

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**June 20, 2017**

**1. CALL TO ORDER**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman F. Ford Drummond at 9:36 a.m., on June 20, 2017, at the Oklahoma Water Resources Board office, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on June 16, 2017, at 4:45 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, and provided on the agency's website.

Vice Chairman Drummond welcomed everyone to the regular meeting of the Oklahoma Water Resources Board. He stated that Chairman Lambert is absent today and he will chair the meeting in her stead. He asked for the roll call of members.

A.1. Roll Call

Board Members Present

Ford Drummond, Vice Chairman  
Jason Hitch, Secretary  
Stephen Allen  
Tom Buchanan  
Charles Darby  
Bob Drake  
Robert L. Melton  
Robert Stallings

Board Members Absent

Linda Lambert, Chairman

Staff Members Present

Julie Cunningham, Executive Director  
Robert Singletary, General Counsel  
Cleve Pierce, Chief, Administrative Services Division  
Joe Freeman, Chief, Financial Assistance Division  
Kent Wilkins, Chief, Planning and Management Division  
Bill Cauthron, Chief, Water Quality Programs Division  
Mary Schooley, Executive Secretary

Others Present

Horace E. Lindley, Town of Gore, OK  
Henry A. Meyer, Oklahoma City, OK  
Travis Pickens, Oklahoma City, OK  
Jason Anderson, Edmond, OK  
Robert Shelton, City of Tulsa, OK  
Chris Havenar, City of Tulsa, OK  
Jason Childress, OG&E, Oklahoma City, OK  
Steve Kelly, Association of South Central Oklahoma Governments, Duncan, OK  
Kate Maddy, Doerner Saunders, Daniels Anderson, Oklahoma City, OK  
Charlie Swinton, BancFirst, Oklahoma City, OK  
Carlos Johnson, Oklahoma City, OK  
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK  
Mike Mathis, Continental Resources, Oklahoma City, OK  
Steven Hoffman, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Tom Liu, Bank of America Merrill Lynch, Oklahoma City, OK  
Jeff Everett, OG&E, Oklahoma City, OK  
Aaron Mears, Harper County Rural Water District #1, Oklahoma City, OK  
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK  
Don Kiser, Grand Lake Public Works Authority, Edmond, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the May 16, 2017, Regular Meeting.

Vice Chairman Drummond asked if there were any corrections to the minutes of the May 16, 2017, regular meeting. There were no changes, and Mr. Drake moved to approve the minutes, and Mr. Buchanan seconded.

Vice Chairman Drummond called for the vote.

AYE: Hitch, Stallings, Darby, Buchanan, Melton, Drake

NAY: None

ABSTAIN: Allen, Drummond

ABSENT: Lambert

C. Executive Director's Report

Ms. Julie Cunningham, OWRB Executive Director, welcomed the members and began her report with the drought update referring to the June 16, 2017, stating Water Resources Bulletin that is available on line, and the drought portal housed at the OWRB website which is another source of information. There has been good rainfall and there are no exceptional, extreme, or severe drought conditions in the State but there is a small area of moderate drought. Ms. Cunningham spoke with the Journal Record reporter recently about the high lake levels and drought conditions, reminding that this is the time to be conducting drought planning and monitoring groundwater resources, as those take longer to recover. The National Weather Service Drought Outlook is favorable for the next three months.

Ms. Cunningham reviewed calendar items and the recent staff participation in the Governor's Wellness Walk; Tribal Settlement meetings have been conducted May 23-24 moving forward in implementing the provisions of that agreement, and a pre-hearing meeting for the Oklahoma City permit which will be held on June 28. On May 25, the Division Chiefs and General Counsel sponsored an Employee Appreciation luncheon which included the first interdivisional cross training by the Financial Assistance Division. On June 30, Ms. Cunningham spoke at the 30<sup>th</sup> Anniversary of the

Sovereignty Symposium on the panel moderated by Supreme Court Justice Wyrick comparing how the Water Settlement aids implementation of the Water Plan and Water for 2060 Act.

Ms. Cunningham stated the Board Committee memberships had been distributed including the new members, and Vice Chairman Drummond stated members' comments were welcomed. The Board Education Series recently implemented will begin at today's meeting with the first presentation by the Planning and Management regarding Water Rights Administration. She said that in 2016 legislation allows the Board to skip three meetings per year and in tallying the cost of the meetings and in the view of assessing costs savings of staff and Board time and travel, the July meeting could be skipped if that is the Board's preference. She announced the Governor's Water Conference dates and location have been set for October 31-November 1 at the Embassy Suites Hotel and Conference Center at Norman, Oklahoma. She added interviews for Assistance Chiefs for the Planning and Management and Water Quality Divisions are being conducted. She also announced the State Capitol Centennial Commission is celebrating the Capitol's 100<sup>th</sup> Birthday with a commemorative ceremony on June 26. Items will be placed in a time capsule to be opened in 100 years; the OWRB contributed the Executive Summary of the Oklahoma Comprehensive Water Plan.

