

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

September 13, 2005

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on September 13, 2005, in the Board Meeting Room of the Oklahoma Water Resources Board offices, 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

Chairman Herrmann asked for a moment of silence for the hurricane victims.

B. Roll Call

Board Members Present

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

Board Members Absent

None

Staff Members Present

Duane A. Smith, Executive Director
Mike Melton, Assistant to the 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

Regina Clinton, Brian County Rural Water District #2, Mead, OK
Merle V. Pearce, Brian County Rural Water District #2, Mead, OK
O'Della Luttrell, Stamper Project, Colcord, OK
Eddy Martin, Stamper Project, Colcord, OK
Joe Baty, Stamper Project, Colcord, OK
James Chamberlain, Stamper Project, Colcord, OK
James Ferrell, City of Pauls Valley, OK
Mayor Tim Gamble, City of Pauls Valley, OK
Bill Werner, Stamper Project, Shawnee, OK
Joyce Chamberlain, Stamper Project, Colcord, OK
Leroy Chamberlain, Stamper Project, Colcord, OK
Rick Pearce, Ryan Whatley & Coldiron, Oklahoma City, OK
Anne Burger Entekin, First Southwest Co, San Antonio, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma Cit, OK
Joe E. Taron, Pottawatomie County Development Authority, Shawnee, OK
Gary Kinder, SMC, Oklahoma City, OK
Bud Green, City of Nicoma Park, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma Cit, OK
Allan Brooks, Fagin Firm, Oklahoma City, OK
Cheryl Dorrance Oklahoma Municipal Utility Power/OML, Oklahoma City, OK
D. Neal Martin, Pottwatomie County Rural Water District #3, Shawnee, OK
Bud Ground, Public Service of Oklahoma, Oklahoma City, OK
Representative Gary Banz, Midwest City, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the August 9, 2005, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were changes.

Mr. Nichols moved to approve the minutes of the August 9, 2005 Regular Meeting, and Mr. Keeley seconded.

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

(Mr. Farmer joined the meeting at 9:35 a.m.)

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, addressed the members and stated to the Board he had met with several groups around the state including city officials in Guymon regarding economic issues and new companies locating in the area; visited with Kenny Knowles at Arnett and his activities in the preservation of the Prairie Chicken; attended the 20th Anniversary banquet of the Oklahoma Academy for State Goals; met with the Oklahoma State University Environmental Institute about legislative priorities in water planning and financial assistance for the 2006 session; spoke to the Oklahoma Rural Water Association Technical Session and made

a “call for action” from the association for support of the OWRB Financial Assistance program and water planning; met with Speaker Todd Hiatt and staff about legislative priorities and his support for Rep. Winchester being the point person in the House for the Comprehensive Water Plan and Financial Assistance Program; and met with the US Geological Survey regarding funding it received for trend analysis of phosphorous in the Illinois River and other sites.

Upcoming meetings Mr. Smith will be attending or speaking to are the Arkansas-Oklahoma Arkansas River Compact Commission on September 21-22, at Tahlequah, Oklahoma; Richard Sevenoaks is speaking at the Oklahoma Municipal League conference on September 15 on water planning; Mr. Smith is speaking to the Association of State Governments on September 27, and the Oklahoma State University Water 2005 Conference on September 28; and the Kansas-Oklahoma Arkansas River Compact Commission meets October 5 at the Port of Catoosa.

Mr. Smith announced the October Board meeting will be at Tahlequah on October 10-11, with a tour of the area, and the November meeting will be moved to be held in conjunction with the Governor’s Water Conference November 1-2. The first one-half day symposium is on groundwater; the Board meeting will be that morning at 9:30 a.m.

Mr. Smith concluded his report introducing Representative Gary Banz of Midwest City in attendance today supporting Nicoma Park emergency grant application.

Chairman Herrmann proceeded with the remainder of the meeting agenda.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Nicoma Park Development Authority, Oklahoma County, Oklahoma. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a \$99,999.00 emergency grant request from the Nicoma Park Development Authority located in eastern Oklahoma County. About 40% of the town is currently on the town’s centralized wastewater collection system that was partially funded by the Board in the 1990s. He said an additional portion of the town using individual septic systems desires to be added to the collection system due to discharges that are occurring. In order to expand the wastewater collection system the proposed project will include an 8” gravity sewer line, manhole, service connections, and a lift station. Mr. Freeman said the project will be funded with \$76,926.00 of local funds and the grant requested of the Board. Staff recommended approval of the grant application.

