

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

June 10, 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 June 10, 2008, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The June 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 June 3, 2008, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Nichols asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

Linda Lambert

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
Kyle Arthur, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

John McCue, Fairview, OK
Keith McDonald, Wells Nelson, Oklahoma City, OK
Mike Mathis, C.H. Guernsey & Co., Oklahoma City, OK
Bill Myers, Myers Engineering/Guymon, Oklahoma City, OK
Erin Boeckman, eCapitol, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,
Oklahoma City, OK
Scott A. Law, Matteson Ranch, Oklahoma City, OK
Garrett Addington, Daisy, OK
Charles Swinton, BancFirst, Oklahoma City, OK
Bobby and Donna McSpadden, Clayton, OK
Ted Graham, City of Guymon, OK
John Hibbs, Waynoka, OK
Allen Miller, Waynoka, OK
Ronald Bouziden, Waynoka, OK
Morris Bluejacket, Bluejacket Public Works Authority, Bluejacket, OK
Jerry Garrett, Bluejacket Public Works Authority, Bluejacket, OK
Ken Durbin, Waynoka, OK
Robert Brownwood, City of Tulsa, OK
Steve Walker, Waynoka, OK
Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Janice Swanson, The Journal Record, Oklahoma City, OK
Mike Langston, Oklahoma Water Resources Research Institute, Stillwater, OK
Jeri Fleming, Oklahoma Water Resources Research Institute, Stillwater, OK

C. APPROVAL OF MINUTES

Chairman Nichols stated the draft minutes of the May 14, 2008, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Mr. Knowles moved to approve the minutes of the May 14, 2008, Regular Meeting, and Mr. Herrmann seconded.

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

D. EXECUTIVE DIRECTOR’S REPORT

Mr. Duane Smith, Executive Director, addressed the members and informed them of his activities the past month. He said he had recently been appointed to the National Drinking Water Advisory Council, an advisory council to the Environmental Protection Agency, and essentially, any rule passed by the EPA on the Drinking Water program has to go through this council, and is

a good place to provide input to EPA. There are a number of issues the Council is working on, one of which is climate change, and Mr. Smith said it seemed unclear how the federal agencies will coordinate those activities and there are a lot of activities, and how will those impact stream flow in Oklahoma. The EPA is also working on carbon geologic sequestration, while not in the strike zone of the OWRB, the potential is immense and while EPA has current rules for underground injection control, it is considering new rules for carbon. Mr. Smith explained the connection between carbon sequestration and the impact of global warming, and the potential involvement of Oklahoma in the issue. The EPA is also working on the emerging contaminant list for drinking water. Mr. Smith said he had gained respect for EPA by attending the meeting; and Oklahoma complains about contaminants to be tested for and one is arsenic and there is a battle over the where the number is. He said that EPA is monitoring for literally thousands of contaminants, and cities are monitoring--though not regulated--so that EPA can gather information and determine health risks. That then goes through a screening process where the technical folks look at the science and eventually those that do have a significant health risk become a regulated contaminant; a very expensive and tedious process and the backbone behind reliable safe drinking water. He spoke about the issue of pharmaceuticals, and the tremendous amount of work that EPA is doing, but no health risk has been tied to a single pharmaceutical. He said while pharmaceuticals, whether found in the treatment plant or the water, it may go through the contaminant process and be regulated by the city, or it could be regulated through water quality standards that would require the OWRB's involvement in the regulation of those contaminants. The big issue is not one single pharmaceutical, but the effect of all of them, and there is an education program about how and what to dispose of that people need to be aware of. The members asked general questions about some of EPA activities, and Mr. Smith responded, and spoke about the recent article in the Oklahoman about Oklahoma's water quality.

Mr. Smith said the Western States Water Council is going to report to the Western Governor's Association, and he would be attending the upcoming meeting to make that report on behalf of the Council. The focus of the report is how sustainable growth--and how does water impact sustainable growth in the West. The recommendation by the Council is that the federal government needs to come under a focused approach in dealing with the states because it is difficult for states to ensure the proper management tools are in place when there is so much activity at the federal level. It is also difficult for the federal government to deal with the states, and the example is funding for state comprehensive water plans. Mr. Smith discussed the current process, and how that can be improved so that both the states and the federal government can achieve their mission and goals. He spoke about Oklahoma's planning process as the example for all states, and that he had participated in training sessions with Corps of Engineers' planners.

Mr. Smith said staff has been planting seeds regarding the OCWP, and, as an example, the Bureau of Reclamation has agreed to fund through "kick-back" funding for a study on the Garber-Wellington to establish the maximum annual yield. There are a number of activities that need to be included in the OCWP; however, Mr. Smith said he had received "push back" on the technical work plan from organizations such as the Oklahoma Water Law Group. These are very good groups with well thought-out positions, but they do not want to do anything that will evaluate what an instream flow protection would be, or a conjunctive use management scenario, and have gone so far as to say it is illegal. He said everyone is for a water plan as long as they get to write it, but what the OWRB is doing is representing not only cities, but farmers, industries, oil and gas, the environment, and now in the comprehensive water plan, have an umbrella that everybody is guaranteed an opportunity to come in and voice an opinion and have

fair, technical evaluation of ideas that will be the technical underpinnings for any policy that will be developed. The 1980 water plan talked about instream flow protection, talked about conjunctive use management, and the 1995 update talked about those two issues as well. States that are similar to Oklahoma are evaluating instream flow, and are getting process by which to grapple with the reality of population increase and consumptive water use, how to deal with the inevitable impact to surface water. Mr. Smith said an option is to ignore or use resources to determine how reliable is the supply for the community or farm. He believed that is the message from the 2500 comments received at the public meetings, and that is how we are moving forward on the water plan. We know it's an issue and a reality, and we would be remiss if some evaluation were not made of those issues.

