

# OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

November 9, 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 November 9, 2010, at 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 November 2, 2010, at 5:15 p.m. at the Oklahoma Water Resources Board's offices.

### A. Invocation

Chairman Herrmann asked that, in lieu of the invocation, there be a moment of silence in recognition of Veterans Day to be celebrated on November 11, 2010, and to honor those persons who have given the ultimate sacrifice to protect our freedoms in order that we can continue to operate in a democracy as we do today.

### 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, 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  
Kyle Arthur, Director of Planning  
Josh McClintock, Director of Government and Public Affairs  
Mary Schooley, Executive Secretary

**Others Present**

Shelby Hudson, Unimin, Roff, OK  
Gary Froeming, Unimin, Roff, OK  
Dave Taylor, Waurika Master Conservancy District, Waurika, OK  
Amy Ford, Citizens for Protection of Arbuckle Simpson, Durant, OK  
Joe Painter, Okemah/Tetra Tech, Oklahoma City, OK  
Paul Smith, Okemah/FIFS, Oklahoma City, OK  
Chip Outhier, City of Waynoka, OK  
Jerry Turner, City of Okemah, OK  
Bob Coplin, City of Okemah, OK  
John Hays, City of Okemah, OK  
Pennie Embry, Oklahomans for Responsible Water Policy, Eufaula, OK  
Justin Martino, eCapitol, Oklahoma City, OK  
Tom Liu, BofA Merrill Lynch, New York, NY  
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Charlie Swinton, BancFirst, Oklahoma City, OK  
SueAnn Nicely, Oklahoma Municipal League, Oklahoma City, OK  
Diane Pedicord, Oklahoma Municipal League, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

Chairman Herrmann stated the draft minutes of the October meeting had been distributed and he said he would accept a motion if the members had an opportunity to review the draft minutes. There were no corrections, and Mr. Sevenoaks moved to approve the minutes of the October 12, 2010, Regular meeting, and Dr. Taron seconded.

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

**D. EXECUTIVE DIRECTOR'S REPORT**

Prior to the Executive Director's report, Chairman Herrmann recognized Mr. Strong's nomination as one of "Oklahoma's 40 Under 40."

Mr. J.D. Strong, addressed the members and asked Mr. Josh McClintock to provide an update on legislative matters. Mr. McClintock distributed a written report, and said there had not been much legislative activity, but he briefed the members on the outcome of the recent state elections, the leadership team of the Governor-elect Fallin, and the Republican-led House and

Senate. He informed the members of the new numbers of U.S. House and Senate, and said the biggest issue for Oklahoma is an appropriations bill, which doesn't look like there will be action, although staff is still working on it. He expected a continuing resolution for the remainder of the year, and a new bill next year. He said there is a big push to eliminate the earmark process which would involve some of the agency's projects such as special studies and stream gaging, so he will be working with the actual agencies to secure funding. Mr. McClintock concluded his report stating the staff had prepared a transition document for the Governor's office, and will expand that into an "OWRB 101" for the new legislators. Ms. Lambert asked if the changes would be positive for the OWRB, and Mr. McClintock responded he believed it would be, although perhaps not immediately. Mr. Sevenoaks asked about the poultry case, and Mr. McClintock said Governor-elect Fallin would be looking at the situation and Mr. Ed Fite said it appeared to be in limbo until Judge Frizzell's ruling, and Cherokee Nation elections in June 2011.

Mr. Strong added to Mr. McClintock's report saying many legislators ran on the promise of "mean and lean" government and we need to make sure we do our job in a very efficient manner and we are spending a lot of time on briefing documents and doing the best we can to describe what we do and why it is important to everyone. Ms. Lambert suggested the OWRB Legislative Committee meet with the legislative leadership. Ms. Strong agreed and said once the session begins that could be arranged. In addition to the briefing document, staff is working in the BUMP report by legislative district.

Mr. Strong said the Governor's Water Conference was highly successful and many positive comments were received about the venue and program format. He thanked the Board for their support, the many sponsors, the OWRRI and its symposium, as well as all OWRB staff that contributed. He hoped that everyone came away better enlightened about water issues statewide as well as worldwide.

