

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

June 14, 2005

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Lonnie Farmer at 9:30 a.m., on June 14, 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. Upon opening the meeting, Mr. Farmer stated June 14 is National Flag Day, and he invited the audience to stand and recite the Pledge of Allegiance.

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.

B. Roll Call

Board Members Present

Lonnie Farmer, Vice Chairman
Harry Currie
Ed Fite
Rudy Herrmann
Jack Keeley
Kenneth Knowles
Mark Nichols
Richard Sevenoaks

Board Members Absent

Bill Secrest, Secretary

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Joe Freeman, 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

Paul Kinder, Lone Chimney Water Association, Glencoe, OK
Anita Earnest, Lone Chimney Water Association, Glencoe, OK
Sue L. Stokes, Lone Chimney Water Association, Glencoe, OK
Carl Hensley, Lone Chimney Water Association, Glencoe, OK
Mark Walker, Dan Elsener et al, Oklahoma City, OK
David Carlson, Dan Elsener et al, Oklahoma City, OK
Lois McGuire, Longdale, OK
Jacque Steinback, Longdale, OK
Keith McDonald, Wells Nelson, Oklahoma City, OK
Don Kiser, Fagin Firm, Oklahoma City, OK
Charles Newton, BOK/Oppenheim, Oklahoma City, OK
Rusty Whisenhunt, City of Lawton, OK
Roger L. Bridges, Lawton, OK
Mike Ray, GIT News Service, Oklahoma City, OK
Myrna B. Geiger, Longdale, OK
Dr. William Geiger, Piedmont, OK
Dr. Shelly Geiger, Edmond, OK
William Geiger, Longdale, OK
Dan Nelson, Edmond, OK
Ricky Pearce, Ryan Whaley Coldiron, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
John Brunk, Westwood, KS
Dan Elsener, Tipton, OK
JK Elsener, Tipton, OK
John McCullough, McCullough Farms, Norman, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Jeff Packham, Journal Record, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK

C. APPROVAL OF MINUTES

Vice Chairman Farmer stated the draft minutes of the May 10, 2005, Regular Meeting has been distributed. He said he would entertain a motion to approve the minutes unless there were changes.

Mr. Fite moved to approve the minutes of the May 10, 2005 Regular Meeting, and Mr. Keeley seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, addressed the members and stated that while the 2005 legislative session had ended, the smoke was not entirely cleared. He noted the summary of final legislative activities in the prepared report and said that for the large number of

measures that the agency was tracking throughout the session, only two had passed. The third year of the Arbuckle-Simpson study was funded, and that is also in the federal government's budget. He said the study is on time and within the budget that has been proposed. He said the OWRB's commitment to the legislature is that we will have the results of the study would include a management scheme for pumping water from the aquifer. Mr. Smith talked about activities involving the study including the construction of a deep well. He said the agency has been very encouraged by the support, including local people, for the study.

Mr. Smith stated the agency received funding for the water augmentation studies being conducted in southwest Oklahoma for Lugert –Altus Reservoir and have been working with the District for a number of years to develop efficiencies for better use of water operating on the strategy that before looking at building new reservoirs, to investigate whether the District is using water efficiently, etc. He described the activities engaged by the District to conserve and recycle water not only for the District operations, but also for the City of Altus.

Mr. Smith stated he had visited with the U.S. Army Corps of Engineers about its reallocation study at Lake Texoma, reallocating 300,000 acre-feet out of the hydro-power pool. It is anticipated the report will be released this summer: and the water supply will be available next summer; 150,000 acre-feet for Texas and 150,000 acre-feet for Oklahoma. He said it was the first time water has been reallocated, and it is important that the Corps set aside water for Oklahoma, and not simply reallocating the amount and the states dividing it.

Also in the OWRB budget is \$287,578 passed through to the Oklahoma Rural Water Association for district training purposes and a continuation of a pass-through item for a number of years. From the Gross Production REAP Account, which is a water projects fund, \$7.5 million was appropriated. The legislature listed five items including \$2.4 million to Tourism and Recreation that was vetoed by the Governor. Mr. Smith said this is the smoke that hasn't cleared because it hasn't been determined what happens to this funding. The Governor's veto message stated it is more appropriate for water planning. Mr. Smith said he did not want to say that water projects for Tourism is not important, but at the beginning of the session the Governor's budget included funding for water planning, \$2.5 million for comprehensive water planning for the first year, and a total of \$6.5 million over the next three years. He said the appreciated the support the Governor and Secretary of Environment on our efforts for developing a comprehensive water plan for the state.

