OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
January 19, 2016

1. CALL TO ORDER

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Linda Lambert at 9:30 a.m., on January 19, 2016, in the second floor meeting room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, OK.

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 14, 2016, at 4:05 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

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

A. Roll Call

Board Members Present
Linda Lambert, Chairman
Ford Drummond, Vice Chairman
Jason Hitch, Secretary
Stephen Allen
Tom Buchanan
Bob Drake
Marilyn Feaver
Ed Fite
Richard Sevenoaks

Board Members Absent
None

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, Chief, Water Quality Programs Division
Mary Schooley, Executive Secretary

Others Present
David Zeller, City of Maud, OK
Thomas Hopper, City of Maud, OK
Brad Eastman, Ozark Materials, Salina, OK
Scott A. Butcher; Dee Max Corbin; Oklahoma City, OK

Jason Childress, Oklahoma Gas & Electric, Oklahoma City, OK
Jean Lemmon, Oklahoma Corporation Commission, Oklahoma City, OK
Candy and Preston Masquelier
Kaylee Maddy, Doerner Saunders Daniels Anderson; Masquelier; Oklahoma City, OK
Mike Wofford, Doerner Saunders Daniels Anderson; Masquelier; Oklahoma City, OK
William Janacek, Midwest City, OK
Cynthia Santos, eCapitol, Oklahoma City, OK
Krystina Phillips; Farris; Ada, OK
Erika Capps, Osage Nation, Pawhuska, OK
Ken Komiske, City of Norman, OK
Amanda Nairn, Central Oklahoma Master Conservancy District
Roger Frech, Central Oklahoma Master Conservancy District
Chris Mattingly, City of Norman, OK
J.R. Miller, Tulsa, OK
Bud Ground, Environmental Federation of Oklahoma, Oklahoma City, OK
Mike Mathis, Continental Resources, Oklahoma City, OK
Daniel Rydell, Thomas, OK
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK
Joel Rydell, Thomas, OK
Carl Parrott, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Michael Moe, Oklahoma Department of Environmental Quality, Oklahoma City, OK
William A. Franks, Langston Public Works Authority, Langston, OK
Micah Isaacs, Citizen Potawatomi Nation
Dee Max Corbin, Hobart, OK
Kimmie Corbin, Hobart, OK

B. 1. Discussion, Amendments, and Vote to Approve Official Minutes of the November 17, 2015, Regular Meeting.

Chairman Lambert asked if there were any corrections to the minutes of the November 17, 2015, meeting. There were none, and Mr. Fite moved to approve the minutes. Mr. Allen seconded.

Chairman Lambert called for the vote.

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

2. Discussion, Amendments, and Vote to Approve Official Minutes of the December 2, 2015, Regular Meeting

Chairman Lambert asked if there was a motion to approve the minutes of the December 2, 2015, meeting. Mr. Drake moved to approve the minutes, and Mr. Drummond seconded.

Chairman Lambert called for the vote.

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

C. Executive Director's Report

Mr. J.D. Strong, OWRB Executive Director, stated the legislative report contains ten pages of activity at the federal level; there has not been much activity at the state level but the new legislative session begins February 1. Referring to the report, Mr. Strong highlighted several actions by Congress: Congress passed a omnibus spending measure on December 18 and the provisions water included an increase of $3 billion over last fiscal year on energy and water while EPA funding remained flat at $2.3 billion; the COE received $5 million more than the previous year; an attempt to block the WOTUS rule failed but restrictions were added preventing the application of the CWA in certain farm areas; an $100 million additional funding for western states drought response; an $135 million for Department of Interior/Bureau of Reclamation; and SJR 22 passed expressing Congress's disapproval of the WOTUS rules although the President has threatened to veto the rules. Mr. Strong reported that Governor Fallin extended the state of emergency originally declared November 29 for all 77 counties for winter storm damage and flooding, and the GAO announced the EPA violated policy restrictions in 2014 and 2015 spending laws when using social media to promote WOTUS rules, and an investigation is ongoing. He said the USGS reported water levels in the Illinois River Basin hit record levels during winter storm "Goliath" 25 ft above normal levels. Ms. Lambert asked the benefit in regard to trickle-down dollars to the OWRB, and Mr. Strong responded that there was no "boost" in SRF funding, COE boost will mostly being going to its own operation (particularly navigation), and the Reclamation boost went to grant programs which may help some state projects through the WaterSmart program.

At the State legislative level, Mr. Strong said this is deadline filing week for legislation, and there has been some interest in recommendations from the Water for 2060 Advisory Council to possibly implement minor changes in statute to enable aquifer storage and recovery projects (ASR) which would require tweaks to the groundwater law, but the bulk of changes could be handled through regulation. He said the agency is not aware yet of the level of budget cuts, and Gross Production Tax funding is scheduled to sunset this year -- that stream of funding now used for groundwater and stream water studies would revert back to the original funding where all funds come to the Board, but that could be taken away altogether due to other priorities. Mr. Buchanan asked whether the proposed state aquifer storage addressed ownership and OWRB General Counsel Singletary said it does address ownership of the property in the area being augmented, but not the ownership of the water itself. Mr. Strong stated that nothing changes in regard to ownership of groundwater that is on the books today, but does open the door for an ASR project to happen and through rulemaking by the Board for those interested to develop an ASR plan to be approved by the Board. It does not create ownership of artificially recharged water, but does create a process to approve a plan to manage that water, including the rights to recover that water, which will be an elaborate process considering the storage capability of the aquifer, what will migrate away, and other site-specific analyses will be needed. The Board will regulate the quantity aspects and DEQ will regulate quality. The members mentioned presentations on the subject at the recent Governor's Water Conference and other related aspects.

Mr. Strong continued his report stating he is working with the Governor's office regarding appointments to the Produced Water Working Group and would have more to report next month. He said that mediation meetings continue and an update will be provided during the executive session at the end of the meeting. He had an opportunity to brief General Bostick on December 7 regarding prioritizing water supply issues as well as flood control and navigation, and the need for more flexibility in District Offices to address local issues i.e. drought, etc. Ms. Cunningham attended a new drought contingency task in Ada with area partners for drought planning as part of a grant received by the Choctaws. He spoke to the Environmental Federation of Oklahoma Board of Directors; attended a budget hearing at the Capitol; the Board's bond closing was on December 15; and on December 16 EPA held a webinar for implementation of the new rule, which has stopped due to a court-ordered stay.

Mr. Strong spoke to the Groundwater Association on January 13, and met with the American Farmers and Ranchers policy committee. Looking ahead, he said on January 21 in Tahlequah will be the public meeting of the pilot study of the Illinois River Watershed, and results of the study will be posted on the agency website. The next meeting of the Beaver-Cache regional planning group is January 22, and the Board's Audit Committee will meet following the Board meeting today. The next OWRB meeting will be held on February 16, at 1:30 p.m. and Water Appreciation Day at the Capitol will be held that morning.

There were no other questions, and Mr. Strong concluded his report.