Mayor Bud Green, and Representative Banz were present in support of the application.

Mr. Fite moved to approve the grant request to the Nicoma Park Development Authority, and Mr. Currie seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Pottawatomie County Development Authority, Pottawatomie County. Recommended for Approval. Mr. Freeman said the Pottawatomie County Development Authority has requested a Drinking Water SRF loan for \$423,901.50 to construct a 158,000 gallon standpipe, and approximately 2,800 feet of 6-inch line to connect to the existing system. Mr. Freeman stated

the provisions of the loan agreement. It is estimated the Authority will save approximately \$175,000 in interest by borrowing through the OWRB. Staff recommended approval.

Dr. Joe Taron, Chairman, was present in support of the loan application.

Mr. Currie asked about the area of the county that is served by the system, and asked about the source of water for the Authority.

Mr. Sevenoaks moved to approve the loan to the Pottawatomie County Development Authority, and Mr. Nichols seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Smith recognized that Dr. Taron has been honored as an Oklahoma Water Pioneer, and that his presence is appreciated at the meeting today.

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Pauls Valley Municipal Authority, Garvin County. Recommended for Approval. Mr. Freeman said this \$900,000.00 Clean Water SRF loan request by the Pauls Valley Municipal Authority is requested for wastewater system improvements including installing five aerators and a force main, modifying the main lift stations, replacing sewer lines and improvements to sludge removal systems. Mr. Freeman noted provisions of the loan agreement. The debt coverage ratio stands at approximately 1.6-times, and it is estimated the Authority will save approximately \$420,000.00 by borrowing from the OWRB. Staff recommended approval

Mayor Tim Gamble, City Manager Jim Frizell, and Financial Manager Rick Smith were present in support of the loan application.

Mr. Farmer moved to approve the loan to the Pauls Valley Municipal Authority, and Mr. Keeley seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water, Sewer, and Solid Waste Management District #2, Bryan County. Recommended for Approval. Mr. Freeman stated the Bryan County Rural Water, Sewer, and Solid Waste Management District #2 has requested a loan in the amount of \$1,200,000.00. The Drinking water SRF loan will be used to make improvements to the existing water system and to pay related costs of issuance, and for rehabilitating the water storage tank. Mr. Freeman noted provisions of the loan agreement. He said the District has been rapidly growing and has increased the number of connections by 44% over the last ten years to approximately 8,200. The District's debt-coverage ratio stands at about 2.15, and it is estimated the District will save approximately \$480,000.00 by borrowing from the OWRB. Staff recommended approval.

Ms. Regina Clinton, Manager and Merle Pierce, field representative, were present in support of the application.

Mr. Secrest moved to approve the loan to the Bryan County RWSSWM #2, and Mr. Farmer seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None
ABSTAIN: None
ABSENT: None

E. Consideration of and Possible Action on a Proposed Order Approving Loan for Altus Municipal Authority, Jackson County. Recommended for Approval. Mr. Freeman stated that the Altus Municipal Authority had requested \$10,808,700.00 financing request. The long-term refinancing request is for its Drinking Water SRF Interim Construction Loan in the amount of a 6-million gallon per day reverse osmosis water treatment plant. He said that \$6,775,000.00 of the loan will be funded from the Board series 2003 FAP loan program bond issue, and \$4,033,700.00 of the loan will be funded from the Drinking Water SRF loan program with a .5 administrative fee. Mr. Freeman noted provisions of the loan agreement. Altus's water connections have increased by about 5% over the last ten years, and it is estimated that approximately \$3.3 million will be saved over twenty years by borrowing from the OWRB. Staff recommended approval of the loan request.

Mr. Mike Nettles, City Administrator, was present in support of the loan request.

Mr. Sevenoaks asked if the plant was on line; Mr. Nettles responded it is being adjusted and will be operational soon. Chairman Herrmann asked the debt coverage for the Authority, and Mr. Freeman responded that at this time it is at about 2.4%, and the Authority intends to pay the loan in five years rather than 20 years. Mr. Sevenoaks asked about the Authority's source of water and Mr. Nettles responded it is Tom Steed Reservoir.

Mr. Nichols moved to approve the loan to the Altus Municipal Authority, and Mr. Keeley seconded.

AYE: Currie, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

Chairman Herrmann mentioned that the next item is part of the advance planning that the OWRB does in order "prime its pump" and have financing available such as the loans that have been approved today.

