

OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES

**February 12, 2008**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Mark Nichols at 9:30 a.m., on February 12, 2008, in the meeting room of the Oklahoma Water Resources Board, at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. He said the December meeting had been cancelled due to the ice storm.

The February 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 February 5, 2008, at 4:15 p.m. at the Oklahoma Water Resources Board's offices.

**A. Invocation**

Chairman Nichols asked Mr. Kenny Knowles to provide the invocation.

**B. Roll Call**

**Board Members Present**

Mark Nichols, Chairman  
Rudy Herrmann, Vice Chairman  
Lonnie Farmer  
Kenneth Knowles  
Linda Lambert  
Jack Keeley  
Richard Sevenoaks

**Board Members Absent**

Ford Drummond, Secretary  
Ed Fite

**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  
David Dillon, Interim Chief, Planning and Management Division  
Derek Smithee, Chief, Water Quality Programs Division  
Mary Lane Schooley, Executive Secretary

### **Others Present**

Travis Brown, Marbet L.L.C., Oklahoma City, OK  
Randy Nelson, Wells Nelson, Tulsa, OK  
Ellen Phillips, Office of the Attorney General, Oklahoma City, OK  
Brian Kellog, Rogers County Rural Water District #3, Talala, OK  
Gene Whatley, Oklahoma Rural Water Association, Oklahoma City, OK  
Charles Swinton, BancFirst, Oklahoma City, OK  
Jason Aamodt, Citizens for the Protection of Arbuckle-Simpson Aquifer, Tulsa, OK  
Reginald Robbins, Mill Creek, OK  
Shannon Shirley, Mill Creek, OK  
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK  
John Rehring, Camp Dresser McKee, Denver, CO  
Rick Mitchell, City of Beggs, OK  
Jeff Lunschel, McCall Parkhurst & Horton, Dallas, TX  
Sara Tanger, McCall Parkhurst & Horton, Dallas, TX  
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Wayne E. Maynard, Rogers County Rural Water District #3, Bennington, OK  
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,  
Oklahoma City, OK  
Brian Mitchell, Camp Dresser McKee, Norman, OK  
Wayne Durham, Jay Utilities Authority, Jay, OK  
Patty Thompson, Department of Environmental Quality, Oklahoma City, OK  
Justin Hodge, Department of Environmental Quality, Oklahoma City, OK  
Robert M. Jones, Capitol West, Oklahoma City, OK  
Dennis Kahle Blackwell, OK  
Eric Kahle, Blackwell, OK  
Emily Meazell, University of Oklahoma, Norman, OK  
Ken Senour, C.H. Guernsey, Oklahoma City, OK  
Mike Mathis, C.H. Guernsey, Oklahoma City, OK  
Keith McDonald, Wells Nelson, Oklahoma City, OK  
Chris Gander, BOSCO, Oklahoma City, OK  
Marty Kahle, Newkirk, OK  
Kim Winton, US Geological Survey, Oklahoma City, OK  
Stan Paxton, US Geological Survey, Oklahoma City, OK  
Amy Ford, Citizens for the Protection of Arbuckle Simpson Aquifer, Ada, OK  
Ben Oglesby, Stephens, Inc., Oklahoma City, OK  
Bud Ground, Public Service Company, Oklahoma City, OK

### **C. APPROVAL OF MINUTES**

Chairman Nichols stated the draft minutes of the January 8, 2008, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Ms. Lambert moved to approve the minutes of the January 8, 2008, Regular Meeting, and Mr. Herrmann seconded.

AYE: Lambert, Sevenoaks, Farmer, Herrmann, Keeley, Knowles, Nichols

NAY: None  
ABSTAIN: None  
ABSENT: Drummond, Fite

#### **D. EXECUTIVE DIRECTOR'S REPORT**

Mr. Duane Smith, Executive Director, addressed the members and said Mike Melton was prepared to make a brief presentation on the legislative activities. Mr. Melton provided the members a packet of information on the bills that have been introduced, as well as those that were carried over from the first session. The report was divided into water-related bills, environmental bills, agency administration, and employee legislation. He highlighted measures regarding removal of the cap on the gross production tax REAP projects, hog farming operation setback for recreation facilities, mining issues, and moratoriums on out of state water sales. He said there are no consolidation bills, but a measure has been introduced to create a web-based portal to help the public access appropriate information. Mr. Smith added he has spoken with Representative DeWitt, and he did not believe there was an effort to move the OWRB to the DEQ. He spoke about the water portal, and the possibility of accessing one area for monitoring data, for example. Ms. Lambert asked the agency's priorities, and Mr. Smith answered removal of the cap of fund (Water Infrastructure Development Fund) and the end off the fund so there is monies coming in to fund water plan projects. He mentioned Sen. Paddack's bill about brackish water as a water supply, which needs to be under the water plan, as an example of being able to implement these type ideas if the cap and end are removed. Senator Gumm has a bill regarding sensitive sole source aquifer—Arbuckle Simpson—that the OWRB has jurisdiction over pit water trapped in a mine. Mr. Smith said Rep. DeWitt's bill on CAFO setback repeals the three-mile setback from the OWRB; he explained the differences between the Department of Agriculture's setback on CAFOs and the OWRB's setback for swine animal feeding operations. He said CAFOs have a size limit and the ODAFF regulation regards only CAFOs, and the OWRB setback regards any operation regardless of size. Mr. Melton concluded his report saying the first deadline is February 21. Mr. Smith also added the Governor's budget was flat for the OWRB, and the Governor wants to put \$100 million, after the Rainy Day Fund, toward the EDGE program; and, Senator Laster has a bill that takes \$5 million after the Rainy Day Fund to put in the financial assistance program. He said he met with Senator Laster about the critical component the FA program plays in areas such as economic development. He said when the FA program puts in \$1 in benefit to Oklahoma, it equates to \$41 dollars, and there is no better investment for Oklahoma than the Financial Assistance Program. He urged cities, towns, rural water districts and other citizens to contact their legislators in support of the legislation.

Mr. Smith said the Water Resources Research Institute will fund three proposals: remote sensing to look at evapotranspiration as a model for water use; instream flow methodologies for developing protection of flows; and establishment and matrix protocols for rural water districts to evaluate how to regionalize. These are excellent opportunities to maximize state dollars as the OWRB puts in \$1, the OWRI puts in \$1, and the professor conducting the research acquires funding.

The Edwards Aquifer tour has been scheduled for Board members, the Arbuckle-Simpson Peer Review Team members, and citizens representing CPASA, Chickasaw Nation, Oklahoma Municipal League, and Rural Water Association will be attending. Mr. Smith said the

trip is designed to meet with the Edwards Aquifer Authority and learn how they used science to get to management, and what is the ongoing piece required to continue the effort. The Edwards is similar to the Arbuckle in formation, as there is municipal use, mining use, industrial uses, agriculture and ranching. That controversy began with an endangered species and the federal court system forced the state to deal with endangered species, instream flows, and protecting springs while allowing San Antonio to grow and use water.

