

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
August 12, 2016

1. CALL TO ORDER

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Linda Lambert at 10:30 a.m., on August 12, 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 August 11, 2016, at 9:30 a.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, and provided on the agency's website.

Chairman Lambert welcomed everyone to the regular meeting of the Oklahoma Water Resources Board, 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
Robert Singletary, General Counsel
Cleve Pierce, 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

Kaylee DiMaddy, Oklahoma City, OK

Randy Worden, Central Oklahoma Master Conservancy District, Norman, OK

S. Work, Oklahoma City, OK

Jason Childress, Oklahoma Gas & Electric, Oklahoma City, OK

David McCulloch, Norman, OK

Cynthia Santos, eCapitol

Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK

Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK

Mike Mathis, Continental Resources, Oklahoma City, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the July 19, 2016, Regular Meeting.

Chairman Lambert asked if there were any corrections to the minutes of the July 19, 2016, meeting. There were no changes, and Mr. Buchanan moved to approve the minutes. Mr. Fite seconded.

Chairman Lambert called for the vote.

AYE: Drummond, Fite, Sevenoaks, Buchanan, Allen, Lambert

NAY: None

ABSTAIN: Hitch, Drake, Feaver

ABSENT: None

C. Executive Director's Report

Mr. J.D. Strong, OWRB Executive Director, began his report stating there is little legislative activity now at the congressional level; however, that will change after Labor Day Holiday and Ms. Brittnee Preston will have a report at the September Board meeting. Likewise, there is not much activity at the state level either, and staff will continue to monitor interim study requests and meetings which may come up over the course of the next couple of months. Mr. Strong said that at this time, there is one Senate interim study which was approved that regarded pit water/mine water in the Arbuckle Simpson Aquifer requested by Senator Simpson; staff has not been approached about the specific subject matter as yet. Other interim studies are not related to water.

Since the last Board meeting, Mr. Strong attended the 50th Anniversary Celebration at the EPA Robert S. Kerr Environmental Research Center held in Ada on August 3, also attended by Governor Fallin and Congressman Cole. Other activities have been focused on mediation matters, the bulk of what we are here for today, he said. Looking ahead, the Red River Valley Association will conduct its Oklahoma Conference at Sulphur on August 18; the Oklahoma Rural Water Association will have its Fall Workshop at Sequoyah Lodge August 31; and the Oklahoma Municipal League Conference is September 13-15. The next OWRB Board meeting will be held September 20, 2016, in the OWRB Board Room (OKC), and the on line registration will soon be live for the 37th Annual Oklahoma Governor's Water Conference, October 11-12, 2016, at the Embassy Suites in Norman. The conference theme, "Weathering Oklahoma's Extremes" will focus on going from one of the more significant droughts on record in the state to the wettest year on record in 2015.

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

D. Monthly Budget Report.

Mr. Cleve Pierce addressed the members and stated that this is the first month of the fiscal year and the majority of expenditures at this time involved personnel expenses. There is 96% of the total

funding available, and 92% of the fiscal year remaining. He explained to the members that for their reference going through the year, the appropriation number on the first line of the report is \$3.9 million, but also \$400,000.00 on line 5 represents a re-appropriation of revolving funds as appropriated money, and \$1.2 million of REAP Funds are given in special cash. Also of note is a “0” for flexible benefits which is an error and will be corrected and is about \$6,000.00 each year.

Mr. Buchanan asked about federal funds of nearly \$1.9 million and what is the increase over the years. Mr. Strong responded the federal funds have remained steady overall; there have not been the cuts as in state dollars, and some funds go up and some down. He said as an overall percentage of the total budget, it has grown because the amount of state dollars has been shrinking. Previously, the funding sources have been 1/3 federal, 1/3 state, 1/3 fees, and now the breakdown is above 40% for federal funding and 20% state funding so there has been a shift in the relative nature of the agency’s budget. Mr. Buchanan asked if the funds are “earmarked” where they can be spent, and Mr. Strong answered yes, and the bulk is the State Revolving Fund (SRF) grants in the Financial Assistance Program. Mr. Sevenoaks asked about pass-through dollars to other agencies, and Mr. Strong said the OWRB contracts with other agencies and other entities such as the Rural Water Association, but that is not a pass through.

There were no other questions by members.

