

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

February 8, 2005

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Ervin Mitchell at 9:30 a.m., on February 8, 2005, in the meeting room of the Oklahoma Water Resources Board, located in offices of the OWRB 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 Harry Currie gave the invocation. Following the invocation, Chairman Mitchell welcomed the Board's newest member, Mr. Edward Fite, Administrator, Oklahoma Scenic Rivers Commission, who was recently appointed by Governor Henry.

B. Roll Call

Board Members Present

Ervin Mitchell, Chairman
Bill Secrest, Secretary
Harry Currie
Ed Fite
Rudy Herrmann
Jack Keeley
Mark Nichols
Richard Sevenoaks

Board Members Absent

Lonnie Farmer, Vice Chairman

Staff Members Present

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

Others Present

Morris Bluejacket, Town of Bluejacket, OK
Ken Durbin, Town of Bluejacket, OK
Ray Tamasko, Rogers County RWD #5, Claremore, OK
Steve Dunavant, Rogers County RWD #5, Claremore, OK
Bob Kellog, Save the Illinois River, Oklahoma City, OK
Greg Swartz, Piper Jaffray, Phoenix, AZ
Cheryl Dorrance, Oklahoma Municipal Utilities Providers (OML), Oklahoma City, OK
Deena Suddath, BancFirst, Oklahoma City, OK
Jackie Geeler, BancFirst, Oklahoma City, OK
Bobby McSpadden, Sardis Lake Water Authority, Clayton, OK
Steven Jolly, Arbuckle Master Conservancy District, Davis, OK
Chris Cochran, Capital West, Oklahoma City, OK
Kristen Howell, Williams, Tulsa, OK

C. APPROVAL OF MINUTES

Chairman Mitchell stated the draft minutes of the January 11, 2005, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were changes.

Mr. Secrest moved to approve the minutes of the January 11, 2005 Regular Meeting, and Mr. Nichols seconded.

AYE: Currie, Keeley, Nichols, Secrest, Sevenoaks, Mitchell
NAY: None
ABSTAIN: Fite, Herrmann
ABSENT: Farmer

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, opened his report to the members detailing the Governor's State of the State address on Monday, February 7 and his budget proposal supporting a number of OWRB programs. He said the Governor has recommended \$25 million for the Financial Assistance Program from a Capitol Improvements Bond Issue package, the biggest investment in Oklahoma's communities through the water development fund since Governor Nigh. He said the program is not seen as a partisan program but one that benefits everyone. He said the \$25 million, along with the match money and combination of the FA programs can be parlayed into a beginning figure of \$650 million to communities, and the dollars will continue to revolve and be available to the communities for sometime.

Mr. Smith stated the Governor has also recommended the Comprehensive Water Plan, to be funded from the Gross Production Tax REAP account, it is proposed that \$6.9 million will be in the account next year, and \$2.5 million the first year to the OWRB for the water plan, and an additional two million dollars for an additional two years for a total of \$6.5 million—exactly what the OWRB has recommended for the water plan. He said basically \$4 million will come from the REAP account to the OWRB for water planning, the Arbuckle Simpson study, \$1 million to assist rural water districts and small communities to conduct water sampling for new standards being implemented, and the remainder to the Conservation Commission for a cost-share program, small dam rehab projects, etc. He reminded the members this is the Governor's recommendation, which he is very pleased, but it is the "first hurdle" in a long race.

Mr. Smith stated he had met with Representative Don Armes who is the chairman of the House Environment Committee, and there are a number of bills in his committee that are of interest, and he said Mr. Melton would make a report. He said that at this point in the process, staff provides input on the effect of proposed legislation, but does not lobby; Administrative staff is working with the legislators, the House and Senate staff on the budget, etc., and it is a busy time. He said looking back over the past few years, and looking at the agency's Strategic Plan, and the High Priority Programs, while it took some time to get those in place, we are now realizing some of the fruits of our labor in that effort. Mr. Smith complimented Secretary of Environment Mr. Miles Tolbert for his support of the programs in the Governor's proposed budget, and to the assistance of community leaders across the state and others that have been supportive. Mr. Herrmann asked about the structure of the water plan; Mr. Smith responded that there are several bills dealing with that issue, and the details of the structure is where the bill ran into trouble last year. He said the OWRB's responsibility is water planning, and so general guidelines should be provided about what the plan should encompass, and expect the OWRB to put together a good plan, or be accountable.

