

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
March 11, 2015

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 1:30 p.m., on March 11, 2015, in the second floor meeting room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on March 9, 2015, at 5:30 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. Mr. Bob Drake will serve as Assistant Secretary in the absence of OWRB Secretary Tom Buchanan.

A. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Linda Lambert, Vice Chairman
Ford Drummond
Bob Drake
Marilyn Feaver
Ed Fite
Jason Hitch
Richard Sevenoaks

Board Members Absent

Tom Buchanan, Secretary

Staff Members Present

J.D. Strong, Executive Director
Rob Singletary, 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
Mary Schooley, Executive Secretary
Jonathan Allen, Office of General Counsel

Others Present

Greg Buckley, City of Altus, OK
Jo Andazola, City of Butler, OK
Gene Collins, City of Butler, OK
Mark Cobb, Frontier Development, Butler, OK
Phil Briggs, Frontier Development, Butler, OK
John Rehring, Carollo, Oklahoma City, OK
Bill Strecker, City of Altus, OK
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK
Tom Liu, Bank of America Merrill Lynch, New York, NY
Eric C. Owan, Bank of America Merrill Lynch, New York, NY
Brandon Walker, Bank of America Merrill Lynch, New York, NY
Kelly Schwartz, Arledge & Associates, CPA, Edmond, OK
Gregg Carr, Department of Environmental Quality DWSRF, Oklahoma City, OK

B. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the February 17, 2015 Regular Meeting had been electronically distributed.

Ms. Feaver moved to approve the February 17, 2015, minutes, as presented and Ms. Lambert seconded. There were no comments or corrections, and Chairman Herrmann called for the vote.

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

Chairman Herrmann noted that Mr. Sevenoaks joined the meeting at 1:32 p.m.

Chairman Herrmann asked that item 4.A., “Presentation and Possible Discussion regarding Application for Weather Modification Operations Licensing and Permitting Process” be moved for presentation prior to consideration of the Summary Disposition Agenda item 3.M.1. under Summary Disposition pertains to weather modification licensing, and which he preferred the Board hear the presentation prior to taking action.

C. EXECUTIVE DIRECTOR’S REPORT

Mr. J.D. Strong, OWRB Executive Director, thanked the members for assisting the staff in another successful Water Appreciation Day at the Capitol, and for attending the presentation of the Water for 2060 Drought Grants with Governor Fallin to representatives of Boise City, Shattuck, and Fort Supply.

Mr. Strong reviewed the agency’s legislative report in the absence of Ms. Storck. He stated to the members that the report is still lengthy as the deadline for measure to be through the house of origin in March 12 and Legislators are very busy; next deadline is for measure to pass out of committee in the opposite house by April 9, and there should be a smaller amount of bills at that point. He said regarding the state budget update, the agency has not had discussion nor received instruction regarding the impacts to the OWRB budget other than the Governor’s proposed 6.25% cut; he said the Board of Equalization certified a shortfall greater than the Governor anticipated, which was \$300

million; the shortfall certified is \$611 million less general revenue dollars than last year, therefore, the budget picture is worsening.

He noted bills of interest: HB 1420 repealing weather modification; however, the OWRB had received an application for a weather modification license and staff spoke with the author who kept the regulatory authority of the OWRB in place, and HJR 1013 opposes the Waters of the US rule (WOTUS). Senator Schulz has authored a measure creating a work group to solve water shortages, and SCR 13 passed the Senate this morning and is expected to pass the House this afternoon recognizing Water Appreciation Day. Regarding federal activities, Brittnee Preston has provided a written report and Mr. Strong noted appropriations hearings had been held including EPA with discussion about stopping WOTUS, the agency's budget, and water efficiency certification program; and the Forest Service has tabled its groundwater directive to avoid unintended consequences regarding decisions regarding groundwater on Forest Service property and adjacent property, some of which threatened state sovereignty.

Mr. Strong continued his report stating there would be an update on mediation efforts later in the meeting; the Water for 2060 Council will meet following the April 21 Board meeting; and he met with the US Army Corps of Engineers and Congressional Offices regarding the COE budget. He spoke to the Eastern Oklahoma County Partnership regarding regional water planning; the Canadian River Compact meeting has been rescheduled; Western States Water Council leadership will travel to Washington, D.C. to meet with Congressional delegations and federal agencies to talk about issues important to the western states; EPA will be in Oklahoma City to meet with water agencies March 30-31, and Oklahoma will host the Spring meeting of the WSWC in Catoosa, April 15-17. The next OWRB meeting will be held on Tuesday, April 21, at 9:30 a.m. in the Oklahoma City meeting room.