Regarding other budget matters, Mr. Smith stated that the agency appropriation remained about the same – no additional funding for the financial assistance programs. He proposed working more closely with the Board on a financial strategy to educate and communicate with people about the importance of future funding for these programs.

Mr. Smith stated that a \$13 million loan for Broken Arrow was closed in late May. In that particular loan, the Board saved \$3.7 million in interest by financing that loan and consolidating other loans. He said this is the reason why additional funding is necessary for these programs. He said he is hearing, for instance from the Department of Environmental Quality, as they are issuing consent orders to communities as to what options are available? He said the OWRB program is not a grant program, but a loan program. If a loan cannot be paid back, there will not be a loan from the OWRB. Those communities that are in dire straights—and typically these communities have lost population over time and are experiencing hardships while needing to address major infrastructure needs—the avenue for these communities is through Rural Development programs where a major grant along with a loan is available. If the Water Board wants to assist those communities, it will need substantial grant monies to go along with loan funds. The current rate is 3.9 %, or 60% of market rate and nationwide there is a 20% subsidy rate while the OWRB's subsidy rate is 30%. He said the OWRB goal is to give the biggest benefit to the communities that can possibly be given, but there are many issues to discuss as the Board proceeds into the next bond issue package about what type of program it wants to

provide to Oklahoma communities. Mr. Smith mentioned a recent Environmental Protection Agency annual report entitled, "Proven Integrity and Performance" that cited achievements for the National Clean Water Program financing, and highlighted the Stillwater project—for its "sewage treatment plant upgrade and expansion, protecting stream habitat and drinking water intakes, at \$14.2 million all from the Clean Water SRF. The project was under budget and won the American Public Works Association Environmental Project of the Year Award in 2003." The OWRB staff worked with Stillwater and funded the project. Oklahoma is also one of the 28 states piloting the new Clean Water SRF Environmental Benefits Reporting System, reporting what type of subsidy is given, what is the population served, how much waste water is treated, if impaired water bodies are improved, strategic watershed planning (total maximum daily loads and watershed management plans), and protection and restoration of water body uses. Mr. Smith stated the OWRB is not only doing the loan program for those communities that are coming to us, but also tracking those with EPA to make sure that the limited monies we do have are going toward the highest priority areas and having the "biggest bang for our buck." Mr. Smith complimented Mr. Freeman and his team for visiting with EPA and participating in that way with our program.

Mr. Smith introduced the Board's newest member, Mr. Kenny Knowles of Arnett, Oklahoma. Mr. Smith also recognized and congratulated Jack Keeley on his accomplishment of co-editing a five-volume water encyclopedia.

Mr. Smith concluded his report noting that Attorney General Drew Edmondson had filed a lawsuit against the poultry companies. He said the Attorney General had not sent a copy to the defendants yet and there is still time to negotiate. Board Member Harry Currie asked about the water use availability from the reallocation by the Corps at Lake Texoma; Mr. Smith replied any use of water would require a permit from Oklahoma. Board Member Rudy Herrmann asked about what water planning activities could be conducted by the Board without the requested funding. Mr. Smith answered the Board can do the basic structure of the water plan update that has been done in the past i.e., identify issues, get groups together to look at issue identification, update maps, etc., but will not be able to conduct engineering assessment of community needs—current infrastructure, current and future needs, what it will take to put the infrastructure in place to meet future needs. Mr. Herrmann stated that needed to be communicated to people that the plan would have a substantial benefit to the people and State of Oklahoma. Board Member Ed Fite commented about the Attorney General's lawsuit.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Lone Chimney Water Association, Pawnee County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for a \$150,000.00 Drinking Water State Revolving Fund Loan request for the Lone Chimney Water Association. He said the Association serves an area including Noble, Payne, Pawnee and Lincoln Counties and is requesting the loan funds to go along with a \$99,990.00 REAP grant and \$15,000.00 in local funds to replace filter media, retrofit clarifiers with tube settlers, and modify filter wash trough baffles. Mr. Freeman noted provisions of the loan agreement, and said it is estimated the Association will save approximately \$225,000.00 in interest expense by borrowing from the Board. Staff recommended approval of the loan application.

Ms. Anita Earnest, Association Vice Chair; Mr. Carl Hensley, Manager; Sue Stokes, Office Manager; and Paul Kinder, Operations Manager, were all present in support in the loan request.

