

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
February 19, 2013

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman F. Ford Drummond at 9:30 a.m., on February 19, 2013, in the Second Floor Board Room of the Oklahoma Water Resources Board Offices, located at 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 February 14, 2013, at 4:30 p.m., at the Oklahoma Water Resources Board's offices.

A. Roll Call

Board Members Present

Ford Drummond, Chairman
Linda Lambert, Vice Chairman
Tom Buchanan, Secretary
Bob Drake
Marilyn Feaver
Ed Fite
Rudy Herrmann
Jason Hitch
Richard Sevenoaks

Board Members Absent

None

Staff Members Present

J.D. Strong, Executive Director
Jerry Barnett, Acting General Counsel
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Josh McClintock, Director of External Affairs
Mary Schooley, Executive Secretary

Others Present

Johnny Parker, Martin Marietta Materials, Mill Creek, OK
Ron Kopplin, Martin Marietta Materials, Mill Creek, OK
Jerry Floyd, City of Chouteau, OK
Kevin Hershberger, Chouteau Public Works Authority, Tulsa, OK
Alan Woodcock, US Fish and Wildlife Service, Tulsa, OK
Dick Scalf, City of Ada, OK
Brian Woodard, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Luke Martin, Choctaw, OK
Angela Thompson, Chouteau PWA; Wells Nelson & Associates, Oklahoma City, OK
Randy Nelson, Chouteau PWA; Wells Nelson & Associates, Oklahoma City, OK
Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK
Precious Bragg, National Park Service, Sulphur, OK
Tom Lay, D. Bryan; Oklahoma City, OK
Peter Dawson, Arbuckle Aggregates, Plano, TX
Floy Parkhill, Tishomingo, OK
Lewis Parkhill, City of Tishomingo, OK
Cody Holcomb, City of Ada, OK
Tom Garver, Blackwell, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Krystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer
CW Phillips, Chickasaw Nation, Ada, OK
Doug McCleary, MEG/Yale; Oklahoma City, OK
Pennie Embry, Oklahomans for Responsible Water Policy
Elizabeth Nichols, Arbuckle Aggregates, Edmond, OK
Bodie Bachelor, Centennial Law, Duncan, OK
Shelby Hudson, Unimin
Shannon Shirley, Mill Creek, OK
Mike Langston, Oklahoma State University, Stillwater, OK

B. APPROVAL OF MINUTES

Chairman Drummond said the draft minutes of the January 15, 2013, Regular Meeting had been distributed, and he asked if there were corrections to the minutes. There were none, and he stated he would entertain a motion to approve the minutes.

Ms. Lambert moved to approve the minutes of the January 15, 2013, meeting and Mr. Buchanan seconded.

AYE: Herrmann, Fite, Lambert, Sevenoaks, Hitch, Buchanan, Feaver,
Drummond
NAY: None
ABSTAIN: Drake
ABSENT: None

C. EXECUTIVE DIRECTOR’S REPORT

Mr. Strong began his report introducing Acting General Counsel Jerry Barnett, and then asked Mr. Josh McClintock to provide the legislative report. Mr. McClintock noted the distributed written report, and highlighted federal government activities. He said that the budget process in Washington, D.C. is about one month behind, and the federal agencies are waiting to

see what their budgets will be, so we do not know what that will look like for the programs the OWRB participates in; the budget is now expected on the Hill the first of March. Secretary of Interior Ken Salazar has announced his resignation; Senator Markey of Massachusetts is working on a drought relief bill but requires a climate change component, and there are several other drought-related bills in Congress—also, several water infrastructure and weather-related bills by Senator Harry Reid--which staff will monitor.

Regarding State legislative activities, Mr. McClintock highlighted measures of interest to the Board and updated the members on pertinent activities regarding each and the members asked questions: HB 1562 repealing provisions of the “Water for 2060 Act;” institution of the new “House Calendar Committee;” HB 1274-regional planning bill; HB 1482-repealing the high hazard study group; HB 1517-regional planning bill setting up regional planning districts; HB 1587 – pit water exemption; HB 1827-drought protection bill and HB 1923 also a drought bill; HB 2069-regional planning bill similar to HB 1518; and HB 2193-a shell for enabling language regarding the state question that passed. Regarding Senate bills, Mr. McClintock noted the following of interest to the OWRB: SB 6 and SB 18-relative to membership of the OWRB; SB 17 – regional water planning bill; SB 83, SB 305 and SB 306-pit water exemption bills; SB 348-Class I designation; SB 654-companion bill to the Wesselhoff’s Water for 2060 repealer; SB 800-companion to McBride’s regional water cooperation bill; SB 964-considering volunteer organizations that form regional planning groups; SB 965-reorganizing the OWRB Board reflecting the planning regions in the 1995 Water Plan and new members will revert to those regions of representation; SB 996-drought bill; and SCR 3-directing the OWRB and ODEQ to develop a permitting process for reuse projects. He said most of the water bills are currently active because the committee deadlines have not been reached yet; and many bills are shell bills at this point. Ms. Lambert asked about whether there would be coordination among the similar bills and Mr. Strong responded there were several regional planning bills last session but there has been no effort to combine them and there seems to be little momentum to move forward with them this session. Mr. Buchanan asked about Senator Fields’ SB 2, and Mr. McClintock responded staff is working with the Senator on that matter (stream water).

Mr. Strong added staff is waiting on three appointments to the Water for 2060 Council in order to get that effort underway; the Instream Flow Advisory Group will begin meeting on March 1 and are to have responded to a 9-question questionnaire which will be compiled into a report so that each members understands the position of one another; mediation continues in the Choctaw/Chickasaw lawsuit and discussion will be later in the agenda and the Tarrant Case is scheduled to be heard at the US Supreme Court April 23, the same date as the meeting for the Red River Compact Commission. He said on February 24-26 the Oklahoma Association of Conservation Districts will conduct its annual meeting where Mr. Buchanan will be the luncheon speaker on Monday; the Board’s Finance committee will conduct a conference call on February 26; the Canadian River Compact Commission will meet March 5 in Amarillo, TX; and, the next meeting of the OWRB Board will be Tuesday, March 19, at 1:30 p.m. following “Water Day at the Capitol” activities. He concluded his report.

