

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
March 19, 2013

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Linda Lambert at 1:30 p.m., on March 19, 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 March 15, 2013, at 3:00 p.m., at the Oklahoma Water Resources Board's offices.

A. Roll Call

Board Members Present

Linda Lambert, Vice Chairman
Tom Buchanan, Secretary
Ed Fite
Rudy Herrmann
Richard Sevenoaks

Board Members Absent

Ford Drummond, Chairman
Bob Drake
Marilyn Feaver
Jason Hitch

Staff Members Present

J.D. Strong, Executive Director
Jerry Barnett, Acting 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

Others Present

Brian McDougal Shawnee, OK
Eddie Rhandour, Department of Environmental Quality, Oklahoma City, OK
Rick Schlegel, Cardinal Engineering, Woodward, OK
Brian Woodard, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Ken Fitch, Grove Municipal Services Authority, Grove, OK
Jim Ford, Grove Municipal Services Authority, Grove, OK
Ryan Ellis, Tray Gray, Broken Arrow, OK
Alan Riffel, City of Woodward, OK
Karen Riffel, Town of Seiling, OK
Bodie Bachelor, Centennial Law Group, Duncan, OK
Chris Gander, BOSCO, Inc., Oklahoma City, OK
Tom Adams, Canton Lake Association, Canton, OK
Mike Mathis, Chesapeake Energy, Oklahoma City, OK
Ed Brocksmith, Save The Illinois River, Tahlequah, OK
Scott Cordell, Norman, OK
Chris Phillips, Chickasaw Nation, Ada, OK
Tim McCrary, Rose & McCrary PC, Grove, OK
Cynthia R. Sementelli, City of Shawnee, OK

B. APPROVAL OF MINUTES

Vice Chairman Lambert said the draft minutes of the February 19, 2013 Regular Meeting had been distributed, and asked if there were corrections to the minutes. There were none, and Ms. Lambert stated she would entertain a motion to approve the minutes.

Mr. Herrmann moved to approve the minutes of the February 19, 2013, meeting and Mr. Buchanan seconded.

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

C. EXECUTIVE DIRECTOR'S REPORT

Mr. Strong began his report thanking members for their participation at "Water Appreciation Day at the Capitol" which began earlier in the day. He said there were a good number of exhibitors, and Mr. McClintock remained at the Capitol to wait for approval the Water Day Resolution, and therefore, Mr. Strong presented the legislative report. He said last week was the deadline to get bills through the House of Origin, those measures that did not survive the deadline are dead for the session; the next deadline is April 11. At the Federal level the focus is reducing spending, and there is much activity in the Senate Environment and Public Works Committee to get the Water Resources Development Act reauthorized; there has not been a WRDA bill since 2005, and the Committee is struggling with how to write the bill without earmarks. Staff is working with partners in Texas and Kansas to get key priorities—developed as a "tri-state" partnership—included in the WRDA bill. He said in a "no earmark world" it makes sense for the Corps of Engineers to fund projects prioritized in States' Water Plans rather than by personal pet projects. He said an OWRB priority is a "no earmark approach" to funding,

as well as other items the tri-state group is trying to get into the bill, for example, right now the COE cannot contract with the State for bathymetric mapping with the OWRB which has expertise, but can contract with a private consulting firms—oftentimes at greater expense to the Corps; the states are asking for an opportunity to bid on projects just like private companies.

At the State level, there are about 10 water bills remaining, particularly regarding the Grand River Dam Authority, and Mr. Strong reviewed the provisions of other measures of interest: HB 1923, drought relief bill (funding from Rainy day fund); HB 2193 to implement language for State Question 764; and SB 965 regarding changing the makeup of the OWRB and using the 1995 water plan regional boundaries.

Mr. Strong stated that mediation is ongoing in the Chickasaw/Choctaw case, and there will be an update later in executive session. The State brief is due Thursday, March 21 for the U.S. Supreme Court hearing on April 23, which is the same date as the Red River Compact Commission; there is confirmed seating for the Board members at the hearing. The Oklahoma Supreme Court has not ruled in the case regarding the Arbuckle Simpson matter. Other activities include the Canadian River Compact met in Amarillo on March 5; Mr. Strong spoke to Ardmore Rotary, and he met with the Environmental Cabinet agencies and the Corps of Engineers prior to Colonel Teague's reassignment this summer. He will speak to the Cherokee Water Conference on March 26 in Catoosa, attend the Western States Water Council quarterly meeting April 3-5 in Denver, Co; and staff will participate in the Oklahoma Rural Water Association annual meeting in Tulsa on April 10-11. He reminded the members that Financial Disclosure Statements are due May 15, and the next OWRB meeting will be held on April 16, 2013 in Oklahoma City. Mr. Strong concluded his report announcing the updated printing of the "Lakes of Oklahoma" Atlas.

