

# OKLAHOMA WATER RESOURCES BOARD

## OFFICIAL MINUTES

September 14, 2010

### 1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on September 14, 2010, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The 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 September 7, 2010, at 4:45 p.m. at the Oklahoma Water Resources Board's offices.

#### A. Invocation

Chairman Herrmann asked for a moment of silence in recognition of the events in New York City and elsewhere on September 11, 2001, and to keep those affected in our thoughts and prayers. He encouraged each person to silently think about ways we can maintain a spirit of peace and harmony as we move forward into the years ahead.

#### B. Roll Call

##### **Board Members Present**

Rudy Herrmann, Chairman  
Mark Nichols, Vice Chairman  
Linda Lambert, Secretary  
Ford Drummond  
Marilyn Feaver  
Ed Fite  
Kenneth Knowles  
Richard Sevenoaks  
Joe Taron

##### **Board Members Absent**

None

##### **Staff Members Present**

J.D. Strong, Interim Executive Director  
Dean Couch, General Counsel  
Joe Freeman, Chief, Financial Assistance Division  
Julie Cunningham, Chief, Planning and Management Division  
Derek Smithee, Chief, Water Quality Programs Division

(Staff attending, continued)

Kyle Arthur, Director of Planning

Josh McClintock, Director of Government and Public Affairs

Mary Schooley, Executive Secretary

**Others Present**

Steve Hall, Town of Adair, OK

Darrell Wekley, Town of Carney, OK

Clyde H. Amyx, Frederick, OK

Dennis & Ilena Vernon, Biggs Farm, Altus, OK

Rick Vernon, Biggs Farm, Altus, OK

Jonny Terry, Town of Adair, Adair, OK

Bob Kellog, Biggs Family Farm, Oklahoma City, OK

Rebecca Poole, Oklahoma Department of Environmental Quality, Oklahoma City, OK

Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK

Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK

Karl Stickley, C.H. Guernsey & Co., Oklahoma City, OK

Lia Tepker, Office of State Finance, Oklahoma City, OK

Mike Mathis, Chesapeake Energy, Oklahoma City, OK

Jim Barnett, Roy Ryan; Kerr Irvine Rhodes Ables, Oklahoma City, OK

Shelby Hudgens, Unimin, Roff, OK

Ken Backer, Unimin, Mill Creek, OK

Nate Ellis, Public Finance Law Group, Oklahoma City, OK

Meredith Morgan, Public Finance Law Group, Oklahoma City, OK

Diane Pedicord, Oklahoma Municipal League, Oklahoma City, OK

Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK

Deena Suddath, BancFirst, Oklahoma City, OK

Cecil Bearden, Ski Island; Piedmont, OK

**C. APPROVAL OF MINUTES**

Chairman Herrmann stated the draft minutes of the August meeting had been distributed and he asked if there were any amendments to draft minutes. Ms. Lambert moved to approve the minutes of the August 10, 2010 Regular meeting as distributed, and Mr. Nichols seconded.

AYE: Drummond, Fite, Lambert, Nichols, Sevenoaks, Feaver, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

**D. Discussion and Possible Action on Work and Recommendation for Executive**

**Director Selection Committee.** Chairman Herrmann stated that he would defer discussion of an update on the process for a search of an Executive Director until the proposed executive session, should the members vote to enter one.

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

Mr. J.D. Strong, Interim Executive Director, addressed the members and asked Mr. McClintock to report any legislative activity. Mr. McClintock said the state legislature is out, and Congress has been out for a month and will return today. The Senate is expected to mark up the Interior and Environment Appropriations bill this week, but it is not anticipated to will pass until after the elections. He said he did not anticipate much activity until after November. Regarding the Water Conference, Mr. McClintock said he has received a lot of interest from sponsors and the panels, and he anticipated a good conference. The latest agenda was distributed, and can be found on the website; both Mary Fallin and Jari Askins have committed to attending. Mr. Strong reviewed the conference program.

Mr. Strong updated the members on the recent agency management retreat and strategic planning. He said it was a very productive day-long meeting held at the new ODWC Conservation Education Center at Lake Arcadia. The group looked at developing the mission statement, goals and objectives for the next five years with an eye toward submitting what is due to the State at the end of September. Beyond being required, it was a productive experience, to be reminded why we do what we do and how to best serve the people of Oklahoma.

In follow up to Board discussions last month, Mr. Strong said he asked staff to focus on completing the strategic plan, including the completion of the Comprehensive Water Plan, and then prepare to meet with the Board Ad Hoc Committees. He proposed a schedule for Committee meetings: review of the budget request at the October meeting, the new budget reporting format for the monthly Board meetings today, the Water Planning Committee will meet in November to review tasks for completing the Water Plan, the Rules Committee will meet in December to review any proposed rule changes; the Legislative Committee will meet in January to review an introduction document to new legislators, and the Audit Committee will meet in February. Ms. Lambert asked that the Board members be provided a copy of the management retreat summary prior to the Committee meeting. Mr. Strong responded the strategic plan, budget request, and agency-wide action plans will be provided to the members once completed.

Mr. Strong updated the members on several meetings that had taken place during the past month, in particular, a meeting with the landowners in the Arbuckle-Simpson Aquifer area; attending the Osage Nation EPA Watershed Forum; met with Farm Bureau, area farmers and Senator Justice regarding water rights and reporting issues; and attended Oklahoma Rural Water Association meeting at Western Hills. Upcoming meetings include a grant presentation to the town of Temple, the Arkansas-Oklahoma Arkansas River Compact Commission annual meeting in Fort Smith September 23, and retirement reception for Mr. Duane Smith on September 30. Mr. Strong suggested the October 12 OWRB Board meeting and Budget Committee meet at the ODWC Lake Arcadia Education Conservation Center, followed by a tour of the OWRB efforts involving the lake, notably the Garber-Wellington Aquifer Study, Water Quality BUMP activities, and City of Edmond facilities. He reminded everyone that the Governor's Water Conference will be on October 26-27, and North American Lakes Management Society will be held at the Cox Center November 3-5.

