

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

January 13, 2009

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Rudy Herrmann at 9:30 a.m., on January 13, 2009, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The January meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on January 7, 2009, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Vice Chairman Herrmann noted Chairman Mark Nichols' and Mr. Farmer's absences, and then asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

Rudy Herrmann, Vice Chairman
Linda Lambert, Secretary
Ford Drummond
Ed Fite
Jack Keeley
Kenneth Knowles
Richard Sevenoaks

Board Members Absent

Mark Nichols, Chairman
Lonnie Farmer

Staff Members Present

Duane A. Smith, Executive 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
Kyle Arthur, Director of Planning

Others Present

Bruce Bailey, Tuttle, OK
Patti Mountford, Snyder, OK
Andrea Head, Snyder, OK
Brenda Wright, City of Mustang, OK
David Cockrell, City of Mustang, OK
Charles Swinton, BancFirst, Oklahoma City, OK
John McElroy, Snyder, OK
Pana McElroy, Snyder, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Josh McClintock, McClintock Associates, Oklahoma City, OK
Tom Liu, Bank of American, New York City, NY
Mike Mathis, Chesapeake, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Ken Senour, Guernsey, Oklahoma City, OK

C. APPROVAL OF MINUTES

Vice Chairman Herrmann stated the draft minutes of the December 9, 2008, Regular Meeting has been distributed. He stated he would accept a motion to approve the minutes. Mr. Fite moved to approve the minutes of the December 9, 2008, Regular Meeting, and Ms. Lambert seconded. Mr. Herrmann asked if there were any changes, and there were none.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane A. Smith, Executive Director, addressed the members and stated members that there is an agency performance review at the Oklahoma State Senate in the afternoon, and he presented to the members the PowerPoint he intended to make to the Senate Committee.

Mr. Smith said he wanted to give the Legislature some review, and put into perspective in a slightly differently way than had been done in the past when he had talked about the agency's visions, about water quality and water rights, and financial assistance, and now how those are tied together under the Comprehensive Water Plan. He distributed a list of Committee members, and also new Legislators, that the OWRB will be working with in the next Session. He said there is not a Natural Resources Committee in the House, and the agency will be working through the Agriculture, Wildlife, and Energy Committees. Mr. Smith said in the performance review, he would begin by talking about the comprehensive water plan, the recipe for success and the activities of the past year and how the agency is trying to tie everything that is done at the agency to the identifying reliable water supplies, tomorrow's water needs, and provide a 50-year water plan. He spoke in some detail of the components of the plan such as robust public participation, expert technical evaluation, implementable recommendations to provide reliable

water supplies for Oklahomans; the three-legged stool of water supply, water rights, infrastructure placed a top the rug of good water quality and the relationship of all of the programs at the Board to the plan. Also, technical studies and a pilot mapping program in Pontotoc County for meeting demands, the status of the Arbuckle Simpson aquifer study and the beginning of the Garber Wellington aquifer study, and water rights administration. Mr. Smith showed a map illustrating the groundwater and stream water rights permits and permit amendments issued in the past year, as well as provisional temporary permits, change of ownership, and reduction and cancellations; the status, as well as benefits of, the update to the agency's water rights administration system; and, update of the programs involving water and wastewater infrastructure financial assistance and the use of the Gross Production Tax funds the Legislature has appropriated to the OWRB--the use of \$3.6 million to obtain \$13 million for \$36 million in loans. He addressed the environmental benefits of funding water infrastructure projects as a major tool in the implementation of the OWCP; prioritization of the projects for funding and permits issued (through DEQ) for good drinking water and environmental protection; that without data and technology the result is limited ability to make sound decisions and therefore impacting the reliable supply for a community. Then, he explained, where cuts are taken is critical in decision-making, and ultimately may impact the gaging program with the US Geological Survey, reduction in data collection activities, reduction in upgrades of the agency computer and technology, have a tremendous impact to how we make decisions. Mr. Smith said sound science is a good foundation for good public policy, and he enumerated how 2.5% and 5.0% cuts will impact those categories in the budget that he described previously, as well as general agency operations. He concluded the presentation inviting the members to comment.

Ms. Lambert asked how water could be made a higher priority with the Legislature, and Mr. Smith responded, unfortunately, drought, or a crisis situation, because there are many matters under consideration during the Legislative Session.

Continuing with his report, Mr. Smith mentioned the recent news article regarding the dam safety program, and how Oklahoma's program is structured as compared to other states. He said the program has improved over the past years, and is at about 80% but there is a plan to get to 100%, with the hiring of Walid Maher as the agency's Chief Engineer.

Mr. Smith said he met with David Engle with the Oklahoma State University Department of Agriculture regarding water research and discussing a contract for demand projections for supply and demand in the agriculture industry for the Comprehensive Water Plan. He said the agriculture demand is the most difficult for the OWRB, and he feared that as the plan develops there would be potentially agriculture groups that would scrutinize and OSU's expertise will assist in that effort. He described the different activities currently going on in the department and the potential focus it can provide for the Comprehensive Water Plan.

