

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
January 21, 2014

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on January 21, 2014, in the Second Floor Board Meeting room at 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 16, 2014, at 4:00 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

Chairman Herrmann welcomed everyone to the meeting, and asked for the roll call of members.

A. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Tom Buchanan, Vice Chairman
Linda Lambert, Secretary
Bob Drake
Ford Drummond
Ed Fite
Jason Hitch
Richard Sevenoaks

Board Members Absent

Marilyn Feaver

Staff Members Present

J.D. Strong, Executive Director
Jerry Barnett, General Counsel
Amanda Storck, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Lauren Sturgeon, Director of External Affairs
Mary Schooley, Executive Secretary

Others Present

Alan Woodcock, National Park Service, Tulsa, OK
Amy Ford, Citizens for Protection of the Arbuckle Simpson Aquifer, Durant, OK
Josh McClintock, Citizens for Protection of the Arbuckle Simpson Aquifer, Edmond, OK
Luke Martin, Ada, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Michael Taylor, OK Department of Environmental Quality, Oklahoma City, OK
Charles Roos, Roos Ranch, Roff, OK
Dean Couch, Gable Gotwal, Oklahoma City, OK
Brian Woodard, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Amber Liles
Tom Lazarski, Oklahoma Gas & Electric, Oklahoma City, OK
Russ Doughty, Oklahomans for Responsible Water Policy
Krystina Phillips, Citizens for Protection of the Arbuckle Simpson Aquifer
Tom Liu, Bank of America Merrill Lynch, New York, NY
Lisa Impson, Chickasaw Nation
Jim Barnett, Doerner Saunders Daniel Anderson/Roos Ranch, Oklahoma City, OK

B. APPROVAL OF MINUTES

Chairman Herrmann said the draft minutes of the December 17, 2013, Regular Meeting had been distributed.

Mr. Hitch moved to approve the minutes of the December 17, 2013, meeting and Mr. Drake seconded.

Chairman Herrmann called for the vote.

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

C. EXECUTIVE DIRECTOR’S REPORT

Mr. J.D. Strong, OWRB Executive Director, began his report announcing the Legislature will convene soon, and he asked Ms. Sturgeon to present the Legislative Report. Ms. Sturgeon referred to the distributed report, and noted that at the State level, legislative activities are beginning with the deadline for introduction of new measures January 16 and over 2,200 new pieces of legislation were filed; about 60 which staff is reviewing, as well as watching the measures that carried over from the previous session. Some of the issues include water reuse and consolidation of the OWRB with the ODEQ; the session will begin on Monday, February 3. Regarding the Federal level, Ms. Sturgeon stated that Congress made monumental action with the passage of the budget by the House and Senate, and also signed by the President—all in one

week. There was an increase in SRF (State Revolving Fund) dollars, and the packet includes a breakdown of what will be funded, particularly regarding water as well as a breakdown of all the projects that were funded in Oklahoma; information regarding the WRDA conference is included, and the report includes a listing of the legislative measures the staff will be following during the State session. Mr. Sevenoaks asked if the funding for the Corps of Engineers had been allocated; Ms. Sturgeon replied the funding had been approved, but not yet allocated but when it is it will be in phases. Mr. Strong added that legislation was still being uploaded late on Friday, and staff is continuing to review measures that have been filed. Ms. Lambert asked and he responded that staff is still sorting through the language, but the bill regarding the OWRB and ODEQ is different than past measures in that the agencies are to be combined into a new Department of Natural Resources; he anticipated the measure was aimed at saving money. Mr. Buchanan asked about water reuse legislation, and Mr. Strong anticipated legislators from the Norman area will have legislation on that issue as there is a large interest in that area to discharge Norman's wastewater into Lake Thunderbird so that it can be passively reused to augment existing supplies. He said Mr. Smithee had been working with various committees formed by the ODEQ to review such a process.

Mr. Strong mentioned that he and Mr. Fite had combined House and Senate budget hearings scheduled today, and their presence was requested as soon as the Board meeting concludes. He said there will be an update of the ongoing mediation meetings of the Chickasaw-Choctaw lawsuit at the next Board meeting. He met with the City of Clinton with Senator Schulz about water shortages and water reuse; the Water Resources Advisory Board Grants Committee met December 13 and the full Board met January 3 (advises the Water Resources Research Institute on research for the coming year); he met with the Environmental Federation of Oklahoma Board, the Scenic Rivers Joint Study Committee met January 6 (next meeting February 5 to select contractor for Stressor Study), and the Emergency Drought Commission met January 9 (next meeting February 13 to review applications). Mr. Strong spoke to the Groundwater Association on January 16 and the Instream Flow Workgroup met January 16 to review a draft scope of work for a pilot study on the Scenic Rivers looking at instream flows; he'll be speaking at Eastern Oklahoma State University January 29, and attending a Carollo water summit on February 4. Mr. Strong announced the February meeting will be held on Tuesday, February 18, at 9:30 a.m., followed by the Water for 2060 Council at 1:30 p.m.; and two long-time OWRB employees would be retiring at the end of January: Barry Fogerty and Shelly Whitmire. He introduced the Board's newest staff member, Mr. Cole Perryman, who joined the Board's Public Information Services section, and is from the public relations firm Schnake Turnbo Frank, and formerly Congressman Dan Boren's Communications Director.

