

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

January 9, 2007

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 January 9, 2007, in the meeting room of the Oklahoma Water Resources Board, 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 January 3, 2007, at 4:50 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Mr. Secrest provided the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

None

Staff Members Present

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

Others Present

Kelly Swartz, Arledge & Associates, Edmond, OK
Bryce Hodgden, Regate, Woodward, OK
D.C. Anderson, Broken Arrow, OK
Robert M. Jones, Capitol West, Oklahoma City, OK
Dan Trotter, COWC, Guthrie, OK
Jimmy E. Seago, Osage county Rural Water District #15, Skiatook, OK
Douglas Hilliary, Meers-Saddle Mountain Ranch, Medicine Park, OK
Erin Boeckman, Capitol News Network, Oklahoma City, OK
Dean Looper, Braums, Oklahoma City, OK
Ken Senour, C.H. Guernsey & Company, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utilities Power,
Oklahoma City, OK
Larry Harrelson, Grand Lake Water Watch, Grove, OK
Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Cliff Younger, Grand Lake Water Watch, Grove, OK
Tom Lay, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Janice Smit, The Journal Record, Oklahoma City, OK
Bryce S. Kennedy, Redgate, Enid, OK
David Anderson, Bureau of Indian Affairs, Anadarko, OK
Ellen Phillips, Office of the Attorney General, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the December 12, 2006, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Mr. Fite moved to approve the minutes of the December 12, 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 saying this is an exciting time of year getting ready for the Legislative session, there are 2500 bills that have been filed at the Capitol, and there will be a number of water bills. He said staff would keep a close eye on the legislation and keep the Board informed. Mr. Smith stated he had met with Senator Laster, from Shawnee and the majority floor leader, and talked about how to get money to implement the Comprehensive Water Plan and the Financial Assistance Program. The Senator is encouraging people to think outside the box, similar to the Governor's Edge Program, funding several initiatives with money that exceeded the Rainy Day Fund. The idea is to take \$50 million and move it into the development fund, and the strategy is to work the details to get it into the Governor's Budget and start the session with the Governor's and key legislators' support that concept. Mr. Smith said he believed there would be broad support, i.e., rural water, initiatives for the program by industry, Municipal League, farm groups and it is an opportune time because the drought this

year has put a sense of urgency on water planning and hopefully the agency can make some progress in the Legislature this year for funding those programs.

Mr. Smith informed the members he had visited the National Weather Center recently and Dr. Baxter Vieux, professor at the University of Oklahoma. He said it was a fascinating trip to the weather center and he expressed his enthusiasm for the Board to schedule a tour in conjunction with a Board meeting in the future. Mr. Smith added that without the Mesonet program, the enhancement in radar coverages and other research components, the Arbuckle Simpson Groundwater Basin would not be the quality that it is. He said he wants to show the Board how the research is being tied into management of the resource.

Mr. Smith has been meeting with many groups promoting the removal of the cap on the Gross Production Tax Water Projects Fund, which will ultimately depend upon funds at the Legislature. He said there would be a lot of issues before the Legislature this session, and he wanted to make sure that water is in the priority mix. He said that \$1.1 million is needed to finish the Arbuckle Study, and the OWRB has asked for that amount because the federal government did not fund its \$550,000.00. The Board is working to get that included; the 1 million will finish the study on time and in budget, and with a management plan to protect the aquifer.

The US Geological Survey has invited Mr. Smith to attend its National Water Science meeting attended by District Chiefs and upper level USGS personnel. He was asked to make a presentation on the cooperator program and ways to improve the program. Mr. Smith said the USGS is a very important organization to the OWRB and supplies much of its basic data, but one of the things the USGS needs to do better in terms of funding is to do more toward the cooperators agenda and not the national agenda. The USGS is interested in a national data base to show Congress what the water resources across the United States are, but from the State's standpoint it is better to concentrate on basic data collection rather than funding research projects, leaving managers at the state level with inadequate resources to make accurate decisions. He would also like to see the state be able to do work on the gages and reduce costs, and work with the Western Governor's Association on its initiatives.