Mr. Smith said he was invited by Senator Crutchfield and Representative Hyman to visit with citizens in Love County about the Water Plan. The Chickasaw casino located at Thackerville is being developed as a destination spot, and there are issues of water supply. The Chickasaw and Bureau of Reclamation are looking at a desalinization project to move Lake Texoma water across Love County, there are potential reservoir sites, and the local people have formed a group to work with the Board and the OCWP. He talked about a water allocation model on the Blue River and consumptive use by the city of Durant as an example that data and science drives decision-making, and the need for the Arbuckle-Simpson study. He announced the Bureau of Reclamation added \$325,000 into its budget for the Arbuckle Study, which has been approved and allows the OWRB to finish the study. He said many of the study components that have come about were unknown at the beginning, and he complimented the OWRB staff that has kept the study on time and in budget, as well as the federal agencies that have made contributions, in funding and in-kind services. He likened the same effort with work on the Comprehensive Water Plan.

Mr. Smith continued his report discussing OWCP activities with a company named Hydrosphere that has done stream flow modeling on the Blue River, and he named the priorities where funding is needed for stream gaging for modeling withdrawal effects, in such areas as the Kiamichi in southeast Oklahoma and the stream systems where there are large permit applications from Texas and from Oklahoma, and in southwest Oklahoma in Cache Creek and Beaver Creek. Supply analysis and demand and gap analyses will be conducted in areas where current demands are not being met, and those will be prioritized as well.

The Oklahoma Municipal League conducted its annual Water Summit and presented a draft Municipal Water Policy. Mr. Smith complimented the OML staff, and in particular Ms. Diane Pedicord, for her work on the policy and her presentation at the summit, and he stated the OWRB looked forward to the Comprehensive Water Plan embracing the ideals from the OML.

Mr. Smith will attend the Western States Water Council meeting in conjunction with the Interstate Council on Water Policy in Washington, D.C. the first week of March. There will be visits with the Oklahoma Congressional Delegation while there. The WSWC will meet in Oklahoma in October.

Mr. Smith introduced Ms. Emily Meazell, with the University of Oklahoma Law School, who is contracting with the Board to conduct some of the hearings that are more controversial, as recommended by the Auditor's report. He provided information on Ms. Meazell's education and work background regarding engineering and administrative law. There is also a contract on the agenda with Mr. Harold Springer, retired OWRB engineer who will be presenting a day of training on engineering issues and the interstate stream compacts.

Mr. Smith concluded his report with the introduction of the Employee of the Quarter, Jody Cason. Mr. Cason was the second winner of a tie on the program.

## 2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Jay Utilities Authority, Delaware County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Jay Utilities Authority is requesting a \$2,940,000.00 Drinking Water State Revolving Fund Loan to be used for constructing a two million-gallon-per-day raw water intake structure for withdrawal of water from Lake Eucha. The intake is being constructed to allow expansion to four mgd at a future date. In addition, a new transmission line will be laid. Mr. Freeman noted provisions of the loan agreement. He said that Jay's water connections have increased by 5% over the past ten years, and sewer connections by 6.5%, and the population has increased by 140% since 1960 to 2,700 citizens. The debt-coverage ratio is 1.45-times, and it is estimated the Authority will save approximately \$987,000.00 in interest expense by obtaining an SRF loan. Staff recommended approval.

Mr. Dunham, Authority Chairman, and financial advisor Municipal Finance Services were present in support of the loan application.

Mr. Herrmann moved to approve the loan to the Jay Municipal Authority, and Ms. Lambert seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #3, Rogers County. Recommended for Approval. Mr. Freeman said the Rogers County RWD #3 is requesting a \$4.5 million Drinking Water Loan to construct a three-million gallon-per-day water treatment system and install new filters, modify existing filters, construct drying beds, upgrade the raw water pumping system, and make improvements to the chemical facilities and yard piping. Mr. Freeman noted the provisions of the loan agreement. He said the District has been a good loan customer of the Board's since 1997, and currently has two outstanding loans with the Board with a principal balance of \$1.2 million. The District was organized in 1965 and currently has about 7,000 connections; a 44% increase over the last ten years. The District's debt-coverage ratio stands at approximately 1.8-times, and it is estimated the District will save \$1.5 million in interest expense by borrowing through the SRF program. Staff recommended approval.

Mr. Brian Kellog, District Engineer, was present in support of the loan application.

Mr. Sevenoaks moved to approve the loan to Rogers County RWD #3, and Mr. Knowles seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Beggs Public Works Authority. Recommended for Approval. Mr. Freeman said that the Beggs Public Works Authority has requested at six-month extension of time to close its loan. He said the extension is requested as a result of working on receiving

approval from the Department of Environmental Quality to build a project within 100 feet of another property, the Burlington Northern Rail line. The loan closed for \$2,170,000.00 along with a \$150,000.00 REAP grant from the OWRB to replace the town's existing flow-through lagoon with a sequential batch reactor treatment system. The loan will be funded through the Clean Water SRF loan program at a fixed interest rate and .5 administrative fee. Mr. Freeman noted provisions of the loan agreement. He said the Authority's service connections have increased by 10% over the last five years, and the debt-coverage ratio stands at approximately 1.8-times. Estimated savings is approximately \$750,000.00 in interest expense.

Mr. Rick Mitchell, Mayor, and Municipal Finance Services were present in support of the request for an extension.

Mr. Herrmann moved to approve the request for an extension of time for obligation of funds to Beggs Public Works Authority, and Ms. Lambert seconded.

AYE: Lambert, Sevenoaks, Farmer, Herrmann, Keeley, Knowles, Nichols

NAY: None

ABSTAIN: None

ABSENT: Drummond, Fite

D. Presentation Regarding Debt Issuance, Loan Commitment, and Lending Procedures for the Board's State Loan Program and State Revolving Fund Loan Programs. Mr. Freeman reminded the members of past presentations about upcoming changes in the financing program because of the passage of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). He, along with the Board's financing team, presented to the Board plans to changes to fund loan projects and issuance of future SRF debt. He introduced Ms. Anne Berger Entekin, First Southwest Company; Sara Tanger and Jeff Luschel with McCall Parkhurst and Horton; Tom Liu, UBS Investment Bank; Chris Cochran and Bob Jones with Capitol West Securities; Keith McDonald and Randy Nelson of Wells Nelson Associates; Chris Gander, BOSCO, and Charlie Swinton, BancFirst.

