

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

August 12, 2003

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Grandstaff, at 9:30 a.m., on August 12, 2003, in the Cedarwood Room of Shangri-La Resort, located at 57401 East Highway 125, Afton, 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.

A. Invocation.

Member Ervin Mitchell gave the invocation.

B. Roll Call

Board Members Present

Grady Grandstaff, Chairman
Glenn Sharp, Vice Chairman
Ervin Mitchell, Secretary
Harry Currie
Lonnie Farmer
Richard Sevenoaks

Board Members Absent

Jack Keeley
Richard McDonald
Bill Secrest

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Jim Schuelein, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Mike Mathis, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Jeff Packham, Capitol News Network, Oklahoma City, OK
William Huffman, representing Joan Hill, Tulsa, OK
Larry Herrelson, Oklahoma Water Watch, Grove, OK
Cliff & Willa Younger, Grand Lake Association, Grove, OK
Richard & Cherrie Stunkard, Tulsa Grass & Sod, Tulsa, OK
Ralph Cartwright, Bixby, OK
Tricia Huey, Bixby, OK
Jenny Huey, Bixby, OK
Heather Huey, Bixby, OK
Joan Hill, Muskogee, OK
Marion Sizemore, Seneca-Cayuga Tribe, Miami, OK
Kathleen Welch, Wyandotte Nation, Wyandotte, OK
Barbara Kyser-Collier, Wyandotte Nation, Wyandotte, OK
Rayanne Tobey, Wyandotte Nation, Tulsa, OK
Jason Aamodt, Wyandotte Nation, Tulsa, OK
Paul Barton, Seneca-Cayuga Tribe, Miami, OK
Chris Franks, Seneca-Cayuga Tribe, Miami, OK
Larry L. Aline, Tulsa, OK
Larry Love, Northeast Oklahoma Electric Cooperative, Vinita, OK
Bob Sullivan, Grand River Dam Authority, Vinita, OK

C. APPROVAL OF MINUTES

Chairman Grandstaff stated the draft minutes of the July 8, 2003 Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were deletions or additions. Mr. Mitchell moved to approve the minutes of the July 8, 2003, Regular Meeting, and Mr. Farmer seconded.

AYE: Currie, Farmer, Mitchell, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Keeley, McDonald, Secrest

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, stated that he would like to, on behalf of staff, thank Glenn Sharp for his hospitality at Grand Lake—its always a beautiful day at Grand Lake! Also, thanks to the Northeast Electric Cooperative, Grand Lake Association, Cherokee Queen, South Grand Chamber of Commerce, and Longs Resort for their sponsorship as well.

Mr. Smith stated that since the Board's last meeting the agency had been awarded a contract with the Department of Agriculture. For the past few years, the OWRB has conducted water monitoring for the DOA on CAFO sites, which by law, required water monitoring. Because of the Board's expertise, the DOA contracted with the Board for the work, but has only received about \$30,000.00 in funding. This year, Secretary Miles Tolbert and Secretary Terry Peach, agreed that 125,000.00 could be used from the 106 Clean Water Act funding to assist with the funding, and the agency received the bid award.

The Bureau of Reclamation has been sponsoring "Water 2025" conferences across the West and Mr. Smith will be speaking at the final conference to be held in Austin, Texas, August

14. He said the western states have experienced a number of controversial water issues, and the effort is to conduct regional meetings to come together and talk about water issues. Mr. Smith will be speaking as will his counterpart at the Texas Department of Environmental Quality and also Steve Kouplen with the Farm Bureau will be speaking. He said it is a good opportunity to go to the Bureau and talk about water issues in Oklahoma, how we see conflict and avenues to resolve the conflict.

Mr. Smith stated he would be meeting with Representative Danny Hilliard who has expressed an interest in water planning and water plan legislation. He mentioned the Texas Water Plan is viewed as being a successful formula, and Oklahoma's plan will address how to get water to Oklahomans, but will be expensive. The idea is the local groups develop local/regional plans and the Water Board would then put those plans together as a state plan.

Mr. Smith stated the 2003 Water Conference Planning has begun. This year's conference will be held on November 4-5, 2003, at the Oklahoma City Renaissance Hotel. He said plans are also being made for a one-half day session on the Arbuckle-Simpson Aquifer on the afternoon of November 4, because we want to spend some time talking about that issue, hear from technical people about the Edwards Aquifer in Texas which is a very similar aquifer.

The Arkansas-Oklahoma River Compact Commission will be meeting in September. The big issues are the talks between Arkansas and Oklahoma that are ongoing. Secretary Tolbert has informed Mr. Smith that progress has been made particularly with the cities in northwest Arkansas and has agreed to go to 1mg/l for a phosphorous limit. He said this will make a difference in the water quality in northeastern Oklahoma, and would not have come about except for the Board setting a phosphorous limit. It has been controversial, and there is still more to be done, but this will have a significant impact. Talks with poultry growers are also ongoing. The main mission of the compact is the monitoring data to see what the trend is of phosphorous in our rivers. Mr. Smith introduced the compact's new federal commissioner, Mr. Dick Seybolt of Monkey Island. Mr. Smith also presented Mr. Seybolt a Resolution of Appreciation for his fourteen-year service to the Oklahoma Water Resources Board. Mr. Seybolt made a few comments to the Board.

