

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

April 13, 2004

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Grady Grandstaff at 9:30 a.m., on April 13, 2004, 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
Ervin Mitchell, Secretary
Harry Currie
Lonnie Farmer
Jack Keeley
Mark Nichols
Bill Secrest
Richard Sevenoaks

Board Members Absent

Glenn Sharp, Vice Chairman

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, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Laurie Williams, Oklahoma Ranch.comLLC, Oklahoma City, OK
Pere Pierce, Norman, OK
Jerold Gammit, Stillwater, OK
Linda Nichols, Mayor, Rush Springs, OK
Charles Birchell, Councilman, Rush Springs, OK
Mike W. Ray, Oklahoma House of Representatives Media, Oklahoma City, OK
Chris Gander, Oppenheim, Oklahoma City, OK
Gary Peoples, Atoka County Rural Water District #8, Hartshorne, OK
Larry Rhodes, Springer, OK
Paul Smith, Wells Nelson, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Dan Thorne, Ardmore, OK
Charles Rems, Springer, OK
Gloria Hayes, Guthrie, OK
Valerie Epperson, Guthrie, OK
Leigh Britton, Jr., Guthrie
Thomas J. Enis, OklaomaRanch.com LLC, Oklahoma City, OK
Loraine Hathorn, Meridian, OK
Warren Whittlesey, Springer, OK
Bobby & Donna McSpadden, Clayton, OK
Chris Cochran, Capitol West, Oklahoma City, OK
Charles Newton, Oppenheim/Banc of Oklahoma, Oklahoma City, OK
Jim Williams, Ardmore, OK
Truman Brown, Grady County Rural Water District #3, Bradley, OK
Becky Thomas, Grady county Rural Water District #3, Bradley, OK
Juanita Haven, Grady County Rural Water District #3, Bradley, OK
Nathan Goodman, Meridian/Langston, OK
Jack Money, The Oklahoman, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Bob Baxter, City of Okemah, OK

C. APPROVAL OF MINUTES

Chairman Grandstaff stated the draft minutes of the March 9, 2004, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were additional changes.

Mr. Currie moved to approve the minutes of the March 9, 2004, Regular Meeting, and Mr. Nichols seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, greeted the members and asked Mr. Mike Melton, Assistant to the Director, to provide an update on current legislation. Mr. Melton distributed a

written report on the legislative measures, and briefly updated the members on the pertinent bills.

Following the report, Mr. Smith said that very early on in this legislative session, he talked about the need to put money into the Financial Assistance programs. He said that at this point, there are no real plans and he is somewhat disappointed. He said he has met with Secretary Meacham (Office of State Finance director and the Governor's Secretary of Finance) to look at some way to try to put some cash into the program. He said the goal is \$120 million dollars, which won't satisfy all of the needs over the next twenty years but a substantial part. Funding proposals have been provided on how the money would be spent, how to leverage the Clean Water and Drinking Water programs together, and it may be necessary to go to a vote of the people to explain the program and obtain the needed revenue. He said that Senate Bill 903 is in conference and there have been many changes to the original bill, and a significant change is the removal of the OWRB in the initial planning process. He said he would be providing input to that, but clearly since 1957, it has been in the OWRB's original statutes for the OWRB to be the comprehensive water planning agency for the state. Those are the two big matters on the plate; and regarding the budget, it is early in the process and the subcommittees are just now getting together to negotiate. The Arbuckle-Simpson study has not yet been funded, but it has been promised, but the amount is not known, so that is also a priority item. He said regarding that study, the first year has garnered support from the landowners, and the Technical committee is confident there will be a good product for developing a management scheme for that basin.

Mr. Smith continued his report stating he had attended the annual Stillwater Legislative Breakfast, and one of the big things he noticed at the meeting and the city's legislative agenda was that there was no mention of water. He said without water, Stillwater would not exist, and we need to get the communities talking about water or there will not be any funding for programs, even though month after month the Board is able to save communities millions of dollars because of its programs.

