

# OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

December 9, 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 December 9, 2008, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The December 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 December 2, 2008, at 4:00 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  
Linda Lambert, Secretary  
Ford Drummond  
Lonnie Farmer  
Ed Fite  
Jack Keeley  
Kenneth Knowles  
Richard Sevenoaks

#### **Board Members Absent**

None

#### **Staff Members Present**

Duane A. Smith, Executive Director  
David O. Dillon, Assistant Director  
Dean Couch, General Counsel  
Joe Freeman, Chief, Financial Assistance Division  
Monte Boyce, Comptroller  
Julie Cunningham, Chief, Planning and Management Division  
Derek Smithee, Chief, Water Quality Programs Division  
Mary Lane Schooley, Executive Secretary

**Others Present**

Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Melody Kellog, City of Guthrie, OK  
Evelyn Nephew, City of Guthrie, OK  
Doug Hehn, City of Guthrie, OK  
Matt Brown, City of Guthrie, OK  
Bobby McSpadden, Sardis, Clayton, OK  
Allen Brooks, Public Finance Law Group, Oklahoma City, OK  
Chris Gander, BOSCO, Oklahoma City, OK  
Maxine Pruitt, City of Guthrie, OK  
Chuck Burtcher, Mayor, City of Guthrie, OK  
Carol Hirzel, Guthrie, OK  
Andrew Gunn, Guthrie, OK  
Teddy Rogers, City of Canadian, OK  
Bob Wright, AFR, Oklahoma City, OK  
Justin Hodge, Department of Environmental Quality, Oklahoma City, OK  
Randel Shadid, City of Guthrie, Edmond, OK  
Bill Myers, City of Guthrie, Oklahoma City, OK  
Ron Gooch, Pawnee Public Works Authority, Oklahoma City, OK  
Erin Boeckman, eCapitol, Oklahoma City, OK  
Frank Davis, Logan County Rural Water District No. 1, Guthrie, OK  
Woodrow Epperson, City of Guthrie, OK  
Patty Thompson, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Tony Mensah, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Mike Mathis, Chesapeake Energy, Oklahoma City, OK  
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

Chairman Nichols stated the draft minutes of the November 12, 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 November 12, 2008, Regular Meeting, and Mr. Herrmann seconded.

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

**D. EXECUTIVE DIRECTOR'S REPORT**

Mr. Duane Smith, Executive Director, addressed the members and updated them about the recent and upcoming meetings. He said the agency's first budget meeting is scheduled for November 15 to discuss performance measures, or agency accomplishments with the money

that's been given; i.e., is the agency a good steward of the programs, are the programs relevant, are they high priority, is the agency managing the programs so that the most important work is being done, etc. He said the staff is looking at the numbers of jobs created with infrastructure through the stimulus bill funding. He said it is well known communities are saving money through borrowing through a subsidized infrastructure. The economy the way that it is, hopefully if the \$2.6 million the OWRB used to utilize the EPA \$13 million is attributed to 3800 jobs, that will make a bigger impression. The Financial Assistance Division is putting together a list of projects that are ready to go, but even without the stimulus bill, what a great impact on Oklahoma the OWRB loan program has--by enhancing jobs and economic development within Oklahoma. The high priority item is the beneficial use monitoring program (BUMP), and that will be discussed in detail. He said staff is excited to get started in the session. Mr. Sevenoaks asked about the impact of oil and gas and the financial situation and the projected impact to the state budget. Mr. Smith said those projections won't be available until the budget cycle; Mr. Boyce said the Office of State Finance has asked the agency to look at 2.5% and 5% cuts. There was some discussion about the nation-wide economic crisis and how that might affect Oklahoma's budget for the coming fiscal year.