Continuing, Ms. Cunningham stated the Legislature adjourned May 26, and the agency realized a 4.4% budget cut. Staff is working on the division and agency budget to be submitted on June 30. Reductions include slowing the IT modernization, renegotiating laboratory contracts, and seeking federal dollars available. Regarding rules, she stated the rules approved this session were signed by the Governor and will be effective in September, and state authorization for permitting produced water was approved (three other bills were discussed but laid over to next year). She referred to the Congressional report provided by Ms. Preston in the meeting materials; staff is watching the President's final budget released on May 23 containing cuts the Interior, Corps of Engineers, and Environmental Protection Agency.

Mr. Drake asked about no meeting in July. Vice Chairman Drummond clarified that the Board now has the flexibility, with people on vacations, etc. in the summer and there are no financial issues that need to be considered in July, so the Board would not meet in July. He added the Governor's Water Conference is in October, and the Board meeting will not be held in conjunction with that conference this year due to the business that will be conducted. Mr. Buchanan asked about the timeline for the Oklahoma City permit and Mr. Rob Singletary responded the pre-hearing conference is scheduled for June 28 and tentatively, the hearing will be conducted the week of August 21. Vice Chairman Drummond said that is a main business item for the October Board meeting.

There were no other questions or comments from members, and Ms. Cunningham concluded her report.

#### D. Financial Update

1. Budget Report. Mr. Cleve Pierce addressed the members and stated the budget report regards financial information for the month ending May 2017. During this reporting period, the agency spent 89% of its appropriated dollars leaving 11%, spent 56% of the revolving fund leaving 44%, and expended 66% of federal dollars, leaving 34%. Overall, the total budget remaining is 36%, with 8% of the fiscal year remaining, exactly where the agency was at the same time last year and staying on track. He said the budget reduction of the general appropriation is about \$242,000.00. The preliminary budget is set to close out on the 16<sup>th</sup> and looking at the budget numbers the agency is a little over budget but with more trimming and additional federal dollars it will be submitted to the Office of Management and Enterprises Services by June 30. He said sometimes revenues come up more than predicted, and generally comes from the cash reserves but over time that is depleted so staff will be cautious.

Vice Chairman Drummond asked the budget cut percentage this year and cumulative over the past years. Mr. Pierce responded this year is 4.4% and 23% cumulatively from the general appropriations. Ms. Cunningham added that does not take into account the \$1.5 million from the Legislature for the Beneficial Use Monitoring Program, otherwise it would be about a 38% cut.

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

## 2. FINANCIAL ASSISTANCE DIVISION

### A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Grand Lake Public Works Authority, Delaware County. Recommended for Approval.

Mr. Joe Freeman stated to the members that this item is a \$1,825,182.60 loan request from the Grand Lake Public Works Authority to construct new lift stations, repair a lift station, add lift stations to the existing SCADA system, lay approximately 1,150 feet of sewer line, and refinancing an existing Board loan with a remaining balance of \$825,000.00. He said the loan will be funded through the Clean Water State Revolving Fund loan program, and Mr. Freeman noted provisions of the loan agreement. He said the Authority has been a very good loan customer of the Board's and currently has six loans with the Board with a combined principal balance of \$8.6 million. The water and sewer connections have increased by approximately 17% over that last ten years, and the debt coverage ratio stands at approximately 1.39-times.

Representing the Grand Lake Public Works Authority was Mr. Steve Garrett, Secretary, and Mr. Jim Anderson, Manager. Mr. Anderson said the Authority is proud of its system through the OWRB financing, and he expressed his appreciation to the OWRB staff for its assistance.

Mr. Hitch noted the growth in the taps and asked the total amount, and Mr. Anderson answered there are 1,700 now. Mr. Hitch also asked if the SCADA system contains any component for cyber security, and Mr. Anderson said he couldn't specifically address that issue, those services are contracted out and he believed it is secure. Vice Chairman Drummond asked the savings on the refinanced loan. Mr. Anderson said the Authority did not want to increase its payment, and the loan that is refinanced had four years remaining and will be reducing payments by 40%. He said this is a two-phase project and the Authority will be back in six months to finance the water side of the same project which will use most of the 40%, reducing the total payment, slightly.

Vice Chairman Drummond asked if there any other questions. There were none, and he said he would entertain a motion. Mr. Hitch moved to approve the CWSRF loan to the Grand Lake Public Works Authority, and Mr. Darby seconded.