Mr. Nichols moved to approve the loan for Lone Chimney Water Association, and Mr. Fite seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Lawton Water Authority, Comanche County. Recommended for Approval. Mr. Freeman stated to the members that the Lawton Water Authority had requested a \$10,815,000.00 Clean Water State Revolving Fund Loan. The project consists of upgrading various areas of Lawton's sanitary sewage line, and new manholes placed throughout the line work. He noted provisions of the loan agreement. Lawton has been a long-time customer of the Board's and currently has eight loans with the Board for a total outstanding principle balance of approximately \$16 million. Lawton has an excellent debt coverage ratio in excess of 6.3-times. It is estimated Lawton will save approximately \$6 million in interest expense by borrowing from the Board. Mr. Freeman said staff recommended approval.

Mr. Roger Bridges and Mr. Rusty Whisenhunt were present representing Lawton, as well as Keith McDonald, their financial advisor. Vice Chairman Farmer asked if Lawton was performing the engineering and construction work as with earlier Board-approved projects, and Mr. McDonald explained that it is the same program and has viewed throughout the nation as a success. Mr. McDonald spoke of the operations of the program and the ability for the city to save its citizens' dollars.

Mr. Herrmann moved to approve the loan to the Lawton Water Authority, and Mr. Keeley seconded.

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

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. Schuelein asked that item 3.D.11., regarding a renewal contract with the Oklahoma Department of Public Safety, be withdrawn from the Board's consideration.

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.O.

There being no other requests regarding Summary Disposition items, Mr. Nichols moved to approve the Summary Disposition Agenda items, and Mr. Herrmann seconded.

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

The following items were approved:

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

<u>REAP Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
ACOG				
1.	FAP-04-0055-R	Luther Public Works Authority	Oklahoma	\$99,999.00
COEDD				
2.	FAP-04-0007-R	Rural Water District #1	Hughes	140,000.00
3.	FAP-04-0002-R	Lone Chimney Water Association	Pawnee	99,990.00
EODD				
4.	FAP-03-0019-R	Westville Utility Authority	Adair	99,969.00
INCOG				
5.	FAP-02-0030-R	New Prue Public Works Authority	Osage	99,950.00
SODA				
6.	FAP-04-0068-R	Town of Stonewall	Pontotoc	amend scope

D. Contracts and Agreements Recommended for Approval

1. Consideration of Interagency Agreement with Oklahoma Department of Environmental Quality for Sharing Office Space in McAlester and Woodward.
2. Consideration of Interagency agreement with the Oklahoma Climatological Survey for Equipment Maintenance to Support the Arbuckle-Simpson Aquifer Study.
3. Consideration of Interagency Agreement with the University of Oklahoma through its Sam Noble Museum of Natural History for Identification of Fish Species.
4. Consideration of Interagency Agreement with the Oklahoma Office of State Finance for Updates to On-line Web Applications.
5. Consideration of Amendment to Interagency Agreement with the University of Oklahoma Department of Geography for Arbuckle-Simpson Aquifer Study.

6. Consideration of Interagency Agreement with the Oklahoma Department of Environmental Quality for Work Related to the Drinking Water State Revolving Fund.
 7. Consideration of Amended Joint Funding Agreement with U.S. Geological Survey for Additional Work on the Arbuckle-Simpson Aquifer Study.
 8. Consideration of Contract Amendment No. 2 with the Texas Department of Licensing and Regulation for Weather Modification Research Activities.
 9. Consideration of and Possible Action on Intergovernmental Memorandum Agreement with Attorney General for Participation in Federal-State Cooperative Program with the U.S. Geological Survey for Water Quality Monitoring.
 10. Consideration of Interagency Agreement with the Oklahoma Conservation Commission for Monitoring and Assessing Watershed Activities Affecting Lake Water Quality.
 11. *Consideration of Renewal of Contract for Services with the Oklahoma Department of Public Safety for Trooper Services while working on Oklahoma Bridges. Item withdrawn*
- E. Applications for Temporary Permits to Use Groundwater:
1. John & Jan D. Scripsick, McClain County, #2004-527
 2. K. D. Dobbins Trust, Custer County, #2004-564
 3. Bar Lazy B, Inc., Washita County, #2005-507
 4. *Philip W. & Bridget Haugen, Custer County, #2005-512 Item withdrawn*
 5. Larry D. & Marsha Miller, Custer County, #2005-513
 6. Arthur Wayne & Phyllis Ann Sloan, Muskogee County, #2005-523
 7. Robert Stephen & Terry Ann Sloan and Phillip Sloan, Muskogee County, #2005-524
 8. Arthur Wayne Sloan Trust and Phyllis Ann Sloan Trust, Muskogee County, #2005-525
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. Town of Dustin, Okfuskee County, #2002-611
 2. Luke Metcalf, Texas County, #2005-519
- H. Applications to Amend Regular Permits to Use Groundwater:
1. John Vanderlaan and Peter Vanderlaan, Tillman County, #2000-565
- I. Applications to Amend Prior Rights to Use Groundwater:
1. Larry & Marsha Miller, Custer County, #1973-141B
- J. Applications for Regular Permits to Use Stream Water:
1. Basil Savage, Marshall County, #2005-006
 2. Twin Eagles Ranch, Ltd., Murray County, #2005-008
 3. Lattimore Materials Company, L.P., Love County, #2005-009