Chairman Nichols commented that if we don't look at those issues, then what are we doing? He said to truly do a comprehensive water plan, all the issues need to be on the table.

Mr. Smith said that if people believe the current water law is the best, why is there fear for evaluation of impacts; if it's the best law, it will stand up to an evaluation. Mr. Drummond said he has recommended that groups get involved in the process, and the OWRB can continue outreach about the process. Mr. Smith said the OWRB has great relationships with these entities and the water plan is not a cause of friction, but a difference in fundamental approach. He said staff is having this conversation every single day, and he asked the members for feedback on these issues. Mr. Herrmann asked, "If not the OWRB, who should do this, and if not now, when should it be done?" Mr. Fite commented that in the private sector you can do whatever you want unless the law says you can't, and in government you can't do anything unless the law says we can.

Mr. Smith said he is continuing to speak to organizations about the water plan, i.e., the MidAmerica Regulatory Conference, the Ada Town Water Hall, and he welcomes those opportunities. On July 6, the recent taping on the OCWP will be aired.

Mr. Smith announced the management retreat scheduled at Lake Eufaula in an effort to go out and learn about a particular area. Some of the issues at Lake Eufaula regarded recreation interests; Save Our Water Lake Eufaula representative Karen Weldin will make a presentation, Representative Terry Harrison will also be speak, as well as touring the dam at the lake and speak to the issues of hydropower, water management, contracts for storage, etc. The staff will also do the Strategic Planning for the next year.

Mr. Smith concluded his remarks by introducing the Employee of the Quarter, Pat Kirkpatrick of the Planning and Management Division Permitting Section. He also announced personnel changes that will be effective July 1 in anticipation of future changes: Mike Melton will be working with Kyle Arthur on legislative matters and he has also been named Director of Planning for the Water Plan; Dave Dillon will assume the Assistant Director position; Julie Cunningham will assume Division Chief for the Planning and Management Division; and Jennifer Wasinger--formerly of the Office of the Secretary of Environment--will assume Julie's duties as Assistant Chief at the Financial Assistance Division. Mr. Smith said he felt these were positive changes for the future of the OWRB, as top management positions become open there will be people in place to take care of the day-to-day activities and the supervision of the agency is in place for long term.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item speaks to the issues Mr. Smith had addressed in the Executive Director's report. He said this request from the Tulsa Metropolitan Utility Authority is for a \$1,250,000.00 loan from the Clean Water State Revolving Fund. The loan funds will be used to acquire and manage permanent conservation easements from landowners along streams within the Lake Eucha-Spavinaw basin. Land purchased will be managed by the Oklahoma Land Legacy to prevent runoff of nutrient and sediments that have deteriorated water quality resulting in taste and odor problems and elevated water treatment costs for Tulsa. The loan will be used to extend 15-year conservation easements purchased through the federal Farm Services Administration Conservation Reserve Enhancement Program (CREP). In addition, Clean Water SRF funds will be considered part of the required state matching funds used to establish the program in Oklahoma and access over \$9.7 million in federal funds. Mr. Freeman said this loan is not only the first non-point source pollution control project funded through the CWSRF, it is also the first time nationally the fund has been used as matching funds allowing the state to bring in federal CREP dollars. Mr. Freeman noted provisions of the loan agreement; the cities' debt-coverage ratio stands at a strong 1.95-times, and it is estimated the savings will realize \$100,000.00 in this short-term loan. Staff recommended approval.

Mr. Robert Brownwood, Water Supply Section Manager for the TMUA, was present in support of the loan request.

Mr. Sevenoaks stated the City of Tulsa is the largest landowner in Delaware County and has had philosophical battles with the different constituents. The Land Legacy and the Oklahoma Conservation Commission are working in the watershed with the Department of Food, Forestry and Agriculture, landowners, and stakeholders to go from responding to problems with the water to doing something that will help prevent problems with the water. He said it has been an interesting process to approach landowners for easements where they have watered cattle for generations, to install fencing along the streambed and implement best management practices to prevent phosphorous and other constituents from coming into the streams and ultimately flowing into Eucha-Spavinaw. All the partners are excited at the prospect that this is the way of the future to prevent problems rather than just responding to problems. He commended the OWRB for working with Tulsa, and conceptually is a wonderful idea to put up seed money for matching dollars.

Mr. Herrmann asked how long it took to put the project together, and Mr. Sevenoaks responded, years. Mr. Smith spoke to the aspects of the model, which is a watershed plan that the state agencies focused together--OWRB, OCC, and DEQ--along with the federal government--EPA, NRCS--to implement best management practices that are driven by a focused state plan. The only way that will work is for the state agencies work together with the local governments and the federal agencies will play a technical and financial role in the process--that's the model. The agencies have come together and the pressure is on to see if it works; if it doesn't improve water quality then it's a waste of money.