Mr. Nichols said that he, Dean Couch and Josh McClintock had attended one of a series of meetings being held across the State of Texas, held in San Angelo, regarding the use of groundwater in rural Texas. He said it was worthwhile trip. Mr. Sevenoaks asked about the status of Mr. T. Boone Pickens' project. Mr. Dean Couch responded Mr. Pickens has obtained in

partnership agreement or otherwise several tens of thousands acres of rights from landowners who have formed a consortium that has water available, but he was not aware of any specific agreements of actual use of water as he has proposed for sale downstate. Ms. Lambert asked about what was learned. Mr. Nichols said there are Water Conservation Districts that have a governing board that sets usage, and about 90% of the state falls under that system. He thought perhaps parts of Oklahoma could look at doing that as it is better to govern yourself than to be governed by others. He said the Lugert Altus Irrigation watershed sits in much of the area where Mr. Pickens has bought up rights, and because there is some tie between surface water and groundwater they are concerned about the effects of pumping groundwater in the area. Ms. Lambert asked if Texas has an "OWRB." Mr. Nichols said there is a Texas Water Development Board, and Mr. Couch said that groundwater is not regulated by the state, but is governed by the rule of capture, the common law of Texas, unless your land is within one of these districts, which is under local control. Even then, there has to be a future condition proposed over the next 50 years--how much groundwater to they want remaining, and after that, set the groundwater pumping. If there is too much, then, what is "takings" based on the local decisions to be available for future generations, and what is the right of capture, and they are finding it very difficult to manage. Chairman Herrmann said the Oklahoma Water Law is much more sophisticated; and other members commented.

## 2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Carney Public Works Authority, Lincoln County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this emergency grant request is from the Carney Public Works Authority located in Lincoln County. He said that the waste water lift station that serves 25 homes in the town has failed, and since the failure the town has had to haul water by tanker truck to the wastewater lagoon. The \$77,945.00 grant requested of the OWRB, along with local funds of \$13,755.00, will be used for constructing a wet well, submersible pumps, and new piping. Staff recommended approval.

Representing the Carney Public Works Authority was Chairman Darrel Wekley.

Mr. Nichols asked about the length of time of the construction, and Mr. Sevenoaks commented the cost was about \$3,600 per household, and he suggested that the individual households might pay.

Mr. Nichols moved to approve the emergency grant to the Carney Public Works Authority, and Ms. Lambert seconded.

AYE: Drummond, Fite, Lambert, Nichols, Sevenoaks, Feaver, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Adair Municipal Authority, Mayes County. Recommended for Approval. Mr. Freeman said that this item is for the consideration of a \$830,000.00 loan request

from the Adair Municipal Authority located in Mayes County. He said that Adair has requested the loan to construct approximately 3.5 miles of 12" water line to bypass the old water treatment plant and to connect to Mayes County Rural Water District #6 for water service. He said that in addition, loan funds will be used to decommission the old water treatment plant. Mr. Freeman stated the loan would be funded through the Drinking Water State Revolving Fund Loan, and he noted provisions of the loan agreement. He said the DWSRF program is jointly operated by the OWRB and the Department of Environmental Quality, and as a requirement of the latest EPA Capitalization Grants--which is a source of partial funding for the SRF program--30% of the grant funds must be used for principal forgiveness. For the DWSRF, it was determined the principal forgiveness will be utilized to encourage consolidation of water systems which would be beneficial for all the entities involved. As a result, 40% of the Adair loan will be in the form of principal forgiveness. Adair's water and sewer connections have doubled over the past ten years and its debt coverage stands at approximately 1.5-times. Staff recommended approval.

Representing Adair Municipal Authority was Mayor Steve Hall and Authority Trustee Johnny Terry.

Mr. Sevenoaks asked if the Authority would be receiving 100% of its water supply from Mayes County, and Mayor Hall answered, yes. Ms. Lambert asked what entity the Authority is working with, and Mr. Freeman responded, Rural Water District #6. Chairman Herrmann asked if the EPA or the ODEQ was encouraging the idea of consolidation. Mr. Freeman responded there had been conversations with Mr. Steve Thompson, ODEQ Director, Mr. Strong and himself about ODEQ wanting to encourage the smaller districts to consolidate--and he agreed--as it makes economic sense, it provides the town a better source of water, and it will get the old water treatment plant out of service. Ms. Lambert asked if there would be similar projects in the future, and Mr. Freeman said there would be.

Mr. Fite moved to approve the Drinking Water State Revolving Fund Loan to the Adair Municipal Authority, and Mr. Drummond seconded.

AYE: Drummond, Fite, Lambert, Nichols, Sevenoaks, Feaver, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

C. Report and Update on American Recovery and Reinvestment Act Funding Through the State Revolving Fund Loan Programs. Mr. Joe Freeman said he wanted to provide an update on the progress of the 57 water and wastewater projects that received funding through the American Recovery and Reinvestment Act of 2009 (ARRA). He distributed reports and stated that to date all of the funds have been obligated and construction is progressing on all of the projects. He said that \$25.6 million dollars or approximately 85% of the \$30.2 million in Drinking Water ARRA funds have been drawn, and \$22.4 million or 74% of the \$30.4 million of Clean Water ARRA funds have been drawn. The ARRA funds, along with \$183.4 million in regular Drinking Water and Clean Water loan funds has resulted in approximately 1,400 direct construction jobs. As noted on the handout, prepared by EPA by region, indicates how Oklahoma (Region 6) ranks in both Drinking Water and Clean water. Based on getting construction dollars out, Oklahoma is first in Region 6 in both the Drinking Water and Clean Water programs, and nationally is 7th in Clean Water and 6th in Drinking Water. Oversight of the programs has been in depth; EPA has

conducted several webcasts on ARRA compliance, two on-site reviews of both the DEQ and OWRB ARRA operations, and has conducted two onsite visits to the entities that have received ARRA funds--Norman and Sulphur. He said that staff has provided monthly reporting to EPA on project status, monthly reporting to the Congressional Transportation and Infrastructure Committee, and quarterly reporting to the Oklahoma Office of State Finance. The OWRB and DEQ staff has provided additional reporting of training and oversight: compliance training was provided at each Board meeting when project funding was approved, and additional compliance training was provided this past Spring with EPA and its consulting firm, Northbridge. Training has also been held for OWRB staff and borrowers with the Office of the Inspector General. The OWRB and DEQ engineers have conducted monthly, onsite inspections and progress meetings with borrowers, and will continue to monitor the programs throughout completion.