Mr. Smith concluded his report with the introduction of Mr. Mark Belden, OWRB Water Quality employee, who received the OWRB Employee of the Quarter Award.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water, Sewer and Solid Waste Management District #1, Major County, Oklahoma. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$70,000.00 emergency grant request by Major County Rural Water, Sewer and Solid Waste Management District #1. The District has requested the grant to assist in funding a project that will extend potable water service to approximately 120 homes east of Fairview and within the Isabella community. This will increase the District's user base by approximately fifty percent. The project will be for purchasing water from the city of Fairview and transporting it to the users through approximately 180,000 feet of PVC lines. In addition, the project will consist of a pump station, 44 gate valves, one standpipe, and 121 meter settings. It is estimated the project will cost \$1,125,000.00 to be funded with local funds of \$11,000.00, a CDB grant of \$150,000.00, Rural Development loan of \$452,100.00, Rural Development grant of \$342,000.00, and the requested OWRB emergency grant of \$70,000.00. Staff recommended approval of the emergency grant request.

There were no representatives of the Major County RWSSWM District in attendance. Mr. Mitchell moved to approve the emergency grant, and Mr. Sharp seconded.

AYE: Currie, Farmer, Mitchell, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Keeley, McDonald, Secrest

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Durant City Utilities Authority. Recommended for Approval. Mr. Freeman stated the Durant Utilities Authority has requested a \$6 million Drinking Water State Revolving Fund Loan. The improvements include constructing a booster pump station, 1.5 million gallon storage tank, installing two-1,800 per minute pumps, laboratory equipment and land purchases. The loan was originally approved as an interim construction loan to be funded directly from the SRF fund. Since the loan will be closing following the Board's new DWSRF bond issue, the loan will be funded after the bond issue. Mr. Freeman noted provisions of the loan agreement. Loan funds will be obligated until March 11, 2004. Staff recommended approval.

Mr. Rick Smith, financial advisor, was present in support of the loan application.

Mr. Mitchell asked if Durant is one of the Board's highest-rated borrowers. Mr. Freeman answered Durant is one of the highest rated as an investment-grade community.

Mr. Farmer moved to approve the loan request to the Durant City Utilities Authority, and Mr. Mitchell seconded.

AYE: Currie, Farmer, Mitchell, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Keeley, McDonald, Secrest

3. SUMMARY DISPOSITION AGENDA

Chairman Grandstaff stated that any item listed under this Summary Disposition Agenda may, at the request of any member of the Board, the Board's staff, or any other person attending this meeting, 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.

Mr. Jim Schuelein stated there were two contracts under the Administrative Services Division which should be withdrawn from the Board's consideration: 3.D.1., 3.D.3.. Mr. Mathis stated items 3.E., #2003-530, and 3.F., #1998-506 should also be withdrawn due to publication problems.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on the Summary Disposition Agenda and Action on items and Approval of Items 3.C. through 3. N.

There being no other questions regarding any items on the Summary Disposition Agenda, Mr. Sharp moved to approve the Summary Disposition Agenda as amended, and Mr. Mitchell seconded.

AYE: Currie, Farmer, Mitchell, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: Keeley, McDonald, Secrest

Mr. Smith commented that one of the items approved on the Summary Disposition Agenda was the contract with the Grand Lake Association for water monitoring. He introduced Mr. Cliff Younger, who signed the contract during a photo session.

The following items were approved:

- C. Consideration of Approval of the Following Applications for REAP Grants and Amendment to Scope of Project for REAP Grant in Accordance with the Proposed Orders Approving the Grants

REAP Item No.	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
KEDDO				
1.	FAP-02-0032-R	Rural Water District #17	LeFlore	amend scope
NODA				
2.	FAP-96-0194-R	Canton Public Works Authority	Blaine	\$99,999.00
3.	FAP-99-0033-R	Rural Water, Sewer & Solid Waste Management District #1	Major	99,900.00
SWODA				
4.	FAP-97-0128-R	Eldorado Public Works Authority	Jackson	125,500.00

- D. Contract and Agreements Recommended for Approval

1. Consideration of Intergovernmental Agreement with the U. S. Department of Interior, Bureau of Reclamation, for a Water Quality Study of Lugert-Altus Reservoir.
2. Consideration of Agreement with the Grand Lake Association for Volunteer Monitoring around Grand Lake.
3. Consideration of Interagency Agreement with the Texas Department of Licensing and Regulation for Cloud Seeding Evaluations.
4. Consideration of Joint Funding Agreement with the U.S. Geological Survey for Investigation of Recharge Age Dates of Groundwater in the Garber-Wellington Aquifer Near Tinker Air Force Base.

