

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**May 19, 2014**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 2:00 p.m., on May 19, 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 May 15, 2014, at 12:45 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  
Linda Lambert, Secretary  
Bob Drake  
Ford Drummond  
Ed Fite  
Richard Sevenoaks

**Board Members Absent**

Tom Buchanan, Vice Chairman  
Marilyn Feaver  
Jason Hitch

**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, Water Quality Programs Division  
Lauren Sturgeon, Director of External Affairs  
Mary Schooley, Executive Secretary

### **Others Present**

Mike Wofford, Holdenville; Oklahoma city, OK  
Phil Luginbill, Town of Fairmont, OK  
Vicki Eggers, Northern Oklahoma Development Association,  
Tony Lazaeski, Oklahoma Gas & Electric  
Rick Schlegel, Cardinal Engineering  
Chris Wolff, Municipal Finance Services  
Eddie Rhandour, Department of Environmental Quality  
Charlie Swinton, BancFirst  
R. Dougherty, Oklahomans for Responsible Water Policy

### **B. APPROVAL OF MINUTES**

Chairman Herrmann said the draft minutes of the April 15, 2014, Regular Meeting had been distributed electronically. Chairman Herrmann asked if there were changes; there were none.

Mr. Fite moved to approve the minutes of the April 15, 2014, meeting, and Mr. Drummond seconded. Chairman Herrmann called for the vote.

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

Prior to the Executive Director's report, Chairman Herrmann reminded members that at the June meeting there would be the annual election of officers, and consideration of the executive director's salary. Chairman Herrmann recommended two books he had read recently, "Water 4.0" and "The West without Water."

### **C. EXECUTIVE DIRECTOR'S REPORT**

Mr. J.D. Strong, Executive Director, said the Legislature intends to adjourn this Friday -- although technically Sine Dine adjournment is not until a week Friday—and are working diligently to wrap up matters. He thanked Board members for attending Water Appreciation Day at the Capitol; there was a great turn out of folks and he recognized staff efforts in organizing and participating. He said Governor Fallin was expected to issue a press release regarding drought conditions and the State's response, and also announcing a new website, [www.drought.ok.gov](http://www.drought.ok.gov), the State's drought portal developed from the OWRB existing drought page. He asked Ms. Lauren Sturgeon to present the legislative report.

Ms. Sturgeon noted the prepared legislative report, and said work continued on Senator Standridge's and Representative Martin's bill on water reuse, along with the Department of Environmental Quality, and she believed an agreement had been reached. She said additionally, the budget was released from the House and Senate and most agencies did take a 5.5% cut which was expected. The OWRB was awarded a supplemental appropriation of \$1.5 million for the drought assistance program, allowing the continuation of emergency relief drought grants which has already been beneficial to several communities around the state. Regarding federal legislation, Ms. Sturgeon stated the WRRDA conference report had been released and included programs for drought and other disasters, silt prevention control and hydropower, and improvements to the dam safety program as well as addressing some of the large river basins—including the Arkansas and Red Rivers. The Clean

Water Act funds (SRF dollars) have been reauthorized and the measure included some improvements to the program in order to streamline the efforts by state agencies. Chairman Herrmann asked if the programs had been reauthorized at the higher levels or at lower levels than proposed in the President's budget. Ms. Sturgeon answered they were reauthorized at levels higher than the President's budget from 2015; however, the appropriations bill can come in under that level. She said the WIKIA program was added as a discretionary program and is not mandatory as the other SRF programs. She noted that Mr. Strong would update the members on the Waters of the State rules, and his anticipated testimony before Congress in June.

Mr. Strong stated he was asked by the Western States Water Council and Western Governors Association to testify and give the western states' perspective on the recently released "waters of the United States" rules which the EPA and Corps of Engineers' finalized; staff has been tracking the rules over the past few years as it goes through the process of guidance and rulemaking. Originally scheduled to testify in May, the hearing was rescheduled to June after the death of the former Chairman of the House Transportation and Infrastructure Committee. Basically, he said the states were left out of the rulemaking process -- a rule states co-regulate and jointly manage with the EPA and COE as it is Clean Water Act jurisdiction. He said they believed it not only inappropriate to be left out of the rulemaking process for a program that we spend a great deal of time and resources implementing, but believe it also violates federal executive orders signed under President Clinton that require consultation with the states; these will be issues he will address at the hearing.

