

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

September 9, 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 September 9, 2003, in the Board Room of the OWRB Offices, 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.

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
Jack Keeley
Richard McDonald
Bill Secrest
Richard Sevenoaks

Board Members Absent

None

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

William J. Love, Oklahoma Tourism & Recreation Department, Oklahoma City, OK
Kim Kohler, Oklahoma Independent Producers Association, Oklahoma City, OK
Charles Newton, Bank of Oklahoma/Oppenheim, Oklahoma City, OK
Clyde Kirk, Office of the Attorney General, Oklahoma City, OK
Kim Winton, U.S. Geological Survey, Oklahoma City, OK
Bob Blazs, U.S. Geological Survey, Oklahoma City, OK
Chris Cochran, Capital West, Oklahoma City, OK
Jeff Packham, Capitol News Network, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Paul Carpenter, Wewoka, OK
Clifton Taylor, Seminole County Rural Water District #2, Wewoka, OK
Sarah E. Penn, Attorney General's Office, Oklahoma City, OK
Steve Funck, Office of State Finance, Oklahoma City, OK
Ann Keeley, Ada, OK
Mark G. Guthrie, City of Broken Bow, OK
Bobby & Donna McSpadden, Sardis Lake Water Authority, Clayton, OK
Robert Vaughan, Oologah Municipal Authority, McAlester, OK
Robert Jones, Capital West, Oklahoma City, OK
Stan Sims, Bank of America, Oklahoma City, OK
Mike w. Ray, House of Representatives, Oklahoma City, OK
Karl Bovee, Bank of America, Oklahoma City, OK
Nicky Harrison, Elk City, OK
Kim Harrison, Elk City, OK
Brent Riley, Bank of America, Oklahoma City, OK
Kris Marek, Oklahoma Tourism & Recreation Department, Oklahoma City, OK
Betty Koehn, Oklahoma Tourism & Recreation Department, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Grandstaff stated the draft minutes of the August 12, 2003 Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were deletions or additions. Mr. Farmer moved to approve the minutes of the August 12, 2003, Regular Meeting, and Mr. Sharp seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, began his report stating that the November Board meeting will be moved to coincide with the annual Governor's Water Conference. The Board meeting will be held at 9:30 a.m. on Tuesday, November 4, at the OWRB office. The conference will kick off with an afternoon symposium on November 4 at the Cox Business Center with a presentation by Commissioner of Reclamation John Keys. The symposium will focus on technical presentations on the Arbuckle-Simpson Aquifer, along with presentations on

the Edwards Aquifer in Texas, and local issues in Oklahoma. The full conference program will be held on Wednesday, November 5, at the Cox Center.

Mr. Smith stated he had traveled to Austin, Texas, following the August Board meeting to speak at the Bureau of Reclamation's "Water 2025" Conference. The Bureau has been conducting regional meetings throughout the Western states, and looking at crisis management in water at the local level in an effort to anticipate problems in the future, and have better resolution to water issues than in the past. Mr. Smith said he was a presenter, and Mike Mathis was a facilitator, Steve Kouplen with the Farm Bureau spoke, and other Oklahomans were in attendance. Mr. Smith stated Oklahoma has the best relationship with the Bureau than ever in the history of the state as currently there are a number of cooperative projects across the state.

Mr. Smith announced that the Kansas-Oklahoma Arkansas River Compact Commission will be meeting in Bartlesville on September 17-18. He said of the two Oklahoma Commissioners last year, Earnie Gilder has been appointed by President Bush as the Alternate Federal Commissioner, and John Pearson from Guthrie had resigned. Governor Henry appointed Ross Kirtley to the Commission, and there is one vacancy. There are no significant controversies between the states in this compact area.

The Arkansas-Oklahoma Arkansas River Compact Commission meeting will be held September 23-24 at Shangri-La. Dick Seybolt is the Federal Chairman, replacing Emon Mahony who had held the position for a number of years. Secretary of Environment Miles Tolbert has also been appointed to the Commission; the third commissioner is Gary Sherrer. The Environmental and Natural Resources Committee will meet on the afternoon of September 23, and will discuss the monitoring on the Illinois River, and the status of phosphorous levels. The USGS will make a presentation on its findings as well.