Mr. Freeman said about one-and one-half years ago he discussed with the Board the situation because of the TIPRA. Staff began working with the financial team to come up with several scenarios of how to approach the problem. Presentations have been made to the Board's Finance Committee with the goal of the final decision to have little change to the borrowers, the bulk of changes at the agency, and maintain the ability to offer the same product to customers. He said the reimbursement bond sale option seemed to be the best.

Mr. Freeman reviewed with the members the history of the financing program since 1980, which was to close the bond issue and fund the loans afterward, which worked well. The borrower's interest rate was tied to the close of the bond issue. He said that regarding the SRF program, a loan rate of 40% below loan market was offered for a 20-year and 30% for DWSRF loan. The Board would make one bond issue, and fund all of the loans from that issue because they were not identified, they would be fitted into the total amount of the issue. After the closing of the loan, the three-year requirement by the IRS to meet 95% origination was met.

Mr. Freeman explained that after TIPRA passed, the new requirements now provide that after the issue, within one year, 30% of the loan would have to originate—the borrower would have to draw upon the loan and paying interest, or monies transferred into a loan fund to earn interest. For example, he said, within three years of issuing \$100 million, within one year \$30 million, and within three years, \$95 million would have to be loaned. If the requirement is not met, the Board would be subject to a mandatory call option between the 30% and the lesser

amount, same for 95% and the lesser amount, resulting in call provisions that would cost money in the future, some of which have been over 100%. He said the reimbursement bond sale would minimize the possibility of exercising the extraordinary call option. He said cash funds on hand will close, for example, \$100 million in loans, use cash, draw up \$30 million in cash on day one meeting the one-year requirement so there is no risk. Then, there would be three years to draw out the remaining 65% to meet the IRS requirements.

Mr. Sevenoaks questioned the approach as to the number of loans identified, the percentage requirement for the first year, and Mr. Freeman explained the bond issue would be closed, the Board reimbursed for \$30 million, and use the remainder to fund \$70 million in loans.

Mr. Freeman said the Board approved a reimbursement resolution in November for both the Clean Water SRF and Drinking Water SRF programs. He said Ann Berger-Entrekin and Tom Liu would be speaking further in regard to the proposal. Mr. Herrmann asked Mr. Freeman if he was confident the 95% test would be met because of the way the Board does business, or is there some residual risk that needed to be managed as well. Mr. Freeman said of course there is always risk, but closing on \$100 million in loans when there is \$100 million in construction projects ongoing--towns have entered contracts--the time schedules are known for construction, so the money will be drawn for the project.

Ms. Ann Berger-Entrekin, serving as financial advisor to the Board, addressed the members and discussed how the team envisioned the Board's loan funding process after implementing the reimbursement bond issue described by Mr. Freeman. She explained the first action following the bond issue would be to reimburse 30% of the available funds with which the Board originated the loans. The balance of the proceeds would then be available for the defined pool on a first come, first serve basis, and then utilize an MMP methodology for setting loan rates. She said the cash flow would be monitored very closely along with the FA staff and make a determination when it would be the appropriate time to access the market. Therefore, once the bond issue closes, the Board would have already met the first year requirement, eliminating the need for an extraordinary call for the first year, although it would still be required for the third year, but hopefully making it more attractive. Once all the bond proceeds have been utilized, the cycle would begin again.

Ms. Berger-Entrekin stated the team looked at when the borrowers would actually need the money that is most important relative to the 30% of the 95% requirement. She recommended first using uncommitted bond proceeds at the Board's access, then using funds available such as second-round money, and CAP grants, as that will be reimbursed once the bond sale is in place. She assured the Board the team had been working closely with bond counsel and tax counsel to formulate the plan as well as to monitor the plan. Mr. Hermann asked if the structure is transparent to the borrower and if there were administrative complexities in place for internal monitoring, and Ms. Entrekin answered yes, those were two goals of the plan. She talked about the remaining funds from the Clean Water and Drinking Water issues that need to be funded, even though they are not subject to TIPRA requirements. The first goal should be to "get them out the door", and can then go back to the original bond issue or utilize the MMP rate setting method.

Mr. Sevenoaks said if the Board is paying interest on funds the end borrower is not using and not paying on, shouldn't the borrower draw down immediately? Ms. Entriken said that is an option, but part of the goal is to not change the process, the borrowers could draw the funds and put it escrow. Mr. Sevenoaks was concerned about the risk to the Board rather than the risk to the borrower, and they discussed this issue as regarding the program before and after TIPRA,

and how the program will change under the new proposal. Mr. Jeff Luschel, McCall Parkhurst & Horton said the State of Texas asked the same question, and the concept has been “run up the flagpole” at IRS and it is consistent with the reimbursement regulations the IRS has promulgated. Ms. Entrekin said they are currently going through the process with other clients, and once they have been through the whole cycle, they may come back to the Board with modifications and further refinements. Ms. Lambert asked the worst-case scenario, and Ms. Entrekin answered if Board borrowed the money, and it is not drawn down and have to exercise the extraordinary call, and she explained that even though the borrower has signed and committed, unless they are paying interest on the bond proceed, it does not constitute obligated. Paying cash for the first 30%, Mr. Freeman said, mitigates the risk. Mr. Sevenoaks was concerned that if there is a call option looming, the borrowers might be less likely to borrow, and Ms. Entrekin talked about paying a higher call premium as protection for the investors assurance, and also the optional use of funds in order to avoid the call. Mr. Herrmann asked if the cost to the borrowers would increase, and Ms. Entrekin answered they are trying to minimize costs to the borrowers, and hopefully the bulk can be put on the premium, she added it could be that according to market conditions, the Board may need to make a smaller issue sooner to minimize the interest rate. Mr. Sevenoaks said he felt the proposal was in favor of the borrower that no bank would provide. Mr. Herrmann observed that the staff has made this proposal under the guidance of the Board to work out a plan to mitigate the impact of TIPRA realizing there is a risk/reward profile. Mr. Sevenoaks expressed his concern about the call options, and Ms. Entrekin talked with him about monitoring withdrawal of funds in order to avoid a call. Mr. Freeman added that the borrower is online, the contract is signed for construction, and there has not been an instance in the Board’s history where the project was not begun once the loan is closed.

