

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
June 14, 2011

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:35 a.m., on June 14, 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 June 7, 2011 at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked Mr. Ed Fite to provide the invocation. He also mentioned that there had been three persons drown in the Illinois River recently, and Mr. Herrmann asked that everyone also keep Mr. Fite and his team in their thoughts.

B. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Linda Lambert, Secretary
Ford Drummond
Ed Fite
Kenneth Knowles
Richard Sevenoaks
Joe Taron
Tom Buchanan

Board Members Absent

Marilyn Feaver

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
Amanda Storck, Chief, Administrative Services Division
Kyle Arthur, Director of Planning
Josh McClintock, Director of Government and Public Affairs
Mary Schooley, Executive Secretary

Others Present

Janet Stewart, Oklahoma Conservation Commission, Oklahoma City, OK
Kelly F. Monaghan, Sequoyah County Conservation District, Tulsa, OK
Mike Mathis, Chesapeake Energy, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Ken Senour, Guernsey, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Dave Taylor, Waurika Lake Master Conservancy District, Waurika, OK
Bob Kellog, Benitscheck, Oklahoma City, OK
Jennifer Taylor, Benitscheck, Sallisaw, OK
Gabrial Taylor, Benitscheck, Sallisaw, OK
Michial Taylor, Benitscheck, Sallisaw, OK
John Estus, Office of the Speaker of the House, Oklahoma City, OK
Pennie Embry, Oklahomans for Responsible Water Policy, Eufaula, OK
Lindsay Robertson, Norman, OK

Chairman Herrmann welcomed the OWRB's new member, Mr. Tom Buchanan, of Altus, Oklahoma. He also recognized Secretary of Environment Gary Sherrer, and former OWRB Director Duane Smith.

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the May 10, 2011, meeting had been distributed. He said if the members had an opportunity to review the draft minutes he would accept a motion. There were no corrections, and Mr. Drummond moved to approve the minutes of the May 10, 2011, Regular Meeting, and Ms. Lambert seconded.

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

Chairman Herrmann announced certain agenda items would be taken in a different order so that the last item considered today will be the Water Plan. That discussion will be an open forum of the Board; he said the Board had received five years of public comment, and he would not accept public comment today, and he asked Board members to be very open in their comments. No formal action will be taken on any of the recommendations in the Water Plan.

The Special Consideration Agenda item would be considered following the Summary Disposition Agenda and the Supplemental Agenda items, and the Budget Report would be presented following the Supplemental Agenda. Election of Officers would then follow the Special Consideration Agenda. Chairman Herrmann stated he preferred that consideration of item 4. regarding the Comprehensive Water Plan Update be the final item considered by the Board because of the anticipated discussion.

D. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, Executive Director, said it is a bittersweet day to welcome a new board member, but also say goodbye to an active member of the Board, Mr. Mark Nichols. Mr. Strong presented Mr. Nichols with a Resolution of Appreciation, and photos were taken. Chairman Herrmann expressed his personal appreciation for Mr. Nichols' service, as well as on behalf of the members.

Mr. Kyle Arthur made a special presentation to Ms. Jeri Fleming for her work on the public input portion of the Update of the Comprehensive Water Plan. Ms. Fleming's work has ended at the Oklahoma Water Resources Research Institute, and she has accepted a position with OSU Biosystems and Agriculture Engineering Department. He thanked her for her tireless work on the Plan and her role as ambassador, and read a poem he wrote, "How to Cook Up a Water Plan." Chairman Herrmann also thanked Ms. Fleming for her tireless work on behalf of the 3.6 million Oklahoma citizens.

Mr. Strong asked Mr. Josh McClintock, Director of Government and Public Affairs, to provide the legislative update. Mr. McClintock provided a report on Congressional activities, a copy of the state budget agreement, and a written tracking report regarding final state legislative action. He commented about HB 1304--IT consolidation signed by the Governor on May 24 and staff is working on the details; HB 1692--floodplain bill removing the five member board requirement signed by the Governor May 11; HB 2140--a measure consolidating several administrative functions to the Office of State Finance; HB 2170--OWRB general appropriations; HB 2179--provides authority to transfer funds designated for programs no longer in existence to the agency for use in other programs, signed May 25; SB 248--groundwater fee reduction bill signed May 18; and SB 597--representing the compromise on pit water and signed on May 26. He concluded his report.

Mr. Strong continued that the OWRB related articles packet was thicker because the OWRB had received much press lately, specifically a spread in the Sunday Oklahoman, as well as articles regarding the request for an attorney general opinion, etc. He said the FIMS have concluded and Mr. Arthur will make a report later in the agenda; a compilation of comments received will be forthcoming.

Mr. Strong stated he spoke at the recently held Sovereignty Symposium; met with the Assistant Secretary of Interior for Science and Water, Ann Castle, while she was in Oklahoma City regarding "America's Great Outdoors Initiative;" met with the Assistant Secretary of the Army Joellen Darcy during the Owasso Watershed briefing, a cooperative TMUA project, and a Lake Eufaula briefing on the shoreline management plan. He said he was able to talk to Ms. Darcy about a stronger partnership with the Corps in funding the plan and as well as moving to implement the OCWP. The OWRB is involved in a joint effort with Texas and Kansas and he

and Josh McClintock will be traveling with his counterparts to Washington, D.C. next week to meet with each states' delegation to discuss the "united front" about working with the Corps, and other federal agencies to obtain funding for not only special projects and "earmarks" but also about how to get more funding devoted to implementation of water plans. There will also be discussion about the need for the COE to prioritize for water supply as a mission--Oklahoma, Kansas and Texas have 75% of the water supply storage of the COE's Southwest Division--currently that is only 1% of the COE budget.

There will be a bond closing following the meeting today; an interview with Kris Polly of Irrigation Magazine on June 15; Water Resources Advisory Board meets June 17; and, staff will participate in the Environmental Federation of Oklahoma meeting June 24. Concluding his report, Mr Strong noted the forthcoming announcement by Speaker Kris Steele's office and Speaker Bingman about the creation of a joint committee on water. He said this is a great opportunity as we move from water planning to the need for water implementation there are big policy issues that will need to be deliberated by the Legislature. He said that while the Board is preparing to weigh in on these issues and make recommendations, ultimately, it will fall to the Governor and Legislature to implement the things they think are important. The Speaker and Pro Temp recognize this is a huge issue for the next session so will be forming the committee that will be co-chaired by Rep. Richardson and Sen. Crain; additional details will be unveiled later. He said it is a very positive step to interface with the OWRB, and he commended Speaker Steele and Pro Temp Bingman and he looked forward to working with the committee.

Chairman Herrmann commented it is a great move, and wanted to ensure to link the work from the past five years and to integrate that into the process. Ms. Lambert asked about what the role of the committee would be, and Mr. Strong said he had just been made aware of the committee and further details will be announced later today by the Speaker and Pro Temp. He said it was stressed this will not be contradictory to the Comprehensive Water Plan, but rather complimentary, to educate members and the need to start now getting ready for the session, but no significant action will be taken until the plan has been finalized and delivered to the Legislature.

2. FINANCIAL ASSISTANCE DIVISION

There were no Financial Assistance Division items for the Board's consideration.

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 requests to move any items that needed to be transferred to the Special Consideration agenda.

Mr. Smithee asked that item 3.D.2., Interagency Agreement with the Oklahoma Department of Wildlife Conservation be withdrawn from consideration.

There were no requests to transfer items from the Summary Disposition Agenda to the Special Consideration Agenda, and no other amendments to the Summary Disposition 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.P.

Chairman Herrmann asked if there were any other questions about items on the Summary Disposition Agenda, or amendments.

Mr. Buchanan asked for clarification on the action, and Chairman Herrmann stated this is basically a consent agenda, consideration of items with no protests and of routine operation; the packet contains supporting information for the items, and are items that require nothing more than approval by the Board.

Chairman Herrmann stated he would accept a motion to approve the Summary Disposition Agenda. Ms. Lambert moved to approve the Summary Disposition Agenda as amended, and Mr. Fite seconded.

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

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>
NODA				
a.	FAP-04-0038-R	Rural Water District #1	Noble	\$148,928.24

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

1. Professional Services Contract with Sparks Write, Inc. to perform assignments which assist the Board in implementing the Board's responsibilities under the Comprehensive State Water Planning Program.