- 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: Handex
Operator: Douglas E. Mick
Activities: Monitoring wells and geotechnical borings
DPC-0645
OP-0755
 - b. Licensee: C & C Loop Drilling
Operator: Charles Ken Campbell
Activities: Heat exchange wells
DPC-0647
OP-1446
 - 2. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: Mohawk Drilling, Inc.
Operator: Ryan Thompson
Activities: Monitoring wells and geotechnical borings
DPC-0563
OP-1444
 - b. Licensee: Engineering Services and Testing
Operator: Corby Wyatt Key
Activities: Monitoring wells and geotechnical borings
DPC-0658
OP-1443

- 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, Rogers County, FP-05-04

Vice Chairman Farmer announced the Board would proceed to the Special Consideration Agenda items and return to item 4.A. following action on those items.

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. 2002-552, Town of Longdale, Blaine County:

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that this application by the Town of Longdale requests a permit to withdraw 60.9 acre-feet of groundwater per year for municipal water supply. The water is to be taken from three wells located on 60.9 acres of dedicated land in Blaine County, the North Canadian Phase I basin. The maximum annual yield study had been completed and determined the equal proportionate share to be one-acre foot of water per acre of land.

Mr. Mathis explained that in 1984 the Town applied for a temporary permit in the amount of 2.1 acre-feet per acre for public water supply, which the Board granted. Since that time, the Town has been using more water, and is now applying for the additional permit. However, errors were discovered in the notice in processing the original application so the original and new applications have been consolidated.

Mr. Mathis said the protestants have questioned whether the Town's dedicated lands overlie the groundwater basin, and while the original maximum annual yield order did not discuss or refer to a map or other illustration of the basin boundaries, it does frequently state in the findings of fact of the study referred to a report by the U.S. Geological Survey. That report and the map of the basin's boundaries show all the lands that have been dedicated by the Town in separate tracts actually overlie the North Canadian Phase I Groundwater Basin.

Mr. Mathis said the Town is proposing to use the water for municipal water supply. It has obtained a Community Development Block Grant to install new water lines, fire hydrants and meters, and customer delivery system improvements. He said the protestants have asserted the Town has used water in excess of its permitted amount for several years. However, the Town witnesses countered these figures are not reliable because they were estimates made by Town staff in the absence of meters previously. He said the Town's Water Superintendent testified that several large leaks were occurring prior to installing the meters that the customers are now in a better position to monitor use.

Mr. Mathis stated the Town is in compliance with the public water supply requirements of the Oklahoma Department of Environmental Quality. Protestants asserted though the Town would commit waste by pollution by causing groundwater quality in their domestic wells to be worsened. The Town suggested that migration would not occur as the Town has been pumping wells for several decades without any identified adverse consequences. The protestants also asserted that the Town's groundwater withdrawal would interfere with and cause groundwater to be depleted in the area of their wells. He said the west Geiger well is approximately 500 feet east of the Town's wells and the east Geiger wells are approximately ¼ mile east of the Town's wells. Regarding the issue of well-spacing in a studied basin, Mr. Mathis stated that proposed wells shall be drilled within 1320 feet of an authorized existing well. There are opportunities for location exceptions and the well that is requested to be authorized is a well that was drilled and completed prior to the maximum annual yield determination and does not meet the spacing requirements. The Town's wells were already long established prior to the maximum annual yield order and there was no spacing issue until 2003 when the protestants actually changed the status quo by drilling their wells within the spacing distance of the Town's wells.