2. FINANCIAL ASSISTANCE DIVISION

There were no Financial Assistance Division 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 withdrawn or deferred to the Special Consideration Agenda.

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

Chairman Lambert stated she would entertain a motion to approve the Summary Disposition Agenda if there were no questions.

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

AYE: Drummond, Hitch, Drake, Fite, Sevenoaks, Buchanan, Allen, Feaver, 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:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
COEDD				
a.	FAP-16-0013-R	Rural Water District #7	Pawnee	\$85,000.00

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

1. Intergovernmental Agreement between OWRB and the Office of the Secretary of Energy & Environment for reimbursement of monies for the water monitoring and pollution control programs.
2. Amendment to Agreement between OWRB and the Texas Commission on Environmental Quality to extend agreement for the development of a common online platform and data transfer methodology and software in association with the Western States Water Council's Water use Data Exchange Project.
3. Professional Services Agreement between OWRB and Carollo Engineers, Inc., to complete Phase I of the development of the Grand Lake Comprehensive Water Plan, in partnership with the U.S. Army Corps of Engineers, to protect and enhance the beneficial uses of surface and groundwater resources in the Grand River Basin.
4. Non-Assistance Cooperative Agreement between OWRB and U.S. Department of Agriculture, Agricultural Research Service to monitor and evaluate water resources in the upper Washita River Basin and the Fort Cobb Reservoir.
5. Memorandum Agreement between OWRB, U.S. Geological Survey and the City of Ada for water monitoring and data collection.
6. Amendment of Joint Funding Agreement between OWRB and the U.S. Geological Survey for the Continuation of the Data Collection and Water Monitoring Program FY17.
7. Amended Joint Funding Agreement between OWRB and the U.S. Geological Survey to extend the time and increase the contributions to continue the *Water Quality, Hydrological Surveys, and Groundwater-Flow Model of the Canadian River Alluvial Aquifer, Western Central Oklahoma*.
8. Amended Contract between OWRB and the Oklahoma Rural Water Association to provide training and education for water system board members and operators.
9. Professional Services Agreement between OWRB and CH2M for engineering services provided to the Produced Water Working Group.

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

1. Kevin Crockett, Harmon County, #2015-595
2. Todd Harvey & Scott Harvey, Caddo County, #2016-505
3. Continental Carbon Co., Kay County, #2016-513
4. Preston R. & Truby A. Simic, Garfield County, #2016-525
5. Fred & Janice Rucker, Bryan County, #2016-529

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

1. City of Bethany, Oklahoma County, #1974-241B
2. Gregory Farms, Major County, #2008-509

- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
 - 1. Town of Okarche, Canadian County, #2015-607
- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
 - 1. Van & Rose Anna Messner, Harper County, #1976-546
 - 2. Wingard Water Corporation, Pontotoc County, #1986-595
 - 3. Carolyn Hunt Sparks, Johnston County, #2002-590
 - 4. City of Bethany, Canadian County, #2005-536
- I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:
 - 1. City of Bethany, Oklahoma County, #1950-004
- J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
 - 1. Evelyn Smith, LeFlore County, #2015-029
 - 2. Cody Sloan, Sequoyah County, #2016-006
 - 3. Lee Taylor Cameron, Caddo County, #2016-008
- K. Consideration of and Possible Action on Applications to Amend Permits to Use Stream Water:
None
- 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:
None
- N. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
None
- O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
 - 1. Jaron Bailey, Town of Gene Autry, #FPA-689
 - 2. Brett T. Conner, Town of Luther, #FPA-690
 - 3. Stephanie D. Murlin, Woodward County, #FPA-691

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

- A. No items. There were no items of discussion for the Board’s consideration.

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on the “State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma City Water Settlement” (“Settlement Agreement”) related to resolution of litigation in *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), and *OWRB v. United States, et al.*, CIV 12-275 (W.D. Ok.):