Mr. Smith said he had attended the National Drinking Water Advisory Council meeting in Washington, D. C., the federal advisory committee to EPA on drinking water programs. Carbon sequestration is a major issue, as is sustainable infrastructure. EPA has a "sustainable infrastructure initiative" which is a multi-pronged approach that deals with full-cost pricing and the agency is putting out education materials about working with communities on how to budget for infrastructure with the idea that the water price is the lowest of the utilities bills a family pays each month, and to realize what is happening with the cost of infrastructure and how cities can plan for that and have the funding to keep the infrastructure going. He said that for people to think that water rates will not go up, that's a dream that will not come true. Water and wastewater infrastructure and the price that a family is going to pay at the tap is going to increase, and substantially increase, and citizens need to understand that as communities grow, current infrastructure aging, all this needs to be replaced, and cannot be done with a static rate and water at a cheap price. Likewise, Mr. Smith spoke to an EPA Sustainable Infrastructure Conference and EPA is on the right path to promote green infrastructure and full-cost pricing of infrastructure. He said that what needs to happen is for EPA to plug into the state planning process, and the OWRB Comprehensive Water Plan needs to make sure that cities and rural water districts have a 50-year plan for water, and make sure that the federal agencies are coming into our plan and providing technical and financial assistance. The OWRB's goal is to bring technical and financial expertise and dollars to the table to help implement sustainable infrastructure for the communities. Mr. Herrmann asked the Board's role versus the role of the rural water districts and communities? Mr. Smith described several programs sponsored by EPA to identify and fund infrastructure projects, and the agencies involved in assisting communities.

He said the OWRB sponsored two committees on December 8, as a result of legislation authored by Senator Susan Paddack. The committees are the Aquifer Recharge Technical Work Group and the Marginal-Quality Water Technical Work Group; the OWRB is to chair the committees, and will include the results and findings of committees in the Comprehensive Water Plan. He talked to the members about the discussions to develop a process to identify recharge projects and funding by the recharge groups; CDM took the lead and is going well with follow up meetings in January and February for presentation to the Legislature. A number of oil companies are involved in the marginal quality group because of their recycle and reuse of water,

but also other industries represented and CDM will prepare an outline of how to move that effort forward. The information regarding the committees will be available on the agency website. Senator Paddock attended both meetings, and was pleased with the work of the committees. Ms. Lambert asked how these two efforts would fold into the long-range plan; Mr. Smith responded that in follow up discussions with staff, it seemed the two groups could combine and it will be side-by-side with the grass roots effort that is now ongoing.

Mr. Smith and Dr. David Engle will meet with other officials at Oklahoma State University to discuss ways they can be involved in the water planning effort and is looking at and reviewing agriculture demand projections. That institute is also involved in wind energy and biofuels research.

Mr. Smith concluded his remarks stating that Water Day at the Capitol is March 10; the Board meeting will be in the afternoon either at the Capitol or here at the OWRB, depending upon room availability.

## 2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Pawnee Public Works Authority, Pawnee County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$1,575,000.00 Clean Water SRF loan request by the Pawnee Public Works Authority. The requested loan is to repair and replace 4,000 feet of sewer lines, remove and clean approximately 10,000 feet of sewer lines, install 30 new manholes, raise 72 manholes, and rehabilitate additional manholes. Mr. Freeman noted the loan provisions; the debt-coverage ratio is 1.96-times. Staff recommended approval.

Mayor Tom Briggs and Rick Smith of Municipal Finance Services were present in support of the loan application.

Mr. Drummond asked about the Authority's water supply; Mayor Briggs answered the water is from Lone Chimney, and is in good shape.

Mr. Herrmann moved to approve the loan to the Pawnee Public Works Authority, and Ms. Lambert seconded.

A YE: Fite, Drummond, Herrmann, Sevenoaks, Farmer, Lambert, Knowles,  
Keeley, Nichols

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Duncan Public Utilities Authority, Stephens County. Recommended for Approval. Mr. Freeman said this \$5,770,000.00 loan request is from the Duncan Public Utilities Authority. He said the loan would be used to construct a two million gallon elevated water tower, and 16-inch water supply line. The loan will be funded through the Drinking Water SRF loan program, and Mr. Freeman noted the loan provisions. The Duncan PUA has been a long-time customer of the Board's, and currently has five outstanding loans with the OWRB, with a balance of \$17.7 million. The water and sewer customers have increased by 5% over the past ten years, and the debt coverage ratio stands at approximately 2.76-times. Staff recommended approval.

Mr. Allan Brooks, bond counsel, and Mr. Brett McDonald, Financial Adviser, were present in support of the loan application.

Mr. Drummond moved to approve the loan to the Duncan Public Utilities Authority, and Mr. Herrmann seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Guthrie Public Works Authority, Logan County. Mr. Freeman said that this item is a \$15,320,000.00 loan request from the Guthrie Public Works Authority that is requesting the loan to construct a 6-million gallon per day water treatment plant, work on the water intake structure, and replace the water main. The loan will be funded through the Drinking Water SRF loan program; Mr. Freeman noted provisions of the loan agreement. Guthrie has been a long-time, good loan customer of the Board's and currently has two loans outstanding with the Board totaling \$2.7 million dollars. Guthrie's water and sewer connections were increased by about 3.5% over the past ten years, and the debt coverage ratio stands at approximately 2.4-times. Staff recommended approval.