Mr. Strong concluded his report announcing the Ms. Cunningham and Mr. Freeman will provide an overview of the proposed rules changes later in the agenda; the formal hearing will be held during the February 18, 2014 meeting, with final action at the March 18, 2014, Board meeting.

D. Monthly Budget Report

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report showed the agency had 71% of funding available with 50% of the fiscal year remaining. She noted that the budget revision for carryover was not posted for December, so not showing on this report but should be on the January report. She said she had been working with

Mr. Strong and the Division Chiefs to prepare for the budget hearing and information for the Governor's Budget book

Chairman Herrmann asked about the possible shortfall in tax revenue and how that will impact the agency. Ms. Storck stated that agencies had been asked to prepare for a 3% and 5% cut, which is standard, and the effect to the agency equates to less temporary staff to conduct monitoring, and less revenue for REAP grants. Mr. Sevenoaks asked the status on payables and Ms. Storck replied the agency is billing quarterly, although she preferred monthly but the system allocates differently, and overall she was happy with the process. Ms. Storck concluded her report with the introduction of Mr. Jeremy Allen who has signed on as an intern from the University of Oklahoma Capitol Scholars Program to work with legislative matters and varying projects.

Mr. Buchanan asked about the contracts under the Summary Disposition Agenda that regard agreements with the Office of Management and Enterprise Services. Ms. Storck answered there are two contracts, one for transactions for PeopleSoft and the other for IT personnel -- there are three employees the agency pays OMES to use. It is the same amount as when they were OWRB employees; and is revenue neutral in the contract, but added to the contract is that the agency will also pay departure costs (retirement and leave) for these employees.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for The Skiatook Public Works Authority, Osage County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the item is a \$520,000.00 loan request by the Skiatook Public Works Authority. Skiatook is requesting the loan for improvements to its wastewater treatment plant. He said the loan will be from the Board's Clean Water State Revolving Fund Loan Program, and he noted provisions of the loan agreement. He said the Skiatook is a very good loan customer of the Board's, and currently has one OWRB loan with the principal balance of \$940,000. Skiatook's water and sewer connections have increased by approximately 20% over the last ten years, and its debt coverage ratio stands at approximately 1.33-times. Staff recommended approval.

City Manager Dan Yancy was present in support of the loan request.

Mr. Sevenoaks asked where the treatment plant was located and the discharge point, Mr. Yancy answered the plant is located east of Lake Skiatook, and discharges to Bird Creek. Mr. Drummond asked about anticipated future growth and Mr. Yancy responded that the engineer design plan is for 20 years for this project. Mr. Herrmann asked the anticipated cost of implementation and Mr. Yancy answered the project is expected to cost about \$8.5 million. The members asked about the size of the plant and discharge requirements. Project Engineer Steve Pollar addressed the members and stated there is currently two plants, one discharging to Bird Creek and one discharging to Pond Creek, and this project is to ultimately close the Bird Creek facility and move the flow to the Hominy Creek site which discharges to the Verdigris River, upstream of the Tulsa Northside Treatment Plant. He explained the ammonia testing and requirements, and said there will not be a phosphorous discharge. Mr. Drummond recognized the loan is for the design phase, but commented that 9% of the loan funds are going to the

counsel and advisors; percentage wise, Mr. Freeman said the same work is being done as for a loan for an \$8 million loan, and they will have to have loan documents again.

Mr. Sevenoaks moved to approve the CWSRF loan to the Skiatook Public Works Authority, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Feaver

B. Report and Update on the Status of the Issuance of State Loan Program Revenue Bonds in an Amount Not to Exceed \$25,000,000.00 Authorized by Resolution Approved by the Board on July 16, 2013. Mr. Freeman stated this item is for the opportunity to update the members on the proposed new debt issuance regarding the State Loan Program, or FAP. Staff recently began work on a new bond issue which will go before the State Bond Council for approval on January 30. The issuance falls under the bond resolution the Board approved at the July 2013 meeting and will provide loan funds for an application by the Tulsa Metropolitan Utility Authority for an amount not to exceed \$10.6 million. He said that staff anticipated bringing the loan to the Board at the February meeting, and closing the loan and bond issue simultaneously by mid-March.

Chairman Herrmann asked if there would be other loans that would be incorporated into this issue, and Mr. Freeman stated that there would not be any other loans.

There were no questions by members, and there was no action required by the Board.

C. Consideration of and Possible Action on Resolution Authorizing the Issuance of Oklahoma Water Resources Board Revolving Fund Revenue Refunding Bonds, Taxable Series 2014A – Clean Water Program (Master Trust) in the Aggregate Principal Amount not to Exceed \$85,000,000; Approving and Authorizing Execution of a Bond Indenture Providing for the Issuance of the Bonds; Providing for the Sale and Delivery of the Bonds and Authorizing a Certificate of Determination; Waiving Competitive Bidding on the Bonds and Authorizing the Sale Thereof by Negotiation Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to the Bonds; Authorizing Execution of Such Other and Further Instruments, Certificates and Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman stated this item is an authorizing resolution for Series 2014A Clean Water State Revolving Fund (SRF) bond issue for refunding the Clean Water loan portion of the Board's Series 2004 bond issue. The issuance will be structured in the same manner as the SRF refunding bond issue which closed last September. The purpose of the refunding is to take advantage of low interest rates to save the Board and the borrowers' interest expense. He said the resolution authorizes the issuance of bonds not to exceed \$85 million dollars, authorizes execution of a bond indenture providing for the issuance, authorizing the issuance be on a negotiated basis, approving preliminary statement, authorizing execution of other documents necessary to issue the bonds, and directing payment for the costs of issuance. Staff recommended approval of the authorizing resolution.