Mr. Smith stated he would be speaking to the Environmental Federation of Oklahoma legislative forum, and the Red River Compact Commission meeting at Pottsboro, Texas, and he reported recent correspondence from the State of Louisiana supporting Oklahoma's position on the Sweetwater Creek project in Texas. The concern is the taking of good quality water and that the Lugert-Aluts Reservoir would be of lower quality and quantity. There is a similar situation between Arkansas and Louisiana, and the downstream states seem to have (and typically do have in other compact states) the same type of agreements. Texas is wanting to implement rules and regulations along the Red River on how the Red River and Lake Texoma water is allocated. Mr. Sevenoaks asked about the boundary of the Red River being in Oklahoma, and Mr. Smith responded that while the waters are in Oklahoma, the compact dictates that it will be apportioned equally among the member states. He added that north Texas is growing so much, they need water supply and are looking at a places for water supply—Lake Texoma is one of them—and there will be increased pressure on that use of water, and Oklahoma must be very diligent in formulating rules to protect the State's interest.

He said on April 28, Mr. Dean Couch will be speaking at a water rights symposium in Oklahoma City, and will be talking about water law and water rights. The Bartlesville Loan Closing is April 30 which he and Joe Freeman will be attending; it is a big project for Bartlesville, approved by the Board recently, and saving citizens millions of dollars.

The Environmental Committee of the Arkansas-Oklahoma Arkansas River Compact Commission will be meeting April 29-30 to discuss the monitoring project on how to monitor water in Arkansas and Oklahoma in the scenic river watersheds. He said the proposal will be critical to determining if Arkansas is doing its part in meeting the .037 limit, and if Oklahoma is doing its part. He said he did not believe it appropriate to monitor just at the stateline and

accuse Arkansas of being the only contributor, as it is an entire watershed issue, for nonpoint sources and point sources. There have been recent agreements with the area cities that will make significant improvements to the water quality, and now the focus is on the nonpoint source side. There are also issues in the phosphorous that is in the stream and in the sediments in the stream and the effect of high flows on phosphorous levels, and ultimately what happens at Lake Tenkiller. Mr. Derek Smithee, OWRB Water Quality Programs Chief, will be working for the OWRB on the monitoring proposal, along with his counterparts in Arkansas, and Mr. Smith stated he anticipated it would be expensive monitoring. Mr. Smith said that several things had happened in Arkansas in response to the .037 limit being passed in Oklahoma that has been very positive: cities have gone to 1.0 mpl permit limits which will be implemented as they renew permits and build facilities, three separate laws were passed last year dealing with poultry growers on land application of litter, soil testing, licensing of litter applicators, and there is an agreement now which was put together between Oklahoma's Secretary of Environment Miles Tolbert and Arkansas about how to move forward. The monitoring plan will bind it all together, with the goal being after agreement to take these measures to improve the water quality, and to determine how well it is working.

Ms. Smith concluded his report with the reminder to the members that Financial Disclosure Statements are due to the State Ethics Commission on April 30.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rush Springs Municipal Improvement Authority, Grady County, Oklahoma. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Rush Springs Municipal Authority, located in Grady County, had been experiencing very low water pressure and in order to correct the problem, Rush Springs proposed to drill a new well and raise its existing standpipe. The total project costs is estimated at approximately \$680,000.00, with funding provided by \$15,000.00 in local funds, \$565,000.00 from the Drinking Water State Revolving Loan Fund (DWSR) and \$100,000.00 emergency grant requested of the OWRB.

Mayor Linda Nichols, Charles Birshnell, trustee; David Wise, engineer, and representatives of the Financial Advisor were present in support of the grant request.

Mr. Mitchell moved to approve the emergency grant to the Rush Springs Municipal Improvement Authority, and Mr. Nichols seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for the Town of Meridian, Logan County. Recommended for Approval. Mr. Freeman stated the residents of Meridian had individual septic systems, and sewage effluent is surfacing in portions of the town and causing a health hazard. Mr. Freeman said in order to solve the problem, the Town will be installing a collection system with total retention lagoons. The project is estimated to cost \$308,000.00 to be funded with a \$50,000.00 REAP grant from ACOG, a \$108,000 CDB grant from the Department of Commerce, \$50,000.00 in local funds and the OWRB grant. Staff recommended approval.

Ms. Loraine Hathorne, town manager, and Mr. Nathan Goodman, Langston University, were present in support of the application.

