

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

September 12, 2006

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 12, 2006, in the meeting room of the Oklahoma Water Resources Board, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on September 5, 2006, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked for a moment of silence in reflection of the events of five years ago on September 11, 2001, to remember the victims and survivors.

B. Roll Call

Board Members Present

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

Board Members Absent

None

Staff Members Present

Duane A. Smith, Executive Director
Mike Melton, Chief, Administrative Services Division
Dean Couch, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Monte Boyce, Comptroller
Lou Klaver, Acting Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Michael C. Turner, Kiowa Allottees, Lawton, OK
Lori Quetone, Oklahoma City, OK
Bill Foster, Oklahoma City, OK
James Eaton, Town of Calera, OK
Brad Davis, Town of Calera, OK
Stanely Ed Manske, Cimarron River Ranch, Boise City, OK
DC Anderson, Broken Arrow, OK
George Ellison, Save Our Water Lake Eufaula, Checota, OK
L.C. Smith, Kenton, OK
Donnie J. Robinson, City of Piedmont, OK
Wayne Minyard, Garvin County Rural Water District #1
Michael Vaughn, City of Piedmont, OK
Clark M. Williams, City of Piedmont, OK
Rich Campbell, Pauls Valley, OK
Bud Ground, Public Service Company, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal Authority, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
R. Deron Twohatchet, Oklahoma City, OK
Gene Quoetone, Oklahoma City, OK
Bill Myers, Sulphur, OK
Ron Gooch, Sulphur, OK
Gene Myers, Garvin County Rural Water District #1
Tony Thornton, The Oklahoman, Oklahoma City, OK
Paul Smith, Oklahoma city, OK
Rob Singletary, Office of the Attorney General, Oklahoma City, OK
Angie Burkhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Joe Painter, City of Piedmont, OK
Robert Crabtree, Lawton, OK
Dean Reeder, Mountain View, OK
Belle Reeder, Mountain View, OK
Beverly Hicks, Anadarko, OK
Pat Eaglenest, Anadarko, OK
Cornelia Karty, Lawton, OK
Ron Twohatchet, Lawton, OK
Edward E. Hilliary, Jr., Lawton, OK
Mike Hilliary, Medicine Park, OK
Matthew Watkins, Anadarko, OK
Deborah Bedemar, Norman, OK
Mike Crews, Sulphur, OK
Keith Woodell, Sulphur, OK
Steve Littleman, Oklahoma City, OK
John Vincent, Oklahoma City, OK
Arvo Q. Mikkanen, Oklahoma City, OK
Kim Winton, US Geological Survey, Oklahoma City, OK
Dave Washburn, Hilliary Ranch, Medicine Park, OK
Kenneth Hilliary, Hilliary Ranch, Medicine Park, OK

George Lodes, Elgin, OK
John Souks, Lawton, OK
Billy Penick, Comanche County Rural Water District, Lawton, OK
Deborah Wilson, Lawton, OK
Daisy Quoetone Mammedaty, Cache, OK
Alan Woodcock, U.S. Department of Interior, Tulsa, OK
Delores Twohatchet, Lawton, OK
Mike Sever, Cushing, OK
Roger J. Crabtree, Lawton, OK
Douglas Hilliary, Medicine Park, OK
Tom Lay, Kerr Irvine Rhodes Ables; Meers-Saddle Mountain Ranch, Oklahoma City, OK
John Zelbst, Rowe, Zelbst, Stonehocker, Lawton, OK
Wayne Rowe, Lawton, OK
Mike Wray, Lawton Constitution, Lawton, OK
Mike McGolbary, Lawton, OK
Judy Littleman, Oklahoma City, OK
Kent Sanmann, Norman, OK
Maryruth prose, Lawton, OK
Bill Cunningham, Lawton, OK
Bernadine H. Rhoades, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the August 8, 2006, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. There were no amendments to the minutes as drafted and Mr. Fite moved to approve the minutes of the August 8, 2006, Regular Meeting, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: Drummond

ABSENT: None

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Smith began his report updating the board members on the drought situation across the state, noting that while parts of the state have received some rain, the southeast corner of the state still has not received any appreciable rainfall, and is in the worst drought of record. He explained that state climatologists say a drought is 5-10 consecutive years of dry period, and the state has had about twenty years of wet times. Mr. Smith announced that Lou Klaver has been designated as the agency drought coordinator accepting and tracking hundreds of calls from people concerned about dropping well levels, spring flows decreasing, and interference by others. He said drought times are difficult times, and people must work together as neighbors.

The Board's Water Policy Committee met on September 11, the topic being how to address pit water in the mining industry. Board Member Jack Keeley chairs the committee and he updated the members on the activities. Mr. Keeley stated it was a very good meeting attended by several dozen people representing government and the mining industry attended. The majority of the discussions centered on the philosophy of water permitting in the mining industry. The result was that the committee will proceed with writing verbage for the rule to be

discussed at the next Board meeting. Mr. Smith added the mining industry representatives talked about rock quarry mining, sand pit mining, coal mining; very positive information, and a good meeting.

Next week Mr. Smith, Dean Couch, Secretary Tolbert and the Attorney General's office will be traveling to Washington, D.C. to talk to the Department of Justice about Sardis Lake. The federal judge ruled the contract (between the Board and Corps of Engineers) is a valid contract and is an enforceable contract. There is still some dispute about the amount owed; the COE says \$60 million with interest and penalties, etc., and the State disputes that figure. The meeting will be about the enforcement of the contract such as aid-intercept, but the State would like to use the Comprehensive Water Plan to detail the use of the lake and how it will be paid for. Tribal claims will also be a topic as how the federal government views the state purchasing the storage and the ability to take water in light of the written claims from Tribes on ownership. Following the meeting, a plan will be devised to make the federal government whole, but also use the water in Oklahoma.