Mr. Smith will speak to the Save Our Water Lake Eufaula, and there is water in the flood pool. The group was interested in a provision last year in the Water Resources Development Act to include a Lake Eufaula Advisory Committee, the Corps agreed, but the WRDA bill did not pass and now with the change in Congress, it appears the bill start over. There was also other legislation such as making recreation part of the lake federal purpose, which did not happen. Mr. Smith stated he supported an advisory committee but at the same time, Eufaula was built for hydropower and water supply and is serving that purpose and there may be ways to better manage the releases, but recreation doesn't pay any cost for the storage. He said there needs to be a way to help manage that reservoir and make sure hydropower uses water in the best way possible, that municipalities use water in an efficient way so as not to have as big an impact on the recreation uses at the lake. Mr. Smith said he has also been visiting with many Rotary Clubs and other civic organizations, which is a good opportunity to talk to the public about water.

Regarding the Meers Saddle Mountain mediation, Mr. Smith updated the members the agreement was to put together a technical review team to look at what can be pumped while protecting the spring. The technical review committee has been contacted, but unfortunately through the holidays the members—USGS, OU, OSU, Kerr Lab—have not been able to get everyone together. A meeting will be held as soon as possible and move forward as quickly as possible to get technical expertise to get the situation resolved.

Mr. Smith introduced Mr. Owen Mills, OWRB Employee of the Quarter.

Concluding the Executive Director's report, Mr. Smith called upon Mr. Dean Couch, OWRB General Counsel, to update the members on a dam safety matter and the Court ruling

regarding payment of Sardis Reservoir. Mr. Couch stated, and noted a news article distributed to the members, that on January 8, 2007, the US Supreme Court issued an order turning down a last appeal of the federal court system decision declaring that the 1974 contract that the OWRB's predecessor agency entered with the US Corps of Engineers for the water supply storage at Sardis Reservoir is a valid contract. He said it is enforceable in the federal court system is what the District Judge ruled; that decision appealed to the 10th Circuit Court of Appeals that affirmed the decision last summer, and this final request to the US Supreme Court was turned down. He said the State would have to address the situation somehow or another, and that would be part of the discussions in Session, and Mr. Smith would also be discussing the matter with the Corps of Engineers, the Attorney General's office, and those that need to be aware.

Regarding the dam safety issue, Mr. Couch said it had been one of interest to the Board, that had only been initially involved in the dam safety issue, where an upstream riparian landowner wanted to construct a dam for recreation purposes. Downstream landowners were concerned and notified the OWRB activities were taking place and the construction was halted until the application process to gain the Board's approval. During that time frame the downstream landowners filed a lawsuit in Caddo County District Court for an injunction to make sure the dam wouldn't go forward as proposed. The Board in the summer of 2003 did approve those plans and specifications with modifications, and an appeal was taken and quickly dismissed. However, the Caddo County court case proceeded as the downstream landowners were concerned the upstream landowner would not comply with the Board's order. In March 2004, the Caddo County District Judge issued an order requiring the upstream landowner to release certain amount of water, the upstream landowner did not think it a proper amount and took an appeal, and the Court of Civil Appeals issued its opinion last summer. The District Judge stated the water law that might govern – the OWRB is incidentally concerned with – is constitutional. However, the Court of Civil Appeals decided that the law was unconstitutional which caused concern, not only by the OWRB but water users across the state i.e. ORWA, Oklahoma City, Tulsa, and they got involved. In November, the Oklahoma Supreme Court issued an opinion in reviewing the Court of Civil Appeals opinion and simply decided to "punt" and sent the matter back to the Caddo County District Court saying the OWRB should be officially and formally given notice of the lawsuit. A rehearing has been requested of that decision, and the upstream landowner is in a position to file a response by January 15 and while not certain of the outcome, it most likely will be sent back to Caddo County Court for formal notice to the Board to get involved. Mr. Couch reminded the members the Board, in November 2004, had decided not to get involved in the Appeals Court (Civil) proceedings. Staff's recommendation will be to get involved and, as the statute requires, have the Attorney General's office represent the OWRB because these water rights matters as presented now tend to have a potential to affect the whole state and all users of water, hence the Supreme Court's reasoning that the agency should get formal notice and get involved. Heldermon v. Wright is the case.

