

OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

February 10, 2009

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Mark Nichols at 9:30 a.m., on February 10, 2009, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The February meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on February 3, 2009, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Mark 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

Board Members Absent

Richard Sevenoaks

Staff Members Present

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

Others Present

Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utilities Providers,
Oklahoma City, OK
Lynn Dobbs, Oklahoma
Stephen Summerall, Mooreland, OK
Dick Seybolt, Grand Lake Public Works Authority, Monkey Island, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Eileen Hensley, Mooreland, OK
Barbara Summerall, Mooreland, OK
Richard Burrow, Mooreland, OK
Wayne Minyard, Mooreland, OK
Stanely Page, Okmulgee County Rural Water District #5, Henryetta, OK
B.J. Mathis, Okmulgee County Rural Water District #5, Henryetta, OK
Mike Mathis, Chesapeake Energy, Oklahoma City, OK
Josh McClintock, McClintock Associates, Oklahoma City, OK
Tommy Puckett, Okmulgee County Rural Water District #5, Dustin, OK

C. APPROVAL OF MINUTES

Chairman Nichols stated the draft minutes of the January 13, 2009, Regular Meeting had been distributed. He stated he would accept a motion to approve the minutes. Ms. Lambert asked for an amendment regarding a motion on item 5.E., regular permit to use groundwater no. 2008-508, Johnny R. & Dana D. McElroy, Tillman County. Ms. Lambert asked that the following language be added, following the word, “homeowners” and before “Mr. Fite seconded.” Inserting, “...to ensure the homeowner's residential water supply is not adversely affected by virtue of this permit approval.”

Mr. Fite moved to approve the minutes as amended, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: Nichols

ABSENT: Sevenoaks

D. EXECUTIVE DIRECTOR’S REPORT

Mr. Duane A. Smith, Executive Director, addressed the members and stated the Legislative session began on February 2, and Mr. Melton and Mr. McClintock have prepared reports, which should be presented at the end of the meeting as there are about 20 bills at this point to discuss. Mr. Smith discussed the budget cuts as presented by the Governor in his “State of the State” report. Mr. Smith said there is a projected 300-400 million to one-billion dollar state shortfall, and the Environmental agencies take the largest cut in state appropriated dollars percentage-wise. Mr. Smith distributed a packet of information from the Governor’s budget document that discussed the OWRB and the ODEQ; the OWRB state appropriated dollar cut is

25.3% putting the agency on the “big hit” list according to the Tulsa World. He explained the REAP account grants are not impacted, 5% cut from the \$4.6 state appropriation, and \$905,000 in additional fees, leaving the agency with the typical 5% cut plus 10% cut in travel expenses. Looking at the fees, in FY 2008, the agency brought in \$418,000 in fees, so for an additional \$905,000 the fees would have to be raised to total \$1.3 million. He said that generally an across-the-board fee increase would be about 310% for each fee: the application fee for a minimum water use permit is \$190 and \$3,000 for the maximum use, making that increase to \$570 for the minimum and \$9,000 for a maximum; provisional temporary used by oil companies is now \$150 going to \$450; well driller’s licensing application is \$7-9,000.00, which would triple. From a policy standpoint the Governor’s position is that the people using the resource should also pay for its management, and conceptually there is a balance between state appropriated dollars and the individual that has the benefit of the permit or license that should pay, which is a shift in policy toward the person that is actually using the resource to pay for the management.

Ms. Lambert asked if the Legislature is to approve fee increases, and what is its response to the proposal? Mr. Smith said the Legislature spoke last year when the OWRB proposed a fee increase, and it was reduced by half (approved in rule by the Board today) and fee increases are not very popular, but it’s a policy discussion of how much should citizens pay that are getting permits that are getting licenses versus the state subsidy, and the state’s interest in good water management. Mr. Smith said he didn’t see the message that the state doesn’t care about the environment, but a policy discussion that needs to be made with the Legislature. He advised that it is too late for permanent rule making, it would have to be done through emergency rule making, so it would not be possible to increase rules this year. He said on the other side, if the cuts occur and there is no fee increase, that would mean several months of furlough for the employees. He said he felt the 5% is more of a real possibility.