The Corps of Engineers is conducting listening sessions on the Red River Chloride Control Project. The long-going program of the COE's is to remove natural salts from the Red River with the idea of making Lake Texoma a viable water supply. The largest salt supply in Oklahoma is on the Elm Fork of the North Fork of the Red River. The federal government has appropriated money to conduct a study to evaluate the environmental and economic factors in taking salt out of the Elm Fork. Lugert-Altus Irrigation District is wanting to acquire more water and if the salt were removed, the lake would be a useful source of water. Controversy involves the taking of water causing harm to the stiper bass fishery at Texoma.

The Arkansas-Oklahoma Arkansas River Compact Commission will meet at Grand Lake September 27-28, 2006 and the Kansas-Oklahoma Arkansas River Compact Commission will meet in Wichita, Kansas, October 11-12, 2006.

Mr. Smith announced that with the funding by the Legislature for the Comprehensive Water Plan--\$6.5 million over 5 years, matched by the state--there have been some changes in OWRB staff. He said a lot of coordination in-house is required to reorganize that effort. Mr. Mike Mathis has been temporarily assigned to be the lead on the OCWP, focusing entirely on the plan; Mr. Smith enumerated Mr. Mathis's qualifications for this position. The target kickoff will be the Governor's Water Conference in November.

Ms. Lou Klaver has moved to the Chiefs' position of the Division of Planning and Management Division, and Mr. Smith enumerated Lou's qualifications and tenure at the OWRB.

In view of the large attendance and agenda items today, Mr. Smith concluded his report. Chairman Herrmann invited the members to contact Mr. Smith about agency matters they are interested in receiving update information about.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #1, Garvin County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Garvin County Rural Water District #1 had requested a Drinking Water State Revolving Fund Loan in the amount of \$264,587. The District is experiencing low pressure problems in the northern central and western portions of the District. In order to correct the problem, the District will construct a 300,000-gallon standpipe and 2,000 feet of water pipe. Mr. Freeman noted provisions of the loan agreement stating the District's water connections had increased by 27% over the past ten years, and the debt-coverage ratio stands at approximately 1.4-times. The District has been a loan customer of the Board's since 1989 and currently has one loan outstanding with the Board.

It is estimated the District will save approximately \$98,000 of interest expense by borrowing from the Board. Staff recommended approval.

Mr. Rick Campbell, District Vice Chairman and Mr. Wayne Minyard, Community Resource representative, were present in support of the loan application.

Mr. Farmer moved to approve the loan to the Garvin County Rural Water District #1, and Mr. Secret seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann
NAY: None
ABSTAIN: None
ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Sulphur Municipal Authority, Murray County. Recommended for Approval. Mr. Freeman stated to the members that this item is a \$1,750,000 million dollar Drinking Water State Revolving Loan request from the Sulphur Municipal Authority. Sulphur is requesting the loan to go along with a \$750,000.00 grant from the Chickasaw Nation to construct 23,500 feet of 16" water line, and a new well to improve water distribution throughout the system, as well as provide water to the new Chickasaw Nation Cultural Center. Mr. Freeman noted provisions of the loan agreement, indicating the Authority has one other outstanding loan from the Board in 2002. The debt-coverage ratio is approximately 1.85-times, and it is estimated the Authority will save approximately \$610,000 in interest expense by borrowing from the Board. Staff recommended approval.

Mr. Mike Crew, Chairman, Keith Wells, Public Works Director, and Don Kiser, bond counsel, were present in support of the loan request.

Mr. Nichols moved to approve the loan to the Sulphur Municipal Authority, and Mr. Farmer seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann
NAY: None
ABSTAIN: None
ABSENT: None

Chairman Herrmann and Mr. Smith commented about the involvement of the Chickasaw Nation in this project, as well as a distribution project near the WinStar Casino area involving salt removal.

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Calera Public Works Authority, Bryan County. Mr. Freeman said this \$2,016,707.04 Clean Water State Revolving Loan Request from the Calera Public Works Authority in Bryan County, will be used to construct a new wastewater treatment plant, a new lift station, force main and collection system. In addition, the proceeds will be utilized to refinance interim loans used for engineering and environmental study, and other equipment and material purchases related to this project. Mr. Freeman noted provisions of the loan agreement; the debt-coverage ratio stands at approximately 1.4-times, and it is estimated the PWA will save \$715, 000.00 in interest expense. Staff recommended approval.

Mayor James Keaton and Mr. Brad Smith, Assistant Supervisor, were present in support of the loan request.

Mr. Sevenoaks asked about the wastewater treatment system.

Mr. Kenny Knowles moved to approve the loan request to the Calera Public Works Authority, and Mr. Drummond seconded.

AYE: Drummond, 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 Piedmont Municipal Authority, Canadian County. Mr. Freeman stated the Piedmont Municipal Authority requested a \$4,670,000.00 Drinking Water State Revolving Fund Loan for the construction of six miles of 16" water line and one mile of 10" pipeline for Piedmont to obtain water from the City of Oklahoma City. The loan proceeds will be used for a booster pump station and a 400,000-gallon storage tank. Mr. Freeman noted provisions of the loan agreement, saying Piedmont had experienced rapid growth over the past several years, with increased water and sewer connections of over 30% since 2000 and a population from 146 in 1960 to over 3,600 in 2000. Piedmont's debt-coverage ration stands at 2.3-times, and it is estimated the Authority will save approximately \$1.6 million dollars in interest expense by borrowing from the Board. Staff recommended approval of the loan request.

Mayor Donnie Robinson, Mike Bond, Interim City Manager, and Mr. Rick Smith, Financial Advisor, were present in support of the loan application.

Mr. Keeley asked about the source of water, and Mr. Sevenoaks asked about the terms of the contract between Piedmont and the City of Oklahoma City.

Mr. Secrest moved to approve the loan request to the Piedmont Municipal Authority, and Mr. Drummond seconded.