He said briefing documents, the strategic plan and other documents are being updated and completed, and will be provided to the members. The Board's Water Planning Committee met before the meeting today and Mr. Arthur will make a presentation later in the agenda; the Board's Finance Committee will be meeting following adjournment.

Mr. Strong concluded his report with an update of recent and upcoming meetings involving the agency and activities. He noted the proposed schedule of meetings for 2011, and Water Day at the Capitol on March 9, 2011. The members agreed to move the March meeting to that day in the afternoon; all other meetings will be held the second Tuesday of the month in Oklahoma City.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for City of Waynoka, Woods County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated that this item is for the consideration of a \$100,000.00 emergency grant request from the City of Waynoka in Woods County. He said the City's reverse osmosis plant has failed and is unable to provide treated water to the residents. In order to solve the problem, the city will be constructing a surge tank, distribution pump station, making electrical repairs, and replacing the reverse osmosis membranes. The estimated total project cost

is \$164,665.00 with funding provided by \$64,665.00 in local funds and the requested OWRB Emergency grant of \$100,000.00. Staff recommended approval.

Mr. Chip Outhier, City Manager, was present in support of the emergency grant request.

Mr. Nichols moved to approve the emergency grant to the City of Waynoka, and Mr.

Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

Chairman Herrmann asked as a reminder, what is the funding source for emergency grants, and Mr. Freeman answered the funding source is from the interest earnings on the cash reserves of the State Revenue Bond Loan Program, which is at about \$18 million today.

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for McCurtain Municipal Authority, Haskell County. Recommended for Approval. Mr.

Freeman stated that this item is a \$92,800.00 emergency grant request by McCurtain County Municipal Authority in Haskell County. The existing storage tank is leaking and causing the settled foundation; the tank has been drained to prevent a collapse. The proposed project consists of tank leveling, construction inlet/outlet piping and altitude valve, and other related appurtenances. The estimated total project cost is \$109,200.00, and the project will be funded with the \$92,800.00 OWRB emergency grant, \$16,400.00 in local funding. Staff recommended approval.

Mr. Freeman said there were no representatives able to attend today. Ms. Lambert asked how the amount of a grant is determined, and Mr. Freeman answered the agency provides the most that can be given by statute, and in the case only \$92,800 was available and the local community worked to come up with the additional funds.

Mr. Fite moved to approve the emergency grant to the McCurtain Municipal Authority, and Ms. Lambert seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Okemah Utilities Authority, Okfuskee County. Recommended for Approval. Mr.

Freeman stated that this item is a request by the Okemah Utilities Authority for a \$2.9 million loan. Okemah is requesting the loan to construct two new flow equalization basins, install clay liners on the interior of the bottom of the basins, to install a synthetic liner on the interior slopes of the basin, construct one concrete lined pre-sedimentation basin, and install two storm pumps at the influent pump station. Mr. Freeman stated the loan will be funded through the Clean Water State Revolving Loan Fund program, and he noted provisions of the loan agreement. He said that Okemah has been a long-time, good loan customer of the Board's and

currently has two outstanding loans with the Board, with a combined principal balance of approximately \$1.8 million; the debt service coverage stands at approximately 1.71-times. Staff recommended approval.

Mr. John Hays, Authority Chairman; Mr. Bob Coplin, Vice Chairman; Mr. Jerry Turner, City Manager; Mr. Paul Smith, Financial Advisor; and Mr. Joe Painter, Engineers, were present in support of the loan application.

Mr. Fite moved to approve the Clean Water SRF loan to the Okemah Utilities Authority, and Ms. Lambert seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of and Possible Action on a Proposed Resolution Expressing Official Intent to Reimburse Costs of Loans for Clean Water State Revolving Fund Projects.