Mr. Smith distributed the agency’s new annual report. He announced the two water committees created through legislation by Senator Paddock—Recharge Committee and Marginal Water Quality Committee—have met twice. The Secretary of Interior has announced the OWRB is a finalist in a Department of Interior water conservation award for the recharge committee’s work and a special project by Kelly Hurt of the Chickasaw Nation is working on regarding recharge.

Mr. Smith updated the members on recent meetings he had attended. He met with the Oklahoma Farm Bureau Board of Directors and had a good discussion on the water plan and how the agriculture community would be involved in water supply and demand. He and Mr. Arthur will be traveling to Oklahoma State University to visit with Dr. Dave Engle and the agriculture staff to discuss development of an agriculture work group to assist in evaluating supply demand for agriculture. He said he has been met with the new officials of Martin Marietta and toured the facility, as well the Chickasaw Nation, and the CPASA work group to discuss monitoring. Part of the agreement being develop is to include the pit water pumpage in the allocation for groundwater. Previously, pit water has been excluded and discussions include now that water will be included in the permitted pumpage, as well as additional water in the streams and springs in the area to monitor impacts to those, and also to not use Mill Creek except during high flows. He said in the zeal to “ratchet back” Meridian Aggregates’ supply of water and to get off the groundwater so as not to impact the streams and springs, they used Mill Creek and impacted that stream, and he is disappointed in the outcome by having lost the overall goal of not only providing water but protecting the stream. But, he said he is very pleased with the work group

and Martin Marietta, but now the situation is in drought conditions. Mr. Herrmann asked about the status of the lawsuit, and work with the Mining Commission. Mr. Smith said the discussions with the workgroup are an effort to settle the lawsuit, and the Aggregate Association is willing to let Martin Marietta handle this case and then evaluate, although Mr. Smith said this will be a footprint and a very important piece in the resolution is to make sure the Ada, the Rural Water Districts, the farmers, the landowners, the industry are all treated the same way.

Mr. Smith said the final report is being completed on the Arbuckle Simpson study, management scenarios are being developed and it is clear now that if two acre-feet per acre had been issued as the original study allocated, that is more water than the aquifer can sustain, and the streams and springs would definitely be impacted. He said it is fairly complicated, but he believed it can be worked through and reach an solution that people can have water to use and develop and grow and at the same time be protective—those are not mutually exclusive events.

The EPA Groundwater Summit was February 4-5 in Dallas and Mr. Smith made a presentation. A number of programs at EPA in groundwater are primarily focused on source water protection so if a city, or rural water district has a source of supply that is a water well, they can access grant monies and establish groundwater protection zones, and look at the area of contribution to a well and inventory potential pollution sources and then work with landowners to implement best management practices or other methods to protect the water supply well. EPA is not into water quantity permitting, although there is chatter in Washington, D.C. about a National Water Policy that integrates quality and quantity. Water quantity has typically been a state's right, a state perspective, but clearly water quantity affects water quality, particularly in terms of impacting habitat. He said Mr. Mike Fuhr, The Nature Conservancy, will make a presentation later in the meeting agenda about the water planning initiative.

Mr. Smith concluded his report by introducing two new employees of the Office of Secretary of Environment, Ms. Kara Williams and Ms. Amanda Stourk. Mr. Smith also introduced Mr. Dick Seybolt, special guest and former member of the OWRB. Mr. Seybolt is with the Grand Lake Public Works Authority, and also serves as the Federal Chairman of the Arkansas Oklahoma Arkansas River Compact Commission. He and Mr. Steve Garrett are present today on behalf of the GLPWA to receive the EPA Pices Award – a performance of innovation award. Mr. Smith read an introduction of the award winning criteria, and presented the award to Mr. Seybolt and Mr. Garrett. The project included a multi-phased project to serve Monkey Island with funds from both the Clean Water State Revolving Fund loan program and the non-SRF OWRB loan funds. The facility was constructed as a result of increased wastewater flows and conflicting land use issues which without remediation would ultimately render the existing treatment system unsuitable and potentially add pollution to Grand Lake. The total project costs were approximately \$3,835,300 of which \$3,500,000 was from the Clean Water SRF program. Mr. Smith said the project started with a Planning Assistance to States cost-share agreement between the Corps of Engineers and OWRB to look at the planning feasibility of the project, and is a shining example of an initial program of the PAS can come to this type of a project. He described the treatment facility components, including water use from the facility on the local golf course, reducing fertilizer use. Mr. Smith invited Mr. Seybolt to make comments to the Board regarding the project.