Mr. Strong mentioned the letter by several large state organizations asking the legislature to disapprove the OWRB rules approved by the Board regarding well spacing on the Arbuckle Simpson Aquifer. He provided a response to Representative Blackwell, reminding him the Board is implementing the law the Legislature passed in 2003 (SB 288) and not just establishing a maximum annual yield to protect springs and streams of the Arbuckle Simpson Aquifer, but also not issuing individual permits that would impact streams and springs. The rule could've been that permits were considered on a case-by-case basis requiring analyzing and scrutinizing each one, but established the setback distance so people would know if they are outside the assumption is there is no impact, and if you are within the setback it may need to be scrutinized more; and, no drilling is prohibited in the Arbuckle Simpson. There were a lot of accommodations made between the proposed rules which the Board conducted a public hearing on and staff came back with changes to address the concerns heard through the rulemaking process. He explained the legislative process for approving rules, and whether the matter would come before the Rules Committee and what the next steps are if the rules are not approved. He added comments regarding the budget and 5.5% cut and the \$1.5 million appropriation to the OWRB which is to provide much-needed drought assistance which is basically a pass through. Last year, \$3 million was appropriated to the OWRB for water providers, but also to Oklahoma Conservation Commission and Department of Agriculture to provide drought assistance to Ag producers. He anticipated there is a need of about \$100 million in drought assistance across the state.

Mr. Strong continued his report stating that mediation meetings are ongoing and an executive session is proposed on today's agenda. He noted the meetings and conference he has attended and will participate in over the next few weeks: Red River Compact Commission in Hot Springs, AR, April 22; ScienceFest at the Zoo; Water for 2060 Council meets May 20 at 1:00 p.m.; Rural Development regarding loans refinancing; and, the Regional Economic Area Partnership Conference in Newton, KS, May 29. Mr. Sevenoaks asked about a pipeline/intake structure and Lake Texoma and Mr. Strong answered that matter was resolved by the Governors' MOU.

Mr. Strong announced the retirement celebration for Mr. Brian Vance on May 29; that Mr. Kim Sullivan of the Lawton office retired end of April, and Ms. Lambert asked about the agency's "bench strength." Mr. Strong announced that Jennifer Wasinger, Assistant Chief of the Financial Assistance Division, was selected to serve as a member of the EPA's Environment Financial Advisory Board.

Mr. Sevenoaks asked, and Mr. Strong explained that the last Water for 2060 Council meeting discussion concerned irrigation conservation and education.

Mr. Strong concluded his report noting the next meeting of the Board is Tuesday, June 17, 2014, at the OWRB OKC office. He said Chairman Herrmann asked him to respond to members' interest in situations of unauthorized use of water, which was a topic of discussion at last month's Board meeting, and what the Board can do to enforce waste. He said Mr. Jerry Barnett did discuss it at that Board meeting, but as a reminder, when staff first encounters through complaint or other notification about someone's wasting water or using water without a permit (unauthorized use is considered "waste" under the law). Generally, complaints regard folks not knowing a permit is required and staff attempts to seek voluntary compliance. The next step is a "cease and desist" order by the Executive Director, and from there staff may seek an injunction in District Court, and finally, file a criminal complaint with the District Attorney. He said there was concern the Board did not have "teeth" to enforce laws, but typically, it is the case that staff is able to get folks to come into compliance working with them voluntarily without having to take extreme measures. There are some exceptions to that, and he asked for the Board's comments going forward.

There were no other questions by members.

#### **D. Monthly Budget Report**

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report for April 2014 showed the agency has 50% of funding available with 17% of the fiscal year remaining. She said the agency is being conservative due to the notice from OMES about a possible shortfall for May and June which may result in a 1.5-2% cut, and she has prepared information reflecting the impact to each division. A 5.5% budget cut has been proposed for the agency which is \$385,000; each division will take its cut proportionately, as will the ORWA and REAP pass through. Chairman Herrmann stated that is a 5.5% cut from the increase a few years ago, and Ms. Storck explained that funding was just for groundwater monitoring, and the drought funding pass through which she explained in regard to the budget cuts and the reflection on the operating budget in the budget agreement. Mr. Strong added that the budget agreement can be displayed in a number of ways including a range of no cut to 40%, and the bottom line to the OWRB is the \$3 million appropriated last year for emergency drought grants being added into the base, then removed along with the 5.5%, looks like a 40% cut. Chairman Herrmann asked for a spreadsheet presentation at the June meeting. Ms. Storck said she is still tracking the \$1.5 million as to which fiscal year it will be received.