Recommended for Approval. Mr. Freeman stated that as a result of the Tax Act of 2005, the Board changed its SRF loan financing strategy from a blind pool program, to a process of closing a loan with cash, and upon reaching 30% of the loan amount drawn, bonds are issued to reimburse the cash funds with bond proceeds. The change kept the program in compliance with the first hurdle of meeting the Tax Act requirement and avoided having to issue bonds with call provisions which are not favorable. As a result of Treasury regulations, Mr. Freeman stated bond issuers such as the Board must declare a reimbursement intention in a form such as the resolution proposed under item 2.D. He said that exhibit A of the resolution notes the potential Clean Water SRF loan that may have closed by the time of the potential bond debt issuance, and would have drawn at least 30% of the loan proceeds. He said that as is noted in the resolution, and in exhibit A, approximately \$500 million dollars has been identified in Clean Water SRF loans which might possibly be eligible for bond issue reimbursement. Staff recommended approval.

There was no discussion, and Chairman Herrmann asked for a motion.

Mr. Drummond moved to approve the resolution, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

E. Consideration of and Possible Action on a Proposed Resolution Expressing Official Intent to Reimburse Costs of Loans for Drinking Water State Revolving Fund Projects.

Recommended for Approval. Mr. Freeman said this item is an identical resolution as the previous item, but for the Drinking Water SRF Loan Program. The resolution notes the same parameters for identifying the Drinking Water loans for reimbursement. Exhibit A of the resolution lists DWSRF borrowers who may have closed loans with the Board at the time of the bond debt issuance, and would have drawn 30% of loan proceeds and eligible for reimbursement.

The Drinking Water loans total approximately \$555 million dollars. Staff recommended approval of the resolution.

Mr. Knowles moved to approve the resolution, and Dr. Taron seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

### **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 stated there is a Supplemental Agenda containing routine items for consideration, and he asked that the Board approve the items along with the Summary Disposition agenda items.

Chairman Herrmann read the summary disposition agenda introduction, and asked if there were any questions about any items, or any items that needed to be separated from the agenda.

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.**

Ms. Lambert asked about item 3.D.2., regarding a contract with the City of Lawton. The OWRB is contributing \$40,000 and she asked FEMA's contribution. Ms. Cunningham explained the agreement is a pass-through payment and is excess FEMA funds that comes through the OWRB's dam safety program to the City of Lawton. Ms. Lambert asked if the federal funds is the \$40,000, and Ms. Cunningham answered that it is the federal funds.

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

Ms. Lambert moved to approve the Summary Disposition agenda and the Supplemental Agenda, and Mr. Nichols seconded.

AYE: Knowles, Lambert, Drummond, Sevenoaks, Nichols, Feaver, Fite, 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. Interagency Agreement with the Oklahoma Department of Wildlife Conservation for the project “Flow Variability and Ecological Integrity Baseline Monitoring” in Upper Illinois and Upper Mountain Fork Mainstems.
2. Contract with the City of Lawton to conduct LiDAR Survey of Medicine Creek below Lake Lawtonka and East Cache Creek below Lake Ellsworth for the purpose of constructing a breach inundation map for the two lakes.
3. Memorandum Agreement with CP Kelco and USGS for water monitoring and data collection.
4. Memorandum Agreement with the Choctaw Nation of Oklahoma and USGS for water monitoring and data collection.
5. Memorandum Agreement with the Chickasaw Nation Division of Commerce and USGS for water monitoring and data collection.
6. Professional Services Agreement with Camp Dresser and McKee, Inc.
7. Amendment to Joint Funding Agreement with USGS for continuation of monitoring program.
8. Amendment No. 1 to Intergovernmental Agreement with The Board of Regents of the University of Oklahoma, University Outreach/College of Continuing Education to provide floodplain management workshops.
9. Agreement with the Office of the Secretary of the Environment for the Clean Water Act FY 10 §106 Water Pollution Control Program – Monitoring Grant CA# I-00F28001.
10. Memorandum Agreement with The Cherokee Nation of Oklahoma and USGS for water monitoring and data collection.