Mr. Drummond asked about the status of the Stimulus Package bill in Congress. Mr. Smith answered that Mr. Freeman has been participating in conference calls, and it looked like the wastewater infrastructure money will come through the SRF program, but other agencies

such as the Corps of Engineers, Bureau of Reclamation, Rural Development will receive, and it is unclear about the prioritization toward water projects. Some will be grants and some low interest loans but until the final bill is approved, it is difficult to say. He said he will be having meetings about how the different agencies will respond; Rural Development will be focused on small, non-ratable communities, the DEQ has a number of communities out of compliance that are financially strapped and need grant monies, there are other communities that are able to pay back and what combination that will take is unknown at this time. He said there will be funds available and staff is in close contact with the Oklahoma's Congressional Delegation; he said there will probably be money for implementation of the water plan, but not for the update of the plan.

2. FINANCIAL ASSISTANCE DIVISION

Consideration of and Possible Action on a Proposed Order Approving Loan for Mooreland Public Works Authority, Woodward County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a Drinking Water State Revolving Fund Loan request by Mooreland Public Works Authority in the amount of \$1,150,000.00 for the construction of a new 720,000 gpd ionic exchange water treatment plant. The project will also be to install water lines and refurbish the existing wells. Mr. Freeman noted provisions of the loan agreement. He said Mooreland is a good loan customer of the Board's and currently has two outstanding loans with the Board, with a principal balance of approximately \$419,000.00; the town's debt coverage ratio stands at approximately 1.32-times. Staff recommended approval of the loan request.

Mayor Richard Burrow, Ms. Eileen Hensley and Steven Summerall were present in support of the loan application.

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

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

Mr. Freeman reminded the members the Board's Ad Hoc Audit Committee will meet today immediately following the Board meeting.

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. Knowles seconded.

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

The following items were approved:

C. Consideration of Approval in Accordance with the Following Proposed Order and Proposal: Application for REAP Grant; and Statewide Water Development Revolving Fund Proposal. Recommended for Approval:

| | <u>REAP</u> | | | <u>Amount</u> |
|----|---|-------------------------------|---------------------------|---------------------------|
| | <u>Item No.</u> | <u>Application No.</u> | <u>Entity Name</u> | <u>Recommended</u> |
| | EODD | | | |
| 1. | FAP-04-0029-4 | | Rural Water District #5 | Okmulgee \$97,000.00 |
| 2. | Consideration of and Possible Action on FY 2010 Proposal for Use of the Statewide Water Development Revolving Fund. | | | |

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

1. Extension and Amendment Agreement with Oklahoma State University School of Geology for a no-cost extension to original agreement with Dr. James O. Puckett regarding the deep aquifer characterization study of the Arbuckle-Simpson aquifer.
2. Professional Services Agreement with Camp Dresser & McKee Inc. for Engineering and Technical Analyses in Support of the Oklahoma Comprehensive Water Plan Programmatic Work Plan and Related Services.