Oklahoma has the best weather monitoring system anywhere in the world, called the MESONET. Mr. Smith chairs the External Advisory Board to the MESONET system that is comprised of people of academia from all over the country who get together and advise the MESONET people in Oklahoma on activities. Mr. Smith stated that the OWRB has a pilot program with the Climatological Survey to drill wells around the MESONET sites and install real-time monitoring on the groundwater wells. The program presents opportunities for very real potential in monitoring groundwater, and to put in place historical data collection on groundwater monitoring.

The Lake Texoma Advisory Committee will meet October 6-7 in Pottsboro, Texas. One of the issues is that Texas is asking for reallocation of flood storage from the reservoir. The contract between the states is a 50-50 split, but Oklahoma is not consumptively using any water, and Texas says it can use it all, and that Oklahoma could request for reallocation of storage if needed, at an updated cost. Discussions will center on how Texoma is managed, what the compact needs, and to get ahead of the curve. This is a matter of concern for the Red River Compact Commission, where Oklahoma has a new commissioner, Mr. Charles Dobbs, replacing long-time commissioner Ken Ferguson who was appointed to the Oklahoma Transportation Authority. There was some discussion among the members about the water supply, water use, and a reallocation study on the Texoma Reservoir to Texas.

Mr. Smith stated he and Dean Couch would be traveling to Durango, Colorado to attend the Western States Water Council symposium on Indian Water Rights on October 6-8, 2003. He said this conference is held once every two years, and it is an excellent forum for the discussion of Indian water rights claims, what the Western States have done and how they resolved those; what's been resolved, what's been litigated, and what the outcome has been. Issues are looming in Oklahoma over water quality and water quantity, and how they will be resolved is critical to the future economic development of Oklahoma.

Mr. Smith concluded his report announcing the retirement of long-time OWRB employee Ken Morris. Ken has served the state for 29 years, and the OWRB for 27 years as the

Floodplain Management Program coordinator. He said that Ken has done an outstanding job and he anticipated the Board would enter a contract with Ken in the future to continue work in this program.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water, Sewer & Solid Waste Management District #3, Seminole County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Seminole County Rural Water, Sewer & Solid Waste Management District #3 has made an application for an emergency grant in the amount of \$19,890.00. The District purchases water from the City of Okemah and a recent interruption in water service created low pressure in the system and the system's low pressure cut off pumps malfunctioned, resulting in a chain reaction causing numerous line breaks and burned-out pump motors. Many customers are now experiencing very low water pressure, and some are with water. The proposed project consists of repairing pump motors, related electrical work and water line repairs. The total estimated project cost is \$23,400.00 with funding provided by \$3,510 of local funds and the requested OWRB Emergency Grant of \$19,890.00. Mr. Freeman said that staff recommended approval of the emergency grant request.

Mr. Paul Carpenter, Chairman, and Mr. Cliff Taylor, Operator, were present in support of the application.

Mr. Secrest moved to approve the emergency grant request to the Seminole RWSSWMD #3, and Mr. Farmer seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Oologah Municipal Authority, Rogers County. Recommended for Approval. Mr. Freeman stated that this item is for the consideration of a \$543,500.00 loan request by the Oologah Municipal Authority located in Rogers County. He said Oologah is requesting the loan in order to meet the Department of Environmental Quality discharge requirements to handle the growth in the Harbor Creek Village area that includes about 200 connections. Mr. Freeman stated the project consisted of a new aeration basin, clarifier, affluent filtration system, and insulation of necessary piping. The loan will be funded through the Board's Clean Water SRF Small Community loan program; Mr. Freeman noted provisions of the loan agreement. Staff recommended approval of the loan application.

Mr. Robert Vaughn, project engineer, was present in support of the loan application.