Mr. Drummond asked the total cost, the loan is \$1.2 million. Mr. Sevenoaks said the loan is only the City's portion; it is not a full watershed plan, just in Spavinaw Creek. He said this is a trial going from 15-year easements to paying for permanent easements because the City

is convinced the science will show how to stop the flow of nutrients off of the land into the water and at the same time letting the landowner to use nutrients for growing; it won't work without Tulsa putting up the seed money. He thought it would work along the Illinois River, although that is a much larger watershed.

Mr. Fite said the CREP program is just coming to the state, and the Illinois River Basin and Eucha-Spavinaw are the first into the program. The Farm Service agency basically returns \$4 to the state for every dollar that is put up under the program. It gives landowners an option for 10 to 15 year easements with an option to renew. Mr. Herrmann asked how much money is being invested in total, and Mr. Sevenoaks said about \$6 million.

Mr. Herrmann moved to approve the loan to the Tulsa Metropolitan Utility Authority, and Mr. Fite seconded.

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

Mr. Farmer asked the total debt to the OWRB by the City of Tulsa. Mr. Freeman estimated about \$100 million. He said the City has utilized the Clean Water SRF program and that will benefit the water program. He said this is the first time the City has pledged the water revenues, as before its loans had been secured by sewer revenues.

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Roland Utility Authority, Sequoyah County. Recommended for Approval. Mr. Freeman said the Roland Utility Authority has requested a loan in the amount of \$3,855,000.00. The Town's sewage treatment plant that consists of a four-cell, flow-through lagoon system has reached its capacity, and the service area is projected to grow from 3,400 residents to over 5,000 in the next 25 years. Therefore, the Town proposed to construct a new extended aeration activated sludge treatment system including a new lab and control building, and converting the existing lagoons to flow equalization basins. Mr. Freeman noted provisions of the loan agreement. He said the connections have increased by approximately 10% over the past ten years, and the population has increased from 1,400 in 1980 to over 3,400 today. The debt coverage ratio stands at 1.47-times, and the estimated savings is approximately \$900,000.00. Staff recommended approval.

Mr. Keith Wasson, Town Administrator, and Mr. Rick Smith, Financial Advisor, were present in support of the loan request.

Mr. Fite moved to approve the Clean Water SRF loan to the Roland Utility Authority, and Mr. Drummond seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Guymon Utilities Authority, Texas County. Recommended for Approval. Mr. Freeman said the Guymon Utilities Authority has requested a \$16,400,000.00 Clean Water SRF loan. He said Guymon is requesting the loan for the construction of a new 3-million gallon per day wastewater treatment

plant with an additional 70 acres of storage lagoons and about 480 acres of additional land for effluent application. The loan proceeds will also be used for 11,750 feet of 24-inch force main to transfer wastewater from the Northeast treatment plant to the West treatment plant and to retrofit a lift station. Mr. Freeman noted provisions of the loan agreement. He said Guymon has been a long-time excellent customer of the Board's and currently has two outstanding loans with a total remaining balance of approximately \$1.4 million. The Authority also has a \$4 million dollar pending Drinking Water SRF loan application. Guymon's population has increased from 7,800 in 1990 to over 12,000 today. It is estimated Guymon will save approximately \$4 million in interest expense by borrowing from the Board, and its debt-coverage stands at about 1.5-times. Staff recommended approval of the loan request.

Mr. Ted Graham, City Manager, Mr. Rick Smith, Financial Advisory, and Bill Myers, Engineer, were present in support of the loan application.

Mr. Drummond asked if this is a replacement plant; Mr. Graham answered this is the only plant where currently effluent is land-applied. Mr. Fite asked about the sales tax, and Mr. Graham said the city has a 1-cent sales tax passed for this specific project, and another 1-cent sales tax passed for capitol improvements. Mr. Herrmann asked what was driving the growth of the area, and Mr. Graham responded agricultural food production, and oil and gas industry. He said this is the largest agricultural industry in the state, and the largest agricultural production in the world. There are approximately 1.5 million hogs in the area, and 450,000 cattle. Mr. Herrmann asked how much of the volume of the effluent stream to the treatment facility comes from the meat processing facilities, and Mr. Graham answered approximately 52%. Mr. Smith commented the OWRB has been involved with Guymon through one of the issues it has which is to redo the system, make it more efficient, and land apply some of the waste on the golf course, and they are working through some of those issues with the DEQ. He mentioned the drought conditions in the Panhandle, and in the OCWP water plan projects, Texas County is the only county that is projected to grow in the next 50 years.

Mr. Fite moved to approve the Clean Water SRF loan to the Guymon Utilities Authority, and Mr. Drummond seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Lawton Water Authority, Comanche County. Recommended for Approval. Mr. Freeman stated that this item is a request by the Lawton Water Authority for a request for a six-month extension of time to close its \$10,420,000.00 Clean Water SRF loan which was approved at the June 2007 Board meeting. He said that Lawton is requesting the extension as a result of a delay in bidding this portion of the City's project. The authorization to bid is scheduled to go out after its June 24 meeting, and then solicit bids by mid-July. The loan is for work in five subbasins, and upgrades in two additional areas of town. Besides the extension of time, all terms of the loan previously approved will remain the same, which Mr. Freeman enumerated. Lawton has been a long-time, good loan customer of the Board's, and currently has ten outstanding loans for both water and sewer improvements which are a total original principal balance of approximately \$61 million. Staff recommended approval.