Mr. Smith said he was invited to speak about the Comprehensive Water Plan to a meeting of the Southeast Regional Work Group, a group of southeast states, including in Georgia, Florida, Alabama, and North and South Carolina. The group is interested in establishing a group similar to the Western States Water Council, and working with the Corps of Engineers.

The Marginal Water Quality Committee and Aquifer Recharge Committee will be meeting on January 21st, following the first meetings earlier in December. Senator Paddack had authored those two bills, and now has other legislation to set up a committee to look at data for the state. Mr. Smith concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a proposed Order Approving Loan for Mustang Improvement Authority, Canadian County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Mustang Improvement Authority has made application for \$8,140,000.00 Clean Water State Revolving Fund loan. The loan will be to expand the existing wastewater treatment facility from 1.5 to 2.0 MGD, allowing the facility to expand to 3.0 MGS in the future. The loan will be funded through the State's Clean Water SRF loan program, and Mr. Freeman noted the provisions of the loan agreement. He said this would be Mustang's first loan with the Board, and an excellent addition to the loan portfolio. The water and sewer connections have increased over 50% in the last ten years, and the population has increased over five times since 1970, and now exceeds 13,000 citizens. The debt coverage ratio is in excess of 2.5-times. Staff recommended approval.

City Manager David Cockrell, Finance Director Brenda Rice, and Jon Wolfe, Financial Advisor were present in support of the loan application. Vice Chairman Herrmann commented about the economic benefits of the loan, and Ms. Lambert asked about the alternate mortgage on the city's water and sewer. Mr. Freeman explained that language regards an alternate mortgage on real property.

Mr. Knowles moved to approve the Clean Water SRF loan to the Mustang Improvement Authority, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: Farmer, Nichols

ABSENT: None

B. Presentation on Current Financial Market Conditions as Related to the Board's Financial Assistance Programs. Mr. Freeman stated the Board had requested an update on market conditions, and he had invited Ms. Anne Berger-Entrekin from the Board's Financial Advisory firm First Southwest Company to join him today in updating the Board on the financial condition of the market place and how it effects the OWRB, its debt issuance, and the current outstanding debt issuance. Mr. Charlie Swinton of BancFirst, Trustee Bank, and Mr. Tom Liu with Bank of America were also in attendance. Mr. Chris Cochran of Capitol West, the Board's remarketing agent and underwriter, was unable to attend.

Mr. Smith interjected regarding the Mustang Improvement Authority loan, Mustang is a member of COWRA--Central Oklahoma Water Resources--and is working with other central Oklahoma communities looking at moving water from southeast Oklahoma here, but are not taking water from the Arbuckle Simpson Aquifer.

Mr. Freeman proceeded with his report distributing a printed report of the PowerPoint presentation he and Ms. Entrekin would be presenting. He stated that as the Board is aware, there have recently been dramatic changes in the financial markets and unfortunately, the Board has been affected. Fannie Mae and Freddie Mack have been placed under U.S. Government conservatorship, something that was unheard of in the late 1978's, AIG is now 80% controlled by the US Government, other major investment banking firms have closed. The actual value of the dollar in a money market fund has gone below a dollar, and the US Treasury has been willing to accept virtually 0.0% interest rate in the primary market. In September, the money market fund withdrawals have affected the OWRB and its remarketing making institutional investors

uninterested in what the OWRB had to offer. He said he would review with the Board today and discuss variable programs such as the Board's, a look at the market as a whole, and how the "big picture" affects the Board, how it affects the borrowers, and how the Board will address these issues as it goes into the market place over the next few months.

Ms. Entrekin visited with the members regarding variable rate bond market updates, and discussed such matters as the general economic fear among investors over the past months resulting in an higher interest rates increased for variable rate instruments, and that seasonal spikes have contributed to pressure, but that the market mechanisms performed as expected and some instruments and rating classes faired better than others depending upon the strength of their credit. Mr. Freeman updated the members on the recent transaction with variable rate bonds remarketing; in August the bonds had been remarketed at 1.6% interest and in September remarketed the bonds at 3.5% with the Grand River Dam Authority, and the next remarketing will be mid-February. He has been in conversation with Bank of Oklahoma, the Board's remarketing agent for its '95, '97 and '99 variable bonds, and learned there is virtually no institutional interest in 6-month paper, but they have is a large portfolio of local retail investors that would be interested, and there is interest in 90-day paper by institutional investors. He said he visited with Chris Cochran at Capitol West Securities and remarketing agent for the '99, 2001, and 2003 variable rate bonds, who indicated that two mutual funds would be potentially interested in 6-months but at a higher interest rate. He added the Board does have the ability to go to a 3-month/90-day paper in that program, and also could convert the bonds to fixed rate if needed. Mr. Freeman reviewed with the Board the historical variable rates for OWRB bonds as illustrated on a chart by the Average Variable Rate and Municipal Market Data from September '05 through September '08. He noted that the average rate on the bonds had been just over 3.5% in September, and the rate is actually where the average has been.