AYE: Drummond, 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 Increase in Obligation of Funds for Skiatook Public Works Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this item is for the consideration of a request by the Skiatook Public Works Authority for an increase in obligation of funds. The Board approved a \$3,968,000.00 Drinking Water SRF loan and as a result of the bids coming in substantially higher than engineering estimates, the Authority is requesting a loan increase to \$5,315,000.00. The loan is for a 3-million gallon per day water treatment plant with the design capacity to increase to five million. All other terms of the loan approved in July will remain the same. Even with the increased loan amount, Mr. Freeman said Skiatook will have a strong 2.8-times debt coverage ratio, and it is estimated the savings of borrowing with the Board to be at approximately \$1.7 million. Staff recommended approval.

Mr. Paul Smith, financial advisor, was present in support of the loan application.

Mr. Sevenoaks commented about the 20% miss in the estimated costs. Mr. Smith explained between the engineers estimate and the time the bids were let, the price escalation in materials containing petroleum products contributed to the construction cost increase. He added the increase is based upon an actual bid for construction that is valid until October 22.

Mr. Fite moved to approve the increase in obligation of funds to the Skiatook Public Works Authority, and Mr. Drummond seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secret, 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.

Chairman Herrmann read the statement above and asked for requests to move items. There were no other requests to move items.

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.

Ms. Lou Klaver asked to withdraw items D.2 and D.3., regarding contracts for US Geological Survey and monitoring around the Meridian Aggregates Quarry and the accompanying contract with Meridian Aggregates. Also, withdraw item E.7. Kirk Mason #2006-549, J.2., AES Big Cedar #2006-014, and J.3., Lawrence E. Reherman #2006-022, due to publication problems. Ms. Klaver stated item H.1. Wheeler Brothers had previously been withdrawn due to having received a protest on that application.

Additionally, Ms. Klaver noted there are two Supplemental Agenda items that could be included under the Summary Disposition Agenda at the Chairman's pleasure. Chairman Herrmann instructed agenda items 7.A. and 7.B. be included under the Summary Disposition Agenda. Ms. Klaver explained item A. is the renewal of the annual lease agreement for the Woodward Field Office, and item B. is a temporary groundwater application for Jay and Karen Leierer, #2006-544 that did not receive a protest.

Mr. Sevenoaks asked about the contract with James Leewright. Ms. Klaver explained Mr. Leewright is an expert draftsman and former OWRB employee who has been retired from the Board for several years. He will be doing mapping and drafting work for the Comprehensive Water Plan. Chairman Herrmann asked about the acquisition of Pontotoc County Rural Water District No. 2 by Ada. Ms. Klaver answered Ada had petitioned the Board to approve its proposed acquisition of the Pontotoc Rural Water District which it already serves; both parties are in agreement. Chairman Herrmann commented about the district and the city working together to solve mutual problems and needs. Mr. Sevenoaks asked if it is necessary for the proposed acquisition to come to the Board for approval, and Ms. Klaver responded that it is, and the Board has received an increased amount of proposals as a result of the drought situation. Mr. Secret added it is state law that the Board approve acquisitions. Chairman Herrmann said the Board is required to approve the acquisitions to assure fairness to all parties through the transaction. Ms. Klaver said it provides a forum, and a hearing is conducted.

There being no further questions or action regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Fite moved to approve the Summary Disposition Agenda items as amended, and Mr. Nichols seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann
 NAY: None
 ABSTAIN: None
 ABSENT: None

The following items were approved:

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

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

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

1. Grant Agreement with the National Fish and Wildlife Foundation for Funding a Portion of the Lake Wister Restoration Program.
2. *Amendment of Joint Funding Agreement with the U.S. Geological Survey for the FY-2007 Federal-State Cooperative Program to Add Monitoring Water Resources in Area of Meridian Aggregates Company North Troy Quarry. Withdrawn*
3. *Memorandum Agreement with Meridian Aggregates Company, A Limited Partnership for Participation in Federal-State Cooperative Program with the U.S. Geological Survey for Water Resources Monitoring in Area of Meridian Aggregates Company North Troy Quarry. Withdrawn*
4. Professional Services Contract with James D. Leewright for Drafting Services Related to the Update of the Oklahoma Comprehensive Water Plan, and Other Services.
5. Contract with Department of Environmental Quality for Laboratory Analysis and Related Services and Products.
6. Contract Amendment with Office of the Secretary of Environment for the Clean Water Act National Pollutant Discharge Elimination System Program
7. Second Amended Interagency Agreement with Grand River Dam Authority for Additional Water Quality Monitoring Below Grand Lake Pensacola Dam and Below Lake Hudson Kerr Dam.
8. Joint Funding Agreement for the Arbuckle-Simpson Aquifer Special Studies Project.

E. Applications for Temporary Permits to Use Groundwater:

1. Kim R. & Vicki L. Sullivan, Comanche County, #2004-574
2. Patricia E. Collins, Roger Mills County, #2006-504

3. Patricia E. Collins, Roger Mills County, #2006-506
 4. Livesay Orchards, Wagoner County, #2006-545
 5. Greg & Geri Little, Caddo County, #2006-549
 6. Cedar Creek Spraying Services, Inc., Caddo County, #2006-550
 7. *Kirk Mason, Major County, #2006-554 Withdrawn*
 8. Paul & Donna Wiedemann and Jeff Wiedemann, Canadian County, #2006-558
 9. Ray Carpenter Living Trust, Evelyn Carpenter Living Trust and Kenneth & Deborah Carpenter, Canadian County, #2006-560
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. James D. & Theda Marie Crook, Beckham County, #2002-538
 2. Flat Prairie Farms, Inc., Texas County, #2006-526
 3. Donny Maphet, Harper County, #2006-547
- H. Applications to Amend Regular Permits to Use Groundwater:
1. *Wheeler Brothers Grain Co., L.L.C., Blaine County, #1984-526 Withdrawn*
- I. Applications to Amend Prior Rights to Use Groundwater:
1. Thomas Public Works Authority, Custer County, #1970-357
- J. Applications for Regular Permits to Use Stream Water:
1. Donna Edgmon & Ty Remington, Bryan County, #2006-007
 2. *AES Big Cedar, L.L.C., LeFlore County, #2006-014 Withdrawn*
 3. *Lawrence E. Reheman, Jr., Kingfisher County, #2006-022 Withdrawn*
 4. Christopher Jordan, M.D., P.L.L.C., Oklahoma County, #2006-024
 5. Wesley L. Johnson, Lincoln County, #2006-025
 6. Patrick Boaz, Johnston County, #2006-026
 7. Alan D. Berkley, Trustee of the Alan D. Berkley Living Trust, Grady County, #2006-027
- 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: Double D Water Pump Sales & Service DPC-0736
 - Operator: Dale Dickerson OP-1513
 - Activities: Pump installation
 2. a. Licensee: Sharp's Pump & Electric DPC-0734
 - Operator: Paul Sharp OP-1512
 - Activities: Groundwater wells, test holes and observation wells
 - Pump installation
- 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, Seminole County, FP-06-10