Mr. Keith McDonald, Financial Advisor, was present in support of the request.

Mr. Drummond asked if with the delay, would the costs be the same. Mr. McDonald responded that the delay is due to the bids for the General Obligation (bond). Mr. Fite said that costs for other projects across the state have increased, and he asked if that is anticipated. Mr. McDonald said he did not anticipate a cost difference.

Mr. Drummond moved to approve the extension of time for obligation of fund to the Lawton Water Authority, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Lambert

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 from the Summary Disposition Agenda to the Special Consideration Agenda; however, Mr. Arthur asked that item 3.L. 15., informal disposition of stream water right #1964-019 be withdrawn.

Mr. Freeman introduced representatives of the Town of Bluejacket present for the consideration of a REAP grant application.

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.

Mr. Sevenoaks asked on item D.11., regarding the arbitrage rebate, if there were a time limit. Mr. Freeman answered payment is required once each five years when owed. And also on L. Informal Disposition of Stream Water, he asked what stream system these regarded, and Mr. Arthur answered the stream systems no. 1-1 through 1-4.

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Nichols asked for a motion.

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

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

NAY: None

ABSTAIN: None

ABSENT: Lambert

The following items were approved:

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

| REAP | | | | Amount |
|------------------------|-------------------------------|--|----------------------|---------------------------|
| <u>Item No.</u> | <u>Application No.</u> | <u>Entity Name</u> | <u>County</u> | <u>Recommended</u> |
| COEDD | | | | |
| 1. | FAP-02-0045-R | Rural Water & Solid Waste Management District #1 | Seminole | \$119,000.00 |
| GGEDA | | | | |
| 2. | FAP-07-0050-R | Bluejacket Public Works Authority | Craig | 99,864.00 |

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

- 1. *Interagency Agreement with the Grand River Dam Authority for fish and wildlife mitigation activities within the Grand River Basin. Item withdrawn*
- 2. Intergovernmental Agreement with the Central Oklahoma Master Conservancy District to provide environmental and routine monitoring at Lake Thunderbird.
- 3. Amendment Agreement with The Office of the Secretary of the Environment for the Clean Water Act FY08/09 §106 Water Pollution Control Program – Monitoring CA# I-006400-08M.
- 4. Interagency Agreement with the Oklahoma Department of Environmental Quality for sharing of office space at the OWRB’s Woodward and McAlester offices.
- 5. Extension and Amendment Agreement with Oklahoma State University Department of Natural Resources, Ecology, and Management for a no-cost extension on the current project “Instream Flow Assessment of Streams Draining the Arbuckle-Simpson Aquifer”.
- 6. Contract with the Oklahoma Department of Environmental Quality to provide lab equipment and analysis services to OWRB for the Board’s water monitoring programs.
- 7. Lease Agreement with the Oklahoma Department of Central Services for renewal of lease of the OWRB’s Tulsa office.
- 8. Memorandum of Agreement with the Oklahoma 4-H Foundation for the OWRB/4-H Speech Contest and Recognition Program.
- 9. Amendment of Joint Funding Agreement with the U.S. Geological Survey for the project “To Investigate the Water Resources of the Arbuckle-Simpson Aquifer Special Studies,

South Central Oklahoma”.

10. Professional Services Engagement Letter with Crawford & Associates, P.C. to provide accounting services related to the Board’s financial assistance programs.
 11. Second Extended and Amended Agreement with American Municipal Tax-Exempt Compliance Corp. for arbitrage rebate calculation and consulting services.
 12. Agreement with BancFirst for financial custody services for the Board’s financial assistance loan programs.
 13. Professional Services Engagement Letter with John M. Arledge & Associates, P.C. to provide auditing services related to the Board’s financial assistance programs.
 - 14. *Interagency Agreement with the Grand River Dam Authority for dissolved oxygen monitoring and outreach activities within the Grand River Basin. Item withdrawn*
 15. Contract for Volunteer Monitoring between Lake Hudson Association of Mayes County and the OWRB.
 16. Interagency Agreement with the Oklahoma Department of Environmental Quality regarding the Drinking Water State Revolving Fund.
 17. Agreement Between Department of Army and Oklahoma Water Resources Board for the Washita River Basin Feasibility Study.
- E. Applications for Temporary Permits to Use Groundwater:
1. Danny & Joy Lawrence, Alfalfa County, #2007-557
 2. Gregory Farms, L.L.C., Major County, #2008-509
 3. City of Cache, Comanche County, #2008-522
 4. Bryan & Lavonne Kroeker, Major County, #2008-523
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Horton & Son Farms, Inc., Harmon County, #1977-658
 2. Hollis Cotton Oil Mill Farm Corporation, Inc., Harmon County, #1998-563
- G. Applications for Regular Permits to Use Groundwater:
1. GFL Daughters, L.L.C., Texas County, #2007-576
 2. James F. Harman Revocable Living Trust, Leota May Harman Revocable Living Trust, Laurance C. & Deloris A. Randall, Michael L. & Teri L. Randall, Stanley D. Jr. & Cynthia D. Mulanax, and David & Paula Harman, Canadian County, #2007-581
 3. Andrew & Jamie Gough, Cimarron County, #2008-511
 4. Wayne & Rita Montgomery, Cimarron County, #2008-515