Mr. Sevenoaks asked what Tribes received \$60 million, and Mr. Freeman answered the Oklahoma Tribes received that funding separately. Ms. Lambert asked what is being ranked, and Mr. Freeman said that Oklahoma was first in distribution of funds, getting the money out and getting the construction underway. He said the construction work on much of the water projects are done except for minor "punch list" type of work such as soldering etc., and nine Clean Water projects essentially have the same status. Chairman Herrmann asked Mr. Freeman about what the pipeline looks like for future projects, and what impact ARRA funding had relative to drawing the pipeline down. Mr. Freeman answered this past year the state processed three times the number of projects done in a year, about one-quarter of a billion dollars. He said he expected to see a dramatic slowdown, but instead is seeing demand return to pre-ARRA or above. He said it appeared to him that projects were readied for ARRA funding, and are now moving forward. Chairman Herrmann commented it has been stimulative, rather than being just a timing chain. Mr. Freeman said the 1,400 jobs has actually been reported from the contractors as to the number of people on the construction site, and not reflected by a company that manufacturers equipment.

### **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.**

Chairman Herrmann asked that the Supplemental Agenda items be approved along with the Summary Disposition Agenda. He explained that Supplemental items are routine items that are not available at the posting of the regular agenda. He read the summary disposition agenda introductions, and asked if there were any questions about any items, or any items that needed to be separated out from the agenda.

There were no questions or requests to transfer items from the Summary Disposition Agenda or Supplemental Agenda to the Special Consideration.

**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, or the Supplemental Agenda items, Mr. Nichols moved to approve the Summary Disposition agenda as adjusted, including the Supplemental Agenda items. Mr. Knowles seconded.

AYE: Drummond, Fite, Lambert, Nichols, Sevenoaks, Feaver, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

**C. Financial Assistance Division Items:**

1. Rural Economic Action Plan (REAP) Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
None				

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

1. Professional Services Contract with Scott Huler for keynote speaking presentation at 2010 Governor's Water Conference and Symposium.
2. Contract for Lab Analysis with Oklahoma Department of Environmental Quality.
3. Interagency Agreement with Oklahoma Wheat Utilization, Research and Market Development Commission to provide support of information technology hardware, software, and IT services for Commission owned workstations, laptop computers, servers, networking equipment and Internet connections.
4. Specific Cooperative Agreement with USDA, Agricultural Research Service for monitoring and evaluating water resources in central Oklahoma watersheds.
5. Joint Funding Agreement with U.S. Geological Survey for the project "Garber-Wellington Aquifer Management, Central Oklahoma".
6. No-cost Time Extension Agreement with Oklahoma Department of Environmental Quality for public water supply assessments in support of the Update to the Oklahoma Comprehensive Water Plan.

7. Amendment Agreement No. 1 with Oklahoma Rural Water Association for technical assistance and training to rural water and wastewater system operators and board members.
  
- E. Applications for Temporary Permits to Use Groundwater:
  1. Bromide Public Works Authority, Johnston County, #2010-502
  2. Paul W. Davis, Jackson County, #2010-524
  3. Logan County Rural Water District No. 2, Logan County, #2010-536
  
- F. Applications to Amend Temporary Permits to Use Groundwater:
  1. Logan County Rural Water District No. 2, Logan County, #1974-453
  2. Kingfisher Public Works Authority, Kingfisher County, #1997-559
  3. City of Kaw City, Kay County, #2004-555
  4. Oklahoma Baptist Home for Children, Inc., Oklahoma County, #2004-566B
  
- G. Applications for Regular Permits to Use Groundwater:
  1. Stephen G. & Cynthia J. Barnes, Texas County, #2010-531
  2. Joe Carroll & Mary Leonene Gribble, Texas County, #2010-534
  
- H. Applications to Amend Regular Permits to Use Groundwater:
  1. Wright Farms, Inc., Texas County, #1976-692
  
- I. Applications for Regular Permits to Use Stream Water:
  1. Ted & Jayne Morse, Choctaw County, #2010-015
  
- J. Forfeitures (Continue in Effect) of Stream Water Rights:
  1. Eddie D. Metzler, Major County, #1982-120
  
- K. Forfeitures (Cancellation) of Stream Water Rights:
  1. Bertha Klaassen, Caddo County, #1994-009
  2. Eddie Zaloudek and Sons, Inc., Grant County, #1994-040
  3. Ronald J. & Pamela S. Deatherage, Pottawatomie County, #1995-027
  4. James & Pauline Rogers, Rogers County, #1996-011
  5. Ernest Blum, Washington County, #1996-049
  6. Brad & Henrietta Blehm, Blaine County, #1997-002
  7. Coburn Snyder, Garfield County, #1975-084
  8. Ralph Rothgeb, Kay County, #1953-214
  9. B & L Ranch, Pottawatomie County, #1982-069
  10. B. G. Green, Pottawatomie County, #1976-134
  11. George Blaney, Lincoln County, #1991-028
  12. Larry Lockwood, Cherokee County, #1973-003
  13. J. C. Rickabaugh, Grant County, #1945-007
  14. Gilbert Mooney, McClain County, #1974-279
  15. J & J Farms, Inc., Canadian County, #1965-347



L. Proposed Resolution Appointing Persons to Serve as Members of the Water Well Drillers and Pump Installers Advisory Council:

Names of persons to serve as members are individually set out in the September 14, 2010 packet of Board materials

M. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

a. Licensee: OK Rental Equipment LLC DPC-0816  
1. Operator: Cody Sander OP-1792  
Activities: Pump installation