F. Consideration of and Possible Action on Selection of Financial Advisor to the Board in Connection with the Board's Clean Water State Revolving Fund Program and Drinking Water State Revolving Fund Loan Program. Recommended for Approval. Mr. Freeman stated this item is for the selection of a financial advisor to assist on a new issuance of bonds to sustain the State Revolving Fund Loan Programs. Requests for proposals were sent to 23 state, regional and national firms and responses were received from Public Financial Management from Minneapolis; Stevens Incorporated from Little Rock; First Southwest Company from Texas; and Piper Jaffray from Phoenix. Staff reviewed the four proposals based on each firm's experience as financial advisors, the financial advisory experience of the person assigned to work with the Board, the understanding of the scope of service that is being asked to be performed, and fees and expenses for services.

Mr. Freeman stated that upon that review, the two top-rated firms proposals were presented to the Board's Finance Committee on September 12. At the meeting, the Committee met with First Southwest Company, and Public Financial Management.

Mr. Secrest, Chair of the Board's Finance Committee, stated that the Finance Committee recommends, and he moved, that the Board select the financial advisory firm of First Southwest Company, to serve as financial advisor to the Board. He added that after

clarification, the firm has agreed that its total not to exceed maximum fee will be capped at \$52,500.00 per bond issue plus expenses not to exceed \$10,000.00 per year. Other members present at the meeting were Chairman Herrmann, Mr. Farmer, Mr. Secrest, and Mr. Nichols was absent.

Mr. Sevenoaks seconded the motion.

Mr. Currie asked if the firm has worked for the Board previously. Mr. Freeman answered it had not, but it is financial advisor to several entities throughout the country. Headquarters are in Dallas, the representative that will work with the Board is located in the San Antonio office. Mr. Secrest added the firm is also the financial advisor to the Oklahoma Transportation Authority. Mr. Currie asked the term of the contract. Mr. Freeman answered the firm will provide services for the next bond issue, and the statutes provide that the Board is allowed 12 months following that to utilize their services for another bond issue if needed; there is no contract term.

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

3. SUMMARY DISPOSITION AGENDA

Chairman Herrmann 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. Mr. Mathis asked that agenda item 3.G. regular groundwater application #2004-570 be withdrawn from the Board's consideration due to publication notice error.

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.P.

Mr. Currie asked about the deep well being drilled for the Arbuckle-Simpson study project. Mr. Mathis answered there would only be one deep well at 3,000 feet, and there would be several shallower monitoring wells placed strategically around the basin. He said local landowners have been very cooperative in making site selections. He said it is the landowner's option to keep the well or for the OWRB to plug it.

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

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

The following items were approved:

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

<u>REAP</u> <u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount</u> <u>Recommended</u>
None				

D. Consideration of and Possible Action on Contracts and Agreements. Recommended for Approval

1. Consideration of Intergovernmental Agreement with the Central Oklahoma Master Conservancy District for Tributary Monitoring at Lake Thunderbird.
2. Consideration of Reimbursable Funding Agreement with the U.S. Geological Survey, Mid-Continent Mapping Division, for Ecoregion Mapping.
3. Consideration of Easement and Agreement with Robert Jack Hoover and Louann Hoover for the Construction of a Groundwater Observation Well and Water Monitoring.
4. Consideration of Intergovernmental Agreement with Oklahoma State University School of Geology for Work Related to the Arbuckle-Simpson Aquifer Study.
5. Consideration of Amendment to Joint Funding Agreement with the U. S. Geological Survey, Water Resources Division, for Investigation of Recharge Age Dates of Groundwater in the Garber-Wellington Aquifer Near Tinker Air Force Base.
6. Consideration of Joint Funding Agreement with the U. S. Geological Survey, Water Resources Division, for Streamflow Monitoring in the Upper Washita River Basin.
7. Consideration of Fourth Subagreement with Weather Decision Technology for Evaluation of Weather Modification Activities.
8. Consideration of Third Subagreement with the Oklahoma Climatological Survey for Evaluation of Weather Modification Activities.
9. Consideration of Amendment Agreement with the Office of the Secretary of Environment for Wetlands Internet Mapping Project.