Ms. Storck concluded her report stating staff has begun the process to update the strategic plan. Mr. Drake said the DEQ received a dramatic cut, and would that impact operations with the OWRB. Ms. Storck and Mr. Strong answered that DEQ had a 21% cut, and \$12 million taken from its revolving fund. There should not be an impact; most dealings between the agencies regard federal funds, and the OWRB pays DEQ for lab work. There were no questions from the members.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Fairmont Public Works Authority, Garfield County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of \$912,000.00 Drinking Water SRF funding request from the Fairmont Public Works Authority located in Garfield County. He said that Fairmont's current water supply has high arsenic levels. In order to correct the funding, Fairmont will lay two miles of water line to connect to the Salt

Fork Water Authority for a new source of water. In addition, the proceeds will be utilized to purchase a new master meter and a new pump station. Mr. Freeman noted provisions of the loan agreement. Staff recommended approval.

Mayor Phil Luginbill, and Ms. Vicki Eggers of Northern Oklahoma Development Association, were present in support of the loan request.

Ms. Lambert asked the population and Mr. Luginbill answered it is 130. Chairman Herrmann asked and Mr. Freeman responded there is debt coverage ratio – with this loan, if the project is built in compliance with all the Drinking Water SRF rules and regulations, DEQ would then agree to use a portion of the Drinking Water SRF Capitalization Grant to forgive the loan.

Chairman Herrmann stated staff recommended approval and he would accept a motion.

Mr. Drake moved to approve the loan to the Fairmont Public Works Authority, and Ms. Lambert seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Feaver, Buchanan, Hitch

Mr. Freeman stated he projected that at the June Board meeting there would be a resolution authorizing a new State revenue bond loan program bond issue which requires approval by a supermajority of members.

### **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.**

Chairman Herrmann read the statement above, and asked if there were requests to transfer items to the Special Consideration Agenda. There were no requests to transfer items.

Chairman Herrmann and Mr. Strong recognized the Mayor and other representatives of the City of Holdenville who were present because of item 3.K. regarding dam and reservoir construction.

#### **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.

There were no amendments to the Summary Disposition Agenda, and no other questions by the members.

Mr. Fite moved to approve the Summary Disposition Agenda, and Mr. Drummond seconded. There were no questions, and Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Feaver, Buchanan, Hitch

The following items were approved:

C. 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:

1. Professional Services Contract with Sparks Write, Inc., to perform assignments which assist the Board in implementing the Board's responsibilities under the Comprehensive State Water Planning Program.
2. Professional Services Contract with Records Solutions, Inc., to perform assignments to assist the Board in implementing various projects to improve management of the Board's electronic and paper records.
3. Interagency Agreement with the Department of Environmental Quality for payment of shared office spaces in McAlester and Woodward.
4. Interagency Agreement with the Oklahoma Department of Environmental Quality regarding the Drinking Water State Revolving Fund.
5. Agreement with Arbitrage Compliance Specialists, Inc., for arbitrage rebate consultant services in connection with the Board's tax-exempt obligations.
6. Intergovernmental Agreement with the United States Department of the Interior, Bureau of Reclamation to provide drought mitigation and response strategies.
7. Intergovernmental Agreement between OWRB and the Central Oklahoma Master Conservancy District for water quality monitoring at Lake Thunderbird.
8. Interagency Agreement with the Office of Management and Enterprises Services Division of Capital Assets Management Real Estate and Leasing Services for payment of office space in Tulsa.
9. Interagency Agreement with the Department of Environmental Quality to pay the OWRB for conducting, performing and producing bathymetric surveys to determine lake oxygen water quality standards.

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

1. Hainzinger Family, L.L.C., Osage County, #2013-609
2. City of Miami, Ottawa County, #2013-635
3. Cookson Hills Christian School, Inc., Adair County, #2014-508
4. Triple S Farms, L.L.C., Caddo County, #2014-510
5. Triple S Farms, L.L.C., Caddo County, #2014-511
6. Bryan Kroeker Revocable Trust, Alfalfa County, #2014-517
7. Danny & Linda Floyd, Dewey County, #2014-519

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

None

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

None

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

1. Jerald & Deborah Radcliff Revocable Trust, Beaver County, #1991-512
2. Kenton D. & Anna Patzkowsky, Beaver County, #1976-716

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 Regular Permits to Use Stream Water:

1. Rose Real Estate, LeFlore County, #2012-056
2. Williams Family Trust, Carter County, #2013-050
3. John D. & Pauline M. Loftis, Payne County, #2014-006
4. Danny Shane & Amy J. McDonald, Hughes County, #2014-011
5. Scott C. & Rhonda Barrington, Grady County, #2014-012