The Executive Director's report was concluded.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water Management District #15, Osage County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a request for \$1,642,548.00 Drinking Water State Revolving Fund Loan request from Osage County Rural Water District #15. The District is requesting the loan to construct 8,500 feet of 12" water line,

18,500 feet of 8" water line, a quarter of a million gallon water storage tank, a booster pump station for the southern supply area, a booster pump for the lake road area, and a third pump station for the Javine/Phillips Road area. The loan will be funded through the Drinking Water SRF loan program; he noted provisions of the loan agreement. Mr. Freeman said the District has had steady water connection growth over the last several years with the number of customers increasing by nearly 80% since 1990 to over 2300 customers. The District currently has one other loan with the OWRB, and with this loan fully funded, the District's debt coverage ratio is 1.3-times. It is estimated the District will save approximately \$390,000.00 in interest expense by borrowing from the Board. Staff recommended approval of the loan request.

District Manager Jim Seago and Engineer Rob Haskins were present in support of the loan application.

Mr. Secrest moved to approve the loan request by Osage County RWD #15, and Mr. Farmer seconded.

Mr. Secrest commented that the District is well run by the Manager, it has been a growing district and Mr. Seago had done an excellent job.

AYE: Drummond, 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 Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated the request by the TMUA for \$14 million in loan funds is to refinance interim construction loans that the TMUA has received from the Board for wastewater system improvements. He said the refinancing would be funded \$8.8 million from the State Revolving Fund Loan Program, \$5.2 million from the Clean Water SRF Loan Program. He noted provisions of the loan agreement and Tulsa's debt-coverage ratio is 1.28-times. He said this would improve significantly as a result of the latest rate increase effective October 2006. He said it is estimated that Tulsa's interest savings by borrowing from the Board is approximately \$420,000.00. Staff recommended approval.

There were no representatives of the TMUA available due to a conflict in meeting schedules.

Mr. Secrest moved to approve the loan to the Tulsa Metropolitan Utility Authority, and Mr. Farmer seconded.

Chairman Herrmann asked about the project fund amount of \$3,717,332, and Mr. Freeman answered there are some parts of the project that have not been done yet, and when the loan matures it will be set up a project fund to use the remainder of the money. Mr. Fite asked about the Underwriter's Discount and Cost of Issuance, and Mr. Freeman answered that because of the new federal tax law, the agency is looking at ways to do business differently and are doing smaller bond issues, the larger issues do not have those costs itemized.

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

Mr. Sevenoaks asked about the costs associated with the bond issue and Mr. Freeman explained that the smaller bond issues charge these costs up front, where the larger bond issues assesses the costs over the life of the loan.

Chairman Herrmann asked the staff to make an extensive presentation to the Board at a future meeting about finance options regarding the financial assistance programs.

C. Report by Board Audit Committee and Report of and Possible Action on Audits of Oklahoma Water Resources Board State Loan Program Revenue Bonds and Clean Water State Revolving Fund Program (CWSRF) Financial Statements as of June 30, 2006 and 2005, Audits of the CWSRF Administrative Fund and the Drinking Water Treatment Loan Administrative Fund as of June 30, 2006 and 2005. Mr. Freeman said this item is to report on the Audit and compliance Committee Meeting held following last month's Board meeting. He said Mr. Farmer serves as Chairman of the Committee, along with Mr. Keeley, Mr. Knowles and Mr. Drummond. During the meeting, the Committee reviewed the following items: the Auditor's Management Letter regarding the loan program as well as EPA's annual evaluation of the OWRB's operations of the SRF Loan Program. The Board's most recent arbitrage rebate reports were reviewed; the reports must be filed with the bond rating agency, the standby bond purchase bank and the national repositories for review. The Committee reviewed the loan documentation exception reports, the policies regarding and balances of the debt service reserve funds were also discussed. The Board's policy on the use of state purchase cards was reviewed, and the Board's loan performance status report was reviewed.