Ms. Entrekin spoke of the cost of liquidity: reduction in liquidity providers due to mergers, acquisitions, and banks that have voluntarily decided to no longer be a part of that business. The reduction has resulted in an increase in standards, higher fees, and that a standby bond purchasing agreement was more like a letter of credit, reflecting higher risk. Mr. Drummond asked if rating agencies were being tougher, and Ms. Entrekin said the agencies have become much more focused on all aspects of the municipal bond program, i.e., what is being done on a day-to-day basis in managing the program, and how variable rate debt is being managed, etc. Mr. Freeman said the Board has two liquidity facilities related to the State Loan Program: one is with Bank of America ('95 and 2003 issues) that has provided liquidity for \$46.3 million of the bonds; an evergreen facility that rolls in discretion of either the Board or the bank to get out of the liquidity facility with advance notice. The fee has increased to 7.5 basis points, and he looked to roll more into the State Street liquidity facility, where the Board has its '94, '97, '99 and 2001 bonds with \$86.9 million bonds. He said he had received phone calls about making changes with State Street agreement that concerned him because of the market and liquidity facility and what might happen if Standard and Poor's decided to pull its short term rating on the Board's bonds. He has been in meetings with State Street bank and their counsel in Chicago are considering the request at its Credit Committee this week. He said he was told that the requested changes were in line with what was happening in the market.

Ms. Entrekin discussed with the members conditions of the long term market – yields are higher, retail is extremely important, the significant consolidation of investment banks resulting in less of a tendency for those firms to underwrite bonds, and remaining firms having less capitol to utilize. Mr. Sevenoaks asked if there was a way to forecast what the retail demand is before

going to market? Ms. Entrekin said there is not a way to forecast specifically, but underwriting teams need to be much more focused on what the retail demand will be, and make sure to select strong retail-oriented firms. She illustrated the interest rate history from January 1999-January 2009 as according to the Securities Industry and Financial Markets Association, the MMD spread of a 30-year 'A' versus 'AAA', the change in interest rates during the fall/winter of 2008, and the change in interest rates during 2009. She said that the rates have declined significantly widening in credit spreads between A and AAA, and the impact to the program's overall transaction results in a higher yield. She said she is happy to report that in the first full week of 2009, interest rates have dropped. She discussed the long-term bond issuance history as compared to the period of January 2007- December 2008, the recent market comparable, bond issuers downgrades and rating agencies' differences in rating criteria. She said the market had completely shut down two weeks in September '08 but there has been some activity in the past weeks, and it is anticipated several billions of dollars that will try to access the capitol market in the next few weeks. Mr. Sevenoaks asked if there would be enough demand, and Ms. Entrekin answered it is being watched with great interest, and for strong credit, such as the Board, there should not be a problem in accessing the market. Mr. Drummond asked if the Board's bonds will still be rated AAA when they go to market, and she answered they would.

Mr. Freeman concluded the presentation with the discussion of the impact on OWRB borrowers, as well as the Board's program and future issue in the Spring, the increased importance of credit profile, and the OWRB's response to the market changes. He said municipal bond insurance is not cost-effective any longer for borrowers, which will increase demand in borrowing from the Board as well as entities will have difficulty accessing the market because of credit requirements, and if they do, it will be costly. The Board has been inundated with calls about what may be in the Stimulus Package that will become available for Oklahoma communities. Mr. Sevenoaks asked if it were beneficial to the Board to increase the spread to help increase the revenue numbers and offset any potential cuts in the overall budget? Mr. Freeman said the FA division does not use appropriated dollars, and any increased revenues can only be spent on those activities that are authorized by the EPA. Mr. Smith said there is one program that is not EPA managed where an increase could be beneficial, but the staff has managed the spread based upon what another community could go to the market and borrow-- they will come to the OWRB as long as it is cheaper than what they can go to the marketplace and get themselves.

Mr. Freeman mentioned the increased costs of borrowing as a factor, which will have to be passed along to the borrower, as well as the increased cost of liquidity, and the bond sale process will take more time. He said the Board's credit profile is very important, and the rating agencies are looking at strength in revenues and ability to repay debt, underlying factors of the economic situation, diversity to offset costs, management of borrowers, water and wastewater projects will not go away, and financial disclosure is important. He announced the Board's Audit Committee would meet following the February Board meeting; currently, the staff is having difficulty in getting communities to complete audits, and in a timely manner, and is working with the State Auditor's office. Some communities are wanting to not do audits but "agreed upon procedures" which is not acceptable and the OWRB cannot lend to communities that are not performing audits. Ms. Lambert asked about language in the loan documents; Mr. Freeman said the documents are adequately written, ultimately, the community is in technical default, but he doesn't want to take legal action. Mr. Sevenoaks commented the Board needed to maintain its AAA rating at all costs, if it means getting tougher with the communities, and Mr. Freeman

agreed. Mr. Freeman update the members on the current variable rate program, that staff will continue monitoring borrowers, that in February request for proposals for underwriters will be released for a recommendation to the Board in April, and there will be a review of liquidity facility when the variable rate bonds are converted to fixed bonds. Vice Chairman Herrmann stated that there will not be any changes in management of the OWRB program, and Mr. Smith added that an essential piece of the AAA rating is a sustainable, dedicated, funding source for the staff in that division, and relative to the 2.5% and 5% budget cuts, this is one piece where state dollars are not dependent upon, and all costs will keep that staffing if it means drawing from other places.