E. Applications for Temporary Permits to Use Groundwater:

1. LaDon & Patsy Morris, Garvin County, #2005-510
2. Malcolm D. Harden, Hughes County, #2005-537

F. Applications to Amend Temporary Permits to Use Groundwater:

1. Charles B. Farni, Roger Mills County, #1981-759B
2. J. C. Alexander, Jr., Muskogee County, #1985-529

3. Harrall Meats, Inc., Custer County, #2004-548
- G. Applications for Regular Permits to Use Groundwater:
 1. *Robert A. Williams & Andrea Mendoza-Williams, Tillman County, #2004-570*
withdrawn
- H. Applications to Amend Regular Permits to Use Groundwater:
 None
- I. Applications to Amend Prior Rights to Use Groundwater:
 None
- J. Applications for Regular Permits to Use Stream Water:
 1. Arcadia Farm, L.L.C., Oklahoma County, #2005-015
 2. Eugene H. Grantham, Pittsburg County, #2005-016
- 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: E.T. Water Services DPC-0655
 Operator: Edward Thomas OP-1457
 Activities: Groundwater wells, test holes and observation wells
 Pump installation
 b. Licensee: Dustin Gieser's Pump
 Service DPC-0659
 Operator: Dustin L. Gieser OP-1362
 Activities: Pump installation
 c. Licensee: Mark L. Tickel DPC-0661
 Operator: Mark L. Tickel OP-1462
 Activities: Groundwater wells, test holes and observation wells
 Pump installation
 2. New Operators and/or Activities for Existing Licenses:
 a. Licensee: Prosonic Corporation DPC-0564
 Operator: Chad A. Petry OP-1461
 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:
 a. Oklahoma Department of Transportation, Woods County, FP-05-07
 b. Oklahoma Department of Transportation, Canadian County, FP-05-08
- O. Applications for Accreditation of Floodplain Administrators:
 Names of floodplain administrators to be accredited and their associated communities are individually set out in the September 13, 2005 packet of Board materials

- P. Waiver of Notice, Agreed Settlement and Consent Order:
Approval of Waiver of Notice, Agreed Settlement and Consent Order for Mark Tickel and T & T Water Well Drilling, Drilling/Pump Contractor License No. DPC-0193 and Operator Certification No. OP-0296

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

There were no questions or item of discussion by the 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 Temporary Permit to Use Groundwater No. 2005-518, Ken & Sharon Stamper, Delaware County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that this applicant, Ken & Sharon Stamper of Delaware County, requested a permit to take and use 15 acre-feet of groundwater per year for industrial use in a poultry waste processing facility. The water is proposed to be withdrawn from one well located on 48.3 acres of dedicated land in Delaware County. The land overlies the Boone Roubidoux Group. The applicant is developing a Phase I demonstration project of approximately six-months duration that is designed to convert poultry litter to a commercially viable products. The applicant is an experienced mechanical and environmental engineer, and will be residing on the site during the project. He said the processed water will be recycled and reused. The applicant will use a Board-licensed water well driller to drill and complete the well in compliance with the OWRB standards and will not be discharging any wastewater, but will be requesting a permit from the Oklahoma Department of Environmental Quality for management and retention of stormwater runoff. The packaging and sale of the fertilizer produced will be regulated by the Department of Agriculture, Food & Forestry.

Mr. Mathis stated that testimony established there are two old abandoned wells on the dedicated land, and in order to protect the groundwater from any pollutants to the basin, the proposed order has a condition the wells be located and properly plugged.

Mr. Mathis stated the protestants were concerned the applicant's groundwater withdrawal would interfere and cause groundwater in the area of their wells to be depleted. The closest well is Ms. Luttrell's and is approximately 400 feet from the applicant's proposed well area. Staff has conducted modeling and the estimated drawdown is about 1-1/2 feet of the well, which is not considered to be an impact.

Mr. Mathis stated that in summary, 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. Ken Stamper approached the members and stated he had no statement to make, but appreciated the Board's consideration. Mr. Sevenoaks asked the applicant about the operation of the facility. Mr. Stamper answered that the facility would involve chemical and biochemical processes to eliminate waste and make liquid fertilizer from poultry waste transported to the site; the gas produced will be sold for electricity. He said there would be no land application of the waste, only some surface runoff--required to be captured by the Department of Environmental Quality--that would be the quality of approximately pond water. He explained the project is financed in part by the State of Oklahoma, the State of Arkansas, and the Environmental Protection Agency, and the product will be marketed outside the watershed through existing fertilizer networks that sell in bulk, i.e. Farmers Cooperatives, etc. He said he expected to produce approximately 10,000 gallons per year in Phase I, and perhaps 100,000 gallons by Phase II. The members had additional questions about location, site topography, and general operation.