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 12, 2006 packet of Board materials

P. Applications to Acquire Assets:

1. Application of the City of Ada to acquire the assets of Pontotoc County RWD No. 2, Pontotoc County, RWA 2006-001

7. Consideration of Supplemental Agenda Items

- A. Consideration of Renewal Lease Agreement with Mori White, DDS, for Office Space for OWRB Woodward Office.

- B. Application for Temporary Permit to Use Groundwater

1. Jay D. and Karen S. Leierer, Major County, 2006-544

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

There were no questions or discussion by the Board under this item.

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. 2005-579, Cimarron River Ranch, L.L.C., Cimarron County:

1. Summary – Ms. Lou Klaver, Chief, Planning and Management Division, stated this application for a temporary groundwater permit by the Cimarron River Ranch Corporation located in Cimarron County near the Black Mesa. The applicant has requested a permit to use 200 acre-feet of groundwater to irrigate 100 acres of land. The applicant owns and has dedicated 230 acres of land and proposes to pump groundwater from four wells located in the Alluvium and Terrace Deposits of the Cimarron River. An OWRB licensed well driller has

completed three of the wells, and the fourth well is actually an excavation pond in the alluvium and is referred to as well number four. The pond was originally intended to be used as a holding basin, but once filled with water, the applicant decided to use it as a well. It has been excavated to a depth of 12 feet that can be pumped at a rate of 150 gallons per minute. The pond is bermed at four feet above grade to keep surface water runoff out of the pond

Ms. Klaver stated the application was protested by Mr. L.G. Smith who owns land adjacent and to the south of the applicant. Mr. Smith is a retired agronomist with the NRCS, and uses groundwater for domestic purposes from his well, and the Cimarron River runs through both properties.

There was no dispute that the applicant owns the land, that the land overlies the Alluvium and Terrace Deposits of the Cimarron River, that irrigation is a beneficial use, or that waste by pollution will not occur. The evidence showed the applicant's irrigation system to be efficient, would be watched closely, and that there are no open holes or wells present on the dedicated land.

The protestant was concerned about waste occurring because the applicant completed the wells before filing an application and also used groundwater before obtaining a permit. Based upon the testimony and evidence presented at the hearing, the hearing examiner found the applicant tested the well by pumping them one day in February and also obtained provisional temporary permits in March for irrigation. While the completion of the wells and use of the groundwater occurred before issuance of a permit, the hearing examiner found it not to constitute denial for the permit. The protestant was also concerned about waste by depletion through evaporation from the groundwater pond that normally would not occur from using a groundwater well but no evidence was presented about the evaporation rate or impact, and since the pond only covers $\frac{3}{4}$ of an acre, the hearing examiner found evaporation to be negligible. Thirdly, Mr. Smith raised the issue that the four wells are actually in the cut beds and banks of the Cimarron River. Photographs, maps, and testimony were presented and the hearing examiner found that the wells are located outside the existing cutbank of the river, and the applicant is pumping groundwater from the alluvium and terrace deposits of the river. Lastly, Mr. Smith objected to the pumping of the alluvial groundwater of 200 acre-feet will result in a reduction of streamflow in the Cimarron River, but the impact of groundwater on streamwater cannot be considered in this matter as grounds for denial because it is not a sole source aquifer.

Ms. Klaver stated the hearing examiner found the application to be in compliance with Oklahoma Groundwater Law, she named the four points of law, and stated staff recommended approval.

2. Discussion and presentation by parties. Mr. Stanley Ed Manske, representing Cimarron River LLC, stated to the members the application had been well represented before the Board, and the facts of the case are supported by the law, and he asked for approval.

Mr. L.G. Smith, protestant to the application stated his work experience in agronomy and irrigation. He described the use of water from surface water rights on his land, and he asked about whether the basin is a major or minor basin, and if it is a minor basin, the OWRB rules state it must be pumped a minimum of 150 gallons per minute, and he questioned if that was possible. Mr. Smith contended 40 gallons a minute is sustainable in the area, and he talked about the number of acres irrigated by the center pivot systems; he said the applicant does not have an NRCS irrigation water management plan, the fourth well log has not been filed on the agency website, and he is concerned about depletion in drought conditions.

Ms. Klaver addressed the major/minor basin issue. She said this is an unstudied basin, but the OWRB defines that once a basin is studied and if it yields 150 gallons per minute it is considered a major basin, and if it is a minor basin the alluvium and terrace will pump less than 150 gallons per minute. There was discussion about the rule regarding major and minor, but

the Cimarron has not been studied, so the law instructs two acre-feet per acre is allowed. Mr. Duane Smith added that the statute that talks about the definition of a major basin having an average yield basin-wide of 150 gallons per minute does not have to do with issuance of the permit. In order to issue the permit well doesn't have to yield 50 gallons a minute, that definition is for administrative purposes. There are different requirements for determining the maximum annual yield for major and minor basins, but because this particular well does not yield 150 gallons per minute, does not mean the permit would not be approved, provided all the facts are there to approve it.

Mr. L.G. Smith then asked the Board to remand the application to the hearing examiner for further discussion.