Mr. Smith informed the members he had attended, along with Ed Fite, a meeting of the Joint Committee on Agriculture and there were a number of invited speakers to talk about the poultry issue in Oklahoma, including the Farm Bureau, the Attorney General and Secretary Tolbert. He said there are concerns from the growers in the poultry industry that the Attorney General is taking a heavy-handed approach and threatening a lawsuit, and some of the growers feel that if the lawsuit is filed and the state is successful, some of the growers would be forced out of business, and the integrators, but shear regulation would eliminate some of the growers business. Mr. Smith lent his opinion to the members stating the OWRB set the first numeric nutrient standard in the region of .037 for the Scenic Rivers, and that action brought about a series of activities. One of the most significant is that the point sources have come into compliance with the 1.0 mg/l limit in the Scenic Rivers, not only Oklahoma communities, but also northwest Arkansas communities have agreed to upgrade their treatment facilities amounting to hundreds of millions of dollars, and that result will be a significant benefit to the Oklahoma Scenic Rivers. He said the Oklahoma Department of Agriculture passed new regulations for poultry operations requiring testing and standards and application if the operation is located in a limited watershed, negotiations with integrators is underway for the removal of access litter, prioritizing federal dollars for Scenic River watersheds (319, 106, TMDL, etc.), the Arkansas-Oklahoma Arkansas River Compact Commission is evaluating and prioritizing available money and assessing hot spots inputting high phosphorous levels into the watershed. He said at Lake Wister initiatives—prioritizing 319 monies to go to cost-share for growers, identified causes of nonpoint pollution and working with point sources to reduce input, conducted flow routing at the intake structure to assist in treatment costs and the quality of water taken, and PVIA and OK Foods has created partnership to work with growers on marketing litter. Mr. Smith also mentioned work at Grand Lake, most notably the Monkey Island sewer system that started with the OWRB Planning Assistance to the States grant with the Corps of Engineers and has been a model for other reservoirs in Oklahoma. Other efforts at Grand Lake include the FERC re-licensing process for revegetation, and the OWRB's Water Watch Program, sediment testing for Tar Creek impacts, prioritized 319 monies through the Conservation Commission, and many other projects including a \$1.7 million watershed project to be proactive in protecting water quality, even consideration of listing Grand Lake as being impaired in order to receive federal dollars for water quality improvement projects. Water efficiency at Lugert-Altus is another project Mr. Smith mentioned.

Mr. Smith said that in the meeting with the Attorney General, and he did not speak for the A.G., but at the outset he was not in favor of the threat of litigation. A typical course of action is that it is better to mediate. But, as he has listed the work on the state's lakes, it is

evident that a lot of time and effort working with people has been made to improve the state's water quality---it didn't degrade in a day and it won't improve in a day. Now, he said, everyone's goal is to protect the grower, and a critical point in the Attorney General's argument for threatening litigation and negotiating, Oklahoma can put additional regulation upon the growers to take excess litter out of the watershed and the A.G. has said he wants the grower to have control of all of the litter that can be applied safely. However, that part of the litter that cannot be applied safely that would be above the limits that are agronomically used by the crops or can't be sold to another landowner in another area, should belong to the integrator to take the burden off the poultry grower and place it onto the integrator. Secondly, Oklahoma can institute regulations making the industry tight and stringent, but 60% of the watershed is in Arkansas and Oklahoma cannot enforce state regulations in Arkansas. So, through litigation, Arkansas and the integrators can be reached; a double-pronged effort is to have reasonable regulations on the grower indicating safe application, that access is a liability not an asset and belongs to the integrator, which is applied to the entire watershed to protect the rivers in Oklahoma. That is the goal of the Attorney General. Mr. Smith said he agreed with the goal, the A.G. does represent the agencies, and the OWRB has been included and informed throughout the process. He reminded the members that when the Board set the .037 limit there was a threatened lawsuit then as well, which was negotiated, and he hoped the same would happen in this instance. Mr. Smith stated that Representative DeWitt, Chairman of the House Committee on Agriculture, made the comment to the A.G. to keep the growers in mind if litigation is filed, and Mr. Smith stated he believed that everyone had the growers in mind, and that if we go our own way and set rules and regulations then we have put the entire financial burden of the removal of excess litter on the back of the grower, and he did not believe anyone wanted that. Mr. Smith said he wanted to make his opinion clear, and he believed it is headed down the right track, and that a reasonable compromise with the integrator will be found.