Mayor Chuck Burtcher, Vice Mayor Doug Hehn, Councilwoman Ellen Jones, Councilwomen Ellen Nephew, City Manager Melody Kellog, Municipal Services Director Maxine Pruitt, Water Superintendent Wood Epperson, and City Attorney Randel Shadid were present in support of the loan application.

Ms. Lambert asked if the sales tax had been approved, and Mayor Burtcher answered that it had been approved. Mr. Sevenoaks asked the water sources for the city, and the Mayor said the city obtains water from Guthrie and Liberty Lakes as well as Cottonwood Creek that should be adequate for future use. Mr. Drummond asked about whether the construction costs estimates were locked in or had they increased. Mr. Bill Myers, city engineer, explained that during the summer months there had been construction cost escalation, but has peaked and there has been stabilization and even small decreases in some items. He said he believed construction would be within the budget. Mr. Herrmann asked how current the estimate is, and Mr. Myers said within the past twenty days.

Chairman Nichols stated a citizen from Guthrie wished to make a comment. Mr. Andrew Gunn addressed the Board members and stated he appeared on behalf of a group of citizens in Guthrie that wanted to bring forth attention to the fact an initiative petition has been brought forth by a group of residents of Guthrie to put to a vote allowing residents to vote on increasing sewer and water rate on a monthly basis. The group feels there would be a negative impact on the city's ability to raise additional funds to pay the loan in the event it is granted. He said the initiative petition would call for a vote on April 9, 2009, and the group does not ask the Board to deny the loan forever, but just until the initiative petition can be voted on by the residents of Guthrie on whether the City has the ability to raise water rates.

Ms. Carol Hirzel, citizen of Guthrie, stated to the members her concerns about an accelerated loan repayment plan. Mr. Freeman explained that typically with construction loans there are interest and perhaps small principal payments before the loan is fully amortized. He

said the debt coverage ratio is based upon when the payment is at its maximum. Ms. Hirzel also stated the Judge has held a judgment against Guthrie for encroachment.

Mr. Herrmann asked about the strength of the Board's security position on a \$15 million loan if the citizens were to vote down the rate increase? Mr. Freeman said that the "number three run" on debt coverage ratio and a favorable vote for the citizens would be a 2.34-times debt coverage, still a strong debt coverage position. Mr. Herrmann asked if, from the Board's perspective the outcome was unfavorable, what happens as the lender looking at a 2.3 debt coverage ratio; Mr. Freeman stated that based upon the rural water district customers it would still be a strong debt coverage.

Mr. Randel Shadid, city attorney for Guthrie, addressed the members and said the issue with rural water is there are two lawsuits pending between the City of Guthrie and RWD #1; the first lawsuit is in federal court partly argued on November 17, but no ruling in that case. Guthrie city limits have expanded over the years into the district and the case regards allegations of intrusion; that case is pending a trial, perhaps in October but the outcome will not affect the city's ability to repay the loan. The rates that are in effect now are adequate to repay the loan. He said the second lawsuit filed in state court three months ago claims that Guthrie has an obligation to sell excess water to the rural water district, but will not have an effect on the city's ability to pay. Regarding the initiative petition that has been filed that states the voters will have to determine whether utility rates can be increased in the future. The request was to place the matter on a April 9 election ballot but as determined on December 5, that petition is insufficient so that issue will not be on the April ballot if at all, there were two reasons it was declared insufficient, and he anticipated hearing in the District Court of Logan County from the other party, but in any event will not have any affect on the city's ability to repay the loan because the rates are already in effect.

Mr. Sevenoaks said then, the current rate structure as it is now, has the ability to repay the loan. Mr. Shadid answered, yes, irrespective of what happens.

Chairman Nichols called for a motion.