Mr. Sharp moved to approve the loan to the Oologah Municipal Authority, and Mr. Mitchell seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Broken Bow Public Works Authority, McCurtain County, Oklahoma. Recommended for Approval. Mr. Freeman explained to the Board members that the Broken Bow Public Works Authority has requested a six-months extension to close its loan with the Board. He said the Board originally approved the \$2,400,149.00 Drinking Water SRF loan on October 8, 2002, for the construction of a flocculation basin, sedimentation basin, four-cell multi-media filter, valving, piping to connect the new facility to the existing plant, and upgrade to the electrical control systems. The project was originally bid as three separate projects, and no bids have been received for the complete bid package. The package was bid, and three bids were received, but all were over the engineer's estimate. Mr. Freeman said that OWRB staff is now working with the town on adjusting the loan amount and to qualify for the additional funds. Staff recommended approval of the request.

Broken Bow City Manager Mark Guthrie was present in support of the extension of time.

Mr. McDonald moved to approve the extension of time for the obligation of funds to the Broken Bow Public Works Authority, and Mr. Farmer seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of and Possible Action on a Proposed Order Approving Loan for Oklahoma Tourism and Recreation Commission, Oklahoma County. Recommended for Approval. Mr. Freeman stated to the members that this item is for the consideration of a \$7,195,000.00 loan request from the Oklahoma Tourism and Recreation Commission. He said that Commission is requesting the loan for improvements to the wastewater collection and treatment systems at Tenkiller, Sequoyah, and Texoma State Parks. Problems consist of inadequate sewage treatment and collection capacity resulting in overflow and bypassing of untreated sewage. Inadequacies in the design and construction of the existing facilities have plagued the facilities over the years. Mr. Freeman stated that improvements to these wastewater systems are necessary to protect water quality standards and to come into compliance with enforceable orders issued by the Oklahoma Department of Environmental Quality. According to the DEQ, failure to address these issues and come into compliance with the orders, will result in closure of the parks. Mr. Freeman noted provisions of the loan agreement, the annual appropriation by the Oklahoma Legislature, and a financial guarantee insurance policy with AMBAC Assurance Corporation that will irrevocably guarantee payment of principal and interest for the entire term of the loan. Staff estimated that by borrowing from the OWRB rather than issuing its own bonds, the Commission would save approximately \$935,000.00 over the life of the 20-year loan. Staff recommended approval.

Ms. Kris Marek, Director of Planning and Development; Ms. Betty Koehn, Chief Financial Officer; Mr. Bill Love, Chief Financial Account; and Mr. Rick Smith, Financial Advisor, were present in support of the loan request.

Ms. Marek stated to the members this project will have significant benefit to the citizens of Oklahoma, and she complimented staff for their assistance with the funding.

Mr. Sevenoaks asked if the bond insurance premium will serve to make the payment if the Legislature did not authorize and appropriation. Mr. Freeman stated that it would. Mr. Currie asked if the fees charged by the ODTR go to the state's general fund or to the department? Ms. Marek answered that all receipts earned from fees are deposited with the state, but do come to the department as part of the department's budget and allocation for expenditures. He asked why the department did not use those funds to make improvements.

Ms. Marek explained that the department is not a moneymaking institution and did not have the funding. She said that the department did have revenue bond authority, however, the payment of revenue bonds would be through annual earnings as well, and it is difficult to justify the building of the sewer systems based on the department's ability to collect revenue.

Mr. Smith stated that this had been a major issue at the Legislature during the last session. He said Senator Rick Littlefield helped as well as the T&R staff. He said that Mr. Freeman required insurance as part of the arrangements, and this deal "meets the test" of a sound financial deal, and it will be a real benefit to Oklahomans.

Mr. Mitchell moved to approve the loan to the Oklahoma Tourism and Recreation Commission, and Mr. Sharp seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Currie asked what would happen if the insurance company folded. Mr. Rick Smith responded that the insurance has been in business for thirty years, has insured a number of credits in Oklahoma, and was the Board's insurer early on during the 1980s. The company is publicly owned and has a capitol requirement of several billion dollars. He said there are only about four insurance companies, and AMBAC's stability has not been a concern. Mr. Smith added that the Tourism Commission wants to borrow additional money, it would have to seek AMBAC's written approval, and a one-year reserve fund has been established which the insurance company required, along with a number of other safeguards. He added that the Legislature made it happen because it passed legislation that allowed Tourism to pledge appropriations to this loan up to a certain amount, which it has not authorized a state agency to do that before, and also helped to assure AMBAC because the hard revenues would not be able to cover the debt. Mr. Freeman added that the original insurance quote was around \$250,000.00 and that Mr. Rick Smith was instrumental in getting the amount reduced.