- E. Applications for Temporary Permits to Use Groundwater:

- 1. *Turner Bros. Trucking, LLC, Oklahoma County, #2003-527* *Item withdrawn*
- 2. *Larry E. & Dixie E. Clafin, Grant County, #2003-529*
- 3. *Thelma T. Flanigin Trust, Caddo County, #2003-530* *Item withdrawn*
- 4. *Duke Energy Field Services, LP, Kingfisher County, #2003-542*

- F. Applications to Amend Temporary Permits to Use Groundwater:

- 1. *Letha M. Brown, Caddo County, #1998-506* *Item withdrawn*

- G. Applications for Regular Permits to Use Groundwater:
1. Sheldon W. & Julee D. Meliza, Harper County, #2002-570
 2. Beachner Southwest Farming Co., Texas County, #2003-522
 3. Okmulgee Co. RWD #5, Okfuskee County, #2003-545
- H. Applications to Amend Regular Permits to Use Groundwater:
1. David Brian & Sandra Silk, Beckham County, #1993-503
 2. Alan J. & Connie Clemans, Texas County, #1994-606
 3. City of Watonga, Blaine County, #1995-572
- I. Applications to Amend Prior Rights to Use Groundwater:
1. Robert C. & Mary E. Lolmaugh Trust Foundation, Texas County, #1968-120A
- J. Applications for Regular Permits to Use Stream Water:
- 1. David Cramer, Major County, #2003-004 *Item withdrawn*
 - 2. Mark A. & Jeanne O. Hayes, Delaware County, #2003-008
 - 3. Oil City Associates, LLC, Stephens County, #2003-013 *Item withdrawn*
 - 4. H-C Sand & Gravel, LLC, Sequoyah County, #2003-014
- K. Applications for Term Permits to Use Stream Water:
1. S & D Farms, Inc., Jackson County, #2003-009
 2. Vinyard Farms, Inc., Jackson County, #2003-010
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Attest Services, L.L.C. DPC-0603
 Operator: David Taylor OP-
 0303
 - Activities: Groundwater wells, test holes and observation wells
 Monitoring wells and geotechnical borings
 - b. Licensee: Pump Service DPC-0617
 Operator: Gregory E. Smith OP-1353
 Activities: Pump installation
 - c. Licensee: Llano-Permian Environmental DPC-0619
 Operator: Erica Thompson OP-1025
 Activities: Monitoring wells and geotechnical borings
 2. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: C & S Heating & Air Conditioning, Inc. DPC-0012
 (1) Operator: Ray F. Hart OP-1357
 Activities: Heat exchange wells
 - (2) Operator: Larry Cox OP-1246
 Activities: Groundwater wells, test holes and observation wells
 - b. Licensee: Standard Testing and Engineering Co. DPC-0244
 Operator: Rich Saxton OP-1355
 Activities: Monitoring wells and geotechnical borings
 - c. Licensee: GeoCore, Inc. DPC-0266
 (1) Operator: Jon W. Mills OP-1356
 Activities: Groundwater wells, test holes and observation wells
 Monitoring wells and geotechnical borings
 - (2) Operator: David A. Summers OP-1358

Activities: Groundwater wells, test holes and observation wells
Monitoring wells and geotechnical borings

M. Dam and Reservoir Plans and Specifications

None

N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Oklahoma Department of Transportation, Payne County, FP-03-04
2. Oklahoma Department of Transportation, Carter County, FP-03-05
3. Oklahoma Department of Transportation, Sequoyah County, FP-03-06
4. Oklahoma Department of Transportation, Hughes County, FP-03-07
5. Oklahoma Department of Transportation, Lincoln County, FP-03-08

04000 4. QUESTIONS AND DISCUSSION ABOUT AGENCY WORK AND OTHER ITEMS OF INTEREST.

A. Presentation and Discussion of Update on Water Quality Monitoring Activities on Grand Lake O'the Cherokees. Mr. Derek Smithee, Chief, Water Quality Programs Division, addressed the Board and audience about activities that are historically underway at Grand Lake, and future activities. He said that staff while working on a variety of projects is always striving to find the balance between protection and utilization. He talked about the geographic characteristics of the lake and economic benefits, and mentioned there have been over \$43 million dollars of financing in the Grand Lake watershed for the development and improvement of water and distribution systems, and considering the population projection within the next twenty years. He said that Grand Lake is a multi-state resource, and a "crown jewel" of Oklahoma. Mr. Smithee talked about the major pollution sources in the area, poultry production, septic tank application and maintenance; and there are other issues such as Tar Creek, nutrient increase, and eutrophication. The Oklahoma Legislature has appropriated funding to the OWRB and the Office of the Secretary of Environment, along with other state agencies, to work in concert to conduct a study on Grand Lake to see if the lake is behaving as the original predictions were when constructed 63 years ago. Mr. Smithee talked about the current monitoring activities conducted by the OWRB through its Beneficial Use Monitoring Program, data collected through other efforts such as the Corps of Engineers, Volunteer Monitors, Grand Lake Association, and he talked about the summary of the most recent monitoring which is found in the annual BUMP report. Mr. Smithee described the sites and monitoring conducted by the Grand Lake Association and the Volunteer Monitoring, summary of the data collected, the study conducted 10 years earlier, and he described the focus of the agreement with GLA and the upcoming study as directed by Senate Bill 408.