Mr. Rick Smith, Municipal Finance Services, addressed the members about the proposal saying that actually cities are paying for the engineering and services before the Board approves the loan and the Board does not close the loan until after bids are received which is a key feature of the program because the communities know what they will have to pay for before incurring the indebtedness. So there is contract for construction and the Board is actually paying for the project as they are draw down the money under the line of credit. He said the gradual draw down allows cities to increase rates over time rather than getting the full amount upfront and having to deal with rebate requirements and smaller communities would have to be faced with that under certain circumstances and also paying interest. He said the Board does not close the loan until all the environmental requirements are met and the cities can’t pay down the money until they have received approval from DEQ on the Drinking Water and the OWRB on the Clean Water or wastewater, and until the project has met EPA guidelines, it isn’t eligible for funding nor can the OWRB even make the loan. Mr. Sevenoaks asked if the Board implemented a mandatory takedown, would it “blow up” this project, and Mr. Smith said he believed it would create some problems in the loan community. He added the program has evolved over twenty years and the way that it is structured now the Clean Water SRF is offering interest rates of about 3%, fixed rate for 20 years, and the Drinking Water offers about 3.4% fixed rate. Those type of rates, along with manner in which the Board and the DEQ administers the program is an ideal situation and he believed the Board would be in a position to continue to make a significant amount of loans under both of the programs for years to come as long as the structure of the program remains relatively the same. Mr. Sevenoaks expressed his concern that the Board takes into consideration that it is taking on an obligation over and above the proceeds of the total issue.



Ms. Lambert said there will be an update at every meeting so as to monitor closely, and Mr. Herrmann commented the OWRB has been operating FA programs totaling \$1.6 billion over 20 years with no defaults, and the bond ratings are all natural triple As from all three rating agencies. He said there has been an external change in the rules, that the FA team and external advisors approved by the Board have identified a methodology that is not without a few risks but is workable, and are the same people who have managed these programs exceptionally well for 20 years, and he said the Board should allow the staff to do its job without micro-managing and recognize it is an unfolding process. He said he is confident that the staff, based on their track record, will keep the Board apprised of problems and appropriate modifications can be made. Mr. Sevenoaks asked the loans to be tracked over a three-year period to see how many times the projects are fully funded and how many times they go past three years, and there would be a track record. Mr. Herrmann said the team is discussing managing the pipeline differently, and when the issue first came out it was thought there would have to be a lot of small issues and that is not in the discussion now, but that by managing the pipeline differently and making sure there is more certainty before issuing bonds, the same size issue can be accomplished, but with a different level of visibility in the pipeline. Mr. Freeman said the comfort level comes from using cash to close the loan that is under construction, and that the rating agencies have looked at the model and have a comfort level for the triple As. Chairman Nichols asked Mr. Farmer his opinion, and Mr. Farmer responded he is concerned about market changes.

Mr. Tom Liu spoke to the matter of market conditions that he characterized as being turbulent over the past few months. He said there has been an unprecedented downgrading of triple A ratings which are on a negative watch meaning there may be more turbulence going forward. Additionally, he said the downgrade is from triple to single A because of the market, a very unprecedented situation. Mr. Liu said this has occurred with many of the firms that are out of business. The good news is the Board decided in 2003 not to have bond insurance and with a strong portfolio coupled with reserves and currently has received a natural AAA rating from all three rating agencies. He said that at this time there are even investment grade issuers that have no buyers in the market place, except for natural AAAs, so in this situation of turmoil, the Board is in the best position possible.

Mr. Freeman concluded the presentation remarking staff will continue to work closely with the consultants and he noted the recent confirmation of S&P triple A rating for the FAP program, and also a triple A with Moody's for the SRF program, and pre-rating meetings have been held on this very issue. He said the goal is to try to minimize the effect on the local borrowers while minimizing the risk to the Board, and he believed that with this model the Board would be able to accomplish both. He said the key is to be diligent in the monitoring. The next issue may occur this summer.

### **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.**

There were no requests to transfer items to the Summary Disposition Agenda. However, Mr. Dave Dillon asked that four items be withdrawn for various administrative reasons: E. 2. Dolese Bros., #2006-543, E.4. Two Rivers Sand & Gravel #2006-569, I.3. Pittsburg County PWA #2007-040, and L.a.7. Well Driller license #OP-1590, Shawn Coslett.

**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 Nichols asked for a motion.

Mr. Farmer moved to approve the Summary Disposition Agenda as amended, and Mr. Knowles seconded.

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

The following items were approved:

**C. Consideration of Approval in Accordance with the Following Proposed Orders and Proposal: Applications for REAP Grants; and Statewide Water Development Revolving Fund Proposal. Recommended for Approval:**

<b>REAP</b>				<b>Amount</b>
<b><u>Item No.</u></b>	<b><u>Application No.</u></b>	<b><u>Entity Name</u></b>	<b><u>County</u></b>	<b><u>Recommended</u></b>
		OEDA		
1.	FAP-07-0017-R	Rural Water District #1	Dewey	\$89,950.00
		SWODA		
2.	FAP-02-0059-R	Rural Water District #3	Beckham	\$95,690.00

3. Consideration of and Possible Action on FY 2009 Proposal for Use of the Statewide Water Development Revolving Fund.

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

1. Amendment to original Intergovernmental Agreement between the Central Oklahoma Master Conservancy District and OWRB related to water quality monitoring of Lake Thunderbird to include adjustments to the scope of work, schedules for completion of tasks, project costs, and an increase in the total compensation to be paid to OWRB by COMCD.
2. Amendment to Agreement for the Clean Water Act FY05 §104(b)(3) Wetlands Program CA# CD-966017-01 between the Office of the Secretary of the Environment and OWRB to extend the period of the agreement and to include a modified workplan and budget.

3. Professional Services Contract between OWRB and Emily Mezell to provide services of Hearing Examiner for administrative hearings as may be assigned by the Board's Executive Director.
4. Professional Services Contract between OWRB and Harold Springer to provide professional engineering services.
5. Agreement between the Oklahoma City Water Utilities Trust and OWRB regarding the Vegetated Wetland Project designed to improve water quality at Atoka Lake in southeastern Oklahoma. OCWUT will provide personnel, labor, equipment and facilities to assist the OWRB in connection with the project.
6. Amendment of Joint Funding Agreement between the U.S. Geological Survey and OWRB for the project "Drought of 2006 in Oklahoma compared with four major drought periods of the 20<sup>th</sup> Century" to extend the ending date of the original agreement.
7. Joint Funding Agreement between the U.S. Geological Survey and OWRB for the project "Trends in Base and Total Flows of Selected Streams within Oklahoma".
8. Joint Funding Agreement between the U.S. Geological Survey and OWRB for the project "Statistical Summaries of Regulated and Unregulated Streamflow in Oklahoma".
9. Letter Agreement between the U.S. Army Corps of Engineers and the Oklahoma Water Resources Board to conduct workshops relating to the Map Modernization Management Support Program.
10. Group Sales Agreement with Hawthorn Suites Riverwalk San Antonio for Special Board meeting and tour of Edwards Aquifer.

