threatened by SB 288, possibly by the mines, possibly by other things, but that doesn't matter where the water is taken, if it is lost to them, they are without drinking water. He asked the Board to consider legitimate needs for rural residents. (He made other comments that may not have regarded the proposed rules, and Mr. Strong asked the Board to only consider comments about the rules.)

Mr. Strong suggested that if the Board does not object, staff will look at these comments and developed proposed changes according to what has been received in written and oral comment and bring back to the Board, prior to the next Board meeting. Chairman Drummond thanked those who have attended to participate.

Mr. Herrmann referenced a “camel” or forced design by a committee. He said he is hearing there was a sincere effort on part of a lot of people and stakeholders to find a middle ground as an acceptable and meaningful way forward. He is also hearing it is not acceptable to anyone and he didn't know if that is a sign of a good compromise or a “cop-out,” but he would study the materials and determine if it is a “camel”—which is a horse designed by a committee-- or an elegant solution to a complex problem. Mr. Strong responded that it was the case when SB 597 was finalized that neither side was completely happy; CPASA and others wanted no exemption and the mining companies wanted their long-existing exemption to stay in place and volunteered to do monitoring and reporting so a compromise was struck. The object of

rulemaking is to expound upon the law, highlight areas of disagreement engaged in developing the compromise, and show how staff believes the law should be implemented. Development of the rules for SB 597 began over a year ago and staff believes there has been enough input to draft rules for the Board's consideration and yet neither side is happy with it; meaningful comments have been heard and staff will go back and recommend what the Board should consider. Mr. Herrmann asked and the members agreed they would like to be provided with the language of the legislation and the language of the statute. Mr. Strong said that would be provided; that it is clear from the comments today there is confusion because how could the rules exempt the mines too much and yet not exempt the mines enough all in the same rule; he said a fine line was crafted in the law which makes the distinction between an exempt mine and a non-exempt mine, but is clearly not the stock exemption the mine enjoyed before, so some clarification may be needed.

C. Proposed Amended Rules in Chapter 35. Well Driller and Pump Installer Licensing

1. Summary of proposed amended rules – Ms. Julie Cunningham stated the proposed changes to Chapter 35 are being proposed by comments received from the Well Drillers and Pump Installers Advisory Council. The Council is advisory to the Board and provides input for rulemaking every legislative session in response to issues that have arisen in the Well Drillers Program. Board staff conducted several meetings with the Council and the staff of the Department of Environmental Quality and Oklahoma Corporation Commission regarding construction standards.

Proposed changes include advising the owner of a well for a minor public water supply should obtain the appropriate construction permit prior to drilling and completion; and to clarify language regarding the height above the natural land surface that a well casing must extend after completion of a new well and installation of a well pump (provides consistency for driller and installers). Other proposed changes include clarifying plugging requirements making the distance the wells and boring must be plugged from the bottom of the well to the land surface the same. Ms. Cunningham said staff had received comments from the Advisory Council and the Corporation Commission that recommended language for additional sealing requirements in oil field areas that had not been included in the rule impact statement or notice.

2. Comments on the proposed amended rules by interested persons- Mr. Steve Vannoy, a member of the advisory council, stated to the members his family has been in the business for 100 years, and he asked that the Board accept the proposed changes. He said they are small changes that do not require much effort but could have a great impact on the water quality of Oklahoma.

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

D. Proposed New and Amended Rules in Chapter 45. Oklahoma's Water Quality Standards

1. Summary of proposed new and amended rules – Mr. Derek Smithee, Chief, Water Quality Division, stated to the members that the Water Quality Standards (WQS) have different publishing and notice requirements and staff has conducted several informal meetings over the course of several months and have received comments. The members were provided the notice and he briefly highlighted proposals for both Chapter 45 (standards) and 46 (implementation) because it is a "hand and glove" program and difficult to separate the two, the criteria is only as

effective as to how they are implemented, so for the sake of discussion Mr. Smithee blended them together although the Board will consider them separately next month.