Mr. Strong concluded his report.

D. Monthly Budget Report

Mr. Strong presented the agency budget report. He stated to the members that the monthly budget report for March 2015 had been provided. He said the agency has 58% of total funding available with 33% of the fiscal year remaining. (An earlier version misstated the percentages.)

Chairman Herrmann asked about interest by the Legislature to access revolving funds, and Mr. Strong said there is still interest as the Legislature looks to fund the budget hole; all options are on the table. Last year was unprecedented when the Legislature took several million dollars from revolving funds, and DEQ was affected. The OWRB revolving funds are mostly tied to the SRF programs which include federal dollars that the Legislature cannot take and EPA would not allow state funds to be withdrawn. The Rainy Day Fund is also being reviewed, as well as other options, but it will be mid-April to late May before the budget picture takes shape. The State's total budget is approximately \$7 billion.

There were no other questions by members, and Mr. Strong concluded the report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Water for 2060 Grant for Infrastructure Project for Frontier Development Authority, Custer County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the member that this first item is a \$467,300.00 Water for 2060 Grant request by the Frontier Development Authority located in Custer County. He said the Authority requested the funding in order to replace current water meters with an automated metering system, including meters for all customers, along with handheld reading

units with GPS capability, as well as associated hardware and software. The project also includes replacing the master meter with an electronic magnetic meter. He said the Authority purchases treated water from the Foss Master Conservancy District through a water purchase contract with the Town of Hobart. It is estimate the Authority will reduce water loss by 6.6 million gallons on an annual basis. Staff recommended approval of the grant request.

Representing the Authority was Chairman Gene Collins, Clerk Jo Andazola, Water Superintendent Mark Cobb, and Engineer Phil Briggs.

Mr. Hitch commented about the current monthly payment by customers, and Chairman Herrmann asked the percentage of the savings as a part of the total usage, which Mr. Briggs said is about 20%; there are 373 customers.

There were no other questions by Board members and Ms. Lambert moved to approve the grant application to the Frontier Development Authority, and Mr. Drummond seconded.

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

Mr. Freeman commented that with this grant, along with the three approved last month, it is estimated that over 23 million gallons of water will be saved on an annual basis.

B. Report of the Board Audit Committee Regarding Oklahoma Water Resources Board State Loan Program Revenue Bonds and Clean Water State Revolving Fund Program (CWSRF) Financial Statements as of June 30, 2014 and 2013, Audits of the CWSRF Administrative Fund and the Drinking Water Treatment Loan Administrative Fund as of June 30, 2014 and 2013. Mr. Freeman explained this report regards the Board's annual Audit and Compliance Committee meeting held following last month's meeting. He said the Committee is composed of Mr. Hitch as Chairman, and members Mr. Sevenoaks, Mr. Fite and Mr. Drummond, who reviewed the following items: Auditors Management Letter and EPA Annual Evaluation of the SRF Loan programs; the annual State Bond Advisor's Report regarding the Board's bonded indebtedness; the Board's most recent arbitrage rebate reports; the annual borrowers' audited debt-coverage ratio; reports required by the National Repository, three bond rating agencies; and State Street Bank of Boston, the Board's variable rate bond liquidity provider. The committee reviewed the loan documentation exception reports, policies regarding balances of debt coverage reserve funds, reviewed the Board's current investment portfolio and Standby Bond Purchasing Agreement. At the fiscal year end of June 30, 2014, the Board's combined assets totaled \$1,399,455,846.00, and the outstanding loan balance was \$1,128,303,144.00. Mr. Freeman introduced Mr. Kelly Schwartz of Arledge and Associates, who reviewed the 2014 audits with the Board.