Regarding the loan performance status report, Mr. Freeman explained that at the time of the Committee meeting there were 18 borrowers of 215, or 8%, that were not meeting the Board's debt coverage requirement of 1.25-times, based on their most recent audited financial statements. The 215 borrowers have a total of 379 loans, and since that meeting, the number has decreased to 14, or 6% of the Board's borrowers. Of that, seven of the borrowers are not meeting the 1.25-times debt coverage, and actually have debt coverage equal to or greater than 1.0-times, leaving three percent of OWRB borrowers who are not achieving a net income equal to their debt service requirement. Mr. Freeman noted individually the seven entities that have a debt coverage ratio below 1.0-times on their last audits, and their corrective plans. He particularly noted Delaware Rural Water District #10, whereby the District and the Board have entered an inter-creditor agreement with Chase Bank, who financed the District's gas system, along with J.P. Morgan as Trustee (now the bank of New York). The agreement calls for a "lock box" form of credit in which the creditors, the Board, and Chase Bank approve an operating budget, the utilities revenues are collected then that month's funds budgeted for operations are dispersed to the District. The net income is then split on a pro-rata basis based upon the outstanding loan balances of the bank and the OWRB. This results in the OWRB receiving 77% of the net revenues of the District and the bank receiving 23%; operations of the District have improved and new customer growth is occurring. The District's loan is the only OWRB loan that is past due of the 379 outstanding loans. Mr. Freeman said the Committee asked Mr. Kelly Swartz of the Arledge Firm, and whom conducted the Board' audit, to review them with the Board.

Mr. Kelly Swartz distributed the Oklahoma Water Resources Board Audit Results Summary, ending June 30, 2006. He described the audits performed for FY-2006, Bond Issues 89, 94A, 94B, 95, 97, 99, 01, 03A, 03,B and 04A; also Clean Water State Revolving Fund and Administrative Fund (CWSRF and DWSRF). There were no changes in the financial report requirements for FY-2006, and Mr. Swartz said there were Unqualified Auditor's Reports on all Bond Issues, the State Revolving Fund, Clean Water and Drinking Water SRF funds, as well as the "Yellow Book" Compliance Report noted no law or regulations violations and no internal control findings on all Bond Issues, SRF Program, and CWSRF and DWSRF. Mr. Swartz also

provided to the members and reviewed the required communications letter to the Board recapping nine key areas associated with the performance of the audit. There were no questions or comments by the Board members.

3. SUMMARY DISPOSITION AGENDA ITEMS

Any item listed under this Summary Disposition Agenda may, at the requested of any member of the Board, the Board's staff, or any other person attending this meeting, may 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 requests to move any 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.

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Farmer moved to approve the Summary Disposition Agenda items and Mr. Drummond seconded.

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

The following items were approved:

E. Applications for Temporary Permits to Use Groundwater:

1. Rodney E. & Lois E. Ferguson, Woods County, #2006-556
2. Cecil E. & Rosalee Cerveny Living Trusts, Canadian County, #2006-589
3. Robin D. Davidson & Nancy S. Davidson, Trustees of the Davidson Living Trust, Canadian County, #2006-592
4. Mark Cook and Paul & Gracie Cook, Alfalfa County, #2006-594
5. John & Lola Lamle, Alfalfa County, #2006-596

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

G. Applications for Regular Permits to Use Groundwater:

1. Mark & Annette Schweitzer, Canadian County, #2006-591

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. WHB Cattle, L.P., Grady County, #2006-035
 2. Richard B. Carr, Adair County, #2006-038
 3. Diamond Sevens, L.L.C., Rogers County, #2006-048
 4. Sonrise Ranch Resources, L.L.C., Rogers County, #2006-053
 5. Max Kinyon 1992 Living Trust, Pittsburg County, #2006-054
 6. Bobby McCraw, Jefferson County, #2006-055
- K. Applications to Amend Regular Permits to Use Stream Water:
1. WHB Cattle, L.P., Grady County, #1984-062
 2. WHB Cattle, L.P., Grady County, #1996-052
 3. WHB Cattle, L.P., Grady County, #2003-036
 4. WHB Cattle, L.P., Canadian County, #2003-037
 5. WHB Cattle, L.P., Grady County, #2003-038
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:

a. Licensee:	Environmental Works, Inc.	DPC-0667
Operator:	Paul E. Feld	OP-1520
Activities:	Monitoring wells and geotechnical borings	
 2. New Operators and/or Activities for Existing Licenses:

a. Licensee:	Layne Western	DPC-0123
Operator:	Darren L. Hunter	OP-1519
Activities:	Groundwater wells, test holes and observation wells	
	Monitoring wells and geotechnical borings	
	Heat exchange wells	
b. Licensee:	Cherokee America Drilling	DPC-0060
	Charles E. Smith	OP-1447
	monitoring wells and geotechnical borings	
- M. Dam and Reservoir Plans and Specifications:
1. Durant Community Facility Authority, Bryan County, #DS-06-06
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma Department of Transportation, Logan County, #FP-06-15
 2. Oklahoma Department of Transportation, Cherokee County, #FP-06-19
 3. Oklahoma Department of Transportation, Creek County, #FP-06-20
 4. Oklahoma Department of Transportation, Noble County, #FP-06-21
 5. Oklahoma Department of Transportation, Pontotoc County, #FP-06-022
 6. Oklahoma Department of Transportation, Logan County, #FP-06-23
 7. Oklahoma Department of Transportation, Pontotoc County, #FP-06-24
- O. Applications for Accreditation of Floodplain Administrators:
None

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

A. Update on Oklahoma Comprehensive Water Plan Activities. Mr. Dave Dillon, Director of Water Planning, addressed the members and updated the Board on the timeline for the stakeholders participation and proposed changes to the timeline, as well as a review of the type of information to be obtained through a contract with the Councils of State Governments to do mapping and inventory work which is the underpinning of the public water supply assessment across the state. He said it is very needed work that needs to get started quickly and staff has been working diligently to develop the scope of work. It is anticipated the contract will be presented to the Board at the February meeting.

Mr. Dillon showed a slide with the timeline for the 40 listening session, the locations, and talked to the members about the new compressed schedule, with work beginning at the November 2006 water conference, and completing in the summer of 2010, and the financial, (cap removed from water resources development fund) policy, and technical challenges in shortening the schedule by one year. He anticipated the schedule for the listening sessions would be confirmed by February, with the first meeting being held in April.

Mr. Mike Sughru made a video presentation illustrating the data collection and data management scheme for asset management, inventory and water system assessment. He said the cities contract with the Councils of Government to conduct an inventory, mapping the locations of the assets, looking at the condition of the asset, estimating the remaining useful life and applying a replacement cost value, i.e., buildings, vehicles, utilities, water lines, roads, electrical systems. The OWRB will be able to use the information to develop the water system asset management plan. He said the goal is to develop a statewide data base of all water systems in Oklahoma: (1) system assets, wells, intake structures, pipelines, pumping stations, treatment plants and storage tanks, as well as the condition of each, and (2) general system information including: system contacts, current populations served, population projections, those who sell water to other systems, infrastructure needs, water supply and emergency supply and future water supply, and including water quality issues. Mr. Sughru said this information will allow us to query and analyze on a statewide scale and identify infrastructure needs today and through the next 50 years, to visually see alternative solutions to water supply and water quality issues. The data will be the basis for the engineering analysis and the long-range water plan. He said that to date it has been determined there are 785 public community water systems that supply 94% of the state's population, the other 6% not included are private water systems. He said he wanted to compile the existing mapping and inventory data first including those municipalities with existing GIS data basis and those communities that already have a CIP mapping and inventory survey done. Second phase would be the rural water districts, then those communities that are not eligible for CIP funding, then the third phase would be to map and inventory the remaining approximate 450 communities eligible for the CIP funding.

Mr. Dillon concluded the presentation saying there is no action to be taken today.

Chairman Herrmann suggested the Board create an Ad Hoc Committee for Water Planning, to be available to Mr. Dillon and his staff to meet occasionally between meetings if necessary or before or after, if there are particular issues to identify, or particular concerns collectively as a Board that should be discussed in more detail with the team. He asked Mark Nichols, Jack Keeley, Ford Drummond, with the chairman as ad hoc chair of the committee, to serve on the committee and augment the role of the Board if particular issues need to be worked through.

