

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**January 11, 2011**

**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 January 11, 2011, 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 January 4, 2011 at 4:35 p.m. at the Oklahoma Water Resources Board's offices.

**A. Invocation**

Chairman Herrmann asked that in lieu of an invocation today, to please bow for a moment of silent prayer in reflection of the tragic events that occurred in Tuscon, Arizona, during the weekend.

**B. Roll Call**

**Board Members Present**

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

**Board Members Absent**

Ford Drummond

**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  
Leslie Nance, Financial Officer  
Mary Schooley, Executive Secretary

**Others Present**

Bud Ground, Public Service Co., Oklahoma City, OK  
Wayne Johnson, Quinlan Community Rural Water District #1, Mooreland, OK  
Bob Jackman, Tulsa, OK  
Quang Pham, Oklahoma Department of Agriculture, Food and Forestry, Oklahoma City, OK  
Paula James, Town of Binger, OK  
Amy Ford, Citizens for Protection of Arbuckle Simpson Aquifer, Durant, OK  
Ken Senour, Guernsey, Oklahoma City, OK  
John Rehring, CDM, Denver, CO  
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK  
Jeri Fleming, Oklahoma Water Resources Research Institute, Stillwater, OK  
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Jason Stutzman, Oklahoma Ordnance Works Authority, Pryor, OK  
Cody Braun, Citizen Potawatomie Nation, OK  
Pennie Embry, Oklahoma for Responsible Water Policy  
Ron Jarman, Apex/OOWA, Oklahoma City, OK  
John Ward, TPR, Oklahoma City, OK  
Luke Martin, Capital Group, Oklahoma City, OK  
Mark Derichsweiler, Department of Environmental Quality, Oklahoma City, OK  
Jim Bonsall, Unimin, Mill Creek, OK  
Gary Frueming, Unimin, Roff, OK  
Jim Luckett, City of El Reno, OK  
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK  
Rep. Joe Dorman, Rush Springs, OK  
Buck Ray, Oklahoma Department of Wildlife Conservation, Oklahoma City, OK  
Roy W. Foster, Tulsa Municipal Utilities Authority, Tulsa, OK  
Richard Landes, St. Crispins, Shawnee, OK  
David Benham, Edmond, OK  
Lydia Sullivan, Edmond, OK  
Krystina Hollarn, Saline Creek, Tulsa, OK

**C. APPROVAL OF MINUTES**

Chairman Herrmann stated the draft minutes of the December meeting had been distributed and he said if the members had an opportunity to review the draft minutes he would accept a motion. There were no corrections, and Mr. Nichols moved to approve the minutes of the December 14, 2010, Regular Meeting, and Mr. Fite seconded.

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

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

Mr. J.D. Strong, addressed the members said that the Legislature is coming into full swing, it has already had organizational meetings, and legislation is beginning to be filed. He asked Mr. Josh McClintock to provide an update on legislative matters. Mr. McClintock distributed a written report, and noted the inclusion of the Journal Record listing of Legislative Leadership and Committee memberships. He also highlighted three pieces of legislation that have been filed so far that are of interest to the OWRB: Rep. Faught has authored HB 1044, changing the process by which the administrative rules are approved, that the Legislature will approve rather than disapprove; Senator Ron Justice has authored SB 108, rolling back the \$50 groundwater fee to \$10, avoiding a full repeal; and Senator Brecheen (former Senator Gumm's district) has authored SB 87 which changes the makeup of the Board--the number of Board members would stay the same with one member from each Congressional District, and the state divided into quadrants having one member from each quadrant. He added staff had met with the Arbuckle Simpson area parties regarding the pit water issue, and a smaller group will be meeting at the end of the month.