D. Monthly Budget Report

Mr. Strong stated that Ms. Amanda Storck was unable to attend today due to illness, and he noted the distributed report and asked if there were any questions. He said the Governor’s Budget proposal has been presented; the OWRB did not ask for additional appropriations, and the Governor’s budget proposal for the OWRB is a standstill budget; no negotiations with the Legislature have begun as yet in the process.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Chouteau Public Works Authority, Mayes County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this item is for the consideration of a \$3,525,000.00 Clean Water State Revolving Fund loan request from the Chouteau Public Works Authority located in Mayes County. He said the Authority is requesting the loan to refinance a portion of the 2006 State bond issue utilized for construction of a wastewater plan. The loan will be funded through the SRF loan program with a fixed interest rate. Mr. Freeman noted provisions of the loan agreement. He said Chouteau's population has increased by approximately 18% over the past 20 years and the debt coverage ratio stands at approximately 1.4-times. Staff recommended approval of the loan request.

Mr. Jerry Floyd, Authority Chairman, and Mr. Kevin Hershberger, System Operator, were present in support of the loan application.

Mr. Herrmann asked about the interest rate, and Mr. Freeman said that will be set at closing. Mr. Randy Nelson, Wells Nelson & Associates, stated the older rate was an overall rate just over 5% which will be cut dramatically, saving over \$1.25 million dollars. Mr. Sevenoaks asked the size of the plant and Mr. Hershberger answered it is 250,000 gallons. Chairman Drummond asked if there were any capacity issues in refinancing in the Clean Water SRF, and Mr. Freeman responded not in the Clean Water SRF, but the Drinking Water SRF.

Ms. Lambert moved to approve the Clean Water SRF loan to the Chouteau Public Works Authority, and Mr. Fite seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver, Drummond
NAY: None
ABSTAIN: None
ABSENT: None

B. Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds in Aggregate Principal Amount not to Exceed \$50,000,000; Approving and Authorizing Execution of a Twenty-Fourth Supplemental Bond Resolution; Providing for the Issuance of Said Bonds; Waiving Competitive Bidding on the Bonds and Authorizing the Sale Thereof by Negotiation and at a Discount Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to Said Bonds; Directing Deposit of Proceeds Derived From the Issuance of the Bonds in the State Treasury and Requesting the State Treasurer to Remit Such Proceeds to the Bond Trustee; Ratifying and Approving the Form of Promissory Note and Loan Agreement to be Executed by Borrowers in the State Loan Program; Authorizing Execution of Such Other and Further Instruments, Certificates and Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman explained to the members that this item is an authorizing resolution for a new issuance of FAP loan program bonds which will be used to fund loans for Garfield County Rural Water District #5, Seiling Municipal Authority, Tulsa Metropolitan Utility Authority, and Shawnee Municipal Authority. Staff will bring the loans to the Board for consideration at the March meeting. The bonds will be priced the week of March 25, with closing on the week of April 22.

Mr. Freeman stated the resolution authorizes the following items as usual: issuance of bonds not to exceed \$50 million dollars, authorizing execution of 24th Supplemental Bond

Resolution for the issuance of the bonds, authorizing the issuance to be on a negotiated basis, directing deposit of the proceeds with the State Treasurer with remittance to BancFirst, the Board's trustee bank, approving the form of promissory note and loan agreement, directing payment for the cost of issuance, and authorizing other documents necessary to close the issue. Staff recommended approval.

Mr. Chris Cochran, BOSC, Senior Underwriter; Mr. Randy Nelson, Wells Nelson & Associates, Co-Manager; and Mr. Jacob Bachelor, Bond Counsel, were present in support of the resolution and bond issuance.

Mr. Sevenoaks asked if the entire \$50 million was allocated, and Mr. Freeman answered that it is allocated to those four entities, and may be more likely in the \$42-\$43 million dollar range but staff raised the amount in the event another entity came in. Mr. Sevenoaks asked what needed to be shown as funds allocated before going to the market; and Mr. Freeman responded that they intend to have 100% allocated on the same day as the bond issue is closed so there is no tax consequences.

There were no other questions. Mr. Herrmann moved to approve the resolution authorizing the issuance of FAP revenue bonds, and Mr. Buchanan seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver, Drummond
NAY: None
ABSTAIN: None
ABSENT: None

3. SUMMARY DISPOSITION AGENDA ITEMS

Any item listed under this Summary Disposition Agenda may, at the requested of any member of the Board, the Board's staff, or any other person attending this meeting, may be transferred to the Special Consideration Agenda. Under the Special Consideration Agenda, separate discussion and vote or other action may be taken on any items already listed under that agenda or items transferred to that agenda from this Summary Disposition Agenda.

A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items.

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

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items and Approval of Items listed.

Chairman Drummond asked if there were changes to the Summary Disposition Agenda items. There were no changes to the agenda, and Chairman Drummond said he would entertain a motion.

Mr. Hitch moved to approve the Summary Disposition items as presented, and Mr. Buchanan seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver, Drummond
NAY: None
ABSTAIN: None
ABSENT: None

The following items were approved:

C. Financial Assistance Division Items:

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

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
ASCOG				
a.	FAP-09-0011-R	Indiahoma Public Works Authority	Comanche	\$ 59,672.00
COEDD				
b.	FAP-12-0025-R	Yale Water & Sewage Trust	Payne	99,999.00
EODD				
c.	FAP-12-0014-R	Hanna Public Works Authority	McIntosh	99,900.00
NODA				
d.	FAP-07-0010-R	Town of Wakita	Grant	125,141.00
SODA				
e.	FAP-11-0035-R	Bromide Public Works Authority	Johnston	99,999.00

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

1. Intergovernmental Agreement with Central Oklahoma Master Conservancy District for water quality monitoring at Lake Thunderbird.
2. Cooperative Agreement with Oklahoma Department of Wildlife Conservation for publishing the Oklahoma Boating Access Water Atlas.
3. Intergovernmental Agreement with City of Norman to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
4. Intergovernmental Agreement with City of Oklahoma City to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
5. Intergovernmental Agreement with McClain County to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
6. Intergovernmental Agreement with Cleveland County to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
7. Intergovernmental Agreement with Canadian County to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
8. Intergovernmental Agreement with City of Ada to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.