Chairman Herrmann clarified that this is the same structure as the Board utilized last year to issue taxable bonds. Mr. Freeman stated that is correct; the Board's Finance Committee held a

conference call meeting and there was no reason to recommend a change in structure since last Fall because that had been very successful. He said this would be the maximum amount, but did not anticipate using the full \$85 million. Borrowers have been contacted about options, and staff is waiting on responses and the determination about what will be shared with the borrower will be made at the same time. He said this item, as well as agenda item 2.D., will go to the State Bond Oversight Council January 30 for approval, responses are due at that time from the borrowers (of the 2004 bond issue), they anticipate discussions with all three rating agencies the first week of February to develop a marketing plan to be presented to the retail market mid-March.

Chairman Herrmann stated staff recommended approval and he would accept a motion. Mr. Hitch moved to approve the resolution for authorizing the issuance of bonds, and Mr. Buchanan seconded. There were no other questions or comments by Board members.

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

D. Consideration of and Possible Action on Resolution Authorizing the Issuance of Oklahoma Water Resources Board Revolving Fund Revenue Refunding Bonds, Taxable Series 2014B – Drinking Water Program (Master Trust) in the Aggregate Principal Amount Not To Exceed \$65,000,000; Approving and Authorizing Execution of a Bond Indenture Providing for the Issuance of the Bonds; Providing for the Sale and Delivery of the Bonds and Authorizing a Certificate of Determination; Waiving Competitive Bidding on the Bonds and Authorizing the Sale Thereof by Negotiation Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to the Bonds; Authorizing Execution of Such Other and Further Instruments, Certificates And Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman stated this item is the authorizing resolution for the Drinking Water SRF portion of this series, 2014B refunding. The resolution authorizes the issuance of bonds not to exceed \$65 million dollars, authorizes the execution of a bond indenture providing for the issuance of the bonds, authorizes the issuance to be on a negotiated basis, approves the preliminary official statement, authorizes the execution of other documents necessary for the issuance of the bonds, and directs payment of costs of issuance. Mr. Freeman stated this resolution is exactly as the previous item, but concerns the Drinking Water SRF. He stated that staff recommended approval.

Chairman Herrmann stated he would accept a motion. Mr. Drake moved to approve the authorizing issuance of bonds, and Ms. Lambert seconded. There were no other questions or comments by Board members.

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

3. SUMMARY DISPOSITION AGENDA ITEMS

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

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

There were no requests to transfer items 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 Herrmann asked if there are amendments to the Summary Disposition Agenda.

Ms. Lambert asked if only one REAP grant applicant was under a consent order; Mr. Freeman answered that he would have to review it to determine, but 90% or more of applicants are under a consent order. Mr. Buchanan asked about the contract for drilling observation wells and if locations had been determined; and Mr. Hitch also asked what type of monitoring i.e., levels and quality and how often. Mr. Smithee answered the best utilization of state funds was to partner with MESONET and the majority of those sites are determined. He said it was envisioned that the agency could support the MESONET system as well as the OWRB groundwater monitoring program and use sites for both static water levels and quality; the Panhandle sites had not come up in the rotation, but will be every three years. Mr. Strong added the GMAP presentation at the January meeting indicated there is a four-year, full ramp-up for the groundwater monitoring program, this is year one and selection depended upon the combination of landowner access and statistical information needed.

There were no amendments to the Summary Disposition Agenda, and no other questions by the members. Chairman Herrmann called for a motion.

Mr. Drummond moved to approve the Summary Disposition agenda, and Mr. Fite seconded. Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Feaver

The following items were approved:

C. Consideration of and Possible Action on 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-11-0034-R	Lenapah Public Works Authority	Nowata	\$99,675.00

KEDDO

b.	FAP-13-0024-R	Clayton Public Works Authority	Pushmataha	79,999.00
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OEDA

c.	FAP-13-0006-R	Fargo Utilities Authority	Ellis	80,917.00
d.	FAP-13-0008-R	Optima Municipal Authority	Texas	126,250.00

D. Consideration of and Possible Action on Contracts and Agreements:

1. OSU subaward agreement for drilling observation wells and providing related services at certain Mesonet stations.
2. Professional Services Agreement with Huitt-Zollars, Inc. for Engineering Services related to the Board's financial assistance programs.
3. Intergovernmental Agreement with the City of Tulsa to participate in the Cooperating Technical Partnership Program by obtaining hydrologic and hydraulic modeling and floodplain mapping for a segment of Joe Creek, Red Fork Creek and tributaries.
4. Contract for Professional Services with Baxter E. Vieux for dam safety and hydrology training sessions.
5. Interagency Service Agreement with Office of Management and Enterprise Services, Information Services Division for Information Technology Services.
6. Addendum to Interagency Service Agreement with Office of Management and Enterprise Services, Information Services Division for Information Technology Personnel Services.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:

1. Heath & Deana Beanland, Harmon County, #2013-561
2. Johnnie Lynn Phelps, Washita County, #2013-632

F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:

1. Lavonne Kroeker, Major County, #1999-586
2. Lavonne Kroeker, Major County, #2001-527

G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:

1. John & Jane McCullough, Tillman County, #2013-612
2. V & R Fischer Farms, L.L.C., Tillman County, #2013-614
3. Robert N. & Jacqueline A. Smith, Payne County, #2013-636
4. Trent Bryant Burns, Choctaw County, #2013-637
5. Amparan Family Revocable Trust, Woodward County, #2013-640

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:

1. Jaret Dowler, Ellis County, #1979-697
2. Major County RWS&SWM #1, Major County, #1995-550

I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:

None

- J. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:
 - 1. Lannis D. Brinkley, Carter County, #2013-035

- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
 - 1. Heartland Properties, L.L.C., Rogers County, #2013-033
 - 2. Harold E. & Barbara M. Driskel Revocable Trust, Creek County, #2013-040

- L. Consideration of and Possible Action on Dam and Reservoir Construction:
 - 1. Summit Lake Property Owners Association, Cleveland County, #OK12578
 - 2. Pine Spring Ranch – East Lake, Atoka County, #OK30462

- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
 - 1. New Licenses and Accompanying Operator Certificates:
 - a. Licensee: Cascade Drilling, L.P. DPC-0894
 - 1. Operator: Curtis Wright OP-2021
 - b. Licensee: StanTech, L.L.C. DPC-0892
 - 1. Operator: Robert Williams OP-0607
 - 2. Operator: Janie Frye OP-2020
 - 1. New Operators to Existing Licenses:
 - a. Licensee: Layne Christensen Company DPC-0123
 - 1. Operator: Gail Ball OP-1999
 - b. Licensee: Loman Drilling, Inc. DPC-0127
 - 1. Operator: Tyler Loman OP-2022

- N. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Oklahoma Department of Transportation, Canadian County, #FP-13-34
 - 2. Oklahoma Department of Wildlife Conservation, Bryan County, #FP-13-36

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

A. Staff Presentations on Amendments to Permanent Rules Proposed for Adoption During 2014. The comment period for these proposed amendments is currently ongoing and will expire February 18, 2014. The formal public hearing on the proposed amendments is scheduled to be held February 18, 2014 during the monthly meeting of the Board.

Chairman Herrmann stated this presentation is the first step in the rulemaking process.

1. Summary of Proposed Amendments to Chapter 30 – Taking and Use of Groundwater –

Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that she would review the proposed changes for Chapter 30, and Mr. Freeman would review proposed changes to Chapter 50.

Ms. Cunningham stated that Chapter 30 regards the Taking and Use of Groundwater, and the propose rules specifically concern Subchapter 3. Permit Application Requirements and Processing, 785:30-3-6. Well spacing [AMENDED]; and Subchapter 9. Maximum Annual Yield Determinations, 785:30-9-6. Issuance of regular permit to temporary permit holder

[AMENDED]. She explained that as part of the Arbuckle Simpson Maximum Annual Yield Determination (MAY), Tentative Order and Final Order, the directives instructed the agency to take comment on both of these issues and promulgate rules. The proposed change adds language regarding the time period for reasonable implementation of the MAY as it relates to when existing temporary groundwater permits are converted/replaced to regular groundwater permits, and promulgation of well spacing rules to protect streams and spring flows for new or proposed well locations. Ms. Cunningham noted the well spacing proposed changes appeared under 785:30-3-6 (c) amending language for proposed rules regarding well spacing within a sensitive sole source groundwater basin and required a certain spacing distance between new proposed wells and springs and streams emanating from that basin. She reminded the members the reason for the Maximum Annual Yield Determination was looked at basin-wide – as a macro scale protection – to avoid the reduction of natural flow and she referred to conclusion of law no. 18 of the final MAY order that specifies no degradation or interference as instructed by Senate Bill 288 and determined that applies on a site-specific basis. She said the MAY is in place for long-term protection of the basin and this rule would be to protect those springs and ensure there is not large amount of water being withdrawn adjacent to a stream or spring.

Mr. Hitch asked how no harm (or the negative) is proved. Ms. Cunningham said that staff proposed modeling, and Mr. Hitch asked the estimated cost for modeling, and Ms. Cunningham said it depended upon the sophistication of the model, and the location. She added that staff assumes there is no impact outside the determined distance, and the burden of proof is then on the protestant. Mr. Strong said that if the application is outside the proposed setback, but if a variance is requested, then additional evidence would be required to prove there would be no impact to the springs and streams as SB 288 outlawed. Mr. Sevenoaks asked how many temporary permits are within the basin, and staff answered approximately 10 or less. Mr. Strong said the rule would apply to new wells, and Mr. Hitch asked if replacement wells would be required to follow these guidelines. Mr. Barnett stated staff had not discussed that, but this language is prospective only, and would apply to new well applicants that would be proposing wells that are within these distances that are specified in this language. Mr. Hitch said it would be cost prohibitive for replacement wells, and Mr. Buchanan confirmed that domestic wells are excluded from the proposed rule. There were no other questions about the proposed well spacing rules.