AYE: Hitch, Stallings, Allen, Darby, Buchanan, Melton, Drake, Drummond

NAY: None

ABSTAIN: None

ABSENT: Lambert

### B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval.

Mr. Freeman stated to the members that this a \$21,725,000.00 loan request from the Tulsa Metropolitan Utility Authority, that is requesting the loan to replace manual screens at the Northside Interceptor Lift station with mechanical screens, replace screens at the Southside Influent Lift Station, build a new force main between the lift station and headworks at Haikey Creek, replace the Rose Dew Lift Station, and perform area wide sewer rehabilitation and fund engineering costs. Mr. Freeman said the loan will be funded through the Clean Water State Revolving Fund Loan program, and he noted provisions of the loan agreement. Tulsa has been a loan customer of the Board's since 1990 and

currently has 25 loans with a combined principal balance of approximately \$193.6 million; the debt coverage stands at 1.59-times. Staff recommended approval of the loan application.

Representing the TMUA today, Mr. Freeman said, is Mr. Bob Shelton, Senior Special Projects Engineer, and Mr. Chris Havenar, Treasurer Analyst.

Mr. Shelton thanked the members for their continued support and he appreciated the Board's consideration. Chairman Drummond asked if there were questions, and noted that Mr. Shelton is retiring October 1, and he thanked him for his service to Tulsa.

There were no questions, and Mr. Allen moved to approve the Clean Water SRF loan to the Tulsa Metropolitan Utility Authority, and Mr. Buchanan seconded. Chairman Drummond called for the vote.

AYE: Hitch, Stallings, Allen, Darby, Buchanan, Melton, Drake, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Lambert

C. Consideration of and Possible Action on Proposed Resolution Authorizing Certain Individuals To Sign and Act on Behalf of the Board Regarding the Board's Financial Assistance Program, State Revolving Fund Programs, and Issues of Indebtedness and Authorizing Members to Act as Assistant Secretary. Mr. Freeman stated this item is for the resolution that authorizes certain individuals to sign and act on behalf of the Board regarding the Board's financial assistance loan program and the state revolving fund loan program. The resolution also names each Board member, except the Chairman, as assistant secretaries in the absence of the secretary. The resolution allows BancFirst, as its Trustee, to know the Board's composition and to have signatures on file for verification. This resolution adds Board members Mr. Darby, Mr. Melton and Mr. Stallings, as well as adding Julie Cunningham as executive director. Staff recommended approval of the resolution.

Mr. Drake moved to approve the resolution and Mr. Hitch seconded. Chairman Drummond called for the vote.

AYE: Hitch, Stallings, Allen, Darby, Buchanan, Melton, Drake, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Lambert

B. Report and Update on the Status of the Project Related to the Loan Provided to the Gore Public Works Authority, Sequoyah County Approved by the Board on October 12, 2016. Mr. Freeman stated this item is for a status update on the Gore Public Works Authority's Drinking Water SRF loan project. He said the project is for the construction of a raw water pump station and two 700-gpm pumps, laying 8,100 feet of 8-inch water line, and for a master meter to serve water to Sequoyah County Water District #5. He said the loan was approved for \$885,000 and was funded from the Principal Forgiveness portion of the DWSRF program the Board administers with the Oklahoma Department of Environmental Quality. The project has also received approximately \$140,000 from Indian Health Services funding and approximately \$18,000 in local funds.

Mr. Horace Lindley, Administrator for the Town of Gore/Gore Public Works, addressed the Board to express the Town's gratitude for the loan and to say the program works perfectly, is up and running and having a positive impact on Gore.

Mr. Freeman concluded his presentations.

Mr. Buchanan asked about Mr. Pierce's presentation noting there is \$400,000.00 balance in the CWSRF fund. Mr. Freeman responded the strategy is that as long as the program can operate off the

administrative fund, the \$400,000 of the capitalization grant is allowed by EPA to pay for overhead and can be used for loans.

### 3. SUMMARY DISPOSITION AGENDA ITEMS

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

A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items. There were no requests to transfer items to the Summary Disposition Agenda.

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

Vice Chairman Drummond asked if there were actions regarding items on the Summary Disposition Agenda. There were none, and Vice Chairman Drummond asked for a motion to approve the Summary Disposition Agenda.

Mr. Allen moved to approve the Summary Disposition Agenda, and Mr. Darby seconded. Vice Chairman Drummond called for the vote.

- AYE: Hitch, Stallings, Allen, Darby, Buchanan, Melton, Drake, Drummond
- NAY: None
- ABSTAIN: Stallings on item L.3.
- ABSENT: Lambert

The following items were approved:

C. Consideration of and Possible Action on Financial Assistance Division Items: 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>
ACOG				
a.	FAP-08-0026-R	Rural Water, Sewer, Gas and Solid Waste Management District #1	Cleveland	\$150,000.00
ASCOG				
b.	FAP-17-0051-R	Comanche Utilities Authority	Stephens	150,000.00
OEDA				
c.	FAP-17-0015-R	Rural Water District #1	Harper	110,000.00

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

1. Joint Funding Agreement with U.S. Geological Survey for the Continuation of the Data Collection and Water Monitoring Program FY18.