Mr. Currie asked about the system design. Mr. Freeman responded the current residents have failing septic tanks and this system will put each resident on a drainage system that will go into a lagoon system. Mr. Currie asked about any fees contributed by the local residents, and funding for future projects when necessary. Mr. Freeman responded that it is a poor community, and without the grant the town would not be able to install the system. He said the Town is trying to put in \$50,000 of their own money through forced labor on this project, but they will have to raise fees in the future because the septic tanks will have to be cleaned out at some point. Chairman Grandstaff noted that the summary indicated that because of the median household income and the ability to finance the project the town received the maximum points on those ratings. Mr. Currie noted that Rush Springs was making a \$5.00 contribution per tap. * Mr. Mitchell said some of the funding would be coming from reserves, which means the town has been doing some saving.

Mr. Secrest said that in response to the request by Senator Morgan, he moved to approve the emergency grant to the Town of Meridian, and Mr. Mitchell seconded.

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

*Mr. Currie later corrected his statement that the Rush Springs' residents were contributing \$18.55 per tap.

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Guthrie Public Works Authority, Logan County. Recommended for Approval. Mr. Freeman stated this application by the Guthrie Public Works Authority was for a Clean Water SRF loan in the amount of \$607,303.56. He said Guthrie has requested the loan for cleaning existing digesters, installing mixing equipment for the digesters, revising the digester roof structure, and installing a sludge transfer station. Mr. Freeman noted provisions of the loan agreement, and said staff estimated Guthrie will save \$201,000 by borrowing through the Board. Staff recommended approval.

Guthrie City Manager Glen Hayes was present in support of the loan application, as well as representatives of the City's financial advisors.

Mr. Nichols moved to approve the CWSRF loan to the Guthrie Public Works Authority, and Mr. Mitchell seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving Loan for Adamson Rural Water District #8, Pittsburg County. Recommended for Approval. Mr. Freeman stated the Adamson District would be using the loan proceeds to finance two bond issues, issued in 1998 and 2000. The loan will be funded through the Board's series 2004A bond issue that is scheduled to close on May 12, 2004. He noted provisions of the loan agreement, and said the District will save approximately \$450,000.00 in net interest by refinancing the bond issue. Staff recommended approval.

Mr. Gary Peoples, District Manager, and Mr. Charlie Newton and Mr. Chris Gander, financial advisors were present in support of the request.

Mr. Secrest moved to approve the loan to the Adamson RWD #8 and Mr. Mitchell seconded.

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

E. Consideration of and Possible Action on a Proposed Order Approving Loan for Durant City Utilities Authority, Bryan County. Recommended for Approval. Mr. Freeman stated this application by the Durant City Utilities Authority had made a loan request to the Board in the amount of \$6,197,476.36. He said Durant would be using the loan funds to refinance the remaining portion of their interim Clean Water SRF loan obtained from the Board in December 2001. He said the interim construction loan was for modifying the existing wastewater treatment plant and for construction of a new 3.5 million gallon per day sequencing batch reactor facility. Mr. Freeman noted funding sources and provisions of the loan agreement. He said that because of refinancing both interim construction loans, Durant would save approximately \$4.9 million dollars, or \$3.41 per tap per month. Staff recommended approval.

Mr. John Wolfe, financial advisor with Municipal Finance Services, was present in support of the loan application, and made comments about the city's financing and temporary sales tax to pay off all loans in the year 2021.

Mr. Mitchell moved to approve the loan for the Durant City Utilities Authority, and Mr. Currie seconded.

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

Mr. Smith interjected that by borrowing from the Board's programs, Durant saved \$10 million, or \$6.82 per tap per month. Mr. Currie suggested the communities write a letter to their legislators so that they know how much money the Board is saving communities. Mr. Smith said a number of the communities do contact their legislators.

F. Consideration of and Possible Action on a Proposed Order Approving Loan for Broken Arrow Municipal Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this application by the Broken Arrow Municipal Authority is for a \$3,775,000.00 loan. He said Broken Arrow is requesting the loan to move water lines for better water service and fire protection; install a new pump station, and build a new 1-million gallon water storage tank. The loan will be funded from the series 2003A revenue bond issue, at a variable or fixed interest rate. Mr. Freeman noted other provisions of the loan agreement. Staff recommended approval.