- 1. Summary – Mr. J.D. Strong, OWRB Executive Director, began the presentation stating the news of the last 24 hours has called the agreement, “historic, momentous” and it is voluminous and comprehensive. He noted the Board had been briefed on the matter a number of times and had input

over the course of the five years. He said Oklahoma has 39 federally recognized tribes, and no Indian water right settlements to date, which changes today. The Oklahoma Water Resources Board will be the first in a number of required approvals throughout the process followed by Choctaw Council on August 13, the Chickasaw Legislature on August 15, and the City of Oklahoma City Council and Oklahoma City Water Utilities Trust on August 16. The Governor and Attorney General will sign, and because the agreement involves federal issues, the federal government as trustee for the sovereign nations of the Choctaw Nation of Oklahoma and the Chickasaw Nation will approve, as well as other federal entities that require approval. The Agreement will go to Congress and also require signature by the President, with ultimate sign-off by the federal agencies, in particular the Secretary of Interior. He said the Agreement is the product of five years of deliberation and negotiation, noting that the 29 settlements that have come previously—mostly in the western United States--involved 30-40 years to settle and this five year process is record breaking.

Mr. Strong summarized the key provisions of the agreement:

- The Oklahoma Water Resources Board remains the water permitting and administration agency statewide, including southeast Oklahoma, providing clarity and consistency in the administration of water in the State of Oklahoma both now and in the future. Water is connected within a watershed, and it is important there is a singular point of contact ensuring management of the water resources.
- Existing water rights are protected and unharmed and affirmed by this agreement, allowing agriculture producers, industry, municipalities, public water supply, rural water districts and others to continue business as they have before the Agreement came into being.
- Oklahoma City and the surrounding metropolitan area serving Yukon, Mustang, Blanchard, Edmond, Norman and other communities around Oklahoma City will receive water they need for continued growth and prosperity and economy. A permit is still required; the permitting process with public comment and review process will come into play and has not been foreclosed by the Agreement.
- Southeast Oklahoma has its long term water needs and interest preserved under the Agreement, including water that is necessary for its vibrant tourism and recreation industry – important to all parties and imbedded into the Agreement.
- The State's debt to the federal government and other obligations to the federal government for the construction of Sardis Reservoir is resolved once federal approval is obtained.
- Provisions are included should the Oklahoma Legislature ever authorize and approve out-of-state water transfer (currently not allowed under state law). For a final settlement of claims under the Agreement, the matter must be addressed as required by the federal government. A Commission to review any proposals for out-of-state water use will report to the Legislature—the final authority on such transfer--about the proposals, and if there are any funds that become available as a result of such transfer, would be dedicated to water infrastructure understanding the enormous need for water infrastructure across the state. The provisions are modeled after the Board's existing rules for Rural Economic Action Plan Grants enabling the OWRB to administer those funds, score the proposals with preference points given to projects in southeast Oklahoma but funding made available statewide, and proposals will be accepted statewide. The OWRB would ultimately approve the proposals for funding should that ever happen in the future.
- Oklahoma City has up to 118,000 acre-feet of water which has been applied for to the OWRB and will be modified to meet long term water needs. Oklahoma City is able to develop the infrastructure necessary to take advantage of those long term water resources.

- The Nations are waiving broadly and extensively and finally their claims of ownership and authority over water resources in their historic treaty territories—southeast and south central Oklahoma—in exchange for a seat on the Technical Committee which will review and evaluate proposals of future large out-of-basin transfers in the Settlement Area, and the OWRB still makes final decisions about whether to grant those permits. Additionally, the Nations have consideration of long-term needs in the basin, including tourism and recreation flows necessary particularly for basins in southeast Oklahoma prized for tourism and recreation and ecology; and protection of Sardis Lake levels and important flows in the Kiamichi River when Oklahoma City does divert water from that basin. A lake level protection plan developed by the Oklahoma Department of Wildlife Conservation is embedded in the agreement; Oklahoma City must follow it and release schedules in its requests to the U.S. Corps of Engineers to release water from the reservoir, and cannot divert from the Kiamichi unless it ensures that at least 50 cfs of flow passes by their point of diversion. Also important to the Nations, there is a Sardis-Atoka Conservation Fund created to benefit projects in and around Sardis and Atoka lakes regarding fishing, recreation and tourism. The Tribes will have a seat on the Commission to review out-of-state proposals in the future and makes recommendations to the Legislature, with the priority to southeast Oklahoma projects if there are proceeds from out-of-state water users.

Tribal interests were heard and satisfied in the Agreement.