Mr. Sevenoaks moved to approve the Drinking Water SRF loan to the Guthrie Public Works Authority, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of and Possible Action on Selection of Remarketing Agent in Connection with the Oklahoma Water Resources Board Series 1995 and 1997 State Loan Program Revenue Bonds. Mr. Freeman stated this last item today is for the selection of a remarketing agent for the 1995 and 1997 Variable Rate State Loan Program revenue bonds, also known as the FAP. He said there is currently \$13,595,000 in variable rate bonds outstanding from these two issues. The need for the selection of a new remarketing agent is the result of UBS exiting the municipal bond business. Proposals were requested from 18 investment-banking firms, and received proposals from four firms: Wells Nelson, Wachovia, BOSC (BOK Financial Corporation) and Capital West Securities. The proposals were reviewed by OWRB Staff, the Board's Finance Committee, and the State Bond Advisor. The proposals from Wachovia did not respond to the form of remarketing requested, but the other three firms did. Each of the firms is a local firm that has

experience with the Board's variable rate bonds, or currently has staff that has experience with remarketing bonds. Mr. Freeman said that after reviewing the proposals and consulting with each member of the Board's Finance Committee, it is recommended that BOSC be selected as remarketing agent for the 1995 and 1997 variable rate bonds.

Mr. Fite moved that BOSC be selected as remarketing agent, and Mr. Drummond seconded.

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

There was a brief discussion regarding the Board's investment funds and the current financial market conditions. General Counsel Couch advised the discussion be placed on a future agenda, or as a New Business item.

### **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.

#### **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.

Ms. Lambert moved to approve the Summary Disposition Agenda, and Mr. Keeley seconded.

Mr. Herrmann asked whether there had been reactions regarding the stream water forfeitures the Board should be aware of. Ms. Cunningham these actions regard permits where the permit holder was notified but did not appear at a hearing or otherwise contact Board.

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

**The following items were approved:**

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

<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>
ASCOG				
1.	FAP-07-0054-R	Town of Hydro	Caddo	\$99,900.00
COEDD				
2.	FAP-06-0016-R	Rural Water District #5	Pawnee	88,965.00
EODD				
3.	FAP-08-0033-R	Rural Water District #7	Cherokee	39,069.00
KEDDO				
4.	FAP-08-0034-R	Canadian Public Works Authority	Pittsburg	109,990.00
OEDA				
5.	FAP-07-0007-R	Rural Water District #1	Woodward	140,000.00
SWODA				
6.	FAP-08-0019-R	Rural Water, Sewer & Solid Waste Management District #3	Roger Mills	91,975.00

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

1. Easement and Agreement with the Benedictine and Fathers of Sacred Heart Mission to grant OWRB an easement in Pottawatomie County for the purpose of drilling an observation well for the Shawnee Mesonet Site.
2. Joint Funding Agreement with the U.S. Geological Survey for the continuation of the project "Streamflow Monitoring of seven Streamflow sites and one lake in the Upper Washita River Basin".
3. Lease Agreement Renewal with Oklahoma Property Investors II, LLC, for Oklahoma Water Resources Board 3800 Classen Boulevard offices.
4. Parking Lease Agreement with VTA Oklahoma City, LLC for parking space at Shepherd Mall.

**E. Applications for Temporary Permits to Use Groundwater:**

1. Ima Jones & Kathy Ann Parker, Dewey County, #2008-585

**F. Applications to Amend Temporary Permits to Use Groundwater:**

1. D. H. Entz Living Trust, Caddo County, #1993-615
2. Wyandotte Tribe of Oklahoma, Ottawa County, #1996-527
3. Caddo County RWS&SWM District No. 3, Comanche County, #2002-504



- G. Applications for Regular Permits to Use Groundwater:
  - 1. Jessie H. Hoskins, Blaine County, #2008-528
  
- H. Applications to Amend Regular Permits to Use Groundwater:
  - None
  
- I. Applications to Amend Prior Right to Use Groundwater:
  - None
  
- J. Applications for Regular Permits to Use Stream Water:
  - 1. R D T Properties, Inc., Pawnee County, #2008-022
  - 2. Lattimore Materials Company, L.P., Love County, #2008-023
  - 3. Lattimore Materials Company, L.P., Love County, #2008-025
  