E. Applications for Temporary Permits to Use Groundwater:

1. Cary B. Davis, Cleveland County, #2008-540
2. D. H. Entz Living Trust, Caddo County, #2008-555

3. D. H. Entz Living Trust, Caddo County, #2008-556
4. D. H. Entz Living Trust, Caddo County, #2008-557
5. D. H. Entz Living Trust, Caddo County, #2008-561
6. D. H. Entz Living Trust, Caddo County, #2008-562
7. D. H. Entz Living Trust, Caddo County, #2008-563
8. D. H. Entz Living Trust, Caddo County, #2008-564
9. A F I Water Supply, L.L.C., Ottawa County, #2008-567
10. Bobby Joe Andrews, Caddo County, #2008-573
11. D. H. Entz Living Trust, Caddo County, #2008-577
12. D. H. Entz Living Trust, Caddo County, #2008-578
13. John & Lola Jean Lamle, Alfalfa County, #2008-588
14. Lavonne Kroeker, Major County, #2008-592

F. Applications to Amend Temporary Permits to Use Groundwater:

1. Mark Cook and Paul & Gracie Cook, Alfalfa County, #2006-594

G. Applications for Regular Permits to Use Groundwater:

1. Lyndell & Dana McCullough, Beckham County, #2008-566
2. Jeff & Jeri Slatten, Beaver County, #2008-569
3. Newport Farms, L.L.C., Cimarron County, #2008-575

H. Applications to Amend Regular Permits to Use Groundwater:

1. Comanche County Rural Water District No. 3, Cotton County, #1973-351A
2. Clyde D. & Betty Meschberger, Canadian County, #1976-767

I. Applications to Amend Prior Rights to Use Groundwater:

None

J. Applications for Term Permits to Use Stream Water:

None

K. Forfeitures of Stream Water rights Due to Nonuse Recommended for Informal-Default Disposition:

1. E. C. or Marilee Morgan, Caddo County, #1967-051
2. Joe & Eleanor Hawthorne, Comanche County, #1990-013
3. Horace G. Halsey, Cotton County, #1955-275
4. Robert Spurlock, Cotton County, #1964-266
5. R. A. Martin/Lee Moore, Cotton County, #1966-579
6. James O. Hardin, Jr., Cotton County, #1981-147
7. Samuel & Elaine Edwards/J. Kirk Schreiner, Tillman County, #1992-029
8. Mark Goodner, et al, Tillman County, #1949-020
9. L. E. Thurman, Beckham County, #1963-080
10. T. J. Allison/Scott Allison, Beckham County, #1963-139
11. L. W. Ballou, Roger Mills County, #1966-062
12. Paul or Bettie Scruggs, Jackson County, #1951-085

13. Clayton Henry & Helen Wright, Jackson County, #1951-121
14. Mrs. John Owen, Jackson County, #1964-171
15. Mrs. John Owen, Jackson County, #1979-119
16. Jack & Velma Smiley, Jackson County, #1964-402A
17. Kenneth Chapman, Jackson County, #1981-152
18. Ralph Gilliam, Jackson County, #1954-081
19. K. Ruth Hartley Estate/Emilee Kay Lynch, Jackson County, #1954-484
20. K. Ruth Hartley Estate/Emilee Kay Lynch, Jackson County, #1986-002
21. Randall J. Miller, Jackson County, 1981-010
22. Lena Doughten, Jackson County, #1980-102
23. Reuben James, Jackson County, #1996-034
24. Andy Wallace, Jackson County, #1992-005
25. Louis Speed, et al, Beckham County, #1950-153
26. Mrs. Forest H. Martin/Aldon Keith Martin, Love County, #1956-053
27. Mrs. Forest H. Martin/Aldon Keith Martin, Love County, #1964-757

L. Well Driller and Pump Installer Licensing:

| <u>1.</u> | <u>New Licenses,</u> |
|---|----------------------|
| <u>Accompanying Operator Certificates and Activities:</u> | |
| a. Licensee: CM Drilling | DPC-0739 |
| 1. Operator: Michael M. Moore | OP-1669 |
| Activities: Heat exchange wells | |
| 2. Operator: Brian Long | OP-1668 |
| Activities: Heat exchange wells | |
| 3. Operator: Richard Moore | OP-1667 |
| Activities: Heat exchange wells | |
| 4. Operator: William B. Atkins | OP-1666 |
| Activities: Heat exchange wells | |
| b. Licensee: Bailey Water Well Drilling, LLC | DPC-0741 |
| 1. Operator: Thomas P. Bailey | OP-1670 |
| Activities: Groundwater wells, test holes and observation wells | |
| Pump installation | |
| c. Licensee: T-N-T Well Service | DPC-0745 |
| Operator: Geoffrey Thomas | OP-1672 |
| Activities: Pump installation | |
| <u>2. New Operators for Existing Licenses:</u> | |
| a. Licensee: Venture Drilling | DPC-0215 |
| 1. Operator: Aarron Rector | OP-1665 |
| Activities: Groundwater wells, test holes and observation wells | |
| Monitoring wells and geotechnical borings | |
| Heat exchange wells | |