2. Memorandum Agreement with USGS and Applied Energy Services, Shady Point, Inc. for water monitoring and data collection.
3. Memorandum Agreement with USGS and Arkansas-Oklahoma Arkansas River Compact Commission for water monitoring and data collection.
4. Memorandum Agreement with USGS and Central Oklahoma Master Conservancy District for water monitoring and data collection.
5. Memorandum Agreement with USGS and Cherokee Nation for water monitoring and data collection.
6. Memorandum Agreement with USGS and CP Kelco for water monitoring and data collection.
7. Memorandum Agreement with USGS and Fort Cobb Reservoir Master Conservancy District for water monitoring and data collection.
8. Memorandum Agreement with USGS Grand River Dam Authority for water monitoring and data collection.
9. Memorandum Agreement with USGS Hardage Site Remedy Corp for water monitoring and data collection.
10. Memorandum Agreement with USGS and The City of Lawton for water monitoring and data collection.
11. Memorandum Agreement with USGS and Lugert-Altus Irrigation District for water monitoring and data collection.
12. Memorandum Agreement with USGS and the City of Moore for water monitoring and data collection.
13. Memorandum Agreement with USGS and the City of Norman for water monitoring and data collection.
14. Memorandum Agreement with USGS and the Oklahoma Department of Wildlife Conservation for water monitoring and data collection.
15. Memorandum Agreement with USGS and Poteau Valley Improvement Authority for water monitoring and data collection.
16. Intergovernmental Agreement between OWRB and the Central Oklahoma Master Conservancy District for water quality monitoring at Lake Thunderbird.
17. Interagency Agreement between OWRB and Grand River Dam Authority to continue the Dissolved Oxygen Monitoring Project.
18. Amendment to Interagency Agreement between OWRB and the Grand River Dam Authority ("GRDA") to amend the compensation portion of the July 2016 agreement to complete Phase I of the development of the Grand Lake Comprehensive Water Plan.
19. Agreement between OWRB and the Oklahoma City Water Utilities Trust to improve water quality at Lake Stanley Draper through the Vegetated Wetland Project by strategically implementing and maintaining planting sites.

20. Professional Services Engagement Letter with Arledge & Associates, P.C. to provide auditing services related to the Board's financial assistance programs for CWSRF and DWSRF loan administrative funds.

21. Professional Services Engagement Letter with Arledge & Associates, P.C. to provide auditing services related to the Board's financial assistance programs for revenue bond issues.

22. Professional Services Engagement Letter with Arledge & Associates, P.C. to provide auditing services related to the Board's financial assistance programs for the Oklahoma Clean Water State Revolving Fund Loan Account Program.

23. Professional Services Engagement Letter with Crawford & Associates, P.C. to provide accounting services related to the Board's financial assistance programs.

24. Agreement with Arbitrage Compliance Specialist, Inc. for arbitrage services in connection with the issuance of state government entity obligations and indebtedness for OWRB loan programs.

25. Interagency Agreement with the Oklahoma Department of Environmental Quality regarding the Drinking Water State Revolving Fund.

26. Professional Services Contract between OWRB and the Oklahoma Rural Water Association for training and education for water system board members and operators, technical assistance and long-term planning assistance.

27. Interagency Agreement with the Oklahoma Department of Environmental Quality for bathymetric survey of select dissolved oxygen impaired reservoirs for Bushy Creek Reservoir and Greenleaf and Shell Creek lakes.

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

1. City of Enid/Enid Municipal Authority, Major County, #2016-575
2. Howard & Edith Reimer, Alfalfa County, #2017-506
3. Sessums Brooks Family, L.L.C., Hughes County, #2017-507
4. Justin R. Warren and Darrelynn K. Weast, Oklahoma County, #2017-511
5. Preston & Christina Jones, Woods County, #2017-515
6. Jerry Jech, Kingfisher County, #2017-518

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

1. Country East Mobile Home Park, L.L.C., Custer County, #1982-698B
2. Winter Creek Golf & Country Club, L.L.C., Grady County, #1995-639

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

1. A C Operating Company, L.L.C., Tillman County, #2016-571
2. L. Mark & Deidra Damron, Beckham County, #2017-517

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

1. Greg & Toni Grewell, Texas County, #2004-568

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. Will & Julie Moore, Blaine County, #2017-007