- K. Forfeitures of Stream Water rights Due to Nonuse Recommended for Informal-Default Disposition:
  - 1. H. R. McGehee, Love County, #1968-030
  - 2. H. R. McGehee, Love County, #1977-089
  - 3. Victor Gray, Marshall County, #1966-187
  - 4. Victor Gray, Marshall County, #1974-256
  - 5. E. C. Henry, Marshall County, #1968-295
  - 6. Lawrence Henry, Marshall County, #1974-227
  - 7. Charlie Rushing, Marshall County, #1974-290
  - 8. Charlie Rushing, Marshall County, #1974-291
  - 9. Joe Sykes/Gary Barker, Marshall County, #1979-047
  - 10. Jack Morgan, Love County, #1979-102
  - 11. Francis Cady, Jefferson County, #1964-855
  - 12. Francis Cady, Jefferson County, #1981-015
  - 13. City of Duncan, Stephens County, #1953-453
  - 14. Robert Garrison, Grady County, #1956-099
  - 15. Albert G. Jacobi, Comanche County, #1959-093
  - 16. Albert G. Jacobi, Stephens County, #1964-012
  - 17. Larry Coleman, Comanche County, #1965-589
  - 18. Cletus White, Comanche County, #1967-505
  - 19. Richard Julian, Comanche County, #1969-333
  - 20. William B. Fitts, Grady County, #1989-015
  - 21. Turley & Maria Dalston, Stephens County, #2000-004
  
- L. Well Driller and Pump Installer Licensing:
  - 1. New Licenses, Accompanying Operator Certificates and Activities:
    - a. Licensee: First Priority, Inc. DPC-0786
      - 1. Operator: Frank Wiebe OP-1653
      - Activities: Pump installation
  - 2. New Operators for Existing Licenses:
    - a. Licensee: Mohawk Drilling, Inc. DPC-0563
      - 1. Operator: Clifford P. Emmons OP-1651

- Activities: Monitoring wells and geotechnical borings
- b. Licensee: Citizen Potawatomi Nation DPC-0641  
1. Operator: Russell Grimes OP-1652  
Activities: Groundwater wells, test holes and observation wells  
Pump Installation

M. Dam and Reservoir Construction:

1. City of Broken Arrow – Aspen Pond Regional Detention Dam, Tulsa County, #OK83015

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

None

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the December 9, 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 said the second phase of the public input process of the update of the Comprehensive Water Plan has been completed—the Regional Input meetings. The meetings began on August 5, 2008 at Big Cabin, and eleven meetings ended on November 13 in Seminole. He said the staff has been very pleased, and on behalf of the agency, he thanked the 340-plus discussants that agreed to serve on the regional input meetings, as well as staff of the OWRB, and members of the Board, and other members of the public. He said Dr. Focht mentioned in his presentation at the Governor’s Water Conference that the difference between a good plan for Oklahoma and the right plan for Oklahoma is having public involvement.

Mr. Mike Langston, Oklahoma State University Water Resources Research Institute, addressed the members and spoke to them using a PowerPoint presentation about the guiding principles of the public input process, initial observations from discussions at the meetings, why Regional Input Meetings were conducted, and explained the updated OCWP process schematic. He described to the members what is planned next, i.e., twelve one-day workshops conducted in one day, on three separate dates, with a ten-day break in between to allow for responding to questions, then a final Town Hall meeting conducted by the Oklahoma Academy in May 2010. In January a letter will be mailed to the RIM participants to determine interest in attending the workshops, as well as identifying through the Agriculture Extension Service facilitators for the workshops. He noted activities planned for the upcoming months, including anticipating that a Basic Water Science Seminar will be conducted in March 2009, and the Governor’s Water Conference/Symposium will be held in November 2009.

B. Presentation and Discussion about Oklahoma Groundwater Law and Oklahoma Water Resources Board Permitting Process. Ms. Julie Cunningham, Chief, Planning and Management Division, used a PowerPoint presentation to outline the basic principles of the state's groundwater law permitting system. At an earlier meeting, Mr. Sevenoaks has asked about land dedicated to a permit and the withdrawal of water from non-contiguous land.

Ms. Cunningham explained the state law was established in 1973 as a utilization law, a mining law that will allow the depletion of the resource, created for economic developed as the Legislation at the time wanted the water to be used in development. Groundwater is considered a personal, private property right that belongs to the overlying surface owner, although subject to reasonable regulation by the OWRB. The OWRB is statutorily required to complete Maximum Annual Yield (MAY) evaluations, looking at an entire basin and determining how much water is available per acre of land, using modeling studies and with final approval by the Board. The MAY is basically the determination of the total fresh water that can be produced from a basin within its minimum 20-year life. An equal proportionate share for each acre is determined through the application of grid over the basin; each landowner has a right to its share of the MAY per land that overlies the basin. Ms. Cunningham said this does not require that wells are drilled on each specific acre of land, but the landowner may drill one well over many of acres of land in an area.