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. Schuelein stated that under the Administrative Services Division agenda item 4.D., four items needed to be withdrawn from the Board's consideration: D.2., D.6., D.10, and D.13. He raised an issue regarding agenda item D.4., explaining that the officials at the TDLR had alerted him to very minor language changes in the proposed contract agreement, and are not substantive changes. He said that if the contract is approved by the Board today, and once the contract is received from TDLR if there are substantive changes (which will be reviewed by the OWRB General Counsel's office) then the item will be brought back to the Board at the next

meeting. He said he preferred that the Board consider approval since there is \$228,000 attached to it for the Board.

Mr. Sevenoaks asked about items 11. and 12. regarding contracts with the Chickasaw and Choctaw Nations. Mr. Smith explained that these items concern the annual contract with the U.S. Geological Survey for the cooperative streamgaging program. He said budget cuts this past year have resulted in a significant hit to the program, and he had visited with the Choctaw and Chickasaw Nations about making the monetary contribution the state had been making for the stream in their areas. They agreed to do so, bringing \$102,000 from the Chickasaw and \$68,000 from the Choctaws. Mr. Smith said there are several areas where the state has conflict with the Tribes, but he believed this is one area where the state can partner, and creates a positive working relationship with the Tribes. Mr. Currie asked if that made up the full difference, and Ms. Kim Winton, USGS District Chief, responded that potentially the budget cuts would have impacted 50 stream gages, and also impacted the USGS cooperative program dollars that could not be retrieved in the future. She said she appreciated the OWRB staff's effort in retaining the gaging program funding. Mr. Smith added that all the studies conducted by the Board depends on data collections, and that the Board cannot make decisions based on science without the data behind it, and the streamgaging program is critically important on permitting and studies and other work.

Mr. Mathis stated items 3.E.1., #2002-555, 3.G.5., #2003-544, 3.J. 1. #1979-107 and 3. #2002-025, and 3.L.2.b. DPC-0197, should also be withdrawn.

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.

Mr. Currie asked if the agency had to discontinue or drop any contracts because of the budget cut this year. Mr. Schuelein and Mr. Smith stated the contracts before the Board today are because of the agency's new income. Mr. Smith said the total contract amount had increased primarily because of the Arbuckle-Simpson study.

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

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secret, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: Mitchell on item 3.H.1., #1979-597
ABSENT: None

The following items were approved:

C. Consideration of Approval of the Following Applications for REAP Grants in Accordance with the Proposed Orders Approving the Grants:

<u>REAP</u>				<u>Amount</u>
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>

None

D. Contracts 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 Intergovernmental Agreement with the U.S. Department of Agriculture – Agricultural Research Service for Drought Study. withdrawn***
3. Consideration of Interagency Agreement with the Oklahoma Climatological Survey for Drought Study.
4. Consideration of Interagency Agreement with the Texas Department of Licensing and Regulation for Cloud Seeding Evaluations.
5. Consideration of Interagency Agreement with the Oklahoma Climatological Survey for Evaluation of Weather Modification Activities.
6. ***Consideration of Intergovernmental Agreement with the U. S. Army Corps of Engineers for Continuing Work on Lake Wister. withdrawn***
7. Consideration of Interagency Agreement with the Poteau Valley Improvement Authority for Continuing Work on Lake Wister.
8. Consideration of Joint Funding Agreement with the U.S. Geological Survey for the State-Federal Cooperative Program for FY-2004.
9. Consideration of Interagency Agreement with Oklahoma State University for Work Related to the Arbuckle-Simpson Aquifer Study.
10. ***Consideration of Professional Services Master Agreement with Critical Technologies for Maintenance of Agency Imaging Data Bases and On-line Access. withdrawn***
11. Consideration of Memorandum Agreement with the Chickasaw Nation for Stream Gaging Services.
12. Consideration of Memorandum Agreement with the Choctaw Nation for Stream Gaging Services.
13. ***Consideration of Interagency Agreement for Services with the Department of Public Safety through its Oklahoma Highway Patrol Division for Traffic Control During Installation of Stream Gages on Cache Creek. withdrawn***
14. Consideration of Interagency Agreement with the Oklahoma Department of Agriculture, Food and Forestry for Groundwater Monitoring.