9. Intergovernmental Agreement with City of Newcastle to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
10. Intergovernmental Agreement with City of Blanchard to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
11. Intergovernmental Agreement with City of Tuttle to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
12. Intergovernmental Agreement with City of Slaughterville to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
13. Intergovernmental Agreement with City of Union City to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
14. Intergovernmental Agreement with Pottawatomie County to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
15. Intergovernmental Agreement with Hughes County to participate in the Cooperating Technical Partnership Program for the completion of Discovery for the Lower Canadian-Walnut Watershed.
16. Agreement with Oklahoma State University, Oklahoma Water Resources Research Institute to participate in the annual Water Research Grants Competition.

E. Applications for Temporary Permits to Use Groundwater:

1. Earnie & Sharon Jantzen, Major County, #2012-623
2. Larry & Betty Paul, Seminole County, #2012-660
3. Max & Rose Koehn, Caddo County, #2012-661
4. John B. & Mary Ann Gilleran Children's Trust, Canadian County, #2012-667
5. Richard C. & Phyllis J. Brown, Woods County, #2012-670
6. Wyandotte Nation Housing Authority, Ottawa County, #2012-672
7. Chau Van Tran, Delaware County, #2012-681
8. David L. & Linda C. Bryan, Kingfisher County, #2012-683
9. Jones Family Trust and Bruce W. & Carol B. Jones, Harmon County, #2012-687

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. Hammond, Hammond & Hammond Ranch, LLC, Choctaw County, #2012-652
2. Doran & Anne-Marie Burns Family Trust, Roger Mills County, #2012-674
3. Randal D. Haley, Canadian County, #2012-680

4. Frank Berry & Sons, Inc., Texas County, #2012-685
5. Frank Berry & Sons, Inc., Texas County, #2012-686

H. Applications to Amend Regular Permits to Use Groundwater:

1. Charles E. & Wathina Mae Luthi, Ellis County, #1974-497
2. City of Elk City, Beckham County, 1979-568
3. Charles E. & Wathina Mae Luthi, Ellis County, #1997-679

I. Applications for Regular Permits to Use Stream Water:

1. Stan Gossett, Pottawatomie County, #2012-057
2. Mike Van Eaton, Okfuskee County, #2012-061
3. Mark Graf, Washita County, #2012-062
4. Jim Curl, Kay County, #2012-064

J. Applications for Term Permits to Use Stream Water:

1. Steinert Farms Operating Partnership, Garfield County, #2012-043

K. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- | | | |
|--------------|--|----------|
| a. Licensee: | Wyatt Drilling, LLC | DPC-0859 |
| 1. Operator: | Vinnie Wyatt | OP-1957 |
| Activities: | Groundwater wells, groundwater test holes and observation wells
Pump installation | |
| b. Licensee: | Bronc's Cable Tool Drilling | DPC-0861 |
| 1. Operator: | Ernest F. Henry | OP-1958 |
| Activities: | Groundwater wells, groundwater test holes and observation wells | |
| c. Licensee: | R & J Waterwell | DPC-0863 |
| 1. Operator: | Johnny D. Fanning | OP-1959 |
| Activities: | Groundwater wells, groundwater test holes and observation wells
Pump installation | |

2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:

- | | | |
|--------------|---|----------|
| a. Licensee: | McLean's CP Installation, Inc. | DPC-0526 |
| 1. Operator: | Kenny Keen | OP-1953 |
| Activities: | Cathodic protection wells | |
| b. Licensee: | York's Pump Service | DPC-0428 |
| 1. Operator: | Buck Alan Scrivner | OP-1954 |
| Activity: | Pump installation | |
| 2. Operator: | Alvis Jerome York, Jr. | OP-1955 |
| Activity: | Pump installation | |
| c. Licensee: | PSI – Professional Service Industries, Inc. | DPC-0772 |
| 1. Operator: | Jackson R. Brummell | OP-1956 |
| Activity: | Monitoring wells and geotechnical borings | |
| d. Licensee: | National EWP | DPC-0858 |
| 1. Operator: | William B. Bludworth | OP-1960 |
| Activities: | Groundwater wells, groundwater test holes and observation wells
Monitoring wells and geotechnical borings
Pump installation | |

- L. Dam and Reservoir Construction:
 - 1. Bob Head Waterski Lake Dam, Comanche County, #OK30446
- M. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Oklahoma Department of Transportation, Tulsa County, #FP-12-41
 - 2. Oklahoma Department of Transportation, LeFlore County, #FP-12-42
- N. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the February 19, 2013 packet of Board materials.

4. PUBLIC HEARING ON PROPOSED NEW AND AMENDED PERMANENT RULES OF THE BOARD

Chairman Drummond stated at the January meeting the Division Chiefs provided descriptions and explanation of the proposed new and amended rules. Today, staff will present changes made to the rules presented at the last meeting, there will be opportunity to hear comments from the public on the proposed changes, and take questions from the Board members.

A. Proposed Amended Rules in Chapter 25. Dams and Reservoirs

1. Summary – Ms. Julie Cunningham, Planning and Management Division, stated to the members that Mr. Jerry Barnett provided the new and proposed rules and highlighted areas where there are proposed changes since last month. She summarized the amendments that were made on this chapter with the Oklahoma Conservation Commission and Natural Resources Conservation Service to clarify improvements to performance standards and plans and specifications and new requirements on dam owners. She said that two minor comments were received on the rules which have been revised to address those comments; both commenters are satisfied with those “tweaks.” Staff recommended approval of the proposed amendments to rules in Chapter 25.

2. Questions and Discussion by Board Members. Mr. Sevenoaks asked about 785:1-2 regarding the change in language from “domestic” to “agriculture.” Ms. Cunningham responded that “domestic” had been inadvertently added, and this corrects that addition. She referred to 785:25-5-1(a) stating the original NRCS language defining agriculture use as exempt; domestic was never included in the definition.