Mr. Schwartz presented a prepared summary of the audits for FY-2014 and reviewed the audits, recapped the scope of the engagement which included the Bond Series Program, Clean Water SRF and Administrative funds for CWSRF and DWSRF (all financial and Yellow-Book compliance), change in financial reporting requirement (none), and he noted the individual results of the separate audits (bottom of page two): Bond Series Program received an unmodified auditor's report, Yellow-Book compliance with no violations noted, and the reports contained the combining supplemental reports of each bond activity. He reviewed the financial results (page three) of the Bond Series Program Audit noting total assets (\$319M), liabilities (\$291M), net position increase (\$28M), interest income, interest expense, other operating expenses, Gross Production Tax, transfer out to OWRB, with an overall increase of \$921,562 remaining consistent with the FY-2013 activity report. Ms. Lambert asked about the absence of GPT in 2013, and Mr. Schwartz explained that 2014 was the first year the reserve funds were brought onto the books, where previously it had been recorded—this reflects a change in

reporting format in 2014, adding the general debt reserve fund. Chairman Herrmann asked if a change in funding or change in reporting, and Mr. Schwartz clarified that it is a change in format, being included in the overall reporting this year. Mr. Freeman explained the reserve funds were separated by bond issue in previous reporting, and required an individual audit for each series of bonds but because they are on parity with each other, are now rolled together and will save money on the cost of 17 audits, so this is a new form of reporting.

Continuing on page four, regarding the State Revolving Fund (CWSRF), Mr. Schwartz reported the fund received an unmodified auditor's report, and Yellow-Book report noted no laws or regulation violations or internal control findings; the summary of the financial changes for FY-2014 included total assets (\$568M), total liabilities (\$240M), total increase in net position (\$328M), total interest income, total federal grants, federal grant principal forgiveness, total interest expense, other operating expenses, gain/loss on investments, transfer from Administration and overall increase of \$12M in 2014. Chairman Herrmann commented about the total assets decreasing in a time when there is demand for funding, and Mr. Freeman responded that demand is actually down, and refundings are at a lesser amount.

Mr. Schwartz continued reporting on the CW and DWSRF Administrative Funds; both received unmodified auditor's report, and Yellow-Book compliance report noted no internal control findings. He summarized the CWSRF fund net position of \$2.6M, with total administrative fee revenue of \$2.2M; operating expenses and transfer out to CWSRF resulting in an overall increase of \$580,448.00. Regarding the DWSRF fund, he said the fund closed the year with a net position of \$6.7M, and administrative fee revenue of \$2.2M; operating expenses and transfer out to DWSRF, resulted in an increase in net position of \$1.9M. Chairman Herrmann asked if Arledge also had a contract to audit the Department of Environmental Quality DWSRF fund, and Mr. Schwartz answered yes; Mr. Freeman said the Committee reviewed that audit. In conclusion, Mr. Schwartz noted the final letter of required communications which addresses whether there were new accounting standards -- which there were not -- and provides opportunity to communicate with the Board if there were any disagreements with management, or issues obtaining information for the audit which there were none; or any difficulties during the audit, which there were none. The letter includes main estimates which are included in the reports such as the arbitrage estimate, and estimate for bad debt reserve. Mr. Schwartz said that 2014 ended on a positive increase. There were no comments from the members of the Board's Audit Committee, or other members, and Chairman Herrmann thanked the Committee for its work.

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Altus Municipal Authority, Jackson County. Recommended for Approval. Mr. Freeman stated to the members that this loan request in the amount of \$2.3 million dollars by the Altus Municipal Authority is to go along with a \$575,000.00 emergency drought relief grant to construct approximately two miles of 12-inch water line parallel to an existing 18-inch line in order to use the existing line to bring water from the Round Timber Ranch well field. The new line will replace the 18-inch line for supplying water to the Creta Rural Water System and the Town of Olustee, as well as other water users south. In addition, loan proceeds will be used for new water lines in the distribution system to loop existing dead-end lines to increase capacity and improve overall water quality. Mr. Freeman said the loan will be funded through the Drinking Water State Revolving Loan Fund Program, and he noted provisions of the loan agreement. The debt coverage ratio stands at approximately 3.8-times. Staff recommended approval.

Representing Altus Municipal Authority was Greg Buckley, Acting City Manager; Bill Strecker, BOSC Financial Advisor; and Alan Brooks, Bond Counsel.

