

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**April 15, 2014**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on April 15, 2014, in the Second Floor Board Meeting Room at 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 April 11, 2014, at 3:30 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

Chairman Herrmann welcomed everyone to the meeting, and asked for the roll call of members.

**A. Roll Call**

**Board Members Present**

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

**Board Members Absent**

None

**Staff Members Present**

J.D. Strong, Executive Director  
Jerry Barnett, General Counsel  
Amanda Storck, Chief, Administrative Services Division  
Joe Freeman, Chief, Financial Assistance Division  
Julie Cunningham, Chief, Planning and Management Division  
Derek Smithee, Water Quality Programs Division  
Lauren Sturgeon, Director of External Affairs  
Mary Schooley, Executive Secretary

**Others Present**

Tom Pearce, Delaware County Rural Water District #1, Twin Oaks, OK  
Max Woollard, Delaware County Rural Water District #1, Rose, OK  
Mike Russell, Delaware County Rural Water District #1, Twin Oaks, OK  
E.E. Mayers, Nash, OK  
Mark Walker, Scott Shrauner; Oklahoma City, OK  
Scott Butcher, Scott Shrauner; Oklahoma City, OK  
Russ Doughty, Oklahoma for Responsible Water Policy  
Phil Ross, CRG, Warner, OK  
Kyle Kruger, Garven; Norman, OK  
Michael Taylor, Department of Environmental Quality, Oklahoma City, OK  
Mark Daniels, City of Norman, OK  
Ken Komiske, City of Norman, OK  
LeeAnna Covington, Oklahoma Farm Bureau, Oklahoma City, OK  
Bob Sandbo, Continental Resources, Oklahoma City, OK  
Charles and Megan Davis, Rogers County Rural Water District #16, Claremore, OK  
Charlie Swinton, BancFirst, Oklahoma City, OK  
Deena Suddath, BancFirst, Oklahoma City, OK  
Brian Woodard, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Jim Barnett, Doerner Saunders Daniel Anderson, Oklahoma City, OK  
Logan Layden, State Impact, Oklahoma

**B. APPROVAL OF MINUTES**

Chairman Herrmann said the draft minutes of the March 18, 2014 Regular Meeting had been distributed electronically. He noted a suggested change on page 1115 regarding the word “stream” which should be “spring” concerning the dam safety matter, and that members have been provided a copy of the correction. Chairman Herrmann asked if there were other changes; there were none.

Mr. Fite moved to approve the minutes of the March 18, 2014, meeting as amended, and Mr. Buchanan seconded. Chairman Herrmann called for the vote.

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

**C. EXECUTIVE DIRECTOR’S REPORT**

Mr. J.D. Strong, Executive Director, said Ms. Sturgeon had prepared a brief legislative report, and there is much activity at the Capitol at this time, although not much regarding water-related legislation. He highlighted a measure by Sen. Schulz and Rep. DeWitt regarding the Drought Proof Communities Act which continues to move through the process without a title or enacting clause. The measure has not been assigned to a conference committee; however, if there are no dollars appropriated, it is essentially moot because the measure is to continue the program funded last year with \$3 million to assist communities with planning and engineering for designing drought-proof systems. He said the Legislature is working to balance the budget while also discussing a 5% budget cuts so funding may not be likely. Work continues on the water reuse issue by legislators from Norman which follows the Water for 2060 Initiative, and Chairman Herrmann asked if there is

opposition to water reuse. Mr. Strong answered there is no real opposition and education through the Water for 2060 Initiative will assist people in getting over the “yuck” factor when considering reuse of wastewater, especially when talking about drinking it. He said the main hurdle was assuring the state processes that needed to “fit,” mostly at the Department of Environmental Quality, for compliance with the Clean Water Act, and Administrative Procedures Act. Ms. Lambert asked in regard to drought plan funding, what can be done when there is no water. Mr. Strong responded that resolving over the long haul means not getting into a situation where there is no water and to look in the water planning process at the biggest constraints given the droughts of record in the state, where we expected to see the greatest shortages, and work proactively in the areas of identified hot spots. He said people in Southwest Oklahoma and Texas County are in the most drought-stricken areas of the State but not yet out of drinking water. Staff will continue to work with those communities through drought assistance; most of the communities that received funding through the Emergency Drought Relief Commission will drill new wells to tap groundwater supplies in those areas. For example, Altus will be adding groundwater supplies to augment its current surface water supplies providing flexibility.