2. New Operators and/or Activities for Existing Licenses:

a. Licensee: Burgess Engineering & Testing DPC-0484  
1. Operator: Curtiss Lackey OP-1793  
Activities: Monitoring wells and geotechnical borings

b. Licensee: Sunbelt Industrial Services, Inc. DPC-0701  
1. Operator: Robert L. Flair, Jr. OP-1794  
Activities: Monitoring wells and geotechnical borings

c. Licensee: Talon/LPE DPC-0619  
1. Operator: William Burton Shepherd, II OP-1795  
Activities: Monitoring wells and geotechnical borings

N. Dam and Reservoir Construction:

1. Basil Savage, Marshall County, #OK30187
2. TPH Capital, L.L.C., Johnston County, #OK30373
3. Alfalfa County Conservation District, Alfalfa County, #OK30374

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

1. Oklahoma Department of Transportation, Lincoln County, #FP-10-13
2. Oklahoma Department of Transportation, Lincoln County, #FP-10-14
3. Oklahoma Department of Transportation, Lincoln County, #FP-10-15

P. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the September 14, 2010 packet of Board materials.

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

A. Contracts and Agreements Recommended for Approval

1. Modification No. 3 to Cooperative Agreement with Bureau of Reclamation for South Central (Garber-Wellington) Regional Assessment Study.
2. Joint Funding Agreement with U.S. Geological Survey for the project "Streamflow monitoring of seven streamflow sites and one lake in the Upper Washita River and Cobb Creek Basins".

#### **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, began his report stating a management retreat goal is to integrate the process of completing the Water Plan, and once that integration occurs, it will go to the water plan community in November to discuss and flesh out the details of what the Board has requested. He said staff appreciated the Board's discussion and has begun to crystallize some of the ideas that have been under consideration. He said, as requested, a letter has been prepared from Mr. Strong and Mr. Herrmann to the Academy thanking it for its participation in the Water Plan process.

Mr. Arthur said the Water Resources Research Institute is currently in the process of working through the recommendations that were made by the Town Hall both in the document as well as the specific recommendations. Their charge by the OWRB is to develop what they believe the public wishes. Staff has discussed that as a contracted entity it is the Institute's job to be the voice for the people of Oklahoma, and they will be working together once that list is available to then develop responses and implementation strategies for each one of the recommendations. Eventually those recommendations will be brought to the Board according to the schedule that will be developed shortly.

Mr. Arthur said he is in the process of meeting with other state agencies to solicit their input about what they would like to see in the Water Plan. Each agency that is involved in water management across the state will be given an opportunity to have a chapter in the Water Plan - this is not just the OWRB plan--and he believed this will accomplish three things: tell their story--what it is they do for water management in Oklahoma--discuss challenges as they look out 10-15 years--and to make recommendations as to how they see those challenges should be addressed. He noted he had recently met with the Oklahoma Climatological survey.

Mr. Arthur said that on the technical side, regional and basin-level fact sheets are being developed for all the technical information to be housed by region. He said this is taking a lot of time but will make the information useful for the stakeholders and users across the state. Ms. Lambert asked if small focus groups that are not involved in water technology and acronyms that could review the information, and Mr. Arthur stated that one component of the schedule is to go back that the 13 water shed planning regions, and vet the information that's been developed, and in particular the water supply providers of the area to get their feedback, not only to get their feedback on specific information but also as to the how it is presented and usefulness. They are currently working on the Beaver-Cache Creek area. He said access to all the information will be available on the website. Chairman Herrmann asked about what are the hot spots -- the ten most critical supply/demand shortage gaps. Mr. Arthur said those issues are being identified by region, and is both a regional and statewide process. Chairman Herrmann added that at some point an action plan will be developed for each area; what are the issues, costs, and action plan.

Mr. Arthur said there is no budget for the Corps of Engineers yet, but he expected there may be \$1-1.1 million (to the Water Plan and the Tulsa District) that will be used for the transition period and for completion and implementation. He said it was more than they had planned, and now the challenge is to go out and match that amount. Chairman Herrmann commented that staff will provide a budget review within the next few months.

## 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).

Prior to presentation and discussion on this matter, Mr. Mark Nichols stated he has a conflict of interest regarding this application and will recuse himself from discussion and voting, and after visiting with OWRB General Counsel, he will not be present while the matter is considered by the Board.

### A. Application for Regular Permit to Use Groundwater No. 2008-520, Roy L. Ryan, Tillman County.

1. Summary - Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that this application is for a regular groundwater permit in the name of Roy Ryan in Tillman County. The application is to take 80 acre-feet of groundwater water per year for irrigation from three wells located on 80 acres of dedicated land. She said, as the Board is aware, when an application is made the four points of groundwater law must be met and if so, the Board shall issue the appropriate permit. Ms. Cunningham reviewed the points of law stating: the applicant does own the land and has a valid right to the land, the land overlies the Tillman Terrace Groundwater Basin for which the maximum annual yield and equal proportionate share has been determined to be one acre-foot per acre, crop irrigation is a beneficial use, and waste will not occur.

Ms. Cunningham explained the land will be irrigated by a center pivot system which is efficient and relatively modern, and the applicant's tenant testified he is an experienced farmer with an excellent reputation and he will abide by guidelines and recommended practices of the NRCS. In addition, daily inspections will be performed during irrigation, and any leaks detected will be repaired in a timely manner. She said there are no issues of waste by pollution.

Regarding the issue of well spacing, Ms. Cunningham said this issue was protested by Mr. and Mrs. Dennis Vernon, representatives of George Biggs and the Biggs family farm, and Mr. Steven Clark, who leases the land. The issue regarded concerns for proximity of the proposed wells and possible interference; their wells are located on the west side of the property and adjacent to the applicant's land. The proposed wells are on the central part of the property. She said that this is a studied basin and well spacing does apply, and the three wells are located 900, 939, and 1,347 feet from the protestant's wells. Mr. Sevenoaks asked what is the regulation, and Ms. Cunningham answered it is 660 feet, and she would explain.