Concluding his report, Mr. Smith announced the agency's DVD production of "Oklahoma Water: A Quality of Life" is now available, announced that Mr. Francis Borelli, first Chairman of the OWRB, and Mr. Jay Galt, attorney for Oklahoma Rural Water and member of the Oklahoma Municipal Authority both had passed away recently. He ended his report with the introduction Ms. Rhonda Bowers, OWRB Employee of the Quarter.

Chairman Mitchell commented that he is in the agriculture industry and while he is not in favor of all restrictions but in regard to water quality he realized those that are necessary to purify the water resources and keep them pure or else face situations foreign countries have today. He said that he is a Farm Bureau Board of Director member, but supports the clean up of the state's scenic rivers for the state's future. He said the Attorney General had been helpful to the citizens of the Panhandle, and while most preferred not to have a threatened lawsuit, sometimes that is what it takes to get the public's attention, and he is hopeful the matter will be resolved without one.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Bluejacket Public Works Authority, Craig County, Oklahoma. Recommended for Approval.

Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Bluejacket Public Works Authority had requested a \$20,674.00 grant. On December 22, 2004, one of the town's two pumps that supplied water to the town's distribution system failed. The resulting pressure in the distribution system dropped below the required DEQ regulation. In order to correct the problem, the pump will be replaced and revisions will be made to the piping. The estimated cost of the project is \$24,322.43 and will be funded with a grant requested of the

OWRB along with the remaining \$3,648.43 to be contributed by town funds. Staff recommended approval.

Mr. Morris Bluejacket, Mayor, and Mr. Ken Durbin, member of the Authority Board, were present in support of the grant request.

Mr. Herrmann moved to approve the grant to the Bluejacket Public Works Authority, and Mr. Fite seconded.

AYE: Currie, Fite, Herrmann, Keeley, Nichols, Secrest, Sevenoaks, Mitchell
NAY: None
ABSTAIN: None
ABSENT: Farmer

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #5, Rogers County, Oklahoma. Recommended for Approval. Mr. Freeman stated that the District has requested a \$1,090,000.00 increase in its loan approved by the Board in August 2004 for \$1,100,000.00. He said that the total loan amount would be \$2,190,000.00. The District is requesting the loan in order to construct five miles of water line to improve water pressure in the system and meet the demand for growth in Rogers County. In addition, the District will rebuild an intake structure on the Verdigris River. The project will be jointly funded with Rural Development. Mr. Freeman stated the District is requesting the increase so it may begin construction of the project and repay approximately one-half the loan prior to it closing. He said the loan will be funded through the Board's 2003 FAP revenue bond issue as a variable or fixed interest rate in place at the time of closing. Mr. Freeman stated the District has been experiencing rapid growth over the past ten years and provides water service to over 4,500 homes and businesses, making it one of the largest Districts in Oklahoma. He said the District's debt coverage ratio stands at approximately three-times. Staff recommended approval of the loan amount increase.

Mr. Ray Tomasko, Secretary of the Board of Directors, and Mr. Steve Dunavant, District Manager were present in support of the request.

Mr. Secrest moved to approve the application for an increase in obligation of funds, and Mr. Fite seconded.

Mr. Currie asked about the need for an increase in funds; Mr. Freeman explained that the project is to be jointly funded with Rural Development but the first step is for the District to obtain funding and begin construction, then Rural Development will pay approximately one-half the loan amount once their funds are secured. Mr. Currie asked about wastewater; Mr. Tomasko responded the district did not provide wastewater service; Rural Water District #1 is within the boundaries of District #5, and handled a large portion of the wastewater, with the City of Claremore and the City of Catoosa handling some as well as private entities.