2. Lottawater, Inc., Kingfisher County, #2017-008
  3. Thomas & Sharon O'Hern, Kingfisher County, #2017-010
  4. Gavin James, Kingfisher County, #2017-011
  5. Ryan Reheman, Kingfisher County, #2017-013
  6. Misty Hampton, Choctaw County, #2017-014
  7. Jerry Jech, Kingfisher County, #2017-018
  8. David White, Muskogee County, #2017-020
  9. Five-G-Water, Kingfisher County, #2017-021
- K. Consideration of and Possible Action on Applications to Amend Permits to Use Stream Water:
1. Oklahoma Gas & Electric Company, Pawnee County, #1973-235
  2. Lottawater, Inc., Kingfisher County, #2015-007
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
1. Don Brown, Rogers County, #OK30516
  2. Kourtis Family Farms, L.L.C., Osage County, #OK30517
  3. Continental Resources, Inc., Blaine County, #OK30518
- 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:
1. Oklahoma Department of Transportation, Logan County, #FP-17-12
  2. Oklahoma Department of Transportation, Nowata County, #FP-17-13
  3. Oklahoma Department of Transportation, Roger Mills/Beckham Counties, #FP-17-14
  4. Oklahoma Department of Transportation, Roger Mills/Beckham Counties, #FP-17-15
  5. Oklahoma Department of Transportation, Logan County, #FP-17-16
  6. Oklahoma Department of Transportation, Logan County, #FP-17-17
  7. Oklahoma Department of Transportation, Logan County, #FP-17-18
  8. Oklahoma Department of Transportation, Seminole County, #FP-17-19
  9. Oklahoma Department of Transportation, Creek County, #FP-17-20
  10. Oklahoma Department of Transportation, Woods County, #FP-17-21
- O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
1. Emily R. Freie, Town of Fort Cobb, FPA-719
  2. Clay Cox, Town of Verden, FPA-720

Vice Chairman Drummond stated that with the Board's permission, staff would present the Special Consideration Agenda prior to the presentation of agenda item 4. on Water Rights Administration.

## 5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on both the Application for Regular Permit to Use Stream Water No. 2016-028, Todd A. & Jessica D. Parker, McClain County, and the Protest and Request that the Application be Remanded to a Hearing Examiner filed on behalf of Susie Purcell, Gilbert Lynn Purcell, Jr., Susan Perine, June Miller, and Becky Conti:

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, addressed the members and stated this item is an application for a regular permit to use stream water number 2016-028 in the name of Todd A. and Jessica D. Parker in McClain County. He said the application was

filed on November 29, 2016, for an allocation of 109 acre-feet of water to be diverted from Colbert Creek, Natural Resources Conservation Services flood control site #2. Proposed use of the water is for the purpose of mining and more specifically drilling and primary completion of oil and gas wells at various sites in McClain County. On May 4, 2017, and on May 11, 2017, publication of public notice for the application was completed in accordance with all applicable statutory and Board requirements. No comments or protests were received during the comment period and the permit was placed on the agenda under Summary Disposition for this June 2017 Board meeting. Mr. Wilkins stated that on June 15, 2017, the Board received an objection and protest to application number 2016-028, from Mr. Henry Meyer III, and in the documentation Mr. Meyer requested the application be transferred to the Special Consideration agenda indicating potential interference with other users on the NRCS reservoir. In response to that request, the permit was placed on the Special Consideration agenda in order to provide an opportunity for separate discussion and vote. Board staff and the record shows the applicant has met the five points of streamwater law: unappropriated water is available in the amount applied for (using the NRCS formula to calculate and apportion how much water is available to each landowner at the reservoir site as found in Chapter 20 of the Board's rules, 785-20-1); the applicant has a present or future need for the water; the applicant intends to put the water to beneficial use; the proposed use will not interfere with domestic or existing appropriative uses; and the use of water occurs inside the stream system and therefore will not interfere with existing beneficial uses. Staff recommends approval of the application as presented. Mr. Wilkins stated representing the applicant is Mr. Todd Parker; representing Susie Purcell, Gilbert Lynn Purcell, Jr., Susan Perine, June Miller, Becky Conti are attorneys Henry Meyer, III, and Travis Pickens.

2. Discussion and presentation by parties. Vice Chairman Drummond asked the parties to limit their presentation to five minutes each.

Mr. Todd Parker addressed the Board and stated his application followed the letter of the law and applicable rules and regulations of the OWRB, and he respectfully requested the Board approve the permit.

Mr. Hank Meyer stated he is representing the people as announced; he began to distribute a map; however, OWRB General Counsel Singletary stated no new evidence could be presented. Mr. Meyer then referred to the application drawing of a lake (page 4 of 4 of the application) created in 1958 by the US Department of Agriculture, and where the SE quarter meets the NE quarter of the SE, one-half belongs to the four protestants which he represents. Mr. Meyer stated the application indicated the use is for irrigation only, but it is to produce water for fracking from approximately five wells in McClain County. Mr. Meyer contended that the publication notice failed in the State and US Constitutions – citing the Franco and DuLaney cases -- as his clients have vested riparian rights but were not notified, and indicated on the application as “unknown” which is a misstatement as they are adjacent landowners and entitled to direct notice. He said they have reasonable right of use and there has been a misappropriation of one half of their water and he said 785:20-11-1 regarding multiple ownership of reservoir sites was not followed and direct notice should have been made. He asked that the matter be given an evidentiary hearing, or their alternative is to go to court to correct. He thanked the Board for its consideration.