Mr. Drummond asked that if approved, is the permit is temporary? Mr. Duane Smith explained a temporary permit is a permit that is reviewed annually, and until the basin is studied, it is temporary. The annual renewal requires the completion of a water use report and the permit is not protested. Mr. Drummond asked if there is a detrimental effect during the year, does that come into the permitting process? Mr. Duane Smith answered that if the terms of the permit are violated it would come into play, simply a decline in water level not necessarily would because the law contemplates the water level will go down over time.

Mr. Keeley said the permit could be reviewed in a year, and Mr. Duane Smith said because the permit is temporary, the amount can be reduced.

Chairman Herrmann asked the applicant if he wanted to comment, and Mr. Manske said the matter would be self-regulating as the applicant himself uses domestic wells that are located much closer to the proposed irrigation wells, and if there is a reduction in the available groundwater, the applicant's best course of action would be to cease irrigation for the use of his domestic well for home and business.

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

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

Mr. Sevenoaks moved to approve the proposed order approving temporary groundwater permit no. 2005-579, and Mr. Keeley seconded.

Mr. Drummond clarified that the relationship between streamwater and groundwater are totally separate under the law. Mr. Duane Smith said yes, except for a sole source aquifer, the Arbuckle-Simpson. Mr. Sevenoaks commented that the problem as a Board is that it doesn't make sense, but unless the parties get together and operate together, it will be pumped dry. State law, which the Board must interpret and put into effect, doesn't give the Board the right to change the law, and if the permitting requirements are met, it's the Board's obligation to approve the permit. There were no other questions or comments.

AYE:	Drummond, Farmer, Keeley, Knowles, Nichols, Sevenoaks, Herrmann
NAY:	Fite, Secret
ABSTAN:	None
ABSENT:	None

Prior to considering the next items, Chairman Herrmann instructed that Ms. Lou Klaver would provide an overview of the permit applications, then there will be a break to allow the applicant and protestant to organize and make presentations of up to 15 minutes for each side.

Ms. Klaver stated the next items are four proposed orders and at the hearing the applications were consolidated into one meeting because there was one applicant and the issues were similar of fact and law, same use and same area, and she summarized them together, as follows:

- B. Application for Regular Permit to Use Groundwater No.2003-598, Meers-Saddle Mountain Ranch, Comanche County:
- C. Application for Regular Permit to Use Groundwater No.2003-599, Meers-Saddle Mountain Ranch, Comanche County:
- D. Application for Temporary Permit to Use Groundwater No. 2004-572, Meers-Saddle Mountain Ranch, Comanche County: and
- E. Application for Regular Permit to Use Stream Water No. 2003-041, Meers-Saddle Mountain Ranch, Comanche County:

1. Summary. Ms. Klaver gave a video presentation of the background of the matter, saying the applications are in Comanche County northwest of Lawton. Comanche County Rural Water District No. 1 serves 1,100 taps, purchasing all water from Lawton; however, Lawton has recently been increasing rates and the district began to look elsewhere to supplement its supply with cheaper water from another source. Meers-Saddle Mountain Ranch approached the District, and a tentative draft agreement has been reached. Meers-Saddle Mountain Ranch made application for four water right permits; three are groundwater and one is for streamwater, for a source of 200 gallons per minute at a rate of 75% of current costs from Lawton.

Ms. Klaver showed a map that illustrated the dedicated land for the three groundwater permits and the stream where the streamwater permit was applied, which is known as Jimmy Creek Spring. She described application 2003-598 as requesting 1,430.4 acre feet from one well located on 894 acres of dedicated land; application 2003-599 as requesting 1,024 acre feet from three wells located on 640 acres of dedicated land; application 2004-572 as requesting 1,732 acre-feet from two wells on 866 acres of dedicated land, and application 2003-041, requesting 464 acre-feet of stream water. Applications 599 and 598 overlie the studied basin named Hennessey-Garber, which is a minor groundwater basin, producing probably less than 50 gallons per minute, and allowing 1.6 acre-feet per acre. Jimmy Creek Spring, subject of application 2003-041, runs through this dedicated land. Application 2004-572 is a temporary permit which overlies fresh groundwater, but is an unstudied aquifer, allowing two acre-feet per acre.

Ms. Klaver said notice was given and the applications were heavily protested, one protestant being the City of Lawton. However, Lawton has reached an agreement with the applicant and the applicant has agreed to meter the wells, use an automatic shut-off valve set to stop the pumping for the day when it reaches the amount set for that particular permit, and Lawton will receive a report on water use, also available as an open record. Additionally, the Lawton settlement agreement will be incorporated by reference into the Board orders. Based upon these elements in the agreement, Lawton has withdrawn its protest.

Ms. Klaver stated it was a five-day hearing conducted in July, August and September of 2005. There was no debate on the applicant's ownership of the land, whether the land overlies a fresh groundwater basin, nor a dispute that the water would be put to beneficial use, which for all permits is for sale for rural water district use. In response to a question by Mr. Secret, Ms. Klaver said the rural water district will use the water for domestic use, not oil and gas; the district has been growing and serves 1,120 taps and anticipates that by the year 2053, there will be almost 2,000 taps, and anticipated using 600 acre-feet in 50 years. Mr. Sevenoaks asked about transmission and treatment, and Ms. Klaver explained the tentative agreement (between the district and the applicant) is that the applicant will do whatever treatment is necessary, and will pipe it to the nearest point on their property that is close to the District line.

One of the issues is waste by pollution. The applicant drilled six test holes on the first groundwater application and were left open for 7-8 months without tapping, plugging, or completing as wells; at this time the wells are domestic water wells. The hearing examiner found the applicant had been neglectful, but that has now been taken care of, and the hearing

examiner has since found that waste by pollution would not occur in the future if the permits are approved.

The larger issue is waste by depletion. The neighbors and surrounding landowners felt the withdrawal of this much groundwater would impact their own domestic groundwater uses as well as lower the groundwater table and cause decreased flow in Jimmy Creek. The wells are proposed further than 1320 feet from any neighboring well, and meet the 1.6 and 2.0 acre-feet per acre allocation.