AYE: Currie, Fite, Herrmann, Keeley, Nichols, Secrest, Sevenoaks, Mitchell
NAY: None
ABSTAIN: None
ABSENT: Farmer

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #2, Mayes County, Oklahoma. Recommended for Approval. Mr. Freeman said the Mayes County RWD #2 has requested an approval of a six-month extension of time for the obligation of funds as a result in delays containing all the necessary easements for the project. The loan is for construction of 76,560 feet of water supply line from the Oklahoma Ordnance Works Authority as well a metering station. He said the District has been a good customer of the Board for several years and has been growing at a strong rate with the number of connections increasing by over 41% over the past ten years. Mr. Freeman recommended

approval of the request; he said a representative of the District was not able to attend. Mr. Sevenoaks asked about the service provided by OOWA. Mr. Currie cautioned about granting funding for water distribution systems without considering wastewater needs for the future.

Mr. Nichols moved to approve the extension of time for obligation of funds, and Mr. Secrest seconded.

AYE:	Currie, Fite, Herrmann, Keeley, Nichols, Secrest, Sevenoaks, Mitchell
NAY:	None
ABSTAIN:	None
ABSENT:	Farmer

3. SUMMARY DISPOSITION AGENDA

Chairman Mitchell 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 to the Special Consideration Agenda; however, Mr. Mike Mathis, Chief of the Planning and Management Division, asked that item 3.E.2, permit #2004-589 for the Town of Cleo Springs, be withdrawn from the Board's consideration due to a protest.

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

Mr. Currie asked about the approval of the Statewide Water Development Fund Spending Plan and payment history on Sardis Reservoir. Mr. Freeman responded the payment history is part of the report to the Legislature as required by statute. He said the report informs the Legislature about what the Board has done with the Statewide Water Development Revolving Fund since it was created. Mr. Smith stated the \$12 million figure is what is owed from the accumulation of payments over the years (that have not been paid to date), but the total debt is now somewhere in the neighborhood of \$60 million. He said the difference between the state and COE on the contract is the interpretation of the contract (whether a Legislative appropriation is required to make a payment) and then how much is owed. Mr. Sevenoaks asked about the status of the lawsuit; Mr. Couch responded that the lawsuit is in the Northern District Court in Tulsa, and the judge has asked for more briefing on the issue of, if appropriate funds can't be provided are there other funds? He said the Attorney General's office is handling that litigation file and has requested additional briefing along with the Department of Justice who is representing the federal government. He said it is difficult to know when a ruling will come, and there could be a variety of rulings to address the options. Mr. Currie asked if as far as the Corps of Engineers is concerned, is the lake is for sale? Mr. Couch responded, no, the storage rights are under contract, pursuant to the 1974 contract, and there has not been a request to rescind the contract, so it could declare the contract void and demand payment.

Mr. Fite commented on item 3.H., #1977-596, application to amend regular permit to use groundwater. He said he believed he understood the issues surrounding waste by depletion,

but he asked if it had been established that washing out a swine operation is a beneficial use of groundwater. Mr. Smith responded that this particular permit of washing swine is a waste by pollution issue and the statute directly precludes the OWRB from making that determination, which is made by the Department of Agriculture. He said when that permit is reviewed by the ODFA, waste by pollution on that particular application is not the recommendation of the OWRB, that is done at the ODFA. He said the OWRB does not depend on the Dept. of Agriculture on the water permit either; staff looks to the four points of law and the application.

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

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

AYE: Currie, Fite, Herrmann, Keeley, Nichols, Secrest, Sevenoaks, Mitchell

NAY: None

ABSTAIN: None

ABSENT: Farmer

The following items were approved:

- C. Consideration of Approval in Accordance with the Following Proposed Order and Proposal: Application for REAP Grant; and Statewide Water Development Revolving Fund Proposal. Recommended for Approval:

<u>REAP Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
SODA				
1.	FAP-04-0042-R	Caddo Public Works Authority	Bryan	\$99,000.00
2.	Consideration of and Possible Action on FY 2006 Proposal for Use of the Statewide Water Development Revolving Fund.			