D. Monthly Budget Report.

Ms. Storck presented the budget report for December 2015 stating the agency has 66% of funding available, and 50% of the fiscal year remaining. She said the report includes the rescission cuts turned in on January 7 which is 6% for the last of the fiscal year, or 3% for the full year which was $187,798. The divisions reviewed General Revenue cuts, REAP grant funds were reduced by $3,564.00 and the ORWA contract was reduced by $5,906.00. Ms. Storck said that all agencies that receive General Revenue funding were reduced by the same percentage amount (6% for the last 6 months of the year), in addition to the 5.5% received at the beginning of the year (for a total of 8.5%). It is anticipated the next cuts will be 10%-plus for two years, and staff will anticipate other cuts that may come. Mr. Sevenoaks said the agency has had 18% cuts for this year and next year, and he asked if there would be a change in the level of programs. Ms. Storck responded staff is looking at vacancies, under filling positions with lower levels of occupied service, and not hiring temporary employees this summer for field work, etc. Ms. Storck said the majority of what the OWRB needs is people to carry out the programs and eventually it may be that the agency will have to look at not filling positions. Mr. Sevenoaks asked if Water Quality gets hits the hardest and Mr. Strong said that division does receive the largest amount of state appropriated dollars; the monitoring programs are the largest state funded activity. Chairman Lambert asked and Mr. Strong responded that as positions become open, staff is careful to fill or hold them open. Ms. Storck added staff has looked at all memberships, in and out of state travel, and only attending conferences which are required to maintain critical programs or are paid by other agencies, as well as looking at renegotiating contracts for a lower cost.

There were no other questions by members, and Ms. Storck concluded her report.

2. FINANCIAL ASSISTANCE DIVISION

A. There were no Financial Assistance Division agenda items for the Board's consideration.

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 Lambert stated there are no requests for items to be deferred or withdrawn from the Summary Disposition 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 Lambert stated if there were no questions, she would entertain a motion to approve the Summary Disposition Agenda.

Mr. Fite moved to approve the Summary Disposition Agenda, and Ms. Feaver seconded. There were no questions or comments, and Chairman Lambert called for the vote.

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

The following items were approved:

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

1. Rural Economic Action Plan (REAP) Grant Applications**:**

Item No.	Application No.	Entity Name	County	Amount Recommended
ACOG				
a.	FAP-16-0032-R	Coyle Public Works Authority	Logan	$99,973.86
b.	FAP-16-0019-R	Langston Public Works Authority	Logan	136,505.00
ASCOG				
c.	FAP-16-0029-R	Sterling Public Works Authority	Comanche	59,930.00
COEDD				
d.	FAP-16-0024-R	Maud Municipal Authority	Pottawatomie	39,999.00
GGEDA e.	FAP-16-0001-R	Welch Public Works Authority	Craig	57,868.00

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

1. Professional Engineering Services Agreement with Cardinal Engineering, L.L.C., to develop plans and specifications to repair the spillway of Hominy Municipal Lake.

2. 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. Mike & LaDena Kauk, Custer County, #2014-612
2. Ryan & JoDell Hodgden, Alfalfa County, #2015-568
3. Tammy Gray-Steele, Oklahoma County, #2015-578

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. Douglas Michael Phenix, Beckham County, #2015-593

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
1. Jim L. Edler, Washita County, #1984-627A

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. John Synar, Sequoyah County, #2012-071
2. Smith, Crow and Fox Properties Trust, LeFlore County, #2015-025

K. Consideration of and Possible Action on Applications to Amend Permits to Use Stream Water:
1. XTO Energy, Bryan and Marshall Counties, #2015-017

L. Consideration of and Possible Action on Dam and Reservoir Construction:
None

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

1. New Licenses and Operators

a. Licensee: Just Geoloops, Inc.	DPC-0963
1. Operator: Dean Sherman	OP-2131
b. Licensee: Unique Drilling, LLC	DPC-0965
1. Operator: Rocky Comyford	OP-2139
c. Licensee: Wet Hole Drilling	DPC-0957
1. Operator: Gary Baker	OP-2128
d. Licensee: Wright Water Well Services, Inc.	DPC-0959
1. Operator: Stephen Wright	OP-2129
e. Licensee: York Water Well	DPC-0961
1. Operator: Jessie Hammock	OP-2130

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

a. Licensee: MK Drilling	DPC-0907
1. Operator: Milton Knutson	OP-2011
b. Licensee: Matcor	DPC-0479
1. Operator: James Vanorden	OP-2133
2. Operator: Joe Schwemin	OP-2134
3. Operator: Chris Johnson	OP-2135
4. Operator: Kristofer Lamb	OP-2137
5. Operator: Dennis Coldiron	OP-2139
c. Licensee: McReynolds Water Systems	DPC-0578
1. Operator: Steve Linch	OP-2138
d. Licensee: Talon/LPE	DPC-0619
1. Operator: John Richins	OP-2132

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, Adair County, #FP-15-32
2. Oklahoma Department of Transportation, Grady County, #FP-15-33
3. Oklahoma Department of Transportation, Muskogee County, #FP-15-34

O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
1. Heath A. Dobrovolny, Kingfisher County, #FPA-658

2. Tim D. Coffey, City of Konawa, #FPA-659
3. Wendi D. Marcy, Lincoln County, #FPA-660
4. Gerald J. Haury, Town of Okeene, #FPA-661

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

A. Staff Presentations and Public Comment on Amendments to Permanent Rules Proposed for Adoption During 2016.

This public hearing is an opportunity for interested persons to present oral or written argument, data, and views on the new and amended rules of the Board which are being proposed for Title 785 of the Oklahoma Administrative Code specified below.

Other than this public hearing, no action will be taken by the Board on the proposed rules at the January 19, 2016 meeting. The comment period for these proposed amendments will expire at the close of the public hearing on January 19, 2016. The proposed amended rules are expected to be scheduled for consideration and possible adoption or any other action by the Board at its February 16, 2016 meeting.

Chairman Lambert stated this item is for a public hearing for new and amended permanent rules of the Board's rules and regulations. There are three chapters, Chapters 45 and 46 regarding water quality rules and implementation, and Chapter 50 regarding the Financial Assistance Division. She stated the public hearing will not result in any recommendations or approval from the Board, pending the comments today, the recommendation and approval will occur at the February Board Meeting. There is no time limit for comments regarding the rules; however, Chairman Lambert asked an indication of those persons wishing to address the Board.

Chairman Lambert asked Mr. Smithee to present the proposals regarding Chapter 45.

1.a. Summary of Proposed Amendments to Chapter 45 – Oklahoma's Water Quality Standards.