E. Applications for Temporary Permits to Use Groundwater:

1. ***The City of Clinton, Washita County, #2002-555 withdrawn***
2. Riverview Sod Ranch, Inc., Tulsa County, #2003-504
3. Thelma T. Flanigin Trust, Caddo County, #2003-530
4. The City of Moore, Cleveland County, #2003-536
5. Duke Energy Field Services, LP, Kingfisher County, #2003-542

F. Applications to Amend Temporary Permits to Use Groundwater:
None

G. Applications for Regular Permits to Use Groundwater:

1. Greg & Toni Grewell, Texas County, #2002-609
2. Grabeal & Grabeal, Roger Mills County, #2003-532
3. Robert C. & Mary E. Lolmaugh Trust Foundation, Texas County, #2003-538
4. Robert C. & Mary E. Lolmaugh Trust Foundation, Texas County, #2003-539
5. **Choctaw County Rural Water and Sewer District No. 1, Choctaw County, #2003-544 withdrawn**
6. Alan J. & Connie Clemans, Texas County, #2003-548
7. Carl O. & E-Vona L. Thrall, Cimarron County, #2003-554

H. Applications to Amend Regular Permits to Use Groundwater:

1. T Z Wright Enterprises LLC, Beaver County, #1979-597
2. Taylor Farms, Beaver County, #1979-759
3. Alan J. & Connie Clemans, Texas County, #1998-504

I. Applications to Amend Prior Rights to Use Groundwater:
None

J. Applications for Regular Permits to Use Stream Water:

1. **The City of Sallisaw, Sequoyah County, #1979-107 withdrawn**
2. Rural Development Foundation, McIntosh County, #2001-015
3. **John Boyd McMahan, Jackson County, #2002-025 withdrawn**
4. David Cramer, Major County, #2003-004
5. Mallard Farms LLC, Choctaw County, #2003-006
6. Susan Fike, Jackson County, #2003-007
7. Lake Region Electric Development Inc., Cherokee County, #2003-012
8. Baker Petrolite Corporation, Osage County, #2003-019
9. The City of Oklahoma City, Oklahoma County, #2003-020
10. John & Jackie Spieker, Wagoner County, #2003-021

K. Applications to Amend Regular Permits to Use Stream Water:
None

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Pratt Well Service, Inc. DPC-0621
Operator: Steven E. Ezell OP-1360
Activities: Groundwater wells, test holes and observation wells
Pump installation
 - b. Licensee: TWF Drilling, LLC DPC-0623
Operator: Sammy Smith OP-1224
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: Groundwater wells, test holes and observation wells

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| <p>b. Licensee: <i>Davis Environmental Drilling, LLC</i></p> <p>(1) Operator: <i>Larry D. Nottingham</i></p> <p> Activities: <i>Pump Installation</i></p> <p>(2) Operator: <i>John O. Stremlow</i></p> <p> Activities: <i>Pump Installation withdrawn</i></p> | <p>DPC-0197</p> <p>OP-0919</p> <p>OP-0981</p> |
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M. Dam and Reservoir Plans and Specifications:
None

N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
None

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

There were no questions of the Board or items of discussion presented.

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 majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation, or proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

A. Application for Regular Permit to Use Groundwater No. 2002-575, Nicky & Kim Harrison, Kiowa County:

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that the applicant is requesting a permit to take and use 147.6 acre-feet of groundwater per year for irrigation of grass. The water is proposed to be withdrawn from four wells located on 147.6 acres of dedicated land overlying the Elk City Sandstone Groundwater Basin in Washita County. A study has been conducted on this basin and the maximum annual yield and equal proportionate share have been determined by the Board as one acre-foot per acre. Mr. Mathis stated the applicant is proposing to use the water in a commercial sod farm operation, which has an efficient irrigation system featuring a low-pressure drop line, center-

pivot type of system, and there will be personnel on site to inspect for leaks/losses. The applicant stated a licensed well driller would drill the wells in accordance with the Board's standards on well construction.