Mr. Strong noted the critical allies of the OWRB that are in leadership positions: House A&B Subcommittee on Natural Resources & Regulatory Services Chair Rep. Don Armes, and Vice Chair Rep. Leslie Osborn (OWRB appropriations committee); and Agriculture, Wildlife & Environment Chair Phil Richardson and Vice Chair Todd Russ (OWRB non-appropriations committee). And in the Senate: Appropriations Subcommittee on Natural Resources Chair Sen. Ron Justice, and Vice Chair Eddie Fields (OWRB appropriations committee); and there is no Senate Environment Committee so its unclear whether OWRB related bills will go to the Energy or Agriculture Committee. He also brought to the Board's attention the "annual report" brochure containing information about the OWRB activities, i.e., mission, goals, budget, status of the OCWP that will be distributed to the Legislative members in an effort to orient and educate, as well as various organizations that the staff interact with.

Mr. Strong noted the legislative deadline for filing bills is January 20; he had attended the inauguration of the State's first female Governor; the Board's Rules Committee met prior to the Board meeting today; staff is meeting with legislators to brief them on water issues across the state; staff had convened the interested parties to work on a compromise regarding the pit water issues as requested by Senator Bingman and a smaller group will meet at the end of the month--the matter is limited to sole source aquifers. The OWRB hosted a U.S. Corps of Engineers Tri-State meeting between Oklahoma, Texas, and Kansas attended by COE officials--including the Southwest Division Commander from Dallas--met at the National Weather Center in Norman and discussed water planning and the states' relationship with the COE and how to work together regarding the current budget situation and the new Congress and obtaining funding for the priorities of the each respective state. The Tulsa District also met separately with Oklahoma staff for their annual meeting to discuss matters of interest.

Mr. Strong concluded his report.

## 2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Town of Binger, Caddo County. Recommended for Approval. Mr. Joe Freeman stated to the members that this item is a \$65,167.00 Emergency Grant request by the Town of Binger located in Caddo County. The Town's main lift station has failed causing sewage overflow that could cause a health hazard. A temporary portable pump is being used, in an attempt to keep an overflow from occurring. The Town proposes to construct a new lift station and remove the old station. The total estimated project cost is \$152,506.00, with funding provided by \$45,019 remaining in a Department of Commerce Grant, \$42,320.00 in local funds, and the requested \$65,167.00 OWRB emergency grant. Staff recommended approval.

Ms. Paula James, Town Clerk, was present representing the Town of Binger.

Dr. Taron moved to approve the emergency grant to the Town of Binger, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drummond

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Kendrick Municipal Authority, Lincoln County. Recommended for Approval. Mr. Freeman stated this item is a \$100,000.00 Emergency Grant request by the Kendrick Municipal Authority located in Lincoln County. He said there are approximately 60 residents in the Kendrick area whose wells have not been able to provide adequate water over the past few years. Kendrick proposes to provide water to these residents by constructing approximately 100,000 feet of water line, gate valve and pump station upgrade. It is estimated the project will cost approximately \$986,350.00 with funding secured through a Rural Development Grant of \$203,100.00; a Rural Development loan of \$285,000.00; an OWRB REAP Grant of \$55,000.00; a CDBG Grant of \$325,250.00; local funds of \$18,000.00, and the requested OWRB Emergency Grant of \$100,000.00. Staff recommended approval.

Mr. Freeman stated the representative from Kendrick was unable to attend.

Mr. Nichols asked how the project qualified as an emergency grant. Mr. Freeman responded because of the lack of water, which is under the Board's rules for Category 3, lack of water. Chairman Herrmann asked if the drought was a factor and is it isolated; Mr. Freeman said that potentially it has, and actually the Governor has declared a drought, which will kick in the drought grant fund; we haven't received calls but he anticipated there will be calls. Ms. Lambert asked if the other funding sources had been obtained, and Mr. Freeman said they had, the approval of the OWRB emergency grant is the final component. Chairman Herrmann asked regarding the emergency, what is the timetable of the project? Mr. Freeman and Ms. Bacon answered the project has not gone out for bid as yet, so the timetable is not known. Ms. Lambert noted the cost is about \$1 million for 60 residents.

Mr. Sevenoaks moved to approve the emergency grant to the Kendrick Municipal Authority, and Dr. Taron seconded.