05000 5. SPECIAL CONSIDERATION

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S.

2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A. Application for Temporary Permit to Use Groundwater No. 2002-520, Tulsa Grass & Sod Farms, Tulsa County:

1. Summary – Mr. Mike Mathis, Chief, Planning & Management Division, stated to the members that this application by Tulsa Grass & Sod Farms of Tulsa County is for a permit to withdraw a total of 2,342 acre-feet of groundwater per year for irrigation of 1,171 acres of turf sod in Tulsa County. The water is proposed to be withdrawn from 38 well areas located on 1,639.4 acres of dedicated land in Tulsa County. The land overlies the Alluvium & Terrace Deposits of the Arkansas River for which the maximum annual yield and equal proportionate share have not been determined; therefore, each landowner is entitled to two acre-feet of water per acre of land dedication. Irrigation is a beneficial use of water, and waste will not occur.

Mr. Mathis said the Applicant operates a commercial sod farming operation, and has an efficient irrigation system so that when well pressure drops personnel are on site to perform maintenance. The Applicant is requesting approval of the 38 well areas because many of the locations contain multiple underground pipes that are known commonly as Sandpoint wells. The Applicant testified that a regular commercial well drilled in the area does not produce enough water for the Applicant's need to operate the irrigation system. The Applicant does, however, have a few wells drilled by commercial drillers that are used to supply some of the pivots, but the majority of the pivots are supplied by the Sandpoint wells. Generally, the Sandpoints are 2-inch diameter PVC slotted pipes installed to an average depth of 28-feet below the ground's surface, in the alluvium deposits of the Arkansas River. Each Sandpoint will produce an average of about 50 gallons per minute each, and several are manifolded together and connected to a single pump which withdraws groundwater from the connected Sandpoint wells to produce a total of about 400 gallons per minute. Given the circumstances of the case, conditions in the permit should require that whenever a Sandpoint or any other well is out of service, it will be properly abandoned, and all new wells will be completed in compliance with the Board's rules and regulations for well construction.

Mr. Mathis stated that the Protestants asserted the Applicant was causing damage to one of the protestant's land by allowing flooding on the property when the Arkansas River is high, due to some of the field activities of the sod farm. The Protestant also requested that if the permit is issued, the Board required the Applicant to install meters on the wells and monitor for usage, and asserted that the sod farm application was the source of pollution of groundwater. The Protestants expressed concern that the Applicant's groundwater withdrawal would cause the groundwater in the area to be completed.

Mr. Mathis said the sod farm activity is under the jurisdictional area of the Oklahoma Department of Agriculture, Food and Forestry. Because the Board's rule requires that in order to require well metering a large number of protestants must request it, and since such request has not arisen in this case, the Board does not have the requisite jurisdiction to make that requirement. In this case also, and in permit applications in the past, applicants can stipulate to meter; however, that has not occurred in this case. He said the Protestant's concerns about the depletion of groundwater is understandable, yet there was no evidence presented in the record to indicate the applicant's use will lower the water table. Contentions raised in the record that the Applicant's use has caused damage to property goes beyond the limited jurisdiction and authority of the Board address in a groundwater proceeding.

Mr. Mathis stated that the record showed the applicant to have a valid right to the groundwater, and that the application is in compliance with the Oklahoma Groundwater Law. Staff recommended approval of the application.

2. Discussion and presentation by parties. Mr. Richard Stunkard, applicant, addressed the members and stated he is co-owner of the sod farm operation with his wife, brother-in-law and sister-in-law. He said it is a family business that was started by his father-in-law about 50 years ago, and was the first commercial sod grower in Oklahoma; their operation employed about 50 people, and it is a beneficial industry. Mr. Stunkard said he understood the guidelines in the order, he was not asking for any exceptions, and asked the Board to approve the application.

Mr. Sevenoaks asked about the location of the farm; Mr. Stunkard replied that there were several locations; there are about 1600 acres of sod in production in Bixby and Leonard area, and about 160 acres on Memorial (Tulsa) along the Arkansas River. He said there are four types of Bermuda grass, and the land near Bixby is where the farm started, and the land near Memorial was added in 1972, and more land has been added. Mr. Stunkard began working with the firm in 1975. Mr. Currie asked about following the Board's well construction standards. Mr. Stunkard said he has developed a system to wash the Sandpoint wells by flushing the system several times with acid, but will follow the Board's guidelines to use a licensed well driller for further maintenance, and to dispose of the acid properly. He explained the procedure for washing the Sandpoint wells. Regarding the runoff situation, Mr. Stunkard explained that the ground is built up for stabilization from erosion, and that he has permits from the Corps of Engineers.