Mr. Gary Blackford, City Manager; Mr. Joseph Watt, city engineer, and representatives of their financial advisors were present in support of the loan application.

Mr. Secrest moved to approve the loan to Broken Arrow Municipal Authority, and Mr. Mitchell seconded.

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

G. Consideration of and Possible Action on a Proposed Order Approving Loan for Broken Arrow Municipal Authority, Tulsa County. Recommended for Approval. Mr. Freeman said this requested loan is for the replacement of a water transmission line to increase capacity to about

43 million gallons per day. The loan will be secured by a lien on Broken Arrow's water, sewer, and sanitation system revenues. Mr. Freeman noted other provisions of the loan agreement. He said staff estimated Broken Arrow would save approximately \$4.3 million in interest over the 20-year life of the loan, or \$0.55 per tap per month. Staff recommended approval of the loan request.

Mr. Gary Blackford, City Manager; Mr. Joseph Watt, city engineer, and representatives of their financial advisors were present in support of the loan application.

Mr. Nichols moved to approve the loan application to the Broken Arrow Municipal Authority, and Mr. Currie seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sevenoaks, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Sharp

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.

There were no requests to transfer items; however, Mr. Jim Schuelein asked that item 3.D.8. Supplemental Agreement with the Corps of Engineers be withdrawn due to changes at the Corps' office. Mr. Grandstaff asked about the poultry litter burning contract agreement pilot project. Mr. Smith responded this project with AES and PVIA is for a poultry burn pilot project to look at how to remove litter from the Lake Wister watershed, and the idea is to combine coal production and poultry litter burning to produce power and get rid of chicken litter. The agreement will test for efficiency of the poultry burn. Chairman Grandstaff stated if the test is successful, it would go a long way in resolving the nonpoint source problems. Mr. Currie asked about the project design; Mr. Smith stated the project design had been built, this agreement would provide some funding for the project.

Mr. Nichols said that Senator Kerr had asked about item 3.D.8. regarding the Mangum study. Mr. Smith responded there is a request to the Legislature for funding in both subcommittees for \$50,000.00, and the problem is the Corps of Engineer's agreement language, but he anticipated that would be resolved soon.

Mr. Currie also asked about the Jenks Aquarium contract. Mr. Smithee responded that the staff had been working with the Jenks Aquarium about interactive computer displays, Oklahoma water, how much people use, water quality and quantity issues, and this is a cooperative project to have a computer touch screen with quizzes, following the Arkansas River from its birth, how Oklahoma and Tulsa effect the river, in an interactive educational display.

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 were no other questions pertaining to items on the Summary Disposition Agenda.

Mr. Farmer moved to approve the Summary Disposition Agenda as amended, and Mr. Keeley seconded.

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

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

A. Presentation and Discussion of Financial Assistance Division Programs. Mr. Joe Freeman stated this presentation is in response to Mr. Sevenoaks' request a few months ago for time to have a presentation and discussion of the Board's Financial Assistance Programs. He said he appreciated the opportunity and he described the staff positions and said that the division is totally self-supporting and does not receive any appropriated dollars for administrative functions. He said the only growth in the division since its inception is when the former "construction grants" division was moved to the OWRB from the State Health Department as a result of consolidation in 1993, and with the addition of the Rural Economic Action Plan (REAP) grant programs.

Mr. Freeman described each of the Board's financial assistance programs. The Emergency grant program is the oldest, having been created and funded by the interest earnings of the initial \$25 million appropriated by the legislature in 1979. Mr. Freeman stated that since the Board approved its first grant, the OWRB has approved over \$30 million in emergency grants throughout Oklahoma, and have assisted communities in Oklahoma's 76 of the 77 counties and estimate that at least over 60% of the state's population have benefited from the program.

Mr. Freeman outlined in detail the point criteria and the Board's rules and regulations for eligible entities and eligible projects that govern funding to communities through the Emergency Grant Program, State Loan Program (Revenue Bond Issue Loan Program), Clean Water State Revolving Fund Program, and Drinking Water State Revolving Fund Program, as well as the REAP program.