Subchapter 1. General Provisions
785:45-1-2. Definitions [AMENDED]
Subchapter 3. Antidegradation Requirements
785:45-3-2. Applications of antidegradation policy [AMENDED]
Subchapter 5. Surface Water Quality Standards
Part 3. Beneficial Uses and Criteria to Protect Uses
785.45-5-10. Public and private water supplies [AMENDED]
785.45-5-12. Fish and wildlife propagation [AMENDED]
Part 5. Special Provisions
785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [AMENDED]
Appendix A. Designated Beneficial Uses of Surface Waters [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [NEW]
Appendix E. Requirements For Development of Site-Specific Criteria For Certain Parameters [REVOKED]

Appendix E. Requirements For Development of Site-Specific Criteria For Certain Parameters [NEW]
Appendix G. Numerical Criteria To Protect Beneficial Uses. [REVOKED]
Appendix G. Numerical Criteria To Protect Beneficial Uses. [NEW]

Mr. Derek Smithee, Chief, Water Quality Programs Division, addressed the members and began his presentation with comments regarding the budget and staff seeking partnerships at all levels to maximize resources. Regarding the rules for consideration, Mr. Smithee explained that the Board is required by the federal government to review and revise the state's Water Quality Standards under what is known as the Triennial Revision, done with a concerted effort to reach out to the public to solicit input. He said there are persons present who will make comments today. He discussed the four basic categories of changes in Chapter 45 before the Board today: sensitive water supply with reuse, updates to aquatic life criteria, Appendix A revisions and Appendix B revisions. All revisions are in the prepared packet, as well as the underline-strikeout version of the rules, rule impact statement, and public comments received. He said there were several interagency meetings over the past year prior to circulation of the final proposals with the Department of Environment Quality, Oklahoma Conservation Commission, Environmental Protection Agency, and others, as well as several informal meetings held to review in detail the current rules, future direction of the rules, and specifically the rule changes proposed today. The meetings were held August 26, October 1, and October 27, 2016.

Mr. Smithee reviewed the proposals beginning with Sensitive Water Supply with Reuse. He explained the agency first promulgated rules regarding antidegradation to protect small water supply reservoirs nearly 30 years ago. He said the world is different now, and with concerns of drought, changes in technology and demographics, staff looked the water quality rules to allow for discharge of wastewater upstream of a municipal reservoir and the wastewater reuse for a water supply for beneficial uses, thereby allowing more water in drought-stricken reservoirs. Traditionally, there has been no new point source discharges into water supply reservoirs, but the new philosophy will open the door, building a category "SWSR" or Sensitive Water Supply with Reuse to allow for the potential of a municipal wastewater discharge to a water supply reservoir. The category does not name a reservoir as that will require separate rulemaking; establishing the category creates the "garage" in rulemaking which following a study – in conjunction with the OWRB and DEQ-- on site specific circumstances on the 88 reservoirs to ensure ecological integrity, public health, water supply status, and the reservoir protection is maintained. He said that today, through a workgroup of state agency representatives and consultants of national and international acclaim, staff is presenting rules in the packet on pages 4118 and 4119 stating the philosophy of the proposed rules and details of the study. He said that existing Water Quality Standards will apply although this proposal does not specifically assign this designation to any specific water body, but creates the philosophy and the category for separate rulemaking for an individual lake for an SWSR reassignment; if a municipality wanted to take advantage of the opportunity, it will come to the Board to get their individual reservoir reclassified for SWSR.

Mr. Strong asked if the two comments received by the staff on the proposed rules were related to this amendment, and Mr. Smithee said the City of Midwest City letter will be presented by Mr. Bill Janacek who is present today, and the letter from EPA does not specifically address this issue but about maintaining ecological integrity and protecting human health, which staff will assure occurs along with beneficial uses which is a core function of the WQS. Ms. Lambert asked the role of the OWRB and the role of the DEQ. Mr. Smithee responded if this is approved, and individual municipality wants to reclassify its reservoir as SWSR, it would petition the Board and staff would conduct an analysis which would be presented to the Board for public comment. If reclassified as SWSR, then a study would be conducted by the OWRB and the DEQ in partnership to look at all components and if that passes, DEQ will issue a discharge permit. Mr. Strong stated this [rule] would be the first step in a very lengthy process.

Mr. Smithee explained the proposed amendment for aquatic life criteria. He said this category needed updating to incorporate new science to the 30-year old regulations. The EPA and WQS staff worked together (Appendix A; pg 4197) to proposed changes by staff for 13 criteria; two will be removed entirely and of the remaining 11, staff recommends a more stringent criteria for 9, and less stringent for two criteria. He said the criteria was evaluated to make it Oklahoma-specific based upon the aquatic community in Oklahoma and regarded Arsenic 3, Chromium 3, Chromium 6, Nickel, Silver Zinc, Cadmium, Endrin, Pentachlorophenol, Dieldrin and Lindane. The criteria has been reviewed by EPA and reviewed during the formal comment period. Staff has worked with the DEQ on what permits would be affected -- about 10%-20% -- some have been notified as to the known impact, and that is incorporated in the Rule Impact Statement.

Mr. Sevenoaks asked if systems currently meeting regulations would have to change their process to meet the new standards. Mr. Smithee said yes, that has been unchanged for the last 30 years. He explained that science may find that some standards are more toxic or less toxic and criterion is developed every five years, but the plant is given time or a "compliance period," perhaps up to ten-fifteen years; this is not a consent order which is issued for a violation, but a compliance schedule. Mr. Strong commented that the proposed changes here have been checked with DEQ about what would be impacted and every discharger has had the opportunity to review and comment—no comments were received there would be a negative impact. The justification documents are available for review.

Mr. Smithee presented the third major category for amendments regarded the Appendix B (Tables 1 and 2) update which include those areas of the state with ecological or recreational integrity that essentially give permit writers a "heads up" there is something unique in these area that need special attention, i.e., endangered species, state park, national wildlife refuge, etc. The proposed updates include new endangered species listed by the US Fish and Wildlife Service and state parks that are out of state ownership. Staff has worked with the USFWS, Oklahoma Tourism and Recreation Department, and Oklahoma Department of Wildlife Conservation for accuracy.

Lastly, Mr. Smithee reviewed the proposed amendments to Appendix A which include named water bodies in the state of Oklahoma (rivers, streams, lakes) and assigned beneficial uses and antidegradation restrictions. He noted the Arkansas River below Keystone Reservoir has traditionally been classified as a secondary water body contact, and the Indian Nations Council of Government requested a re-classification as primary body contact recreation from Keystone Dam downstream, which will allow for swimming to occur without increased gastrointestinal disease. Mr. Strong explained the key to the primary versus secondary body contact designation is that a person could submerge the body in the particular water body. Staff is also proposing Hefner Lake be specifically included and also a new segment for Great Salt Plains; and typos corrected on Saline and Little Saline Creek which were reclassified several years ago but not published at the Secretary of State' s Office.

Mr. Smithee concluded his presentation stating staff is proud of the process and ready to address any questions about the rules. Chairman Lambert clarified these amendments regard Chapter 45 and Chapter 46 which regard implementation of the WQS will be taken separately.

b. Questions and Discussion by Board Members. There were no other questions by the members regarding the proposed amendments to Chapter 45, Water Quality Standards.

c. Public Comment. Chairman Lambert invited members of the public to address the Board and provide comments regarding the rule amendments to Chapter 45, Water Quality Standards.