- H. Applications to Amend Regular Permits to Use Groundwater:
1. William M. & Marjorie L. Knop, Texas County, #1994-526
- I. Applications to Amend Prior Rights to Use Groundwater:
1. Hollis Cotton Oil Mill Farm Corporation, Inc., Harmon County, #1952-127
 2. City of Cache, Comanche County, #1970-219
- J. Applications for Regular Permits to Use Stream Water:
1. Rick & Linda Raney, Bryan County, #2008-004
- K. Applications for Term Permits to Use Stream Water:
1. JoB Construction Company, Inc., LeFlore County, #2008-005
- L. Proposed Order for Informal Disposition by Default for Administrative Cancellations of Rights to Use Stream Water:
1. John & Karen Cohen, McCurtain County, #1993-037
 2. Hulen & Sandra Missildine, McCurtain County, #1995-041
 3. J. W. Gaston, McCurtain County, #1972-523
 4. Tony Lovitt, Pushmataha County, 1978-120
 5. Wes Watson, McCurtain County, #1979-006
 6. Walter & Oma Lee Peters, McCurtain County, #1988-021
 7. Carl LeForce Farms, McCurtain County, #1988-017
 8. Lucille Cranford, Pushmataha County, #1967-307
 9. Billy Easterwood, Choctaw County, #1978-141
 10. Marty & Corina Wilson, Pittsburg County, #1997-022
 11. Nelson Heddlesten, Choctaw County, #1998-044
 12. Dewitt King & Larry Dennis, Pushmataha County, #2000-025
 13. Braum's Dairy Farm a.k.a W. H. Braum Family, L.P., Coal County, #1953-123
 14. H. B. Chapin, Choctaw County, #1958-237
 15. W. E. Reeves, Pontotoc County, #1964-019 *Item withdrawn*
 16. U. V. Barnard, Atoka County, #1964-846
 17. Fred Smith, Atoka County, #1964-867
 18. Arch Rounsaville, Choctaw County, #1965-487
 19. W. B. Garrett, Hughes County, #1965-639
 20. Leon Russell, Hughes County, #1966-318
 21. Arch & Carl Rounsaville, Choctaw County, #1971-221
 22. Braum's Dairy Farm a.k.a. W. H. Braum Family, L.P., Coal County, #1978-065
 23. Braum's Dairy Farm a.k.a. W. H. Braum Family, L.P., Coal County, #1978-069
 24. Charles Shockley, Pontotoc County, #1980-074
 25. Henry Young, Pontotoc County, #1981-064
 26. T. A. Comstock, Hughes County, #1984-013
 27. Randall Pogue, Pontotoc County, #1987-004
 28. Donald Houser, Atoka County, #1991-017
 29. George & Elizabeth Harrington, Choctaw County, #1997-020
 30. Consolidated Stone Industries, Johnston County, #1999-018

M. Well Driller and Pump Installer Licensing:

1. New Operators for Existing Licenses:

- a. Licensee: Oklahoma Corporation Commission – Oil & Gas DPC-9006
Operator: David Howard OP-1615
Activities: Monitoring wells and geotechnical borings
- b. Licensee: Boart Longyear, Co. DPC-0671
Operator: Fred Hafner OP-1616
Activities: Monitoring wells and geotechnical borings

2. New Operators and Activities for Existing Licenses:.

- a. Licensee: Summers Well Drilling DPC-0568
 - 1. Operator: David Paul Summers OP-1617
Activities: Groundwater wells, test holes and observation wells
Heat exchange wells
 - 2. Operator: Jacob Andrew Summers OP-1618
Activities: Groundwater wells, test holes and observation wells
Heat exchange wells

N. Dam and Reservoir Construction:

- 1. TKT Ranch, L.L.C., Major County, NID No. OK83009

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

- 1. Oklahoma Department of Transportation, Ottawa County, #FP-08-11
- 2. Oklahoma Department of Transportation, Mayes County, #FP-08-13

P. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the June 10, 2008 packet of Board materials.

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

A. Update Report on Oklahoma Comprehensive Water Plan Activities. Mr. Kyle Arthur, Director of Planning, addressed the members and briefly updated them on the activities of the Oklahoma Comprehensive Water Plan. At the May meeting, Mr. Smith had presented an extensive update, and many of the activities are continuing. The technical activities are proceeding through funding by the Corps of Engineers through the Planning Assistance to the States Agreement; statewide demand projections, and looking at statewide supply availabilities. Under the Summary Disposition today, the Board approved the cost-share agreement with the U.S. Army Corps of Engineers and the OWRB for the Washita Basin Management Study, which has been a goal under the OCWP, and the work will commence later summer-early fall. There has been extensive work done on the water provider survey, a critical element to the demand projections and taken to a provider level which has not been done previously--CDM has been working with the Oklahoma Municipal League and the Oklahoma Rural Water Association

which will be the OWRB's "arms and legs" to distribute the survey and assist in completion of the surveys.

Mr. Arthur introduced Mr. Mike Langston, Oklahoma Water Resources Research Institute, who will update the members on the public policy side regarding the Regional Input Meetings (RIM) that will begin in August. The first critical part is to develop the list of nominees as participants in the RIMs.