Mr. Strong stated he attended the Western States Water Council and Interstate Council on Water Policy Washington, DC Roundtable and met with several members of the Oklahoma Congressional Delegation. Notably, the Delegation is focused on the WWRDA legislation which continues to move through the process; there is not much content for matters requested by Oklahoma i.e., Planning Assistance to the States funding which supports the Comprehensive Water Plan implementation initiatives, but on navigation infrastructure. He said there is a new WIFIA -- Water Infrastructure Financing Improvement Authority – which is modeled after a transportation program and is in the bill; the concern is whether it will compete against the State’s SRF programs, and if there is access to rural areas. He said there is lot of activity on drought legislation and Sen. Inhofe and Sen. Feinstein are looking at reforms to the Bureau of Reclamation grant programs to assist California and the Plains States to meet drought needs. Congressman Mullin has been active regarding the Waters of the State rule and participated in a hearing asking questions about the failure to work with states as co-regulators.

Mr. Strong continued his report stating that mediation meetings continue, and the Attorney General’s office is unable to attend today; however, staff can update as the Board is interested. Regarding the Arbuckle Simpson matter, Mr. Barnett stated the record had been filed and parties are working on the next phase which is any supplementation to the record, and then briefing and argument. Chairman Herrmann asked if there is a timetable, and Mr. Strong said there is no schedule as yet; Mr. Barnett anticipated at least a month for the briefing stage.

Meetings Mr. Strong has participated in recently included speaking to the Land and Water Symposium “Surviving the Elements” sponsored by the National Cowboy & Western Heritage Museum, spoke to the Conference on Water Law April 10, and the last of the four Hot Spots meetings along the Canadian in Yukon is April 16. Regarding the Hot Spot meetings, members asked and he said the meetings had been well attended with 50-100 folks attending depending upon the issues in the area, and there are those experiencing drought now. Of the 82 small subbasins identified in the OCWP, over one-half were identified as having potential water shortages and/or groundwater decline over the next 50 years – and the twelve hot spot meeting locations highlighted as being the worst in drought right now has substantiated that prediction over the next 50 years.

He also attended the Corps of Engineers FY15 Civil Works Briefing April 7; the Red River Compact Commission annual meeting is April 22 at Hot Springs, AR, where there is discussion between Arkansas and Louisiana over the water shortages in the Lower Red River; April 19 is the 19<sup>th</sup> Anniversary of the Murrah Building bombing and the Memorial Marathon will be April 27 and there are two OWRB relay teams and one marathon runner participating. The next meeting of the Oklahoma Water Resources Board will be Monday, May 19, 2014, at 2:00 p.m., and is also Water Appreciation

Day at the Capitol. Mr. Strong concluded his report recognizing Ms. Amanda Storck as having been selected an “Achiever under 40.”

Mr. Buchanan commented about agriculture across American being concerned that the Water of the State rule by EPA will have an impact on business, although there have been assurances there will not be an impact. Mr. Drake confirmed the Water for 2060 Council will meet Tuesday, May 20, at 1:00 p.m. in the OWRB meeting room.

#### **D. Monthly Budget Report**

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report for March 2014 showed the agency has 55% of funding available with 25% of the fiscal year remaining. She responded to an inquiry regarding the “payment to local governments” and explained that reflects the internal transfer of dollars from the agency’s divisions to the Administration Division for overhead costs, and the divisions have not been billed as yet. She noted the revolving funds that show a balance at 100% are those that are required to be maintained at the balance by transferring funds to other revolving funds.

Ms. Storck concluded her report, and there were no questions from the members.

### **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water District #16, Rogers County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that on today’s agenda, there is the smallest funding and the largest funding ever recommended. He said the first item is a \$24,999.00 Emergency Grant Request from Rogers County Rural Water District #16. Residents of the District are currently on well water which is unreliable and the water is high in sulfur. In order to have a reliable source of water, the District will be purchasing water from the Rogers RWD #3, and to accomplish connections, 5,102 feet of 2-inch line will be upgraded to 4-inch line, 15,500 feet of additional line will be laid, and two master meters installed. The project will cost approximately \$279,199.00, and will be funded by a \$132,000 Community Resource Group loan, a \$82,000.00 CDB grant, a \$30,000.00 grant from the Cherokee Nation, a \$10,000 REAP Grant from Grand Gateway Economic Development Association, and the OWRB emergency grant. Staff recommended approval.