K. Consideration of and Possible Action on Dam and Reservoir Construction:

1. City of Holdenville PWA, Hughes County, #OK10479

L. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:

1. New Licenses:
  - a. Licensee: Revilo Exploration DPC-0902
  1. Operator: Bradley Oliver OP-2043
  - b. Licensee: Mowdy Drilling DPC-0904
  1. Operator: Mike Mowdy OP-2044
  - c. Licensee: Mowdy Water Well Service DPC-0905
  1. Operator: Don Mowdy OP-2045
2. New Operators to Existing Licenses:
  - a. Licensee: Pendergraft and Son Windmill DPC-0640
  1. Operator: Jeremy Pendergraft OP-2039
  - b. Licensee: Oklahoma Environmental Services DPC-0363
  1. Operator: David Correll OP-2040
  - c. Licensee: Sahara Water Services DPC-0781
  1. Operator: Zachary Stewart OP-2041
  - d. Licensee: Associated Environmental Industries Corp. DPC-0269
  1. Operator: Mickey Murray OP-2042
  2. Operator: Billy Graham OP-0957

M. 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, Okmulgee County, #FP-14-09

N. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the May 19, 2014 packet of Board materials.

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

There were no items discussed or questions by the members.

**5. SPECIAL CONSIDERATION**

**A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Regular Groundwater Permit No. 2013-510, Lance Ruffel Oil & Gas Corporation, Seminole County, Recommended for Approval:**

1. Summary – Ms. Julie Cunningham stated neither the applicant nor the protestant are in attendance at the meeting today. She informed the members that the applicant requested a regular permit to use groundwater in the name of Lance Ruffel Oil & Gas Corporation in Seminole County. The request is for a permit to withdraw 120 acre-feet of groundwater for the purposes of drilling and primary completion of oil & gas wells from one well located on 60 acres of dedicated land in Seminole County. Ms. Cunningham stated the application was protested; and the applicant has met the four points of law according to the hearing examiner. The protestant had concerns the proposed withdrawal could affect their use of the water, and the hearing examiner acknowledged the protestant’s concerns; however, there is no basis to make a determination the proposed use of the private property would impermissibly or unlawfully degrade the water. She said that record showed the applicant satisfied the test set out in the Oklahoma Groundwater law, and staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

2. Discussion and presentation by parties. There was no discussion.

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. There were no questions or discussion, and Ms. Lambert moved to approve the proposed findings of fact, conclusions of law, and Board order for permit No. 2013-510, and Mr. Sevenoaks seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Feaver, Buchanan, Hitch

**B. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any.**

There were no items transferred from the Summary Disposition Agenda.

**6. PROPOSED EXECUTIVE SESSION**

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

*Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing Chickasaw Nation and Choctaw Nation v. Fallin, et al., and Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al.*



Chairman Herrmann stated there is a proposed Executive Session. As Patrick Wyrick joined the meeting, Chairman Herrmann asked General Counsel Jerry Barnett if he had a statement regarding the Board entering an Executive Session.

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.

Mr. Barnett stated he did advise the Board that the disclosure of the discussion of this litigation as described on the agenda will seriously impair the ability of the Board and State to conduct that 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.

Chairman Herrmann asked for a vote regarding an Executive Session. Ms. Lambert moved that the Board enter Executive Session, and Mr. Drake seconded.

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

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

Chairman Herrmann asked Executive Secretary Mary Schooley to serve as the designated person to keep written minutes.

C. Executive Session, if authorized.

The Board entered executive session at 2:47 p.m. on Monday, May 19, 2014.

At 3:37 p.m., Mr. Drummond moved the Board return to Regular Session, and Mr. Fite seconded. There was no action by the Board as a result of discussion in the Executive Session.

## **7. 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.

Chairman Herrmann stated there were no New Business items for the Board's consideration. He reminded the members the next meeting would be held on Tuesday, June 17, 2014, at 9:30 a.m. in the Oklahoma City meeting room.

**8. ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 3:38 p.m. on Monday, May 19, 2014.

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Rudolf J. Herrmann, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Tom Buchanan, Vice Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Edward H. Fite

\_\_\_\_\_/s/\_\_\_\_\_  
F. Ford Drummond

\_\_\_\_\_/s/\_\_\_\_\_  
Marilyn Feaver

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Sevenoaks

\_\_\_\_\_/s/\_\_\_\_\_  
Bob Drake

\_\_\_\_\_/s/\_\_\_\_\_  
Jason W. Hitch

**ATTEST:**

\_\_\_\_\_/Absent\_\_\_\_\_  
Linda P. Lambert, Secretary  
(SEAL)