- M. Dam and Reservoir Construction:
 - 1. Niles, L.L.C., Canadian County, #DS-08-02
 - 2. St. Mary Land & Exploration Company, Atoka County, #DS-09-01

- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Oklahoma Department of Transportation, Kay County, #FP-08-19
 - 2. Oklahoma Department of Transportation, McClain County, #FP-08-20
 - 3. Oklahoma Department of Transportation, Tulsa County, #FP-02-25
 - 4. Oklahoma Department of Transportation, Tulsa County, #FP-05-10
 - 5. Oklahoma Department of Transportation, Ottawa County, #FP-06-27
 - 6. Oklahoma Department of Transportation, Oklahoma County, #FP-06-37

- O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the February 10, 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. Mr. Kyle Arthur, Director of Planning, addressed the members and spoke to them about the current activities regarding the technical studies side of the scope of work is now being finalized through the U.S. Army Corps of Engineers for 2009. He said the agency had received \$425,000 through three existing authorities—Southeast Study, Washita Study, and Planning Assistance to States—funds have been matched and development plans are now worked on in conjunction with the COE. The planning workshops are also being developed, under phase 3 of the public participation section of the water plan, three workshops will be held: June 4, August 13, and October 22, all held at the Metro Tech Springlake in Oklahoma City. During those meetings, there will be five meetings on five themes in the morning and five meetings on five themes in the afternoon; the OWRRI is developing a list from the RIM participants, to be approved by the same committee (OWRB, ODAFF, OSE, OWRRI), and participants will attend each workshop. He updated the members on the activities of the workgroups that are operating under the water plan, groups that are outside the typical technical studies but are a part of the technical evaluation, and in particular three of the groups are the Recharge Technical Workgroup, Marginal Quality Water Workgroup, and the OWRB Water Quality Division Trends Analysis Group.

Mr. Arthur also updated the members on the Conservation Grant program. He said the permanent rules will be considered later in the meeting today; emergency rules had been approved earlier. The OCWP funds dedicated \$35,000 to fund up to five projects or \$5,000 each for the water conservation grants. The deadline for applications is February 20. He said the Water Science Seminar is being planned and will be held hopefully in April, and will be covering basic water science and how to apply that to determining water availability. He also noted the kickoff of the Agriculture Demand Group that will begin February 11 at Oklahoma State University, Water Science Center, College of Agriculture.

Ms. Lambert and Mr. Herrmann complimented the OWRI on their conduct of the Regional Input Meetings and the final report recently distributed. The members and Mr. Arthur discussed the mechanics of the workshops and anticipated format and outcomes.

B. Presentation by The Nature Conservancy. Mr. Duane Smith stated he had visited with Mr. Fuhr, Executive Director of The Nature Conservancy, about water plan activities and thought it appropriate for Mr. Mike Fuhr to come and talk about what the TNC does and the issues it wants to have addressed in the OCWP. He said Mr. Rudy Herrmann is on the Board of both the OWRB and the TNC. Mr. Herrmann introduced Mr. Fuhr.

Mr. Fuhr addressed the members and spoke of the water issues that are important to him, as well as presenting a PowerPoint presentation on the mission and focus of TNC, an overview of the methodology of the organization, and along with other partners developed a decision support tool to help with decisions regarding water as it relates to ecological flows; one piece of the puzzle for decision makers.