Regarding the proposed language for 785:30-9-6(e) [issuance of a regular permit to temporary permit holder], Ms. Cunningham said there had been a lot of discussion and comments received on this language and amends the rule by adding new language that only concerns sensitive sole source groundwater basins – of which the Arbuckle Simpson is the only one – that have had a MAY approved final order. The proposed language provides for a period whereby additional time may be granted for a temporary permit to continue in effect before the succeeding regular permit takes effect. The temporary permit will be converted to a regular permit unless a request to continue is received within 60 days of notification, and the permit holder will have to show good cause for the need for a continuance (0-5 years). Although “good cause” is not defined, staff supposed that would include financial review or why additional water rights cannot be obtained and will be rigorous, but staff recognized the reduction by the MAY will create that need. If the applicant requested more than five years, that request would be subject to a formal Board hearing.

Mr. Sevenoaks asked hypothetically that if a permit holder could continue pumping two acre-feet of water per acre if the Board grants permission, and if not, they would need to obtain

new wells. Mr. Strong answered additional dedicated land would be required if they cannot reduce their water use from 2.0 to 0.2, then the alternative is to obtain more water rights—leased or acquired. Ms. Cunningham said there are permit holders that are working on that issue.

Ms. Lambert asked if staff had worked through “unintended consequences.” Mr. Strong said staff believed it has, but that is the purpose of the rulemaking and public participating process—staff proposes what is appropriate and legal, and those impacted comment about what might have been missed; there have been good questions today, i.e. replacement wells. Mr. Hitch was concerned that if more time is given, it may be more difficult to determine what a water right is worth, and he asked about whether the locations of the springs were known so that if someone wanted to put in a well, they would be aware of the impact/distance to a spring. Ms. Cunningham answered there is a spring inventory by the USGS; and they talked about that it is referenced in the rule, staff has discussed that they realize that every seep from the ground cannot be protected, and the list can be modified, but the rule applies to 500 gpm or greater streams (the original proposal was for 1,000 gpm), and the rule only applies to new or proposed wells, so if streams are added that will not affect existing wells. Mr. Hitch commented that land may be purchased because there are no springs, yet when a stream is added, that affects the value of the land; Ms. Cunningham responded that is why the limit was set at 500 gpm. She added that staff looked at this as a buffer zone, as with any other spacing rule that establishes the burden of proof; she stated staff will accept comments. Mr. Hitch asked if the landowner would realize the full value of the water right if only part of the acreage would be affected by the spacing. Mr. Strong answered that the setback only applies to the actual location where the well is drilled, not upon the full amount of dedicated land that overlies the aquifer. He said it is the second part of the test to meet the requirements of SB 288 – that the MAY that won’t impact the natural flow, and not to issue individual permits that could impact the natural flow of springs and streams. The EPS considers all the land over the aquifer.

Mr. Strong added that regarding the process, everyone will receive notice their temporary permit will be converted to a regular permit, they will have 60 days to file a request for more time and if they are seeking less than 5 years staff will be able to make the determination of whether it is approved, if there is a compliance schedule implemented, etc., and if they are seek more than 5 years the request will go to a full hearing process as with any other protested permit and evidence can be presented as to whether there should or should not be additional time beyond 5 years, then that will go to the Board . Mr. Sevenoaks asked if there is still a moratorium in place, and Mr. Jerry Barnett answered that the law was written that the moratorium would continue until the Board determined the MAY, so at this point the moratorium is no longer in effect. However, there are a couple of issues, the spacing and the implementation period. Mr. Strong said it doesn’t matter until there is an application to take water out of the basin which is what the moratorium applies to, and there have been applications for regular permits over the past ten years since SB 288 was passed, but the moratorium was for transferring water out of the basin. Mr. Drummond clarified that the proposed rule did not concern wells for domestic use, and Ms. Cunningham answered that is correct.

Chairman Herrmann stated the Board has had high quality questions and identified areas that do need clarification, and persons in the area may be thinking more clarification is needed, with the understanding that flexibility is needed in order to be fair. Mr. Buchanan asked if a landowners over the Arbuckle Simpson have springs or streams of 500 gpm, are they listed in the USGS document, when were they added and are they affected by drought. Ms. Cunningham answered that is correct; Mr. Chris Neel stated the date on the document is 2004, no streams

have been added since that time. If streams are added, the USGS has a technical peer review process, it is not arbitrary.

There were no other questions by members.

2. Summary of Proposed Amendments to Chapter 50 – Financial Assistance –

Chairman Herrmann asked Mr. Freeman to present the amendments to the rules for Chapter 50, and he also asked if the amendments addressed matters discussed by the Board's Finance Committee regarding support for Water for 2060, etc.

Mr. Joe Freeman said those issues were addressed in the previous year's rulemaking, and he answered Ms. Lambert's earlier question about REAP grants under 3.A., saying that Lenapah, Clayton, and Fargo all are under consent orders; Optima is not.