Originally, the application was for five wells; but because of where adequate water was found on the property to operate the irrigation system, the applicant agreed to delete two of the wells following the hearing. In the meantime, a new minimum spacing rule was promulgated and approved by the Governor during last legislative session. The rule separated bedrock aquifers from alluvium terrace aquifers and created a new spacing rule of 660 feet for alluvium aquifers. Since the wells in this application proposed are greater than 660 feet from the protestant's wells, the spacing rule does not apply. Regarding the timing of the new rule, the protestants contend the old rule should apply in this case since it was in effect at the time of filing. The hearing examiner describes in the proposed order under Conclusions of Law no. 13 that the Board has faced these situations in the past; once an application is in the process, laws and rules have and do change regularly. The previous rule was 1,320 feet.

Mr. Drummond asked why the rule was changed. Ms. Cunningham responded that staff had received many requests over the years to look at each individual aquifer groundwater basin and set possibly a separate spacing requirement for each one. Staff looked at the average spacing (spacing that was analyzed that would not have a drawdown affect) of all of the hydrologic studies for all alluvium and terrace, and bedrock aquifers. The 1,320 was originally set for the ease of administering as it was extremely protective. The average for alluvium terrace is about 600 feet; 660 feet was slightly more protective and easier to administer. Mr. Sevenoaks asked when the rule was approved; Ms. Cunningham answered it was approved at the February meeting, and had been presented at the January and December meetings. The members recalled there had been discussion about the distinctions between alluvium and bedrock, and that the Board was not aware of the application at the time. Ms. Cunningham said that the hearing examiner noted in the order this is an occurrence that has happened, and the Board has consistently made its dispositions based upon the law at the time of the Board's final order. Denial of the application based on the old law would be meaningless here because the applicant can simply apply for a new permit under the new rule. She said it makes no difference if the application goes forward or the applicant re-applied.

Ms. Cunningham stated the applicant satisfactorily passed the test, is entitled to the equal proportionate share of groundwater set for the basin, and nothing in the record indicates the applicant will unlawfully use the water; the evidence submitted to the contrary was not sufficient to deny the application. Therefore, staff recommended approval of the application in accordance with the specification in the proposed findings of fact and conclusions of law, and Board order for groundwater application #2008-520.

To summarize, Chairman Herrmann stated staff recommended approval, and he asked Mr. Strong to comment. Mr. Strong said that he wanted to succinctly emphasize is that what remains in contention mostly in this case turns on the applicability of the rule that was changed in the middle of the application process. He noted paragraph 13 of the FOF in the order where the hearing examiner stated that numerous times the law and rules changed in the middle of pending applications. He said it happened when Senate Bill 288 passed and there were many pending applications for water in the Arbuckle-Simpson Aquifer and most of those changes had a negative impact on the applicants, and he remembered in the late 1990s laws changing and having a huge impact on pending applications for swine CAFOS in northwest Oklahoma. He said that, while it is sometimes difficult to manage, it is simply the case that simultaneously there are legal and regulatory changes and permit applications that are in process from several months, to as in this case, several years. Mr. Strong said the key is whether that is legal and there is

precedence for it, and legal counsel has laid out that it is while possibly inconvenient for some. He said it is worth considering that because of the rule change, it went from someone seeking an exclusion to the 1,320 foot well spacing rule to an applicant that now has an application that lays on the outside of the 660 well spacing rule. When that occurred and the well spacing applied, the burden of proof then switched from the applicant having to prove why there should be an exclusions to the 1,320 rule, to the protestant having to prove that someone outside the well spacing rule can still have a deleterious impact on their water right, and in this case, even a prior right to water, which is afforded additional protection. He noted that staff has said the material impact on the protestant has not been proven.

Ms. Lambert clarified that the other test is not what the law is when the application is made, but what the law is when the Board makes the decision, and Mr. Strong agreed. Chairman Herrmann asked Ms. Cunningham to clarify the prior right situation. Ms. Cunningham said that under paragraph 12, page 5010, the prior right is discussed. She said the original permit of the protestant's is a prior right--established before the current groundwater law in 1973--the claim is that the protestant's water right is a prior right and the Board rules state that the subsequent groundwater law shall not be construed to deprive them of their right to use such groundwater in the quantities and amount being used prior to the right. She said the hearing examiner listed the Board rules and looking at paragraph 12. (d), she quoted the rule saying that in this case that evidence was not presented, and there was no finding of material impairment. Mr. Couch added there was evidence presented; however, it was inconclusive according to staff. Mr. Sevenoaks asked if it was inconclusive there would be an effect on the well, and Mr. Strong answered, yes.

2. Discussion and presentation by parties. Chairman Herrmann asked to hear from Mr. Jim Barnett, representing the applicant, and Mr. Bob Kellog, representing the protestant. He asked that they keep their comments to ten minutes.

Mr. Jim Barnett stated his client Mr. Ryan is not present today due to poor health, but his assistant, Mr. Clyde Amyx, is present and did attend the hearing. He said the application was filed in February 2008, and the only issue was whether his client was entitled to the variance to the Board's well spacing rule. He said in recognition of that fact, they walked away from the original five wells; there was a lot of testing--eight test holes on the long 80 (acres) and two more immediately to the east, but no water was found on the far side of the property. He said his client would've been entitled to the variance, but now that is no longer an issue because as staff noted, the rule has changed, and because of that he is well outside the 660 foot well spacing. He said he has had a lot of personal experience with change in rules and has been on the other side on several occasions, and while not particularly happy, that has been the Board's long-established policy and procedure. He said well spacing has been a continuing problem on the alluvium terrace aquifers that have the 1,320 foot well spacing. He said that was an overly protective, "one size fits all" and he believed developed for the Ogallala. Prior to that, the law did provide for customized well spacing for each aquifer which to his mind was the ideal, and that going to a smaller setback or variance was progress in the right direction, and he believed numerous experts would testify that is more than adequate protection. He said the Tillman Terrace is an alluvium aquifer, his client does own the land and does have a system, it is his private property and he is entitled to use it, and there has been no showing that there is anything flawed with the application. He requested the Board approve the application.