Dr. Taron commented because he is in the water business in a rural area, that the residents will be paying \$72 dollars per month for water service. Mr. Freeman said that cost is both water and sewer; the water is \$52.50. Dr. Taron said that would be high in his community.

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

### **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 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, or other changes to the 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.**

Chairman Herrmann asked if there were other questions. Mr. Nichols asked about why the Board votes separately on the Emergency Grants, and the REAP grants are part of the Summary Disposition Agenda. Mr. Freeman answered that when the Board first considered the REAP grants in the mid-1990s, there were so many the Board did not want to consider each one individually. Chairman Herrmann said that process could be revisited.

Mr. Sevenoaks asked about item D.1., Agreement with the Oklahoma Tobacco Settlement Endowment Trust Fund. Mr. Strong explained the agency would provide IT services for the small staff at TSET, and realize a benefit in Internet services as well for the OWRB. The TSET offices are located in the same building with OWRB. Chairman Herrmann stated this is an example of state agencies working together and sharing resources.

There being no further questions about items on the Summary Disposition Agenda, Chairman Herrmann stated he would accept a motion.

Ms. Lambert moved to approve the Summary Disposition agenda, and Mr. Knowles seconded.

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

ABSTAIN: None  
ABSENT: Drummond

#### **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 he would update the members on the technical work of the OCWP process currently underway, and John Rehring and Jeri Fleming will speak as well. Mr. Arthur said regarding the "hot spot analysis" staff is going across the state and looking at the supply, demand, and gap analysis based upon the 13 watershed planning regions. There is a wealth of information being generated as a result of the work being conducted within each of the watershed regions--and within the 13 regions are 82 planning basins. He said the draft report contains a regional synopsis, then a regional report containing more detailed information about the characteristics--water availability, water quality, demands, etc., about each of the regions. He said there will also be additional information on the 82 basins regarding the characteristics of the basin and there is a lot of technical information which will be provided at the basin level giving the water users in the regions or basin-- a wealth of information necessary for informed water management and water planning for the next 50 years. He said what is important about the exercise is to be able to identify issues--how do we determine those issues (hot spots) that need to be addressed, and rank, or prioritize in a sense as regards how to respond in implementation. These are the components that make up a reliable supply, and critical components were reviewed that are important for a reliable supply, and to help to identify the "hot spots": physical availability, permit availability (surface water and groundwater availability) and water quality data, which are ultimately synthesized together for an overall ranking for each of the 82 basins. Once evaluated, solutions will be identified for the critical areas. Mr. Arthur reported the process for ranking assigned to the 82 basins regarding stream water, groundwater and water quality, and what will appear on the maps for each basin through a color-coded system.

Mr. John Rehring spoke to the members about the further analysis of the most significant supply issues/options and identifying solutions. There will be basic information in the basin reports and appendices, but the more significant issues will be more detailed. He said some of the key areas that are looked at for solutions are: demand reductions, increased surfaced water use, increased groundwater use, reservoir storage and out of basin supplies.

Chairman Herrmann asked about 50-year demand data by category analysis, and that hot spots can occur at different times. Mr. Rehring said the gap tool looks at the projected demands through 2060 for each of the seven demand sectors and are compared to the supply tool for both surface and groundwater and are looked at decade-by-decade to identify not only where but when do we expect problems to occur, and what can be implemented to solve that.

Mr. Bob Jackman, citizen participant in the public participation meetings, stated he was interested in the technical and engineering reports particularly regarding the supply side and he asked when can those who are qualified have an opportunity to vet/analyze the information in the technical and engineering reports prior to them being finalized. Mr. Rehring answered that much

of the information has already been documented in the supply and demand analysis through the supply and demand handbook that was distributed to the public participants. The regional meetings that will be occurring are a place where all the regional reports will be made available.