Mr. Strong said many people should be thanked for their involvement: Governor Fallin, Governor Anoatubby, Chief Batton, Attorney General Scott Pruitt, Mayor Cornett, and Oklahoma City Manager Jim Couch. He recognized those people in attendance who sat at the table representing state officials over the course of these five years who certainly deserve praise and credit, including Maria O'Brien, counsel representing Oklahoma; Stephen Greetham, representing the Chickasaw Nation; Glenn Coffee representing Governor Fallin and the State broadly; and Mike Hunter, representing the Attorney General's Office. He said a great deal of respect of each parties' views came from the negotiation which will bode well in the decades ahead when continuing to implement the Agreement and work together on mutual interests.

Mr. Strong recognized OWRB staff including General Counsel Rob Singletary, Planning and Management Division staff who ensured reliable modeling, engineering and science used in the decision making—Anthony Mackey, Kent Wilkins, Julie Cunningham, Mary Nell Brueggen; and Financial Assistance Division staff that provided information on the best and least political evaluation and grant process for water infrastructure projects—Joe Freeman, Jerri Hargis; and there are many others. Mr. Strong especially recognized the support of the Board Members as being instrumental and who were very involved throughout the process providing great input and whose issues and concerns have been incorporated into the Agreement. Mr. Strong stated that staff wholeheartedly recommended approval of the Settlement Agreement.

2. Discussion and questions by the Board. Chairman Lambert asked the Board members if there were any comments or questions for Mr. Strong or other representatives of the parties of the Agreement. There were no questions or comments by the Board members.

3. Possible Executive Session

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

of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board may 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. There was no statement by legal counsel.

(a) Vote on whether to hold Executive Session. 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. There was no vote to hold Executive Session.

(b) Designation of person to keep written minutes of Executive Session, if authorized. There was no designation.

(c) Executive Session, if authorized. The Board did not enter Executive Session.

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

5. Vote on whether to approve the Settlement Agreement as presented or as may be amended, or vote on any other action or decision relating to the Settlement Agreement.

Prior to a motion and vote for approval of the Agreement, Chairman Lambert said the statement is not new but it is true, this is an historic day. This Board has the opportunity to be the first to approve this Settlement Agreement between the State of Oklahoma and the Chickasaw and Choctaw Nations, and the City of Oklahoma City. She said this began in litigation with some wondering if it would happen in our lifetime, and through the process of negotiation, this has been accomplished in five years, which looking through the rear view mirror, seems like a short period of time. A representative at yesterday's press conference said: If you settle an issue through litigation you will know what your rights are, but that is all you will get. If you settle through negotiation, through open and trusting cooperation, collaboration and compromise—which is what has been experienced these last five years—you will know what your rights are, but you will get something much more valuable, the trustworthy, respectful relationship built over that period of time that will stand in a much more sustainable place over a longer period of time than any words written on a page. Chairman Lambert stated that while the words on the page are very clear to see, the work behind the words are not so transparent. She thanked all those who labored in the field faithfully and tirelessly for five years to come to this day: (recognizing those present) J.D. Strong, Rob Singletary, and staff at the OWRB, Senator Glenn Coffee who stayed on after serving as Secretary of State, Steve Greetham representing the Chickasaws, Mike Hunter representing the Attorney General, and Maria O'Brien, and there are many others that not only deserve credit and our thanks and appreciation, but a standing ovation!

Chairman Lambert asked for a motion to approve the Settlement Agreement.

Mr. Bob Drake stated that as a representative of the District that includes the Chickasaw Tribe/Chickasaw Nation he knows how important this is to the area, and to have this approval and this agreement is unbelievably important in those 22 counties, and with thanks to everyone that has put it together, he made the motion to approve this Agreement and to go forward to implement it. Mr. Stephen Allen seconded.

Chairman Lambert called for the vote.

AYE: Drummond, Hitch, Drake, Fite, Sevenoaks, Buchanan, Allen, Feaver, Lambert

NAY: None

ABSTAIN: None

ABSENT: None

Chairman Lambert thanked the Board for its unanimous decision.

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. 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.

7. ADJOURNMENT

There being no further business, Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 11:00 a.m. on August 12, 2016.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Linda P. Lambert, Chairman

_____/s/_____
F. Ford Drummond, Vice Chairman

_____/s/_____
Edward H. Fite

_____Absent_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Tom Buchanan

_____/s/_____
Stephen B. Allen

ATTEST:

_____/s/_____
Jason W. Hitch, Secretary (SEAL)