Regarding the new proposed amendments to rules under Chapter 50, Mr. Freeman stated that most of the changes are clean-up items: Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures, 785:50-7-1 General procedures [AMENDED]785:50-7-3, Evaluation procedures for grant applications [AMENDED], and 785:50-7-5 Emergency grant priority points system [AMENDED]; Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures, and 785:50-8-5 REAP grant priority point system [AMENDED]; Subchapter 9. Clean Water State Revolving Fund Regulations, Part 3. General Program Requirements, 785:50-9-21 Eligible project [AMENDED], 785:50-9-22 Revenue program [AMENDED], 785:50-9-23 Clean Water SRF Project Priority System [AMENDED], 785:50-9-28 Pre-application for funding [AMENDED], 785:50-9-30, Planning documents [AMENDED], 785:50-9-32 Plans and specifications [AMENDED], 785:50-9-35 Loan closing [AMENDED], 785:50-9-38 Construction phase [AMENDED], 785:50-9-42 Retainage [AMENDED]; and Part 7. SRF Environmental Review Process, 785:50-9-61 Environmental information required by the Board [AMENDED].

He said in four locations changes are to correct grammatical errors, in three sections the amendments change the name of a document because the document has changed, and changing the name of the newspaper which changed its name. In Section 785:50-7-3, the changes regard the emergency grant program clarifying time constraints regarding the date an emergency situation occurs in that when a grant is brought to the Board and when it is funded, an emergency must still exist. In Section 785:50-9-21 the word, "treatment" was deleted to clarify the type of project that is eligible for Clean Water SRF loan assistance, and to be consistent with EPA guidelines and amended the rule regarding construction contingencies of the Department of Environmental Quality rules. Mr. Freeman said the last change regarded construction changes to match the new Oklahoma State Statutes competitive bid law. Mr. Freeman stated he had not received comments on any of the proposed amendments to the rules.

There were no questions by members.

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on Proposed Order for Informal Disposition In the Matter of Alleged Unlicensed Groundwater Well Drilling by Respondents Gene Gibson, Tom Gibson Drilling and Gibson and Sons Drilling; Recommended for Approval:

1. Summary – Ms. Julie Cunningham explained to the members that this item is for the consideration of informal disposition of a matter of alleged unlicensed groundwater well drilling by Respondents Gene Gibson, Tom Gibson Drilling and Gibson and Sons Drilling. She said that

the Board does not see many of these cases; however, this matter arose by staff through complaints received and investigation revealed the Respondent had committed violations of the Board's rules by conducting well drilling without a license, and had improperly constructed completed wells per the Board's construction standards. She stated that after the Respondent failed to respond to staff regarding the requirements to obtain a license for well drilling, staff initiated administrative proceedings pursuant to the notice of violation and set an administrative hearing to order the Gibsons to complete prescribed remedial actions and pay administrative penalties. She said that the Respondents failed to appear at the show cause hearing held in October and upon the consideration of the evidence provided by staff, the hearing examiner concluded the Respondents had not made an application to obtain a well drillers license, and that the well construction did not meet the Board's standards, therefore, waste and contamination of groundwater may result. The Board may impose administrative penalties up to \$5,000.00 and revoke, suspend or deny renewal of any license for each violation of the Board's rules. Ms. Cunningham added that the amount of the fine was set based upon recently promulgated rules of the Board adopting increased penalty fee for each offense and schedule within the rules. The Oklahoma Well Drillers Advisory Council approached the agency regarding the increase in penalty to deter these illegal activities and allow the licensed drillers to do the job. Ms. Cunningham stated that staff felt this action prudent, and recommended approval of the proposed order for informal disposition with the stipulation that the Respondents make application for and obtain a license for commercial drilling of groundwater wells and refrain from any commercial drilling activity until such time a license has been obtained, and to pay the Board a fine of \$15,000.00 pursuant to Title 82 and the Oklahoma Administrative Code.

2. Discussion and presentation by parties. There were no parties or representative of the parties in attendance.

Ms. Lambert asked if the Parsons paid for the drilling of the well, and the Gibsons pay the Board the fine, does the Board reimburse the Parsons for the drilling of the well—how does the money circle back around to the landowner? Mr. Strong answered that is between the Gibsons and the people that hired them. Mr. Kent Wilkins, Assistant Division Chief of the Planning and Management Division and previous director of the Well Drillers' Program, addressed the members and stated that any fines received in this type situation goes to the Well Drillers' Indemnity Fund which is used to plug or correct improperly constructed wells. As far as reimbursement to the landowner, that would not occur but the Indemnity Fund could be used to plug the improperly completed wells.

Mr. Sevenoaks asked if the Gibsons were an incorporated Oklahoma entity, and Mr. Wilkins said staff did not find any incorporation under their name, and staff learned they had moved here from New Mexico, claiming to be licensed in New Mexico, giving them the right to operate in Oklahoma, which is incorrect. He explained how the Respondents were served, and the hearing scheduled where there could have been an opportunity to work with them on the fine amounts and compliance issues; they ignored the hearing and staff has no other choice. He added that law has been added that if the fine is not paid, that matter can be turned over to the Attorney General's office and they will pursue it.