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, Vice Chairman Herrmann asked for a motion.

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

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

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>
None			

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

1. Joint Funding Agreement with the U.S. Geological Survey for the project “Investigate the Water Resources of the Arbuckle-Simpson Aquifer special studies, South-Central Oklahoma”.
 2. Contract with the Oklahoma Floodplain Managers Association, Inc.
 3. Supplemental Agreement No. 2 with the U.S. Army Corps of Engineers, Tulsa District.
 4. Memorandum of Understanding with the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services.
 5. Reimbursement Memorandum of Agreement with the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services.
- E. Applications for Temporary Permits to Use Groundwater:
1. Roy T. & Rebecca Oliver, McClain County, #2008-533
 2. Brent L. Hajek, Major County, #2008-541
 3. Bennie D. & Nettie E. Racer, Kingfisher County, #2008-552
 4. James “Jim” Lamle, Alfalfa County, #2008-587
- F. Applications to Amend Temporary Permits to Use Groundwater:
None
- G. Applications for Regular Permits to Use Groundwater:
1. Robert & Robin Jemison, Johnston County, #2007-572
- H. Applications to Amend Regular Permits to Use Groundwater:
None
- I. Applications to Amend Prior Rights to Use Groundwater:
None
- J. Applications for Term Permits to Use Stream Water:
1. Hunt Land and Cattle Co., an Oklahoma Corporation, Tillman County, #2008-024
 2. Hunt Farms, L.L.C., Tillman County, #2008-027
- K. Forfeitures of Stream Water Rights Due to Nonuse, Recommended for Informal-Default Disposition:
1. A. A. Jeffrey, Marshall County, #1974-174
 2. B. G. McGahey, Marshall County, #1974-225
 3. Larry Williford, Marshall County, #1977-094
 4. Ruben E. Williford, Marshall County, #1979-046
 5. Tillford Clement, Marshall County, #1984-015
 6. Don Carter, Bryan County, #1994-027
 7. Don Carter, Bryan County, #1999-023
 8. Mrs. Glen White & Son, Comanche County, #1950-241

9. Damon & Georgia Doye, Comanche County, #1954-1276
10. Alex H. Seward, Cotton County, #1955-497
11. Edward Sims, Comanche County, #1964-416
12. Chester & Jerry Phillips, Cotton County, #1966-515
13. Kathryn Karlann Wilks/Bonifield Properties, Comanche County, #1966-655
14. Max Phillips, Cotton County, #1971-459
15. Clarence C. Bott, Comanche County, #1974-252
16. Paul or Dosia Jackson, Jr., Caddo County, #1976-021
17. G. Russell John, Comanche County, #1980-099
18. Dale B. Smith, D.O., Comanche County, 1998-030
19. William Earl Pardue, Tillman County, #1972-290
20. David F. Hooper, et al, Comanche County, #1983-067
21. John Roll, Tillman County, #1989-056
22. J. D. Laney, Tillman County, #1981-169
23. Rash Barrett, Jefferson County, #1971-517
24. Don B. Ellis, Kiowa County, #1964-590
25. Jeff Morris, Kiowa County, #1965-125
26. Don Aldon Perrin, Kiowa County, #1974-144
27. John Kessee, Kiowa County, #1997-011

L. Well Driller and Pump Installer Licensing:

1.	New Licenses,
Accompanying Operator Certificates and Activities:	
a. Licensee: Brad Sholl	DPC-0729
1. Operator: Brad Sholl	OP-1654
Activities: Pump installation	
b. Licensee: Corrpro Companies, Inc.	DPC-0731
1. Operator: Michael Ridgeway	OP-1662
Activities: Groundwater wells, test holes and observation wells	
c. Licensee: Martin Marietta Materials	DPC-0733
1. Operator: Dustin Dane Heder	OP-1657
Activities: Monitoring wells and geotechnical borings	
d. Licensee: W.E. Pender & Sons, Inc.	DPC-0735
1. Operator: Ernest Pender	OP-1659
Activities: Groundwater wells, test holes and observation wells	
Monitoring wells and geotechnical borings	
Pump installation	
2. Operator: Bruce Burdett	OP-1660
Activities: Groundwater wells, test holes and observation wells	
Pump installation	
e. Licensee: Palmerton & Parrish, Inc.	DPC-0737
1. Operator: Shane Rader	OP-1664
Activities: Monitoring wells and geotechnical borings	
2. Operator: Jesse J. Buttram	OP-1665
Activities: Monitoring wells and geotechnical borings	
3. Operator: Matt Robison	OP-1666

2. New Operators for Existing Licenses:

- a. Licensee: Environmental Loop Service DPC-0257
 - 1. Operator: Jeremy Garrison OP-1655
 - Activities: Groundwater wells, test holes and observation wells
 - Heat exchange wells

M. Dam and Reservoir Construction:

None

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

- 1. Oklahoma Department of Transportation, Roger Mills County, #FP-08-18

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the January 13, 2009 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. Vice Chairman Herrmann stated that in the interest of time, and in light of Mr. Smith's previous report, this item would be held in abeyance until the remainder of the agenda has been considered.