Mr. Herrmann stated that while it is allowed, a permit holder does not have to mine, it is not mandated, just cannot be mined faster than within 20 years; Mr. Smith said that is correct. He said the minimum basin life is 20 years, but the MAY could be set for 100 years. Mr. Herrmann asked if the outcome of the Comprehensive Water Plan is to set the minimum basin life at 100 years, that would not require a change in law, and Mr. Smith answered that is correct. He said the model approach used, utilizes every acre of land pumping water and the MAY is set at what one-half of the aquifer not able to pump the MAY after 20 years, which is intended to maximize the use of water. He said that within the statute, the number of years can be set at 50 or 100, but the OWRB has traditionally set it a 20 years, recognizing the economic development philosophy behind how the implementation. Mr. Sevenoaks asked if that can be changed, and Mr. Smith answered it cannot be reduced on an exiting permit once it is set. Mr. Sevenoaks said, then, it might be that all permits should be temporary so there is maximum flexibility.

Mr. Sevenoaks then asked about the equal proportionate share language that states each landowner is entitled to a share that may equal to his or her ownership of land over the basin dedication of land. He asked then, for example, Edmond owns 40 acres of land near in Edmond, but also owns 40 acres in Norman, for a total of 80 acres, and the well is located in Edmond; does that mean they have the ability to take out 160 acre feet from the one well? Ms. Cunningham answered that is correct, as long as the four points of law are met.

Mr. Smith said this is where the water law gets difficult, that when the law was made it was intended the land did not have to be contiguous, now known as the "straw in the bucket" theory. He said there is also reasonable regulation by the OWRB, so if there was one acre in Edmond and 10,000 acres in Norman, the Board may not think that reasonable so there are other considerations that come through the hearing process. He said there are some nuances in the statutes that don't come up very often, and the presentation is based upon those applications that are 99% of the time where it is noncontiguous land within close proximity and that is so that applicants do not have the expense of drilling a number of wells, etc. Mr. Sevenoaks asked if the definition of equal proportionate share in the statutes? Mr. Smith answered that is statutory

language, and goes back to private property rights so that every landowner over the basin has the ability to take some water, not to guarantee it is there, but they have the right to take the share.

Ms. Cunningham continued that the MAYs have been completed and approved for 16 of the 26 major basins, which is a basin greater than or equal to 150 gallons per minute for alluvium and terrace, and 50 gallons per minute for a bedrock formation. Anytime the MAY is determined for a basin, the temporary permits are administratively converted to regular permits after approval of the Board, and is a statutory requirement. Mr. Couch added the matter comes before the Board twice; once the MAY is determined, it is subject to public hearing where all the scientific information is presented followed by public input and then presented to the Board for a final determination.

Mr. Herrmann asked about there is a priority list to study the basins, and if only one can be done, which would it be. Mr. Smith replied the Garber Wellington, which is the one we are working on now. There was some discussion about funding for studies and priorities, evaluating yields that are different in parts of one aquifer, the requirement by statute to update every ten years--but not to reduce the equal proportionate share--although a new subbasin can be created within a basin, and that the two-acre feet per acre for an unstudied basin is a legislative allocation because that is the amount estimated for crops in the Panhandle at that time (24 inches of water).

Ms. Cunningham concluded the presentation with an overview of the four points of law and well spacing variances. Mr. Herrmann asked if the new modeling techniques are applied to studies already conducted; Mr. Smith said the new techniques are applied to the new studies, but is difficult to go back and review the older studies because of funding, etc.

Mr. Smith commented that while the law can be complicated, the permitting process is very straightforward--there are four requirements that must be met: own the land, land overlies basin, beneficial use, and will waste occur, and the first three are very easy to define. The only one that the Board really deals with is waste for the most part; waste by depletion and waste by pollution. If its waste by pollution, that is considered by the Department of Agriculture and the Department of Environmental Quality, unless the pollution issue regards construction of the well or inefficient use of water. Waste by depletion is viewed by (1) the MAY or equal proportionate share--are you taking more than what is authorized, and (2) interference between wells; if a study has been conducted there is a 1320 foot well spacing, although a variance can be obtained. If there is no study, the Attorney General instructs no well spacing can be set. If these requirements are met, then Board shall issue a permit. He reiterated the manner in which a MAY/EPS is determined and said that in reality that even in the Ogallala, there is less than 20% development and the Arbuckle Simpson is one percent development, so 100% development has not been seen. He said to the Board and staff needs to put the best foot forward and be very clear on the process considered. Chairman Nichols said consistent modeling would be very helpful. Mr. Sevenoaks asked Mr. Keeley why the decision was made not to have subbasins in the Arbuckle Simpson, and Mr. Keeley answered it complicated the issue and it goes along with the modeling; dealing with statistics means dealing with the average, and that simplifies the issue. There were general comments by the members.