3. Possible Executive Session –and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter executive session.

5. 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 Herrmann commented this is a good example of an industry self-regulating. There were no other questions, and he said he would entertain a motion.

Ms. Lambert moved to approve the proposed order for information disposition, and Mr. Drummond seconded.

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

(Mr. Drake stepped out of the room at 10:40 a.m. and returned at 10:42 a.m., and absent for the vote on matter 5.A.)

B. Consideration of and Possible Action on Application to Amend Temporary Groundwater Permit No. 1984-646C, Roos Ranch, Inc., Pontotoc County, Recommended for Approval

1. Summary – Ms. Julie Cunningham explained to the members that this request is to amend a 1984 water right by changing the use of 6,000 acre-feet of water from municipal water supply to mining use, and changing 200 acre-feet of water from industrial to oil and gas production. She stated that 13 wells are currently authorized under the permit, and no additional water nor additional wells has been requested; this is a change of use of the water. Ms. Cunningham reminded the Board that it postponed action on this application at the September 17, 2013, meeting until after the MAY final determination was approved for the Arbuckle Simpson Groundwater Basin—that has been approved and the matter is back for the Board’s consideration. She said that staff has evaluated the application under the Board’s rules for amending an existing water right permit to change the use on approval of applications, and in light of the pertinent provisions of SB 288 governing use of groundwater within the sensitive sole source groundwater basin. Ms. Cunningham told the Board the application does meet the requirement for approval of the requested change in use. She added that as with other existing permits within the basin this existing temporary permit is subject to the 0.2 acre-feet of water per acre EPS per the MAY Board order, and staff is proposing amendments to the time of conversion of those existing permits to regular permits, as well as well spacing requirements.

Ms. Cunningham said that no protests were received during the prescribed protest period consequently, there was no hearing and no proposed order, findings of fact, and conclusions of board order for the Board today. She said staff did receive a letter from the Aamodt Law Firm on behalf of CPASA acknowledging they had overlooked the newspaper notification and would have otherwise protested the application; representatives were allowed to speak at the previous Board meeting.

Chairman Herrmann asked Ms. Cunningham to explain how this action would be implemented under the proposed amendments to the rules just described. Ms. Cunningham answered this is an existing temporary permit and the proposed amendments to the rules are for new permits and not retroactive and in this case a review of the area under the new well spacing is there are no springs or streams of 500 gpm – there is one 7 miles away, and the closest perennial stream is 5 miles away, well beyond the boundaries of the proposed well spacing rules. Chairman Herrmann asked and Ms. Cunningham confirmed that the 6,000 acre-feet and 200 acre-foot of water is based upon the temporary permit amount, and the MAY number of 0.2

would be substantially less. Ms. Cunningham stated staff treated this application like any other existing temporary permit in the basin, and when the new rules come into play, it will be treated the same.

Chairman Herrmann asked if there were any questions by members, and there were none. He said that staff recommended approval of the application, and said he would entertain a motion before hearing from the parties and audience.

Mr. Buchanan moved to approve the application to amend temporary groundwater permit #1984-646C, Roos Ranch, Inc., and Mr. Drummond seconded.

2. Discussion and presentation by applicant. Chairman Herrmann invited the applicant and members of the audience to present to the members as if it were a protested matter, allowing 7 minutes for each side.

Mr. Jim Barnett, representing Charles Roos, spoke to the members stating this is a 1984 permit and Mr. Roos and he has been trying to realize the benefit of his water right for all of those years. He said this water was the subject of a potential sale to Canadian County and Chickasha, which triggered the legislature passing SB 288 with the moratorium, halting any effort to realize benefit from use of the groundwater. The application to change use was filed in 2011 to change the use to mining purposes for sand and gravel mine, and to sell water to the oil and gas industry. He said the Board sat on the application while developing the rules for the Arbuckle Simpson and in December 2012 he complained and the Board began to process the application and it was determined the applicant met the rules as well as new criteria that might be coming; the matter went to notice and was published, there was no protest and no one has standing. In September it was laid over until the MAY was done, and now he said his client is entitled to the Board acting favorably upon the application.

There were no questions by the Board.

Ms. Kystina Phillips, representing Citizens for the Protection of Arbuckle Simpson Aquifer (CPASA), addressed the members apologizing for having missed the notice in the Pontotoc County newspaper. She made clear that CPASA does not object to Mr. Roos's use of his groundwater, but would like for Mr. Roos to have a beneficial use like everyone else that uses groundwater and to use groundwater at a rate that won't degrade or interfere with springs and streams that emanate from the sensitive sole source basin. She said the permit does not have an actual beneficial use, and has a two-acre foot per acre per year limit rather than what the Board decided a few months ago, 0.2 a.f.

Chairman Herrmann asked if she was suggesting that oil and gas and industrial is not a beneficial use, and Ms. Phillips answered that there had been no showing by Mr. Roos he actually intended to use those. She continued that one use is for mining and there had been a pending application by Roos Resources, Inc., -- which is not the same entity -- at the Oklahoma Department of Mines, but has been authorized to proceed with public notice and there had been no forward progress by Mr. Roos to get a mining permit. She said there also is no contract with a municipality for municipal use and no indication of any industrial use. Chairman Herrmann stated it is not unusual to get a permit first and Ms. Phillips said Mr. Roos has had plenty of time to use the water. She said that CPASA is requesting that before the Board approves the change of use it has the beneficial use he intends to make, and that it be approved at 0.2 a.f. per acre per year.