With regard to Jimmy Creek Spring, the permit is based upon actual springflow, and the applicant constructed a weir to measure the flow to determine rate and amount of stream water that could be used. This spring has great historical and religious significance to the Kiowa Tribe, and there is concern that the groundwater pumping will reduce the flow and that use of streamwater itself will cause a problem with the spring. The stream is used by cattle ranchers and is also important for Indian cultural ceremonies, and is considered sacred; the campgrounds are used for family reunions each year, and there are features along the creek special to the Tribe.

Ms. Klaver stated those are the issues and she detailed staffs recommendation to the Board. Regarding the four permits, the hearing examiner has found that Meers-Saddle Mountain Ranch has a right, and owns the dedicated land, the land overlies over one studied basin and an unstudied basin, rural water supply is a beneficial use, and waste will not occur in regard to the three groundwater applications and proposed recommending approval of the permits. Regarding the stream water permit, which stream water law is separate requiring the finding of separate facts, and in this case it must be shown that there is unappropriated water in the amount requested, the use is beneficial, there is no interference, and that the applicant must demonstrate a present or future need of the water. The hearing examiner addressed these issues together and found that the three groundwater rights would total over 4,000 acre-feet, and found that the applicant did not establish a present or future need to use the streamwater from the Jimmy Creek Spring. A vote to approve the proposed order on the application involving streamwater would deny the streamwater application. Summarizing, Ms. Klaver said a vote of approval of the permits would grant groundwater permits (5.B., 5.C., 5.D.) and deny the streamwater permit (5.E.).

Questions from the Board members included how much water the rural water district anticipated needing, how many gallons per day the permits would allow and the need for that amount per year, and state law in regard to use of groundwater by Tribes. Regarding Tribal use, Ms. Klaver stated the Tribes claim rights protected under federal law and the members were afraid that issuance of these permits would interfere with what might be claimed under federal law. The hearing examiner discussed that issue and found the OWRB's jurisdiction does not end in federal law, the OWRB can only apply state law, and the Tribe is not bound by this decision. The Tribe may ask for quantification by federal court but is not bound what the Board decides. Other concerns by Tribal members is the depletion of the groundwater and the drilling of a well on the same 10-acre tract of land as the spring.

2. Discussion and presentation by parties. Chairman Herrmann called for a break and stated that when the proceedings are re-opened, the applicant will be allowed 15 minutes to present its case to the Board, the protestants (all protestants represented) will be allowed 15 minutes to present its case. He reminded participants that only parties to the case may be heard. Rebuttal time will be allowed, as well as questions from Board members. He recognized the emotion involved in this case and asked that light be shed on the matter rather than heat, and that people be respectful of one another. Mr. John Zelbst asked the Chairman to allow more time for individual protestants to speak as this is their only opportunity to speak to their government. After some discussion the Board members and participants agreed to up to thirty

minutes for each side to allow representatives of several groups the opportunity to speak, and to address different issues than those raised by others.

Mr. Tom Lay, representing Mr. Edward Hilliary, addressed the members and described the family-owned cow/calf operation, Meers-Saddle Mountain Ranch located north of Lawton. He said he does not represent Comanche County Rural Water District #1, but he described the District's situation and need to seek other supply source, its search for options, and the subsequent proposal by the applicant to build, operate and pipe and sell water to the District, at a cost $\frac{3}{4}$ that of the cost currently charged by the City of Lawton. While there is no contract at this time, the District as voted to accept the Hilliary's proposal. Mr. Lay provided a history of the applications filed, reflecting on a statement by a past OWRB Chairman that said the Board issues water rights on paper, provided the water can be found. He said water is difficult to find in this area of geological fractures, and once found it is difficult to obtain in big quantities. It's a minor basin, and the applicant drilled about 12-13 test holes in three sections of land with a range of yields from dry to trace and the best two wells produced 60 gallons per minute. Because the District is looking for 200 gallons per minute, and not knowing what groundwater can be found, but knowing that stream water is available by their estimation of 500 gallons per minute, two applications were filed, one for groundwater and one for streamwater. After notice and protests, the applicant met with Lawton and reached the agreement. The six-day hearing with numerous exhibits and arguments resulted in the four applications now before the Board.

Mr. Lay said that staff has recommended approval of the groundwater permit and he discussed the distinction between the demonstration of need for the water in the streamwater application, but that "need" is not an element required to be shown in the groundwater applications. While a seemingly large amount, the applications were filed based upon what the law determines for a studied basin, where the law says you shall have your equal and proportionate share of 1.6 acre-feet in this case, and the unstudied basin for a temporary permit of no less than 2 acre-feet per acre.

Mr. Lay asked the Board to approve the permits as they have been presented, with no extra "frills or thrills." He reiterated the applications' compliance with the groundwater law, there was no evidence submitted to show the pumping of groundwater would effect the flow of the stream; and there are no well spacing or well location issues. Mr. Lay said he respected staff's reasoning to recommend denial of the streamwater permit, although he respectfully disagreed. However, he said that his client has agreed that if the Board approved the 3 groundwater water permits, he will not pursue a streamwater permit.

There were no questions by Board members of Mr. Lay.

Mr. Lay said the Chairman of Comanche County Rural Water District, Mr. Bill Penick, did participate in the hearing, and has requested to speak. He said he was not a party to the proceedings, but is an interested party in the matter. General Counsel Dean Couch said it is the Board's pleasure whether to hear from a non-party, the Administrative Procedures Act specifies for parties, but to the extent the 9-member Board wants to allow other perspectives by non-parties that could be allowed. The Board allowed comment.

Mr. Penick wanted to provide an update of data about the future growth of the District, however, Mr. Couch explained no new evidence could be presented and the other side has not had an opportunity to review or comment, so he suggested it not be allowed. Mr. Penick continued that the District is growing faster than anticipated and at this rate soon will not be able to deliver water using the existing infrastructure. He asked the Board to approve the permits which would allow the District to extend its ability to provide water to its customers.