The protestant, Eddie Martin, expressed his concern about the source of the litter from the State of Arkansas, and additional storage of litter in the Illinois River watershed. He questioned whether the system was a closed-loop system and if there would not be spreading of the runoff wastewater. He was concerned about the lowering of the water table, whether the well driller performed the grout work on the well, and he talked about the characteristics of the water quality of the area, saying the water is good but at a shallow level.

Ms. Luttrell told the members her well is the closest, and she expressed her concern about the possible lowering of her water table. She said if the table were lowered 1-1/2 foot, she would not have water. She said she had good, clean water and she asked who would be responsible if something were to happen to her well, a deeper well would reach sulphur water, and she could not afford a new one. She was also concerned about the containment of the runoff water to keep it from the Illinois River.

Mr. Joe Baty spoke to the members stating he lived about one mile away from the property, and he is related to Eddie Martin and that is also his interest. He stated his concern about how the well would be completed, that the shallow water is plentiful and of good quality but more susceptible to pollution. He was also interested in how it was determined Ms. Luttrell's well would be drawn down 1-1/2 foot and that if the well causes the water from the shallow zone to drain to the lower zone and lower her water table further. He said that they were fortunate to live where the water is of good quality and plentiful, and he was concerned something would happen to change that, and he was also concerned about having to drill deeper and possibly hit sulphur water. He asked that if the Board did approve the permit, he would like it to be conditioned to protect the shallower zone. Mr. Currie asked at what level are the shallow wells, and Mr. Beatty responded his well is at 68 feet, Ms. Luttrell said her is at 45 feet, and Mr. Martin said his are at 38 feet and 157 feet.

Mr. Mathis explained that every site is different in this area, and the testimony of the well driller was that he would "zone" the well and find the range of wells of the area, saturated thicknesses, and attempt to isolate the shallower areas. He said the drawdown monitoring on the desk top model evaluated the amount of water being pumped over time to get a feel for what kinds of impact can be determined on a relatively close regional basis. Regarding the runoff and the DEQ permitting, Mr. Mathis responded that the applicant is working with the DEQ on a

stormwater management permit but the actual processing of the litter is under the jurisdiction of the of the ODAFF. He reminded the members this is a temporary permit, as the basin study has not been completed and there is annual review; however, staff would respond to complaints if issues arise.

There was further question and discussion about the depth of the proposed well, the isolation of the shallower zones for protection, the possibility of casing of the well at 260 feet to protect the upper zone, whether this is a beneficial use of water, and that if there are damages remedy would have to be sought through the court system. Mr. Sevenoaks commented that the Board would do its best to ensure protection through the well drilling process, but that Mr. Stamper had a right to the water as do the residents, and that the Board is very cognizant of the Illinois River and is encouraged to see the Conservation Commission working to find a solution to the poultry litter problem.

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

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

Mr. Sevenoaks moved to approve temporary groundwater permit #2005-518, and Mr. Keeley seconded.

AYE: Currie, Farmer, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann

NAY: None

ABSTAIN: Fite

ABSENT: None

- 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, stated to the members the budget report this month incorporates the budget-to-actual of the first months of the fiscal year. He noted in regard to the agency's gasoline expenditure that last year the agency budgeted \$40,000 for fuel and spent about \$68,000, and this year the first six weeks of the fiscal year, the agency has spent \$8,800 and expecting the worse to come; \$55,000 was budgeted for fuel this year. He said that overall the budget is down about \$190,000.00 over last year and salaries, insurance and fringes were up about \$120,000.00 and the agency received a small increase of about \$130,000.00 so the balance will be made up from other sources. Mr. Sevenoaks asked if the agency was fully staffed; Mr. Schuelein answered the agency is not fully staffed, and is somewhat below the appropriated FTE level. The agency is allowed to utilize "project term limited" positions, filled on an as-funded basis; if the funding ends, so the does the position.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There was a Supplemental Agenda items for the Board consideration.

- A. Consideration of Findings, Conclusions and Order Approving the Citizen Potawatomi Nation Acquisition of Assets of the Pottawatomie County Rural Water District No. 3, Recommended for Approval. Mr. Mike Mathis explained to the Board members that this item

concerns the Pottawatomie County Rural Water District #3 and is a process that doesn't often come before the Board, but one where the Board has responsibility to review and approve acquisitions. In this matter, the Citizens of the Potawatomi Nation, headquartered in Shawnee, have agreed to acquire the assets of the Rural Water District whose service area covers roughly the southern one-third of Pottawatomie County. He said there are about 600 taps on the system and a special meeting was held earlier this year by the benefit holders of the District, and the asset purchase agreement was approved by a vote of 72-10. After that, the matter was considered by the Board of County Commissioners, which was done and approved the agreement in June.