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. Cancellation of Stream Water Right No. 1971-371 of John Overstreet, Stream System 1-12, Jefferson County: and

B. Cancellation of Stream Water Right Nos. 1968-427 and 1976-139 of Marvin Moore, Stream System 1-13-1, Cotton County:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that the first two items, A. and B. are similar, and the water use reports established that they had not used water in quite some time. They regard use from Beaver Creek in Jefferson County and East Cache Creek in Cotton County in southwest Oklahoma. It was considered they both met the seven-year "use it or lose it" provision and a show cause hearing was conducted on November 6 where the parties of interest presented testimony requesting to retain the water right. The evidence was taken into consideration; however, the water had not been used in quite some time. Item 5.A. regards a 1971 permit and ceased using water in 1989, and with item 5.B. the water had not used since 1987. Based upon the record, these two rights have been lost due to nonuse, and staff recommended approval of the administrative cancellation of item 5.A. and 5.B. Ms. Cunningham stated the Board could vote on both items in the same vote.

Mr. Drummond asked if there would be any prohibition against filing for a new permit, and Ms. Cunningham answered there would not.

2. Discussion and presentation by parties. There was no discussion.

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. Drummond moved to approve the administrative cancellations of both item 5.A. and 5.B., and Ms. Lambert seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Farmer, Nichols

Vice Chairman Herrmann asked Ms. Cunningham to present the facts of the following three cases together because the applicant is the same; however, each permit will be voted on separately.

C. Application for Regular Permit to Use Groundwater No. 2008-505, Johnny R., Dana D. and Meagan B. McElroy, Tillman County:

1. Summary (Items 5.C., 5.D., 5.E) – Ms. Julie Cunningham said all three items are applications for regular permits to use groundwater by Mr. Johnny and Dana McElroy, and item 5.C. includes Meagan McElroy. Application 5.C., #2008-505 is for 120 acre-feet of groundwater and 160 acres of land dedicated and six wells with a maximum total of 600 gpm; application 5.D., #2008-507 is for 160 acre-feet of groundwater and 160 acres of land dedicated and 14 wells with a maximum total of 600 gpm; and application 5.E, #2008-508 is for 160 acre-feet of groundwater overlying 160 acres of land and 20 wells with a maximum total of 800 gpm, and all the applications are for irrigation. There were several protests on each application, and a joint hearing was held to take testimony on each. The main consideration was withdrawal of water being detrimental to domestic use wells in the area.

Ms. Cunningham discussed the differences in each application. In 5.C., 2008-505, in Section 24 on the map, Mr. McElroy reported the three existing wells produce a maximum of approximately 75 gpm each. Regarding the four points of law, the applicant does own the land; it overlies the Tillman Terrace basin that has an equal proportionate share of one-acre foot per acre as established by the Board in 1978. The proposed use is irrigation of cotton and possibly other crops, and a flood irrigation system is already in place and the applicant has testified he

will follow the requirements for Best Management Practices of the Natural Resources Conservation Service (NRCS), and testimony indicated a need for 600 gpm. Regarding the issue of waste, no excessive losses of fresh groundwater will occur and monitoring for loss will occur daily. Regarding well spacing, no evidence was presented that any existing wells in use are within the 1320 ft and if wells do exist, that rule will apply. Regarding waste by pollution, it appears no waste will result of the construction of the wells and will be required to meet the OWRB well construction requirements and reporting requirements, and will also be required to comply with the ODAFF rules on runoff, pesticide control and fertilizer and groundwater protection. Staff recommended approval of the application 2008-505 and terms of the proposed order.

2. Discussion and presentation by parties - Representing the applicant was Mr. Jim Barnett, and there were no protestants in attendance. The applicant was present. Mr. Barnett asked that the permit applications be considered individually because there were different parties involved and different issues in each application. Vice Chairman Herrmann answered the Board would vote on each application separately, but would hear the presentation because of being related in terms of application. Mr. Barnett stated he had no problem with staff recommendation. Ms. Cunningham named the protestants to the application 2008-505.

A protestant to another of the applications asked to present a letter to the Board from V.A. and Sandra McKinney who due to illness were not able to attend the meeting today. Mr. Couch stated the letter is not in the nature of evidence but in the nature of presentation of the proposed findings to the Board and to the extent it addresses that, it is acceptable. Ms. Cunningham read the letter that stated their opposition to the application to use groundwater 2008-505, and requested (based upon conversation with the hearing examiner at the hearing) an opportunity to discuss applying for a rural water system.

Regarding application 2008-507, Ms. Cunningham said there was evidence presented that the wells could produce up to 200 gpm. Regarding the four points of law, ownership was not contested; the land overlies the Tillman Terrace basin at one acre-foot per acre. Regarding beneficial use, a center pivot irrigation system will be installed, applicable NRCS requirements on BMTs, testimony indicated approximately 600 gpm is needed and he will not drill more wells than is necessary to accomplish that. Waste by depletion was not an issue, and the proposed wells sites met the 1320 feet well spacing requirements for all but one: protestant LaDonna Dismore owned and is using a domestic well located within the 1320 of the applicant's two northernmost well locations in Section 26. The applicant presented testimony the saturated thickness decreases toward the south; however, the hearing examiner found the applicant did not prove by substantial competent evidence that the amount of groundwater available outside the 1320 was insufficient to meet the gpm, and well spacing requirement will stand in this instance. Staff proposed denial of those two well locations within the 1320. Regarding waste by pollution, the applicant testified there is no knowledge of abandoned wells. Staff recommended approval of the proposed findings and terms of the order, up to 14 wells with conditions limiting pumping to 600 gpm and requiring the wells meet the 1320 spacing requirement.