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

2. Discussion and presentation by parties. Mr. Mathis stated protestants had provided written exceptions to the proposed order copies of which have been distributed.

Mr. Jim Barnett, representing the City of Longdale, addressed the Board and explained he had been the city's attorney since before the hearing, and while the matter has been pending for a number of years, there was no need for an attorney until the hearing was protested. He said city representatives were present and available for questions. He said he had not seen the

exceptions provided by the protestants and would not be able to respond. He said Mr. Mathis had summarized the facts well; the wells have been in existence for many years since perhaps 1938 and the Town of about 250-300 people and has been the same size essentially all these years. The application does not entail any new wells and no additional water, and probably will use less water due to the improvements made to the system through the Community Development Block Grants. Leaks have been patched, wells are metered and of the 170+ taps in town the homeowners are paying for volume of water and actual reduction is anticipated, estimating the 60.9 acre-feet will cover the Town's perceivable needs as long as there is no growth.

Mr. Barnett said the conditions on the permit as recommended are acceptable to the applicant, the wells will be metered and making the permit co-terminous with the leases for the dedicated land. He said the hearing examiner did an excellent job sorting out the facts and coming to the proper conclusions. Mr. Currie asked if the wells had been in use for some time and if so had there been a change in the water level. Mr. Barnett responded the well had been in operation for many years and there had been no evidence that would indicate there had been a significant change in the water quality or the water levels over this period.

Mr. Dan Nelson, representing Mr. and Mrs. Geiger and their son, stated the protestants were present to answer questions. He stated this is a unique case as there is not a well that has been drilled within the Town of Longdale that has produced water. He said the two wells that are producing are located on two acres outside of Longdale and are less than ten feet apart, and located adjacent to the protestant's land. Mr. Nelson contested that the wells are located over the basin based upon information he said was obtained when drilling the two wells, and that when Longdale realized there was a problem, it leased land other than the Geigers which is not overlying the basin where the current wells are located, and that the town did not intend to drill wells on the additional acres it did lease about four miles away. Mr. Nelson reviewed the four points of law which must be met, but he contested there is adequate land dedicated to support the 60.9 acre-feet, that it overlaid the basin, and that there was evidence the groundwater level had changed. Mr. Nelson said no well location exception had been filed, that there would be waste by depletion and waste by pollution based upon usage information provided by Department of Environmental Quality; that reasonable use is not when 100% of the water is withdrawn from 2% of the land, and that it is known the sulphate content is higher an increased level of water table will allow migration. Mr. Nelson asked that the permit be denied.

Mr. Herrmann asked when the Geiger's received their permit; and Mr. Nelson responded in 2003. He asked if the Town protested the Geiger's permit; Mr. Nelson replied it did not. Mr. Currie asked if the Town drilled its wells before the 1983 spacing ruling, and Mr. Mathis responded the new permit is subject to the well spacing rule; however, there are variances on the well locations where these were existing wells prior to the basin study that allows those well to fall under the spacing rule. He added that in this case the Town's wells pre-existed the protestant's wells being drilled, and the protestant's did have the opportunity to drill their wells further from where they are now, and based upon that evidence, the hearing examiner felt it appropriate to allow the spacing exception. Mr. Currie asked what the protestant's wells are used for and Mr. Nelson answered for irrigation, if at all. Mr. Keeley asked about the saturated thickness of the aquifer, and Mr. Mathis responded it varies at about 40-50 feet.

Mr. Barnett commented that the hearing examiner looked at the four points of law and found in favor of the application and that in contrary to Mr. Nelson's statements, all the maps and records of the OWRB and the hydrologic atlas used by the Board showing hydrologic boundaries of the State's basins, show the land to overlie the basin and there is no real evidence to the contrary. He added that this application was filed in 2002 and the Board staff worked diligently with the Town of Longdale to help it come into compliance by having enough dedicated land to calculate the necessary amount of water. He said the indication of the term

“regular permit” is a quantification of the landowner’s legal right and because this is a mining law; the drawdown on the neighbor’s well is not a legal factor appropriate for the Board to determine. The reality is that as long as the use is no more than the equal proportionate share, the Oklahoma Supreme Court says that is reasonable and appropriate; what would not be appropriate would be to obtain the permit and not “live within its means” and if that is not adequate they need to buy more land and dedicate more land and come before the Board. He said he believed this amount would be adequate because of the water-saving measures of the city. He said the pollution issue is a “non-issue” because if these wells have been in the same location pumping the same amount for 50-60 years and haven’t pulled pollution from the far side of the aquifer, it is highly speculative to believe that will start in the near future, and there is no evidence to show it. And finally, in regard to the well spacing issue, he said it is important to remember that prior to 1972 in the State of Oklahoma, communities and municipalities routinely took one acre of land or less and drilled all their wells and took the water and it was totally legal and appropriate. Only after 1972 and the law changed when more land mass was needed to justify the amount of water taken, and the Longdale wells long-predated the 1972 law.