- E. Applications for Temporary Permits to Use Groundwater:
  1. Scoggin Family 1995 Trust, Roger Mills County, #2010-535
  2. Turkey Trak Ranch, L.L.C., Osage County, #2010-540
  3. Turkey Trak Ranch, L.L.C., Osage County, #2010-541
  4. General Materials, Inc., Cleveland County, #2010-543
  5. Claude Smith 2009 Trust, Cimarron County, #2010-544
  
- F. Applications to Amend Temporary Permits to Use Groundwater:
  1. Eleanor Renbarger, Major County, #1981-622D
  2. Seneca-Cayuga Tribe of Oklahoma, Delaware County, #2004-584
  3. Chain Land & Cattle Company, Inc., Dewey County, #2006-577
  
- G. Applications for Regular Permits to Use Groundwater:  
None
  
- H. Applications to Amend Regular Permits to Use Groundwater:  
None
  
- I. Applications for Regular Permits to Use Stream Water:
  1. TPH Capital, L.L.C., Johnston County, #2010-019
  2. RHB Verdigris, L.L.C., Rogers County, #2010-020
  3. Eufaula Public Works Authority, McIntosh County, #2010-021
  4. City of Bartlesville, Osage County, #2010-022
  
- J. Forfeitures (Reductions) of Stream Water Rights:
  1. O. A. Hall/Steve & Glenda Kinzie, Kay County, #1954-253
  2. Roy N. Purcell, Pawnee County, #1964-700
  3. Kelly Dean Wahl, Major County, #1976-048
  4. Kelly Dean Wahl, Major County, #1976-059
  5. Matt Moreland, Grant County, #1998-013
  6. Dean Reimer, Major County, #2000-027
  7. Goodson Ranch, L.P., Kay County, #2001-036
  
- K. Forfeitures (Cancellation) of Stream Water Rights:
  1. Cecil R. Bearden, Canadian County, #1988-036
  
- L. Well Driller and Pump Installer Licensing:
  1. New Licenses, Accompanying Operator Certificates and Activities:
    - a. Licensee: Water Well Pump Repair & Service DPC-0822
      1. Operator: Harold W. Dudley OP-1798
        - Activities: Installation of water well pumps
    - b. Licensee: Plummer Water Well Service DPC-0824
      1. Operator: Roy Plummer OP-1799
        - Activities: Installation of water well pumps
  
  2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
    - a. Licensee: Associated Environmental Industrial Corporation DPC-0269
      1. Operator: Wayne R. Griffin OP-1800
        - Activities: Groundwater wells, groundwater test holes, and observation wells

Monitoring wells and geotechnical borings  
Heat exchange wells

- M. Dam and Reservoir Construction:
1. Royce L. Casey, Pittsburg County, #OK30360
  2. Robert E. & Linda H. Hall, Pittsburg County, #OK30361
  3. M. L. Lenardo, Pittsburg County, #OK30362
  4. David Webster, Hughes County, #OK30363
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma State University, Payne County, #FP-10-17
  2. Oklahoma Department of Transportation, McCurtain County, #FP-10-18
- O. Applications for Accreditation of Floodplain Administrators:  
Names of floodplain administrators to be accredited and their associated communities are individually set out in the November 9, 2010 packet of Board materials.
7. **CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS**
- A. Contracts and Agreements Recommended for Approval.
1. Memorandum Agreement with the Arkansas-Oklahoma Arkansas River Compact Commission and USGS for water monitoring and data collection.
- B. Consideration of Well Driller and Pump Installer Licensing, Recommended for Approval:
1. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
    - a. Licensee: Talon/LPE DPC-0619
    - Operator: Charles W. Clark OP-1801
    - Activities: Monitoring wells and geotechnical borings
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, stated to the members that today's presentation will include highlights of the presentation Mr. John Rehring made at the Governor's Water Conference, work done in 2010 and work to be done in 2011. He will also talk about the 2011 schedule ahead and completion of the Water Plan, and then how the Board will interact in the completion of the plan, and the reports that will be presented in the 13 Water Shed Regional Planning reports (he distributed a draft report for the Board's review).