D. Monthly Budget Report

Ms. Amanda Storck presented the budget report as prepared and distributed. She said there is 57% of total expenditures available with 33% of the fiscal year remaining. She said the agency did receive an expense in federal funds, and are about one-third of the way through working with the Office of Management and Enterprise Services on the GPC (grants, projects and contracts) model to bill the grants the agency had not been able to bill for the past year and a half; she anticipated being caught up in May. In response to Mr. Sevenoaks' questions, Mr. Strong explained that the state accounting system experienced glitches and the agency was unable to bill for federal projects, which is over one-third of the agency income. Ms. Storck explained that of the 29 federal grants and contracts, they are working backwards from FY 2012, once those are completed, they will work on the FY 2013. The backlog amount equaled over \$2 million; the lack of the funds causes a shortage in cash flow but the agency has been able to maintain. Ms. Storck described the anticipated schedule for completing the billing through FY 2013 grants and projects; she explained to the members how the problem arose and how the problem resolution process has been handled.

There were no other questions by the members, and Vice Chairman Lambert asked that Ms. Storck keep the members informed on the progress with the federal funding issue. Mr. Strong complimented Ms. Storck and her staff for their effort to get the issues resolved as quickly and efficiently as possible, especially considering the agency has no enforceability and limited abilities to take care of the matter.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Rural Water and Sewer District No. 5, Garfield County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for an \$865,000.00 loan to the Garfield County Rural Water and Sewer District No. 5. The District is requesting the loan to go along with \$200,000.00 in District funds to lay approximately 36,338 feet of 6-inch water line in the northeast part of the district in order to increase supply and water pressure. In addition, to the District will utilize approximately \$545,000.00 in loan proceeds to convert an existing variable rate loan with the Board to fixed rate. He noted provisions of the loan agreement, funded through the Board's State Loan Program Revenue Bond Program (FAP loan). He said the District has been a good loan customer of the Board's since the 1990s and has one other outstanding loan with the Board. The District's connections have increased by approximately 14% over the last ten years and its debt coverage ratio is a strong 3.47-times. Staff recommended approval of the loan application.

Representing Garfield County RWD No. 5 was Mr. Jack Herrian, District Manager.

There were no questions by Board members, but Mr. Herrmann stated he was pleased to see \$200,000.00 in local funds included in the project.

Mr. Herrmann moved to approve the FAP loan application to the Garfield County RWD #5, and Mr. Buchanan seconded.

AYE: Buchanan, Herrmann, Sevenoaks, Fite, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drake, Drummond, Feaver, Hitch

B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Seiling Public Works Authority, Dewey County. Recommended for Approval. Mr. Freeman stated that this item is a \$3.2 million dollar loan request by the Seiling Public Works Authority located in Dewey County. He said Seiling is requesting to use \$2.3 million of the loan proceeds to extend water and sewer service to a new commercial area, and to the north side of town. He described the project that included 17,000 feet of water line, 10,700 feet of sewer line, and a new storage tank and pump station. In addition, Mr. Freeman said the loan will refinance a 2000 bond issue for the construction of a reverse osmosis plant which has a balance of about \$716,197.50. Mr. Freeman noted provisions of the loan agreement which will be funded through the Board's FAP loan program at a fixed interest rate; water connections have increased 13% since 2005, and sewer connections by 11%, and the debt coverage ratio stands at approximately 2.62-times. Staff recommended approval.

Ms. Karen Ripple, Town Administrator, was present in support of the loan application; she explained the new area will bring in increased tax revenue in addition to the approved sales tax increase; the funding will assist the new hospital under construction.

Vice Chairman Lambert asked about the administrative and other fees being higher than the other three loans (on the agenda), and Mr. Freeman responded he would need to review the fees, but usually that would involve filing fees and rounding.