2. *Interagency Agreement with the Oklahoma Department of Wildlife Conservation for the Fort Cobb Vegetation Project. Item withdrawn*
 3. Lease Agreement with Burgess & Burgess, Inc. for renewal of OWRB Lawton office lease.
 4. Interagency Agreement with Oklahoma Department of Agriculture, Food and Forestry for statewide pesticide monitoring.
 5. First Extended and Amended Agreement with American Municipal Tax-Exempt Compliance Corp. for arbitrage rebate calculation and consulting services.
 6. Professional Services Engagement Letter with John M. Arledge & Associates, P.C. to provide auditing services related to the Board's financial assistance programs.
 7. Professional Services Engagement Letter with Crawford & Associates, P.C. to provide accounting services related to the Board's financial assistance programs.
 8. Joint Funding Agreement with the U.S. Geological Survey for the continuation of the statewide stream gage monitoring program.
 9. Professional Services Contract with Record Solutions, Inc. to perform assignments to assist the Board in implementing various projects to improve management of the Board's electronic and paper records.
 10. Professional Services Contract with Emily Meazell to provide services as Hearing Examiner.
 11. Contract for Lab Analysis with the Oklahoma Department of Environmental Quality.
 12. Contract with Oklahoma Rural Water Association to provide technical assistance training to rural water and wastewater system operators.
 13. Third Amended and Restated Intergovernmental Agreement with OSU Water Resources Research Institute for sharing costs of Water Research Symposium and Governor's Water Conference events.
 - 14. *Memorandum Agreement with Central Oklahoma Master Conservancy District and USGS for water monitoring and data collection. Item added*
- E. Applications for Temporary Permits to Use Groundwater:
1. Ron & Kathyran Sproul, Major County, #2011-517
 2. Ricky & Imogene Cargal, Jackson County, #2011-521
 3. S & D Farms, Inc., Jackson County, #2011-522
 4. Edith Reimer & Heather Friesen, Major County, #2011-525
 5. Moore Land & Cattle Company, Inc., Harmon County, #2011-529

6. Horton & Son Farms, Inc., Harmon County, #2011-533
7. K & S Partnership, Harmon County, #2011-534
8. Harlan G. & Gloria K. Mefford Revocable Living Trusts, Harmon County, #2011-539
9. M & K Horn Farms, L.L.C., Caddo County, #2011-546
10. Patrick J. Brueggen, Kingfisher County, #2011-550
11. Patrick J. & Mary Nell Brueggen, Kingfisher County, #2011-551

F. Applications to Amend Temporary Permits to Use Groundwater:

1. W. F. F. C., Inc., Harmon County, #1994-566
2. John & Lola Jean Lamle, Alfalfa County, #2008-588

G. Applications for Regular Permits to Use Groundwater:

1. Thomas J. & L. Tommie Rosson, Beckham County, #2010-549
2. Mark Messenger, Woodward County, #2011-513
3. Charles & Zulie Dejoux, Choctaw County, #2011-523
4. Howard & Sonja Frantz, Beaver County, #2011-527
- 5. *Rio Rojo Enterprises, L.L.C., Tillman County, #2011-532* *Item withdrawn*
6. Chuck Murdock 2009 Trust, Cimarron County, #2011-543

H. Applications to Amend Regular Permits to Use Groundwater:

1. Jeff & Jeri Slatten, Beaver County, #1978-610
2. Mary Lou Hummer Revocable Trust, Beaver County, #2001-570
3. Margi Murdock 2009 Trust, Cimarron County, #2003-568

I. Applications for Regular Permits to Use Stream Water:

1. Gary Millspaugh, Custer County, #2011-008
2. Eichelberger Farms, Blaine County, #2011-018

J. Applications to Amend Regular Permits to Use Stream Water:

None

K. Applications for Term Permits to Use Stream Water:

1. Kaye Base 1990 Revocable Trust, Michael & Kaye Base, Trustees, Canadian County, #2011-006
2. James Pierce, Blaine County, #2011-016

L. Reductions/Cancellations of Stream Water Rights:

1. Defaults (Uncontested)
 - a. Lilly Cannon, Pontotoc County, #1977-126
 - b. B. L. Little, Coal County, #1978-164
 - c. Oklahoma Gas & Electric Co., Atoka County, #1969-369
 - d. Clyde and Donnie Corbin, Pushmataha County, #1985-010
 - e. Billy Luper, Caddo County, #1969-080

- f. Mark Graf, Washita County, #1958-057
 - g. Geary Campbell, Caddo County, #1972-272
2. Corrections/Excuses Accepted
 - a. Frank Weisser, Washita County, #1939-013
 - b. Lee Erin Weisser Trust, Washita County, #1939-013A
 - c. Elizabeth B. Weisser Trust, Washita County, #1939-013B
 - d. Tyson Foods, Inc., Hughes County, #1994-033
 - e. Tyson Foods, Inc., Hughes County, #1994-053
- M. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Staiger Plumbing DPC-0801
 1. Operator: Mark D. Staiger OP-1810
 - Activities: Pump installation
 - 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
 - a. Licensee: Ted Jenks Water Well Service, LLC DPC-0109
 1. Operator: Michael M. Posada OP-1836
 - Activities: Pump installation
- N. Dam and Reservoir Construction:
1. Pontotoc County Conservation District, Pontotoc County, #OK01286
- O. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma Department of Transportation, Mayes County, #FP-11-21
 2. Oklahoma Department of Transportation, Mayes County, #FP-11-24
 3. Oklahoma Department of Transportation, Caddo County, #FP-11-25
- P. Applications for Accreditation of Floodplain Administrators:
 Names of floodplain administrators to be accredited and their associated communities are individually set out in the June 14, 2011 packet of Board materials

Chairman Herrmann asked that the Supplemental Agenda items be considered.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

Chairman Herrmann stated there are two Supplemental Agenda items, which are similar to Summary Disposition Agenda items. One is a renewal of a lease for office space in the Tulsa Office, and a professional services agreement with CDM for wastewater infrastructure needs assessment.

Ms. Lambert asked, for Mr. Buchanan's benefit, about the duties of the Tulsa and other field offices. Ms. Cunningham answered all field offices are under the Planning and

Management Division and they conduct any field investigation, any representation of the OWRB, speaking opportunities the topics of water rights, well drillers, and perform a variety of jobs for the Water Quality and Financial Assistance Divisions; specifically, the State Floodplain Coordinator is out of the Tulsa office.

Chairman Herrmann asked for comment regarding the CDM contract. Mr. Strong responded that both CDM and First Southwest had done some extensive work for the Water Plan looking at drinking water infrastructure needs over the next 50 years. He said what seemed to be a missing component is what the wastewater needs are, even though drinking water needs have typically been the primary focus in the past. He felt that should be looked at, and if not finalized before the plan but comes after, it would be useful to the agency in planning for infrastructure financing over the next 50 years. This is to develop in a somewhat cursory manner the wastewater needs for the next 50 years.

Chairman Herrmann said the agency would then have a better picture of the drinking water and waste water needs for the future, and Mr. Drummond said, then, the \$87 billion is only for drinking water infrastructure needs. Mr. Strong said that is correct. He said that number sounds very high, and is very high, but includes projected costs based upon when the needs will "kick in" and with inflation, what those costs are going to be at that time.

Chairman Herrmann asked for a motion to approve both Supplemental Agenda items. Dr. Taron moved to approve the items, and Ms. Lambert seconded.

AYE: Lambert, Knowles, Fite, Sevenoaks, Taron, Buchanan, Drummond, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Feaver

A. Contracts and Agreements Recommended for Approval.

1. Renewal Lease Agreement with Department of Central Services for OWRB Tulsa office.
2. Professional Services Agreement with Camp Dresser & McKee Inc. for Statewide Wastewater Infrastructure Needs Assessment.

Chairman Herrmann asked that the budget report be considered next as Ms. Storck would be attending a meeting regarding the state IT services streamlining coordination for the State.

6. AGENCY BUDGET REPORT

Ms. Amanda Storck addressed the members and stated the budget report had been provided--8 % of the fiscal remaining and 33% of the agency budget remaining but there will be bills coming in to pay during July and August. Any carryover will be budgeted in September and October. She asked if the members had questions.

Ms. Lambert asked about the funds the Legislature allowed the agency to utilize, and Ms. Storck said it was about \$115,000 that had been sitting in revolving funds for a specific purpose. The agency asked the Legislature to put those funds into a fund that could be used to pay outstanding obligations. Mr. Strong added the fund would be used to pay the outstanding legal defense bill.

Ms. Storck concluded her report with a special "thank you" to OWRB staff for their assistance in the software conversion, which should be up and running within the next two weeks. She also thanked the IT staff for meeting with the Office of State Finance to determine what will happen with the IT consolidation.