Mr. Fuhr highlighted several important components -- habitat conservation, economic sustainability, instream flows, freshwater biodiversity relationships -- included in the development support tool known as ELOHA: Ecological Limits of Hydrologic Alteration. Key pieces of ELOHA are the ecological response curve, the schematic of the scientific process (hydrologic foundation, stream class, flow alteration, flow ecology relationships), and the social process (climate change, population growth, infrastructure upgrade and environmental flow target.) He referred those interested in the decision support tool to the website <http://conserveonline.org/workspaces/eloha>.

Mr. Ford asked how the ELOHA process is being integrated into the water plan process, and Mr. Fuhr answered there is overlap with the hydrologic foundation and possibly there is a way to use those in part or in form in each part of the water plan, in a desire not to duplicate state effort, state money, etc., so there is a huge opportunity there. Mr. John Rehring, CDM, responded that the workplan looks at what other states are doing and moving forward from there with stakeholder involvement to determine where we want to go. Mr. Fuhr said this can be done on a regional basis, and does not necessarily need to be done statewide, but could begin in those areas of the state that have more sensitivity, such as the Kiamichi area.

Mr. Smith commented said that the issue of environmental flows are coming up at the Regional Input Meetings, coming up from the people--how are the water quality allocations addressing this issue. He said one concern is the amount of available data, and in the light of 25% proposed budget cuts, stream gage data is critically important to the evaluation. But talking about environmental flows from a water plan standpoint, Mr. Smith said this is a discussion topic from a policy standpoint we can look at and make recommendations and how it is done is through robust public participation and expert technical evaluation. Different states do it different ways, and there are similarities and differences, but before implementation, all the water users have to have a seat at the table in that discussion. There were comments about Texas and dealing with the coastal areas. Mr. Smith said the water users groups are very concerned about instream flow, and the reason is that water permits and water quality permits and reliable supply to a water user they see that water set aside for environmental flows is a negative to their ability to take water and it's all a conceptual idea that if you provide for an instream flow you take away from the water user. He said he personally thinks that to totally ignore instream flow in the comprehensive water plan and to never look at the state's water quality allocations in terms

of providing some type of environmental flow benefit is going to be a loser in the long term. How it's done has to involve the water user group, rightfully so, how the process is done and data evaluated, recommendations and implementation all have to be there, but to assume because there is instream flow that's automatically negative, that is rhetoric for the discussion. Mr. Herrmann commented about the Edwards Aquifer (Texas) and there was no framework being implemented that ultimately led to a lawsuit and environmental reasons and protection of an endangered species that drove that process. Mr. Smith added a fact situation will cause change to occur when it's right for change, which has happened in a court situation. How we deal with it is with eyes wide open, no unintended consequences, everyone at the table and expert technical evaluation.

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

B. 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 report is the budget-to-actual report for the month ending January 31, 2009. He said that 58% of the fiscal year has been completed, expended and obligated 81% of the budget, and collected 63% of the budget. He said he keeps an eye on the collections category, the agency has \$1.1 million, which is a key indicator as to whether the federal dollars are being received. Mr. Herrmann asked about the cut backs at the state level and what may be jeopardized relative to the comprehensive water plan? Mr. Arthur responded that the cuts in appropriation do not impact the Gross Production Tax collections. Mr. Boyce added that there is flexibility to switch between water plan and financial assistance in addition, the collections have been faster so the money is in the bank. The GPT is difficult to forecast, the agency received \$2.6 million in the first 5 months of this fiscal year, but

with the drop in the price of oil it may take twice that amount of time, but for now, he felt comfortable with the amount the agency has received. Mr. Drummond asked how the agency is doing in regard to the receipt of federal funds; Mr. Boyce answered the bills for the federal funds have gone out through December and most have been collected and he felt confident. At this time of the year, he will review the programs that may have been anticipated but didn't "pan out" and add in any new ones that weren't expected, but now the budget is okay.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

There were Supplemental Agenda items for the Board's consideration. Chairman Nichols stated there are basically consent agenda items, and he said asked for comments, and if not, he would entertain a motion. There were no comments, discussion, or questions.

Mr. Fite moved to approve the Supplemental Agenda Items, and Mr. Herrmann seconded.