There being no other questions, Mr. Buchanan moved to approve the FAP loan to the Seiling Public Works Authority, and Mr. Sevenoaks seconded.

AYE: Buchanan, Herrmann, Sevenoaks, Fite, Lambert

NAY: None

ABSTAIN: None
ABSENT: Drake, Drummond, Feaver, Hitch

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for the Grove Municipal Services Authority, Delaware County. Recommended for Approval. Mr. Freeman stated this item is for consideration of a \$7,050,000.00 Drinking Water State Revolving Fund Loan for The Grove Municipal Services Authority. Grove is requesting the loan to expand its water treatment facility to meet growing demand. Mr. Freeman noted provisions of the loan agreement, stating that Grove has been a long time, excellent customer of the Board's and currently has two outstanding loans with the Board. He said Grove's water connections have increased by approximately 16%, wastewater connections have increased over 20% during the past ten years, and from 2000 to the 2010 Census, the population grew by approximately 30%. Grove's debt coverage ratio stands very strong at 4.78-times. Staff recommended approval.

Representing Grove were Mr. Jim Ford, Authority Chairman, and Mr. Kenneth Fitch, Authority Trustee.

Mr. Sevenoaks asked about the number of connections for wastewater and if the connections along the lake are on the wastewater line. Mr. Ford answered that for some time those along the lake have been on septic systems, and currently there are approximately 1,900 sewer connections of the 6,500 water connections. Grove is working to get people on the system by lowering fees and assisting developers but it is difficult and expensive because of the physical area characteristics.

There were no other questions, and Mr. Herrmann moved to approve the Drinking Water SRF loan to The Grove Municipal Services Authority, and Mr. Sevenoaks seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Shawnee Municipal Authority, Pottawatomie County. Recommended for Approval. Mr. Freeman explained that this item is for consideration of a \$14 million request by the Shawnee Municipal Authority. The Authority is requesting the loan to refinance its Series 2003 debt issuance which was for payment to the Pottawatomie County Development Authority for construction of the Wes Watkins Reservoir. Mr. Freeman noted the provisions of the loan agreement and said that by refinancing, Shawnee will shorten its amortization of the debt by approximately 3.5 years and save approximately \$2.5 million in interest. He said the debt restructuring will free future cash flow for addressing Shawnee's water and wastewater infrastructure needs which will be identified in its 20-year Master Plan which is currently being developed. Mr. Freeman said that Shawnee has been a long time customer of the Board's, and has three outstanding loans with the Board. Over the last ten years, the water connections have increased approximately 6% and sewer connections by 10%, and the debt coverage ratio stands at approximately 3.18-times. Staff recommended approval.

Mr. Bryan McDougal, City Manager; Cynthia Sementelli, Finance Director; and Steve Nalms, Utility Director were present in support of the FAP loan application.

Mr. Herrmann asked the old and new interest rate for the funding, and Mr. Chris Gander, BOSCO, answered the old rate was about 5% and the new rate will probably be about 2.25%.

Vice Chairman Lambert stated if there were no other questions, she would entertain a motion to approve the application.

Mr. Sevenoaks moved to approve the FAP loan to the Shawnee Municipal Authority, and Mr. Buchanan seconded.

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

E. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman said this item is a \$32.5 million request by the Tulsa Metropolitan Utility Authority in order to increase capacity to the Cherry Creek flow equalization basin, design the main interceptor line extension for Lower Nickel Creek basin, rehab area wide sewer lines, and provide service to unsewered areas. Mr. Freeman stated the loan will be funded through the FAP loan program, and he noted provisions of the loan agreement. Tulsa has been an excellent customer of the Board's for 23 years and currently has 25 loans outstanding with the Board with a total outstanding balance of approximately \$172 million; the debt coverage ratio stands at 1.5-times. Staff recommended approval.

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

There were no questions by members, and Mr. Fite moved to approve the FAP loan to the Tulsa Metropolitan Utility Authority, and Mr. Buchanan seconded.

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

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.

Vice Chairman Lambert recommended transfer from the Summary Disposition Agenda to the Special Consideration Agenda, item 3.E.1., application for temporary permit to use groundwater #2012-656 by Andy Vu Nguyen in Adair County. There were no objections.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items and Approval of Items listed.