Mr. William Huffman, representing protestant Joan Hill, addressed the members and stated that Ms. Hill's property runs along the Arkansas River, and between the river and Mr. Stunkard's operation. He said she has experienced runoff from the sod farm across her property to the river and has experienced significant erosion. An oil well on her property has been raised onto a platform because of the flooding, and also because dams had been constructed in areas of natural drainage which back water onto Ms. Hill's property. Mr. Huffman said that the report (proposed order) talks about the well areas and does not specifically address wells because each of the well areas has somewhere between 8-12 Sandpoint wells; the (entire) area has about 400 Sandpoint wells. He said the evidence that was presented by the applicant at the hearing was somewhat vague, but the protestant's had presented evidence regarding water tests indicating nitrate levels in the groundwater of the area were beyond safe drinking water levels for children. He said it is very sandy soil and the water table is near the surface, and the water pressure is very low. He stated there was no competent evidence presented at the hearing that waste or depletion would not occur. He said the Board's rules require that wells be constructed according to its guidance, and some of the locations of the Sandpoint wells are unknown because many have been closed over; he said the Board should enforce its rule that all the wells "shall" be in compliance. Mr. Huffman asked that the permit be denied, but that if the permit is granted, that the wells will be brought into compliance with the Board's guidelines.

The Board members asked questions, and protestant Mr. Ralph Cartwright as well as Mr. Huffman responded, about residents that live in the area, erosion on some of the property, that the City of Bixby as well as residents also use Sandpoint wells that do not comply with the Board's rules, the matter of whether the Board can require metering, and the well field areas and topography of the land.

Mr. Cartwright represented many landowners in the area, and read a prepared statement about their concerns of the spacing and construction of the wells and well field areas, waste by pollution and depletion, and about circumstances of his own health problems that he contributed to the use of pesticides by the applicant, increased nitrate levels, and what they believed to be a high number of cancer cases in the community.

Mr. Stunkard responded to the remarks made by Mr. Huffman and Mr. Cartwright. He said that he hired a consultant that tested 12 wells, and of those well two were private

residential wells; two of the wells were higher in nitrates than the sod farm wells, one of the wells was on the farm, and the other nitrate levels were nonexistent. He said regarding the drainage that had been referred to, he had received a permit from the county to remove a drainage ditch beyond the arch of the pivot irrigation but did not change the inlet elevation or the outlet elevation. Regarding the matter of applying pesticides, there are four licensed applicators employed by the company, and the chemicals are used according to package labeling.

The Board members asked about the use of soil sampling and Best Management Practices, the cost of bringing each well into compliance, and how many acres are irrigated. Mr. Stunkard responded he does conduct soil testing, but does not have a plan. He said it would cost approximately \$2,500 to have a well drilled in the area and that would be a sizeable cost for eight wells. Mr. Stunkard said there are 1170 acres in the Leonard area (of the 1600 total acres for the sod operation), but not all of that acreage is irrigated; the permit application is just for irrigation on the property.

Mr. Dean Couch, General Counsel, stated that for the record, Mr. Cartwright had provided previously and he had received a call from Ms. Sheila Tipton, a five-page comment letter from Ms. Tipton, which he asked to be placed in the record, as well as the list of 39 citizens Mr. Cartwright indicated he was representing. He said he had not compared the list of individual signatures (no addresses or other contact information) to those that have been recognized as parties to the matter.

Mr. Currie asked about the well spacing issue; Mr. Mathis responded that this is a temporary permit and well spacing rules do not apply. He said this is a different setting to deal with because of the construction of the project. He said that Board rules do allow if site conditions warrant for an applicant to request a variance to the well construction standards based on site-specific conditions. Mr. Mathis added that this has been a very difficult application, and staff and the hearing examiner looked at the matter and believed that, because there is an existing business, the process is to get the operation into full compliance with the well construction standards as best as possible. He said that staff believed that the conditions in the permit will move that matter forward and over time the wells not in use or abandoned can be completed or rehabilitated.

Mr. Smith directed the Board's attention to conclusion of law no. 9 under "waste by pollution" in the proposed order which note that section 1020.9 and 1020.15 provide that if the activities which the applicant intends to use the water is required to comply with rules and requirements or is within the jurisdictional area and environmental responsibility of the Department of Environmental Quality or the State Department of Agriculture, Food & Forestry, then the Board is precluded from making a determination whether waste by pollution pursuant to section 1020.15 will occur as a result of the activity. Mr. Smith said that the permit application meets the four points of law and waste by pollution in this particular case the Board is precluded from. The Department of Agriculture has been at the site and the OWRB will work with them to make sure they have full access and ability to review and evaluate the pollution that is under their jurisdiction. He said regarding waste by depletion, the water levels are going down, but the groundwater law is a mining law and under the law there is no priority or domestic or irrigation use, and on a revalidation issue, that would be considered. Regarding the well construction, Mr. Smith said that even the landowners in the area have the same type of well construction as the applicant and they do not comply in strict compliance with the Board's rules and regulations. But, in certain areas the Board has authorized variances for Sandpoint wells and the Board has required the applicant to review the location and to request variances if needed for those wells to bring them into compliance with the construction standards. Regarding domestic wells, Mr. Smith said there is no permit requirement but the well construction must be in compliance, same as those of the applicants. He said that staff has recommended approval of the permit not to say that these issues are not important, but have made a point to say they are important. He