Mr. Strong added the Oklahoma Independent Petroleum Association brought that to the Board’s attention in its comment letter.

Ms. Lambert asked about a comment made at the January meeting regarding the downstream traffic count. Ms. Cunningham responded data referenced was the National standard, and staff will work over the next year with the City of Bixby about its concerns and come back next year; the language has been stricken. Mr. Strong noted the highlighted area on page 3, 785:25-3-3 A.2., and added the traffic count guidelines developed in 2011 is what gave them “heartburn” and that language referencing the guideline book has been stricken.

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

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

Mr. Drake moved to approve the recommended amendments to Chapter 25, and Mr. Herrmann seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver, Drummond
NAY: None
ABSTAIN: None
ABSENT: None

Chairman Drummond stated he will invoke Chairman's prerogative and pass on consideration of Chapter 30 as there is a lot of interest (persons in attendance). The Board will consider the other proposed rules and amendments prior to considering Chapter 30.

C. Proposed Amended Rules in Chapter 35. Well Driller and Pump Installer Licensing

1. Summary – Ms. Cunningham stated these rules were recommended by the Oklahoma Well Drillers and Pump Installers Council and the Oklahoma Corporation Commission. She said the only change regarded the term “minor and small” public water supply wells. The highlighted language (page 1, 785:35-7-1) was inadvertently omitted, and is now re-inserted. This is a Department of Environmental Quality definition. Staff has not received any further comment. Staff recommended approval.

2. Questions and Discussion by Board Members. There were no questions nor discussion by Board members.

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

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

Ms. Lambert moved to approve the amendments to Chapter 35, and Mr. Herrmann seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver, Drummond
NAY: None
ABSTAIN: None
ABSENT: None

D. Proposed New and Amended Rules in Chapter 45. Oklahoma's Water Quality Standards

1. Summary – Mr. Derek Smithee, Chief, Water Quality Programs Division, stated there were three changes to the proposed amendments and new rules to Chapter 45. He said the first two changes are in Table 2 of the WQS. When transferring the original table, there were two “gremlins” in the criterion: (1) regarding Silver, the number on the fish consumption should read “64620”; and (2) regarding Ethylbenzene, the number should read, “2100.”

The third change removes consideration of the Arbuckle Simpson Aquifer as a Class I designation. Mr. Smithee said that at the hearing, there were several comments, as well as the Corporation Commission having conducted further research, and there may be an economic impact which staff has not had time to vet.

2. Questions and Discussion by Board Members. Mr. Sevenoaks asked how long it would be withdrawn, and Mr. Smithee stated until rulemaking next year. Mr. Sevenoaks said he said he didn't hear any comments, so that must be acceptable. Mr. Strong responded that before, there did not seem to be a downside even though he had been asking since September/October to be shown a legitimate economic impact. He said the Corporation Commission sent a letter stating that after further review there may actually be regulatory ramifications to oil and gas operations, so everyone is agreeable to get together over the next few months with the Corporation Commission and the oil and gas industry and see if there is a regulatory impact, and what that might be. Mr. Smithee stated staff recommended approval of Chapter 45.

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

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

Mr. Buchanan moved to approve Chapter 45 with the new and recommended amendments as presented, and Mr. Hitch seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver,
Drummond

NAY: None

ABSTAIN: None

ABSENT: None

E. Proposed Amended Rules in Chapter 46. Implementation of Oklahoma's Water Quality Standards

1. Summary – Mr. Smithee stated this chapter is the general implementation of the Water Quality Standards document, Chapter 45. He said based upon the hearing and comments received, there are no changes to the proposal, and staff recommended approval of Chapter 46.

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

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

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

Mr. Herrmann moved to approve the recommended amendments to Chapter 46, and Ms. Lambert seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver,
Drummond

NAY: None

ABSTAIN: None

ABSENT: None

F. Proposed Amended Rules in Chapter 50. Financial Assistance

1. Summary – Mr. Joe Freeman, Chief, Financial Assistance Division, stated the proposed changes to the amended rules are shown in yellow highlight on page four and five of Chapter 50. He said these two changes correct a Scribner error regarding the cents; also on page five, and on page six the changes include inserting an omission of language received as a comment regarding the criteria for the emergency grants and the ranges of per customer ranking calculation of indebtedness based on the consumer price index which had not been updated since 2006. On page 11, this comment was received by the Economic Development Authority of Beaver, Oklahoma, regarding when no grant applications are received before the deadline from an area of any given COG, staff may extend the deadline and contact an official--funds may not be moved from one COG to another; page 13 amendments regard adjusting the rating for indebtedness per customer ranking according to the consumer price index; and on page 21 correcting the numeral on "Category VIII." Staff recommended approval.

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

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

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

Mr. Hitch moved to approve the recommended amendments to Chapter 50, and Mr. Buchanan seconded.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver,
Drummond
NAY: None
ABSTAIN: None
ABSENT: None

Chairman Drummond asked that the Board now consider Chapter 30.

B. Chapter 30. Taking and Use of Groundwater

1. Summary – Ms. Cunningham stated that the legislation regarding these rules passed two years ago, and a group of interested parties conducted 20 meetings with varying degrees of agreement. Last month she discussed the proposal for Chapter 30 that regard re-enacting water permit consolidation language, as well as the implementation of Senate Bill 597. She said there were no comments on the consolidation language and there are no changes to that language today.

Ms. Cunningham noted the ~~strikeout~~/underline yellow highlighted language indicating the revisions made to the proposals on the pit water regulations, or the use of groundwater trapped in a producing mine in a sensitive sole source groundwater basin which is in response to comments received last month, and staff has re-worked several of the sections (785:30-15). Ms. Cunningham provided the background history stating the legislation requires mines to adopt and implement plans to monitor and report accumulations and disposition of pit water during the previous 12-month period and to report quarterly. It also requires the Board to promulgate rules that contain provisions regarding site-specific water management plans, and augmentation to offset consumptive use, setting up a regulatory scheme based on SB 597. Before, the use of that groundwater portion of the pit water that accumulated in the mining pits was not regulated by the Oklahoma Groundwater Law.