Chairman Herrmann asked that the Special Consideration item be presented.

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. Petition for a Declaratory Ruling Regarding Sallisaw Creek Dam No. 33, Sequoyah County.

1. Summary - Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members this matter is a petition for a declaratory ruling regarding Sallisaw Creek Dam No. 33 by the petitioner, Ms. Jennifer Benitscheck Taylor; the site is a watershed dam in Sequoyah County. Ms. Cunningham said this type of request is unusual, and staff has reviewed the petition and other information as required by the Board's rules for review of such requests, and where the Board can rule. A memorandum has been prepared and included in the members' meeting packets summarizing the issue and providing background information.

Ms. Cunningham stated that according to the Board's rules, no declaratory ruling can be made in an attempt to resolve disputed issues or questions of fact, or where the question presented involves a matter subject of pending applications, administrative hearings or litigation. She said this matter does involve pending litigation issues, and the petitioner is currently in litigation with the Sequoyah County Conservation District. Therefore, staff recommended the Petition for Declaratory Ruling be denied.

Mr. Bob Kellog is representing the petitioner, and Mr. Kelly Monahan is representing the District. Ms. Janet Stewart and Mr. Robert Toole are present for the Oklahoma Conservation Commission.

Chairman Herrmann asked Mr. Dean Couch, OWRB General Counsel, to comment on the Board's scope of authority in this type of matter. Mr. Couch stated that it is an unusual situation as typically the Board is required to look at individual proceedings such as a permit application, and the rules themselves in a rulemaking capacity. The Administrative Procedures Act requires a third type of category of consideration and specifies that each agency shall provide by rule for filings and prompt disposition of petitions for declaratory rulings; a requirement for all agencies to make an opportunity for all citizens for a pre-emptive determination, a hypothetical situation before action is taken that may have ramifications; to go ahead and ask the agency what its views are through a declaratory ruling. Mr. Couch said the Board has a rule for declaratory ruling, here however, a little bit different situation in that matters between the parties -- Conservation District and landowners -- are pending before a District Court, and the issues of hazard classifications are likewise being raised and addressed there, so it appeared to staff that based on a plain reading of the rules of the Board that no declaratory ruling can be made for two circumstances if there are contested issues or the matter is in litigation. He said that for those two reasons, the order before the Board is to deny the petition for declaratory ruling, and the actual rule itself--fully set out in the proposed order-- is in the packet and is 1-5-6, the full OWRB rule for petition declaratory rulings. Staff proposal is to deny the petition for declaratory ruling.

2. Discussion. Chairman Herrmann invited the parties to address the Board with their issues and asked they keep the comments to three minutes.

Mr. Bob Kellog, representing the Ms. Jennifer Benistchek Taylor and Mike Taylor, approached the members and stated he was before the Board a couple of years ago assisting the Board in revising its dam safety rules, and now is here with an odd twist. He said the rule about whether the Board can issue a declaratory ruling is not black and white, and he introduced the petitioners and said they had not come as an adversaries and not claiming the OWRB has made any errors, but are simply asking for help. Mr. Kellog said the Sequoyah County Conservation District has sought to condemn land of his clients that contains Site #33 and the resolution included in the Board's packet reads,... "Whereas the O_W_R_B_ has determined that Site #33 structure is now considered to be a high hazard dam and downstream development has led to human health and safety concerns" and that claim has been made by the SCC in a condemnation action. He said he asked the OWRB staff for the file on Site #33, and there is no such determination in the file, having been made by the agency it is a high hazard dam. At most, the staff approved the plans submitted by the local conservation district in 2006 that suggested it was a high hazard dam and submitted plans to build a high hazard structure, and this agency approved those plans. He said that under today's rules, he was confident this would not be classified as high hazard. Mr. Kellog stated he was not involved in the condemnation case, he said he had been told by those representing his clients in that case, unlike normal civil litigation, there are no defenses or claims available to the landowner (he cited a case) but there is a right to a jury trial for damages, but that is not the issue he has brought to the Board today. He said he has not asked about damages, but has this agency determined or not the hazard class for this

dam? Mr. Kellog said in this client's situation, the District has said the OWRB has made a determination, and the District must act accordingly. The District brought the condemnation action, not his clients, and now staff would have you say you can't answer the question because of litigation, so his clients are stuck. The subject of the condemnation action is not the hazard classification of the dam, it's the amount of damages. He argued that the proposed order doesn't help anything, and so he is asking the Board to send it back to the staff to do one of two things: (1) confirm his view that the agency has never determined the hazard class, or (2) determine the hazard class. And, if the agency has determined the hazard class, then tell when and upon what it was based.

There were no questions by the Board members, and Chairman Herrmann asked the Conservation District representative to address the Board.

Mr. Kelly Monahan stated to the members that he felt Mr. Kellog was asking the Board to act in a manner that is contrary to the Board's expressed rules. The express rules provide that when a petition for declaratory relief is requested and if there is pending litigation, or if a judicial court has the jurisdiction to determine those disputed issues, the Board will decline to exercise any declaratory rule. There is a pending condemnation case before the Sequoyah County District Court, and he explained the process for a condemnation case where the agency with the power of eminent domain -- the Sequoyah County Conservation District -- has to set out the area sought to be acquired and establish public necessity for that acquisition. The Court then appoints three Commissioners who then inspect the property and make a determination of just compensation and at that point, either party has the right to file an exception to the taking, which one basis is a lack of public necessity and the resolution does not support the acquisition. He said that when Mr. Kellog indicated the sole issue for the condemnation is damages, he did not agree for there is a step for that and that is to challenge the taking. He said he was confident that issue would be presented by the property owner's attorney once the Commissioners have done the inspection. He provided history on the case saying the initial inspection has been done and an exception has been filed claiming the petition did not adequately describe the area to be acquired and had not been physically staked when the Commissioners inspected. The Court has instructed the District to do that, and it has prepared surveys and is in the process of the property being staked. He said he anticipated the Commissioners would conduct the reinspection within the next 30-60 days and at that point the property owners have the right to file an exception to the taking and challenging this hazard classification. Mr. Monahan mentioned a supplemental watershed plan and an environmental assessment which the Board was not provided a complete copy, but he said that could be provided; it clearly articulates that this Site #33 has been reclassified as a high hazard and that was based on the rules of this agency. He said he agreed with Mr. Couch that the Board follow its rules and decline the request for declaratory relief, allow the hazard classification to be presented to the District Court where a full evidentiary hearing can be presented.

Ms. Lambert asked, if there a dam classification for Site #33 or not; one says yes, one says, no. Mr. Monahan answered, yes, it is high hazard. Mr. Kellog stated that classification was made by the local consideration district, there is no determination made in the files he had reviewed of the Board itself, and yet the justification for the condemnation states the OWRB has determined that it's a high hazard. Chairman Herrmann stated the Board's rules stand, and that determination would come out during the evidentiary process of the litigation underway.

Mr. Buchanan asked Mr. Couch if the Conservation District makes the determination it is high hazard, does the OWRB then as a matter of business accept that determination, or does it make its own? Mr. Couch stated the rules about dams, dams safety, modifications, or new dams provides for descriptions of hazard classifications--low, significant or high. The application was made to modify this one in 2006, presented without protest, requesting approval of plans and specifications based on high hazard, and that was accepted. As a practical matter this is the highest level and the general philosophy is to make the dam as safe as possible, there are minimum standards, but if an applicant wants to go higher so be it, and it was approved based on high hazard.

3. Vote on whether to approve the Proposed Order Regarding Petition for Declaratory Ruling or other possible action.

Chairman Herrmann stated the staff recommendation is to deny the petition for request as outlined in the agenda packet. He said he would accept a motion.

Mr. Drummond moved to accept the staff recommendation and Dr. Taron seconded.

Chairman Herrmann asked if there were questions by members.

Ms. Lambert asked for clarification, that even though there might not have been a specific classification of this dam, because in 2006 the Conservation District came to approve plans and specifications for a high hazard dam and it was approved, then in a different way it has been approved as a high hazard dam. Mr. Couch answered that is correct, and a secondary reason is that these kinds of dams, as well as many of the other 3,000-4,000 dams across the state, were subject of a Phase I inspection through funding by the Corps of Engineers in the late 1970s and there was a mass effort to inventory, review and consider classifications of dams. Thus, in the Sallisaw Creek area, #33 was one of those several thousand dams that were inventoried, and for which the federal government paid through our agency an inspection report. In 1977, which report by CH Guernsey, indicates the dam is classified and should meet the high hazard classification. He explained that the Board's rules state that the hazard classifications set forth in the Phase I reports shall be deemed accurate, and there may be some factual issues of dispute, consideration, and rule changes even last year that Mr. Kellog worked on that might provide leeway or flexibility, but those are factual issues that can be addressed by the District Court.