Mr. Herrmann asked OWRB General Counsel Dean Couch if he had reviewed the protestant’s objection to the proposed order and is there any information that affects the recommendation by the Planning and Management Division. Mr. Couch responded he has read the objections, and he did not see a need to change the recommendation

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

There being no further discussion, Mr. Currie moved to approve the regular permit to the Town of Longdale, and Mr. Keeley seconded.

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

B. Application for Regular Permit to Use Groundwater No. 2005-503, Roy L. Ryan, Tillman County:

1. Summary – Mr. Mathis stated the applicant requested a permit to take and use 480 acre-feet per year for irrigation of crops. The water is proposed to be taken from eight wells located on 480 acres of dedicated land in Tillman County. The maximum annual yield and equal proportionate share has been determined for the Tillman Terrace Groundwater Basin and each landowner is entitled to take up to one acre foot of water per acre of land dedicated. The applicant proposed to use the water for irrigation of crops that would include corn and peanuts. He said the applicant would be utilizing a low-energy precision application center pivot sprinkler in each quarter section of dedicated land. The applicant testified that new well #1 through new well #6 were all drilled since January 2005 and each of the new wells is located more than 1320 feet from the nearest well of the adjacent landowner. Mr. Mathis stated the applicant has had the six new wells drilled by a Board-licensed well driller.

Mr. Mathis said the protestants contended the applicant’s proposed use would interfere with the use of their own groundwater for irrigation. Protestants produced evidence and testimony from an expert witness in hydrogeology to support this contention that the applicant’s use would cause a drawdown on their groundwater wells and their operations. The applicant did not produce evidence of their own to controvert this drawdown calculation but instead asserted that some of the applicant’s premises were incorrect for example the applicant noted he is pumping from seven wells rather than eight, that they would be pumping only 350 gallons per minute per well rather than the protestant’s assumption of 400 gallons per minute. And, the

protestant's conclusion was flawed because it did not account for recharge to the basin therefore protestant's conclusion was suspect. The applicant argued to the effect the applicable law does not support the protestant's case. Upon consideration of the applicable law, protestant's are correct that reasonable use is a prerequisite for approval of an application for a groundwater permit; however, the applicant is correct that the reasonable use is to be measured and determined according to the elements of beneficial use and no waste. In this case, Mr. Mathis stated the applicant has satisfied these two elements; the seven wells are in accordance with the well spacing rule. Legislative policy expressed in the groundwater law is to utilize groundwater resources of the state, and the groundwater law authorizes the controlled reduction—mining—of a groundwater basin as long as the use and reduction are done in an orderly fashion according to the statutory scheme. Here, the groundwater basin has been studied and determined an allocation of one acre-foot per acre and the applicant's use will be in accordance with and not contrary to that allocation and controlled reduction. Mr. Mathis stated the application is in compliance with the Oklahoma Groundwater law, and staff recommended approval.

2. Discussion and presentation by parties. Mr. Jim Barnett, representing the applicant stated to the members that this application is very similar in a number of respects to the previous matter. This is a regular permit where the equal proportionate share has been determined; the landowner is entitled under the law to one acre-foot of water per surface acre of land. One distinction here is that the 480 acres are contiguous, and there was some effort to ascertain whether the land overlies the same basin and the evidence was clear and the protestants concurred that the land does overlie the Tillman Terrace basin. Then the question becomes if the landowner is entitled to his equal proportionate share in this instance. He said there were some issues raised in the case that are important that he feels strongly about and staff had devoted a lot of time to and the hearing examiner did a terrific job with some very difficult legal issues and the staff has done a remarkably good job of synthesizing those, but he particularly commended the order to the Board to read because of the lesson in Oklahoma Groundwater law. Mr. Barnett asked that the Board approve the recommendation

Mr. Mark Walker, representing some but not all protestants and specifically nine, spoke introducing the clients present (Elseners, McCullough, Brunk). He said this is an important case and the issue is a very fine point—what is the power of this Board. He said Mr. Barnett stated in the Longdale case that drawdown is not a legal factor, but that is the position that is at issue in this case. He explained that the position is, if the permit application meets the four points of law, the Board must approve; and if the evidence presented and uncontroverted that the proposed use would dewater and dry up offsetting wells (in one instance within one year), then can the Board can consider that—is there authority for the Board to make the applicant modify the permit if it is demonstrated the offsetting wells will be dried up. He asked if the Board's "hands are tied" and said this is an important policy issue and involves the proper interpretation of the law. Mr. Walker mentioned an earlier Supreme Court case involving a Board decision, the Messer-Bowers case, involving the question of reasonable use.