1. Randy Miller of Tulsa appeared on behalf of a landowner along Saline Creek near the HWY 82 Bridge. Specifically, he spoke to the corrected amendments, or he described as re-designation, to Saline Creek and Little Saline Creek which flow into Lake Hudson upstream of the lake pump back. He asked the Board not to designate the creek High Quality Water at this point as there are problems upstream with poultry operations and considerable cattle feeding areas along the

creek which he characterized as not being corporate operations. He said Little Saline Creek was listed as a 303(d) designation in 2008 and Saline Creek in 2010 for bacterial contamination, and thought it was a short time frame for the issue to come up again in two years. He said the history of these creeks and others along the institutional or corporate poultry feeding operations. Mr. Hitch asked about his comments regarding corporate farming, and Mr. Miller said the poultry operations are large enough to take on a corporate or institutional size-they are affiliated with an integrator. He said he was not referring to a legal status, but a colloquial reference, and he contended the chickens are not owned by the operator but the integrator. He said the streams received the designations because of bacterial contamination which can settle in sediment and that conditions still exists with the raising and lowering of the lake level (which he described), therefore, he asked for closer scrutiny and testing of the streams. Mr. Strong asked and Mr. Miller responded he is interested in the continued scrutiny of the creeks at their current qualification and are not ready to be classified as higher quality. Mr. Strong explained the designation was approved in 2010, and proposal regarded correcting a staff error in 2012 that inadvertently removed the designations and that that designation be restored. Mr. Miller argued the streams didn't receive the designation in 2010, it was listed on the 303(d) list and does not bear the designation now, is not enforceable, and that Saline Creek and Little Saline Creek should not be singled out; he wanted to update the Board's about the present condition of the streams.

2. Kystina Phillips addressed the members and stated she also represented a landowner along Saline Creek and reminded the Board of the administrative cost in 2010 to obtain the HQW designation for the creeks; she read the definition of HQW. She said a thorough justification statement was presented to the Board which met the requirements of the Board, this is the correction of a Scribner error in 2012 and doesn't mean the creeks are not HQW, are now listed impaired and should be protected.

3. Michael Graves, a resident of McClain County, served as a chairman of a reuse workgroup that evaluated the SWSR designation. He said staff of the DEQ, OWRB and experts in water quality and water treatment from the region and around the country participated. He spoke to upholding the limits of the WQS established by the Board, and he enumerated the three goals of the group in augmenting water supplies: protect public health, maintain beneficial use of the reservoir, and identify a path to demonstrate compliance—determining existing conditions, how new rules will impact modeling prior to any construction and instituting a monitoring period. He said all the goals were accomplished and the next step is to identify discharge limits, treatment requirements, and pilot areas. He said this action is a way to reach the Water for 2060 goals.

4. William Janacek, Director of Environmental Services of the City of Midwest City, said he provides engineering support to the Central Oklahoma Master Conservancy District, spoke of work at the State Health Department and DEQ Laboratory, and noted written comments were submitted to the Board, and endorsed by the MWC Council, which he read. Mr. Strong noted copies were provided to the OWRB members. His written and verbal comments regarded support of the concept of reuse as a valuable tool in water quality and quantity management preferably only applicable to impoundments that provide public water supplies to a populations of less than 100,000, ensuring the protection of human health or aquatic life, support of evaluation for follow up compliance, and other enumerations of suggested components regarding engineering, drought conditions, and the use of improving technology.

5. Ken Komiske, Utilities Director for the City of Norman, addressed the members regarding Chapter 46 stating the City of Norman strategic plan for water supply was developed in 2001 and reviewed in 2012 and much has changed in regard to the quality of water in its wells and has to look at other sources. As a community, the City is comfortable with the SWSR designation as a viable option as technology has changed significantly in the last ten years.

Chairman Lambert stated the discussion had morphed into Chapter 46, and she asked if there were any other comments regarding Chapter 45. There were no other comments, and she asked Mr. Smithee to proceed.

2. a. Summary of Proposed Amendments to Chapter 46 – Implementation of Oklahoma's Water Quality Standards.

Subchapter 1. General Provisions
785:46-13-1-2. Definitions [AMENDED]
Subchapter 13. Implementation of Antidegradation Policy
785:46-13-1. Applicability and scope [AMENDED]
785:46-13-4. Tier 2 protection; maintenance and protection of High Quality Waters, ~~and~~ Sensitive Water Supplies, and Sensitive Water Supply-Reuse waterbodies [AMENDED]

Mr. Smithee said Chapter 46 is taking the "bones" of water quality protection and providing clarifying language of the development of the standards. This revision necessitated minor changes in Chapter 46 in WQS implementation focusing on the SWSR definitions and philosophical admonitions. The next rulemaking will include additional changes in Chapter 46 as the SWSR evolves and the DEQ develops companion rulemaking.

b. Questions and Discussions by Board Members. There were no questions by Board members.

c. Public Comment. Chairman Lambert asked if there were members of the public that made comments that pertained to Chapter 46, would they want those comments included in the public record regarding Chapter 46 or Chapter 45 or both. Upon the response, all comments will be included in both, although Mr. Miller indicated his comments regarded Chapter 45.

Chairman Lambert asked if there were members of the public that would like to speak solely to Chapter 46 [proposals] that have not already spoken.

1. Roger Frech, member of the Central Oklahoma Master Conservancy District, stated to the members that he served on the study group, and is also concerned about the same issues mentioned by Mr. Janacek, regarding water quality, i.e., and the group studied what is in the lake now, what will be done to treat a waste stream, and are writing an RFP for a year-long study for seasonal variation. He said they want to know what kinds of treatment can affect what kinds of effluent, what do the numbers mean in regard to affecting public health, and what effect will a clean waste stream have on the lake.

2. Amanda Nairn, member of the Central Oklahoma Master Conservancy District, stated to the members that she concurred with both members. She said the rule change would provide the first step to be able to move forward with the processes and address concerns. She thanked the OWRB staff for developing the rule; the District wants to do the right thing and the COMCD goal is to be able to firm its yield to its customers—Midwest City, Del City and Norman—which becomes difficult in times of drought which is why the District is looking at ways to satisfy customers. Ms. Nairn said that reuse has come to the forefront as an option to move forward and she is supportive of the rule change.

There were no other comments by the public regarding proposed changes to Chapter 46.

Mr. Smithee added the public hearing concludes with the Board meeting today and any additional comments received by staff will be forwarded to the Board members. Chairman Lambert and Mr. Strong stated the comment period will conclude at the end of the business day at 5:00 p.m.

Mr. Buchanan asked the process for approving the rules amendments. Mr. Strong stated that typically the Board would approve all proposed changes in one vote, but has the ability to modify the changes and approve the rules individually. Mr. Buchanan pointed to the members for discussion at

the February meeting the rules language on page 191, item J., regarding detrimental effect in regard to the proposed rule amendments for Chapter 45. Mr. Strong clarified this page regards Chapter 50; however, the same language is also included for Chapter 45, page 4217.

3. a. Summary of Proposed Amendments to Chapter 50 – Financial Assistance.

Subchapter 3. Project and Entities Eligible
785:50-3-1. Project eligibility [AMENDED]
Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures
785:50-7-5. Emergency grant priority point system [AMENDED]
785:50-7-7. Disbursement of funds [AMENDED]
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-2. Definitions [AMENDED]
785:50-8-3. Application review and disposition [AMENDED]
785:50-8-4. Applicable law; deadline for applications; eligible project costs [AMENDED]
785:50-8-5. REAP grant priority point system [AMENDED]
785:50-8-6. Disbursement of funds [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-9. Definitions
Part 3. General Program Requirements
785:50-9-21. Eligible project [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-24. Intended use plan [AMENDED]
785:50-9-27. Types of assistance [AMENDED]
785:50-9-30. Planning documents [AMENDED]
785:50-9-33. Application for financial assistance [AMENDED]
785:50-9-35. Loan closing [AMENDED]
785:50-9-45. Compliance with federal authorities [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-60. Requirement of environmental review [AMENDED]

Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that for eleven of the sections the proposals regard spelling and grammatical corrections. For the Emergency and REAP grants program the proposed changes regard rate structures point systems, and the ability to finance evaluation is adjusted to better reflect current interest rates. For REAP grants specifically, amended rules allow applicants additional time to file an application if circumstances are outside the applicant's control, clarify that applications for engineering work without project funding only be allowed if the applicant is under a consent order and clarifying the point system if the applicant has been a previous recipient of a REAP grant. Section 2 of Chapter 50 amendments updates eligibility for Clean Water SRF projects in accordance with the Clean Water Act, and moves sections of the rules to reflect the correct process for loan closings and construction. Section 9 updates language in accordance with EPA guidelines, and changes words to be consistent with the National Environmental Policy Act. Mr. Freeman stated staff did not receive any comments from the public regarding the rule changes.

b. Questions and Discussion by Board Members. There were no questions members.

c. Public Comment. There were no comments by the public.