Mr. Sevenoaks asked about the request for a variance in February 2008. Mr. Barnett explained that when the application was first filed in 2008 there were five wells, and once a

protest is filed then you have to seek the variance. He said there are several reasons for requesting a variance and they probably qualified for three. Mr. Sevenoaks asked if the wells were within 1,320 of each other and Mr. Barnett explained they were, and the wells are located exactly as they are now; he said the variance procedure does not come into play unless someone files a protest.

Mr. Bob Kellog, representing the protestants, Dennis and Ilene Vernon and son Rick Vernon, of the Biggs Family Farm of Altus, addressed the members stating this is a rather unusual case. The administrative law judge (ALJ) is following the Board policies established over the years to support the rule, and he didn't have a quarrel with the judge but with the application of the rule from a procedural perspective. He said the burden had shifted from the applicant having to prove he qualified for an exception, to after the hearing was over and pending the completion of a test, his clients now have to prove there would be an adverse impact on them. He said the Board is aware that it can only be predicted through expert testimony and modeling what is thought might happen, there isn't any actual proof until the well is put in and studies conducted. When the hearing concluded, there had been some expert testimony, and some modeling done by the OWRB that showed some impact, and the parties agreed and prevailed upon the administrative law judge to allow an additional test to be performed under a protocol approved by OWRB staff to test the well for 24 hours and measure the effects on the Biggs wells. There would then be proof-positive, but there was never a test as the applicant declined to accept the protocol approved the OWRB staff, and he presented a scenario of having been "snookered" as in the billiards game. He said it happened in this case by the absence of action--once when the applicant declined the water test and secondly, in February 2010 in the absence of adverse comments regarding the well spacing rule, the Board changed the rule. He argued all the alluvial aquifers are not the same, and whether the rule is valid as it is required that rules should be developed for each basin rather than one hearing statewide, so his clients were not aware of the change. He said he attended the February meeting for dam safety rules, but didn't recall the spacing rule change. He said the burden of proof changed in mid-stream and he asked the Board to recognize it happened and is unintentional, and subsequently the standard that applies may well be 660 feet, if the rule is valid, but procedurally consider what has happened to his clients. They believe they should not have to spend money to defend their water right. He explained experts were at the hearing, a test was agreed, and then the rules changed. He asked the Board to send the proposed order back to the administrative law judge to complete the process that was started and not finished.

Mr. Drummond asked about the test, whether it showed material impairment. Mr. Kellog answered it was inconclusive because it was modeling and expert testimony, what would be conclusive is an actual water test. He said there was a hurried test the day before the hearing that was inconclusive, and so the parties agreed to an additional test in the winter after the aquifer had recharged and the wells weren't being pumped; a dispute occurred about what to do with the water from the test. They agreed it should not go back onto the ground but pumped away from the site, but that was not accepted by the applicant. Mr. Kellog said the test was not conducted, the hearing wasn't completed, and his clients have lost that ability procedurally; they haven't had their day in court.

Ms. Lambert asked about the number of wells to be pumped; Mr. Kellog said originally there were five wells, three were to be pumped for the test with water being pumped off site so it could not come back and adversely affect the test, which is standard procedure.

Mr. Barnett responded that Mr. Kellog's version of the events don't track with his version. His said the OWRB conducted the pump test prior to the hearing, but the protestants did not like the result of the test because the during the 24-hour pumping the Biggs wells actually went up, so that was called inconclusive. He said at the hearing the protestant's witness, Mr. Alexander, presented modeling of the projected drawdown, predicating it based on the filed application, not as it was, and showed additional wells pumping in the wrong locations, so that test had flaws. It was not his idea to do the additional test, but he was not opposed because he was confident the result would not be negative for his client. He said there was difficulty agreeing to protocol, but at the end of the day the OWRB and Mr. Kellog agreed to protocol and that water should not be taken off site, because in reality, there will be flow back into the aquifer. Having said all that, none of it makes any difference because the rule is 660, and the application is outside that distance. Mr. Barnett said if a new application has to be filed, he will do so, and regarding the protection of prior rights, the Board's processes for determining equal proportionate share already takes care of the prior right holders. He said before it was decided that the landowners would be entitled to one acre-foot per acre, all of the prior rights water was removed from the bucket and protected, it is already set aside by law and whatever is done will not affect him (Mr. Vernon) as long as he (Mr. Ryan) does not take more than his share. He said the argument is a "straw man" as the law has contemplated the prior rights at the beginning of the process and not at the end.

Chairman Herrmann invited the protestants to make further comments. Mr. Kellog said the prior rights issue is in the statutes, and the burden of proof because of the spacing rule was not necessary to develop expert testimony on the impact to the Biggs wells. Under the spacing rule that was in place at the time, the protestants met their burden, but the applicant did not, and that is clear in the interim order that was issued, when suggested that additional test wells should be drilled in other parts of the land, which was not done. The protest filed raised two issues: prior rights, and well spacing. Mr. Kellog said the order instructed to focus on well spacing, the rule changed, proper evidence was presented, and they are still waiting on the proper testing to be done,. Without completing the evidence, his clients have lost procedurally the ability to present their case. Mr. Kellog asked why start over in the future, all is needed is the test.

Mr. Dennis Vernon, protestant, addressed the member and said he appreciated the opportunity to address the Board. He said the issue is important to him and to landowners in his area. He said it is hard to complete the test without cooperation. He told the members the history of the situation of Mr. Ryan's application and test drilling, and that people make long term decision based on what they think they are protected on, and mentioned family matters that influence decisions. He said the application was published in the Oklahoma Register, which may have met the law but was not common sense. He said rules established by this agency should be followed, there are rules to protect, and he suggested Mr. Ryan knew it was a dry land farm and it may not have been developed because the prior owners knew the rules and respected that.