There being no further questions, Chairman Herrmann stated the motion and second is to deny the request, and he called for the vote.

AYE: Lambert, Knowles, Fite, Sevenoaks, Taron, Buchanan,
Drummond, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Feaver

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

Chairman Herrmann asked that the Election of Officers be considered prior to the discussion on the update of the Oklahoma Comprehensive Water Plan.

8. Election of Officers

Chairman Herrmann stated there are three officer positions to elect. He asked for nominations for the position of chairman of the Oklahoma Water Resources Board.

Mr. Fite moved to nominate Ms. Linda Lambert as chairman. Dr. Taron seconded.

Chairman Herrmann stated that typically the new chair would take the gavel at the end of this meeting.

There were no other nominations for chairman. Mr. Herrmann called for the vote.

AYE: Lambert, Knowles, Fite, Sevenoaks, Taron, Buchanan,
Drummond, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Feaver

Chairman Herrmann asked for nominations for the position of vice chairman of the Oklahoma Water Resources Board.

Ms. Lambert moved to nominate Mr. Ford Drummond as vice chairman, and Mr. Knowles seconded.

There were no other nominations for vice chairman, and Chairman Herrmann called for the vote.

AYE: Lambert, Knowles, Fite, Sevenoaks, Taron, Buchanan,
Drummond, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Feaver

Chairman Herrmann asked for nominations for the position of secretary of the Oklahoma Water Resources Board.

Mr. Drummond nominated Dr. Joe Taron as secretary, and Ms. Lambert seconded.

There were no other nominations for secretary, and Chairman Herrmann called for the vote.

AYE: Lambert, Knowles, Fite, Sevenoaks, Taron, Buchanan,
Drummond, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Feaver

The following officers were elected: Chairman Linda Lambert; Vice Chairman Ford Drummond; and Secretary Joe Taron.

Mr. Herrmann extended his congratulations to the new slate of officers, and expressed his and other members support as the agency moves into the next critical year of "tying the ribbon around the water plan" and moving forward with implementation.

4. QUESTIONS AND DISCUSSION ABOUT AGENCY WORK AND OTHER ITEMS OF INTEREST.

Chairman Herrmann introduced the agenda item stating this item is for discussion and there would be no vote or action taken by the Board today. He said it would be structured as a "Committee of the whole." He said the members had received information through emails and this will provide for open discussion. He asked that the feedback be incorporated into the draft documents and ultimately presented to the Board as formal recommendations. He also asked the members to consider the amount of time that might be required at Board meetings to "get their arms around it" and that it might be appropriate to consider a one-day Board retreat sometime in August-September, which can't be known at this time, but which would be an open meeting with the public invited.

Mr. Strong said most of the presentation will be on PowerPoint.

A. Review of Oklahoma Comprehensive Water Plan Feedback and Implementation Meeting activities. Mr. Kyle Arthur, Director of Planning, began the presentation with a brief update of the FIM meetings. He reminded that most of the members attended some of the meetings which were two part in format with technical information and discussion in the afternoon meetings with focus on the public water supply, and there was a critical mass of knowledgeable people about the water resources in their area and knowledge of their particular systems--as well as irrigators and others--to help true-check the analysis done so far and worked very well. He said the evening meetings presented what the Board would tackle today--the board policy and other recommendations for Oklahoma that have been developed, from the public, other workgroups, and the agency. The FIM Report has been published and is available on the website which staff analysis of is in the initial stages, but thus far what will be presented received support in the feedback meetings. Ms. Fleming will be putting together a spreadsheet of what is now known as the "Big 7" part of which will be discussed today so that the members will know what feedback and implementation and other ideas that was received in support of those recommendations.

Chairman Herrmann interjected that the Board's Water Planning Committee had met and challenged staff to "boil down" the policy recommendations into a handful of recommendations, but which his not cast in stone; these discussion will determine how many there will be, or if there will be something different. Mr. Arthur said the seven shown are those recommendations staff received input from the public as well as legislators and others.

Mr. Strong added that the Oklahoma Water Resources Research report has been compiled and made available on their website and he asked members to alert staff if there is other information they would like to have made available.

B. Overview of Technical and Public Policy Components of Update. Mr. Arthur mentioned the four handouts that had been provided to the members: Final Water Policy Recommendations and Implementation, OWRB Meeting June 14, 2011 (regarding agenda item 4.D.), Water Policy and Related Recommendations for Oklahoma, and the OCWP Timeline 2011-2012.

Mr. Arthur said he wanted to provide context as to what has happened and how we got here, and what has been done most recently. He reviewed with the members the six goals of the

update of the OCWP--and particularly #6, " to make implementable recommendations" which the Board is beginning to discuss today. He reminded the members of how staff compiled and reviewed the technical work and developed the 82 basins and 13 regions to conduct the analysis on a more local level. He reviewed the technical components which are contained in 14 volumes of the draft Water Plan: (1) the Executive Summary Report containing Statewide Water Assessment components and the Regional and Statewide Opportunities and Solutions; and (2) the 13 Watershed Planning Regional Reports. Mr. Arthur reviewed the policy components that are in the Water Plan developed through public input process, managed and executed through the Oklahoma Water Resources Research Institute.

C. Upcoming Schedule to Finalize Plan Update and Possible Action to Accept or Revise Schedule. Mr. Arthur reviewed with the members "how we got here" with a visual flowchart beginning with the local and regional input meetings to the workshops (2007-09) and Town Hall and post Town Hall report (2010) and technical and data considerations and refined recommendations, to the draft recommendations and feedback and implementation meetings, and today beginning discussion on the draft plan and policy recommendations through Board input, and ultimately to approval of the final Oklahoma Comprehensive Water Plan, and implementation.

Mr. Arthur presented the timeline developed to illustrate action and activities from April 2011-- when the draft report first appeared on the website -- to the Board for input and review process, and steps of discussion today and the July Board meeting; the final draft plan and regional reports to be considered at the August Board meeting, final public comment received at the September Board meeting, and formal consideration and approval of the Oklahoma Comprehensive Water Plan at the October Board meeting. Following approval in October, the Plan will be formally submitted to the Governor and Legislature in February 2012, and the Board--particularly through the Water Planning and Legislative Committees--will work with the Governor's Office and key legislators to implement OCWP recommendations.

Today, discussions will begin deliberating the key policy recommendations with three of the seven recommendations--instream/environmental flows, state/tribal issues, and technical studies and monitoring, and the final four of the draft "Big 7" will be discussed at the July meeting: infrastructure, water management, surplus water, and regional planning groups. If there is change today as a result of discussion of what those seven are, that will be adjusted accordingly.

Chairman Herrmann asked if there were any questions by members. Mr. Strong interjected that this is the area where staff needed solid input from the Board. He said the Governor's Water Conference has been scheduled for the week of October 17 and the Governor and Legislators have been informed the plan will be considered for approval at that time. He said there is a lot of work to do before the Board, which may or may not happen between the June and July meetings, and there may need to be additional meetings scheduled. He asked the members if the schedule could be accomplished as laid out, or if other meetings would be necessary.

Ms. Lambert suggested looking at October as the key date and be flexible between now and October of what else needs to happen that we can't predict today. She said things will

continue to happen, there will be Board input and continued public dialogue and there might be a need for additional deliberation in between. Chairman Herrmann stated the members should feel empowered to communicate if they believe these recommendations are on target or clarification is needed and that doesn't have to be at a Board meeting, but submit comments through email--it would not violate open meetings law, but there is a lot of work of to do. Mr. Strong said it would be staff's desire that the public comment period, tentatively scheduled for the September Board meeting--that staff has a final water plan for the public to look at and be able to comment directly to the Board.

Dr. Taron added he had attended the LIMs and FIMs, and he commended the committee, and said that if he were to come up with something different, he wouldn't know what that would be. Mr. Sevenoaks stated that the Board should begin deliberations on the three recommendations shown now, as the process proceeds, there will be further input from the members on what additional areas they would like to explore, and to work back from the public hearing date where if by some point in August it isn't worked out there could be a retreat. He suggested working the schedule, and any additional input as members have time to contemplate can be emailed and then discussed at the August meeting. Chairman Herrmann said that staff will present a "mapping back" of input into these seven recommendations, and then there is a list of ideas that have surfaced that are not ripe for action or might be impractical, but those need to be catalogued. Ms. Lambert said it should be noted why there is a census or commonality of why these are recommendations that have been chosen as a priority.