said staff wrestled with the matter and has come up with a recommendation knowing there is continued work to be done with the applicant to understand how the contamination is occurring and how to resolve it, but that is through the Department of Agriculture. Mr. Smith added that even if the Board denied the application, it would not have jurisdiction to investigate the pollution issue. Mr. Farmer asked if the Board is instructing the applicant to comply with the order on existing wells or just new wells. Mr. Smith responded that all of the wells will have to come into compliance, requiring variances on some of the wells, etc. Mr. Farmer asked if variances have been requested, and what is the Board's intention to obtain the variances. Mr. Mathis responded that the site-specific conditions will be reviewed to see if there is a way to bring the well into compliance under the traditional standards, or by variance, and may also be brought under the review of the Well Drillers' Advisory Committee.

Mr. Currie commented that both parties needed to review their withdrawal of the water and what they are putting into it i.e., septic tanks and domestic use.

3. Possible executive session. The Board did not vote to enter executive session.

4. 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. Currie moved to approve the proposed findings of fact, conclusions of law and Board order, and Mr. Farmer seconded.

AYE: Currie, Farmer, Mitchell, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Keeley, McDonald, Secrest

Mr. Mitchell expressed reservations about any water that is being backed up on neighboring property, and discharging diluted acid wash water on the ground.

B. Application for Temporary Permit to Use Groundwater No. 2002-579, Thomas and Crystal Handrich, Ottawa County.

1. Summary – Mr. Mike Mathis stated to the members that the applicant has requested a permit to take and use a total of 10-acre feet of groundwater per year for a poultry feeding operation to consist of six broiler houses. The water is proposed to be withdrawn from two wells located on 39.92 acres of dedicated land in Ottawa County. The Board has not determined the equal proportionate share for this basis; therefore, each landowner is entitled to two acre-feet of groundwater per acre dedicated. The applicant will transport the water from the primary well via underground PVC pipe, and has installed a meter to measure the amount of water used. Both wells conform to the Board's well construction standards.

Mr. Mathis stated that both the Wyandotte and Seneca-Cayuga Tribes have protested the application. They contended that poultry farms in general in the area are causing groundwater to be polluted and they expressed specific concern the applicant's operation likewise will contribute to groundwater pollution of the area.

The operation is required to comply with the rules and regulations of the Oklahoma Department of Agriculture, Food & Forestry and the Registered Poultry Feeding Operations Act.

The protestants argued the applicant's withdrawal will adversely affect surface water sources in the area, but only as a matter of fact. There is no clear legal authority for the Board to consider the affect of the groundwater permit on surface water sources. Protestants also argued they have rights to the surface water and groundwater in the area by being Tribes, and that the Board must deny or withhold action on the permit until such determination is made. Mr. Mathis stated these arguments go beyond the scope of the jurisdictional authority in this particular groundwater permit proceeding.

Mr. Mathis stated that the application is in compliance with the Oklahoma Groundwater Law and staff recommended approval.

2. Discussion and presentation by parties. Mr. Larry Oliver, representing Thomas Handrich, addressed the members and stated the case had been heard by the proper tribunal, testimony was presented under oath, and while emotions flared, Mr. and Mrs. Handrich are willing to rely on the evidence presented. He said they are a third generation family in this area, their children attend the Wyandotte Schools, and they use the wells for their own consumption and would not want to create an unhealthy situation. Mr. Oliver asked that the Board approve the permit.

Ms. Barbara Kyser-Collier, representing the Wyandotte Tribe, stated to the members she had lived in Oklahoma all of her life and near Grand Lake, and has seen the lake depreciate over the years. She said she is very concerned about the water quality and hears often at her office about water quality and fish kills, and the Tribe is a member of the Water Watch program, as well as other Tribes in the area. They have also been involved in the plant and mussel study, and are currently working with the U.S. Geological Survey in obtaining sampling and water monitoring to determine effects of Tar Creek and also working with the Oklahoma Department of Environmental Quality on wastewater treatment plants in the area. Ms. Kyser-Collier presented the Tribe's legal counsel, Ms. Rayanne Tobey and Mr. Jason Aamodt who spoke to the members on a number of issues.

Ms. Tobey said the Tribe had briefed four exceptions that they believed to be pertinent to the proposed order. Ms. Tobey spoke to the first two, and Mr. Aamodt spoke to the remaining two. Ms. Tobey enumerated exceptions: (1) remand the matter for the completion of discovery; (2) remand for the finding of adverse affect on surface water; (3) refer the matter to the Oklahoma Department of Agriculture for determination on waste by pollution; and (4) remand for determination of Tribal water rights and impact on the Board's ability to issue this permit.