Chairman Herrmann stated Ms. Cunningham explained the permit will default to 0.2 a.f.; and Ms. Phillips stated that if the Board is contemplating a permit, to approve 2.0 a.f. could set bad precedence that staff is recommending it won't degrade springs and streams which is contrary to what the Board found in October. Ms. Lambert asked if it would not default to 0.2; what is the Board approving. Mr. Strong answered that before the Board is a request to change use, the amount of water allowed under a temporary permit in the Arbuckle Simpson remains at 2.0 a.f. per acre until temporary permits are converted to regular permits so essentially Mr. Roos obtained a temporary permit for 2.0 a.f. in 1984 and is seeking a change of use for that permit. Mr. Sevenoaks said then when the permit is converted, he has 60 days to request an extension, and Mr. Hitch said he could be getting five years; Mr. Sevenoaks said that staff would evaluate for "just cause." Ms. Phillips added that protests had been filed several years ago but there had not been a formal hearing.

Mr. Alan Woodcock, representing the National Park Service, stated he believed it was procedurally inappropriate to grant the application to amend because in May 2003 the Chickasaw Nation and City of Ada filed protests for revalidation for the temporary permit #1984-646B, the base permit for 1984-646C, and no hearing has been held. He felt the Board should not consider amending the permit with the outstanding revalidation protests. The other comments regarded the staff recommending approval of the 0.2 a.f. citing other relevant data, but in support of this recommendation does not disclose what that data is, but that the 6,000 a.f. based on the EPS of 2.0 a.f. would not degrade or interfere with streams and springs, which is not what the Board determined in the MAY, and he asked that if the Board approves the permit it should be limited to the 0.2 a.f.

Mr. Hitch asked if the objections have been filed timely, and Mr. Woodstock said they had been filed in May of 2003, and he had not seen the publication on this particular application.

Chairman Herrmann asked Mr. Jerry Barnett to address the issue. Mr. Jerry Barnett answered he had spoken with Mr. Peter Fahmy, attorney with the NPS, about the 2003 revalidation protests. After some discussion between Mr. Barnett and the members, it appeared there were protests filed not only against the Roos revalidation, but several other temporary permits in effect at that time, and it was determined those objections did not constitute the kind of test the rule on revalidation protest required—which could include the legal interest, what is the alleged adverse impact to a legal interest, as well as considering no use had occurred. A hearing would have to consider something that has changed, and apparently it was decided none of those matters were the case, and therefore no hearing was held. Those temporary permits have been revalidated, and Mr. Roos has a valid temporary permit; staff determined in light of the upcoming rules, this application should be treated the same as other temporary permits when converting to a regular permit as this is a private property, and staff was comfortable it would be in compliance with new spacing rules as these wells are in good locations and there are no springs and streams in the area that are on the inventory, the new rules will apply. This application will convert like all other temporary permits and if they desire a request for an extension, it will have to be filed within 60 days of notice but will eventually be in compliance with the 0.2 a.f. Mr. Drake asked and Mr. Strong responded that one outcome could be the mining is put to use during a 5-year period, but water use reports are filed annually as well as temporary permits are converted to regular permits annually and there is no change in rule regarding that, so what would be required of Mr. Roos or the City of Ada, or anyone else that has a temporary permit is the 60-day requirement to make a request. This is an application for

change of use, just like any other request from any other area or aquifer; staff reviewed the permit according to the proposed rules out of an abundance of caution and where the existing wells are in relationship to springs and streams and they are well outside the setbacks proposed.

There were no other questions by members, and Chairman Herrmann invited Mr. Jim Barnett to make responding comments. Mr. Barnett addressed the matter of Ms. Phillips' conversation with the Mining Department; he said he had been advised that until such time as the he had obtained adequate water for the mining operation, the mining permit would not be approved. He said the permit has been on hold since 2011, filed the same time as the water permit application, and he asked the Board to move on the permit.

3. Possible Executive Session, and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter executive session.

5. Vote on whether to approve the application as recommended, or vote on any other action or decision relating to the application.

Chairman Herrmann stated there had been a motion by Mr. Buchanan and a second by Mr. Drummond supporting staff recommendation.

Mr. Fite asked if the wells had been drilled, and Ms. Cunningham and Mr. Neel answered all the wells are authorized and about half had been drilled, but there has been no use of water.

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

NAY: Fite

ABSTAIN: Drake

ABSENT: Feaver

Chairman Herrmann stated the change of use recommendation had been approved.

C. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda to the Special Consideration Agenda for the Board's consideration.

6. NEW BUSINESS

Chairman Herrmann

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.

7. ADJOURNMENT

Chairman Herrmann

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:14 a.m. on Tuesday, January 21, 2014.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/Absent_____
Tom Buchanan, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
F. Ford Drummond

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/Absent_____
Jason W. Hitch

ATTEST:

_____/Absent_____
Linda P. Lambert, Secretary
(SEAL)