Mr. Travis Pickens addressed the Board and stated he does not represent all parties on the protest, Mr. Meyer is representing them. He said he represents three of the parties on other matters, Susan Perine, Susie Purcell and Gilbert Purcell, but has a conflict in representing everyone for this hearing.

Mr. Stephen Allen asked Mr. Meyer about item one (1.) of his letter regarding insufficient notice of publication, and Mr. Meyer responded that is correct in regard to the DuLaney decision. Mr. Allen asked if Mr. Meyer is arguing the statute that provides for public notice is unconstitutional, and Mr. Meyer answered there are two things on the notice, that the application is for irrigation but it is not, and there are other portions of the notice that states if there is a domestic use, notice is to be given

and according to the Franco case, it is a vested property right. He argued that under the US Constitution Fifth Amendment and the Oklahoma Constitution and the DuLaney decision regarding a similar issue of notice, that the notice by publication was found to be insufficient. He said also there is a misrepresentation on the application showing on the map multiple owners and it is commonly known who owns the property (NE/4 of the SE/4), who are his clients. Mr. Allen stated he read the cases and in the Franco case the Supreme Court also referenced the Oklahoma Corporation Commission v. the Texas County Irrigation and Water Resources Association case where it was specifically held that notice by publication is sufficient in that circumstance which seemed very similar to these, and he asked Mr. Meyer to distinguish that. Mr. Meyer responded the DuLaney case is all four points on this case; there were adjacent, contiguous owners that got notice by publication in a newspaper and they objected they did not (receive notice), they had vested property rights at issue, which he argued are identical here except the landowners are part of the whole reservoir. He said unlike the Texas water case, there were multiple owners north of Guymon and the applicant, not the Board, gave insufficient information, and his clients are entitled to direct notice. This is an attempt to misappropriate their property right to the benefit of someone who only owns half, which is why they have requested the evidentiary hearing.

Mr. Stallings asked the applicant why irrigation (use) is on the application. Mr. Parker answered he planned to use it as both. Mr. Hitch added it states he owns the land.

General Counsel Singletary commented staff, when determining if notice is sufficient, relies upon Title 82 Section 105.11 which governs notice for the use of streamwater and states notice is to be in a newspaper of general circulation in the adjacent downstream county and any other county designated by the Board once a week for two consecutive weeks; there is no direct notification required under the streamwater statute, and notice must be given in the county of diversion and the county downstream of the diversion. Mr. Meyer noted two owners are out of state.

Vice Chairman Drummond stated the applicant met the black letter requirement for the Board and under the statute for notification. Mr. Buchanan asked if in the past the Board has allowed an owner to make a change of use, and Mr. Singletary answered the permit can be amended to change the use. Mr. Hitch said the Board had reviewed an issue of notice in an earlier case, and Vice Chairman Drummond said in that case the applicant met the requirements of notification and the Board did not reopen that case, and that has been the Board's precedent, absent an unusual circumstance. He said that the usual approach is to follow the Board's rule and staff recommendation.

3. Vote on whether to approve or as may be amended, or vote on any other action or decision relating to applications.

Vice Chairman Drummond asked if there were any other questions. There were none, and he said he would entertain a motion.

Mr. Stallings moved approval of application for regular permit to use streamwater no. 2016-028, and Mr. Buchanan seconded.

Vice Chairman Drummond called for the vote.

AYE: Hitch, Stallings, Allen, Darby, Buchanan, Melton, Drake, Drummond

NAY: None

ABSTAIN: None

ABSENT: Lambert

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.

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

A. Presentation and Discussion of Board Education Series, “Water Rights Administration.” Mr. Kent Wilkins addressed the members and presented a PowerPoint presentation on what he termed, the foundation of the Oklahoma Water Resources Board. He introduced Mr. Anthony Mackey who will review the agency’s permitting process, and said that he would not be covering the law as General Counsel Singletary will make that presentation at a future education series session.

Mr. Wilkins discussed the definition of “groundwater” as fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut banks of any definite stream, and “stream or surface water” is water in a “definite stream” (a watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. He said there is no priority of use with groundwater, but there is a seniority system for stream water. He reviewed domestic use of water noting there is no permit required for uses that include household, livestock, irrigation not exceeding three acres, certain agricultural uses not exceeding five acres, fire protection, and non-household entities, i.e., field office. Groundwater is considered private property that belongs to the overlying surface owner, but is subject to reasonable regulation by the OWRB. Current groundwater law was established in 1973 as a utilization law—economic development or mining which allows for depletion—although the OWRB is required to base appropriation upon a Maximum Annual Yield study for the groundwater basin. The default allocation is 2.0 acre-feet of acre of land overlying an aquifer. He said that for permitting purposes, the law considers the amount of water in an entire basin... Maximum Annual Yield Determination by the Board of the total amount of fresh groundwater that can be produced from a basin or subbasin allowing a minimum 20-year basin life; the Equal Proportionate Share (EPS), is each landowner’s right to a share of the MAY equal to his ownership of land overlying the basin.