Mr. Walker noted that the applicant is a businessman in Lubbock and in 2001 purchased a 320-acre tract and drilled 13 test holes, found no sufficient water and in 2004 bought another 360-acre tract and then drilled eight wells in a 40-acre area to pool the 480-acre feet from these wells to be piped to the other location. He contended the concentrated use would cause the drawdown effect. He referred to the Messer-Bowers case where the Board restricted the right of the applicant had he read from the case decision citing the applicant intended to withdraw over ½ of its groundwater from less than three percent of its property constituting an unreasonable use of groundwater. In the case, the Board reduced the number wells that could operate at any one time. He argued against Mr. Barnett's statements that there is no issue of reasonable use in this case and the Board must approve the permit because it meets the four

points of law---he said this is not Oklahoma Law as the Oklahoma Supreme Court has approved it. He said there have been other orders issued by the Board that have recognized the reasonable use issue and have denied permits when it was demonstrated that the proposed use would dry up offsetting wells: the Town of McLeod and the Westview Boys Home. Mr. Walker stated that based on these decisions, this is a factor that not only should but must be considered in determining whether to issue this permit.

Mr. Barnett rebutted that the hearing examiner correctly found the Board's powers are as they are found in the statute that clearly says that if the landowner owns the land that overlies the basin and the water will be beneficially used and waste will not occur, the Board shall issue the permit. It's not fuzzy. There is a provision in the policy statement for the groundwater act that talks about reasonable use and the Court had instructed interpretation. He refuted Mr. Walker's statement of the facts in the Messer-Bowers case as he was the attorney of record and he clarified that the applicant voluntarily agreed with the Board to limit pumping of the wells—it was not something the Board did against the applicant's will. Same as if an order includes that a meter be put on a well if the applicant agrees to the meter even when the Board knows it can't require a meter unless it's a regular permit situation. He noted the sections of the proposed order than mentioned the Messer-Bowers case and the issue of reasonable use, and that reasonableness is not a stand-alone concept but a way to look at waste issues and the beneficial use issues have been proven, and in this case, it was not. He said the fact that the testimony was not controverted, but the applicant did show was that the expert's model was bogus as clearly shown through the legal arguments of the case. He said that even if you looked at the model—which was flawed in many ways—one well would not dry up for eight years, and another for seven years and even the one that would dry up the soonest was not allowed under this application. He said the pumping rate included in the model was incorrect as well, and also that the model did not include recharge. He said he was also the attorney of record in the Westview case, when the protestant said she would probably not use the well (she did not live on the property) and so the applicant did not appeal the order. He said the Board does have authority to instruct a well be perforated at a certain depth.

Mr. Smith interjected by reiterating the four points of law and their application to this case, and noted that in some aquifers there is better water than in some areas and at varying depths, but that is not a fault of the study. He talked about the waste issues and said the law does not protect "the first in time", but protects every landowner's ability to take their proportionate part of the basin based upon the number of acres, and right of well spacing for orderly withdrawal. In other applications where the land is contiguous versus where it is not contiguous are different circumstances and can be weighed differently and in this case the land is contiguous. He said every user impacts the other and if a model shows an applicant's well will impact a neighbor's well, that model will also show the neighbor will impact the applicant's well if similar pumping occurs. He said in this particular basin, it is one where there isn't enough water to do the irrigation that needs to happen. He said that if the report says more water is being taken out than is being recharged, then the result is that the water table will go down once its fully developed and that is exactly what the law contemplates. The Board's job is not to protect the first one that was there, it is to say that every landowner has a right to take water as long as the requirements are met and the waste by depletion issue in terms of reasonableness is two-way: for the study, and by the well spacing. He said that in terms of what is presented in the record, those are not cut-and-dried issues, but when the hearing examiner reviewed the evidence in this case he felt that every well is affecting every other well but the landowner had the right to take his share of the water and that is why the recommendation is as it is. He said an application in the future may look a little different but in this particular case looking at all the issues and the four points of law, the hearing examiner did a very good job in outlining that and recommending approval.