Mr. Herrmann stated that at the last meeting, citizen comments suggested that it would be irresponsible of the Board to do (what was proposed) yet it struck him that the statute does not enable the Board to go any further. He asked if it is correct, that the legitimate comments from the public asked the Board to do some things it does not have the authority to do. Ms. Cunningham and Mr. Strong confirmed that is correct. Mr. Herrmann said, then, that what staff has proposed is within the statutory legal authority; and Mr. Strong said staff believes strongly that what is proposed is within the Board's statutory authority. He added that the well-spacing component of what has been proposed is potentially subject to the Supreme Court Stay – and out of an abundance of caution staff has suggested that portion of the rules be removed from consideration. He said at a hearing before the Supreme Court staff was told March 4 would be the earliest the Court would be able to consider the Referee's recommendation. He said at the January hearing there would be a hearing on the well spacing rules at the February meeting, but because no decision has been rendered in the Supreme Court case, the hearing on these rules needs to be continued again to the March 19 meeting of the Board.

Mr. Strong also addressed the permit consolidation portion of the rules (785:30-7-8), saying there was very little or no comment received and there are no changes to those rules. He said; however, regarding pit water, significant comment was received and there are a significant number of changes as shown in the yellow highlight all of which are in response to the comments received. He said the public review portion of the rulemaking process provides the opportunity for the public to tell us we've got it wrong, where it won't work, etc. Comments received were from the conservation side in the local area and changes have been made in response to those comments. Also, changes have been made in response to comments received from the aggregate industry; comments about overstepping the Board's statutory authority, i.e.,

the Board dictating what goes into the monitoring plan. He explained the statutes state an exempt mine has to have a monitoring plan to monitor and report to the Board but did not give the Board the authority to dictate what will go into the plan. Mr. Sevenoaks asked who decided what the monitoring plan is, and is it voluntary. Mr. Strong answered the statutes says [an operation] has to have a monitoring plan beginning the first of this year, and has to be monitoring according to that plan if it is an exempt mine, but the statute doesn't authorize the OWRB necessarily to promulgate rules as to what goes into that plan. He said the statute does authorize the OWRB to make a determination by March 31, 2015, (after the reports have been submitted for two years) whether the exempt mine may continue operating under the exemption or whether the exemption goes away based on what the monitoring shows as related to the actual groundwater entering into that operation.

Mr. Strong reminded the Board that the members of the working group – aggregate industry, conservationists, cities -- met over 20 times to work together to develop the statutory language then to develop the language of the rule, and consensus was never reached in those meetings on the language of the statute, and now we do not have consensus on the language of the rule. What we do have is a really good idea by staff of what folks on all sides of this issue want and have used that as best it can to form the statutory language and the rule. He explained that mines that come into being after August 1, 2011, are considered new mines under this law and must have a permit for groundwater in their operation, which is made clearer with the proposed changes. New mines must have a site-specific water management and conservation plan--cannot do their own monitoring and reporting to the Board--but have its own, upfront monitoring and conservation plan, report quarterly and annually, and have a permit. The exempt mines (prior to August 1, 2011) essentially has a conditional permit—the law before SB 597 was an absolute exemption and SB 597 changed that to an exemption that can be kept if certain conditions are met, and gives the Board the authority to determine whether they can keep the exemption. Staff attempted to clear up confusion, and scaled back where the comments had a valid point regarding overreaching authority, but ultimately they are following the two-stage process. Exempt mines get a chance do monitoring and reporting to the Board to show how much actual groundwater is coming into the pit and what happens to it—how much evaporates, how much is used to wash, how much is trucked offsite, how much is discharged to the stream, how much is moved around from pit to pit. It's only if those reports show that how much water is coming into that operation that they may have to do more to maintain the exemption, i.e., if it looks like the initial reports show there is more than the Equal Proportionate Share (EPS) of groundwater being consumed or used and not beneficially returned to the environment they may have to offset their impact on the aquifer. This is a benefit that other groundwater users don't have—that requires augmentation credits, and a site-specific water management and conservation plan.

Mr. Strong continued that the statute doesn't make a distinction between a site-specific water management and conservation plan, or exempt mine and non-exempt mine—it's all the same site specific water management and conservation plan. The only distinction that is made is that first as an exempt mine they do monitoring and reporting and may not have to have a site specific water management and conservation plan --some operations do not encounter groundwater--but those that do may have trouble meeting the same EPS may have to offset that impact through augmentation credits according to a site specific water management and conservation plan in order to satisfy the Board or they either aren't having a significant impact on the aquifer as defined in the law and the rules, if they are they can offset the impact.

2. Questions and Discussion by Board Members. Ms. Lambert asked if there are objective criteria for the Board to use to determine if the EPS is valid. Mr. Strong said there is criterion in the rules; consumption is straightforward, and if there is more groundwater being

used in an operation than the EPS would allow, then it will require offsets, and how we calculate credits is spelled out in the rules. Mr. Herrmann said that ultimately, the Maximum Annual Yield (MAY) Determination will prevail over the currently exempted mines, and Mr. Strong responded the MAY has bearing on the currently exempted mine; anyone with a groundwater permit has to comply with the MAY and EPS. The exempt mines have the ability to avoid permitting but comply with the EPS as a practical matter, and they will come under the EPS that everyone else has to follow. Mr. Herrmann said then that would be the objective measure the OWRB would use in 2015 to determine if the management practices are adequate. Mr. Drake stated then there is no standard the existing mine would have to meet, and Mr. Strong responded the law requires they have to consult with the OWRB to develop their monitoring plan which was to be done by January 1, 2013. The staff has consulted with ten (operations) and those plans are posted on the OWRB website. Mr. Strong said this is a good way for the OWRB to interact with the mine and make sure we think they have a solid plan. The Board also has an opportunity as they turn in the quarterly and annual monitoring report, to tell them where we think there are deficiencies, and not wait until March 31, 2015; staff intends to notify operations right away if deficiencies are noted. Mr. Drake asked if staff believed all affected mines will operate under the guidelines as proposed or can come in with another system of monitoring and, is there any legislation affecting what the Board wants to do. Mr. Strong answered there are some bills by Southeast Oklahoma legislators to remove the exemption altogether, that existing mines have to follow the same laws as new mines would; whether those measures move forward is yet to be seen and may depend upon what happens with the rulemaking—are the rules adequate, did we follow the law, will it be challenged. He said again it is a two-step process: first monitor and report and determine which mines have a lot water is coming into the mines and which do not, and those that do not continue to monitor and report. Those that do, if offsets are required, will have to have a site specific water management and conservation plan. There are also ways exempt mines can volunteer to do a site specific water management and conservation plan which is spelled out in the changes on page 8, paragraph (c) and outlines the ways the exempt mines can continue in consultation with the Board (not approval) and develop a management plan if they want to ensure it is considered permitted, that it is beneficial use, and the reasons listed come from the law. There was an incentive in the law if exempt mine wanted to volunteer and work with the Board and develop a management plan then they can get additional legal protection.