There were questions and discussion by Board members.

B. Update and Discussion on National Flood Insurance Program Activities. Mr. Mike Mathis stated that this time of year is the flooding season, and the Board's program is very important and provides tremendous service to the people of Oklahoma. He provided a brief update of the staff activities related to the State Flood Insurance Program.

Mr. Mathis said that nationally, there have been now \$6 million in flood loss damages, a four-fold increase since the early 1900s, and mainly because we like to build around water. In Oklahoma, we have experienced 38 President-declaration disasters since 1955, 28 involving flooding, and over the last ten years we have experienced over \$120 million in actual damages. Mr. Mathis described the benefits of the state program and the goal is to mitigate losses of life and property associated with flooding, and activities that protect the actual and beneficial uses of our floodplains, and land use strategies that help to support those uses.

Mr. Mathis stated that the OWRB is the state coordinator for the National Flood Insurance Program, and Oklahoma is one of the best states and is very active in recruiting volunteers, and Tulsa is a national leader. Still, there are now 374 participants in the program with only 12% of structures located in the floodplains insured. He said the goal over the next

few years is to obtain support to modernize the floodplain maps across the country. Governor Henry has declared March 2004 as “Flood Insurance Month”, and May as “Flood Awareness Month.” Staff will be conducting a series of flood insurance workshops across the state during the month of May. There were a few questions from Board members.

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 Stream Water No. 2003-018, Charles M. Rowe Revocable Trust, Carter County.

1. Summary – Mr. Mike Mathis, Chief of the Planning and Management Division, stated to the members that this application by the Charles M. Rowe Revocable Trust is for the right to take and use 210 acre-feet of stream water per year for wetlands restoration purposes. The water is to be taken from two diversion points on Henry House Creek and from two diversion points on tributaries of Henry House Creek. Mr. Mathis stated the applicant had been informed about the wetlands reserve program some time ago, and had been working with the Natural Resources Conservation Service in developing the project. He provided a map of the project, and exceptions filed by the protestants.

Mr. Mathis explained there is a 12-year agreement between the applicant and the NRCS that provides that the NRCS and other agencies provide 75% of the funding for the construction and actual flooding of the applicant’s land. He said the applicant intended to flood six ponds, which are actually the low-lying areas and will require the construction of dikes in the area to impound the water. The wetlands will maintain an optimum water level for migratory waterfowl, and other birds and wildlife during the fall and winter seasons.

He said evidence in the record showed a need for only 147 acre-feet of water generally from October 1 to March 31 of each year. He said it had been determined that 147 acre-feet of stream water is available, the use is a beneficial use, and will not interfere with domestic or existing appropriative uses. Mr. Mathis stated that the permit is in compliance with Oklahoma Stream Water Law, with conditions for a seasonal permit for 147 acre-feet October 1, through March 31. He said it is also recommended that the permit contain additional conditions that the dikes contain outlet conduits of sufficient capacity to release water to prevent interference with downstream domestic and public uses.

Mr. Mathis explained that the protestants were concerned that the land is not suitable for development as a wetland because of the type of soil in the project area; however, evidence in the record was substantial to support the applicant’s proposal. Several protestants contended

the applicant's use was not beneficial because it would be wasteful; however, under the circumstances, the evaporation loss that will be caused by the applicant is not unreasonable or unduly wasteful. He said the protestants opposed any interference by the applicant with their domestic use of the water in the stream; however, with the conditions mentioned earlier, the proposed use will not interfere.

Mr. Mathis stated the protestant's had filed exceptions (distributed earlier) primarily based on the grounds that water is not available. He said it has been the philosophy of the Board in the past to look at mean annual availability of water and in Oklahoma it is recognized that streams do go dry during certain times, and there are times of flooding occurring. He said the Board's philosophy is to make available water to proposed users even though there may be times when water may not be visibly available, so many times applicants in some areas may have to divert water and store it offstream for use later; there is not a guarantee that water will be available all of the time. He said that some of the testimony in the record indicated that the applicant would, on the most part, not need to divert water and most years there will be sufficient water for the project. A condition is in place in the permit during those dry years to be protective of downstream uses. Staff recommended approval.