The protestants were concerned there would be possible depletion of groundwater in the area. Mr. Mathis explained that because the hydrologic study had been completed, well spacing requirements are in effect. At one of the well locations it appeared that some portions of the 10-acre tract could be within the 1320 feet, so a condition has been included in the proposed order to state the well will not be located closer than 1320 in order to meet the spacing condition.

Mr. Mathis stated that in summary, the record showed the application to be in compliance with Oklahoma Groundwater Law, and staff recommended approval.

2. Discussion and presentation by parties. There were no protestants in attendance at the meeting.

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. Sevenoaks moved to approve the findings of fact, conclusions of law and Board order for regular groundwater permit #2002-575, and Mr. McDonald seconded.

Mr. Currie asked the applicant if he would be willing to place a meter on the wells. Mr. Harrison responded that he would be willing to; however, this water is also used for his household. After some discussion, Mr. Harrison stated he was comfortable that he would not deplete the groundwater, and the order was not amended to include metering.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

B. In the Matter of Stream Water Right No. 1964-61 of Charles Abernathy, Jackson County.

1. Summary – Mr. Mathis stated that the item is for the proposed reduction of stream water permit #1964-61 for Charles Abernathy in Jackson County. He said this vintage 1964 permit has been subject of reduction on a couple of occasions and during this review and update of water use information, it appeared the permit is subject to reduction to 24 acre-feet. Staff recommended the permit be reduced accordingly.

Mr. McDonald asked if this review came about as part of an annual routine review of water use, and if staff is also reviewing municipalities. Mr. Mathis responded that is correct, and municipalities have been under review as well. He explained that the Board staff reviews an entire watershed and the permit holder that is subject to cancellation or reduction is contacted and allowed an opportunity to preserve the right.

2. Discussion and presentation by parties. The applicant was not in attendance.

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. Sevenoaks moved to approve stream water right number 1964-61, and Mr. Currie seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

C. In the Matter of Stream Water Right No. 1965-245 of Margie Koester Hicks, Kiowa County

1. Summary – Mr. Mathis stated this proposed stream water reduction is in Kiowa County. He said this 1965 permit has gone under several reviews for reductions over the years. Recent records indicate the permit should be reduced to 15 acre-feet of stream water, and staff so recommends.

2. Discussion and presentation by parties. Mr. Mathis stated the permit holder was not in attendance.

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. Sevenoaks moved to approve the reduction of stream water right number 1965-245, and Mr. McDonald seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of adoption of resolution to authorize Chairman, Vice-chairman and Executive Director to participate in and submit a settlement offer in the case of United States v. State of Oklahoma and Oklahoma Water Resources board, Case No. 98-CV-521E(C)

1. General background and discussion of resolution. Mr. Duane Smith stated to the members that this matter regards the lawsuit that the Corps of Engineers has against the State on repayment for Sardis Lake. The case sat in abeyance for a while and the Corps has now asked the Judge to move the case forward and the Judge has ordered a settlement conference. Mr. Clyde Kirk, Assistant Attorney General, is representing the State in this matter, and Mr. Smith asked Mr. Kirk to speak to the Board.

Mr. Kirk approached the Board and stated that he had attended a status scheduling conference with Judge Ellison of the Tulsa District Federal Court. He said the Judge indicated the parties should be able to get together and settle the matter without going through the courts, and so has ordered the parties to attend a settlement conference. He said that prior to the settlement conference the United States Government is to submit a settlement demand to the State, and the State, prior to the settlement conference, is to respond to that demand. He said he has been in contact with the Office of the President Pro Tempore of the Oklahoma Senate, the Speaker of the House and the Governor's Office. He said Mr. Couch will prepare an outline of potential settlement options for consideration by the Water Resources Board as well as the Governor and the Legislature. Whether the matter can be settled, Mr. Kirk said he believed it would be tough, but the Judge has ordered the parties to attend the conference and listen. He said there are certain things that are impediments to settlement that the Legislature is going to have to consider that will have to be discussed with them. He said, though, as part of the court's order we have to have someone there with settlement authority on behalf of the state, and the Water Resources Board is a named party, so he requested that someone attend on behalf of the Board who would have settlement authority, and also regarding the State of Oklahoma there is discussion as to perhaps the Attorney General's office can be appointed by the Legislature to represent the State. He said there are several settlement options, and he anticipated that the discussions at the beginning of the settlement conference will be to get the parties talking about a potential settlement and then to go to the Legislature for agreement. Mr. Kirk stated that a lot of whether it settles depends on the position of the United States Government and Judge Ellison has leaned heavily on them to be fairly flexible in trying to get