Mr. Strong asked if there were any other comments about the tentative schedule with the understanding it may need to be adjusted. Mr. Drummond said he would not be at the July meeting and asked about discussion on that matter; Chairman Herrmann stated that could be done with Ms. Lambert prior to adjournment.

Chairman Herrmann said regarding the final public comment, we did not want to revisit five years worth of work, but need to make sure that is an open process for the public so thought needed to be put into how the public comments will be incorporated.

There was no formal action taken by the Board to accept or revise the proposed schedule.

D. Review and Discussion of Water Policy Recommendations and Implementation and Possible Action to Accept, Revise or Add Recommendations.

Mr. Arthur explained this item was reserved for the possibility of a different seven recommendations, or additional recommendations and he detailed how the list of seven priority recommendations and implementation recommendations were developed from the 70 recommendations received from the public. He said it is more an art than a science as you are aware of what you've have heard, what past experience has been, input from various groups and input from the Board. More specifically, he enumerated the things that were considered and helped to drive the formation of this list: Priorities for Implementation, Imminent Need, Limited Funding Available, Focused Tactical Plan, Input from Board Members/Planning Committee, Input from Public, Input from OWRB Staff and Other Agencies, Input from Policy Makers, and Technical Considerations.

Mr. Strong added that it is noteworthy that all or part of 45 recommendations that are in the 35-page document are rolled into these Big 7. He said it was the best attempt to take the

common themes and common concerns and issues that were coming from all different directions to be funneled into this prioritization.

Mr. Arthur then reviewed the list of the seven suggested consolidated recommendations which would be fully presented and deliberated under item E. today and at the July meeting) :

1. Monitoring & Studies --*The State Legislature should provide a dedicated source of funding to enable the OWRB to accurately assess the quality and quantity of the state 's water resources thereby ensuring improved water quality protection, accurate appropriation and allocation, and long-term collection of data to inform water management decisions. Such funding should be directed towards conducting and updating hydrologic studies of Oklahoma's surface and groundwater resources and development and maintenance of permanent statewide water quality and quantity monitoring program.* For purposes of groundwater and surface water, both quality and quantity; hydrologic studies (imminent need for groundwater basin studies and stream water allocation model)

2. Instream/Environmental Flows--*The establishment of an instream flow program should be investigated and evaluated to preserve water quality, protect ecological diversity and sustain and promote economic development, including benefits associated with recreation, hunting and fishing. The process developed by the OCWP Instream Flow Workgroup should be implemented and followed to ascertain the suitability of such a program for Oklahoma. The OWRB should seek express authority from the State Legislature prior to promulgating rules to accommodate and protect instream flows.* A contentious issue, formed a workgroup that reached a reasonable consensus with specific recommendation for next steps (not a recommendation to have environmental flow value, but to continue to implement the recommendations)

3. State/Tribal Water Consultation & Resolution- *To address uncertainties relating to the possible validity of water rights claims by the Tribal Nations of Oklahoma and to effectively apply the prior appropriation doctrine in the fair apportionment of state waters, the Oklahoma Governor and State Legislature should establish a formal consultation process as outlined in the OCWP Report on Tribal Issues and Concerns.* There are uncertainties related to this issue, but three recommendations are in the plan from, the public, working group of Tribal representative led by Professor Lindsay Robertson, and the OWRB

4. Water Project & Infrastructure Financing- *To address Oklahoma,,s considerable drinking water and wastewater infrastructure need and the inability of current programs to meet that need, a team of financial and water/wastewater infrastructure professionals, led by the OWRB, should investigate the development of a separate state funding program to meet the state's projected \$87 billion drinking water infrastructure need –as well as the substantial wastewater infrastructure requirement –by 2060. Any potential program should include a specific mechanism to address the significant financing requirement of small communities in the state, as well as the encouragement of regionalization of water/wastewater systems, where appropriate.* Known woeful lack of capacity of current programs, programmatic as well as dollars invested, for water and wastewater infrastructure improvements and financing most specifically by the OWRB. Drinking water needs were assessed, and now wastewater can be included.

5. Water Management & Supply Reliability: Conjunctive Management & Seasonal Allocation-*To address projected statewide and regional increases in consumptive demands for water and effectively administer a water management program that ensures reliable supply for*

all users, the OWRB should implement the following recommendations, considering regional variations when appropriate: The OWRB should conduct a prioritized comprehensive hydrologic evaluation of groundwater basins across the state to characterize valid groundwater/surface water interactions as well as the suitability of a potential conjunctive management program in Oklahoma. The OWRB should organize a statewide workgroup of water users, researchers and other experienced professionals to investigate the utility, impacts and appropriateness of

transitioning from an average annual to a seasonal stream water allocation program. How we manage our water resources from a water management standpoint, rules and regulations regarding surface water appropriation and groundwater allocation. Conjunctive management has been controversial and transitioning from an average annual to a seasonal stream water allocation and recommendations to move forward for management considerations.

6. Excess & Surplus Water -*The OWRB shall adopt the following definition and procedure for determining excess and surplus water: Definition: "For implementation of the 2012 Update to the Oklahoma Comprehensive Water Plan, „excess and surplus water “ shall mean the volume [or a percentage of the volume] of stream water measured in acre-feet per year within each of the 13 OCWP watershed planning regions (i.e., areas-of-origin) in the state that is estimated to be available for water permits (for use of water inside or outside the watershed of origin) at the watershed outlet at the conclusion of the year 2060, provided that nothing herein shall affect ownership rights to groundwater.”* A contentious yet extremely important issue; the plan is obligated to propose two things: a definition of excess and surplus water, and procedure for how to determine excess and surplus water; looking at future demand and needs in the basin, and to consider out-of-basin transfers in-state or out-of-state, and procedure for determining excess and surplus water.

Mr. Arthur said this would be discussed in more detail at the July meeting. Chairman Herrmann said this is a hugely important issue and Mr. Strong added this is clearly one there is expectation that the water plan and the Board will address. He said there are some points embedded in the procedure that dictate the additional priorities of quantity of water adjudicated and available for federal or tribal rights, instream or environmental needs, which may not be considered for excess or surplus water, so these are key issues in their own right and are closely related to how we define or quantify surplus water. Chairman Herrmann asked staff to present that information by basin.

7. Local & Statewide Water Planning: Regional Planning Groups -*The OWRB should form a workgroup to investigate and make appropriate recommendations to the State Legislature related to the creation of thirteen Regional Advisory Groups to assist in implementing local OCWP initiatives. These groups would be comprised of local stakeholder representatives charged with identifying local water resource issues, prioritizing planning initiatives, collaborating on matters of mutual interest, promoting conservation activities/green projects, implementing educational initiatives, developing action plans and making recommendations, when appropriate, for implementation by the OWRB. The State Legislature should establish regular appropriations to the OWRB to fund the activities of these groups.* Much support from workgroups and the public and based around the 13 regional planning groups developed as part of the technical work of the Plan. These groups could have a number of tasks

that are authorized to be a part of and to implement such as conservation projects, green projects, local planning issues, water quality, and education in public and private school systems.

Mr. Strong asked if there were any input now from the members or other recommendations in addition to these seven that they would like to have information and presentation prepared. And, are there any additions for the seven -- three today and the remaining four at the July meeting, and specifically, the Chairman's request on excess water.

Chairman Herrmann said we have the data, and he would like to see it by basin, and Ms. Lambert added based on what is available and what is excess. Mr. Sevenoaks said he has been concerned about the known rapid depletion of the Ogallala, and he would like to look at the possibility of looking at the permit process of not issuing permanent water permits -- grandfather in everyone that has one -- that future permits be temporary so as not to hamstring the future generations by not having water available; he'd like to see discussion for flexibility for the next generation in the permitting system for all aquifers, and he would like to see it on the table.

Chairman Herrmann asked if there were any other issues. Ms. Lambert asked about the criteria for the seven recommendations and does this seem fair and is there anything else that needed to be included, or anything that should not be considered. Mr. Strong responded that the members will see as each recommendation is presented, more in-depth, specific steps and actions, schedules and costs, and more specificity will be provided as to, "why."