Mr. Smith commented about the agenda item regarding the well driller. He complimented Mr. Kent Wilkins, director of the program. He noted the agreed settlement and consent order is for Mr. Lynn Dobbs, a driller in southwest Oklahoma, and who is present. Mr. Dobbs has had some violations on water well drilling, and one of the things the Water Well Drillers Council has encouraged the Board to do is to be more proactive on finding problems, correcting problems, and in this particular case there were multiple examples of wells not being constructed properly with various causes for that, and Mr. Wilkins and his staff did a lot of investigation and spent a lot of time trying to assess this case. Last week Mr. Dobbs came to the Board, and has a consent order, which in essence, he will correct the problems and there will be a \$5,000 administrative fine and a number of provisions for probation and is a situation where the agency worked with the Driller's Association and the driller and came to a conclusion. There was no further discussion.

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

The following items were approved:

- A. Contracts and Agreements Recommended for Approval.
 - 1. Consideration of Third Amendment Agreement with the Office of the Secretary of the Environment for the Clean Water Act FY 05 §104(b) (3) Regional Monitoring and Assessment Program, CA# RM-832667-01.
- B. Well Driller and Pump Installer Licensing:

1. Agreed Settlement and Consent Order relating to Dobbs Water Well Service, license DPC-0723, Operator Lynn Dobbs, OP-1636, and Recommended for Approval.

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.

A. Proposed Amendments to Chapter 5 - Fees

1. Summary of final draft proposed rules - Mr. Dean Couch, General Counsel, stated to the members the tradition of rule making is to give notice and have a public hearing to receive comments from the public about proposals, make adjustments if staff believes from the comments those are warranted. The rules are presented during one monthly meeting not for action but for presentation, allowing a one-month time frame for the Board to review, which were presented at the January meeting. He said that has not changed from last month, but by chapter these are presented on the agenda for presentation and suggestion by staff. The first chapter regards fees, and simply reflect what the Legislature approved last year after the Board adopted a doubling of fees, the Legislature saw fit it should be 1.5-times of the previous amounts, and the proposal today simply reflects in the rule book what the Legislature has already done.

Mr. Smith added there are water well driller fees the Council has added.

2. Questions and Discussion by Board Members. Mr. Drummond asked if the 300% increase discussed earlier is based upon the new fees or the old fees, and Mr. Smith answered that is based upon the new fees.

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

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

Ms. Lambert moved to approve the proposals for Chapter 5 rules, and Mr. Herrmann seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Sevenoaks

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

1. Summary of final draft proposed rules - Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that Mr. Smith will comment on this chapter. Mr. Smith said that he would propose that these changes be withdrawn from consideration. He said there have been a number of comments stating the Board does not have statutory authority, this expands its statutory authority, and while he strongly disagrees with that legal opinion, staff

believes the Board does have statutory authority, and he wanted to work through these changes with these comments. He said basically, its regards present and future need for a stream water permit, saying the Board *may* consider all stream water and groundwater sources available to the applicant when determining present and future need for a stream water permit, and whether that proposed use is consistent with the Oklahoma Comprehensive Water Plan. He said staff clearly believes that is within the statutory authority and disagree very strongly with the comments that were received, but he wants to reach out and work through some of those differences.

The comments were from the Environmental Federation of Oklahoma, OG&E, the Oklahoma Municipal League, and basically they are consistent about statutory authority. Mr. Herrmann said he thought the rules reflected the statute, and Mr. Smith said it does, the statute says we may use reasonable information including groundwater availability as an alternative, and staff put that in a rule to spell it out, and so the feeling is that without the rule the statute provides ample authority to do that and so will work with the groups on the rule, and do not think that not doing rules keeps from doing something that wouldn't already be done, but only clarifies the statute.

There was no action by the Board.

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

1. Summary of final draft proposed rules - Julie Cunningham stated these proposals reflect statute changes from the previous year in House Bill 3135. The change is to increase the fine from \$500 to \$5,000, and also increases the amount that can be spent from the Indemnity Fund when there are violations and corrections are needed. Funds are used and then repaid and will be increased from \$5,000 to \$15,000. Ms. Cunningham stated the recommendations are supported by the Well Drillers' Advisory Council, and staff recommended approval.