Mr. Langston presented a PowerPoint presentation to the members in Dr. Will Focht's stead. He discussed the process where by the RIM discussants were selected: nomination, applications, and selection process; screening criteria including demonstrable stake in water, knowledgeable in the subject, uniqueness of perspective, willing to listen and reflect, ability to assess what is good for all, and commitment to the process. He described how the meetings would be conducted after consolidating the 2500 comments, and the goal of the meetings is to prioritize the issues through a ranking of the issues with the most important being the low priority issues as most of the high and medium issue will continue throughout the process. Evaluation of the low priority issues will eliminate some issues and establish the agenda for remainder of the process. He said next year there will be workshops and these priorities will establish the themes for those workshops.

Mr. Drummond asked how the criterion was matched with the applicant's response, and Mr. Langston said there were three questions on the application in addition to the general information questionnaire.

Mr. Langston explained that in reducing the list of issues, the reviewers looked at issues that were important to the whole state, and also to avoid conflict crystallization or rural versus urban, or west versus east, as potential issues. And finally, the issues were used to define topics that would be prioritized within each of the regions. Then the discussants were matched to the issues, eliminating gaps and redundancies.

Mr. Langston discussed the role of the Oklahoma Water Research Advisory Board, advisory board to the OWRRRI, which members include Mr. Smith and Mr. Fite, and provide feeding back on the process as well as and technical studies. Also, the Water Policy Advisory Board--the OWRB Water Planning Committee Members, Secretary Peach and Secretary Tolbert--will assist in the process by review of the nomination list and provide final approval. The discussants will be informed of their selection, and what area they have been selected for, by the end of June. The discussants will not be asked to confine their comments to the issues they have been selected for, but are encouraged to speak as a whole person. The basic water law conference will be held on July 28-29, and all designated discussants will be invited to give them basic background about how water law in Oklahoma works. The first RIM meeting will be August 7 in Big Cabin. The Governor's Water Conference will be October 28-30, and discussants will be invited to attend that conference.

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. In the Matter of Stream Water Right No. 1977-004, of Jack G. Emerson, Stream System 1-4, Hughes County; and

B. In the Matter of Stream Water Right No. 1982-074 of Rick & Kathy Clayton, Stream System 1-4, Hughes County; and

C. In the Matter of Stream Water Right No. 1991-037 of Donna Addington, Stream System 1-3, Latimer County:

1. Summary - Mr. Kyle Arthur explained to the members there are four items for the Board's consideration under the Special Consideration Agenda; however, items A., B., and C., regard the recently commended stream water cancellation and reduction effort, and these are the first items that have been brought to Board under that effort. He provided background information about the staff's process stating the agency commenced an effort to conduct a comprehensive review of streamwater permits and individual water usage. The purpose of the review is two-part: statutory requirement under title 82, and "use it or lose it," where a permit holder is to develop the water use within seven years or the unused water will be lost and revert to the public. Secondly, the review is needed for the update of the water plan, and critical for an accurate development of the supply and demand analyses, and particularly on the availability side, to know what supplies are available, who is using water, who is not using water, and how much water is in actual use.

The stream systems under the first review were: systems 1-1, 1-2, 1-3, and 1-4 located in the Red River Basin, and covering McCurtain County, Pushmataha County, Choctaw County, Atoka County, and Coal County, and parts of Pontotoc, Johnston and Bryan, Hughes, Pittsburg, Latimer, LeFlore, and Seminole Counties. There were 83 stream water rights that were reviewed for cancellation; notices were mailed to all water right holders that included an explanation of the review, as well as a thirty-day notice for a hearing to be held for cancellation or reduction. Sixty notices were returned; three hearings were held and three people attended presenting evidence to suggest the water right should not be cancelled but reduced.

Mr. Arthur said those three water rights appear before the Board now under this item; the other 29 appeared before the Board under the Summary Disposition agenda considered earlier in the agenda. Those water rights were defaulted and cancelled by the Board's approval. Sixteen voluntarily cancelled their right, and there are 11 that required other action such as change of ownership, corrected use, or other excuse as accepted by law.

There are 23 unclaimed notices, and those rights are required to receive a notice of cancellation publication and that process is underway. That action will result in a final order for action by the Board at a future time.

Mr. Arthur said the three items appearing before the Board today, attended the hearing and provided evidence for reduction. Based upon the evidence presented at the hearing it was determined these water rights should not be cancelled but rather reduced, and the proposed order so indicates recommended reduction for the water right held by each individual. Staff recommended approval of the three proposed findings of fact, conclusions of law, and Board order as presented.

Chairman Nichols and General Counsel Dean Couch indicated the Board may take action on all three orders together, after hearing from any representatives.

2. Discussion and presentation by parties - Ms. Donna (Addington) McSpadden was present regarding her water right no. 1991-037. Ms. McSpadden spoke to the members and thanked the OWRB staff. She said it is a hard thing for her to talk about.

Mr. Drummond asked who measures the water and the beneficial use? Mr. Arthur said the individual returns a water use report that has been reviewed. Mr. Drummond said there were 83 rights reviewed, and there will only be 14 after the process is complete; and Mr. Arthur responded that is correct. Mr. Drummond asked why the other water right holders did not attend the hearing. Mr. Couch responded perhaps there had been no use of the water for various reasons, transfers among family members, or no further interest due to the economy or other reasons not to use the water. So, either not appearing at the hearing or otherwise contacting the Board about that use, it is simply no longer an actual use or a need for further use. Mr. Drummond asked if the person would be precluded from a future application, and Mr. Couch answered, no.