B. Update on Water Quality Standards Rulemaking. Mr. Derek Smithee began his presentation introducing the Water Quality Division staff that makes water quality standards revision a success. He said there is a subtle but real change in the public participation requirements that the WQS are subject to in this rulemaking which he will explain further next month when presenting the results of the public hearing that will be held on January 12, 2007. He said there was a lawsuit decided recently regarding the administrative procedures act and public participation process that results in a change in the presentation of public comments to the Board. In the past, the staff provided a copy of responses, but “whittled” down the issues so the members would not have to read the multitude of comments and the staff response. However, the court found that staff could no longer filter or interpret public comments. Next month when the public comments will be presented to the Board, it will be either a transcript of the hearing or the actual written comment from each person. Staff responses will continue to be provided. Mr. Couch added he would be analyzing the court case and the final court of appeals decision and it is certainly something to be aware of, and shines light on the agency, and that the Board members themselves are the rulemaking/legislative type function to adopt the rules so the public, having direct access to those decision makers, is what the court was pointing out—that screening and filtering is probably not the best way to approach rulemaking, and it may be best next year for the public hearing itself to be conducted before the Board. He said the case did not involve the OWRB and he is not worried about the agency and its process, but it will have to be more diligent. Mr. Smithee concluded his report reminding the members of the hearing and formal comment period. All of the topics and justification documents can be found on the agency’s website. He said the proposed changes would be presented at the February Board meeting.

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.2006-524, Ryan Patrick and Dacia L. Redgate, Woods County:

1. Summary – Ms. Lou Klaver, Chief of the Planning and Management Division, stated to the members that Ryan and Dacia Redgate filed an application to withdraw a total of 120 acre-feet of groundwater per year for irrigation in Woods County. The water is to be taken from three wells to irrigate 60 acres of land; the applicant is dedicating 90 acres. The applicant owns

the land, which overlies the Alluvium and Terrace Deposits of the Cimarron River; that basin has not been through the process to determine the maximum annual yield so the allocation is two acre-feet per acre of land. The applicants have agreed to follow all guidelines and best management practices of the Natural Resources Conservation Service, and are installing a high efficiency drop sprinkler pivot system installed by a well-established company, and they will be on site in order to repair any leaks quickly. Three wells are proposed, and one has been drilled which is 180 gpm, and plan to drill all three wells in order to operate the 600 gpm system. Ms. Klaver stated that waste by depletion was not an issue with regard to leaks and efficient use of the water.

The protestant in the case is the City of Waynoka, whose well field the Redgates' property is located around. The City has three wells within forty feet of the applicant's property line, and then two wells to the north and only three to four feet from the applicant's property line. There is no well spacing in this basin because the maximum annual yield determination has not been set. The City urged the Board to place a buffer to protect the City's wells from the irrigation wells. The City also urged that the municipal use be declared as a higher priority. With regard to pollution, there was no evidence the applicant would commit waste by pollution; there is a licensed water well driller that will drill the remaining two wells and has plugged the one test hole that has been drilled in compliance with the Board's rules.

Ms. Klaver stated the applicant owns the land and irrigation is a beneficial use, but the issue in this case and the hearing examiner found, based on the evidence, that waste by pollution and waste by depletion would not occur. The City hoped to protect its wells from being impacted. Staff has recommended approval of the proposed order with the added condition that the parties have agreed to, which is that the Redgates will keep their wells, less than 350 feet apart, and will drill the other wells in a north-south line keeping the wells approximately 300 feet from the eastern property line.

Ms. Klaver stated that in regard to the City's argument that municipal use should have preference over the irrigation use, the statutes and the court and attorney general have all ruled that there is no priority among uses. Staff recommended approval of 120 acre-feet of groundwater to irrigate 60 acres on 90 acres of dedicated land in Woods County, with three wells, and with the recommended added condition, to which both parties have agreed.

2. Discussion and presentation by Parties. Ms. Klaver stated the attorneys representing both the applicant and the protestant, the City of Waynoka, were present. Mr. Bryce Kennedy, representing the City of Waynoka is also the attorney for 20 other cities in northwest Oklahoma. Mr. Kennedy stated that if the Board approved the order as amended and he appealed, he would lose under the law. He applauded the water system analysis study saying there is a drought, there are water systems in northwest and north central Oklahoma that are hurting and these things need to occur. One of the problems here is there has been no hydrological survey or maximum annual yield determined; the staff agrees it should be done and he would like to put together the support to have the study done. The issue is priority of use, and he understands the groundwater is owned by the landowners; however, he urged the Board when considering these issues as a part of its plan, that among areas of high population the public use needs to "trump" the private use. Another consideration is the nitrate issue, which the order states must be referred to another agency, and the Board should be able to consider the application of nitrate and provide some control on that use, and seems the public interest in having good drinking water is not being effected. In summary, Mr. Kennedy asked for support from the staff to bring together the COGS, municipalities, and legislators to support this study.