5. SPECIAL CONSIDERATION

Chairman Lambert stated that Ms. Julie Cunningham, Chief, Planning and Management Division, would provide an overall summary on the four applications for permits which are interrelated, then the Board will address each application individually. Some of the Applicants are represented by Counsel for both the Applicant and the Protestants, and five minutes will be allowed to address the Board including whether used by the Counsel, the Applicant, or a combination thereof.

Ms. Julie Cunningham stated to the members that these four special consideration items are related and she will provide a summary of the background, the protests, the hearing, and then proceed to each item separately. The four stream water applications are on an unnamed tributary of the upper Canadian River in Custer County. The matter arose from the application by Preston and Candy Masquelier to divert water from the pond, which is upstream. Their permit application was protested by three downstream landowners, Dee Max Corbin, JoLana Farris, and Vicki Rydell and all have filed individual applications which have been protested by the Masqueliers, but not by each other. Although the three parties are located downstream from the Masqueliers, if approved, they will have a senior water right because their applications were filed prior to the Masqueliers application. She noted the map provided (which is part of the record). Ms. Cunningham said the hearings on the permit applications were held over a series of several days, and all parties and their expert witnesses and attorneys attended each of the hearings, and Assistant Attorney General Martha Kulmacz presided. The protest to the three stream water applications are the same, challenging the need for the water and that drilling groundwater wells is not a solution for the Applicant's water needs. Protests to the Masquelier's application alleged the use would adversely interfere with the domestic and appropriated uses downstream, unappropriated water is not available, and requesting permit conditions be imposed to prevent downstream interference. The hearing examiner concluded there is unappropriated water for all four applications, calculated on an average annual basis, and all five points of the stream water law will be met if approved with special conditions.

Ms. Cunningham stated that stream water permits are rare, the last being approved in 2010. There is one note that on December 31, 2015, Board staff mailed the proposed order to the parties and on January 15, 2016, staff learned the order had been provided to a law firm which previously represented Dee Max Corbin in these matters, and immediately provided the order to the current law firm representing Mr. Corbin. Upon receipt of the order and exceptions, the Corbin's representative elected to proceed as scheduled today. Chairman Lambert instructed the Applicants and the Protestants that there is to be no new testimony or evidence at this meeting that was not in the oral arguments at the hearing; however, any evidence in the hearing examiner's order is allowable.

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Permit to Use Stream Water No. 2014-004 filed January 29, 2014, Dee Max Corbin, Custer County:

1. Summary – Ms. Cunningham stated this application for a regular stream water permit is to divert 145 acre-feet of stream water from one point of diversion on an unnamed tributary of the upper Canadian River at a maximum rate of 400 gallons per minute for the purpose of irrigating 67 acres of land in Custer County. The record shows the permit application does meet the five points of law: unappropriated water is available in the amount applied for and in this case staff calculated the amount by USGS model using upstream use and average rainfall and priority uses above and below and determined there is 539 acre-feet available on an average annual basis at this diversion point; the

Applicant does have a present and future need; the Applicant intends to put the water to beneficial use; the proposed use does not interfere with domestic or existing appropriative uses, and use of the water is inside the stream system.

Ms. Cunningham stated the Protestant alleges that the Applicant has no present or future need and no intention of irrigating, has sufficient groundwater available, and drilling additional wells could cause pollution, and the purpose of the application is to cause insufficient unappropriated water to satisfy the Protestant's upstream water needs. The hearing examiner's recommendation is that the Applicant has satisfactorily passed the test of stream water law, and the permit should be issued with conditions, located on page 5024-25 of the Board meeting packet: (1) the use of stream water shall not interfere with domestic or existing appropriative uses, and may be modified, suspended or revoked to abate and prevent interference; and (2) the plan of works implemented must be designed by the US Natural Resources Conservation Service (NRCS) or other plan satisfactory to Board staff. Staff recommended approval of the findings of fact, conclusions of law, and Board order.

2. Discussion and presentation by parties. Chairman Lambert invited representatives of the Applicant to address the Board. Mr. Scott Butcher, representing Dee Max Corbin, said he agreed with the proposed order by the hearing examiner and understands the conditions. He is available to answer questions based on the hearing examiner's recommendation.

Mr. Hitch asked if the Applicant anticipated storage, and Mr. Butcher answered they do anticipate storage but at this time do not have a permit; it is a long-term plan. He said once the Protestant put in the dam upstream, it put them in a "now or never" situation and their plan wasn't complete but they needed to make an application before all the water would be appropriated.

Chairman Lambert invited the Protestant or Protestant's counsel to comment. Ms. Kaylee Maddy responded there are no comments.

Mr. Buchanan stated there are special provisions of the permit and one would require access to the land and he asked if staff would have appropriate access to investigate. Mr. Strong answered he did not anticipate that would be a problem, and the Corbins have not indicated they wouldn't agree. Ms. Cunningham stated that staff will be monitoring the construction which they will have two years to start construction of the works, and then have seven years to use it or it will revert back to public water. Mr. Hitch asked if that concerned the beneficial use, and Ms. Cunningham said to put the water use; and, he asked if that would mean damming the stream, and Mr. Strong responded, not necessarily.

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 Lambert asked if there were any further questions or comments by Board members, and there were not. She said she would entertain a motion.

Mr. Hitch moved to approve regular stream water application 2014-004, and Mr. Drummond seconded. There was no further discussion and Chairman Lambert called for the vote.

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

B. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Permit to Use Stream Water No. 2014-005 filed January 29, 2014, JoLana Farris, Custer County:

1. Summary – Ms. Cunningham said this application is for a regular stream water permit in the name of JoLana Farris in Custer County. The Applicant has requested the permit to divert 68.8 acre-

feet of surface water per year from one point of diversion on an unnamed tributary to the Canadian River at a maximum rate of 200 gpm for the purpose of irrigating 55 acres. The record showed the applicant has met the five points of stream water law; staff determined there is 358 acre-feet of water available on an average annual basis at this particular diversion point; no storage has been built to date and there is a plan. The Protestant alleged the Applicant has no present or future need for the water and no intention or capability to irrigate, there is good and sufficient groundwater available and the purpose of the application is to cause insufficient unappropriated steam water to satisfy Protestant's upstream water needs. Ms. Cunningham stated the recommendation by the hearing examiner is that the Applicant has passed the test set out in Oklahoma stream water law, and the regular permit should be issued with conditions located on page 5057 of the Board meeting packet; the same conditions are placed on this permit if approved, that the use stream water shall interfere with domestic or appropriative uses and if there is interference found the permit may be modified suspended or revoked in order to abate and prevent interference; and the plan for works implemented by the applicant must be designed by the NRCS or satisfactory to Board staff. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

2. Discussion and presentation by parties. Chairman Lambert invited comments by the Applicant or Applicant's representative. Ms. Krystina Phillips, representing Mark and JoLana Farris, stated she is requesting the Board approve the permit application. She said the Farrises are standing before the Board because the creek they had used for their domestic needs that once provided sufficient water for nearly a decade is now dry when it wasn't previously until the dam was built across the creek by upstream landowners. They have no water for their cows, and she said there is no water for this permit application, but, they are trying to protect their livelihood. She respectfully requested the OWRB approve their application. There were no questions.