Ms. Cunningham stated that if it appeared that an operation has gone over consumptive use, there is the ability to augment, there is opportunity to acquire more land and water rights, or to prove in another way use is not likely to interfere with natural streams and springs of a sole source basin. She said there has been a lot of argument about the exempt mines and management plans; there are other options if they cannot augment. On page six she noted the criteria for the management plan which was developed by the technical work group and agreed on certain criteria regarding augmentation. She said a letter had been received from the Oklahoma Aggregates Association and another letter this morning; there was a meeting this past Friday with CPASA, OKAA, Senator Simpson; Arbuckle Aggregates was unable to meet. She said staff is unaware of how much more statutory and regulatory agreement can be reached.

Chairman Drummond asked if there were any further questions by the members; there were no other questions or discussion.

3. Comments by Public. Chairman Drummond invited the public to make comments, and limited each presentation to five minutes. He said there was a hearing last month and he asked that comments today regard changes to the rules or additional information.

A. Ron Kopplin, Martin Marietta Materials –representing the Oklahoma Aggregates Association. Mr. Kopplin stated a considerable amount of time and energy has been involved in

negotiating and compromising about how pit water is not only managed but regulated, which began two years ago. Rules were developed in earnest in November 2011 following SB 597 with a number of stakeholder and technical group meetings. The last meeting was May and he felt although there was not 100% consensus, but ground was being gained attempting to reach a compromising position. He felt the draft rules failed significantly in comparison to the guidelines the OKAA felt were agreed to, and therefore the OKAA has presented its written concerns to the rules supported by an attachment containing legal, competent arguments supporting their position. The new draft goes beyond the intent of SB 597 as well as specific language; the spirit of compromise was abruptly ended; because of short notice of meeting (Feb. 15) many were unable to attend and their position was not heard because its representative is not an expert. He said to address issues additional stakeholder meetings are needed and he asked for a one-month delay for legal and technical representatives to come up with a compromise.

B. Andrew Pinkerton, TXI –representing Oklahoma Aggregates Association. Mr. Pinkerton talked about company investments and stewardship; the industry has invested hundreds of millions of dollars as these types of investment are calculated in decades; operations were formed under Oklahoma’s legal structure prior to 2003 for long term production; the company takes pride in providing a critical natural resource for the growth of the economy and the operations help build and support local economy through jobs, utilities, taxes and services translating to hundreds of millions of dollars to Oklahoma’s economy; capital investment in technology is made to ensure the optimization of all natural resources, and minimize the amount of water moved with maximum use, making products efficiently. OKAA member companies negotiated in good faith and accepted a compromise provisionally surrendering prior rights to responsibly manage water trapped in a producing mine without OWRB regulation. He said the principal provision in the compromise was that an existing mine would be able to responsibly manage the water through a voluntary site specific water management and conservation plan, prepared in consultation with OWRB, and also allowed the opportunity to get credit with the voluntary plan for water recharging the groundwater basin and local streams. He said in the 11th hour, the companies were told the Board must approve the plans and must be completed under the rules of SB 597, completely reversing the context which prompted their agreement.

C. George Matthews, U.S. Silica –representing Oklahoma Aggregates Association. Mr. Matthews stated his company has 66 employees and mines about one million tons of silica sand every year. He referenced the previous discussion of the evolution to SB 597 and the rules, and said SB 597 creates two classes of mines: exempt (permitted or application prior to 2011) and nonexempt; all mines operating in the Arbuckle Simpson Aquifer are exempt. He quoted in the Act that, “the monitoring plan is to provide for the measurement or reasonable estimation of groundwater and surface water volume separately stated, entering the pit, of the water diverted from the pit, of the disposition of water from the pit, and of consumptive use defined in the section to mine pit water by the mine operator.” He said all existing mines are exempt; a mine that fails to report could lose its exemption and an exempt mine that exceeds its EPS could also lose its exemption, but can consult the OWRB and voluntarily provide a management plan. He said existing mines are following the law and recently there has been mischaracterization by Aquifer stakeholders and newspapers that the industry position is all mines are exempt from the rules and only need to monitor rainfall. He said the Board has heard the outline of SB 597, the law certainly requires more than just monitoring rainfall. Seven existing operations have submitted voluntary plans which are available on the OWRB website providing detailed information regarding water management and the disposition of pit water; the Board may consult with the companies to ensure management and use is responsible, it’s a transparent process and they are confident all mines are following the law.