Jeri Fleming updated the members on the public input process. She said the purpose for the upcoming feedback and implementation meeting will be to allow public comment on the draft water plan and to ask questions, visit with OWRB and CDM staff and make comments on the plan, and allow the public to provide implementation ideas. She announced the meeting format will be open house/come-and-go, and that staff will be available for discussion and questions. The draft plan is not available, so all details are not certain at this time; she said once all locations are confirmed, a schedule will be available on the OWRI website. When the draft plan is available, it will be on the website and available by print; citizens can review and bring pre-written comments. The meetings will begin April 19 at Beaver, there will be three meetings per week, 13 meetings total. She said that CDM will also hold feedback meeting on the regional reports from 2-5 p.m. during each meeting. Both meetings are open to the public.

Dr. Taron commented he had observed that many issues related to education and conservation, and while many organizations have their own programs, he believed there could be a benefit of combining the programs into a "water in the classroom" program. Ms. Fleming said that had been a topic of discussion, and she anticipated it would be addressed in the plan. Chairman Herrmann asked about when the draft plan will be available. Mr. Strong responded that the schedule is that the draft plan will be available in March prior to the meetings starting so there is ample time for review. The meetings are structured so there is technical review in the afternoon and more general policy feedback in the evenings. Chairman Herrmann asked at what point will the information be final and staff is able to "take it to the bank." Mr. Strong said with availability in March there is then a 6-7 month review so the Board is prepared to vote prior to the Governor's Water Conference and presentation to the Legislature.

## **5. SPECIAL CONSIDERATION**

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

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

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

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

## **6. AGENCY BUDGET REPORT.**

Ms. Leslie Nance stated the December budget-to-actual report has been provided. She said it shows the agency is in good shape so far this year. Mr. Sevenoaks asked if any cuts are anticipated, and Mr. Strong said the agency was asked to provide information to the Senate about a 5%, 7.5%, and 10% for the 2012 fiscal year, on top of what the agency has already taken in the past two fiscal years, but there has not at this time been any discussion about a mid-fiscal year cut. Ms. Nance said specific information regarding IT operations was also provided.

Ms. Lambert complimented staff on its discipline to staying under budget.

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

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

## **8. PRESENTATION OF PUBLIC DRAFT PROPOSED AMENDMENTS TO PERMANENT RULES**

Staff will briefly present highlights and summaries of draft proposals that have been made available for public review and comment for the following chapters of the permanent rules. The formal public hearing to receive comments about the draft proposals is scheduled before the Board members at the January 11, 2011, monthly meeting. Thereafter, final draft proposals for all chapters will be forwarded to the Board and are scheduled for consideration and action by the Board members at the February 8, 2011, monthly meeting.

Chairman Herrmann stated that today the Board would conduct the public hearing regarding the proposed rule changes that were presented at the December meeting. He said that today the staff will review briefly the changes to the proposed rules presented at the last meeting, summarize the public comments received in writing in response to those, accept public comment and there will be an opportunity for questions. He stated there would not be Board action today. Final Board action will be taken at the February meeting after incorporating public comments.

Mr. Strong suggested that staff present public comments received since the December meeting, unless there were questions by the Board members.

Prior to continuing, Chairman Herrmann expressed his appreciation for the public's involvement in the rules amendment process, as the robustness and quality of the process depends upon the public's participation.

A. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing - Ms. Julie Cunningham said Chapter 35 amendments had been provided, and the proposed changes have been suggested by the Well Drillers and Pump Installers Advisory Council, established to



make recommendations to the Board. Two meetings were held with that group to develop the proposed language. She stated the actual "underline-strikeout" version of the proposed rules is provided. There have been no additional comments received during the comment period.

Chairman Herrmann asked for public comment. There were no additional comments by members of the public, and there were no questions by Board members.

B. Proposed Amendments to Chapter 45 – Oklahoma’s Water Quality Standards; and

C. Proposed Amendments to Chapter 46 – Implementation of Oklahoma’s Water Quality Standard- Mr. Derek Smithee addressed the members and distributed the formal written comments that have been received for both Chapters 45 and 46 during the comment period. He said federal law has a more extended process than state law, which began prior to the other chapters. The comments distributed are the actual written comments received; although additional comments may be received today. Staff also provided the "underline and strikeout version" of the proposed rules.