Representing the District was Charlie Davis, Secretary, and Megan Davis, Recording Secretary.

Mr. Davis mentioned he personally had drilled two wells and Mr. Hitch asked the depth; 102-feet and 210-feet. He said the average depth for the area is 30-100 feet. Mr. Hitch asked if the taking for additional water from RWD #3’s supply would have an impact, and Mr. Davis stated it would not. He also said there are 13 residents ready to tie on; there will be additional residents in the future. Mr. Herrmann asked about the Community Resource Group, and Mr. Freeman said the group is based in Fayetteville, Arkansas, and has several employees in Oklahoma; the OWRB staff has worked with the group in providing small loans when it is not cost-effective to borrow from the Board, and also provides technical assistance to RWDs and small communities across the state.

Ms. Lambert moved to approve the emergency grant to Rogers County RWD #16, and Mr. Fite seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Freeman stated Mr. Phil Ross with the Community Resources Group was present to address any questions the Board may have.

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Rural Water, Sewer, Gas and Solid Waste Management District No. 11, Delaware County. Recommended for Approval. Mr. Freeman stated this item is a \$950,000.00 Drinking Water SRF funding request by the Rural Water District #11 from Delaware County. He said the District is making the funding request so as to be able to provide safe, potable water to the Town of Colcord. Last summer the town's water supply was contaminated and the project will consist of constructing approximately 15,840 linear feet of 10-inch line, 36,350 linear feet of 8-inch line; he noted provisions of the loan agreement. The District began providing water service in 2011 and has approximately 300 connections; the Town of Colcord will add approximately double the number of connections. The District has a debt-coverage ratio of approximately 1.8-times. Staff recommended approval.

Mr. Tom Pearce, Secretary-Treasurer; Mr. Max Bullard, Board Member; and Mr. Mike Russell, District Manager, were present in support of the loan application. Mr. Phil Ross with Community Resources Group was also present.

Mr. Fite moved to approve the Drinking Water SRF loan to Delaware RWSG&SWM District No. 11, and Mr. Sevenoaks seconded.

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

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

Chairman Herrmann noted this item is the largest single loan request the Board will have acted upon.

Mr. Freeman stated that this item is for the consideration of a \$50,300,000.00 funding request from the Norman Utilities Authority. Norman is requesting the loan to go along with \$16.7 million in local funds for improvements to its water reclamation facility. He said the improvements will expand the wastewater treatment plant facilities' capacity from 12 million gallons per day to 16 million gallons per day. He noted provisions of the loan agreement from the Clean Water SRF program. Norman has been a long-time, good loan customer of the Board's and currently has four loans with the Board with an outstanding principal balance of approximately \$17 million dollars. He said the water and sewer connections have increased in excess of 18% over the past ten years, and the debt coverage ratio stands at approximately 1.4-times. Staff recommended approval of the loan request.

Mr. Ken Komiske, Utilities Director, and Mr. Mark Daniels, Utilities Engineer, were present in support of the loan application.

Mr. Komiske spoke to the members and stated there was an overwhelming support – 76% -- approval rating by the citizens. Mr. Hitch asked about the rate increase; Mr. Komiske said there is a fixed fee and rates were raised on both sides—water and wastewater. He explained the rate scale designed to encourage conservation. Ms. Lambert asked how long the city thought the increase from 12 to 16 mgd would serve the residents and Mr. Komiske responded it is a twenty-year loan and the current use of 12 mgd is approximately 92% capacity. He said it is a 30-month project and hoped it would get to at least 20 years; the rate of growth correlates with the capacity usage. Mr. Sevenoaks asked about the use of a flow equalization basin, and Mr. Komiske replied there are two basins at 5 mgd and 15 mgd in use for storm water operations. Mr. Drummond stated this is a large loan, and asked Mr. Freeman if there were capacity constraints with the Clean Water SRF program and he replied, no. Chairman Herrmann asked in terms of a refund whether the loan amount was considered