Mr. Sevenoaks asked about item 3.D.3., contract with Attorney General's office for legal services. Mr. Jerry Barnett responded the contract is a new arrangement with that office to help over the next few months to conduct hearings and get caught up on a backlog of permit hearings due to the lack of personnel.

Mr. Julie Cunningham asked that items 3.G.1., and 3.K.1. be withdrawn from

consideration.

Vice Chairman Lambert stated if there were no questions the Board could move to approve the Summary Disposition Agenda, removing the two items and transferring the item to Special Consideration.

Mr. Herrmann moved to approve the Summary Disposition items as modified, and Mr. Buchanan seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Hitch, Drake, Feaver, Drummond

**Mr. Fite stepped out of the meeting room during the vote and returned. Later in the meeting he asked that his vote be reflected as "aye."

The following items were approved:

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Possible Action on Items Listed Below. Recommended for Approval.

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>
GGEDA				
a.	FAP-10-0002-R	Fairland Public Works Authority	Ottawa	\$99,999.00
KEDDO				
b.	FAP-10-0001-R	Rural Water District #6	McCurtain	\$99,900.00

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

1. Memorandum Agreement with U.S. Department of the Interior, Bureau of Reclamation, Fort Cobb Reservoir Master Conservancy District, and Foss Reservoir Master Conservancy District for Upper Washita Basin Study.
2. No-Cost Time Extension Agreement with AMEC Environment & Infrastructure Inc. for Allocation Modeling of a Portion of Canadian River System.
3. Contract with Attorney General's Office for Legal Services.
4. Intergovernmental Agreement with Waurika Lake Master Conservancy District for Hydrographic Survey of Lake Waurika.
5. Contract with Oklahoma Groundwater Association for Continuing Education Services for Well Drillers and Pump Installers.

E. Applications for Temporary Permits to Use Groundwater:

1. Andy Vu Nguyen, Adair County, #2012-656 -- Item transferred to Special Consideration Agenda
2. Blake Ventures, LLC, Kingfisher County, #2012-673

3. Jordan & Sarah Gunter, Caddo County, #2012-688
 4. Loretta Rae Jones, Marilyn Kaye Graham & Kenneth Dean Hodges, Caddo County, #2012-690
 5. Jerry & Marie Loula, Caddo County, #2012-692
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Enid Municipal Authority, Woods County, #1982-965
- G. Applications for Regular Permits to Use Groundwater:
1. *Michael J. & Kathy Lee Martin, Greer County, #2011-583 --Item withdrawn*
 2. Harry J. & Linda K. Minns, Cimarron County, #2012-666
 3. McCurtain Farm, LLC, McCurtain County, #2012-676
 4. Knosby Farm, LLC, McCurtain County, #2012-678
- H. Applications to Amend Prior Rights to Use Groundwater:
1. Loretta Rae Jones, Marilyn Kaye Graham & Kenneth Dean Hodges, Caddo County, #1953-120
- I. Applications for Regular Permits to Use Stream Water:
1. McCurtain Farm, LLC, McCurtain County, #2012-065
 2. Richard A. & Sonja G. Ford, Haskell County, #2012-066
- J. Applications for Term Permits to Use Stream Water:
1. TransCanada Keystone Pipeline LP, Atoka County, #2012-068
- K. Applications to Amend Regular Permits to Use Stream Water:
1. *Daniel Williams, Muskogee County, #2002-056 -- Item withdrawn*
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: WP Drilling DPC-0865
 1. Operator: Gary Walther OP-1961
 Activities: Groundwater wells, groundwater test holes and observations wells
Water well pumps
 - b. Licensee: Bass Corrosion Services, Inc., dba Bass Engineering Company DPC-0867
 1. Operator: Don Ashcraft OP-1966
 Activities: Cathodic protection
 - c. Licensee: Patterson Charles Brandenburg DPC-0869
 1. Operator: Patterson Charles Brandenburg OP-1967
 Activities: Groundwater wells, groundwater test holes and observations wells
Water well pump
 - d. Licensee: Sam Hummel Consulting, LLC DPC-0871
 1. Operator: Sam Hummel OP-1968
 Activities: Groundwater wells, groundwater test holes and observation wells
Water well pumps.
 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses;
 - a. Licensee: Associated Environmental Industries Corp. DPC-0269
 1. Operator: William Joseph Newman, III OP-1962

- Activities: Monitoring wells and geotechnical borings
- b. Licensee: Enercon Services, Inc. DPC-0549
- 1. Operator: John Phillip Kelley OP-1963
- Activities: Monitoring wells and geotechnical borings
- c. Licensee: James L. Binkley DPC-0642
- 1. Operator: Joshua Christopher Harrison OP-1965
- Activities: Groundwater wells, groundwater test holes and observation wells
Water well pumps

M. Dam and Reservoir Construction:
None

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 March 19, 2013 packet of Board materials.