Mr. Drummond commented to Mr. Sevenoaks in that under these recommendations, the "monitoring and studies" will consider the quantity and groundwater, and "water management and supply reliability" and the interaction of surface water and groundwater will tie in as well. Mr. Sevenoaks said he believed that is right, and was asking for (staff) preparation on the suggestion (of not issuing permanent permits). Mr. Strong added that water management and supply reliability is the recommendation area where that sort of idea deals with a couple of new twists to how we do water allocation and permitting looking at conjunctive use management and specific areas where that may be an issue -- looking at seasonal variation instead of average annual water allocations especially as we approach the next 50 years where we have identified shortages and what he (Mr. Sevenoaks) is suggesting regards addressing areas of less than sustainable practices, and that is one way to look at it, and there are others. Mr. Sevenoaks said there could be a better way; there are different ways -- metering, lesser permitted amounts--that will preserve for future generation water in our aquifers. Chairman Herrmann added there was input about re-establishing the groundwater water management assessment among the neighboring states, but reality is that Oklahoma is a relatively small participant, and regarding a variation on permitting, and groundwater specifically, and for a 50-year water plan and issuing permits on a 20-year mining formula, is that sufficient? Mr. Sevenoaks said that the whole mining issue may need to be looked at, and we need to get the input and understand what we are doing based upon the 50-year look out.

Ms. Lambert asked about priorities for implementation, and Mr. Arthur stated that of these seven, there will be detailed information and strategies, schedule and costs developed for each of the seven, whereas, the remaining ones--particularly those in the supporting documentation and initiatives section of this document would not have that level of detail treatment in the Water Plan. Mr. Strong added the reason this list was derived is that we can't focus on everything because of limited funding from the Legislature and from Washington,

limited staff resources as there were 35 pages of recommendations and this is a "stab" at prioritizing the recommendations where there is the most urgent need today. Mr. Drummond said that there should be a price tag on those where we can, and Mr. Strong said staff will present that on all seven. Ms. Lambert clarified that the \$87 billion is a future cost not the current value. Chairman Herrmann asked Mr. Sevenoaks if from Tulsa's perspective did that number seem reasonable. Mr. Sevenoaks said it seemed large, and factors the city has had to consider such as the ability to finance, which is why it has looked to regionalization. Ms. Lambert said the members needed to understand what that number is, and Mr. Strong said that information would be presented--what are the numbers, what are the underlying assumptions, and how that number was derived. Mr. Buchanan added that to replace impoundments, that number may not be so large looking at the cost of storage supply, not just the infrastructure to get it the people.

There was no action by the members to accept, revised or add recommendations.

E. Review and Discussion of Initial Set of Draft Water Policy Recommendations

(Each Division Chief presented information about the particular draft recommendation using a PowerPoint series of slides with bullet points, charts and graphs.)

1. Technical Studies and Monitoring - Mr. Derek Smithee addressed the members to present the monitoring portion of the recommendation. He asked that throughout his presentation, the members think about how are we going to work together to collect the data, manage the data, and interpret the data toward making sound water quality and quantity management decisions. Beginning with slide #1, Mr. Smithee said that sound water management is predicated on the consistent, long-term collection of good data, its availability and interpretation, and is necessary for good decision-making for water use/permitting, public health, pollution remediation, flood forecasting, drought preparedness, and planning. He recognized the state and federal agencies that participate in the state's data collection programs and said there is a lot of monitoring work going on, but each project is for a specific purpose or need. He talked about the state's 70-year old stream gaging program, noting that the effort between the USGS and OWRB, and also numerous other governmental, private and tribal entities, is vital for water quality/quantity management, is a critical data component of the OCWP, but that state and federal program funds have decreased considerably. He enumerated the stream gaging program needs including a dedicated source of state monies to support the program and use in implementing OCWP initiatives, establish at least one stream gage in each OCWP planning basin to strengthen management decisions, and a total funding need of approximately \$565,000 annually to meet the State's immediate needs and to address uncertain cooperator funding. Costs have gradually increased 5%-8% annually, while funding has decreased. A chart depicted the status of gages, some active, some historic/inactive, and those proposed.

Mr. Strong interjected that the stream gaging program is an historical record foundational to every water management activity, within the state and nationally as well, and to lose historical gages to the lack of funding is very significant because in some cases a 70-year period of record is lost.

Mr. Smithee continued that in 1988 the state was spending about \$450,000 per year with a match by the USGS, along with other cooperators; and now state dollars have decreased to about \$124,000, and the federal share has been reduced, forced to make up the funding gap

through other sources and becoming dependent on cooperator funds which are project-specific and are not a reliable source. The State's correlating program is BUMP--Beneficial Use Monitoring Program--established in 1998 for \$1.2 million to look at water quality needs in state streams and lakes. Since, costs have increased approximately 35% for laboratory analysis, 31% for travel, and 23% for personnel; funding has decreased 34%, making it difficult to bridge the gap, operating on about \$794,000.00 currently. Biological collection has been increased because it is more reflective of the health of the biological system year-round rather than a water sample that is more a snapshot in time at a particular location. The agency prepares an "Oklahoma Water Quality Monitoring Strategy" every two years which integrates all state water quality monitoring programs into a holistic, coordinated effort. Approximately \$1.7 million is needed to close the gap in increasing costs; there are infrastructure needs for example, staff is driving some vehicles with 270,000 miles. Mr. Smithee emphasized that if we are going to stay active in water quality monitoring; those are the type of debts we will have to pay to continue that program. He said if we are going to stay in the business of collecting good water quality data, we are going to have to address these shortfalls.

Regarding groundwater, Mr. Smithee stated the agency operates a mass measurement program looking at groundwater quality that has existed since the 1950s. The program has not been directly funded, except through "financial crumbs" from the table but there are fewer and fewer crumbs. If we are to know how much groundwater is available and how it responds over time, we are going to need a holistic groundwater quantity monitoring program. Oklahoma currently has no ambient groundwater quality monitoring program. He illustrated on a chart the gap in data that was collected during the Blaine-Gypsum study. The Department of Environmental Quality does conduct some groundwater quality monitoring, and some ground water monitoring is done through the Department of Agriculture Food and Forestry, primarily in response to swine feeding operation to detect groundwater contamination, and mapping and other work. Required aquifer technical studies are conducted only as funding allows (e.g., Arbuckle-Simpson and Garber-Wellington), long-term analyses would provide long-term vital information. Regarding the mass measurement program, Mr. Smithee illustrated the historically monitored sites and the active sights, and he said we have lost a significant piece of information over time.

Ms. Smithee stated the state needs an overall Groundwater Monitoring Program, unification of existing and new programs into one holistic groundwater quantity/quality monitoring program for Oklahoma (similar to the BUMP), funded at a baseline level to match at about \$815,000 per year (not including start-up costs).

Mr. Buchanan asked about the map illustrating stream gages, and he asked about duplication. Mr. Smithee said that sometimes there is duplication, but may not be an artifact of a holistic program. If, for example, you are conducting a TMDL at Lake Wister, there should be a gage upstream and downstream of a municipal wastewater discharge so that you know the impact of the discharge by both quantity and quality, and while you may not need both sites long term, both are needed during the TMDL process. Mr. Strong said the point for future discussion is what is needed for a statewide, comprehensive basis--a bare minimum for a stream gaging network needed--and Mr. Sevenoaks mentioned there is not as good a coordination among the agencies as there is monitoring going on and the agencies need to share data, and Mr. Smithee

said coordination and cooperation takes time, energy and money, too, for example, the OWRB coordinates the stream gaging program, but does not receive any funding to do so but causes us to "steal" from other programs that are paying for their own way. The members talked about coordination, savings through coordination, representing different aspects looking for different data, benefits of regionalization, what is important for the state, and how to weave it all together.

Ms. Julie Cunningham presented on the hydrologic studies saying that there is a critical need for monitoring and that data is not put on a shelf, but is used for assessment, and she specifically addressed groundwater basin studies, stream water allocation modeling which are the specific recommendations from the public and included in the consolidated recommendations document. She acknowledged there are many other hydrologic studies such as for dam safety matters and lake conditions. The OCWP recommendation is that the State Legislature will “...appropriate significant funds... to conduct and regularly update hydrologic studies...” which became a recurring theme throughout the recommendations and comments from workgroups. The public additionally recommended funding for unstudied and unfunded aquifers, and studies on surface water - groundwater interaction, fairness in water rights administration; and interstate water issues (Ogallala). The Agriculture Water Needs Workgroup (ODAFF) recommended robust modeling to predict supply/demand impacts; “exurban development” impacts on alluvial groundwater use; reservoir and in-stream flow optimization to minimize use conflicts, and the OWRB Staff recommended studies for scientifically defensible water rights administration; improved protection; prediction of seasonal shortages/water availability; and informed management decisions.