Mr. Arthur reminded the members of the common themes that have been discussed throughout the update process: federal and state and local partnerships, watershed and regional approach, technical information--all occurring at multiple levels of detail to provide good data for important, informed decision making. He reviewed the model for the planning tools (supply/demand gap) and reservoir yield model developed for this planning process, the climate change component, allocation model, water demand forecast report, and analysis and reports completed including the Aquifer Recharge Committee and the Marginal Water Quality Committee. The information from these reports will be used by water managers as we look toward the future and implementation. Two other reports he mentioned that are completed are the Instream Flow Report (Oct. 2009) of the western states and how that may affect Oklahoma's planning, and Water Supply Permit Availability--to know from a legal standpoint what is available from both surface water and groundwater. The water shed regional management reports on 82 basins contain gaged data that was aggregated based on supply and demand on a 58-year period of record of flow and precipitation for a dry year (2006) followed by a wet year (2007) into the 13 watershed areas.

Mr. John Rehring addressed the members and said he thought it would be helpful to see the plan in front of them now (draft regional report) and talk about how all this gets pulled together in one place and the application of work that has been done so far. He provided a quick tour of how the regional reports are organized; a synopsis for those who just want a "snapshot", the regional report, basin summaries and basin technical appendices. The detailed information in the report is color-coded for each basin, where concerns can be identified. He said there are key potential options to look at: demand reduction and conservation shift from groundwater use to surface water and conversely, reservoir storage both current and potential sites, and out of basin supplies and what would be needed. Mr. Rehring described the supporting details that goes into the synopsis, and the water quality trending analysis as well as information provided by the 785 water suppliers across Oklahoma, and he then described the basin-level information that will be contained in the reports. He informed the members of the work in progress now--the climate change analysis conducted by the Bureau of Reclamation and funded by the Oklahoma Climatological Survey; what are the "hot spots" and the best solution for each area, and what are the major supply challenges, climate change affect, conservation potential and conjunctive management report.

Mr. Sevenoaks asked about what is meant by conservation potential, and Mr. Rehring said looking at the effectiveness of conservation measures and taking into account where we are today and where we can go in the future--given a potential shortage, how do conservation measures help in reducing the shortage. They talked about the Ogallala and conservation's role in supply options, and Mr. Strong mentioned that the information can be modeled as we consider what water use is known in an area (irrigation and municipal and industrial as the largest users in an area) and continue the same practices; the shortage projection could then be made and then look to what conservation measure could be employed to reduce the gap between supply and demand going into the future, then look to costs what will yield the "biggest bang for the buck" as we go from the plan to the implementation stage. Mr. Sevenoaks said the mining laws allow a well to be pumped dry, and are we going to find a way through recharge and conservation to allow the Ogallala to survive? This is the type of things that will need to be considered. Mr. Nichols asked about information gathered about surrounding states, and water is an economic issue for the agriculture sector.

Mr. Rehring concluded his report noting other factors that will be included in the basin reports including conjunctive management, physical supply reliability, financial need for infrastructure, water shed planning, and provider planning guide.

Ms. Lambert commented about attitudinal factors in making the Water Plan a reality--the implementation of the Comprehensive Water Plan, what is the short term and long term thinking and how is the planning group looking at society's attitude of "what's in it for the community--for me and the group", and the balance of what can be mandated and what can be voluntary? Mr. Rehring answered the planning process is to help understand what may be in the future, and what changes may be needed now legislatively to change that. Mr. Nichols commented the legislature does not approve the plan, but will approve the law changes that may be recommended, and with the new Legislature there may be a change in attitude.