Mr. Barnett said there was no objection to staff recommendation. There were no other protestants in attendance.

Regarding application #2008-508, Ms. Cunningham stated the applicant is requesting 20 wells to produce a total of 800 gpm for irrigation. Regarding the four points of law, the

applicant owns the land dedicated and overlies the Tillman Terrace, and is proposing to irrigate primarily Bermuda, possibly cotton, etc., and proposing they may install a center pivot, drip irrigation or the furrow system. Applicant has stated the number of wells drilled will be curtailed at the point that achieves 800 gpm, and will agree to a capacity condition in the permit.

Regarding waste, several protestants contended the applicant is causing waste by depletion. The farm is leased to a tenant for cotton production and the applicant has stated he will inspect regularly and make repairs necessary; there was no evidence presented or contention there were wells within the 1320 spacing requirement, and if any wells do exist, that requirement will be upheld. Regarding waste by pollution, one well has been drilled and it appears that waste will not occur as a result of construction of additional wells; the applicant will be required to meet regulations of the ODAFF and OWRB. Staff recommends approval of the application as subject to terms specified in the order with up to 20 wells limiting withdrawal rate to 800 gpm and that all wells meet the 1320 spacing requirement.

Mr. Barnett stated he found the staff recommendation to be acceptable. He asked the Board, for the record, to consider the applications now before the Board (#2008-505, #2008-507) without the possibility of protestants bringing in issues the protestants are concerned about on this order (#2008-508) that does not concern the other applications.

Vice Chairman Herrmann asked if any protestant wished to address the Board. Ms. Andrea Head, resident of Section 30 of Tillman County, said she owned 10 acres there where her home is located and her main concern is that if the applicant drills 20 wells, she will not have domestic water, her only source of water as rural water is not available. She wanted to be able to spend time with her children and not be hauling water. She questioned whether there had been adequate testing to determine that there is enough water to give the applicant the right to take her water. She said she only uses her water for household purposes and she pleaded with the Board to take people such as herself into consideration.

Ms. Patti Mountford, spoke to the Board. She is a former resident of the area where the applicant has made application for his water right, but she now lives in Snyder; Ms. Head is her daughter. Ms. Mountford talked about conversations with well drillers in the area and their opinion about what wells can produce, she asked the Board to consider the 1974 hydrologic study that indicated the area would be out of water in ten years, if used at the rate calculated at that time; however, the Boveivel stopped production for many years, and she asked the Board to consider the report. She said she was told the water became salty because the level was low; she mentioned the attendees at the hearing at Lawton did not all receive notice of the Board meeting today; there are five capped oil wells in the area which was given as evidence at the hearing and that sand and oil may get into the lines. Ms. Mountford said she was not there to say the applicant did not have a right to the water, but she asked the Board to look at the evidence about the excessive number of wells that have been requested. She added that the hearing examiner at the hearing advised her that the recourse if the permits are approved and water is not available to the neighbors, is to sue the applicant and she felt that would be too late if there is not water.

Mr. Bruce Bailey addressed the members -- and Mr. Barnett objected the record did not recognize Mr. Bailey as a party to this matter. Mr. Couch stated the proposed findings list the persons that the hearing examiner is proposing as party to the case; that name does not appear in any of the three orders, and he was unaware of what the request might be from Mr. Bailey. Mr. Bailey said he is present today to represent his father, and that his father was not made aware of the permit. Mr. Couch said that if it is an issue of not being a protestant, a written request for reconsideration, if the Board takes action, might be appropriate. Mr. Bailey asked to read an

objection, from the party who owns land adjacent, that the landowner doesn't live in the county and was unable to read the newspaper [notice], and was only recently aware of the matter. Mr. Couch stated that matters regarding notice should be presented in writing and a reconsideration request for the Board; whatever is being presented was not presented to the hearing examiner and summarized here is out of order and inappropriate for the Board to consider. Vice Chairman Herrmann stated with the advice by the General Counsel, he would not allow any statements by Mr. Bailey. Mr. Couch stated he could not provide legal advice, but would note to the Board that there is possible reconsideration.

Ms. Head asked if all parties that have wells within 1320 feet were not notified is that the parties with recourse due to not being properly notified? She said Mr. Bailey had wells within the 1320 but wasn't notified. Ms. Cunningham said the applicant submits an affidavit of who was notified and Mr. Bailey's name is on the list. Mr. Bailey said there are two Bruce Baileys-- III, and Jr. he did receive notification, but his father did not. There was some discussion between the members and staff about the notification in this matter, and Mr. Couch reviewed the rules for notification. Mr. Drummond asked about the maximum number of wells, but that only the number of wells sufficient to obtain the 800 gpm would be drilled, and Ms. Cunningham said there were test wells drilled and one had low pumpage. Ms. Mountford informed the members about what was said at the hearing regarding the number of wells, and a request for metering. Ms. Cunningham and Mr. Couch responded to the matter of metering that is found in the statute.