Hydrologic studies answer the fundamental question...*How much water is available?*, are fundamental to state water management and planning, offer robust characterization, opportunity for availability forecasting and “what-if” assessment for policy decisions, minimal/inconsistent funding has been available for studies or contributing water rights admin. (e.g. use reporting) and are often done sporadically and for specific purposes. There is no dedicated funding for hydrologic studies, and therefore no consistency. Ms. Cunningham reviewed the OWRB statutory mandate to allocate water based on hydrologic yield studies to determine Maximum Annual Yield (equal proportionate share), update hydrologic studies “at least every 20 years,” utilize specific criteria for determination--land area, water in storage, recharge/discharge, transmissivity, possibility of contamination by natural pollutants, use projection, etc., and facilitate water use reporting, which informs studies.

Ms. Cunningham illustrated for the major groundwater basins, there are ten studies remaining and nine overdue updates, and for minor groundwater basins, there are 17 unstudied and no updates required at this time.

Regarding streamwater allocation, the OWRB statutory mandate is to determine if unappropriated water is available prior to permit issuance and this is done through modern analysis simulating stream water management using a priority-based water allocation system to determine if water is available for a permit holder but which requires data on streamflow, permitted water, water use, reservoir demands, compact/environmental flow requirements. Regarding existing water rights and new applications, Ms. Cunningham said staff can anticipate water shortages at current permitted diversions, evaluate potential supply interference--which

staff are receiving many calls due to the current drought--and resource availability/reliability to potential applicants. The permits must be actively managed, and this is an outstanding tool.

Ms. Cunningham said that staff can manage resource during drought events such as pre-drought warning for permittees, cut off triggers for junior permittees, analyze location-specific "what-if" scenarios, characterize surface water availability at any location, and domestic use impacts. The public is asking that the permits be actively managed through assessing potential implications of various water policy scenarios through legal flows, environmental, compact, industry-specific, stream water/groundwater interactions, make permit-specific and "adaptive" management decisions, e.g., new permit oversight for mining industry.

Concerning stream water allocation models, there are nine stream systems completed; 42 unstudied, and future priorities are to complete the stream systems that are fully or mostly allocated systems (e.g., Washita, North Canadian, North Fork/Red), look at OCWP hot spots, demand growth areas, etc. public, policymaker, sector needs, where a workgroup could be established to assess the priorities for the studies. Regarding implementation of the hydrologic studies, the recommendation is to seek funding and complete unstudied groundwater basins (including permit modernization) and overdue 20-year updates by 2022 for a total of \$1.6 million/year, seek funding and complete stream water hydrologic investigations/allocation models by 2017 at a cost of \$196,000/year, and work with stakeholders, academia, local, state, federal agencies to prioritize studies.

Concluding the presentation, Ms. Cunningham presented the total cost per year for the implementation of both the monitoring and hydrologic study recommendation:

- Surface Water: Quantity Monitoring= \$ 564,575, Quality Monitoring= \$1,775,320, Hydrologic Studies= \$ 196,000. And for
- Groundwater: Quantity Monitoring= \$ 65,000, Quality Monitoring= \$ 750,000, Hydrologic Studies= \$1,644,000, for a total of: \$4,994,895.

The members and staff commented about the benefit of the public input process and the ability for the public to see the need and to be willing to support funding, what happens due to a lack of funding, need to focus on the funding for projects, suggested beginning with the "hot spots", need to continue successful partnering with agencies and work with others (Tribes, etc.) as a way of the future, but the need for steady funding for example partners (Scenic Rivers commission) that lose funding which results in the loss of a stream gage, and how critical that is. They also talked about the technical data from the planning process has recognized--in addition to the 12 hot spots-- that many of the 82 basins will experience shortages in the next 50 years and we need to know before allocating permits what the impact will be and it may be time to do things differently knowing the shortages are coming. The dollars presented are just the state match, does not cover all the monitoring and technical studies but is only a baseline, and it's the Board's job to specifically inform the Legislature on what is needed, express a sense of urgency to the legislators and what will happen if not funded, and also what is in the best interest of the current permit holders, and future applicants.

3. Instream/Environmental Flows - Mr. Derek Smithee addressed the members and presented the consolidated recommendation regarding instream/environmental flow. He said this area touched upon some controversy, but basically, it is about how we use those non-

consumptive uses of water in water quantity or quality administration. Mr. Smithee asked, why address instream flows? There was significant interest expressed from the public meetings and Town Hall in the value of non-consumptive water uses of water, especially related to recreation/tourism (including lake level management). The associated factors related to ecological integrity, endangered species, interstate compact compliance, etc., and it is consistent with holistic water planning principles and in calculating excess/surplus water. The purpose of a water plan is to plan, and to know how much water--consumptive and non-consumptive--is out there, and to be able to respond with calmer heads to an issue.

Mr. Smithee reviewed the instream flow definitions as: •The amount of water set aside in a stream or river to ensure downstream environmental, social and economic benefits are met [OCWP/Workgroup], •Flow conditions necessary for supporting a sound ecological environment in the river basin [Texas Senate Bill 2], and there are dozens of others. He said in order to know where we are headed we need to know where we are so he reviewed the existing policy: Current OWRB rule seeks to protect domestic uses through a set-aside of 6 acre-feet of water/year per 160 acres of land, to allow for the downstream consumptive uses of water users if and when those consumptive uses materialize; however, there is not always a consumptive user downstream of all segments and the workgroup then examined the merits of that rule. Additionally, the OWRB has established a 50 cfs minimum flow requirement in a portion of Barren Fork (established through OSU study), which is now in the rules.

As the workgroup began, it was decided that there were key considerations for a State Instream Flow Methodology: legal/policy factors (statutory authority), costs/benefits, ease of implementation, the role of stakeholders, impact to existing/future water rights holders, coordination with state water planning process, adaptive management, selection of desired method as there are hundreds available all which calculate minimum flow, the natural flow regime that reflects seasonality, and habitat considerations. An OCWP Instream Flow Advisory Group was formed, and the OWRB contracted with Barney Austin (INTERA) -- a primary author of the Texas plan--to coordinate the activities. Five meetings between February-December 2010 were held, members were from a variety of interests--municipalities, interest groups, governmental and non-governmental organizations, and Tribes. He explained the group conducted technical analysis of various instream flow methods, analysis of regulation and potential implementation, and review of successful and unsuccessful programs in other states/countries.

The group ultimately formulated six foundational recommendations in the final report, which went through seven drafts, and there was quite a bit of controversy surrounding how the final six recommendations were derived. Mr. Smithee said the controversies surrounded a couple of factors, including why are we doing this and does it really matter and is the system broken enough to make this review. And secondly, while policy tends to drive technical considerations and technical tends to drive policy, which then comes first.

The Workgroup Final Report/Recommendations:

Recommendation 1 –Address the legal and policy questions:

1. Factors that can legally be considered in developing a flow recommendation
2. Effect on current and future water right holders
3. Process for implementing flow recommendations
4. Statutory changes [OWRB would seek express authority from State Legislature]

5. Is an instream flow program necessary in Oklahoma?

Recommendation 2 – Study other mechanisms for protecting instream flows

Recommendation 3 – Develop a draft methodology for instream flow studies in Oklahoma

Recommendation 4 – Conduct a study on the economics of instream flows in Oklahoma, including an analysis of the following:

1. Cost of studies
2. Cost of managing an instream flow program
3. Economic impact of implementation

Recommendation 5 – An instream flow pilot study in a scenic river

Recommendation 6 – Preserve the instream flow Advisory Group

Mr. Smithee said the workgroup agreed that policy development and technical considerations did not have to be sequential, and developed a timeline for addressing the legal and policy questions and workgroup issues, in concert with addressing the technical, economic, and costs issues. He said there is a cost associated with implementing the recommendations as the workgroup had envisioned, which totals \$1.5 million over the four years, and in the end the State would have a recipe for addressing instream flows and non-consumptive needs, and an instream flow set in place at a scenic river as a blueprint which could be finalized at the conclusion of the pilot study. Mr. Smithee said it was a difficult and challenging process, but that indicated its importance. The group has agreed upon the recommendations even though probably no one person was in total agreement with all of it, but in the end everyone felt it should be moved forward.