Chairman Herrmann stated there would opportunity for Mr. Kennedy and his client to participate in the Water Plan process, and Mr. Smith added staff would gladly work with him on support for the study.

Mr. Drummond asked about the city proceeding with eminent domain. Mr. Kennedy answered that may be abandoned; they proceeded with what they thought was \$1,000 per acre, and the commissioners offered \$3,000 an acre or \$270,000 for the tract, and the client has not considered that offer yet.

Mr. Hodgkins, representing the applicant, approached the members and stated he yielded to Mr. Kennedy because he knew of the issue Mr. Kennedy wanted to mention to the Board, but nowhere in his comments though did he argue against the proposed order. He said the applicant asks that the order be approved. He said that in regard to Mr. Kenney's comments about nitrates, and the priorities involved, this is a prime issue of a municipality with a piece of land that the city is opposing the water rights and complaining about water rights. He suggested there is more nitrate affect on the water system in that area from people fertilizing their yards than there are farmers fertilizing their crops. He asked that the Board approve the permit application.

Mr. Smith commented that the Board has worked with both of these attorneys on a number of issues in the past, and it is good to have an agreement come together between two attorneys, and staff appreciated the city and landowners working together. Regarding the priority of uses, Mr. Smith said that this is a good time to talk about what the law says. He said one of the main reasons the groundwater law was put into place in 1972 is because there was conflict between cities and rural areas and depleting the area to where the local landowners couldn't take water. When the law came into place, there was discussion about prioritization, and every landowner has the right to take water, and everyone has equal standing in the law. The groundwater law protects the rural area from municipalities or industry and any other big group from going there and depleting the area locating wells there, then saying, "hey, we're there, and we have a priority, and now all the local people cannot take water around that." That is why the maximum annual yield is two acre-feet per acre, and spreads the use of water over a number of acres. Other states have the right of capture. By not setting a priority, everyone is on equal standing for water. He said in this case, Waynoka drilled its wells right next to the side of the land next to the applicants; the City now says it is already there, it has water and the landowner can't take water but has to take a certain distance, but the law doesn't protect that, the law protects the land next to the municipality to be able to take water, too. Waynoka should have put its wells away from the landowner and protected that individual landowner and well spacing on the both sides could be a part of what is there. When rural water districts and cities come and locate in the country, the landowner doesn't have the ability to sit on the rural board and city council to see how many people can be hooked on, so the individual landowner has not voice in what's happening with the rural water district, that is all governed by the law. If priorities are set in that particular case, then there also has to be some kind of accountability to the city and rural water districts that more water than what the aquifer is able to produce will be taken and then tell the rural area the folks cannot take water. If you want to take more water, you can, but you must have more land to do the same thing as any other user has to do—they are all on equal footing. Irrigators have infrastructure needs, too. So, Mr. Smith said, that when we talk about priorities in use, it was a concept that was well discussed, well thought out in the current water law, and one of the most successful parts of the water law, because it allows for everyone to be on equal footing and equal ability to take water. He read from the order on page 5009, referencing the Texas County case in 1972. That is why the recommendation is that it is, and as the drought continues, the Board will hear more and more these issues.

Ms. Klaver stated staff recommended approval of the proposed order before the Board, with the additional condition that the applicants drill their wells at least 250 feet from the eastern property line.

3. Possible executive Session. The Board did not vote to enter an 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 order as proposed and amended, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSTENT: None

Chairman Herrmann commented that the best situation is where the parties are able to work something out, as has been done in this matter. Adopting the "Golden Rule" mentality to these water issues will result in far better outcomes.