Chairman Lambert invited comment by the Protestant or their representative. Ms. Kaylee Maddy indicated there were no comments.

Mr. Bob Drake asked if there is no water now, if approved will the water be released from the particular dam? Mr. Strong responded it depended upon what the Board's action is on the Masquelier application, but, because there is a paper water right doesn't mean they are entitled to water being released to meet the right; there must be actual interference occurring before a junior appropriator is to stop withholding or withdrawing water to meet a senior appropriator's needs. Mr. Sevenoaks asked if these are senior rights, and Mr. Strong said these three applications are senior as they relate to the Masquelier application. Ms. Cunningham added that the applicants under items A., B., and C., submitted their applications on the same day and all have the same priority; and the Masqueliers application, item D., is junior to all three even though it is located upstream. Mr. Sevenoaks asked if the Board can work it out so that all applicants get water, and Mr. Strong answered that what is in the packet is what is recommended by the hearing examiner that the amounts applied for be granted because there is sufficient water available on an average annual basis to fulfill each application for a permit. Ms. Cunningham said there is no guarantee of water during drought period, and if there is a claim of interference staff will investigate, and junior appropriators will be required to release water if interfering with domestic or senior appropriative rights, which the general conditions of the permit cover. Mr. Singletary and Mr. Strong added this is how the prior appropriation system works.

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 Lambert asked if there were no other comments or questions, and there were none.

Mr. Drake moved to approve application 2014-005, and Mr. Drummond seconded. Chairman Lambert called for the vote.

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

C. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Permit to Use Stream Water No. 2014-010 filed January 29, 2014, Vicki J. Rydell, Custer County:

1. Summary – Ms. Cunningham said this application is for a regular permit to use to use stream water under the name of Vicky Rydell in Custer County. The Applicant has requested a permit to divert 95 acre-feet of stream water from one point of diversion on an unnamed tributary of the upper Canadian River at a maximum rate of 120 gpm for the purpose of irrigating 68 acres of land. The record show that the application has met the five points of stream water law and staff has determined 405 acre-feet of water is available on an average annual basis from this diversion point. The Applicant will put the water to beneficial use and irrigate a crop of nut trees, purchased irrigation equipment in 2011, and have been in contact with the NRCS regarding storage.

Ms. Cunningham stated the Protestant alleged the Applicant has no present or future need for the water, nor the capability of irrigating, and the purpose of the application is to cause insufficient unappropriated water to satisfy the Protestant's upstream water needs. The recommendation by the hearing examiner is that the Applicant has passed the test of the stream water law and the regular permit should be issued with conditions located on page 5094 of the Board meeting packet which are the same as for items A. and B.: (1) the use of stream water shall not interfere with domestic or existing appropriative uses, and may be modified, suspended or revoked to abate and prevent interference; and (2) the plan of works implemented must be designed by the NRCS or other plan satisfactory to Board staff. A third condition added to the permit as required by rule is that within thirty days prior to authorized diversion the applicant shall submit a right of access document. Staff recommended approval of the findings of fact, conclusions of law, and Board order. There were no questions.

2. Discussion and presentation by parties. Chairman Lambert invited comments by the Applicant or their representative. Mr. Daniel Rydell addressed the member stating he is representing Vicki Rydell in favor of approval of the permit. The thanked the Board for working through this special, complicated matter, and he also thanked the hearing examiner for doing a fair job of reviewing the applications and seeking the information to make a good judgment. He said as farmers when the situation occurred they realized they needed to make an application for irrigation as they had purchased irrigation equipment in September 2014. Mr. Rydell mentioned other circumstances regarding provisional temporary permits after the hearing, which Mr. Singletary cautioned were not part of the record and could not be presented. Mr. Rydell stated his irrigation equipment is in place and he is ready to divert as required, asked the Board approve the permit. Mr. Hitch asked if the Rydell's planned for storage, and Mr. Rydell said he couldn't speak to what happened after the process, but he had a 90-day period—not long enough to get a full evaluation by the NRCS—so he made a small storage area which he pumped water to, set up a system, and is now ready. There were no other questions.

Chairman Lambert invited comment by the Protestant or their representative. There was no comment.

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 was no other discussion and Chairman Lambert asked for a motion to approve the application.

Mr. Buchanan moved to approve application 2014-010, and Ms. Feaver seconded.

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

D. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Permit to Use Stream Water No. 2014-007 filed February 19, 2014, Preston W. & Candy Masquelier, Custer County:

1. Summary – Ms. Julie Cunningham stated this application for regular stream water use is in the name of Preston and Candy Masquelier in Custer County. The Applicant has requested a permit divert 148 acre-feet of stream water from two points of diversion on an unnamed tributary of the upper Canadian River at a maximum rate of 400 gpm for the purpose of irrigating 45 acre-feet for irrigation and 103 acre-feet for the drilling and primary completion of oil and gas wells. The record showed the Applicant has met the five points of stream water law, unappropriated water at the point of diversion is calculated at 515 acre-feet. The Protestants alleged the Applicant's use of the water would adversely interfere with the downstream domestic and appropriative use and natural flow downstream, unappropriated water is not available, and the Applicant's construction of the upstream dam prevented stream flow to their property which has impacted future cattle grazing and irrigation plans. The Protestants requested that if the application is granted, the Applicants should be required to meet the requirements of out-of-stream use and that conditions be imposed so there is no interference. Ms Cunningham said there is no out-of-stream use proposed in this application. The hearing examiner determined the Applicant has passed the test of the stream water law and the regular permit should be issued with conditions. General conditions are in place for all permits to protect downstream domestic and existing appropriative uses and set deadlines for the construction of works, utilization of water and annual reporting. The original special conditions are found of page 5126 of the Board's meeting packet, including that stream water use shall not interfere with domestic or existing appropriate uses, and shall be modified, suspended or revoked to abate and prevent interference.

Additionally, Ms. Cunningham noted that paragraph b. is unusual: "a continuous minimum flow of stream water past the dam by means of a method certified by a professional engineer and documented and approved by Board staff prior to any diversion of water pursuant to this permit, which method provides a minimum flow rate of 12.2 gpm," and was proposed by the Applicant's expert witness taking into consideration downstream domestic needs and evaporation. An exception was submitted by the Applicant requesting verification that release would only be required if there is sufficient water in the pond, and if there is no water available they would not have to supplement with groundwater or other source in order to make the minimum release. Staff has drafted additional language for this condition which states, "The required minimum flow shall be continuously provided unless the Applicants demonstrate to the satisfaction of the Board staff that the amount of water stored in the pond is below the Applicants' two-year supply of domestic use recognized in 82 O.S. 1052(A)."