Mr. Strong interjected the biggest result of the plan is education and information - to get interest in making changes you have to recognize there is a problem - and then what to do to better manage Oklahoma's water, Board and staff level decisions in making recommendations, and then work at the Capitol to implement the plan, keeping a balance between regulatory and voluntary. Chairman Herrmann commented about the high-integrity public input process reflecting the divergent views of the public and the importance of public input, and that the information gathered is "data rich (good data, and a lot of it);" that problems will be identified on a statewide basis and we can decide what choices need to be made from a quality perspective and a supply and demand perspective. Staff and the Board will be working to identify areas and choices to make. Ms. Lambert said that Oklahoma is "data rich, and change poor"; how do we maximize to make the shift to change being less threatening. Mr. Strong said we are input-rich during this update, the public input process is new this time and that is where we get the help we need about making decisions and where we can obtain ideas and gain support for those ideas. Mr. Fite commented the statewide leadership is now limited to eight years, and legislative terms are twelve years, making it incumbent upon the Board to step up and be firm when it receives the expertise and collectively sees past the politics to what serves the state through the years; he wasn't as concerned about the recent elections, as that the Board remain focused.

Chairman Herrmann made additional comments about the benefit of outside input from organizations, and Mr. Arthur concluded the presentation stating how the plan will be "rolled out" and the technical information gathered will be "vetted" through the 13 regional meetings (water stakeholders) that will be held beginning in mid-April 2011, while simultaneously drafting the plan (which process will be presented at the December meeting), with the final reports brought to the Board -- anticipating that four reports will be presented at a time for the Board's approval, completing the process by October 2011 and presentation to the Legislature in 2012. The planning group is continuing discussions about how the plan will be i.e., written, on CD, downloadable from the website, etc. Mr. Mark Nichols, Chairman of the Water Planning Committee, anticipated the Committee would be meeting more frequently until the plan is complete.

## **5. SPECIAL CONSIDERATION**

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal

deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

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

A. In the Matter of Stream Water Right No. 1988-037 of Everett W. Meyer Trust, Stream System 2-9-2, Canadian County, Oklahoma:

(1) Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that on this item a hearing was conducted, and there is no one present today. She said this is a proposed reduction of an existing stream water right, in the name of Everett W. Meyer Trust. As part of the statewide review, staff found reasonable cause to reduce the right for the failure to use water in the full amount of 40 acre-feet in any one year in a 7-year period, 1991-1997. A show cause hearing was held; claimants provided testimony, and staff worked with the representative resulting in the calculation of four acre-feet of use; therefore, staff recommended the water right not be cancelled, but be reduced to four acre-feet of stream water per year. Staff recommended approval of the proposed findings of fact, conclusions of law and Board order reducing water right 1988-037.

Mr. Drummond confirmed that the party may reapply for additional water rights in the future, and Ms. Cunningham stated that is correct. The user bottles water and has indicated they will seek additional use in the future based on anticipated operation changes. Ms. Cunningham said staff assured the water right holder it was not anticipated there would be additional users in the area and staff would assist them when they wished to reapply.

(2) Discussion by parties- There were no parties in attendance.

(3) Possible Executive Session- The Board did not vote to enter executive session.

(4) Vote on whether to approve the findings of fact, conclusions of law and board order as presented or as may be amended, or vote on other action or decision relating to the proposed order, findings of fact, conclusions of law.

Ms. Lambert moved to approve the reduction for stream water right 1988-037, and Dr. Taron seconded.

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

B. Proposed Findings of Fact, Conclusions of Law and Board Order: Daniel Paul Bandimere and Enviroguard Technologies

(1) Summary – Julie Cunningham said this item concerned an unlicensed commercial drilling and completion of wells in the state by Daniel Bandimere and Enviroguard Technologies. She

said staff has been working diligently with the Oklahoma Construction Industries Board as well as the Oklahoma Well Driller's Advisory Council. She noted the OWRB program has been drastically cut over the past two years and staff is partnering with other agencies for assistance. She recognized Mr. Kent Wilkins who is the program manager, and she said that upon notification by the Construction Industries Board staff, verified that Mr. Bandimere from Fort Smith, Arkansas, has drilled and installed heat exchange wells in Sequoyah County, Oklahoma, without a license and using drilling methods and materials that are not authorized by law in Oklahoma. Staff has advised Mr. Bandimere of the requirements, and sent the appropriate form; he said he had no plans to perform work in the state and the next day staff was informed he was drilling in Oklahoma. The Oklahoma Well Driller's Advisory Council has recommended Mr. Bandimere and Enviroguard Technologies be presented a notice of violation; a hearing and proposed imposition of administrative penalty in the amount of \$15,450.00 for failure to meet construction standards on nine heat exchange wells, for failure to obtain license and operators certification, and failure to file required completion reports for each well drilled. There was no information on other drilling activities around the state, but there has been concern he has worked in other parts of the state. Mr. Bandimere acknowledge receipt of the notification; however, he did not appear at the hearing to present evidence and argument, and to date has not submitted reports or come into compliance with Oklahoma law. Staff recommended approval of the proposed findings of fact, conclusions of law and Board order imposing penalty with the requirement that Mr. Bandimere remit payment and the completion reports upon receipt of the order.