2. Questions and Discussion by Board Members. There were no questions or discussion by the Board members.

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

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

Mr. Herrmann moved to approve the proposed changes to Chapter 35 rules, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Sevenoaks

D. Proposed Amendments to Chapter 50 – Financial Assistance

1. Summary of final draft proposed rules - Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the first proposal is an emergency rule for Category 3 for emergency grants to allow service to be extended to individuals if wells have gone bad and don't have water. The existing rule allowed for the creation of a rural water district, this just allows a rural water district in existence to extend service. Also, the changes regard the emergency grant program and restores language that was inadvertently left out regarding school districts. The additional proposal regards time frame, existing rules indicate approval by the Board for an emergency grant is for one year, but the change allows for

extraordinary circumstances and factors outside control to allow for time extension. Other changes include word changing regarding from minority and women-owned business enterprises to disadvantage business enterprise to be the same as EPA terminology, and greater flexibility for environmental requirements for loans from the Clean Water SRF to mirror federal regulations. The last change regards the Conservation Grant Program.

Kyle Arthur stated these rules were approved on an emergency basis in November, and makes them permanent. The definition of eligible products was expanded to be more reflective of the language that was included in the original statute, the language regarding the cap per project and total amount for the entire program for one year, as well as the ability to adjust the program total amount in the event the appropriation is not received, and clarification for reimbursement of funds.

2. Questions and Discussion by Board Members. There were no questions or discussion by Board members.

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

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

Mr. Drummond moved to approve the proposed amendments to Chapter 50 rules, and Mr. Fite seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Sevenoaks

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

1. Summary of final draft proposed rules - Ms. Cunningham said staff had been working with the Oklahoma Independent Petroleum Association about the permitting process across the state for the NFIP program. Each community and town within the program implement their own ordinances, rules and requirements regarding floodplains, and the OIPA approached the agency regarding streamlining the program statewide. She said the rules regard only state-owned properties that could be a template to be used on a statewide basis. Staff has been working with FEMA to establish criteria that could be applied. She said at this time staff is still in discussions with the OIPA regarding details and fulfilling requirements and is not ready to move forward. Ms. Angie Burckhalter is in attendance today. She recommended the proposals be withdrawn from today's consideration.

Ms. Lambert said she preferred the term "deferred" as the proposals are not being withdrawn from consideration forever. Ms. Cunningham said that is correct.

No action was taken by the Board.

1.D. Executive Director's Report, continued.

Chairman Nichols asked Mr. Smith to continue his report regarding Legislative matters. Mr. Mike Melton addressed the members and reviewed the distributed report regarding

legislation affecting the Board. Of particular interest are measures concerning the Arbuckle Simpson aquifer, the payment for Sardis Reservoir, data collection, and removal of the cap on the GPT REAP grants and Financial Assistance program.

Mr. Josh McClintock then reviewed with the members federal legislation as regards the proposed Stimulus package --which he said at this point no one really knows what will be in the final version. He said there had been a number of modifications and the Senate bill today will contain \$6.4 billion for the SRF program, but there is also funding for water through other areas such as Rural Development. The stimulus funding will be in addition to the normal appropriation process, which could contain water planning funding. He spoke of the upcoming meetings scheduled with members of the Oklahoma Congressional Delegation and their staff February 23-25. He said that this year Congressman Tom Cole is on the Appropriations Committee, Congressman Fallin is on the Authorizing Committee in the House, and Senator Inhofe is the ranking Republican on the Authorizing Committee in the Senate. He said he hoped that the \$6.5 million for the water plan that has been authorized will be appropriated in one sum, but so far it has been smaller amounts in different areas. He anticipated a return meeting in March and hoped to be able to get all the staff from the Delegation's offices to meet together.

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

Chairman Nichols adjourned the regular meeting of the Oklahoma Water Resources Board at 11:32 a.m. on Tuesday, February 10, 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

_____/s/_____
Richard Sevenoaks

_____/s/_____
F. Ford Drummond

ATTEST:

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