**Chairman Nichols asked that Agenda Item 5.A. be taken under consideration prior to item 4.C.**

## 5. SPECIAL CONSIDERATION

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation, or proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

### A. Application for Temporary Permit to Use Groundwater No. 2007-561, Rural Water, Sewer, and Solid Waste Management District No. 1., Logan County.

1. Summary - Ms. Julie Cunningham stated to the members that the Logan County Rural Water, Sewer and Solid Waste Management District No. 1 has requested a permit to withdraw 763.7 acre-feet of groundwater per year for rural water supply from four wells located on 381.87 acres of dedicated land in Logan County. Concerning the four points of law, the District owns the right to the use the groundwater, the dedicated land is located over the Garber-Wellington basin; however no maximum annual yield has been established. The beneficial use was not protested, and regarding waste by depletion there will be full-time onsite personnel to address any problems that might arise. To the District's knowledge, there is no abandoned well on the property, and the permit will be conditioned that applicant properly plug test holes and a multi-purpose completion report submitted to the Board.

Ms. Cunningham stated there were protests based upon the concern on domestic wells. A hearing was conducted on September 22, 2008, but there was no evidence presented the groundwater would be depleted. Staff recommended approval of the proposed findings and order.

2. Discussion and presentation by parties. Mr. Frank Davis, representing the applicant spoke to the members saying the applicant is a large District with over 2,000 customers serving a fast-growing area between Edmond and Guthrie and additional water supply is needed. He said he enjoyed the presentation on the water law and even after serving many years in the Legislature, he still learned from the presentation. He asked the Board to approve the request.

Mr. Sevenoaks asked if Logan County had its own treatment plant; Mr. Davis responded it did not, but the water is chlorine treated at the source.

Mr. Smith referred the members to the Board packet information on the application and noted the findings of fact and the evidence regarding the four points, and the issues of waste that have gone through the hearing. He said then the protestants objections are reviewed, and he noted the concerns of depletion, but the record shows no evidence. The conclusions then state the requirements met as a matter of law: own the land, located over a basin, a beneficial use, no waste by depletion (10 issues addressed under 8.a. in the order) and none of those items as a matter of fact at the hearing are going to happen and therefore the hearing examiner correctly recommends there will be no waste by depletion. Regarding waste by pollution (9.) and nothing

that regards the pollution of a public water supply will be under the Board's jurisdiction, so any dispute goes to the Department of Environmental Quality. The Board looks at whether the well is constructed properly, if there are abandoned wells, and that is the scope of the hearing and the four points of law that culminates in this recommendation by staff that the Board approve the permit. Mr. Smith said that every single case that is brought before the Board has gone through this review and the order is the summary of the review. If the protestant does not have evidence they will be impacted, the permit will be issued, and that evidence will need to be substantial, and within these constraints, but that does not mean the recommendation will be to deny a permit because the applicant has the right to its equal proportionate share.

Mr. Davis added that the plugging of the test wells has been done, and the reports have been filed. Mr. Keeley asked how many hearing examiner the Board has, and Mr. Smith noted the personnel who are designated hearing examiners, and Jerry Barnett is the lead.

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

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

Mr. Fite moved to approve the proposed findings of fact, conclusions of law and Board order, and Mr. Sevenoaks seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

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

**4.C. Presentation and Discussion of Issues Regarding 2008 Annual Meeting of the Arkansas Oklahoma Arkansas River Compact Commission.**

Mr. Derek Smithee, Chief, Water Quality Division, addressed the members and stated that this matter is to update the members on the more high-profile aspects of the upcoming Arkansas-Oklahoma Arkansas River Compact Commission meeting. On Wednesday afternoon several committees will meet, and on Thursday, the full Commission will meet. Oklahoma Commissioners are Duane Smith, Gary Sherrer and Miles Tolbert, and Federal Chairman Dick Seybolt.

Mr. Smithee reviewed compact history, with the purpose of the compact to promote interstate comity--or equal allocation of water resources. The compact reviews water quality as well as water quantity issues, and Mr. Smithee focused on water quality issues regarding reduction of total phosphorous--the Illinois River watershed is listed on the state's 303(d) impaired waters list. With the aid of a PowerPoint presentation, Mr. Smithee described the process by both states agreed to a 40% reduction and reported that through the current monitoring methods, there is a strong downward trend in phosphorous, with the exception of Flint Creek. One cause is lower flow or fewer storm events, and increases in treatment efficiencies at the waste water treatment plants. He expressed his concern about the lack of funding for appropriate monitoring.