Ms. McSpadden said that many of these are in the water sale area, and most of them are on the streams and due to the economy and the drought, many of the people do not have a way to monitor so they don't know how much they used and the small streams are dry in the summer time. She said that she is on Lake Sardis, but because of sediment and drought, she had not been able to use her for three years. She said a lot of the people had passed away, but the biggest factor is if they can't monitor their use, they don't know what to tell the Board. She said she understood the law, but when the Board is taking a water right from a resident from an area that is in the negotiating water sale area, it should be a different story.

Chairman Nichols said there are many more water rights in the area; these are the ones that are subject to cancellation because of not having been reported or showed no use. Mr. Arthur said those water right holders who were unable or did not know how to report could have shown evidence that water had been used and that would satisfy the requirement. Mr. Fite asked if this [process] effected domestic use, and Mr. Arthur said it did not.

There were no representatives of water right 1977-004, or 1982-074 at the meeting or wishing to speak to the Board.

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. Chairman Nichols stated the Board could vote on all three items, and Mr. Couch stated the motion should so indicate.

Mr. Herrmann moved that the Board approve staff recommendation for items A., B., and C., and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: None
ABSENT: Lambert

D. Application for Regular Permit to Use Stream Water No. 2006-044, Wesley Dean & Sherrie S. Matteson, Major County;

1. Summary - Mr. Arthur said this matter regards the application of a regular permit to use stream water in the name of Wesley Dean & Sherrie Matteson, requesting to take 168 acre-feet to be withdrawn from two diversion points, and without storage, located on Main Creek in Major County. The protestants also use water from Main Creek, and do not rely on storage.

Mr. Arthur said the proposed order before the Board today is the third order for the Board's consideration on this matter. He provided historical information regarding the application, saying the applicant began taking water from the stream to irrigate on or about July 30, 2006, and from that time the protestants noticed diminished flow. After objections by the protestants, the applicant ceased pumping water about August 7, 2006, and the application for a long-term permit was filed on August 10. A provisional, 90-day permit was approved August 21, with the provision that the existing appropriative right for domestic use downstream is not interfered with. During a second period of irrigation at a later time, the protestants again observed reduced or no-flow conditions, and a complaint was made to staff.

A first of two hearings was held on November 13, 2006, and as a result of the hearing and evidence presented, the proposed order recommending denial of the permit was considered by the Board at its April 7, 2007, meeting, based upon the evidence that the applicant had caused and would cause in the future interference with the downstream domestic use of water. However, based upon argument by the applicant at that time, the Board remanded the matter to the hearing examiner to obtain additional information and re-present to the Board. The second hearing was held on June 26, 2007, and the proposed order, as a result of the evidence presented at that hearing, was considered by the Board at its September 11, 2007, regular meeting. The proposed order recommended denial of the permit, but after discussion and offer by the applicant to work with the protestants and agree to a settlement, the matter was remanded back to the hearing examiner to reopen the hearing and provide opportunity for settlement. At the September Board meeting, the applicant suggested a weir be installed, and based upon that statement, staff assumed the applicant's counsel would coordinate with the protestant's counsel and prepare a settlement agreement and whatever monitoring plan could be agreed to, and then based upon the agreement, the protest would be withdrawn, and a permit with conditions agreed to by the parties could be issued.

After an ample, and appropriate length of time and over six months, no communication has been received by either party regarding a settlement. A third hearing on the matter was scheduled for April 18, 2008, to determine whether a settlement had been reached, and a proposed order could then be drafted with the specifics of conditions as set forth in Chapter 20, section 5. Just prior to the third hearing, both the applicant and protestants notified the hearing examiner by letter that no settlement had been reached, and as a result, the hearing was cancelled. A third proposed order has been prepared for the Board's consideration today. Staff recommended approval, therefore, of the proposed findings of fact, conclusions of law, and order as presented which denies the application based upon the finding that use of water will interfere with domestic existing appropriative uses downstream.

2. Discussion and presentation by parties - Mr. Scott Law, representing the applicant, addressed the members and said his last appearance before the Board was on