Vice Chairman Drummond noted that the landowner has a legal right to the water, but that doesn’t mean there is water.

Mr. Wilkins stated that in basins with MAYs determined, regular permits (permanent) are issued based on MAY, for example the current range is 0.2 ac-ft/acre in the Arbuckle-Simpson and up to 2.1 ac-ft/acre in the Antlers Sandstone formation; and requires 1,320 feet (bedrock)/660 feet (alluvium) of spacing between wells (exceptions allowed in rule). And in basins without MAYs determined, temporary permits are issued for 2 ac-ft/acre (if applicant can show beneficial use and no waste) – and there are no spacing requirements, so until the study is completed, there is no spacing protection from domestic wells or existing permitted wells. Mr. Drummond asked about the rationale for that position, and Mr. Wilkins said the legislature designated 2 ac-ft/acre and until the characteristics of the aquifer are known, they did not want to institute spacing.

Continuing, Mr. Wilkins stated the Board shall approve the application if the four points of law have been met: 1.the applicant owns or leases the land from which the water will be withdrawn; 2.the dedicated land overlies a fresh groundwater basin; 3.the water will be put to beneficial use; and, 4.waste will not occur by depletion or by pollution. Ms. Cunningham interjected that if saltwater is above 5,000 ppm it is not regulated, and Mr. Wilkins said well drillers are not allowed to drill in water that is greater than 5,000 ppm. Mr. Buchanan asked about the definition of waste by depletion, and Mr. Wilkins explained the example is if a zone is lost or draining to a lower cavity due to drilling. It is normally placed in the Board’s orders that there is no evidence depletion would occur. Regarding pollution, the Board only has authority to regulate the drilling and completion of wells, and other state agencies regulate other activities.

Regarding surface water, Mr. Wilkins stated there are 34 major reservoirs containing 13 million acre-feet of water, and 4,300 public/private and watershed protection lakes, primarily located in the eastern part of the state. Stream water is publicly-owned and subject to appropriation by the OWRB,

“Domestic uses” have highest priority and exempt from permitting, seniority by water right date (right in time, then a junior right) and no priority of use type; streamwater is subject to use-it-or-lose-it provisions--generally 7 years, and a schedule of use is filed. The points of streamwater law that must be met in issuing permits included unappropriated water is available in the amount applied for; the applicant has a present or future need for the water and the use to which applicant intends to put the water is a beneficial use; the proposed use does not interfere with domestic or existing appropriate uses; and if the application is for use outside the stream system of origin, use must not interfere with existing or proposed (future) uses and needs in the stream system. Domestic use takes water first, then the senior use, then the junior use. Staff maintains 10,894 groundwater permits allocating 3,837,865 (AFY) and 2,111 stream water permits allocating 2,726,509 (AFY); domestic use of groundwater is not reflected.

Vice Chairman Drummond asked if beneficial use is the same for groundwater and streamwater. Mr. Wilkins answered that it is much the same.

Mr. Anthony spoke to the members about the permitting process for both groundwater and stream water. He reviewed the applications and information required by the applicants, and said staff follows the Administrative Procedures Act process regarding public notice of application and administrative hearing if the application is protested; applications and proposed administrative orders may be approved, modified, or denied by the nine-member Board. He noted regarding groundwater applications that because it is a property right, the name must match on the legal ownership document, the amount of water and the purpose, and all information related to irrigation, including the total acres dedicated and number of wells needed, signed by someone that can legally represent the applicant, with the signature notarized. A plat showing the lands dedicated is required including the well locations and legal descriptions and names and addresses of surrounding landowners. He described the two types of groundwater permits, long term regular permits, (studied basins, MAY, allocation based on EPS and acres dedicated, permanent, well spacing requirements, set amount of water each year, can be amended to add water, add wells, add land, change use), and temporary permits (unstudied basins, allocation based on acres dedicated, 2 ac-ft/year, reauthorized each year, no well spacing requirements, set amount of water each year). Both can be amended to add water, add wells, add land, and change use. He also explained prior rights, which are groundwater rights that existed prior to the current law and procedurally grandfathered, and could be more than 2 ac-ft/year; these permits can be amended but cannot add water, there are some other provisions for prior rights recognition, and he described the process of calculation regarding new permits on a prior right. There is also long term limited quantity permits for 15 acre-feet per year, both regular and temporary, less notice is required, and can be approved administratively.