E. Applications for Temporary Permits to Use Groundwater:

1. Dolese Bros. Co., Logan County, #2006-542
2. *Dolese Bros. Co., Oklahoma County, #2006-543    withdrawn*
3. Dolese Bros. Co., Oklahoma County, #2006-553
4. *Two Rivers Sand & Gravel, L.L.C., Choctaw County, #2006-569    withdrawn*
5. City of Norman, Cleveland County, #2007-547

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

None

H. Applications to Amend Regular Permits to Use Groundwater:

None

- I. Applications for Regular Permits to Use Stream Water:
1. Dolese Bros. Co., Logan County, #2006-019
  2. Bob & Aquilla McLemore, Washita County, #2006-065
  3. *Pittsburg County Public Works Authority, Pittsburg County, #2007-040* *withdrawn*
- J. Applications to Amend Regular Permits to Use Stream Water:  
None
- K. Applications for Term Permits to Use Stream Water:  
None
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
    - a. Licensee: Oklahoma Corporation Commission, Oil & Gas Division
 

1. Operator: Grant Ellis	DPC-9006
Activities: Monitoring wells and geotechnical borings	OP-1583
2. Operator: Billy Moss	OP-1584
Activities: Monitoring wells and geotechnical borings	
3. Operator: Gary K. Wood	OP-1585
Activities: Monitoring wells and geotechnical borings	
4. Operator: David E. Romines	OP-1586
Activities: Monitoring wells and geotechnical borings	
5. Operator: Simon Winlock	OP-1587
Activities: Monitoring wells and geotechnical borings	
6. Operator: Jason Pryor	OP-1588
Activities: Monitoring wells and geotechnical borings	
7. Operator: <i>Shawn Coslett</i>	<i>OP-1590</i>
Activities: <i>Monitoring wells and geotechnical borings</i>	<i>withdrawn</i>
8. Operator: Brad Ice	OP-1592
Activities: Monitoring wells and geotechnical borings	
9. Operator: Clyde A. Cupp	OP-1593
Activities: Monitoring wells and geotechnical borings	
10. Operator: Douglas A. Vincent	OP-1594
Activities: Monitoring wells and geotechnical borings	
11. Operator: Gary L. Matl	OP-1595
Activities: Monitoring wells and geotechnical borings	
    - b. Licensee: A-1 Water Solutions
 

1. Operator: Toby Dunn	DPC-0748
Activities: Groundwater wells, test holes and observation wells	OP-1582
    2. New Operators for Existing Licenses:
      - a. Licensee: Strata Core Environmental Drilling
 

1. Operator: William Fields	DPC-0727
Activities: Monitoring wells and geotechnical borings	OP-1581
      - b. Licensee: G-2 International
 

1. Operator: Randy L. Molitor	DPC-0371
Activities: Monitoring wells and geotechnical borings	OP-1580

3. News Activities for Existing Licenses:

- a. Licensee: Able Environmental Drilling DPC-0746  
1. Operator: Kodi Roberts OP-1005  
Activities: Groundwater wells, test holes and observation wells

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-07-52
2. Oklahoma Department of Transportation, Noble County, #FP-07-53
3. Oklahoma Department of Transportation, Latimer County, #FP-07-54
4. Oklahoma Department of Transportation, Latimer County, #FP-07-55

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the February 12, 2008 packet of Board materials.

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

A. Update on Comprehensive Water Plan Activities. Mr. Kyle Arthur said Mr. Smith had mentioned several items concerning activities regarding the OCWP in his Executive Director's report, and he added comments about "plugging in" other OWRB activities to strengthen and enhance the plan. He said the first phase of the public input part of the plan had been completed and he invited Dr. Will Focht to address the members about where we are, comments received, and where we go from here.

Dr. Will Focht, Director, Oklahoma Water Resources Research Institute, said to the members that Duane's remarks regarding research indicated the state matched dollar-for-dollar, but the Institute is federally funded and because of the state match there is less burden on the researchers, and they are actually able to realize \$2-for -\$1 which is quality research as there are more proposals, and more opportunities for funding.

Regarding the public input phase of the Comprehensive Water Plan, Dr. Focht provided the members with summary information regarding comments received at the meetings held the last year. He said the goal of the 42 meetings was because we want a better plan, the content of the plan will be better because people have been involved, and they bring matters to our attention that may not have been contemplated before. Also, involving people results in more support for the plan, demonstrates the agency's confidence in the public and also shares and cares agency values with the public. He said there 2,276 attendees at the 42 meetings, which exceeded his expectations, and 2,259 comments plus additional comments received on line. He said the lowest attendance was long the southwest and northeast areas along the urban corridor, and the highest attendance was outside the corridor. Dr. Focht said that the larger attendance in the rural areas might indicate people in urban areas are not emotionally connected to the water although they want it and need it and use it. In re-categorizing the comments, some of the prevailing

themes included: people in Oklahoma do value water, water is essential to economic development, development transmits to recreation and increased property value; not sure of what market value is, and some believe there should not be a value i.e. aesthetic and spiritual; concerns about unfounded EPA mandates; concerns about lake levels becoming too low; excessive groundwater pumping; water diversions; cutback on federal and state funds; possible litigation; and that agriculture interests are ignored. In terms of water use and conservation, comments received included: people recognize the state wants the best use of water resources; water uses should be prioritized, and drinking water should be first; need for protection of in-stream flows; need definition of "excess water" as relates to water sales; review of the definition of beneficial use and wasteful use; appropriate use of marginal and "gray" waters; development of additional reservoirs and encourage conservation. Regarding water quality, comments included: nonpoint source pollution for construction sites and road maintenance, surface water and oil and gas operations and groundwater; some contaminants are over-regulated as the risk does not justify the cost; and concern about tribes developing water quality standards. In terms of infrastructure, comments received included: people want more investment and attention devoted to maintaining and expanding current infrastructure, upgrade of waste water systems; upgrades for firefighting and rural water districts; and payment for water transfer if there is sale to Texas. Regarding control and compensation, comments included that people want local control of their water resources, afraid of losing control as well as funds earned for the use of the water; people want to be involved in whether, when, and how much water is transferred (not seen as a state issue); want to serve the needs of Oklahomans first; all Oklahomans should benefit from water sales not just the landowners; basin of origin should have priority in use and during times of drought be compensated for transfer of water; if there are sales to Texas, Texas may acquire more land use rights in Oklahoma infringing upon property rights; concerns about the large use of water by cities over rural water; and concern about the control of lake levels. Regarding water rights, there were comments about "first in space," that people who live near water should trump "first in time;" infringement of water rights use or lose, and small communities are particularly concerned; farmers are concerned about getting water as they have in the past and that influences how they use the land. Other comments included desire to see a streamlined permit process, mixed interest in conjunctive use, interest in the web portal, and interest in education and research. In general, regarding the planning process, people complimented the process, mixed fear on speed of development of the plan, and planning needs to be continuous.