Ms. Lambert stated she heard two different versions of the test issue, and asked for clarification. Mr. Vernon answered he thought the OWRB staff would conduct part of the test, and that it should take longer than two days, and when its been hot weather, no rain, and everyone is irrigating. Mr. Barnett said he was referring to exhibit no. 28 of the hearing file and memorandum by Kim Sullivan of the OWRB Lawton office who conducted a July 14-15, 2009, water level test, and he read the report by Mr. Sullivan to Mr. Sandbo. The result of pumping after four days of not pumping, showed that of one north well and one south well, one increased

by 17-hundredths of an inch, and one increased by 20-hundredths of an inch. Mr. Barnett said he did not understand why the Board chose to say that was inconclusive. Nonetheless, he was confident in having the pump test conducted repeatedly, but after having drilled ten test wells, they were not interested in drilling new test holes, or spending more money. He said he was willing to conduct another test, but it was difficult getting everyone on board, and then the law changed.

Chairman Herrmann asked staff to summarize before entertaining a motion. Mr. Strong stated that the rule changed and originally the applicant was required to demonstrate why they should receive a variance to the Board's 1,320 foot spacing rule. Once the rule changed, and the wells they were seeking the variance for fell outside the spacing rule, those types of tests were no longer required, at least from the Board's perspective. Certainly, that might be the type of information needed for the protestant to demonstrate whether their prior right incurred material impairment. Regardless, that was not necessary at that point. He said its important to remember the law is what it is, and as stated in the order, any person having a prior right cannot be deprived that prior right by a junior water right holder, which is what the applicant is in this case. The water from the prior right holder is set aside when determining the final allocation across the basin, and also if later it can be proven the prior right is abridged it is the OWRB Counsel's belief that further action can be taken by either the protestant or the Board.

Mr. Drummond clarified that if the application is approved based on current law and spacing, if once the pumping begins and it is shown there is some material impairment, what is the recourse. Mr. Dean Couch, OWRB General Counsel, answered that under the rule, there can be a request to curtail production, and upon that showing--and the issue is what needs to be shown--in real lifetime scenarios in 100-plus degrees when the irrigators are pumping, seems to be a more acceptable test, then trying to do a test before the permit may not show exactly what will occur on the ground in the field at the time. He noted there are rules that protect the prior right as stated in the packet on page 5010, and specific remedies the prior right holder could pursue outside of the agency, but certainly OWRB staff would investigate in light of the existing rule that protects as well the statute. Ms. Lambert asked if the application is approved, and there is material impairment, do the Biggs come back to the OWRB? Mr. Couch responded that they can and staff would follow up on the complaint and as is done many times particularly in hot, dry summer months to work with the new permit holder. If it can't be worked out there are further remedies even to include court action. Again, he said, that is after the fact, after impairment has been caused; not predictive impairment.

Chairman Herrmann said what happened with the rule change in well spacing was the burden of proof shifted from the applicant to the protestant, but that does not mean the right has gone away.

Mr. Fite asked if the requirement for the test as requested by the ALJ was met. Mr. Strong answered that was the requirement before the rule change; there was an initial pump test, but no follow up pump test, because once the rule changed it was not a requirement for the OWRB. Because there was no exception being sought, and the parties could not agree to do it on a cooperative, voluntary basis. Mr. Fite asked if both parcels of land were used for row crops, and Mr. Vernon answered, yes; and Mr. Fite explained the timing necessary with that type of farming.

Chairman Herrmann asked Mr. Cunningham to summarize, and then he would consider a motion. Ms. Cunningham stated that staff recommended approval of the application according



to the proposed findings of fact, conclusion of law and Board order. The record does show the applicant passed the test as set out in statute, and is entitled to the equal proportionate share of the groundwater basin.

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.

Chairman Herrmann stated he would accept a motion.

Mr. Sevenoaks moved to approve the proposed findings of fact, conclusions of law, and Board order for groundwater application #2008-520, and Mr. Drummond seconded.

Ms. Lambert said she understood both the applicant and the protestant could not agree on a second testing after the rule change, and she asked for clarification regarding the disagreement. Mr. Jim Barnett responded there was significant delay as people thought others were working on the project and by the time there was a protocol and he returned comments eventually everyone got on board but by that time the rule changed. Mr. Kellog added the test was to be done in November or December of 2009 after the crops were harvested and the aquifer recharged as all the experts agreed this would provide the type of evidence needed.

There being no further questions, Chairman Herrmann called for the vote.

AYE: Drummond, Sevenoaks, Feaver, Herrmann

NAY: Fite, Lambert, Knowles, Taron

ABSTAIN: None

ABSENT: Nichols

Mr. Couch stated with a tie vote, the motion failed. He said there could be another motion or further discussion of the findings of facts as written and conclusions of law as written, or further guidance on legal issues.

Ms. Lambert asked if another test would resolve the issue. Mr. Kellog answered that it would and he had authorized that provisional temporary permits could be issued while that is being done. Mr. Couch said he didn't attend the hearing but heard the test looked at (pursuant to the rules ) well locations as a static water level impact and change of excessive drawdown in existing wells. But also that a test in a hot summer day cannot be predictive, and to assume in the future there would be the exact result is not appropriate. He said the prior rights protection rule contemplates that kind of test to be done. The protocol discussed by staff before was the historical static effects but it sounds like the protestants are not inclined to consider that as affecting their prior rights, but rather in the field on a hot summer day. He said it might have been the proper protocol for a well location exception, but no longer necessary as a drawdown test. He said he could see agreement as to protocol when wells are pumping on a hot summer day for material protection as in the rule for protection of a prior right on an actual status situation in the field.

Mr. Sevenoaks stated the applicant could come back with another application and with the new rules, and it would probably pass. Mr. Couch added that is why there has been this interpretation, that when the rules changed in the middle of the process it seemed an unnecessary burden to file a new application, publish notice, go back to hearing and to come back to the exact same position as today. Mr. Strong said there is no practical effect.