in the size of the last bond issue, and Mr. Freeman stated that it had been considered. Mr. Buchanan asked if there is a component for water reuse being built into the facility for the future. Mr. Komiske responded that this project does not include indirect potable reuse; there are three components to the project: increased capacity, regulatory to address a consent order to provide disinfection, and additional aeration, but the design will allow for biological nutrient reduction which is the next piece for reuse without changing the footprint. Biological nutrient reduction is not part of the project, but sets the stage to take the next step. Chairman Herrmann commended Norman for contributing \$17 million of its own money toward the project; it is a well planned and well managed project. There were no other questions. Mr. Sevenoaks asked the Utilities' rate per 1,000 gallons and Mr. Komiske explained the inverted rate block designed for conservation and what services are provided. Mr. Strong added that Norman is one of the few cities in the State that has a conservation pricing strategy.

Mr. Drake moved to approve the Clean Water SRF loan to the Norman Utilities Authority, and Mr. Sevenoaks seconded.

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

C. Report of the Board Audit Committee Regarding Oklahoma Water Resources Board State Loan Program Revenue Bonds and Clean Water State Revolving Fund Program (CWSRF) Financial Statements as of June 30, 2013 and 2012, Audits of the CWSRF Administrative Fund and the Drinking Water Treatment Loan Administrative Fund as of June 30, 2013 and 2012. Mr. Freeman stated the Board's Ad Hoc Audit Committee met following the March meeting; the members are Mr. Hitch as Chairman, Mr. Sevenoaks, Mr. Fite, and Mr. Drummond. The Committee met to review the following: Auditor's Management Letter and Independent Financial Audit for the loan programs, and review with the auditors from John M. Arledge and Associates. The auditors reported to the Committee that all of the audits were given a clean opinion, and the annual EPA Region 6 evaluation reports for the SRF programs were reviewed with the Committee. The Board's Arbitrage Rebate Reports were reviewed and showed there were no arbitrage rebate payments were necessary during the last fiscal year, and staff reviewed with the Committee the Borrowers Debt Coverage Ratio Report, and a plan of action for those not meeting the minimum requirement. The Board was presented the Secondary Market Disclosure Report as required by the Securities and Exchange Commission, along with the reports filed with the three rating agencies; and document exception reports by loan analysts were also provided to the Committee. He said he was pleased to report to the Committee there were no loans in default which were reflected in the Board's financial audits. The Committee reviewed the debt service reserve funds, as well as the Board's investment port folio. As of the end of the last fiscal year, the Board's three loan programs' total loan assets under management have increased by 8.8% to \$1,498,937,000.00 and total loans outstanding rose to approximately 9% to 1,217,808,000.00. Mr. Freeman concluded his report and invited questions by the members.

Committee Chairman Hitch stated the meeting went well, and Mr. Sevenoaks asked about a loan default. Mr. Freeman responded that there is one, it is not reflected in the audit; however, he explained that loan is one he had visited with the Board over the past several years concerning a rural water district in Delaware County. He said staff is working with the District, there is an approved budget, and payments are being received and the loan is in a recovery state. Mr. Sevenoaks asked and Mr. Freeman answered the amount is \$4 million, and that will not reflect upon the Board's bond rating because it has been taken off the books.

Ms. Lambert asked a question regarding the Emergency Grant map provided, and why Cimarron County in the Panhandle was the only county that had not received an emergency grant. Mr.

Freeman and Mr. Strong responded most of the population in the county is on individual wells, and the grants are for public water supply entities.

**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 statement above, and asked if there were requests to transfer items to the Special Consideration Agenda. There were no requests to transfer items.

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

Chairman Herrmann asked if there are amendments to the Summary Disposition Agenda.

There were no amendments to the Summary Disposition Agenda, and no other questions by the members. Chairman Herrmann called for a motion.

Ms. Lambert moved to approve Summary Disposition Agenda, and Mr. Drummond seconded. There were no questions, and Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

**C. Consideration of and Possible Action on 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-13-0018-R	Town of Nash	Grant	\$97,950.00
SODA				
b.	FAP-13-0041-R	Mill Creek Public Works Authority	Johnston	\$99,999.00

**D. Consideration of and Possible Action on Contracts and Agreements.**

1. Intergovernmental Agreement with the State of Oklahoma, Office of the Secretary of Energy & Environment for Agreement for the clean Water Act FY 2014 § 104(b)(3) Regional Wetlands Program, Cooperative Agreement (CA)# CD-00F74001.