Chairman Herrmann invited members of the public to address the Board if there were any comments.

Mr. Roy Foster, City of Tulsa/Tulsa Municipal Authority, stated to the members Tulsa has submitted written comments regarding the dissolved oxygen (DO) criteria for reservoirs. The OWRB is proposing to weaken that requirement. He said he conducted an evaluation of the city's data, and identified the OWRB was capable of doing what the TMUA [and other agencies] could not and that is improve the water quality of Lakes Eucha and Spavinaw and remove them from the 303(d) list. The City of Tulsa had determined that the DO limit for Eucha and Spavinaw has not improved, looking at historical data he said it is higher historically than development in the watershed. He said he had met with OWRB staff and crafted language and submitted the written record as a reference to recognize that Eucha -Spavinaw are still impaired.

Mr. Smithee responded he had met with TMUA and believes they can take the drafted language and he believed their comments can be adequately addressed for presentation next month.

Mr. Bob Jackman, Tulsa Independent Geologist, asked for clarification on Chapter 46 regarding metals. He asked about adding biologically altered metals because of problems whereby mercury is changed by bacteria action. He asked if that is necessary, or if the proposal is sufficient.

Mr. Smithee responded staff believed it is sufficient, but would look into it.

Mr. Jackman also commented regarding changes to the name of the "Middle Arkansas River" and designation of Saline and Little Saline Creek. He suggested leaving the middle Arkansas areas as it is used in other nomenclature.

Mr. Smithee said he would speak to Mr. Jackman after the meeting for clarity.

Mr. Ron Jarman, Apec Environmental, representing the Oklahoma Ordnance Works Authority, commented on the simplification of the language in Chapter 46, page 13, regarding regional potential determination. He said the OOWA manages the Mid America Industrial Park and it appeared language proposed would eliminate the flexibility the Authority has in modifying its wastewater treatment system for new and expanded companies moving into the

park. He said anytime a change is proposed in flow then it requires a new water quality permit evaluation. Language proposed is that concentration and loading be added; he suggested they are essentially the same, and so only "loading" be used, which is what the permitting entities refer to.

Mr. David Benham, landowner in the Saline Creek area, addressed the members and stated his support for the designation of high quality water for Saline and Little Saline Creek area. He said they are beautiful creeks and are in need of the protection. He said there is broad support by landowners as well as legislators and local mayors which all had signed letters of support. He said the scientific data is sound and he asked the Board's favorable consideration.

Mr. Jackman asked about the new section 785:46-15-13.1, regarding navigation--he recommended the change include both "in state and out of state", because flow out of state affects other states. Mr. Smithee said the lock and dam system is managed for navigation in Oklahoma, Arkansas, and Louisiana. He said he wasn't sure how that could be captured in the Standards, but he would take a look at it.

Mr. Fite asked why the proposed designation for the Saline Creeks is only HQW and not ORW (outstanding resource), and was it contemplated. Mr. Smithee responded that was discussed and in general ORW is associated with scenic river assignment and is basically political as it's done by the legislature. Mr. Fite said he understood there was legislative support, and Mr. Smithee said if that designation is made, it will be incorporated into the Standards.

There were no other comments by the public. There were no other questions or discussion by members.

D. Proposed Amendments to Chapter 50 - Financial Assistance. Mr. Joe Freeman stated there were no comments received, and no changes have been made since last month.

There were no public comments. There were no questions or discussion by Board members.

Chairman Herrmann thanked everyone for their participation.

## **9. NEW BUSINESS**

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

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

**10. ADJOURNMENT**

There being no further business, Chairman Rudy Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:32 a.m. on Tuesday, January 11, 2011

**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

\_\_\_\_\_/Absent\_\_\_\_\_  
Kenneth K. Knowles

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

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

**ATTEST:**

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