Ms. Lambert said this is human fallibility that changes the mind, and she did not want to hold up a two-year old process when the result is going to be the same. Chairman Herrmann said

the situation changed when the Board made the rule change and the burden of proof shifted from the applicant to the protestant. He said it was not an aquifer-specific basis but a statewide basis, and those kind of statewide changes have been made in the past, and it was not a sinister effort to undermine any protestant's position, but simply that this was caught in that transition. Mr. Couch said there have been provisional temporary permits issued and actual pumping of these wells has taken place in the last year or so, and he wasn't aware of a compliant the protestant's wells have dried up. Chairman Herrmann stated that if the Board were to issue a permit, the prior right concern, legitimately raised by the protestant, is in no way diminished by any action taken today.

Chairman Herrmann stated there was a motion that did not pass. The matter can be sent back to staff to revisit, there can be a new motion, or the Board can move on.

Ms. Lambert offered a new motion to approve the application and to support the staff recommendation. Mr. Drummond seconded. Chairman Herrmann asked about a second motion and Mr. Couch said this is the first vote on the new motion.

There were no additional questions by Board members, and Chairman Herrmann called for a vote.

AYE:	Drummond, Fite, Lambert, Sevenoaks, Feaver, Knowles, Taron, Herrmann
NAY:	None
ABSTAIN:	None
ABSENT:	Nichols

Chairman Herrmann reminded the protestants that their prior right is as protected as when they entered the room today, and staff will be supportive. Mr. Fite commented about attorney's coming to the Board and saying that staff missed something, and he was concerned about serving the good for all concerned, as a citizen representative. Mr. Strong said in this case staff did not miss anything; Mr. Fite said that is what the Board hears, but that is distracting, and he wondered if a better job could be done. Mr. Strong said that staff had discussed that when there is a rule change and this type of situation that perhaps notice can be made, its not required but would be going "above and beyond" but an effort to serve the public. Ms. Lambert explained she changed her vote because ultimately she came to the recognition the result would be the same, and would take longer to have it come back. She expressed her sympathy for both sides, but felt they should get closure at this stage of process and take the appropriate steps if necessary and not delay this part of the process for a couple of more years.

The members further commented, and Chairman Herrmann said the real issue is the rule change, the process of how rule changes are made, and the unintended consequences as an impact to those rule changes.

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

Mr. Mark Nichols returned to the meeting at 11:30 a.m.

**6. DISCUSSION AND POSSIBLE ACTION ON AGENCY BUDGET REPORT AN FORMAT.**

Ms. Leslie Nance stated to the members that there is a revised budget report format in the meeting notebooks today. She said she hoped the new format would be easier for the Board members to look at and understand quickly. She noted the major changes in the report are removing the Office of the Secretary of Environment so the budget is only reflective of the OWRB, the revenues are grouped, and the encumbrances were eliminated. The members thanked Ms. Nance for her effort. Mr. Strong said the budget committee will meet next month, and any further comments and changes can be reviewed then. Mr. Sevenoaks asked if next month the expenses category would show an additional month of cumulative expenses, and Ms. Nance responded that it would.

Mr. Strong introduced Ms. Lia Tepker from the Office of State Finance, who serves as the Board's liaison.

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

Consideration of the Supplemental Agenda items was moved to the Summary Disposition Agenda (3.).

**8. PROPOSED EXECUTIVE SESSION**

**Chairman Herrmann**

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(1) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[d]iscussing the employment, hiring, appointment, promotion, demotion, disciplining, or resignation of any individual salaried public officer or employee.”

Pursuant to these provisions, the Board proposes to hold an executive session for the purpose of:

Discussion of individual applicants for the Executive Director position.

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

Chairman Herrmann stated the purpose of the proposed Executive Session. He said he would like the Board to consider an Executive Session for the purpose of the Board's Selection Committee to give a brief update to the full Board on the status of selection of an executive director.

Mr. Fite moved the Board enter Executive Session, and Mr. Knowles seconded.

AYE: Drummond, Fite, Lambert, Nichols, Feaver, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None  
ABSENT: Sevenoaks

B. Designation of person to keep written minutes of Executive Session, if authorized.

Chairman Herrmann designated Executive Secretary Mary Schooley to keep the written minutes of the Executive Session.

C. Executive session, if authorized.

The members entered Executive Session at 11:35 a.m. (Mr. Sevenoaks returned to the meeting in Executive Session.)

**9. VOTE ON MATTER DISCUSSED IN EXECUTIVE SESSION - Return to open meeting and possible vote on any matters discussed in the Executive Session.**

The Board returned to open session at 11:50 a.m. There was no discussion or action taken on any matters discussed in Executive Session.

**10. NEW BUSINESS**

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

There were no New Business items for the Board's consideration. However, Mr. Fite asked if the Board should reconsider the 1,320 spacing rule. Mr. Couch noted for the record, the Board is continuing its discussion under the earlier agenda item of 5.A., the individual proceedings regarding Mr. Roy Ryan, and the subject of well spacing and the rule.

Mr. Sevenoaks suggested that if there needed to be further discussion, the rule should be considered during the regular rulemaking process for the year. Chairman Herrmann said he remembered the rule and thought it was progress and gets into conjunctive use, groundwater/surface water interaction and he viewed it as an enhancement to the Oklahoma Water Law. There was plenty of data and analysis done behind it to suggest there wouldn't be these kinds of problems, but this application happened to be in process, and if it hadn't been in process the Board would probably not have heard it. Mr. Couch suggested staff email the portion of the rulemaking record that included Mr. Sandbo's scientific report of findings conducted by Mr. Bob Fabian and spreadsheet showing the possible impact to alluviums based on background information conducted before the hearing on the rulemaking last spring.

Chairman Herrmann said there were no other items, and that the October Board meeting will be at the ODWC Lake Arcadia facility.

**11. ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:55 a.m. on Tuesday, September 14, 2010.

**OKLAHOMA WATER RESOURCES BOARD**

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

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

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Marilyn Feaver

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

\_\_\_\_\_/s/\_\_\_\_\_  
F. Ford Drummond

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph E. Taron

***ATTEST:***

\_\_\_\_\_/Absent\_\_\_\_\_  
Linda P. Lambert, Secretary  
(SEAL)