the case settled. He said the resolution before the Board is to authorize members of the Board to attend the settlement conference in October on behalf of the Board. He said the U.S. Government's settlement demand is due on September 15, and the State will have an opportunity to formulate a response.

Mr. Currie asked if the State's obligation is \$40 million. Mr. Kirk responded that at the scheduling conference the stated total amount is \$60 million. Mr. Currie asked if the State did not come up with \$60 million, could another entity pay the settlement and own the lake? Mr. Kirk responded that is part of the lawsuit and something the Judge will have to determine. The contract itself states the Legislature is under no obligation to appropriate any funding to pay the interest payments, and that is one of the questions that will have to be decided; whether to sell water to third parties, surrender rights, or any other kind of possibility, and the court will have to decide what the contract allows. Mr. Currie said, then, there could be a possibility of someone else owning the lake. Mr. Kirk answered that is a possibility if the contract is held to be valid.

Mr. Sevenoaks asked how the settlement conference could bind the legislature to make a payment? Mr. Kirk said that any settlement would have to be approved by the legislature, so any monetary settlement would have to be something the legislative leaders feel would be approved by the legislature. Chairman Grandstaff asked then, it is highly plausible that if there is no settlement, that a third party could write a check for \$60 million and gain ownership of the lake? Mr. Kirk answered that if the court determined that Oklahoma was not going to pay, then the rights would revert back to the Corps of Engineers, which could then do what it wanted. He said if there is no settlement, the court will have to decide if the contract is valid and then if it is, to determine the parties' rights and responsibilities under the contract and what they can force the state to do, if anything, and could make the state negate in good-faith negotiations someone willing to use the water and make payments.

Chairman Grandstaff stated that to reach a settlement is the wisest thing to do, and that is what the resolution does, to authorize the Board to participate in the beginning stages, with the approval of the legislature.

2. and 3. Consideration and vote on whether to go into executive session. The Board did not vote to enter executive session.

4. Vote on whether to approve resolution as presented or as may be amended.

Mr. McDonald moved to approve the resolution authorizing Chairman, Vice-chairman and Executive Director to participate in and submit a settlement offer, and Mr. Farmer seconded.

AYE: Currie, Farmer, Keeley, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

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 the budget-to-actual report in the members' notebooks reflect the agency expenditures ending August 30, 2003. He noted, in response to earlier questions, the overall budget has decreased

\$1.4 million from last year. He said the appropriations for operations has increased somewhat because \$1 million was transferred from REAP funds—funding for the BUMP--to the regular operating budget, but the overall appropriation decreased from \$8.06 million last year to \$6.2 million realizing a \$1.8 million cut.

Mr. Smith added there would be a second legislative meeting later in the week regarding the REAP funding, and appropriations to the OWRB and the Substate planning districts. He said he would be speaking to the committee about the differences in the programs and projects funded through REAP appropriations. He explained that the Board's program is a priority point system, and no administrative dollars are taken from that appropriation, it is funded through the other financial programs, and the small communities that benefit are getting all of the money intended for the program.

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 10:50 a.m., on Tuesday, September 9, 2003.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Grady Grandstaff, Chairman

_____/s/_____
Glenn Sharp, Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Lonnie Farmer

_____/s/_____
Richard McDonald

_____/Absent_____
Bill Secrest

_____/s/_____
Jack W. Keeley

_____/s/_____
Richard Sevenoaks

ATTEST:

_____/s/_____
Ervin Mitchell, Secretary

(SEAL)