Regarding the first exception, Ms. Tobey stated the Wyandotte Nation served discovery on the applicant's counsel on June 11, twenty days before the hearing date seeking information on the permit regarding water usage, waste, disposal operation, and monitoring for water usage. Several attempts were made to contact applicant's counsel for inspection of the property which was not responded to, but an applicat's objections to the request for discovery was received, and the hearing examiner granted the applicant's request and squashed the Wyandotte's request. She said the Tribe specifically sought inspection of the property to determine the number of wells and operation of the water usage system. She said the OWRB hearing examiner stated the application for discovery was not timely; however, the Board's rules provide pre-hearing discovery can happen at any time. She stated she believed the prejudice for denial is substantial and required a remand. In response to the second exception, Ms. Tobey stated there is clear legal authority for the Board to consider the legal affect of the permit on surface water, until Title 27A, 1-1-202(D)(5) stating the groundwater protection agencies must ensure that the activities within their jurisdiction protect groundwater to support the uses of the state's water quality. She contended the state's water quality is not limited to groundwater, but that the waters of the state include streams and ponds, water courses, wells, drainage systems, and other accumulations of water. She said she believed the hearing examiner erred by refusing to allow evidence on the surface water impact, and that if the Board approved the permit without a finding on that issue, the Board will violate not only statutory procedure but the Nation's right to provide testimony on the impact to surface waters.

Mr. Jason Aamodt addressed the members and stated that while the Wyandotte Nation is technically a protestor in this case, it is also a partner with the state toward protecting the surface water and groundwater, and deserves special status. Mr. Aamodt discussed how the Board goes about creating a finding that waste by pollution will not occur, and the question of delineation of water rights between the Board and Tribes. He said the finding of no waste by

the Board must be supported by evidence in the record (quoting from the Texas County case). He said the proposed order in this case does not express a finding, but instead of finesses the issue stating the statutes provide a difficult area for the Board to resolve jurisdiction. He recognized intergovernmental jurisdiction is not an easy issue and there have been a number of conflicting precedences about what exclusive and primary jurisdiction means, versus concurrent jurisdiction. He said, nonetheless, it could not be disputed the OWRB under existing Oklahoma law has an obligation and the jurisdiction to make a finding of no waste by pollution and the finding must be supported by evidence in the record.

Mr. Aamodt referred to the exceptions filed by the Wyandotte Nation and the discussion about the history of the OWRB jurisdiction in this area and the Texas County court decision, stating the Board must make a finding, and also in the Messer-Bowers case which he likened to circumstances of the case before the Board today. He contended the court's decision stated the Uniform Permitting Act did not give the Department of Agriculture exclusive jurisdiction, but specifically made the OWRB's jurisdictional responsibilities over the pollution of groundwater in addition to that otherwise provided by law. He said the Oklahoma statutes were changed in 2001, but that the Legislature did not change the Board's responsibility to make a finding that waste by pollution will not occur, and to ensure that the finding is predicated upon evidence in the record. He said if the Board follows the proposed order, the result is the Board issuing a permit without making a determination of waste by pollution. Mr. Aamodt said that creates a gap and irregularity in jurisdiction that the Board should then bridge by creating an informal mechanism that is commonly done between state and federal agencies.

Mr. Aamodt stated he would reserve the discussion of water rights for another time, and that the issue was briefed in the exceptions presented to the Board.

Mr. Sevenoaks expressed his concern about the matter of discovery. Mr. Mathis stated the hearing examiner is very thorough and very careful and he referred the Board to language in the order addressing the time line of requests, how the process worked, and in fairness to both parties his consideration of the requests for discovery, which he believed there was ample time. Mr. Couch pointed to finding of fact no. 2 specifically setting out the time line of pre-hearing activities, noting the publication notice was give in January, protests received the end of January and beginning of February, requests for continuances furthered the matter and during the time discovery could have been held, but it wasn't until a second hearing date scheduled that a request for discovery was made, which OWRB staff only received a copy, and apparently there was a dispute between the attorneys. There were more than two parties involved, and after several continuances and extensions and changed dates, it was clear the matter needed to move forward and the hearing examiner seeing that six months had passed and only in the last two weeks something in writing began to gel between the attorneys when there had been several months prior to conduct inspections. He said the issues for discovery regarded pollution from animal waste and the effect on streamflow were not matters to be considered by this Board anyway under the interpretation of the law included in the conclusions of law, and it was not for a lack of understanding for the need to gather information.

Ms. Maryanne Sizemore, representing the Seneca-Cayuga Tribe, addressed the members and stated she is representing 4,000 members of the Tribe. She said the State of Oklahoma does not have jurisdiction over water rights and water quality. She said they are a federally-recognized tribe and they expected to be treated as such in a government-to-government relationship with the State of Oklahoma. She said there are tribal members whose wells are being depleted and cannot afford to drill new wells, but the hearing examiner did not accept their evidence. She stated the Tribe has inherent rights to both the surface and ground water. Ms. Sizemore stated there has been a failure to distinguish between the requirements of the Oklahoma Environmental Quality Act and other statutory responsibilities, specifically the inability to distinguish between the Oklahoma Department of Agriculture's requirements under

the EQA and poultry feeding operations, USDA requirements for an application for a loan, and the OWRB requirements under the EQA and application for a water permit. She asked that the State and the Tribes work together to protect the state's natural resources.