- D. Contract and Agreements Recommended for Approval

1. Consideration of Resolution to Authorize the Chairman or Vice Chairman to Enter into a Contract for Services with the Oklahoma City Renaissance Convention Center Hotel to Host the 2005 Governor's Water Conference.
2. Consideration of Supplemental Agreement with the U. S. Army Corps of Engineers for Technical Support for Development of the Oklahoma Comprehensive Water Plan under the Planning Assistance to the States Program.
3. Consideration of Amendment to Joint Funding Agreement with the U. S. Geological Survey for Streamflow Monitoring in the Little Washita River Basin.
4. Consideration of GOES Data Collection System System Use Agreement for Satellite Data Transmission.
5. Consideration of Letter Agreement with the U. S. Army Corps of Engineers for Technical Support for Lake Hugo Conduit Hydropower Study under the Planning Assistance to the States Program.

- E. Applications for Temporary Permits to Use Groundwater:
 - 1. Lester Dale Pierce, Roger Mills County, #2004-588
 - 2. *Town of Cleo Springs, Major County, #2004-589 Item withdrawn*

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

- G. Applications for Regular Permits to Use Groundwater:
 - 1. Margaret A. Barber Revocable Trust, Texas County, #2004-523

- H. Applications to Amend Regular Permits to Use Groundwater:
 - 1. Hitch Enterprises, Inc., Texas County, #1977-596

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

- J. Applications for Regular Permits to Use Stream Water:
 - 1. Ralph E. Teeter, Custer County, #2004-032

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

- L. Well Driller and Pump Installer Licensing:
New Operators and/or Activities for Existing Licenses:

1.	Licensee: Fields Water Well Drilling	DPC-0068
a.	Operator: Charles Craig Youngblood	OP-1424
	Activities: Groundwater wells, test holes and observation wells Pump installation	
2.	Licensee: Oklahoma Environmental, Inc.	DPC-0363
a.	Operator: Dylan Cowan	OP-1425
	Activities: 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-04-15
 - 2. Oklahoma Department of Transportation, Delaware County, FP-04-19
 - 3. Oklahoma Department of Transportation, Woods County, FP-04-20

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

There were no items presented to the Board.

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. Consideration of items transferred from the Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda.

Prior to the presentation of the budget report, Chairman Mitchell asked Mr. Mike Melton to bring the members up to date regarding Legislation.

Mr. Melton distributed a written report about legislation that has been introduced regarding water, environment, and other associated issues. He said there has been close to 2100 bills filed, not a record, but more than the two previous sessions, and with nearly one-third of legislators are freshmen. He said the leadership in the House met and passed new rules, named, "Open House Rules" which are aimed at increasing more public access to the business conducted at the Capitol. He said more emphasis would be placed on Committee work and less on floor work, affording every member an opportunity to look at the bills and agendas before the Committee starts its work, hopefully minimizing surprises. He briefly described each bill in the "OWRB" section of the tracking report, and answered questions by the members. He expected that many of the bills would go away after the first deadline.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report stating the budget-to-actual report provided shows that through January 31st is about 58% through the fiscal year and the agency is operating within the budget limits set by the Governor and the Legislature. He said that the state has received good deposits from the Gross Production Tax, and he hoped that the OWRB would receive funding within the next few months, following funding already indicated for other agencies prior to the OWRB's allocation.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

8. PRESENTATION OF PROPOSED NEW PERMANENT RULES AND AMENDMENTS TO CURRENT RULES OF THE BOARD

Presentation of Draft Proposed New Permanent Rules and Amendments to Current Rules of the Board – (Scheduled for consideration and action at March 8, 2005 Board meeting):

A. Background and Summary of Public Participation – Duane Smith said the summary of publication has been distributed to the members. The document contains all the comments received at the rules hearings and otherwise, and a response to the comment is included. He said this month staff will present the draft proposed rule for open discussion today but no action will be taken until the March meeting. Mr. Smith stated public comment would also be heard today, and the members would then have thirty days for review. He instructed the members they are allowed to discuss rules and rule amendments with any person of the public, unlike a permit situation where the members cannot discuss the matter with the public. He said staff followed the Administrative Procedures Act.

B. Proposed Amendments to Chapter 1 - Organization and Procedure of the OWRB

1. Summary of final draft proposed rule – Chairman Mitchell stated he had requested this proposal that the Board elect the Chairman for no more than two consecutive years. In the past chairmen have served up to 17 years and he felt it was better for the Board to allow more opportunity for others to serve. He added that once the two-year term is over and the person sits out a year, he can be re-elected at another time.

2. Questions and Discussion by Board Members – Mr. Sevenoaks asked if there were any other changes; Mr. Smith responded that is the only proposed change to Chapter 1.