2. Contract for Legal Services with the Attorney General’s Office.

3. Interagency Agreement with the Grand River Dam Authority to Provide Shoreline Survey and Mapping Services.
  4. Interagency Agreement with the Grand River Dam Authority to Provide Services for the FY 2015 GRDA Dissolved Oxygen Monitoring Project.
  5. Interagency Agreement with the Grand River Dam Authority to Provide Services for the Salina Pumped Storage Project Dissolved Oxygen Monitoring Plan.
  6. Contract with Oklahoma Ground Water Association to Provide Continuing Education Services for Well Drillers and Pump Installers.
- E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
1. Billy D. & Lisa Griffin, Grady County, #2013-547
  2. City of Nichols Hills, Oklahoma County, #2013-638
- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
1. Donna Long, Noel Long, and Lawrence Long, Harmon County, #1985-545
  2. Triple S Farms, L.C., Blaine County, #1994-531
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. Devin & Klayne Brown, Woodward County, #2013-626
  2. Louis Long, Robert Long, and Steven Long, Texas County, #2014-503
  3. Richard Lee Cowan, Beaver County, #2014-507
- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
1. Blake & Jennifer Nichols, Beaver County, #1975-751
  2. Andrew & Tonya Deann Brown, Okfuskee County, #1994-600
- I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:
1. Dan & Kay Villines, Caddo County, #1971-466
- J. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:
1. Select Energy Services, L.L.C., Garvin County, #2013-053
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
1. Paul J. Brown, Grady County, #2013-052
  2. Continental Resources, Inc., Grady County, #2014-002
- L. Consideration of and Possible Action on Dam and Reservoir Construction:  
None
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
1. New Licenses:
    - a. Licensee: W.E.S.T. Drilling DPC-0896
      1. Operator: Ricardo P. Garcia, Jr. OP-2032
    - b. Licensee: TXI Operations, L.P. DPC-0898
      1. Operator: Roderick B. Williams, II OP-2033
    - c. Licensee: Rippetoe Farms DPC-0900
      1. Operator: Chad Rippetoe OP-2035
  2. New Operators to Existing Licenses:
    - a. Licensee: Choctaws Groundwater Pump & Supply DPC-0086
      1. Operator: Matthew Blanchard OP-2037

- |    |                                     |          |
|----|-------------------------------------|----------|
| b. | Licensee: Layne Christensen         | DPC-0123 |
| 1. | Operator: Russell Bowles            | OP-2036  |
| c. | Licensee: Kleinfelder               | DPC-0558 |
| 1. | Operator: Nathan Payne              | OP-2038  |
| d. | Licensee: Mike's Water Well Service | DPC-0700 |
| 1. | Operator: Michael Oefelein, Jr.     | OP-1838  |
| e. | Licensee: Kenner Water Well         | DPC-0706 |
| 1. | Operator: Casey Kenner              | OP-2034  |

N. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the April 15, 2014 packet of Board materials.

**4. QUESTIONS AND DISCUSSION ABOUT AGENCY MATTERS AND OTHER ITEMS OF INTEREST.**

There were no items discussed or questions by the members.

**5. SPECIAL CONSIDERATION**

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Regular Groundwater Permit No. 1993-582A, Bob and Dian Boaldin Living Trust, Texas County, Recommended for Approval:

1. Summary – Ms. Julie Cunningham explained to the members that this matter is an application to amend a regular groundwater permit in the name of Bob and Dian Boaldin Living Trust in Texas County. She said the amendment would add additional water, land, and location of use to the current permit. The application was protested; however, since the hearing was held and the proposed order distributed to the parties, the Board has received several filings from the attorneys for both the applicant and the protestants, which have been provided to the Board members.