Ms. Julie Cunningham reviewed with the members a PowerPoint presentation illustrating the issues regarding water quantity and apportionment issues between the states. She said there

were issues brought up that will be discussed at the upcoming meeting. Oklahoma is entitled to develop and use 60% percent of the annual yield of the Arkansas River Subbasin, so crossing the state line we use 60%, and deliver 40%. The annual yield is a computation of the annual gross run off originating in the subbasin, and define the compact under natural conditions, including rainfall, lake evaporation, consumptive uses, and additions of water from other basins. The Commission charges the Engineering Committee to make the determinations of the annual gross runoff, which is an annual requirement. The 2006 report, for the first time ever, showed that Oklahoma was short on the delivery of 40% to Arkansas, and attributed the deficiency to the long-term drought cycles during that time, and to the depletion caused by evaporation losses in the reservoirs in the Compact area. At the September 2007 meeting, the Commissioners assigned to the Engineering Committee to review those findings. OWRB Chief Engineer Walid Maher, and Harold Springer who contracts with the Board on compact matters, looked specifically at the depletions and in appendix 1 the formula is stated including the factors that attempts to arrive at natural flows, which Ms. Cunningham explained. Looking at Kerr and Weber reservoirs only, there are two concerns: the annual yield as a computed runoff originating within the basin and Oklahoma was charged with 100% of evaporation loss (in the 2006 report) however, 98% of the basin originates outside the compact area. The equation has never been challenged, because there has not ever been a deficit; and navigation use has not been properly considered either. Ms. Cunningham reviewed other flow data collected and said that Oklahoma does not believe there was a shortage. The Engineering Committee will discuss and attempt to resolve the evaporation depletion dispute and attempt to clarify appendix 1 annual yield criteria.

Mr. Drummond asked the penalty for not meeting the 40% apportionment, and Mr. Maher responded it must be delivered the next year. Mr. Smith said that the issue regards water planning, and the water in eastern Oklahoma, Arkansas cannot claim a depletion issue and Oklahoma plan for a use of those reservoirs. To Oklahoma it seems obvious there is more evaporation loss than there is runoff in calculation. He believed it is fixable, and important that it be done so that it can be included in the Comprehensive Water Plan. He said that it is his experience that this will not be resolved and downstream states wait for the best situation and press that; he is not hopeful it will be resolved, but wants the matter brought to table--and he complimented Mr. Maher's work. Mr. Smith also commented about the water quality and nutrient issues have become difficult and he complimented Mr. Smithee.

Mr. Fite made comments about compact actions and the inability to make progress. He also made comments about the Cimarron River and Little River and drainage into Arkansas. Mr. Smith said that budget cuts make it difficult to address issues.

## **6. PRESENTATION OF AGENCY BUDGET REPORT.**

Mr. Monte Boyce, OWRB Comptroller, said to put the budget cuts into perspective, 2.5% cut of operations equals \$108,000, and 5% equals \$215,000, and includes REAP and ORWA. The affect on REAP would be a reduction of \$55,000 or \$110,000. State appropriated REAP is about \$2.2 million. Mr. Smith said the message to the Legislature is that the Financial Assistance Program does not take state appropriate dollars, and the budget cuts will not impact that program. All aspects of the program will be maintained.

Mr. Boyce said carryover was the result of permit fees but as the price of oil declines, so will permit fees. He said the report states that 42% of fiscal has been completed, expended and obligated 72% of the budget and collected 47%.

Mr. Drummond asked about the water plan collections and expenditures matching. Mr. Boyce said the final deposit was received in November, for a total of \$2.6 million. Financial Assistance Program share was transferred to draw down federal dollars, and currently the cash balance is \$2.1 million until August 2009.

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

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

**8. NEW BUSINESS**

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

There were no New Business items for the Board's consideration.

**9. ADJOURNMENT**

Chairman Nichols adjourn the regular meeting of the Oklahoma Water Resources Board at 12:07 p.m. on Tuesday, December 9, 2008.

**OKLAHOMA WATER RESOURCES BOARD**

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

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

\_\_\_\_\_/Absent\_\_\_\_\_  
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)