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

There were no items for the Board's consideration.

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 items for the Board's consideration.

B. Items transferred from Summary Disposition Agenda, if any.

3.E.1. Application for Temporary Permit to Use Groundwater, Andy Vu Nguyen, Adair County, #2012-656 transferred from the Summary Disposition.

Vice Chairman Lambert introduced the item, and asked Mr. Jerry Barnett, Acting General Counsel, to provide background information on the matter. Mr. Barnett explained to the

members that this application was filed last year by Mr. Andy Vu Nguyen in Adair County asking for two wells to be used for poultry production on less than a quarter-section (127.7 acres). He said that during the comment period and opportunity to file protests, a letter was filed on behalf of a number of landowners in the area by Attorney Tray Gray raising a number of issues common to these types of applications. Mr. Barnett said he began the process as hearing examiner, but later Ms. Lou Klaver became the hearing examiner in the matter. As has been done in several similar cases, it is staff's view that issues raised in the letter did not rise to the level of requirements for a protest as spelled out in the agency rules, but the primary concern was for pollution of the groundwater as well as pollution of a nearby stream. Mr. Barnett said that an order was distributed that afforded an additional opportunity to these folks that might show a basis to treat it as a protest and to conduct a hearing, but the second filing also focused on the question of pollution and in staff's view, and in a number of board decisions in the past on that issue, the Board rules the question of pollution regarding a poultry farm in this case is within the jurisdiction and area of environmental responsibility of the Department of Agriculture Food and Forestry. By statute, while the Board still maintains jurisdiction on the question of waste by pollution, statutes carved out a section for that jurisdiction of this agency and said that when an applicant's activity is subject to the regulation within the jurisdiction of the Department of Environmental Quality or the Department of Agriculture, the Board is precluded from making a determination on the issue of waste by pollution from that activity.

Mr. Barnett said that applying that rule, or that law, to the facts in this case, staff found there still was not a basis to treat the matter as a protest for a hearing and so on that basis and the absence of any valid protest staff recommended approval. He said a request was received by the attorneys representing the people opposed to the application and requested addressing the Board today, the purpose for moving the item to Special Consideration, and the attorney is present. He added that late last week staff confirmed with the Department of Agriculture the Animal Waste Management Plan submitted by the applicant for this operation has been approved, not legally relevant, but giving comfort that the matter has been addressed by the agency with jurisdiction. Mr. Sevenoaks asked if that is the same as a Best Management Plan (buildings, disposal of waste, etc.), and Mr. Strong explained those are different practices that may be part of the Animal Waste Management Plan. Mr. Barnett said that staff recommended approval of the application.

Vice Chairman Lambert invited Ms. Ryan Ellis, Tray Gray Law Offices, to address the Board members. Ms. Ellis stated she represents a number of landowners in Adair County who oppose this application for a groundwater permit. She said the main concern is the determination regarding waste by pollution has not been made and must be made before the Board can grant the permit. She stated the Board does not believe it has jurisdiction and that falls under the jurisdiction of another agency and they are not opposed to another agency making that determination, but that it should be made before the groundwater permit is granted. She said they believe waste by pollution will occur because the poultry operation sits on an unnamed tributary to Tyner Creek which has been named an outstanding water resource, giving it as well as all its tributaries protection. Ms. Ellis stated that since the stream is protected, the waste by pollution determination should be made before the Board grants the permit. In addition, she said, Tyner Creek has been listed on the Department of Environmental Quality's 303(d) list for primary body contact and recreation impaired water source, which potential sources for impairment are animal feeding operations like this operation, and they believed another poultry operation on this tributary to the already impaired water resource will cause additional pollution. She asked that the Board to either deny the permit today or stay all proceedings until OWRB or another appropriate agency make the determination.