3. Possible executive session. The Board did not vote to enter executive session.

4. Vote on whether to approve the proposed order as presented or as maybe amended, or vote on any other action or decision relating to the proposed order.

Mr. Sevenoaks said he recognized the attorneys in the matter waited six months before deciding what to do, but expressed concern the Tribe should be given an opportunity for discovery and suggested the Board could give another 30 days. He said he did not believe the water rights issue was within the Board's purview, and that the Department of Agriculture has jurisdiction on the waste by pollution matter.

Mr. Sevenoaks moved that the matter be remanded to the hearing examiner and given thirty days to complete discovery and let the hearing examiner consider the discovery in the consideration of the permit.

Mr. Couch asked with respect to a remand order that only the Wyandotte Tribe has made the request. Mr. Smith added that one matter the Tribe is wanting discovery on is waste by pollution activities, but the hearing examiner has already ruled that waste by pollution is something the Board is precluded from considering, so in that discovery the issue of waste by pollution should be excluded and only allow other types of discovery. Mr. Couch stated his reading of the exceptions for discovery is the Tribe also wants information about the effect of the applicant's pumping on the springs and streams, another aspect that in previous Board decisions have been determined not to be subject of a groundwater application.

Mr. Sevenoaks said he was not concerned specifically about why they want discovery, but that they, as a sovereign nation, have requested discovery and he did not object to that.

Chairman Grandstaff stated that the application is for 10 acre feet of water on 40 acres of land, and under the law, the applicant is entitled to 25 acre feet just under domestic use laws. He said he agreed there should be no appearance there was not an opportunity to present evidence. Mr. Mitchell commented the Board is precluded from considering the effect on stream water.

Mr. Couch stated that for purposes of specificity for the hearing examiner and the parties, the thirty days would be for completion of discovery, and he asked if the Board members were ordering the hearing be re-opened for simply matters that are discovered and are submitted in writing? Mr. Sevenoaks responded the wording (of motion) is that thirty days is allowed to present what is found during discovery, from the tribe only, and the hearing examiner will look at it to determine any effect on his decision, and to bring back to the Board within 60 days.

Mr. Oliver addressed the members, stated he is an American Indian but not an angry one and he could not believe the lecturing of the Board on what its obligations are, and that the Board now is talking about it being scared. Mr. Sevenoaks asked Mr. Huffman not to make personal attacks, and to address only the matter regarding the discovery process and the thirty-day addition. Mr. Oliver said he was concerned about the effect of the arguments that have been made on the action the Board may make; that the Board knows its obligations, and the protestants have had ample time.

Chairman Grandstaff stated there is a motion before the Board, and Mr. Couch re-stated the motion as:

A motion to remand the hearing examiner allow the opportunity for parties to conduct discovery and submit any additional in writing a report describing the evidence or information they would like to submit to the hearing examiner, who will rule on the admissibility of that, and those items that are determined to be admissible the hearing examiner will review and alter the

proposed findings and conclusions accordingly, and if necessary bring back to the Board for consideration by the October Board meeting. Mr. Sharp seconded the motion.

AYE: Sevenoaks, Sharp, Grandstaff
NAY: Currie, Farmer, Mitchell
ABSTAIN: None
ABSENT: Keeley, McDonald, Secrest

As a tie vote, the motion fails.

Mr. Currie moved to approve the proposed findings of fact, conclusions of law and Board order as presented, and Mr. Mitchell seconded.

Mr. Sevenoaks asked a parliamentary question about a second failed vote due to a tie. Chairman Grandstaff said the matter would be brought back before the full Board.

AYE: Currie
PASS: Farmer
AYE: Mitchell, Grandstaff
NAY: Sevenoaks
ABSTAIN: Sharp
AYE: Farmer
ABSENT: Keeley, McDonald, Secrest

Mr. Sharp made a statement during his vote about his great respect for the Wyandotte Tribe and the Seneca-Cayuga Tribe and the nations represented, and he also had great respect for the property owners of Ottawa County who have a right to develop their land, and to do those commercial aspects that are of beneficial use to the State.

The motion passed, four ayes, one nay, one abstention.

- E. Considerations of Items Transferred from Summary Disposition Agenda, If any.
There were no items transferred from the Summary Disposition Agenda.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report saying there are two budget reports presented today: the thirteen-month period ending June 2003, and the first month of the new fiscal year. The documents reflect a decrease of \$1.2 million between the Oklahoma Water Resources Board and the Office of the Secretary of Environment.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There were no Supplemental Agenda items for the Board's consideration.

8. 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.

9. ADJOURNMENT

There being no further business, Chairman Grandstaff adjourned the regular meeting of the Oklahoma Water Resources Board at 12:10 p.m., on Tuesday, August 12, 2003.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Grady Grandstaff, Chairman

_____/s/_____
Glenn Sharp, Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Lonnie Farmer

_____/s/_____
Richard McDonald

_____/s/_____
Bill Secrest

_____/s/_____
Jack W. Keeley

_____/s/_____
Richard Sevenoaks

ATTEST:

_____/s/_____
Ervin Mitchell, Secretary

(SEAL)