Mr. Sevenoaks asked if he preferred a voluntary plan. Mr. Matthew said the law is clear a voluntary plan can be submitted, but the question is what does the voluntary plan include, is it truly voluntary, or are they under the rule? Ms. Lambert asked what happened if a company chooses not to voluntarily submit a plan. Mr. Strong said there is no choice on a monitoring plan, but on whether to submit a site specific water management and conservation plan. The Board will continue to review the quarterly and annual monitoring plans and determine in 2015 if a management plan is required. Ms. Lambert said there are two ways to ensure the law is followed, one is voluntary and one is not, and Mr. Strong referenced the two plans (785:30-15-4); she said there are two plans, one is a monitoring plan and one is a management plan. Mr. Sevenoaks asked about how the plans cause damages to the aggregate industry and Mr. Matthews answered what is not clear (by statute or rule) what happens if an operation can't stay within the EPS because of the water that comes into a pit over which they have no control—obtaining additional water rights is a damage. Mr. Matthews referenced the City of Ada obtaining additional rights, and Mr. Strong noted that the City may have to do that, and others may have to do that as well; it's a cost, but not a complicated path with how to deal with overconsumption of groundwater. Mr. Sevenoaks asked if there were other damages, and Mr. Matthews answered additional economic costs is significant, but if they can't comply and can't find the additional water rights they will have to change mining methods, or shut down the business. Mr. Strong explained the meeting on Friday was held at the request of the OKAA and he asked that question and asked them to comment today about what aspects of the criteria for the plan that cannot be complied with. At meeting the response regarded the criteria to receive credit for augmentation of stream flow at 50% exceedance, which should not be a problem unless there is a lot of water entering the pit in these operations which the monitoring plans will help to determine.

Mr. Ron Kopplin expressed confusion about the 50% exceedance and the USGS definition and the OWB definition causing them not to be able to have confidence about whether they can agree to that; and Mr. Strong responded one of the changes made was to include a definition of “50% exceedance” (page 2), which he reviewed and explained. Mr. Herrmann commented about the voluntary aspect and comments about whether the Board is overstepping its bounds, and asked Mr. Barnett to clarify after reading from the statute (Section E.1.) regarding submitting a voluntary monitoring plan, and (Sec. E. 3) regarding exempt mines submitting voluntary site specific water management and conservation plans. Mr. Barnett clarified that the language in Subsection D—now 82 O.S. 1020.2---addresses the Board promulgating rules primarily regarding nonexempt mines. He said Subsection E, paragraph 1, regards what is called a monitoring plan and it is mandatory the mine have a monitoring plan. The Board's rules can address a monitoring plan for nonexempt mines more directly than nonexempt mines. The exempt mines still have to do monitoring and have a plan and report and what staff has gone to provide in the rules gets at the language in the bill and the law in paragraph 2, Subsection E, which regards that if after March 31, 2015, they go over their EPS, there are consequences. Staff has provided criteria for these plans, and if the reporting is in compliance with the plan, you can continue the exemption. It seems better to say upfront what it will take to satisfy the agency rather than getting to March 2015 and not having that spelled out seems more subjective. He said that paragraph 3. (as read by Mr. Herrmann) is addressed in the rules on page 8, subsection (c) which in a “nutshell” condenses the first part of subsection (c), regarding the consultation with the OWRB about water management plans for three reasons spelled out in statute. To avoid conflicting requirements between the Board and ODOM can be a reason to voluntarily choose to do a water management and conservation plan, for purposes of avoiding the loss of exemption. Mr. Herrmann stated, the Board has the authority to promulgate the rules under the language of the statute, and Mr. Barnett said, yes.

Chairman Drummond asked other members of the public to address the Board.
Comment by the public, continued:

D. Alan Woodcock, US Fish and Wildlife Service – Mr. Woodcock said that overall, he is very much in favor of the adoption of the rules as they will provide a step forward in the protection of the water resources of the Tishomingo National Fish Hatchery and Tishomingo National Wildlife Refuge, which depend upon water from Pennington Creek. He said they would prefer that reporting begin on January 1, 2014, rather than March 2015; there should be a greater incentive in the rule for augmentation in the groundwater as that furnishes water to the springs; there is concern about “one time water balance;” concern about the location of the station for monitoring; evaporation should be considered from all sources; the operator should report on a daily basis; and it would be helpful to have each operator install a rain gage at each site.

E. Bruce Noble – National Park Service/Chickasaw National Recreation Area – Mr. Noble provided a brief history of the park, and its economic impact to the area. He said as of the original 33 streams, there are now only five, and he read a statement thanking the Board for the opportunity for additional comments about new rules about water trapped in producing mines overlying a sensitive sole source basin; they support the OWRB’s efforts to ensure the requirements for the use of the water by mine operators is consistent with all other users; and he urged the Board to adopt today.

Mr. Drake asked what would happen if there was no water in the park; he used the word, “die” and Mr. Noble answered it would die as there would not be one million visitors a year, and would not contribute to the local economy. Mr. Fite asked what caused the decline in the number of springs, and if there had been major springs go dry in the last 25 years. Mr. Noble said the decline is because of greater use of water from the aquifer, more competition for use, and possibly counting differently caused decline,; Bromide Spring is the major spring that has gone dry.

F. Elizabeth Nichols, Arbuckle Aggregates – Ms. Nichols expressed her review of the rules circulated as of February 1. She said she didn’t believe the rules support the statutory language of SB 597 and she requested the matter not be decided today and, to convene an attorney workgroup to make sure the language conforms to the meetings. There has not been a meeting since May 2012, and it’s important to get the language of the rules right after the investment of everyone in time and money, and businesses are making decisions. She said the rules need to reflect what the statute says; the statutes are for guidelines and the rules are for logistics and she didn’t believe the rules supported SB 597 for logistical purposes. She said there are two distinct plans – monitoring and site specific management - and the rules illuminate the distinction of the monitoring plan and place it under the guise of the site specific water management plan and the rules eliminate the distinction of a new mine with a pre-existing exemption which is not what the statute intended. The definition of “augmentation” in the statute is not the same as the definition in the rules and the rules expand augmentation. Regarding what the damages would be to a mining operation, Ms. Nichols said the mining business is unlike others because the business depends upon how much rock is in a quarry which is intended to last for generations and the damages are the uncertainty, and there is no certainty related to these rules related to procedure, process and logistics. She asked the Board not to decide the matter today but to allow the attorney group to get together and make certainty related to the rules.

Mr. Strong asked what certainty Ms. Nichols was asking for and she said the language in the statute needs to match the rules, and right now they do not and that creates ambiguity. Mr.