Mr. Mackey discussed the stream water permitting process explaining the State (public right), not tied to ownership of land, all water above ground, streams, rivers, lakes, ponds, etc. Appropriation is based on average annual flow or dependable yield using the 1950-1981 USGS data and he explained the time period is the most current but a good measuring stick, and there are other considerations such as reservoir and NRCS ponds, etc. Permitting also considers seniority based on water right date, no priority in type of use, subject to cancellation/reduction, use once every seven years, domestic use is protected, and no interference allowed. Stream water permits are issued for water use from a stream (average annual flow at diversion point, less existing permits and domestic needs, in watershed above diversion point, downstream of diversion point); from a reservoir based on the dependable yield; from a NRCS flood control structure (designed storage, multiple ownership, percentage of pond on property, sediment pool, flood pool, dam); from non-NRCS impoundments (estimated yield, storage capacity, evaporation, other factors). Mr. Hitch asked and Mr. Mackey responded by discussing determining yield and storage using average annual runoff, domestic needs (statute sets 4 users per mile), and evaporation loss, existing permits, etc., although reservoirs yield regarding structures built by the COE and BOR are somewhat different, but can only permit up to the yield, which he explained. Mr.

Stallings asked about drought conditions and the OWRB role as a referee between upstream and downstream users. Mr. Mackey responded that a domestic user downstream can make an interference complaint which staff will investigate. Mr. Singletary added there is a statute that allows the permit holder to go to district court to protect their interest without any involvement from the agency. Ms. Cunningham said it happens very rarely, but in times such as the 5-year drought complaints were received but staff have been able to get parties to voluntarily work together. Staff and Board members discussed parties working together to resolve issues of interference, and water use from an NRCS concerning multiple ownership concerning yield, percentage of sediment pool, percentage of the flood pool, percentage of the dam, and the formula to calculate storage capacity and use allowed per owner because when the landowner gave up land for the structure, he was allowed a percentage of the water. There are also rules for non-NRCS structures considering storage capacity and evaporation which is included in the application; every drop of water has to be justified.

Mr. Mackey described the stream water application process regarding requirements for regular long term permits, seasonal permits, term permits, limited quantity permits, and 90-day provisional temporary permits and when changes are allowed. The largest difference is there is no protection on seasonal permits; a permit can be issued even when there isn't any water available. Ninety-day permits are issued same day, walk in to the office, unless for a large amount of water and staff will look closer; but, 90-day PTs are not renewable and no notice required, although there can be a new application. Mr. Mackey concluded his presentation with a discussion of the annual water use reporting and fees required by permit holders and the information provided is important for staff to know planning by the user, data collection, and to review the protection of rights of others. There is no metering is required but can be agreed to by the user. Mr. Buchanan asked and Mr. Mackey responded about use and storage of stream water, once it is released back to the stream it must re-applied for to use. There were no other comments or questions.

Vice Chairman Drummond and the members expressed their appreciation to Mr. Wilkins and Mr. Mackey for the presentation.

## **6. ELECTION OF OFFICERS**

Mr. Buchanan stated that Chairman Lambert appointed him and Mr. Drake to the nomination committee. He said that after much discussion and significant consideration, they recommend the Board consider a slate of officers, and so nominated Mr. Ford Drummond as chairman, Mr. Jason Hitch as vice chairman, and Mr. Stephen Allen as secretary. Mr. Drake seconded the nomination.

There were no other nominations, nor discussion. Vice Chairman Drummond asked for the roll call vote on the nomination.

AYE: Hitch, Stallings, Allen, Darby, Buchanan, Melton, Drake, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Lambert

Mr. Drummond thanked the members for their confidence and for their service on the Board.

**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, incoming Chairman Drummond announced there would not be a July Board meeting, and the next meeting will be August 15, 2017. He also reminded members to review the Board Committee assignments and to contact him about their interest. Ms. Cunningham reminded members that following adjournment today the Rules Committee would meet.

**8. ADJOURNMENT**

There being no further business, Chairman Drummond adjourned the meeting of the Oklahoma Water Resources Board at 11:20 a.m. on June 20, 2017.

**OKLAHOMA WATER RESOURCES BOARD**

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

\_\_\_\_\_/s/\_\_\_\_\_  
Jason Hitch, Vice Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Linda P. Lambert

\_\_\_\_\_/s/\_\_\_\_\_  
Tom Buchanan

\_\_\_\_\_/s/\_\_\_\_\_  
Charles Darby

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

\_\_\_\_\_/s/\_\_\_\_\_  
Robert L. Melton, Sr.

\_\_\_\_\_Absent\_\_\_\_\_  
Robert Stallings

**ATTEST:**

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen B. Allen, Secretary (SEAL)