Mr. Smithee said the proposals included clarifying seasonal temperatures, restoring language regarding default low flow, removing numerical color criterion for aesthetics, restoring language that clarifies criteria for fish consumption beneficial uses applicable to Warm Water Aquatic Community, Cool Water Aquatic Community, or Trout fishery; refined beneficial uses for several waters of the State for a higher level of protection for Rush Creek and Wewoka Creek (currently secondary water body contact); many criteria modifications for human health criteria to reflect evolution in science including human consumption for fish, cancer potency risk factor, reference doses, etc.; and groundwater recommendations that several water bodies be classified in the groundwater area: Arbuckle Simpson Aquifer to be classified at a Class I or Special Source groundwater area, and for several waterways in Appendix H for ground waters that have had contamination from some kind of activity to serve as an alert the water has been contaminated and additional precautions are needed.

Mr. Smithee said several comments were received by Lewis Parkhill (Tishomingo), Kystina Phillips, Amy Ford (CPASA), Jim Rodriguez (OKAA), Jim Barnett (EFO), Brian Woodard (OIPA), Bill Hollis (Sulphur), Phil Crocker EPA Region 6; and more recently several citizen letters were received, also Alan Woodcock (DOI), Shannon Shirley, Ed Brocksmith (STIR), Arnella Hargis (State Chamber of Commerce), Arbuckle Karst Conservancy, Department of Environmental Quality, Oklahoma Farm Bureau, and Craig Shew, City of Ada. He said most of the comments focused on two major areas: the Arbuckle Simpson recommendation (both pro and con); the numerical criterion and the beneficial use upgrade (Wewoka and Rush Creeks) -- which a meeting was held with municipalities and discharges and are supportive of the recommendation; and comments on the numerical criteria changes to represent evolving science expressing a general fear that lowering criteria will have a corresponding increase in treatment costs; but is EPA guidance and new science requires that be "bled" into the WQS implementation.

Prior to receiving comments, Chairman Drummond asked Mr. Smithee to brief the members on the Class I designation. Mr. Smithee said the Class I Special Source Groundwater is an uniquely Oklahoma requirement, the Federal Clean Water Act does not require Oklahoma to have groundwater quality standards, but Oklahoma Statutes do, and there is a special subchapter dealing with groundwater quality standards that is patterned after the philosophy that we want to take full advantage of using most of our surface water and groundwater. However, there are some that is believed to be the "best of the best" and given the vulnerability of groundwater we want to be more protective. Class I Special Source Groundwater designation assigns additional theoretical protection to ensure the existing water quality is not adversely impacted. Prior to this revision of the Standards, there are no other waters in that category (other than waters under scenic rivers), and this will specifically name the Arbuckle Simpson Aquifer as Class I and as agencies implement the WQS, and extra eye will be placed to make sure the Arbuckle-Simpson is protected. The full impact is yet to be known as implementation is carried out by other agencies and hearings will be heard on the implementation of the standards.

Mr. Strong added Class I has been in the Standards since 1992, but there has not been a whole aquifer designated, but there are hundreds of areas designated Class I that are protected, largely wellhead protection areas, wildlife management areas, floodplains of the state scenic rivers, etc. It is largely the other agencies that will implement the standard and those agencies have been consulted and all answered that essentially there is no additional costs to their

regulated community, and some comments have been received that would suggest this would bring unintended consequences to the regulated community and it was asked but no response has been received as to specific examples of an impact to business has been provided. The implementing agencies can change how they regulate in order to do something more than they do today to protect Class I groundwater, and that will have to go through a rulemaking process, with notice, comment period and hearing, and ultimate approval by the Legislature and Governor.

2. Comments on the proposed new and amended rules by interested persons.

Chairman Drummond invited public comment, again stating if written comments have been provided, to only supplement those comments, and not to reiterate another's comments.