Mr. John Zelbst, representing certain protestants, addressed the members and stated his family ranch is south of the Meers-Saddle Mountain Ranch, and their ranch well is two miles south of the spring, and adjacent on the west to the applicant's groundwater wells. Mr. Zelbst enumerated the concerns of the protestants he represents: there is an adequate source of water for the rural water district from Lawton, the fuss is over the cost, there are other sources of water available, and he doubted the statements made about the determination of rate of future growth and development of the rural water district indicating the evidence is insufficient. The Wichita Mountains formation inhibits availability of water so groundwater is difficult to find, and now compounded by drought conditions with water levels declining by 80 inches, and the same water sources feed the spring. Regarding the unstudied basin, he said he would write the Governor to request Rainy Day Funds be expended to study basins. There is no contract with the rural water district, and the application is six times the amount of the need of water. He used a dry-erase board to illustrate the spring and known underground cavern, and he believed the major source of water to Lake Lawtonka. He is concerned the applicant will drill into the channel and indirectly take water from the spring, and he suggested the Board direct the drilling to be south of the stream. He said the district has not shown an interest of going to other neighbors over the years, and they are concerned about the lack of adequate water once water withdrawal has begun. He argued that the amount of water applied for can be considered waste because there is no customer, no contract means there is no need for the water and the City of Lawton can supply all the water needed. He urged the Board to table the matter until there is a contract, that the Board severely limit the amount of water that can be taken, and asked that the Board not allow the applicant to do indirectly what can't be done directly which is to drill into the underground source. He mentioned the case, Stillwater v. Oklahoma Water Resource Board where it forbids the owner of a spring to divert the natural underground flow, and if the Board allows the applicant to drill into the cavern, that would divert the natural flow. Other concerns he mentioned is the requirement that the financial ability of the applicant to do whatever they say they are going to do and no evidence was presented in that regard; there is a history of bad conduct for not having plugged the wells until after the hearing began; and the applicant has been excessive in its request, and asked for no conditions. Mr. Zelbst asked the Board to table decision until further time as the applicant can provide information and a valid contract, or in the alternative deny the groundwater applications because of waste, and if the groundwater application is permitted, have strict conditions on the spring area and not drill into the actual cavern. There were no questions by Board members.

Mr. Arvo Quetone Mikkanen, a great grandson of Jimmy Quetone, addressed the members describing Jimmy Quetone as a Kiowa Tribe member and his original allotment that included the property downstream from the creek but the creek runs through it. He described the large family and the annual reunion, and said it is the Board's job to protect the stream as it is a beautiful place, a landmark, and a major water supply to Lake Lawtonka. He said there is no contract so no need for the water, and the cost is too high for the few cents saved, and the resources on the land are for others to make a living and the impact on downstream owners was not considered. He said the amount applied for is 97% of what the stream produces. He asked that the Board table the matter, or if the well is allowed to be drilled, to make sure the applicant does not unfairly accomplish what it otherwise would not be able to under the law.

Mr. Alan Woodcock, representative of the Department of Interior Tulsa Office, stated to the members that he had filed a special entry of appearance in this case to advise the Board does not have the authority or jurisdiction to appropriate water from the reserved water right that belongs to the Indian family without asking for general stream adjudication.

The proposed order seems to suggest the Board does not have jurisdiction but proposes to proceed in the absence of federal law. He said he renews his suggestion that the Board require the applicant to file a federal stream adjudication so that all interests can be adjudicated, or to otherwise comply with federal law. Mr. Sevenoaks asked if he referred to stream or groundwater, and Mr. Woodcock replied both, it's a reserved water right under federal law, but he would not speak of the evidence he might present in case of a federal lawsuit as a way of explaining his position, except to say that anything that would effect the stream is part of the reserved water right.

General Counsel Dean Couch responded that as indicated in the conclusions of law in these orders about this particular issue, the OWRB's authority comes from state law and is acting under state law. To the extent that action does not and cannot effect any federal claim, rights, or authority, or take precedence, the Board would not be attempting to do so by its written expression contained in the conclusions of law. He said Mr. Woodcock is correct about federal reserve rights and its particular complex method to address those, there are even complex aspects such as waters under the earth that would be a part of the federal claim. These claims have gone to the U.S. Supreme Court in many western states and stream right adjudication is the accepted approach to address that, which is understood in the conclusion of law acknowledging that is not what this is, nor does the Board have authority to effect change or take away any of those rights and claims. Mr. Drummond asked about the process to address such claims, and Mr. Couch answered that it is a very expensive and long process. A general stream adjudication – which the state tried to address in a more summary fashion with vested rights proceedings – requires the naming of each and every person and entity in a stream system that might be able to claim any rights to the water which is virtually every landowner, and could potentially be tens of thousands. In Arizona in the case of the Gila River these type of adjudications have included up to 30,000 claimants and those cases have been going on with special judges, 25 years, and tens of millions if not hundreds of millions of dollars to resolve on paper who has what rights. This is the type of general stream adjudication Mr. Woodcock talked about and what would have to be considered and done to resolve those claims. Chairman Herrmann asked if the Board acted on staff recommendation, would this likely be the next step that would occur. Mr. Couch answered if the Board proceeds and issues permits, then it would be for those who want to make those claims if they believe they are impacted or effected, but, it would take use of the water and drilling of the wells to determine. Chairman Herrmann asked if it would be practical to consider that to be a condition precedent to the Board issuing a permit, that those issues be resolved among the participants in that watershed. Mr. Couch answered that as a practical matter that would probably mean the applicant obtained a permit, but it might be 20-30 years before they could use the water.

Several members of the Quoetone family spoke to the Board members and expressed their concerns, including Daisy Quoetone Mammedaty, Delores Twohatchet, Deborah Quoetone Wilson, and Matthew Watkins. They spoke of their growing up on Jimmy Creek and conveyed the special, sacred feeling the people have for the spring, the use of water in religious ceremony, their concern of the impact to the environment, trees, recreation and Lake Lawtonka, the current drought conditions in the area, and that the law should look at the element of need for use in groundwater application. They asked the Board to table consideration of the permits until further study could be done.