- (2) Discussion by parties - There were no parties in attendance.
- (3) Possible Executive Session - The Board did not vote to enter executive session.
- (4) Vote on whether to approve the findings of fact, conclusions of law and board order as presented or as may be amended, or vote on other action or decision relating to the proposed order, findings of fact, conclusions of law.

Mr. Fite moved to approve the proposed findings of fact, conclusions of law and Ms. Lambert seconded.

Ms. Lambert asked the recourse if Mr. Bandimere doesn't pay. Ms. Cunningham answered that the funds would go into the Indemnity Fund which can be used to correct when something is done wrong; but he would not be able to do business in the State. Mr. Couch added the Board could consider the option of seeking an order from the local district judge; it would be difficult out of state to bring him in, but were he caught in state and there could be an order from the court and the agency could seek that. He said it is a crime and local district attorneys, depending upon the work load, could be presented a complaint in violation of law and a Board order and from a criminal perspective deputies driving about and there is a warrant issued then they could take whatever action they preferred. Mr. Strong said from an environmental perspective, the Indemnity Fund can be used to properly close or reconstruct those wells and then the agency could sue for reimbursement. Ms. Cunningham said there are water quality concerns and the Water Well Driller's Advisory Board has been asking for regulation because of those that are doing the right thing and has increased the fine from \$500 to \$5,000 for each violation, and asked for enforcement.

Mr. Drummond asked if the OWRB had jurisdiction because he is drilling into the aquifer--he isn't getting a permit but has the chance to pollute an aquifer. Mr. Couch explained this is the fundamental reason the well driller's licensing was put into the law, and has expanded

and become more specific about what type of activities, but certainly primarily for groundwater contamination prevention, the idea of consumer protection and keeping people licensed to do it right. Mr. Drummond asked Mr. Wilkins if anyone is drilling this type of well, and Mr. Wilkins answered the geothermal business has greatly increased and this gentleman is using a system that is not approved in Oklahoma for a number of reasons and could increase the possibility of groundwater contamination. Chairman Herrmann said the International Ground Source Heat Pump Association is located at Oklahoma State University, and Mr. Wilkins said he had contacted the group and they had not done much research on that system and had not endorsed that system. Mr. Fite thought it best to exhaust the administrative system and then go to the court; if there is a warrant, he will be picked up. There were no further questions or comments.

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

NAY: None

ABSTAIN: None

ABSENT: None

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

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

Mr. Strong said that Ms. Leslie Nance was unable to attend the meeting. He said the new report is available. He said the agency is on track; there is 67% of the fiscal year remaining and 77% funding budgeted, coming slightly under budget and where we want to be. Ms. Lambert applauded the new format and thanked Ms. Nance. There were no questions about the budget; Mr. Sevenoaks asked about Mr. Strong's salary as Secretary of Environment and how funding is provided.

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

The Supplemental Agenda items were approved under the Summary Disposition Agenda.

**8. NEW BUSINESS**

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

There were no New Business items for the Board's consideration. Mr. Nichols reminded the Finance Committee members they would meet following the meeting.

**9. ADJOURNMENT**

There being no further business, Chairman Rudy Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:27 a.m. on Tuesday, November 9, 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

\_\_\_\_\_/Absent\_\_\_\_\_  
F. Ford Drummond

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

**ATTEST:**

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