Mr. Barnett responded commenting on two points: Mr. McElroy put in writing that irrigation wells are expensive and he would not drill more well than are necessary for obtaining the 800 wells, a domestic well had low capacity, but no irrigation wells had been drilled so it is unknown what can be pumped. Secondly, the Tillman Terrace was the first groundwater basin ever studied and had been declared a critical groundwater basin, and there was an actual shortage of water at that time. The regular permits were then issued for one acre foot per acre of land, and since that time the terrace has actually recovered, and the ten year update (2002) levels were up and in fact better than in 1960s--a classic example of how the current groundwater law works very well, exactly as it is intended, and it is not accurate to say the water levels have dropped. The bottom line is, Mr. Barnett said, that his clients are asking for no more or no less than their ownership interest and equal proportionate share of the aquifer so that it can be placed to beneficial use which is irrigation. He asked the Board to approve the application.

Mr. Sevenoaks asked about sending out notification. Mr. Barnett said normally it would be through his office, however, he did not represent the McElroys at the hearing but engaged his services for the purposes of the meeting today. Mr. Keeley asked the saturated depth of the wells, expressing concern the number of wells for a small amount of water. Mr. Barnett and Mr. McElroy responded that it is a very shallow aquifer, 30-50 feet total depth and 20-50 feet saturated thickness.

Board Vote on Each Application:

Ms. Cunningham reviewed the three applications and stated staff recommended approval of each application. Vice Chairman Herrmann said he would entertain a motion for the Board.

5.C. Application for Regular Permit to Use Groundwater No. 2008-505, Johnny R., Dana D. and Meagan B. McElroy, Tillman County: Section 24 of Tillman County, 120 acre-feet of groundwater and nine wells.

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.

Ms. Lambert moved to approve staff recommendation for regular groundwater permit no. 2008-505, and Mr. Drummond seconded.

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

5. D. Application for Regular Permit to Use Groundwater No. 2008-507 Johnny R. and Dana D. McElroy, Tillman County: Section 26, 160 acre-feet of groundwater, and fourteen wells limiting pumping to 600 gallons per minute, requiring wells meet the spacing requirement.

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. Drummond moved to approve staff recommendation for regular groundwater permit no. 2008-507, and Mr. Sevenoaks seconded.

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

5. E. Application for Regular Permit to Use Groundwater No. 2008-508, Johnny R. & Dana D. McElroy, Tillman County: Section 30, 160 acre-feet of groundwater, 20 wells and limiting pumping to 800 gallons per minute, requiring wells meet spacing requirement.

Mr. Smith commented about the number of wells issue, saying there are two different ways to apply: conduct test drilling and have a good idea where the wells will be, or if the applicant does not want to go to the expense, then they submit proposed well locations and most of the time the applicant applies for more wells that will actually be drilled because they don't know where the water will be. In the Board's history, there have been quite a few applications with a number of proposed locations, and not all of them have been drilled, and it's a "catch-22" both ways. He said proposed locations, in more sites than are proposed to be drilled, is not out of the ordinary. The rate of withdrawal is regulated, for instance, 600 gallons per minute, determining the number of wells drilled; the amount is the same whether there is one well or twenty wells.

Mr. Smith added that waste by depletion is evaluated two ways: an aquifer withdrawal--one acre-foot per acre--and secondly through well spacing, 1320 feet from any well. The applicant must comply with the well spacing no matter how many wells are drilled, and the entire conglomerate of wells--whether one or twenty--can only be 600 gallons per minute. Ms. Lambert said it's the volume, not the number of wells, and in this case its 800 gpm, from all of the wells, total.

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

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

Mr. Sevenoaks moved to approve staff recommendation. He said it is not a comfortable situation, the law is on the applicant's side and the Board is not here to make law, but to follow it. Mr. Keeley seconded the motion.

Mr. Fite said that where the indigestion is, is that the Board is trying to get at whether there are 20 wells, or ten or eight, how do we ensure 800 gallons per minute is not exceeded. Mr. Smith said field investigations can be conducted to verify permit conditions. Vice Chairman Herrmann asked what recourse the protestants have if there is an impact on their domestic use? Mr. Smith said that there are a couple of things that can be done to help; one is to contact the Oklahoma Rural Water Association to determine rural water alternatives that are available. Secondly, the OWRB field representative can measure the water levels so there is an accurate record of where the levels are. Regarding impact, if a complaint is filed the OWRB staff will investigate to see if the applicant is within the permit limit, and if he is, the OWRB cannot take any additional action. The permit allows the applicant to exercise its ownership interest on their land but does not allow damage (to neighbors), so if there is a property damage claim, that would go through the appropriate court channels. He said it is very important to understand that the groundwater does not guarantee people water, it doesn't protect quantity of water, and in fact the groundwater law contemplates that some areas are going to go dry, otherwise no water could be used. It is contemplated -- and this area is not particularly a good area for water -- that over a period of time and as an area is developed, the water is going to decline and some of those wells are going to go dry. What we do is to protect each landowner's right to take their proportional part if its available, and this is where the OWRB's job becomes difficult because there are good people that are only interested in their ability to have a reliable supply for their family, but our groundwater law does not protect it.