Strong asked what areas other than augmentation are there no matches, and she answered regarding the monitoring plan, the definition had been deleted. Mr. Strong said there is a monitoring component to a site specific monitoring plan that is required of nonexempt mines, and voluntary for exempt mines. Staff went back to more closely match language (page 3, 785:30-15-4) and he explained the changes that are verbatim from the statute--and do not tell an exempt mine what has to be in its monitoring plan--but pairs to statutory language that says an exempt mine is to adopt its own plan to monitor and report, having taken the comments from the aggregate industry to heart. He said what is incorporated into the site specific water management and conservation plan is a component of the plan that includes monitoring of water which is only applicable to those that have to or choose to do a site specific management plan. An exempt mine can still choose not to do a site specific plan and merely do its own monitoring and report that data.

Mr. Drake said there could be ten different plans and he thought the staff would want a standard plan. Mr. Strong said that is why staff originally proposed criteria for what goes into a monitoring plan only to have the Board's authority to do that questioned, rightfully so, and if its easier for the industry to have the vague and ambiguous, then these rules provide for that. If they want to consult with staff on an individual basis to find out what staff thinks should be in a plan, staff is available to do that. The members, staff, and Ms. Nichols continued to discuss the process, the presumption of groundwater use and unfair shift in burden, and the statutory requirement that exempt mines demonstrate to the satisfaction of the Board that it should maintain its exemption.

G. Cody Holcolm, City of Ada– Mr. Holcomb thanked the Board for the hard work on this issue, he supported the rules as presented because they afford a balance between being responsible and managing the water for all users, and gives options that some might not otherwise have. He said the rules create certainty that has not been available before and suggested that improving water resources means the status quo cannot be maintained; cities are concerned about being around in 100 years, and spend money to support infrastructure and they need the certainty. He asked the Board to do what is best for everyone as it is in the position to continue to improve water resources.

H. Lewis Parkhill, City of Tishomingo – Mr. Parkhill stated he is aware of the Board's responsibility to manage water, which is not a mineral; SB 597 tried to address basic issues of fairness, that users need permits in order to manage the resource; it is costly and they are actively working to seek alternative water sources and solutions for a city of 3,100. He said he is very supportive, and asked the Board to give careful consideration and adopt the rules of SB 597.

I. Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer (CPASA) – Ms. Ford reviewed the history of the group meetings that developed SB 597 and the proposed rules. She said delaying the rules would continue problems; she thanked the OWRB staff for facilitating the meetings, not everyone is happy, but compromise has been made, and a path has been laid for the companies to do what they need to. She asked the Board to approve the rules.

J. Shannon Shirley – CPASA – Ms. Shirley said they have been dealing with this situation for years; there are the aggregates and then everyone else. She said the [aggregates] have a special exemption and need to get in line with other water users and these rules do get them closer than they have been. She commented about the dry springs in the area noting the degree of certainty in the area is uncertain but any water back into the aquifer is good.

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

Ms. Lambert moved to adopt the amendments to Chapter 30, and Ms. Feaver seconded. Chairman Drummond asked if there was further discussion.

Mr. Sevenoaks asked if an exempt mine finds out they are using more water than the EPS is there a period of time while working on the plan they can put in remediation or immediately rectify the situation. Mr. Strong responded that was a comment, which originally was stated as 90 days, and now 90 days or more time if show cause if demonstrated. He said they are monitoring now, and for the next two years, and they know how much groundwater is coming into the operation, what is happening with it, and whether they will have trouble complying with the EPS. If they suggest it takes two years to rectify the situation, they should start now rectifying the situation.

There were no other questions by members, and Chairman Drummond asked for the vote.

AYE: Herrmann, Fite, Lambert, Drake, Sevenoaks, Hitch, Buchanan, Feaver,
Drummond

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Strong said that anyone that remains confused about what the rules say or don't say, he is happy to meet with them.

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. No items. There were no Special Consideration items for the Board consider.

B. Items transferred from Summary Disposition Agenda, if any.

There were no items transferred from the Summary Disposition Agenda.

6. PROPOSED EXECUTIVE SESSION

Chairman Drummond

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a 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 a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing Chickasaw Nation and Choctaw Nation v. Fallin, et al., Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al. and Tarrant Regional Water District v. Herrmann, et al.

Statement by legal counsel advising on whether disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest.

Mr. Jerry Barnett stated that it is his advice that discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest.

Chairman Drummond read the statement above regarding the purpose of Board's proposed executive session.

A. Vote on whether to hold Executive Session upon determination that disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Mr. Buchanan moved the Board enter into Executive Session, and Mr. Drake seconded.

AYE: Herrmann, Fite, Lambert, Drake, Hitch, Buchanan, Feaver, Drummond

NAY: None

ABSTAIN: None

ABSENT: Sevenoaks**

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

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

C. Executive Session, if authorized.

The Board entered Executive Session at 11:53 a.m. on Tuesday, February 19, 2013.

Return to open meeting and possible vote or action on any matter discussed in the Executive Session.

Mr. Sevenoaks moved to return to Regular Session, and Mr. Herrmann seconded.

AYE: Herrmann, Fite, Drake, Sevenoaks, Hitch, Buchanan, Feaver, Drummond

NAY: None

ABSTAIN: None

ABSENT: Lambert**

The Board returned to Regular Session at 12:10 p.m. on Tuesday, February 19, 2013.

**Mr. Sevenoaks was absent for the vote to enter executive session, but attended; Ms. Lambert was present to vote to enter executive session, but did not attend.

7. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.

The Board did not vote on any matter discussed in Executive Session.

8. NEW BUSINESS

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

There were no New Business items.

9. ADJOURNMENT

There being no further business, Chairman Drummond adjourned the meeting of the Oklahoma Water Resources Board at 12:11 p.m. on Tuesday, February 19, 2013.

OKLAHOMA WATER RESOURCES BOARD

_____/Absent_____
F. Ford Drummond, Chairman

_____/s/_____
Linda P. Lambert, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Rudolf J. Herrmann

_____/Absent_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/Absent_____
Bob Drake

_____/Absent_____
Jason W. Hitch

ATTEST:

_____/s/_____
Tom Buchanan, Secretary
(SEAL)