2. Discussion and presentation by parties. Mr. Charles Rowe, applicant, approached the Board members and stated that he had made the application with the NRCS after looking at the project for a couple of years. He said initially he had some reservations about it himself, but he had not known much about the application process. He said he cared about the stream, he was proud of the project and that is was a good thing for the community and southern Oklahoma. Mr. Rowe said that the watershed includes 20 sections of land, and he had hoped he would not have to pump water, and he may not have to pump water every year, but there may be times that some portions of the project would need water. He said he did not want to take water when there is not enough water to go downstream, and that he planned to take water during the cool months of the year that would be returned to the stream.

Chairman Grandstaff asked how many acres of land were involved in the project. Mr. Rowe answered the project would cover 51 acres, with 8 ponds. Mr. Grandstaff asked why the original application was 210 acre-feet, and the staff has recommended 147 acre-feet. Mr. Rowe explained that at first he did not know much about the project, and made the application for the amount that would be year-round, but it was later determined that only 147 acre-feet of water is needed, so that it what the application is for.

Mr. Mitchell asked who or what would benefit from the wetlands project. Mr. Rowe responded that he believed it would benefit the migratory birds, as well as other wildlife. He added that he had been in the cattle business for a long time, and things change and he had to change with them; he needed to do something different, began to look at options and liked this project. He asked Mr. Rowe if it would dry up in the summer; and he responded it would be intentionally drained and released back to the stream in the summer.

Mr. Thomas Ennis, attorney representing the protestants, addressed the members and he named the adjacent landowners who protested the application. He said the application has two parts: (1) to divert water from two places (points 1 and 2) on Henry House Creek, and (2) to divert water from several tributaries of Henry House Creek (diversion points 3 and 4). He said his client's main concern is Henry House Creek which has a long history in Oklahoma, which he described. He said for this to be a wetlands restoration project, there would have to have been a wetlands, and the protestants did not believe, and had presented evidence, there was no wetlands there prior, and the type of soils there are not appropriate for a wetlands. Mr. Ennis stated that Henry House Creek is a special water, and a pristine creek, and that the water is simply not needed—a requirement of the statute—and there is no testimony in the record that the water is needed. He said that of the 147 acre-feet, 90 acre-feet comes from Henry House Creek, and that is the creek the protestant's are concerned about. Mr. Ennis said their expert

witness calculated that the stream data available on a daily basis, using the commonly used method of "Probability of Exceedence" which was not accepted by the hearing examiner. Mr. Ennis asked that the permit be denied, or two things be added to the permit conditions: (1) additional conduits needed; (2) that the Henry House Creek will be overpumped, and a meter should be placed at the diversion point. He additionally took issue with the matter of photos and maps which he said were not admitted in the record.

Mr. Couch stated the matter was discussed with the hearing examiner, but the photos did not have subtitles or descriptions and there was discussion of entering into the record, but the protestants chose not to enter as exhibits, and were not put together as part of the record. He said, however, at the Board's discretion photos could be entered to confirm or change the decision of the findings or conclusions, but the Board has usually just remanded the matter to staff.

Mr. Ennis stated he represented Oklahoma Ranch.com, L.L.C., however, Mrs. Laurie Williams, owner of the ranch, was present and wanted to speak to the Board.

Ms. Williams approached the members and stated she lives in Norman, Oklahoma, but owns the "ranchette" in Carter County. She described her family's history in the county and the history of the area. She talked about the importance of the serenity of the Henry House Creek and the effect the proposed development by the applicant would have on the creek. She feared that if the creek is diverted, or dammed, it would eventually have an effect on Turner Falls. She said the creek is also part of the Arbuckle-Simpson aquifer, and she attempted to tie the two together, quoting from a hydrological report. She asked the Board to deny the permit, and Ms. Williams submitted a letter from the President of the First national Bank of Ardmore in support of denial of the permit.

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.