Mr. Mathis explained that the District has been struggling financially and the Citizen Potawatomi Nation has a significant interest in the system because one-third of the customers are tribal members, and wanted to bring stability to the system. He said the proposed findings and conclusions recognize the value and stability of the Citizens of the Potawatomi Nation will bring to the water system operation. The only concern by staff is that the asset purchase agreement would be enforceable since this is a tribal entity so a provision was included in the actual agreement that indicated the agreement is governed by federal, state and tribal laws. He said that was included expressly in the proposed order. Staff recommended approval.

Mr. Neal Martin, representing the Rural Water District, said he attended the meeting in order to answer questions if necessary. Through question and answers, Mr. Martin discussed with the members that the District had not been making full payments to Rural Development each month, the tribe had agreed not to increase the rate for a basic period of three years but would have to negotiate with Rural Development, and from a customer standpoint it is very good news and new customers would be hooked up without charge. He said the original system had been designed to accommodate 617 users, but 100 dropped out and 200 are only paying the minimum and since more people are needed to connect, the Tribe has provided incentive by eliminating membership fees and offering to lay the line to homes, as this is an economically depressed area. Mr. Martin said there were improvements that needed to be done to the system but the District doesn't have the money to do them.

Mr. Smith explained the Board's responsibility in the matter. He said it is unique as it is a tribal government and traditionally in acquisitions another rural water district would be involved but with this matter it is a sovereign entity and there could be question about whether the Tribe has to come to the Board, but the District wants it to come here. He read from the statutes the pertinent sections. Mr. Smith said that the staff reviewed the financials of the Tribe and found that the assets exceeded liabilities by \$61 million. He said the staff then reviewed the level of service to the customer and the Tribe has made a substantial agreement with the citizens and by vote approved it, as did the County Commissioners. Mr. Smith stated his concern regarded the sovereignty of the Nation and taking away the complaint process of the citizen by having to go to tribal court rather than state court so he recommended as a condition that the citizens be able to go to state court as a remedy to enforce the agreement. Mr. Couch stated that the condition being recommended and is before the Board today is that the approval by the Board be conditioned enforcing the agreement. Mr. Smith said the agreement language would give the Indian members of the District the option to file with the tribal court, and the non-Indian members could file in state court, and there may be a federal claim.

Mr. Sevenoaks was concerned about the sovereignty issue, about the water quality standards, and about turning over the District to an entity that is not responsible to the State of Oklahoma or to the Board. He expressed concern about setting a precedent with tribal governments and conducting water business that could be used as a model, and that the Attorney General's office nor the tribal representatives were present today to discuss the matter, and he believed the agreement was not strict enough and should have specific language or risk acquiescing the Board's authority.

There was further discussion that the Board is not signing the contract with the District, but rather approving the contract between the District and the Tribe and assuring enforcement of the agreement, whether it was arguable that the language proposed does waive the Tribal sovereignty, that the Tribe may want to go to tribal court but would protect those who wanted to go to other court, and that the anticipated closing of the acquisition is October 1, but would also have to be approved by Rural Development.

Mr. Sevenoaks suggested because of the time element for review and with such importance that the matter be tabled to the next Board meeting, and the members discussed the merits of that proposal. Mr. Sevenoaks then moved to table consideration of the approval of the acquisition of assets until the October meeting, and to invite the Attorney General's office to attend and allow members to review the asset agreement. Mr. Fite seconded.

There was further discussion about the issue of the waiving of tribal sovereign immunity, and the terms of enforcement of the agreement, and that conflict of law issues are decided by a judge. Chairman Herrmann repeated the motion and called for the vote, explaining an "aye" vote will table the motion to the next meeting.

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

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 matters of new business for the Board's consideration; however, Chairman Herrmann reminded members the October 11, 2005 Board meeting would be held in Tahlequah, and that the November meeting would be moved to be held in conjunction with the Governor's Water Conference on November 1, 2005 at 9:30 in Oklahoma City at the Board's offices.

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 11:20 a.m. on Tuesday, September 13, 2005.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____

Rudolf J. Herrmann, Chairman

_____/s/_____

Jess Mark Nichols, Vice Chairman

_____/s/_____

Lonnie Farmer

_____/s/_____

Jack W. Keeley

_____/Absent_____
Harry Currie

_____/s/_____
Richard Sevenoaks

_____/a/_____
Edward H. Fite

_____/a/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Bill Secret, Secretary

(SEAL)