3. Comments by Public – There were no comments.

C. Proposed Amendments to Chapter 20 – Taking and Use of Streamwater

1. Summary of final draft proposed rules – Mike Mathis stated to the members that the changes proposed in this chapter of the Board's rules include one by the navigation industry and Waterways Division of the Department of Transportation to ensure that during times of low flow conditions, water that may be released that is contracted for storage and Corps of Engineers projects could be protected from diversion by others. Another amendment concerned the reasons why a water right holder should not be subject to reduction i.e., wet years an irrigator on a schedule of use found it not necessary to irrigate but has the equipment well maintained and may need to irrigate at another time. This change would be used as a guideline and would warrant a field investigation by staff.

2. Questions and Discussion by Board Members – Mr. Sevenoaks asked about strike-through language on page two. Mr. Couch responded that language had been in the Administrative Procedures Act but has been deleted from the Act; therefore this change reflects that amendment to the APA. Mr. Sevenoaks was concerned that someone sitting on a water right might be able to do so if they installed a pump and indicated to staff it was being used; however, Mr. Mathis stated the equipment would have to be maintained and in working condition and clear that it is used for a crop, and that would not qualify as a reason to preserve the right. Mr. Smith interjected that there is a fine line between protecting an investment and hoarding water, and the stream water law is about how to prevent the hoarding of water. He explained the situations where a community is planning and an industry is put on a schedule but economic downturns affect its ability to use water, and staff was interested in assisting the community in protecting its investment, i.e., building a reservoir, and that it is inappropriate to

cancel the water right due to not being able to comply with the schedule. And also, if an irrigator does not have to irrigate his crop because it is a wet year, he should be able to maintain his water right. He said this is another tweak in the appropriation doctrine, and he has heard some negative comments, but he believed the concept is needed for long-term water planning. Mr. Couch added the existing language in the statute refers to “ready and willing” and this language is to clarify what is already in the law. Mr. Smith mentioned Rep. Askins’ current measure in the legislature takes cities out of the appropriation process and actually removes the protection of the city’s water right and could remove all possibility for other users upstream of a city-owned reservoir. He said he thought the intent was for long-term water planning without being under the reduction provisions. The rule change is to say that if the infrastructure has been built and maintained, it won’t be subject to reduction. Mr. Sevenoaks stated he wanted to be careful not to throw the weight to one direction or the other.

Mr. Mathis stated the final item on page six of the proposed rule document regarded impounding water in mine pits. He said the Department of Mines closure process allows the one-time filling and the use reverts back to the landowner; the language allows for the landowner to apply for an irrigation permit, for example.

3. Comments by Public – There were no comments.

D. Proposed Amendments to Chapter 35 – Well Driller and Pump Installers Licensing

1. Summary of final draft proposed rules – Mike Mathis said these proposed rule changes regard the well drillers and pump installers licensing program. He said most of the matters are clean up language and clarification. The rules in this chapter are promulgated in close relationship with the Well Drillers Advisory Council so everything presented today has been considered and approved by the Council. Mr. Mathis stated the primary area with a substantive change is on page 17 (of the packet) about a plugging standard using bentonite seal slurry in the completion of a test well. He said the Council suggested the requirement as a better option to the current standard. Mr. Smith reminded the Board it appoints the members of the Council, and Mr. Kent Wilkins is the OWRB staff person who works with the Council and the program.

2. Questions and Discussion by Board Members – There were no questions or discussion by the Board members.

3. Comments by Public -- There were no comments by the public.

E. Proposed Amendments to Chapter 46 – Water Quality Standards Implementation

1. Summary of final draft proposed rules – Derek Smithee made a PowerPoint presentation on the proposed changes to Chapter 46 that is Water Quality Standards Implementation. There are no proposed changes to the Water Quality Standards this year. He said the WQS establish the benchmarks for the surface waters of the state that all agencies must meet, but the best standard can be undone with improper implementation and the worst standard can be made good with the excellent implementation. He said the rule changes proposed today clarify certain matters for the implementation of the standards.