Mr. Smith said that all the comments he has received about the public input process is that it has been well done, feedback is positive, citizens have had an opportunity to express themselves, and now he can go to the legislature that as they are wanting to pass bills about water, he can say there is a process, and the process is the way to go. Dr. Focht said that next month he would make a presentation to the members about what to expect next with the regional meetings. Mr. Smith mentioned the water law symposium for the participants on the regional planning committees that is being organized.

## **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 to Amend Temporary Permit to Use Groundwater No. 2001-513, Dennis E. and Marscha C. Kahle, Kay County.

1. Summary - Mr. Dave Dillon, Interim Chief, Planning and Management Division, stated to the members that this application is to amend temporary permit to use groundwater, No. 2001-513, for Dennis and Marscha Kahle in Kay County. The application was received in February 2007, a protest was received concerned about interference with domestic wells, and two hearings were held in the summer of 2007. The applicant owns 320 acre-feet of existing groundwater rights with 160 acres dedicated that overlies land in the unstudied Wellington formation, therefore, two-acre foot per surface acre is allowed.

Mr. Dillon said the applicant has requested the amendment to add 150 acres of dedicated land and 160 acre-feet of groundwater, and the addition of one well, which has been drilled and a provisional-temporary permit issued. The additional land is used for irrigation of crops. He said that based on the interference issue, staff investigated the distance to the domestic wells, and found they ranged from 300 feet at the closest to 1,000 feet from the new well site. However, the proposed order indicates there was no evidence presented, and therefore recommends approval.

The new total authorized amount is 480-acre-feet. One of the wells had been damaged and the order instructs express conditions that the permit not be authorized to use any of the wells until the permittees have brought the well into compliance. Mr. Dillon said the applicant indicated this morning that the repairs have been completed, and staff will seek to confirm prior to authorizing use. Staff recommends approval of the amendment application for permit no. 2001-513.

2. Discussion and presentation by parties. There were no protestants in attendance. Mr. Jim Barnett, representing the applicant, stated to the members he had no problem with the proposed order and believes it follows the law. He explained the damage to the well casing, and said it has been repaired. He said this well is the closest to the protestant, and is shut-in; all the other wells are 900-plus feet away. The well has been disconnected from the irrigation system and is capped; it is available if needed, but is not in use at the present time, Mr. Barnett said. Mr. Dillon clarified the application will allow use of the well, however.

3. Possible executive session. The Board did 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. Herrmann moved to approve the application to amend temporary groundwater permit no. 2001-513, and Ms. Lambert seconded.

AYE: Lambert, Sevenoaks, Farmer, Herrmann, Keeley, Knowles, Nichols

NAY: None

ABSTAIN: None  
ABSENT: Drummond, Fite

B. Consideration of Items Transferred from the Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for discussion.

## 6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce, OWRB Comptroller, addressed the members and stated the budget-to-actual report distributed ends on January 31, 2008. He said that 58% of the fiscal year has been completed, 77% of the budget has been expended and obligated, and 65% of the funds have collected. He said the agency received a deposit today from the Water Infrastructure Development Fund of \$500,000, bringing the total to \$2.4 million, and then the cap will be in effect.

Mr. Sevenoaks asked if there was a reserve fund built into the budget. Mr. Boyce responded yes, each year when the budget is developed divisions review all cash balances, and an amount is reserved. He said the state appropriation historically there is \$200-400,000 carryover, and this past year there was \$8,730 from federal funds and the ORWA. Chairman Nichols asked if there is an amount the state will allow to be carried over? Mr. Boyce answered there is not, the agency's cash inflow and outflow is reviewed and if it is believed to have budgeted too much, it will not be allowed. Mr. Smith said if there are state funds left over, there is a threat it will be taken away, there is no "atta boy" for operating the OWRB like a business, yet budget shortfalls and emergencies such as the ice storm have to be adjusted. Mr. Freeman explained there are reserves for the SRF programs that are equivalent to over 30% of the outstanding bonds, equaling over \$100 million in reserve. He said he also maintains about 5-6 years of operating reserves. Mr. Sevenoaks asked if those reserves could be used for the extraordinary call, and Mr. Freeman said it could. There was some discussion about general budgeting practices.

## 7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

### A. Contracts and Agreements Recommended for Approval.

1. Consideration of Second Amendment to Agreement with The Office of the Secretary of the Environment for the Clean Water Act FY 03 §104(b)(3) Wetlands Program CA# CD-976400-01 to extend the end date of the original Agreement.

### B. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Marbet, L.L.C., Payne County, #FP-08-02

Mr. Smithee said the first item is an amendment to the agreement with the Office of the Secretary of Environment. Mr. Dillon said the second item relates to an action regarding development in a floodplain.



Mr. Smith said the Board has talked about mediation and he wanted to emphasize this item. The Floodplain program can be very controversial, and in this case Marbet, an oil company, wanted to build a pad in the floodplain. There were concerns about a convenience store being flooded, and the matter went to court. The company does not have a floodplain permit, the location is on a state owned or easement property with ODOT, and it is the responsibility of the OWRB to issue the permit. He said the parties were upset, and Ken Morris and staff worked with everyone, and today there is an agreement in summary disposition for the oil company to put a well in. The company hired an engineering firm to look at the base flood elevation; it meets requirements and staff recommended approval. He said there was a lot of effort that went into the background of the matter. He thanked staff for providing solutions for industry to move forward. Chairman Nichols added he and Ms. Lambert have talked quite a bit about mediation while it may not be right for everything.

Mr. Smith said Marbet was outstanding to work with, and he complimented the parties involved.

Mr. Knowles moved to approve the Supplemental Agenda items as presented, and Mr. Sevenoaks seconded.

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

## **8. Presentation of Final Proposed New Permanent Rules and Amendments to Current Rules of the Board**

Chairman Nichols stated Mr. Smith and the Division Chiefs will present the final draft rule proposals. Mr. Smith stated the recommendations were presented at the January meeting, comments have been received, and the goal today is explain the difference between what was proposed last month and the changes based upon comments received during the last month, then comments will be received from the public and Board members today.

Mr. Smith asked Mr. Dillon to present the rule changes below. Mr. Dillon said Mr. Couch provided the summary of the rule changes, as well as the summary of the comments, and summary of the staff recommendation. He said he will review the changes in each chapter, then the Board can consider each.

### A. Proposed Amendments to Chapter 1 - Organization and Procedures

1. Summary of final draft proposed rules – Mr. Dillon explained the two proposed rule changes, the first regarded deletion of unnecessary language about the OWRB being able to reject or modify all local, state and federal water activities. There were no comments received, and staff recommended approval. The second change regards the response by staff to a complaint changing within “two working days” to “as soon as practical after” receipt of a complaint. Comments were received, and staff recommends withdrawing consideration of the proposed change.