Mr. Bill Strecker spoke to the project. Mr. Sevenoaks asked the water source, and Mr. Buckley answered, Tom Steed Reservoir which has traditionally a supplemental source and is at 22%. He said

this project is one step in the Authority acquiring additional water sources. The members asked and Mr. Buckley responded that the average use per day is 4 million gallons, the project should yield about 1/3 of the daily use. Altus is at stage three water rationing, and he explained the rationing measures. He said they are not using the groundwater wells at this time, but are rehabilitating the wells which haven't been used since the mid-1990s. The property is south of the Red River near Vernon, Texas; it is not within a conservation district, and Texas law is unrestricted withdrawal. Mr. Strong mentioned a project the OWRB staff had worked with Tom Steed/Mountain Park concerning the drilling of wells around Tom Steed Reservoir; this is a bigger project to have a groundwater and surface water source so that the supply can toggle between surface water and groundwater during times of drought. Mr. Buckley said blending the water will improve quality as well; no additional permitting is required—the contracts have been in place since the mid-1960s with the time frame of one being perpetual and negotiating the other for 30 years with a 30-year option. Chairman Herrmann asked if Mr. Freeman's staff was satisfied with the water agreement, and Mr. Freeman said the Board's General Counsel verified Texas allows unrestricted pumping, and they are working with the Department of Environmental Quality about what happens after the water crosses the river and transported to the water treatment plant. Mr. Alan Brooks spoke to the matter of the lease agreements and financial obligation and that Altus is pledging a senior lien on its water and sewer revenue, and whether the water is available or not, it is committed to repay the loan, and is in good shape in terms of financial liability. Altus has paid for a number of years to keep this option open but have not used any water.

Chairman Herrmann asked if there were additional questions. There were no other questions and he said he would entertain a motion.

Mr. Fite moved to approve the DWSRF loan application to the Altus Municipal Authority, and Ms. Lambert seconded.

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

Chairman Herrmann asked for consideration of staff's presentation on the Weather Modification Operations Licensing and Permitting Process.

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

A. Presentation and Possible Discussion regarding Applications for Weather Modification Operations Licensing and Permitting Process. Mr. Jonathan Allen, OWRB Assistant General Counsel, stated to the members that the agency had received an application for a weather modification operations license and because the agency had not issued a license in some time, staff prepared a presentation for the Board regarding the Weather Modification Act, and the responsibilities of the OWRB, which are found in Chapter 15 of the OWRB Rules and Regulations.

Mr. Allen described the type of activities that are considered weather modification control and include, "changing or controlling, or attempting to change or control, by artificial methods the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere." The OWRB regulates the operation in "the performance of weather modification and control activities pursuant to a single contract entered into for the purpose of producing, or attempting to produce, a certain modifying effect within one specified geographical area over one continuing time interval not exceeding one (1) year [. . .]" and licenses are issued on an annual basis. In the past, the contracts were with the OWRB, but now—concerning Summary Disposition Agenda item 3.M. is a

contract with a company contracting with the City of Lawton for this type of operation. The licensing is analogous to the well driller licensing in that if the minimum qualifications are met under the Act, then the applicant qualifies for a license. Mr. Allen described the licensing procedures required by the applicant, and renewal and revocation requirements. He described what is required for the permitting process: hold a current license issued by the OWRB, submit a properly completed application and application fee (\$25), publish a notice of intent pursuant to Rule 15-3-20, submit evidence of a financial responsibility (Liability insurance), and provide any additional information the OWRB deems necessary. He also talked about notice and hearing requirements, and spoke to the history of licensing and permitting by the OWRB from 1973-1988, showing an actual notice published in the newspaper, and other documents provided. There were activities in the 1990s regarding research activities funded by the State. Some licensing regarded Hitch Agribusiness of Guymon, and Mr. Hitch commented about his Grandfather being involved in those activities. Mr. Allen said the current application will employ a different type of operation.

Mr. Allen continued, stating that once the notice is published, any interested party may request a hearing and the OWRB is required to conduct the hearing pursuant to the Administrative Procedures Act, and he described what will be reviewed at the hearing: OWRB must determine if the proposed operations are “safe and not a menace to life and property,” and permitted operations must give adequate consideration to the planting and harvesting of crops, affect on other segments of the economy, and affect on public events. Monthly and annual reports are required by the operators providing information about when activities occurred, daily logs of location of weather stations and ground operations, etc. He noted the OWRB has certain powers to suspend, modify or cancel licenses, and OWRB Rule 15-3-16 states that permits “will reflect that operations may be suspended at times to protect life and property.” Conditions that may cause such action include, if the OWRB determines that an emergency exists, or is eminent, the permit holder is notified to suspend operations immediately, whereby the OWRB will be notified by phone call followed by certified letter, and if suspension is permanent, notice and a reasonable opportunity for a hearing will be provided. Permits expire after one (1) year, and may be extended by the payment of an annual fee (\$25) and a review of the operation by the OWRB. Mr. Allen concluded his report.