Mr. Hitch asked if that depended upon the inflow or is that the two-year storage. Ms. Cunningham answered the Applicant will have to determine to the satisfaction of the Board what the storage capacity is --two-year supply-- and at a minimum release that storage. They also have to protect appropriative interference downstream, and staff will respond to interference complaints. Mr. Strong added that is in the hearing examiner's proposed condition a., and in addition, a continuous flow of 12.2 gpm past the dam. Staff has recommended adding this language unless the Applicant can prove to the satisfaction of Board staff the level of the pond has dropped below what is necessary for their two-year's supply for domestic use needs—which by regulation they are allowed to store.

Mr. Allen stated that condition a. is mutually exclusive from condition b., and asked if it is correct the Applicant can satisfy condition b., and potentially violate condition a? Ms. Cunningham stated that is correct; since there are senior appropriated rights downstream now, it is not all simply domestic on all four of these permits downstream. Ms. Cunningham continued reading conditions c., maintain an operative valve on the siphon; d., within 30 days of the approved order allow staff right of access; and e., the permit shall expire upon termination of the lease or renewal unless the permit transfers within 30 days.

Mr. Hitch asked since part of the application is for the sale of water, can they sell water to take the level below the two-year domestic supply. Mr. Singletary said they cannot sell water below the water for domestic use for a purpose that is nondomestic. The members asked who monitors that, and Mr. Strong said staff would have to monitor based on lake levels, which staff has done several times. Mr. Sevenoaks expressed concern about the staff becoming a referee, but Ms. Cunningham stated that is what occurs with stream water law, staff investigates interference complaints especially during times of drought.

Ms. Cunningham stated staff recommended approval of the proposed finds of fact, conclusions of law, and Board order with the proposed changes.

Mr. Drummond asked if there is interference of domestic use already, why isn't there a release of water. Mr. Singletary stated that had not been considered by the hearing examiner, but there were issues raised about whether the proposal would be able to satisfy the appropriative uses downstream which at that point staff would follow condition a. and if someone were trying to put it to a use they had a permit for, staff would investigate if interference had occurred and start the administrative process. Or, the permit holder has an opportunity to enforce their water rights in district court directly regardless of the action by the agency. Mr. Strong said the genesis of the condition proposed to be placed on the permit is to make it a permanent requirement. Ms. Cunningham stated we are protecting domestic use since there is no appropriated uses downstream, and if interference occurs—someone attempting to put water to use downstream and is not able to--staff will enforce condition a. Ms. Lambert asked if condition a. takes precedence over condition b. Mr. Strong answered both conditions have to be enforced independently, and Mr. Singletary said that condition b. would always have to be satisfied; condition a. is triggered when someone puts to use the appropriative use. Mr. Drake asked if the three applications were filed the same day do they have the same senior priority over the fourth applicant, and staff answered, yes. Mr. Drake was also concerned about staff being a referee, but Mr. Strong that is staff's job.

Mr. Fite said he was concerned about a dam built across a stream without authorization. Mr. Strong responded the Board dealt with that in an action when the Board approved the dam permit---after the fact and making them retroactively install the siphon that is required to pass water. The Board has considered that matter and approved it. Mr. Drake said the siphon must not be working, and Mr. Strong said this is the first opportunity for the Board to make a requirement that a certain amount of water be continuously released. Mr. Buchanan asked if that had been requested, and Mr. Strong and Ms. Cunningham stated the 12.2 gpm had been requested and that is what is in the hearing record.

2. D<u>iscussion and presentation by parties.</u> Chairman Lambert invited the Applicant or their representative to make comments. Mr. Mike Wofford and Ms. Kaylee Davis-Maddy were present representing the Masqueliers. Mr. Wofford stated speculation about the condition of the stream today is new evidence. He said the hearing examiner has said the water has to be released, and they fully support that, in addition to the new conditions that staff is requiring---which amounts to a simple impossibility if the water isn't there it can't be released, and if the water is there they will. He said staff has found water is available, they (Masqueliers) acknowledged they are a junior appropriator and are not allowed to interfere with the senior appropriators, and they support the order with the additional staff recommendation. There were no questions.

Chairman Lambert invited comments by the Protestants or their representative, in the order in which the applications were filed.

Mr. Scott Butcher, representing the Corbins, stated they are opposed in total to granting the permit, and also opposed to the modification by staff proposed. He explained this spring fed stream has never been dry and when it became dry the Corbins complained about the dam. There were told they (Masqueliers) did not have approval, and the Corbins could complain about the dam at a hearing on its structural integrity to have it retroactively approved with the siphon tube. They were advised they could not complain about damming up the water because they did not have a permit right. Now they all have gone through that process and the matter is whether the Masqueliers' permit will interfere with the downstream uses. He said evidence at the hearing was that there has always been flow in the stream although variable, and there had never been measurements except by the USGS. Mr. Butcher contended there is 190 acre-feet of water in the dam—30 acre-feet more than they could ever be permitted to use and that the law does not allow them to impound. He stated the condition that they release 12.2 gpm was to address downstream domestic use and to prevent that interference was necessarily going to occur, but the notion the stream would ever be dry is impossible based on evidence at the hearing. Mr. Buchanan asked if Mr. Butcher's clients objected to the new suggested language, and Mr. Butcher clarified the Corbins objected to the permit as a whole—because they don't like the dam--and specifically, to the new proposed language because the only way the stream will be dry is to drill a groundwater well in the stream. There were no other questions.

Ms. Phillips stated to the members that the Farrises oppose the application on a legal basis and an equitable basis. They disagree with the staff that the water will be put to a beneficial use because there is a duty to show where they are going to use the water: what crop they will irrigate, what amount of water is required, and what conveyance and irrigation system will be used during what time periods of the year, and that hasn't been done. Nor is there evidence in the record there will be a beneficial oil and gas use: no business plan, no contract with a specific company for a specific amount of water for a specific period of time, etc, and so a regular permit is inappropriate. Ms. Phillips stated the Board acknowledges there is to be no interference downstream for appropriative or domestic uses and she contended the 12 gpm is insufficient and the Board cannot issue the permit because it knows it will interfere. On the equitable basis, she stated the Farrises have used the creek for a decade and have always had sufficient supply for cattle and now that is gone; what is the remedy? It is the Board, but the Board is considering issuing a permit that condones interference, which fails the legal requirement, and is fundamentally unjust. Ms. Phillips stated the Farrises respectfully request the Board deny the permit or table and investigate what amount should be released to provide for all the uses.