Mr. Sevenoaks asked where Tyner Creek flowed and Mr. Fite said it flowed to the Barren Fork. He also asked Ms. Ellis if she was aware the Department of Agriculture has issued its permit. She said she was not aware the permit was issued; only that it had been applied for. Mr. Sevenoaks asked if her argument is moot if the Department of Agriculture has issued its permit, and Ms. Ellis said she isn't sure the Department considered that the operation is sitting on the tributary to Tyner Creek. Mr. Strong said he didn't know if the Department issued a license or a permit; Mr. Kent Wilkins (OWRB) stated Mr. Dan Parrish of the ODAFF said they have a permit to operate and have a waste management plan. Mr. Herrmann asked what the Board's role is, and if a problem is identified after-the-fact, and Mr. Strong said the Department of Agriculture has been assigned that jurisdiction by the State Legislature, and that is under the Department of Agriculture's enforcement responsibility. Mr. Buchanan said the Board's authority regards quantity, and Mr. Barnett interjected that the Board's jurisdiction on waste by pollution is interpreted in this type of situation and is retained concerning the integrity of the well to be drilled properly and regarding abandoned wells. He said the issue people are concerned about – the activity of the operation – by statute is covered by another agency and the Board is precluded in making a determination.

Vice Chairman Lambert asked if there were other comments. Mr. Fite asked if the Cherokee Nation was a party to Ms. Ellis representation, and she answered she didn't know. He said it was a hot topic and there had been a lot of talk by residents around the area about poultry operation. Mr. Buchanan asked about development in the area, and Mr. Fite said there are poultry operations currently in the area, the area is primarily residential, and there is a lack of zoning.

Ms. Ellis asked that the Board stay the proceeding to be sure the Department of Agriculture has considered the operation is on a tributary to Tyner Creek.

Vice Chairman Lambert stated the Department of Agriculture has spoken (whether a permit or a license) and Mr. Strong said it has, and would have made that determination based on laws governing as regards Scenic Rivers and watersheds, etc. Whether a public hearing was held or not under the Administrative Procedures Act, that is still within the Department of Agriculture's jurisdiction. He said the matter here is a water quantity issue because the water quality has been carved out and made clear that is the Department of Agriculture's jurisdiction. If the Board approves the permit, the protestants still have rights to protest at the Department of Agriculture and challenges in district court.

Mr. Herrmann stated he is empathetic to the protestants' concerns but recognized the limitations of the Board's authority, and he moved approval of staff's recommendation. Mr. Buchanan seconded.

Vice Chairman Lambert called for the vote.

AYE: Buchanan, Herrmann, Sevenoaks, Fite, Lambert

NAY: None

ABSTAIN: None

ABSENT: Drake, Drummond, Feaver, Hitch

The members expressed their support for the protestant's concerns, but recognized the applicant met the requirements.

6. PROPOSED EXECUTIVE SESSION

Vice 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, 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.

Vice Chairman Lambert read the statement above regarding the purpose of Board's proposed executive session.

Mr. Jerry Barnett stated that it is his advice that disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the litigation in the present and proposed litigation in the public interest.

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.

**Prior to a motion and vote to move to executive session, Mr. Fite asked that the minutes reflect his "aye" vote on approval of the Summary Disposition Agenda items as he was out of the room at the time of the roll call vote.

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

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

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

Vice Chairman Lambert designated Executive Secretary Mary Schooley to keep written minutes of the Executive Session.

C. Executive Session, if authorized.

The Board entered Executive Session at 2:34 p.m. on Tuesday, March 19, 2013.

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

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

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

The Board returned to Regular Session at 3:10 p.m. on Tuesday, March 19, 2013.

7. 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.

Mr. J.D. Strong asked Mr. Patrick Wyrick about a copy of the Colorado amicus brief. Mr. Wyrick said he would provide the members a copy of the State brief when it is filed.

8. NEW BUSINESS

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

There were no New Business items for consideration. However, Mr. Fite asked about the Board's action to support water use efficiency when funding projects. Mr. Strong replied yes, there is some action now and staff hoped to be able to do more through the Water for 2060 Act. Mr. Herrmann added the Finance Committee had visited with staff about employing more of those methodologies.

9. ADJOURNMENT

There being no further business, Vice Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 3:11 p.m. on Tuesday, March 19, 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

_____Absent_____
Jason W. Hitch

ATTEST:

_____Absent_____
Tom Buchanan, Secretary
(SEAL)