Ms. Lambert asked about unintended consequences, and Mr. Allen said there are concerns which is the purpose of the hearing process so that evidence can be brought to the hearing examiner. The current application is for the license – which is the first step -- once issued, the notice will be made, then a hearing if requested. The Board’s rules require liability insurance of \$300,000.00 which should cover all types of damages that have been recently associated with this type of operation.

Chairman Herrmann stated any member can withdraw consideration of the application when the Summary Disposition items are considered; he had wanted the Board to hear the presentation prior to considering that portion of the agenda. This is a first step of a relatively complex process. There was discussion about the process, that the license application has met the minimum qualifications, and notice of the hearing process etc., will come as the permit process continues; however, the license does not authorize any weather modification activity without the permit. Mr. Strong added that the applicant is being proposed and funded by the City of Lawton, and if no one protests the application, the matter could come to the Board as early as the April Board meeting.

There were no other questions by members, and Chairman Herrmann proceeded to consideration of the Summary Disposition Agenda items.

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 from the Summary Disposition Agenda to the Special Consideration Agenda. There were no requests to transfer items to Special Consideration.

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 any changes to the Summary Disposition Agenda; there were none. Chairman Herrmann stated he would entertain a motion to approve the Summary Disposition Agenda.

Mr. Drake moved to approve the Summary Disposition Agenda, and Mr. Hitch seconded. There being no further questions regarding items listed; however, Chairman Herrmann asked Ms. Cunningham to clarify item 3.D.2., agreement with Mesheck & Associates. Ms. Cunningham stated the contract provides assistance to the State and OWRB in providing a flood hazard data base and the program is through FEMA which provides the funding. The program will maintain up-to-date floodplain management data on specific watersheds which are determined priority, and work will be conducted in-house and contracted through engineering firms, and will include public education and outreach. There were no other questions. Mr. Fite commented that Meshek & Associates is renowned among Certified Floodplain Managers.

Chairman Herrmann called for the vote.

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

The following items were approved:

C. Consideration of and Possible Action on Financial Assistance Division Items:

| 1. Rural Economic Action Plan (REAP) Grant Applications: | | | | Amount |
|--|------------------------|--------------------|---------------|--------------------|
| <u>Item No.</u> | <u>Application No.</u> | <u>Entity Name</u> | <u>County</u> | <u>Recommended</u> |
| None | | | | |

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

1. Renewal Agreement with Oklahoma Ground Water Association for the oversight of continuing education of Well Drillers and Pump Installers.
2. Agreement with Meshek & Associates, PLC to assist OWRB in implementing the CTP Program in Oklahoma to create and maintain accurate flood hazard data for OWRB.

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

1. Vivian E. Abraham Revocable Trust, Harmon County, #2014-501
2. Nathan & Ashley Miller, Custer County, #2014-610
3. David Gustav ZumMallen, Kingfisher County, #2014-631

- 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:
1. J W & R Mantooth Farms, L.L.C., Garvin County, #2014-626
- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
None
- 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. Tim & Linda Phillhower, Atoka County, #2014-038
2. Greg A. Stangl and Anthony Stangl, Kingfisher County, #2014-063
3. Calvin Mays Oilfield Services, Inc., Kingfisher County, #2014-073
4. Janet Wahrenberg, Kingfisher County, #2014-075
- K. Consideration of and Possible Action on Dam and Reservoir Construction:
1. American Fidelity Dam, Oklahoma County, #OK02422
- L. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
1. New Licenses and Operators:
a. Lodestar Field Services, L.L.C. DPC-0915
1. Operator: Brennan George OP-2082
2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
a. Licensee: Oklahoma Environmental Services DPC-0363
1. Operator: Christopher Cooper OP-2080
b. Licensee: Layne Christensen DPC-0123
1. Operator: Jon Fife OP-2081
c. Licensee: Red River Resources DPC-0805
1. Operator: Joyce Hurst OP-1911
- M. Consideration of and Possible Action on Weather Modification Operations Licensing:
1. New Licenses and Operators:
a. Licensee: Seeding Operations and Atmospheric Research (SOAR), LLC of Wichita Falls, Texas
WL-2015-1
- 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, Bryan County, #FP-15-01
- O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
1. City of Guymon, Elvia Hernandez, FPA-610
2. Town of Luther, Twila K. Bourlon, FPA-611
3. Payne County, Losco N. Hunter, FPA-612
4. Town of Valley Brook, Danny L. Patnaude, FPA-613