2. Questions and Discussion by Board Members. There was no discussion.

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

4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Ms. Lambert moved to approve the proposed changes to Chapter 1, and Mr. Sevenoaks seconded.

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

B. Proposed Amendments to Chapter 4 – Rules of Practice and Hearings

1. Summary of final draft proposed rules – Mr. Dillon said this proposal regards required remediation that comes from discussion by members. There was a lot of discussion about this rule, and comments were received by Jim Barnett, Shannon Shirley and Amy Ford, which were that mediation may be helpful but didn't want the burden on the protestant. Staff revised the proposal to indicate mediation would be voluntary and eliminate the mandatory nature of mediation, and eliminate language that a protest be withdrawn. Mr. Dillon provided a recent example where staff began mediation efforts with a golf course. Staff recommended approval of the proposal that mediation be voluntary.

2. Questions and Discussion by Board Members. There was no discussion by members about the rule, but Mr. Herrmann encouraged the use of mediation.

3. Comments by Public. There were no comments.

4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Herrmann moved to approve the amendments to Chapter 4 as presented, and Ms. Lambert seconded.

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

C. Proposed Amendments to Chapter 5 – Fees

1. Summary of final draft proposed rules – Mr. Dillon said this chapter outlines the agency's fees and the proposal regards two sets of rules, stream water and groundwater. The recommended change is to two areas in fees: one is to double the stream water application fee from \$125 to \$250, ratcheting up according to applied-for amount up to 1,500 acre-feet. Above that, the fee is \$200 for each 500 acre-feet applied for, with no cap for the amount of dollars to be charged. The second stream water fee regards the annual reporting fee to be increased to \$100 flat fee. He said staff received comments from Marla Peek, Oklahoma Farm Bureau opposed to annual fee increases. Staff recommended approval of the fee increase as presented, as well as elimination of proposed language adjusting the annual fee based on legislative appropriations to avoid confusion and additional administrative burden.

Regarding groundwater application fees, staff is recommending the one-time application fee to double. Marla Peek and Jim Barnett submitted comments opposing to the increase.

2. Questions and Discussion by Board Members. Chairman Nichols asked if the persons who make comments are informed about any changes to the proposals other than attending the meeting? Mr. Couch responded the proposals are posted on the agency website for review. Mr.

Dillon discussed the idea about increasing fees to covers costs of permitting activities. Mr. Herrmann asked the total revenue amount that is anticipated by the increase, and Mr. Boyce said the original calculation was \$370,000.00 with a \$200,000.00 appropriation. Mr. Dillon said the fee amount for applications above 1,500 acre-feet were not included in the calculation because those type of applications are very infrequent. Mr. Smith added it will be difficult at the legislature to get this passed and unless citizens contact their legislators and say we want the OWRB to be able to have knowledge water is available and interference will be taken care; don't expect it if it doesn't pass, and then pass rules to make it more difficult to get a permit, but pass rules that make it more like a registration process, because that is the way it has to be administered. He said based on the participation at the public input meetings, people want the OWRB to review a permit application, to know how much groundwater is available, well spacing, rates of withdrawal, and in order to do that we have to have resources.

Mr. Herrmann asked the agriculture members of the Board how they felt about the fee increase, how would they respond to a legislator? Mr. Knowles said he can see both sides, and he holds a stream water permit, but he sees the need to monitor, and if the OWRB doesn't do it, who will? However, putting an increase on farmers, they probably won't pay it. Chairman Nichols said that being on the Board has provided a different perspective, the rural citizen may not want to pay it, but they want to be protected. He said that his own perspective has changed in that someone has to pay and this approach puts part of the burden on the permit holder, and part on all taxpayers by asking for the appropriation from the legislature. Mr. Couch said there are 2,500 stream water permits, and about 12,000 groundwater permits, most agriculture use. Two years ago the failed proposal included a \$100 groundwater application fee. Mr. Dillon said that the bulk of the permit holders then are groundwater, and there is no fee increase to them.

3. Comments by Public. Mr. Jason Aamodt, representing the Citizens for the Protection of the Arbuckle Simpson Aquifer, addressed the members and said he had expected a response, and he was aware of the hearing today because it was announced at the last meeting. He said he is not necessarily aware the Board planned to issue rules that would be revised from the language that was originally proposed. But working with the staff, who does a fantastic job, particularly regarding the issue of mediation, but he hadn't the opportunity to review and digest the particulars of the rules. He said he'd like to have that opportunity, but not to "gum up the works" necessarily.

Secondly, Mr. Aamodt wanted to add his comments about having a water engineer for the determining of water availability.

There were no other public comments.

4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Sevenoaks moved to approve the proposed amendments to Chapter 5, and Mr. Herrmann seconded.

AYE: Lambert, Sevenoaks, Farmer, Herrmann, Keeley, Nichols

NAY: None

ABSTAIN: Knowles

ABSENT: Drummond, Fite

D. Proposed Amendments to Chapter 20 – Appropriation and Use of Stream Water

1. Summary of final draft proposed rules – Mr. Dillon said there were originally four proposed changes. However, there is only one recommended change today, and that regards the

definition of “enhanced oil recovery” to clarify that water use for fracturing is not considered to be enhanced production. At the hearing held last month, there was discussion about how to go about that, and comments were received by Angie Burckhalter, OIPA, and Jim Barnett, EFO. In essence, what is proposed today is what has been suggested by Ms. Burckhalter which goes to say that enhanced recover of oil and gas, means a long-term process using fresh water to recover substantial quantities of additional oil and gas that would not be recoverable under ordinary primary methods, or under short-term stimulation techniques (added).

Mr. Dillon said that on the second page are the remaining original proposals that staff now recommends to be withdrawn, consumptive/non-consumptive use in one permit, inactive applications, and commercial sale or marketing of water. These issues will be worked though under the Comprehensive Water Planning process.

2. Questions and Discussion by Board Members. There were no comments by members.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Ms. Lambert moved to approve the proposed amendments to Chapter 20, and Mr. Knowles seconded.

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

E. Proposed Amendments to Chapter 25 – Dams and Reservoirs

1. Summary of final draft proposed rules – Mr. Dillon said there were three areas of revisions, the first adding the requirement relating to the notice of completion of the dam that the notice to the OWRB be accompanied by an engineer’s certification that the dam was constructed according to the plans approved by the OWRB, putting the engineering stamp of approval burden on the owner of the dam, the staff believes that should be withdrawn as being unnecessary.