Mr. Smithee explained the process by which the proposals are developed, highlighted the issues including the correction and addition of some definitions, clarifies language on testing procedures, clarification of minerals criteria, clarification of data requirements for Use Assessment Protocols, new biocriteria for the Central Great Plains, new language for nutrients in Scenic Rivers, and new language pertaining to water quality standards implementation for the state’s Financial Assistance program and the Clean Water State Revolving Fund program. Mr. Smithee particularly explained the changes in regard to the implementation of the .037 and the need for all agencies to agree upon the methodology for implementing the numerical limit, and how the methodology was developed. He explained the support tests for the data procedure,

and how certain streams would be indicated as impaired. He noted this issue brought the most public comment at the public hearings, and that the organization Save the Illinois River (STIR) felt the methodology was “dumbing down” the .037 criteria for the Scenic Rivers by making it easier to be in compliance. Mr. Smithee argued that was not the intent of the rule change, that staff and members of other state agencies are comfortable with the proposal.

2. Questions and Discussion by Board Members – Mr. Sevenoaks asked about the impact of high flow events to the methodology. Mr. Herrmann asked if there were an argument that in general the change would make more strict the water quality standards in Oklahoma or on the other hand dumbs them down. Mr. Smithee stated the intent of the rule is for one purpose, and that is to determine whether Oklahoma’s scenic rivers should be on the 303(d) impaired waters list; it is not to drive TMDLs, point source control, or nonpoint source control—that is a different implementation of the .037. This change is to ensure that all state agencies, when the state develops the singular impaired water list, use the same method, and that is the recommendation. He added there is a default for the rule that has been in place for many years, but the default is rarely better than the specific test. There was discussion about point source, nonpoint source pollution and storm events.

3. Comments by Public – Mr. Bob Kellog, representing STIR, spoke to the members stating he had submitted written comments, and said he was prepared to ask the Board to delay action on the methodology rule for one year to allow time to work with staff, but he will use the next month to work with Mr. Smithee, whom he said had been very cordial. He said his concern is the implementation of the phosphorous standard and the use of the geometric mean because there is not an opportunity to accept some data and to decline some data. He said the use of a mean gives a way to pick one number as being representative of a stream, that the scenic rivers are deserving of the best protection that can be given, and the elements of the proposed rule is not the best it can be.

Mr. Herrmann asked the impact to the river choosing one measure over another. Mr. Kellog responded that choice is not available because the geometric mean is specified in the water quality standard. He said now we need to make sure the implementation is not “dumbed down”, and that there is time to get the matter resolved because it does not take effect for seven years. Mr. Sevenoaks said the time element is crucial, that we need to push forward and any delay makes it more difficult for upstream partners to remediate the problems they have, and the sooner we stop arguing over the numbers, the faster remediation can begin.

Mr. Smith committed staff to work with Mr. Kellog over the next month to resolve any concern.

There were no other comments.

F. Proposed Amendments to Chapter 55 – Floodplain Management

1. Summary of final draft proposed rules – Mike Mathis said the Oklahoma Floodplain Managers had worked diligently during the 2004 Legislative Session to pass statutory changes requiring accreditation of Floodplain Administrators in local communities that are members of the National Flood Insurance program. He said the proposed language instructs training for the floodplain administrators in those communities – one day each year to be aware of changes in the program. He said the OWRB staff provides several opportunities for training each year free of charge, and a home study course is also available to those unable to attend.

2. Questions and Discussion by Board Members – There were no questions or discussion by the Board members.

3. Comments by Public – There were no comments by the public.

Mr. Smith summarized this completes staff's presentation of the rules. He said the members could review the changes and review comments over the next month. He particularly mentioned in the written comments package the statement by Mr. Dudley Williams about the well drilling changes. He said there would not be additional presentation (by staff) at the March meeting, there may be public comment and discussion then the Board will formally consider and vote upon each chapter proposals.

9. 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.

10. ADJOURNMENT

There being no further business, Chairman Mitchell adjourned the regular meeting of the Oklahoma Water Resources Board at 11:47 a.m. on Tuesday, February 8, 2005.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Ervin Mitchell, Chairman

_____/s/_____
Lonnie Farmer, Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Jack W. Keeley

_____/s/_____
Jess Mark Nichols

_____/s/_____
Richard Sevenoaks

Absent
Edward H. Fite

ATTEST:

_____/s/_____
Bill Secrest, Secretary

(SEAL)