Chairman Grandstaff if all the dikes would have drains installed, or just one? He said he read it as being plural and they all would. Mr. Mathis answered that is correct. Chairman Grandstaff also asked what enforcement would be available if there is "interference"? Mr. Mathis responded that the OWRB staff should be contacted who then would conduct an investigation and determine what alleviating measure would be necessary. Chairman Grandstaff reiterated the Board could not make metering of the well mandatory, the Board could request the applicant to install a meter(s), but it is voluntary. Mr. Keeley asked if the creek would be dammed; Mr. Rowe responded the dike would be constructed in the wetlands area, and water would be pumped from the creek, there would be no restrictions of any kind in the creek. Mr. Sevenoaks said that Mr. Rowe's has a 12-year agreement with the NRCS, which has determined his land is eligible for the wetlands reserve project, and it is determined under the Board's rules and regulations that he has a right for the use and that is no different than other uses. He said that sometimes the Board has to make difficult decisions that individually may not be liked, but the Board has to abide by the laws handed down by the Legislature. Mr. Ennis said the NRCS wrote a letter stating a water right is not required for a wetlands restoration project.

Duane Smith said that as staff evaluated the application, the comments by the protestants regarded any use of water. He said the staff has tried to work out a situation where Mr. Rowe can do his project with minimal impact to the stream. He said staff has recommended a seasonal permit, so that if the stream goes dry in June and July, there will be no pumping; the standard conditions are also in the permit where there cannot be interference with domestic uses and if there were, Mr. Rowe would be restricted, even during October through March; the water is to flow through the wetland and then flow back to the stream; and the amount was reduced from the original application. He said the Board has the option of remanding the matter

to staff for further work, accepting the protestant's modifications, or to accept the order as proposed and staff's recommendation to approve the order.

Mr. Nichols asked about NRCS's requirement to pump from the creek; and Mr. Grandstaff replied the NRCS did not require pumping.

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

AYE: Currie, Farmer, Keeley, Nichols, Sevenoaks, Grandstaff

NAY: Mitchell, Secrest

ABSTAIN: None

ABSENT: Sharp

Mr. Smith stated that staff would be willing to assist the protestants and to consider any options that may be available.

B. Consideration of items transferred from the 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 is in a new format, and provides basic information about money that the agency has encumbered and expended from each fund. He said the items questioned last month because of software errors are now shown as being well-under budget. He encouraged the members to contact him if they have any questions.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

A. Contracts and Agreement Recommended for Approval.

1. Consideration of Interagency Agreement and Related Agreements with Oklahoma Office of State Finance and NIC, Inc., for Services in Connection with Developing On-Line Applications for Water Well Drillers, Drought Monitoring Graphing, and Water Watch Volunteer Monitoring Program, and Authorization for Chairman or Vice-Chairman to Approve and Execute Any Changes to Such Agreements. Recommended for Approval.

Mr. Schuelein explained that this item with the Office of State Finance was added in order to do some initial work on the agency website, developing on-line application for the water well drillers, drought monitoring graphing and the water watch monitoring program. He said these are great projects that will enhance the agency's customer service, and he recommended approval.

Mr. Mitchell moved to approve the agreement and Mr. Nichols seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sevenoaks, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Sharp

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; however Mr. Currie asked to correct his statement made earlier that Rush Springs was paying \$5 for their contribution to the project, and in actuality, it is \$18.55.

9. ADJOURNMENT

Prior to Adjournment, Chairman Grandstaff indicated that his term of office will expire in mid-May, and he most likely would be out of town, essentially making today’s meeting his last. He said a wise man once said, “In no small part is the quality of a man’s life determined by his friends and life experiences. He offered his thanks to the members, said he believed the staff to be the best of any state agency. He also thanked everyone for the opportunity to work with them in the matters of protecting Oklahoma’s water resources.

Mr. Smith thanked Mr. Grandstaff for his service, and noted the many achievements under his leadership. He extended his and staff’s congratulations on an awesome term, as well as best wishes for the future.

There being no further business, Chairman Grandstaff adjourned the regular meeting of the Oklahoma Water Resources Board at 12: 25 p.m. on Tuesday, April 13, 2004.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Acting Chairman Ervin Mitchell

(Vacant) Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Lonnie Farmer

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bill Secrest

_____/s/_____
Jack W. Keeley

_____/s/_____
Jess Mark Nichols

ATTEST:

_____/s/_____
Acting Secretary Bill Secret

(SEAL)