Secondly, adding language to avoid the perception the OWRB employee takes the responsibility to certify the dam is safety built; the underlined language says, "the executive director shall approve the issuance of a certificate of completion if based on the certification from the engineer in the notice of completion the dam or reservoir is safe according to limitation described in the certificate," again, shifting the burden to the dam owner. Mr. Jim Barnett thought the Board was protected by the tort claims act and the language is unnecessary. Staff’s recognizes there is limitation on that liability of \$1million, and a dam failing may be more costly than that, but if the owner has an engineer that certifies that it is safe, the owner is taking an ownership position in that issue.

Mr. Dillon said the last item amends the rule on post event inspections and under conditions of emergency, where the Board staff may not be able to conduct inspections, this allows the Board to require the owner to conduct unscheduled inspection at the owner’s expense. Mr. Barnett did not believe the Board had the authority to require that or the owner to have to pay for the inspection of the dam. Staff recommends the language, "major heavy precipitation" be deleted as duplicative, and that duties of the Board are sufficiently broad to include the authority to require individuals to have unscheduled inspections.

2. Questions and Discussion by Board Members. There was no discussion.

3. Comments by Public. There were no comments.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Ms. Lambert moved to approve the proposed amendments to Chapter 25, and Mr. Herrmann seconded.

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

F. Proposed Amendments to Chapter 30 – Taking and Use of Groundwater

1. Summary of draft proposed rules – Mr. Dillon stated to the members the first issue is the same as regarding Chapter 20 clarifying the definition of "enhanced recovery of oil and gas" to exclude fracturing. The comments received were the same from Ms. Burckhalter and Mr. Barnett. Staff recommended revisions as suggested by Ms. Burckhalter.

The second change originally put in notice regarded well interference protests, requiring protestants for conduct modeling, commercial sale and marketing of water, location exceptions to well spacing, sand and gravel mining, and subsequent hearing on maxim annual yield. Mr. Dillon said staff recommended these proposals be withdrawn and the issues addressed through the comprehensive water planning process.

2. Questions and Discussion by Board Members. There was no discussion.
3. Comments by Public. There were no comments.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Herrmann moved to approve the proposed changes to Chapter 30 as presented, and Ms. Lambert seconded.

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

G. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing

1. Summary of final draft proposed rules – Mr. Dillon said there are nine proposed changes regarding the Well Driller's program. He explained the OWRB worked with the Well Drillers and Pump Installers Advisory Council on these changes. There were no written or oral comments received. Staff recommended approval of the proposals as presented.
2. Questions and Discussion by Board Members. There was no discussion.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Sevenoaks moved to approve the amendments to Chapter 35 as presented, and Mr. Herrmann seconded.

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

H. Proposed Amendments to Chapter 45 – Water Quality Standards

1. Summary of final final draft proposed rules – Mr. Derek Smithee stated to the members there were two minor changes being recommended to the Board. The only substantive change is the withdrawal of the proposed selenium criteria done by the City of Poteau. The EPA had comments and staff will work with the city and bring the changes back next year. Staff recommended approval.
2. Questions and Discussion by Board Members. There was no discussion.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Ms. Lambert moved to approve the amendments to Chapter 45 as presented, and Mr. Knowles seconded.

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

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

1. Summary of final draft proposed rules – Mr. Smithee stated there were four changes to the water quality standards implementation rules, all grammatical, with the exception of one change, and that is clarifying language on the application of the aesthetics criterion for scenic rivers. The DEQ requested clarifying language that applied to scenic rivers, the DEQ and OWRB are comfortable with proposed change, and staff recommended approval.
2. Questions and Discussion by Board Members. There was no discussion.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Herrmann moved to approve staff recommendation on Chapter 46 amendments, and Mr. Sevenoaks seconded.

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

J. Proposed Amendments to Chapter 50 – Financial Assistance

1. Summary of final draft proposed rules – Mr. Joe Freeman stated to the members that there are two minor proposed amendments, the first to reinstate the rule for the priority point system for school districts for REAP grants that were deleted from the rules last year. The second change regards the Clean Water State Revolving Fund Loan program amending language to remove 20 years and insert “as allowed by federal regulations.” No comments were received, and staff recommended approval.
2. Questions and Discussion by Board Members. There was no discussion.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Farmer moved to approve the amendments to Chapter 50 as presented, and Mr. Knowles seconded.

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

K. Proposed Amendments to Chapter 55 – Development on State Owned or Operated Property Within Floodplains.

1. Summary of final draft proposed rules – Mr. Dillon stated to the members that there are three proposed changes, basically for clean up language. No comments have been received orally or in writing. Staff recommended approval as presented.
2. Questions and Discussion by Board Members. There was no discussion.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Herrmann moved to approve the amendments to Chapter 55 as presented, and Mr. Knowles seconded.

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

## **9. PROPOSED EXECUTIVE SESSION**

**Chairman Nichols**

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a 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 a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing the Tarrant Regional Water District v. Herrmann

A. Vote on whether to hold Executive Session - before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Mr. Farmer moved to enter Executive Session, and Mr. Knowles seconded.

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

B. Designation of person to keep written minutes of Executive Session, if authorized.  
Chairman Nichols designated Ms. Schooley to keep written minutes.

- C. Executive Session, if authorized.  
The Board entered Executive Session at 12:40 p.m.

**10. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.**

Return to open meeting and possible vote or action on any matter discussed in the Executive Session.

Mr. Sevenoaks moved to return to regular session, and Mr. Knowles seconded.  
AYE: Lambert, Sevenoaks, Farmer, Herrmann, Keeley, Knowles, Nichols  
NAY: None  
ABSTAIN: None  
ABSENT: Drummond, Fite

The Board returned to regular session at 1:10 p.m.

Chairman Nichols noted there was no vote or action taken by the Board as a result of the executive session.

**11. 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.

**12. ADJOURNMENT**

There being no further business, Chairman Nichols adjourned the regular meeting of the Oklahoma Water Resources Board at 1:12 p.m. on Tuesday, February 12, 2008.

OKLAHOMA WATER RESOURCES BOARD

\_\_\_\_\_/s/\_\_\_\_\_  
Jess Mark Nichols, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Rudolf J. Herrmann, Vice Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Lonnie Farmer

\_\_\_\_\_/s/\_\_\_\_\_  
Edward H. Fite



\_\_\_\_\_/s/\_\_\_\_\_  
Jack W. Keeley

\_\_\_\_\_/s/\_\_\_\_\_  
Kenneth K. Knowles

\_\_\_\_\_/s/\_\_\_\_\_  
Linda Lambert

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Sevenoaks

***ATTEST:***

\_\_\_\_\_/s/\_\_\_\_\_  
F. Ford Drummond, Secretary  
(SEAL)