Mr. Keeley said its the thought of drilling 20 wells, and how do we avoid that perception? Mr. Smith said the other way is to apply for one well, and if its not good, come back and re-apply for another, and another, etc., but it won't ever be known where the water is in that piece [of land] until test drilling is conducted. Ms. Lambert reiterated its still 800 gallons, regardless the number of wells. Vice Chairman Herrmann said the total amount of water permitted is one acre foot per acre and the volume becomes the instantaneous rate. He said there is a motion and second on the table.

Ms. Lambert said, respecting the motion and second, is there a way to include assistance in monitoring or whatever can be done to help protect the landowner. Mr. Smith said the motion can include staff follow up.

Mr. Sevenoaks withdrew his motion, and Mr. Keeley withdrew the second. Ms. Lambert moved to approve the motion as amended that OWRB staff would follow up with the homeowners to ensure the homeowners' residential water supply is not adversely affected by virtue of this permit approval. Mr. Fite seconded. Vice Chairman Herrmann asked if there were any questions regarding the revised motion. There were none, and he called for the vote.

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

Ms. Mountford commented about the rural water district not having expanded into that area and expressed her appreciation if the Board would contact the district, and Mr. Smith assured her staff would contact the rural water district.

F. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for further consideration.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce, OWRB Comptroller, said the budget reports is through December 2008; one-half the fiscal year has been completed. He said the agency has completed and obligated 78% of the budget, and collected 54% of the budget. Regarding carryover, staff planned to purchase software and is working on two other items to spend that money by June 30.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

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

8. PRESENTATION OF FINAL PROPOSED AMENDMENTS TO PERMANENT RULES

Following discussion of the 2009 rulemaking process, staff will present the final proposals for the following chapters of the permanent rules. Public hearings for the proposals were held on January 6, 2009, and public comments have been taken into consideration. The proposals are not scheduled for action by the Board at this meeting. Consideration of adoption of the proposals to amend the rules as presented or as may be revised is scheduled for the February 10, 2009 Board meeting.

In the essence of time, Vice Chairman Herrmann asked Mr. Couch to distribute and review the rules packet. Mr. Couch explained the draft rules packet of information, including copies of the comment letters received. He said the Board may recall that last year there was an appellate court case indicating that staff cannot filter comments from the public about rules. He said, then, these are presented and before the Board, and there is a one month period for review, and there is no filtering. Vice Chairman Herrmann said the Board's assignment is to read and be familiar, no action at this meeting. Mr. Couch said following the public hearing required by the Administrative Procedure Act, there were a few changes, which he noted: Chapter 5 fees, beginning at page 11 of 50, comment was made. He said these rules reflect the HJR that "trumped" the Board's adopted rules last year doubling the fees, and these are the numbers. There was a maximum to apply only to agriculture and irrigation, and the comment was that it should apply to all uses, so that language has been changed accordingly. Page 15 of 50, Mr. Couch noted a change in the streamwater proposals, regarding new-numbered paragraph 4., making a determination of present and future need, the statute specifies the Board shall consider available streamwater and may consider groundwater sources; a comment there was that should be further limited or is outside the Board's authority, but no change about that general concept is

there. Previous language had said "all" sources available, and the OIPA was concerned an applicant would look at saltwater sources, and that is not the intent, so that change was made to say all streamwater and groundwater sources. Finally, he noted that he is highlighting changes made as a result of public comment, and on page 47 of 50, the remaining four pages, all underline, means all new proposed language and is a new concept in working with the Oklahoma Independent Petroleum Association to work in a streamlined process in the event an oil company wants to drill (in state owned or operated property) regarding a flood plain. He said he had been working with Ms. Burckhalter and she may wish to address the Board next month. He concluded his comments regarding changes due to public comment.

Mr. Smith said to the Board that rules are different than proposed orders. Proposed orders the Board wears a judge's hat and is not to talk to anyone outside about the facts of the case. Rules are the opposite, and he encouraged the members to talk to people and staff about any questions they may have.

There were no individual presentations by staff. Below are the chapters containing proposed amendments to the Board's rules:

- A. Proposed Amendments to Chapter 5 – Fees
- B. Proposed Amendments to Chapter 20 – Appropriation and Use of Stream Water
- C. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing
- D. Proposed Amendments to Chapter 50 – Financial Assistance
- E. Proposed Amendments to Chapter 55 – Development on State Owned or Operated Property Within Floodplains.

Vice Chairman Herrmann asked Mr. Arthur to report next month regarding Water Plan activities.

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.

10. ADJOURNMENT

Vice Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:07 p.m. on Tuesday, January 13, 2009.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Jess Mark Nichols, Chairman

_____/s/_____
Rudolf J. Herrmann, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Edward H. Fite

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/Absent_____
Richard Sevenoaks

_____/s/_____
F. Ford Drummond

ATTEST:

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