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on Driller License No. DPC-0823 of Joshua D. Manning, and Operator Certificate No. OP-1839 of Joshua D. Manning:

1. Summary – Ms. Julie Cunningham explained that this item concerns an enforcement action in regard to a water well driller license in the name of Joshua Manning. She said Mr. Manning obtained a license in 2011, and in 2012 the Board found he had violated rules on well plugging, completion and reporting of well logs. An order was issued for a fine, and placed the firm on probation for six months. In 2014, inspections revealed that the seals on two of the wells did not meet minimum construction standards, and because the violations were different from the first, the hearing examiner considered it to be a first-time violation carrying a lesser fine. A second violation brings a fine of \$5,000.00. She said the Well Drillers Advisory Council has worked with staff regarding enforcement, and had recommended the fine structure which is in the OWRB rules. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order with four conditions: installation of cement surface seals in accordance with OWRB rules with Board staff present; and payment of a fine of \$2,000.00 (\$1,000.00 per well) by April 30, 2015; and probation through December 31, 2015, requiring advance notice of regarding activities. Any violation of the Board's Rules during the probationary period will result in suspension of the license.

Mr. Hitch asked about the reduction of the fine from \$5,000 to \$2,000. Ms. Cunningham explained the hearing examiner considered the offense to be first-time, and recommended the first level fine. Mr. Sevenoaks asked if the Council was present at the hearing, and Mr. Kent Wilkins responded that the Council has recommended the rules regarding the fine structure, and while he wasn't aware if this matter had been vetted through the Council's process, staff has been trying to bring a conclusion to this matter for sometime; this is the finding of the hearing examiner. Chairman Herrmann and Mr. Wilkins added that the Council has delegated to staff its expectations, and has repeatedly asked for additional inspection and enforcement so that everyone plays by the same rules.

2. Discussion and presentation by parties. There were no representatives of the party present.

3. Possible Executive Session; and 4. Return to open meeting. 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.

Mr. Fite moved to approve the proposed findings of fact, conclusions of law and Board order, and Mr. Mr. Drummond seconded. There were no questions, and Chairman Herrmann called for the vote.

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

Chairman Herrmann commended the Council for its work in policing its own the industry.

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

Chairman Herrmann

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.

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

Chairman Herrmann read the stated purpose of the proposed Executive Session, and asked Mr. Mr. Rob Singletary, OWRB General Counsel, to make a statement of advisement to the Board. Mr. Singletary stated that under 307(b)(4) of the Open Meeting Act, it is the advice of General Counsel that disclosure of communications and discussions proposed under agenda item 6. relating to pending litigation as referenced in the agenda would seriously impair the ability of the Board to conduct the pending litigation in the best interest of the public.

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.

Ms. Lambert moved that the Board enter Executive Session, and Mr. Hitch seconded.

Chairman Herrmann called for the vote.

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

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

Chairman Herrmann designated OWRB Executive Secretary Mary Schooley to keep minutes.

C. Executive Session, if authorized.

The Board entered the Executive Session at 2:50 p.m.

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

At 3:04 p.m., the meeting room doors were opened and the public invited to enter. Mr. Drake moved to return to Regular Session, and Ms. Feaver seconded.

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

There was no action taken on matters discussed during 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.

There were no new business items for the Board's consideration. Chairman Herrmann reminded everyone the April 21, 2015, meeting will be held at 9:30 a.m. at the OWRB offices. Mr. Fite noted the Board had awarded a grant to an entity(ies) in every county of Oklahoma.

8. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 3:05 p.m. on March 11, 2015.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/Absent_____
Linda P. Lambert, Vice Chairman

_____/s/_____
Edward H. Fite

_____/Absent_____
F. Ford Drummond

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

_____/s/_____
Tom Buchanan, Secretary (SEAL)