Other protestants and landowners in the area spoke to the Board including Wayne Duty Rowe, George Lodes, Bill Cunningham, Bill Foster, and Michael Turner (tribal member) who spoke to the members about the historical water problems in southwest

Oklahoma, the drilling of the test wells and abandonment of the wells and waste by pollution, the amount of water requested is excessive, drought conditions of the area, impacts to the environment, sell of water serves to the enrichment of the property owner, possible result of earthquakes off the Meers fault. They recognized the value of the water district but said the cost of water from Lawton is not excessive and is worth more than what is paid for it, that withdrawal of the water will effect allottees and other landowners downstream, that homesteaders received riparian rights as part of the allotment agreements, and an opinion from the Department of Interior and Attorney General should be sought. They asked for denial of all four permits, a moratorium for future study, and an opinion on the federal reserved rights.

Mr. Lay offered his time to the City Attorney for Lawton, Mr. John Vincent who said a settlement agreement has been reached and other action has been taken to protect water rights in the area. Mr. Sevenoaks asked if the city has estimated a potential loss if the district uses other supply, and Mr. Vincent said it had not been estimated, there is a limited amount of water in the three lakes. The city has a 45 mgd plant fed from Lawtonka, with plans to add a 10 mgd fed by Ellsworth and Waurika cutting off most water being transferred from Lawtonka now. Regarding economic impact, Lawton currently sells one million gallons per month to the district. Mr. Lay's rebuttal response included comments on the Cabelka case (groundwater-streamwater interaction) by the protestants, and Messer Bowers which distinguishes the two, and said the two laws regulate. There is no significance to the fact there is no contract, but there is still a need and a willing buyer and seller, and he recalled the Board probably approved permits in the past for commercial sale when no buyer had been identified. He concluded saying staff, having heard five days of evidence, have come up with a good order, and he asked for adoption, and if approved, no stream water application will be pursued.

The Board members discussed the possibility of exploring middle ground, the election of officers of the rural water district, and the majority of opinion and local demand. They discussed the possibility of "carving out" a certain area where wells cannot be drilled and exploration of other areas for water, but said ultimately the landowner has use of the water under his land; that full amount does not have to be requested, and there is a need to protect Indian Tribal waters as culturally significant waters in the Water Plan.

Mr. Sevenoaks said he is for approving the water permits B.C.D. and E., as recommended, but let staff carve out an area around Jimmy Creek to preserve the flow. There was discussion of tabling the matter until the local parties could work together, as well as the alternatives regarding the federal/state issue.

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

After the discussion, Mr. Sevenoaks moved to table consideration of the permits until the next Board meeting with the caveat that it be remanded to staff to bring back to the Board a better understanding of the federal issues, even with the overview from Counsel, and also to carve out an area around Jimmy Creek that will prevent drilling immediately adjacent to it that won't immediately deplete Jimmy Creek. Mark Nichols seconded the motion, encouraging the residents of the area to work out the issues whether it be to lower the application amount and increase later, for example, but to work out the matter at the local area. Mr. Fite noted the Board would be traveling in October. Mr. Sevenoaks amended the motion to make the time frame to 60 days, and Mr. Nichols agreed.

Mr. Lay asked if the remand to staff would include a hearing. Mr. Sevenoaks clarified his request is for staff to review as a technical exercise. Mr. Couch responded that evidence has been produced today there is some channel that is some degree known, and he suggested for

all groundwater anywhere in the state that is an accurate statement, but preciseness of that is unknown. He noted that Mr. Lay had indicated for the applicant that if they drilled somewhere outside the opening or the pond area of the spring that it is automatically groundwater. Mr. Couch isn't convinced that is the case if the actual drilling actually intersects the definite stream, even though underground, title 60 section 60 says the landowner owns the water on surface and underground not forming a definite stream, thereby indicating there could be a stream underground and in the State of Oklahoma that has not ever been determined to exist. This could be the first place that is designated and therefore it isn't groundwater and therefore can't be taken even though authorized in the general 10-acre area put a well in and pull water out. The presumption is that's groundwater owned by the landowner and can be taken under a groundwater permit. But if the actual fact is after drilling there is definite stream underground, that is the taking of stream water not groundwater, but that won't be determined until an actual drilling is done. Staff could look at application 599 that includes the area of the springs and draft a condition for presentation to the Board at the November meeting about the intersection and after the fact information that would be obtained by the drilling of the actual well, that condition could be placed in that order and on the permit. He said that this is an evidentiary proceeding and all the evidence has been gathering and if the idea with that is that evidence to be gathered later and placed in the record for consideration, he would have to suggest that would need to go back for more hearing, not just staff review. Chairman Herrmann said that if additional findings triggers additional work, that is what will be. Mr. Couch suggested the staff could compile a review documents regarding the water rights claims, federal reserve rights, how those can be addressed, and he did not perceive the motion to include changes to the conclusions of law made, but just to further explain staff's understand of the very complex matter.

Chairman Herrmann said there is a motion to table with specific provisos to be done in the interim, and that has been seconded. Mr. Sevenoaks asked Ms. Klaver if the Board is making the issue overly complicated. Ms. Klaver responded that permit application 599 and in particular this 10-acre tract of land where one well is proposed, the Board may want to consider saying the well should be drilled in the southern half 1320 feet away from the spring, this is a regular permit, and a condition could be added to drill away from the spring.

There were no other questions or comments by Board members, and Chairman Herrmann called for the vote.

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

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

No items were transferred from the Summary Disposition Agenda.

6. PRESENTATION OF AGENCY BUDGET REPORT.

There were no other questions or discussion about the agency budget.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

Considered under the Summary Disposition Agenda.

8. NEW BUSINESS

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

There were no new business items for the Board's consideration.

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 1:05 p.m. on Tuesday, September 12, 2006.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/Absent_____
Jack W. Keeley

_____/s/_____
F. Ford Drummond

_____/s/_____
Richard Sevenoaks

_____/Absent_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Bill Secrest, Secretary

(SEAL)