A. Mike Wofford, representing Environmental Federation of Oklahoma and the Oklahoma Aggregates Association – he said he wasn't so sure another agency has to pass a rule to implement Class I groundwater designation; when asked if there would be a problem, they don't know because the other agencies won't tell what the plans are to implement Class I in the Arbuckle Simpson; the explanation doesn't say what the problem is so they are operating in the dark; he suggested other agencies wouldn't adopt rules but could place new permit requirements municipality by municipality; if the Board does not pass it, they could have time to find out about adverse affects and costs; he asked for further discussion during 2013 and he asked the Board to reject the proposal and give the regulated community time to determine the effect.

Mr. Wofford also spoke to the discharge limit on the new default standard on fish consumption. The proposal is that the fish consumption rate be the default standard, this isn't a recommendation of staff but EPA, and that EPA requested it be done which would require more stringent requirements for municipalities. He challenged that is not the philosophy of Oklahoma that the Federal Government will dictate to the state and he said it is not required by EPA. He asked the Board reject the change.

Mr. Buchanan asked if Mr. Wofford was aware of additional requirements to municipalities or others as a result of Class I designation in other parts of the state, and Mr. Wofford said he is not.

B. Lewis Parkhill, City of Tishomingo – the City has passed a resolution in support of the Class I designation. He spoke to the number of areas currently designated Class I and their location, three with the outflow of the Arbuckle Simpson Aquifer. The action would be the recognition of the real and actual water deserving of that recognition.

C. Cody Holcomb, City of Ada – he asked that all discussions about the aquifer be looked at through the same lens, the goal is to protect the quantity and quality of the water.

D. Precious Braggs, National Park Service – thanked the state for designating the waters of the Chickasaw National Recreation Area as Class I waters in 1992, the park has been waiting 20 years for Class I designation for the aquifer, the source of the springs of the park, and is used by the hatchery.

Mr. Strong said the CNRA is already designated, and Mr. Sevenoaks said it made sense the source water should be also.

E. Peter Burk, US Fish and Wildlife Service – followed up on Ms. Bragg's comments; the designation is important and he is supportive of the designation, he has submitted written comments and would add the Tishomingo National Fish Hatchery was placed in the current location in the 1920s, and has a Board approved permit from Pennington Creek that dates from the early 1930s.

F. Brian Woodard, Oklahoma Independent Petroleum Association – he provided written comments, but added in response to other comments that theoretical protection would cover of 600 miles, and asked how do other state agencies implement the restrictions—it is not uncommon for agencies to take action when no impact is expected. If it doesn't change anything, but may present future uncertainties, then why adopt the change? He asked what has been received from the Corporation Commission which regulates wellhead protection areas based on groundwater quality standards and in those areas development can incur extensive costs, and he asked the proposal be postponed in order for more review by agencies with water quality authority.

Mr. Sevenoaks asked how many wells are in the area, and Mr. Woodard responded there is extensive historic buildup.

G. Krystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer – comments have been submitted and she commented on statements made: there are no wells that overlie the aquifer, but there is extensive development outside the boundaries, the overwhelming majority of supporters of the proposal come from local stakeholders that are directly impacted, if the decision was stayed and pollution occurred, these people would be directly and immediately impacted; the opposition is from outside the aquifer; the Board has a statutory obligation to protect and maintain the water quality of the waters of the State, and also is tasked to establish classification for water quality and criteria to protect them, and statutes instruct other agencies to implement and the other agencies should already have implementation plans for this designation.

Mr. Hitch commented that agencies have different ways of changing applications and do not always provide opportunity to comment. Ms. Phillips said that the APA requires agencies to follow rulemaking and public comment must be allowed; Mr. Strong added that criteria cannot be changed without going through the rulemaking process, but an agency may have new leadership who has a different way of interpreting the rules.

H. Bill Clark, rancher – has a temporary permit for groundwater and he suggested when the aquifer was designated sensitive sole source, landowners did not know that would draw a “target on their back” and used to apply co-mingling of groundwater and streamwater; he questioned if the Class I would be applied to Arbuckle Simpson, why not all groundwater.