The members discussed cultural and religious flows and if that would be incorporated into this methodology or through Tribal negotiations; the possibility of an aesthetic values and how would those be quantified; consideration of historical flows and what is okay and what is not, as well as ecological values and the domestic use set-aside policy for calculation for permitting; the need to recognize downstream users' (industrial, municipal, agricultural) benefit because of the mechanism there is an increased likelihood there will be flows; that there is mutual benefit and it is not tourism versus economic development, and while tourism is the third largest industry in Oklahoma, tourism and economic development are not mutually exclusive; that it establishes a priority of flow of water that stays in the stream to benefit the non-consumptive users and the current use. There was discussion with Mr. Couch about the current law's view of domestic use protection, what is interference and what is reasonable, the appropriation doctrine and there is no statutory preference of use; the workgroup did not discuss there would be guaranteed flow but when we would set aside from new appropriation, and that the complexity of the matter is why the consolidated recommendation is to go with the workgroup recommendation which is a thoughtful process going forward--not developing numbers for each stream system in the state--but look at the policy and legal ramifications and employ any of a number of models to protect what the policy makers determine should be protected. The members talked about the need for the workgroup to be unbiased with no prior guarantees and all uses represented, with specific direction and express authority from the legislature, and regarding economic impact of instream flows, what might be the negative

consequences to existing water users but also the positive, how does lake level management fits into the scenario which is unique to every reservoir, and also that currently there is no protection for those streams that are the subject of out-of-state interests.

Mr. Strong said that the majority of the comments received at the Feedback and Implementation Meetings regarded this issue -- whether for or not for it -- but an overwhelming consensus no to ignore it, and not to wait until there are shortages to look at this issue.

2. State/Tribal Water Consultation and Resolution - Mr. Strong indicated the Mr. Lindsay Robertson, with whom the Board contracted with to look at Tribal issues was in attendance. Mr. Couch presented the consolidated recommendation regarding state/tribal water consultation and resolution. He said for the reasons that Mr. Arthur had explained, this issue met the criteria to be placed in the top seven, but it must be understood that this nine member Board can makes its recommendation, the implementation is up to others outside the Board members' purview. He said, however, "bottom line" was reviewed and considered by our independent contractor Professor Lindsay Robertson, who has consulted the past two Oklahoma Governors about Tribal issues generally and has been involved in water matters. Professor Robertson went out and spoke with folks and recommended consultation as a method to resolve, which is the recommendation presented today. He said the reason for that is because of the need to apply the appropriation doctrine for both stream water and groundwater, and to ignore and not consider and not try to resolve this issue goes to the very heart of our historical water management programs. Mr. Couch said that there has been longstanding uncertainty of tribal claims, which weakens planning efforts and the need to effectively and fairly apportion water, which alternative seems to be a costly, protracted litigation but to reach an amicable resolution and opportunity to recognize State and Tribal sovereignty would be beneficial to all.

Mr. Couch illustrated the numerous Tribal boundaries located within Oklahoma's borders, noting the Indian Territory and the Five Tribes, and the other areas subject of discussion which could be addressed under this issue.

Previous water planning efforts recognized the issue, and the 1980 OCWP stated there are no reservations in Oklahoma but considered the Indian population demand, and the 1995 Update, recommended forming a permanent committee with inclusive membership to address issues, develop mutually acceptable negotiation systems, and identify projects warranting cooperative action. He said that there is recognition of the issue, and the public through the OCWP public input process recommends resolution, as does Professor Robertson through the 20 independent contract meetings with tribal representatives where the issues and concerns were discussed--the Tribes recommend negotiation, the Town Hall recommends negotiation, and also Robertson's February 2011 Report recommendations.

Mr. Couch enumerated the recommendations from the OCWP Report on Tribal Issues/Concerns, stating that before negotiations can begin, the Oklahoma Governor and State Legislature should:

- Establish a formal consultation process in accord with [this report],
- Decide authority to approve process of negotiations,
- Decide authority to conduct negotiations, decide authority to approve negotiated agreement,

- Assemble team to meet with tribal representatives on process, appoint team to conduct negotiations and submit negotiated results to State for approval, and

- Consider implementation of regular consultation protocols and the Tribal governments' approval process for submittal, and as an ongoing process, regular consultation protocol.

He added that as addressed in each presentation of the recommendations, the implementation timeline and cost would be established by Oklahoma Governor and State Legislature. He said the Board lacks the authority to get involved, but to the extent the Governor and State Legislature wants to specify a timeline and wants this agency or some of its staff to be involved.

Mr. Drummond asked if there has been progress since the 1995 report, and Mr. Couch responded that the events that have occurred since 1995, there certainly was a degree of discussion through the Office of the Governor and requesting staff to assist the Governor's Office in negotiations for a draft compact, which is still on the agency website, there was significant involvement but no committee established for that process. Ms. Lambert inquired who asked the State to establish this consultation process, and Mr. Couch said the recommendation is to present the recommendation to the Governor and Legislature to decide; he said the recommendation would be a priority recommendation of the Oklahoma Comprehensive Water Plan . Mr. Sevenoaks commented that he had been involved through two separate times of negotiations and recommendations to the Legislature, and it seemed logical to form a group and start the process.

Professor Lindsay Robertson spoke to the members and stated that he had been a part of the negotiations between the Choctaws and Chickasaws which he said was actually a success. He said the question of whether the Board can do this on its own is a State Constitutional law question, and Mr. Sevenoaks expressed he would like to initiate a negotiation process of just hearing both sides of the issue, and Mr. Robertson suggested that would be more in line with a mediation. He said his mission was to figure out what folks wanted to do, but there are certain things the Board could do on its own such as ongoing activities the Tribes could be involved in, and take the lead to get the Governor 's office to start the process, but the Governor takes the lead in involving the Legislature.

Mr. Robertson and the members talked about the emotional and legal response to negotiation, that the Tribes are sovereigns within the geographical/political structure of the United States and enjoy certain rights of sovereignty that are inherent. He said as sovereigns, they are accustomed to speaking with governments as the United States is, and as Indian affairs are entrusted with the Federal government and not to the State government, have a long history of dealing with just the Federal government, but have become more comfortable dealing with the state government. The OWRB is more of a subsidiary part of state government, and they would send their staff, but that may be the way to go. Mr. Sevenoaks suggested meeting to get the issues on the table and making recommendations to move forward. Dr. Taron mentioned the new Joint Legislative Committee as the group to begin the process, and that is a positive approach. Mr. Drummond commented that Tribal negotiations is above the OWRB pay grade and legal authority, and the Board should focus on what is already doing--recommending a water plan for all of Oklahoma; it is not a separate plan for Tribal members and non-Tribal members, it's a plan for all Oklahomans. Mr. Sevenoaks mentioned there will be a permitting process involving Sardis Lake and it would be a mistake not to involve the Tribes, and he expressed his frustration level about a Legislative plan, but recognized that it is not the Board's paygrade.

Chairman Herrmann said he felt the Legislative Committee could move the process along, and Mr. Strong added that Mr. Robertson suggested lower level discussions would be welcome and he said there are several Tribes where there are staff-to-staff cooperation on issues, and that level of ongoing dialogue needs to happen but the global settlement of Tribal rights claims is clearly statutorily and constitutionally a higher level, and if the Governor or Legislature don't take up the mantel, the Board cannot do anything about it. The members, Mr. Robertson and staff discussed the proper process to follow up on a lower level and engage the Tribes, and form a way to get them involved to reach out and talk; and discussed the sensitivity about the Tribes own water plan, that there are Tribal waters all over the state but no one knows as a matter of federal law what that amounts to, but there is a need to know for various reasons, and the need to agree or let a federal judge decide.

4. Other Policy Recommendations. Chairman Herrmann asked if there were any other thoughts that have come up that members wanted staff to consider as another recommendation. There were no other recommendations.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

The Supplemental Agenda items were considered following the Summary Disposition Agenda (3.)

8. **Election of Officers.** Election of Officers was considered following the Special Consideration agenda item.

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.

Mr. Fite asked about the July meeting. Ms. Lambert said that she, Mr. Drummond and Mr. Herrmann would not be in town for the scheduled July 12 meeting, leaving six Board members to attend. Ms. Lambert wanted to make sure that the five members present today, absent an emergency, would be in attendance, and there was discussion that there would be a quorum but no Chair or Vice Chair and whether there were other dates are possible to move the meeting, but they agreed to meet on the scheduled meeting date, and that Dr. Taron would chair the July 12, 2011 meeting.

10. ADJOURNMENT

There being no further business, Chairman Rudy Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 1:40 p.m. on Tuesday, June 14, 2011.

OKLAHOMA WATER RESOURCES BOARD

_____/Absent_____
Linda P. Lambert, Chairman

_____/Absent_____
F. Ford Drummond, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/Absent_____
Rudolf J. Herrmann

_____/s/_____
Tom Buchanan

ATTEST:

_____/s/_____
Joseph E. Taron, Secretary
(SEAL)