Mr. Sevenoaks commented that it would make sense the landowners come together and try to share the water by lowering the rate of pumping, for example. Mr. Nichols said he is familiar with this situation and familiar with and farms around these people. There are serious problems in the area, but the Board cannot do anything about it; the people that live and farm there should get together and look at use of land and water. He said he understands the law, he does not like it, but he is not sure that the Board has a choice. The Board members, Mr. Barnett, and Mr. Walker talked about the particular circumstances of the farming in the area and use of water, i.e., efficient irrigation systems, the number of wells and pumping rate, whether the study should be re-studied, that it is a difficult situation etc., and the possibility of the landowners getting together to try and work through issues so that there is water for everyone.

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.

Following the discussion, Mr. Nichols moved to table consideration of the permit for one month and encourage the landowners to meet and work out an agreeable solution, and Mr. Fite seconded.

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

Mr. Smith said that he and staff are certainly available to meet with the parties and facilitate any meetings.

C. Consideration of items transferred from the Summary Disposition Agenda, if any.

There were no items transferred from the Summary Disposition agenda.

Vice Chairman Farmer asked that the Board proceed with agenda items 6., 7., and 8. prior to returning to items 4., 9., and 10.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, stated to the members that over the past few months the agency has been able to close the gap between the percentage of funds obligated and percentage of funds collected: at the end of March there was a 16% gap, May was 6% and June 3%. Mr. Schuelein said the agency is within the budget limitations set by the Governor and the Legislature.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

8. ELECTION OF OFFICERS

Vice Chairman Farmer stated the floor is open for the nominations of Chairman of the OWRB.

Mr. Nichols moved the nomination of Lonnie Farmer as Chairman.

Mr. Sevenoaks moved the nomination of Rudy Herrmann as Chairman

There were no other nominations.

Vice Chairman Farmer announced that nominations were closed. Mr. Farmer called for the vote on the nomination of Rudy Herrmann as Chairman.

AYE: Currie, Fite, Herrmann, Sevenoaks

NAY: Keeley, Nichols, Farmer

ABSTAIN: Knowles

ABSENT: Secrest

Mr. Farmer called for the vote on the nomination of Lonnie Farmer as Chairman.

AYE: Keeley, Nichols, Farmer

NAY: Currie, Fite, Herrmann, Sevenoaks

ABSTAIN: Knowles

ABSENT: Secrest

Mr. Farmer asked that the vote be announced. Executive Secretary Mary Schooley stated the individual vote on the nomination of Mr. Herrmann as Chairman and the nomination of Mr. Farmer as Chairman. Mr. Herrmann was elected Chairman of the OWRB for the next year.

Vice Chairman Farmer announced nominations were open for Vice Chairman.

Mr. Currie nominated Lonnie Farmer as Vice Chairman.

Mr. Herrmann nominated Mark Nichols as Vice Chairman.

Mr. Farmer withdrew his name from consideration.

There were no other nominations, and Mr. Farmer declared Mark Nichols as Vice Chairman of the OWRB for the next year.

Mr. Farmer opened the floor for nominations for Secretary.

Mr. Fite nominated Bill Secrest as Secretary

There were no other nominations, and Mr. Farmer declared Mr. Secrest as Secretary of the OWRB for the next year.

Additionally, Mr. Farmer asked Mr. Sevenoaks to perform the duties of Assistant Secretary in Mr. Secrest's absence today.

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

A. Update Regarding Water Quality Programs Division Monitoring Activities. Mr. Derek Smithee, Chief, Water Quality Division, introduced the OWRB staff members whose duties are to perform stream water sampling to fulfill the Board's monitoring program responsibilities. Mr. Monty Porter gave a PowerPoint presentation outlining the program activities, and the staff members demonstrated the equipment used to perform their monitoring duties.

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 other New Business items for the Board's consideration.

10. ADJOURNMENT

There being no further business, Vice Chairman Farmer adjourned the regular meeting of the Oklahoma Water Resources Board at 12:15 p.m. on Tuesday, June 14, 2005.

OKLAHOMA WATER RESOURCES BOARD

_____/Absent_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Jack W. Keeley

_____/s/_____
Harry Currie

_____/s/_____
Richard Sevenoaks

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Bill Secrest, Secretary

(SEAL)