Mr. Strong said that staff will provide suggestions to the Board as result of comments received, and the response from other agencies about the designation; he responded to the comments the changes recommended for fish consumption criterion is a shield for EPA and stated that is not true, it is guidance --- it is not required but would not be proposed if not appropriate for Oklahoma WQS. Mr. Herrmann asked to be provided information about linkage to statute on Class I, and for the statutory authority for the Board to take that action. Mr. Buchanan asked if the 17.4 grams is implemented, will there be costs and Mr. Smithee responded that is in the cost/benefit analysis, but essentially, yes there will be additional costs associated.

E. Proposed Amended Rules in Chapter 46. Implementation of Oklahoma's Water Quality Standards

1. Summary of proposed amended rules – Mr. Derek Smithee stated Chapter 46 is for the where, when, how, time, etc., that other agencies follow when implementing the WQS. In general, Chapter 46 proposed changes reflect a modification in the USGS citation on how we statistically calculate 7-day, 2-year low flows, and this is an update on new statistical methods to

reflect that so that all agencies use the same method. Other changes are housekeeping or reflect the changes in Chapter 45.

2. Comments on the proposed amended rules by interested persons. There were no questions or comments by Board members, nor comments by the public. However, a citizen asked if the Class I designation would cover all 326,000 acres of the aquifer, and Mr. Strong responded Mr. Smithee would research that and get back.

F. Proposed Amended Rules in Chapter 50. Financial Assistance

1. Summary of proposed amended rules – Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the proposed changes affect the point system for emergency and REAP grants as they relate to the cost of water and sewer service and the points associated with the costs. This is the first adjustment in approximately six years and reflects the consumer price index as a whole, and for water and wastewater services, as well as the inflationary factor. Other modifications regard the median household income in scoring emergency and REAP grants, and updates the most current Census data available; simplifies language regarding the date the grants are due, and added the definition of water reuse, and water reuse added as eligible project in the Clean Water SRF to be consistent with DEQ and the EPA; modifications to the environmental requirements in the Clean Water SRF program to be consistent with the Environmental Policy Act and EPA guidelines; and language clarification regarding format for the audio portion of the transcript of the Clean Water SRF Public Hearing.

Mr. Freeman said that three comments were received from the Oklahoma Rural Water Association, the Oklahoma Finance Authority, and the Oklahoma Economic Development Authority and staff will be looking at these over the next month

2. Comments on the proposed amended rules by interested persons. There no questions or comments by Board members, or members of the public.

Chairman Drummond stated the Public Hearing is concluded.

5. SPECIAL CONSIDERATION

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

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

A. No items. There were no Special Consideration items for the Board consider.

- 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

Chairman Drummond

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, et al.

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.

Chairman Drummond read the statement above regarding the Board's proposed executive session. He asked if legal counsel would advise the Board move into executive session, and Mr. Couch stated he did so advise.

- 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. Herrmann moved the Board enter into Executive Session, and Mr. Hitch seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

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

Chairman Drummond designated Executive Secretary Mary Schooley to keep written minutes of the Executive Session. He also indicated Staff Attorney Jerry Barnett will attend.

C. Executive Session, if authorized.

The Board entered Executive Session at 12:00 p.m. on Tuesday, January 15, 2013.

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

Mr. Sevenoaks moved to return to Regular Session, and Mr. Herrmann seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake

The Board returned to Regular Session at 12:37 p.m. on Tuesday, January 15, 2013.

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

The Board did not vote on any matter discussed in Executive Session.

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.

Chairman Drummond reminded members the next meeting is February 19, 2013 in Oklahoma City.

10. ADJOURNMENT

There being no further business, Chairman Drummond adjourned the meeting of the Oklahoma Water Resources Board at 12:38 p.m. on Tuesday, January 15, 2013.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
F. Ford Drummond, Chairman

_____/s/_____
Linda P. Lambert, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

_____/s/_____
Tom Buchanan
(SEAL)