B. Application for Temporary Permit to Use Groundwater No.2006-557, COWC, L.L.C., Logan County:

1. Summary – Ms. Lou Klaver said this proposed order for the Board's consideration is an application by COWC for a permit to use groundwater in Logan County. The applicant is Central Oklahoma Wake Boarding Center, only the 5th such center in the nation. The applicant is requesting the use of 312 acre-feet of groundwater per year for a commercial amusement and recreational business. The water is proposed to be withdrawn from four wells located on 156 acres of dedicated land in Logan County. The water would be pumped into a 6-acre lake, 10.5 feet deep, and it is anticipated it will take 100 acre-feet to fill the lake and they will need groundwater to replace evaporation and to fill when there is not rainfall. She said there is not much stream water or runoff as the location is at the top of the watershed, and they are depending mainly on groundwater to fill the lake. The basin is the Garber Sandstone Formation for which the maximum annual yield and equal proportionate share have not been determined and each landowner is entitled to two acre-feet per acre of land dedicated. Ms. Klaver described the wakeboarding facility located on 156 acre of land dedicated, where participants are pulled along the water by a cord system, and there will also be bunkhouses and an office.

Ms. Klaver stated the hearing examiner found that reasonable intelligence and reasonable diligence will be exercised and that this is a beneficial use for commercial amusement and recreation purposes. The applicant has constructed the lake by putting a layer of clay on the bottom, sides and dam, and a bentonite seal on the sides and dam to minimize seepage. The four wells are located closely to the well so there is no more than 50 feet of line, and because it is a family operation, there will be three families living on the property and so will be available to detect and repair any leaks. The hearing examiner found that the water would not be used in an inefficient manner and that waste by depletion would not occur. The applicant has drilled the four wells by a licensed water well driller, and there is no evidence in the record to indicate that waste by pollution would occur. There was one protestant that appeared at the hearing, LaVerla S. Simpson, and her concern is that her domestic use well would be interfered with and the groundwater supply depleted. Ms. Simpson lives ¾ mile to the south-southeast of the applicant's nearest well location, and there was no evidence at the hearing to discuss the depth or static water level, or capacity of the well, therefore staff found that the law did not support her contention the well would be depleted.

Ms. Klaver said the applicant owns the land, it is a beneficial use, waste by pollution and depletion will not occur, and it overlies the Garber Sandstone. Staff recommends approval of the proposed findings of facts and Board order.

2. Discussion and presentation by parties. The applicant, represented by Mr. Tom Lay, was present. Mr. Lay said Ms. Klaver did an excellent job presenting the matter, the findings of

fact is based on the evidence presented, and he requested the Board approve the proposed order. There were no representatives of the protestant at the meeting.

3. Possible executive session. The Board did not vote to enter an 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. Nichols moved to approve the proposed findings of fact, conclusions of law and Board order #2006-557, and Mr. Sevenoaks seconded.

Mr. Keeley asked about what the wakeboard is. Mr. Dan Trotter, the applicant, addressed the members and explained the operations of the wakeboarding facility. There were no other questions or comments.

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

NAY: None

ABSTAIN: None

ABSTENT: None

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce addressed the members and stated the financial report for the month ending December 2006 has been provided; this completes one-half of the fiscal year. The agency has expended and obligated about 65% of the budget and collected about 50% of the budget. He said he closely watches the Water Infrastructure Development Fund. There were no questions by Board members.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

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.

Chairman Herrmann stated there is one item of new business that could not have been contemplated until the last 24 hours. He asked Mr. Smith to present the item. Mr. Smith stated that Mr. Dean Couch is distributing a contract for consulting services with Daniel J. Gamino who is an attorney. There is an agency personnel issue that is appropriate for outside counsel to assist the agency. The cost is \$125.00 hour with a cap of \$15,000.00.

Mr. Fite moved to approve the contract, and Mr. Farmer seconded.

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

NAY: None

ABSTAIN: None

ABSTENT: None

There were no other new business items for the Board's consideration. However, Mr. Nichols asked for staff, before the next Board meeting, to inform the State Auditor and Inspector's office that the Board would like to have a report.

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 11:40 a.m. on Tuesday, January 9, 2007.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Jack W. Keeley

_____/s/_____
F. Ford Drummond

_____/s/_____
Richard Sevenoaks

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Absent
Bill Secrest, Secretary

(SEAL)