Mr. Allen stated the requirement in condition b. is a minimum requirement which is a floor, not a ceiling, and the order contains condition a. that states interference cannot occur, so he struggled with the objection of the requirement. Ms. Phillips responded the order first states a permit that interferes cannot be issued, and to make sure there won't be interference, a minimum flow requirement of 12 gpm is set, but that still interferes which is known with certainty. She said at the very least additional evidence is needed to determine the level everyone can live with and still meet the law. Mr. Drake stated that 12 gpm is about 700 gallons which is not much for a creek and he asked about her statement the 12 gpm had been agreed to. Mr. Strong responded the more accurate depiction is the protestant's expert witness stated that 12.2 gpm released from the dam would be sufficient to meet the downstream users domestic use needs. Ms. Phillips said that is correct and based on what was currently available in the record, but there is information since then, that cannot be considered, that does not support that. Mr. Hitch asked where the number came from and Ms. Phillips answered the witness was a joint witness using the best information at the time but now there is more the Board should consider. There were no more questions for Ms. Phillips.

Mr. Daniel Rydell addressed the issue of the 12 gpm, saying were it piped to everyone's stock tank through a pipe rather than flows down the creek, it might be different; what starts at one end

doesn't always get to the other end, and he sympathized with the Farrises. He said he was not standing in disapproval of the entire application, but there are several issues that needed to be considered: a pipe and a siphon are not the same thing and the low water valve which is in the requirements has not been installed; there had been discussion about groundwater and stream water interaction, that a downstream user has groundwater wells (Dobbins) and that groundwater use can lower the streambed. He said there are things about a groundwater well he can't speak of that are impacting but, hypothetically, if there was a stream and a dam and water was to be supplied, groundwater wells by the stream would have an impact. He said this is a complicated issue of a dam, whether there is water in the stream or in the dam that has to be delivered, and he was concerned that dams can be built, water can be diverted, and the process can become convoluted. There were no other questions.

Mr. Mike Wofford addressed the Board and stated the Masqueliers are asking the Board to approve the order as staff has recommended complying with the statement of all three of the Protestants' expert witness. He said this is a permit for future use and they are not asking that state law be changed, but Ms. Phillips is asking that higher standards be put on the Masqueliers i.e., plans etc., that the senior appropriators downstream don't have. He said their own expert has stated the conditions comply with law and the Masqueliers are willing to meet those requirements, including the requirement they operate in such a way as to not interfere with downstream uses. When water is put to beneficial use, that is the basis and measure of the right to use water in Oklahoma and nothing in the order changes that. The Masqueliers are asking to be treated fairly; they obtained a permit for the dam and are asking for a junior water right that has all the protections in it their expert testified to at the hearing. He said if the permit is issued, the Masqueliers will comply, but do not believe it appropriate to come with new evidence and new conditions that do not apply to anyone in the state. The Masqueliers are asking for the water right and to comply with the law in the way that they will use it.

Mr. Hitch asked if the Masqueliers complied with state law when they built the dam, and Mr. Wofford replied that not all impoundments of water in the state require a permit from the OWRB. He said when the Masqueliers became aware the type of dam they were building did meet the requirements of the OWRB they applied for a permit and received it.

Mr. Drummond stated for clarification that nothing in the order is allowed to interfere with domestic or appropriate use downstream, without the order there would be no requirement for the 12.2 gpm flow, and if the applicant does not put the water to use for seven years it will revert back to the state. Ms. Cunningham stated that is correct. Mr. Strong added that if they do not complete the work to divert the water for two years, or do not begin construction of the works necessary to put it to use within two years, it can revert back as well. This is general legal requirements for any surface water appropriator. Ms. Feaver asked if the water is already being diverted currently, and Mr. Singletary said the water is being impounded.

Mr. Allen asked, procedurally, if the Board does not approve the permit, what jurisdiction does the OWRB have with respect to regulating the impoundment. Mr. Strong responded the OWRB would make sure the impoundment is not interfering with senior appropriator rights or their domestic use rights downstream, and they would maintain their general ability to store up to two years of their own domestic use rights within the reservoir, and those come without a priority. Mr. Allen asked if it is fair to say the order is more restrictive than the general rights under the law, and Ms. Cunningham said more than typical domestic use, yes. Mr. Strong said that additionally it would grant them the ability to use water on top of their domestic rights, if approved, for 148 more acre-feet of water. He said the conditions that are suggested to be placed on it might require the applicant to do some things that they would not have to do otherwise having no permit. Ms. Cunningham stated that with stream water this is generally what staff deals with: issue the permit, investigate interference complaints, investigate and determine domestic use i.e.,, how many head of cattle, what is actually needed, and a way to get them water. There were no other questions.

3 <u>Possible Executive Session; and **4**. Return to open meeting and possible vote or</u>

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.

Mr. Drummond stated that he did not see, under current state law and our rules, interfering with the existing permits approved today, there are other conditions that require the flow of water, and in accordance with the Board's rules and state law, and he moved approval of permit #2014-007. Mr. Buchanan seconded.

For clarification, Mr. Strong asked, is the motion as proposed by the hearing examiner with the addition of staff language on 49.b. (of the order), and Mr. Drummond stated that is correct, and Mr. Buchanan agreed on the second.

Chairman Lambert asked for other comments. Mr. Sevenoaks expressed his concern about the staff having to perform as full-time referees, and there is no metering for the 148 acre-feet of water from the Masqueliers land; it started with the unapproved dam and is now worse. Mr. Drake stated he agreed; he knows the law and respects staff, he won't be against it, but didn't believe it not a good deal for staff to be a referee. Chairman Lambert asked Mr. Strong to speak to the referee issue. Mr. Strong answered that is staff's job; we operate like all other western states in a prior appropriation system and often appropriate water that isn't there--- and when it is not there "the date stamp on the application" kicks in and is managed by cutting off junior appropriators until the senior appropriators get their allotted water. It is not pleasant, but is what has to be done.

Chairman Lambert asked if there were any other comments prior to voting on the proposal to approve application for the Masqueliers as revised in section 49.b. There were no other questions or comments, and Chairman Lambert called for the vote.

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

Ms. Feaver stated her affirmative vote is because she had reviewed the five points of law and that the Board is required to abide by them. Mr. Drake stated his vote is reluctant.

E. 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 Lambert

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

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing Chickasaw Nation and Choctaw Nation v. Fallin, et al., 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.

Mr. Robert Singletary, OWRB General Counsel, stated to the members that pursuant to Section 307(b)(4) of the Open Meetings Act, it is his advice as General Counsel that the disclosure and discussions proposed under this agenda items relating to the pending litigation referenced on the agenda, would seriously impair the ability of the Board to conduct the pending 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 Lambert stated she would accept a motion for the Board to move into Executive Session.

Mr. Drummond made a motion the Board hold Executive Session, and Mr. Allen seconded.

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

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

Executive Secretary Mary Schooley kept written minutes of the session.

C. Executive Session, if authorized.

The Board entered Executive Session at 12:30 p.m.

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

At 1:08 p.m., Chairman Lambert stated she would entertain a motion to return to Regular Session.

Mr. Drake moved to return to Regular Session, and Ms. Feaver seconded.

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

The Board did not vote or take action on any matter discussed 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.

There were no New Business items for the Board's consideration. However, the members remained for a group photo.

8. ADJOURNMENT

There being no further business, Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 1:11 p.m. on January 19, 2016.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Linda P. Lambert, Chairman

_____Absent_____
F. Ford Drummond, Vice Chairman

_____/s/_____
Edward H. Fite

_____Absent_____
Marilyn Feaver

_____Absent_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Tom Buchanan

_____/s/_____
Stephen B. Allen

ATTEST:

_____Absent_____
Jason W. Hitch, Secretary (SEAL)