September 11, 2007, but it didn't matter if it were a year ago or one day ago, the matter was doomed for failure. He said at that time he had presented an alternative solution to the Board of installing a weir system for measurement and irrigation wording in the permit that if the level fell below a level that would reduce any domestic or other use downstream. At that time, Mr. Law said he had specifically requested additional time to work with the protestant and reach a consent order, or, some alternative by the Board. He said the initial motion by the Board was to table the matter and challenge the parties to work it out. But, he said because the protestants had already objected to the alternative solution and otherwise indicated their refusal to enter a settlement agreement, Mr. Sevenoaks proposed an alternative. Mr. Law read from the minutes of the meeting, and quoted Mr. Sevenoaks asking about whether no compromise would result in staff's recommended denial, and after discussion, the Board voted to remand to the hearing examiner to provide the opportunity for additional evidence. He said that in early April 2008 the hearing examiner requested evidence of a settlement agreement between the parties and set a hearing, if necessary on April 18, but limited only to the presentation of evidence of settlement agreement and nothing further, and in response to that the protestants filed a letter stating they had received and reviewed a settlement proposal by the applicant, and denied the same and there was no need for the hearing. Mr. Law said he responded and requested an opportunity to present the settlement agreement by written submission only, no hearing, as evidence in support of the recommendation of a restricted permit. He said the protestants replied to that stating, "The protestants will not accept applicant's proposed settlement and will object to a third hearing on the matter because new evidence does not exist. If there were some way that would guarantee the protestant's would never be harmed by the applicant's irrigation, we would listen to that proposal. The present proposal does not guarantee anything, and is subject to the same clause as if the applicant was allowed to irrigate..." He said that based upon that, no hearing was held, no evidence was allowed and the third proposed order has now been submitted to the Board. He said the result is that nothing has been able to occur, and the protestant's attorney said--on several occasions--it was unusual and unlikely to succeed. He said his clients asked the he submit a request to the Board to amend the third proposed order to grant a restricted permit in accordance with the v-notch weir proposal as set forth by letter as part of the file, otherwise, approve the third proposed order denying their permit so they may seek relief elsewhere, they do not want another remand, but want to move forward.

Chairman Nichols asked Mr. Law about the contact between he and the protestants. Mr. Law answered he had sent the proposal to the protestants, they reviewed it and objected to it, and there was little contact otherwise.

Mr. McCue, representing the protestants, stated to the members that this is a novel position for him as an attorney for 40 years, and this is the first time he has been involved in a hearing in a state matter where the Board is being asked to enforce settlement despite objection by one of the parties. And, also to enforce a settlement based upon something the applicant wants that the protestants do not. He said the fact that was established at the original hearing is that when the applicant was irrigating on a minimal basis on a temporary permit on a 22-acre site and much less than they were asking for, the stream dried up. It took three days for water to return for cattle and the system that he (Mr. Law) is suggesting is a water measurement system that does not guarantee that when they irrigate there will be water downstream, but all it does is measure the amount of water that flows at that one particular point where the weir is built. He said that even if through some formula that applies generically to all water everywhere it is determined the exact parameters of this weir, and there is not enough water below a certain

notch, and the irrigation system continues to operate because no one has noticed the water has fallen below the notch, then the protestant will notice there is no water for his cattle. He said if all of these things were guaranteed--that the weir be constructed properly, that it would be put in the proper place, that it would measure the flow of water, that it could work out perfectly, but there is no guarantee and this is just a water measurement device. He said he had spoken to the Board at the last meeting that he did not agree with it, but would look it, and his clients were looking at it, but there was no guarantee on it then and there is no guarantee on it now. He said his clients have established for the hearing examiner twice, that irrigation on this creek has the potential to damage them severely and so that is what the hearing examiner has found, twice. He asked the Board to deny the permit.

There were no questions.

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. Drummond said there had been "three bites at the apple" and he moved to approve staff's recommendation to deny the application. Mr. Keeley seconded.

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

NAY: Sevenoaks

ABSTAIN: None

ABSENT: Lambert

E. 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, updated the members about activities of the agency regarding preparation by staff of the FY'09 budget. He said the budget report provided is for May, and the agency has completed 92% of the fiscal year, has expended and obligated 88% of the budget, and collected about 97%. Mr. Herrmann asked about the new position, and Mr. Smith responded there is no funding, but allows the agency to allocate the position. The members, Mr. Boyce and Mr. Smith talked about the agency's fuel expenses, and anticipated budget for the next year's fuel.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

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

8. Election of Officers

Chairman Nichols opened the floor for nominations for Board officers for 2008-2009.

Mr. Fite asked if there was a committee to make a recommendation? Mr. Herrmann said that Mr. Nichols is prepared to continue as Chairman, and he understood Mr. Drummond was no longer interested in serving as Secretary. Chairman Nichols stated that Mr. Herrmann was prepared to continue serving as Vice Chairman. Mr. Drummond said a good candidate for Secretary is Ms. Lambert, but she is absent. Chairman Nichols said he had spoken with her and she is willing to serve.

Mr. Fite then moved that the Board retain current Chairman Mark Nichols, and Vice Chairman Rudy Herrmann, and replace the Secretary with Ms. Linda Lambert. Mr. Keeley seconded.

AYE: Knowles, Keeley, Drummond**, Sevenoaks, Fite, Farmer, Herrmann, Nichols
NAY: None
ABSTAIN: Drummond** (Mr. Drummond initially voted to "abstain", but changed his vote to "aye")
ABSENT: Lambert

9. NEW BUSINESS

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

There were no New Business items for the Board's consideration; however, Chairman Nichols suggested the attire for the July meeting be "dressed down" from the usual business suit, no tie required. The members also discussed potential locations for an out-of-town meeting in later summer or fall.

10. ADJOURNMENT

There being no further business, Chairman Nichols adjourn the regular meeting of the Oklahoma Water Resources Board at 11:37 a.m. on Tuesday, June 10, 2008.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Jess Mark Nichols, Chairman

_____/Absent_____
Rudolf J. Herrmann, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Edward H. Fite

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Richard Sevenoaks

_____/s/_____
F. Ford Drummond

ATTEST:

_____/s/_____
Linda P. Lambert, Secretary
(SEAL)