Mr. Jerry Barnett, OWRB General Counsel, stated to the members that this is an unusual procedural posture and there have been late filings which have been provided, and which he explained. He said this is an existing permit the applicant requests amendments to add land, to increase the amount, add wells, and add areas of use; the application was protested and a lengthy hearing conducted by the OWRB Assistant Attorney General Hearing Examiner; several months preparation resulted in the proposed order and attachments contained in the members' packets. Mr. Barnett stated that it is important to bear in mind that that applicant/permittee has at least one other permit and another application to amend that permit was considered by the Board was protested by the same protestants, and after that hearing, but prior to going to the Board, the applicant withdrew that application to amend the other application. Much of the testimony and evidence received in that first hearing was reproduced into the hearing record in this case. The hearing examiner takes the matter under advisement and prepares the proposed order recommending denial of this particular application to amend a permit, and on Friday (4/11/14) the first filing received was the applicant's request that certain proposed findings of the hearing examiner be corrected or disregarded, stated by counsel that the applicant took issue with certain matters in the proposed order and asked that these be corrected in the order or disregarded. Late in the day applicant's counsel delivered to the Board a letter stating the permittee requests that its application to amend permit #1993-582A "be withdrawn as of today's date and the upcoming hearing before the ....Board regarding the Trust application be stricken as moot." Mid-morning on Monday, Mr. Barnett stated that the protestant filed "protestant's response in opposition to applicant's request to withdraw application," where the protestant's lawyer articulated an

objection to the Board allowing or treating the application as being withdrawn. The protestant pointed to the applicant having twice gone through much expense and resources to object to these applications and a withdrawal with no conditions, and wants the application to be acted on so there can be a decision, or in the alternative asks that the Board impose conditions on the applicant to agree to certain conditions to withdrawal, that being that the findings be approved and adopted as precedential so as to have precedential value in a future case. Mr. Barnett stated counsel for both the applicant and protestant are present today and prepared to argue on the issues in the case. Lastly, the Board received at the end of the day on Monday an “applicant’s response to protestant’s response in opposition to applicant’s request to withdraw application” where the applicant points out the authority that the protestant’s counsel cited in their objections really applies in the District Court context, and the Board and state statutes for administrative proceedings do not have the authority to apply to this type of scenario, and they continue to press that the application be withdrawn and the hearing today should not go forward.

Mr. Barnett continued that with this circumstance, the norm is that an application is followed through to action by the Board, occasionally but unusual, an applicant will withdraw an application in some form, but it has not occurred that someone has protested to withdrawing an application. In this scenario where the parties have invested time and money twice, and the staff, hearing examiner, and now Board members, staff believed it should not presume to treat it as withdrawn; it’s on the agenda, the Board has received the proposed order, and it should be acted upon by the Board. He said the threshold issue in his view is whether to allow the withdrawal as the applicant is seeking, and first the Board needed to decide whether to withdraw, and then whether the application should be denied.

Mr. Strong stated that the lateness of the request to be withdrawn should be considered as the agenda had been posted on Friday, then the request was received, and because of the history of the matter, and that this applicant has done this before prior to a findings of fact were written following the hearing process. He said although rare, when applications are withdrawn, it is usually earlier in the process and the protestants are usually agreeable because the aggravating circumstance is going away. This is unique in many regards, and why it is before the Board today.

Chairman Herrmann stated there is no staff recommendation in terms of withdrawal, and while there is no motion, he will invite those who wish to speak to both sides of the issue to come to the podium, and then look to the Board for a motion as to whether to proceed with the withdrawal, and then go to the next step of hearing the merits of the individual application. Each side will be allowed five minutes, applicant’s attorney being first, and discussion is strictly to address the withdrawal. He said that he would then look to the Board for a motion relative to whether to proceed with the withdrawal, whether it is a conditioned withdrawal, and depending upon that action, go to the next step in terms of hearing the actual application.

2. Discussion and presentation by parties. Ms. Lauren Hanna, representing the applicant, addressed the members and stated this is an application by her clients to amend a current permit in Texas County, and the hearing examiner (HE) recommended that the application not be approved. The HE did not have any conditions; there were no further obligations on her client, and her client’s position would be that withdrawing the permit essentially accomplishes the same result without involving the Board’s time and resources or wasting more attorney fees. She said that the HE recommended denial was due to numerous technical deficiencies with the permit application regarding tracts of land at issue and appropriate notice to persons, and if the client decided to pursue the amendment at another time the deficiencies would have to be corrected to properly come before the Board to make a decision; the threshold issues in the HE findings were not met. She contended the Board did not have legal authority to force the applicant to continue to argue in favor of an application to amend which it has already withdrawn. The authority cited by the protestant in this case regards state district court where civil procedures allow someone to dismiss their case with or without

prejudice to move their case forward, but those rules do not apply to the administrative hearings; the protestant has cited no legal authority to force the applicant to continue the request to amend an application.

Mr. Drummond asked if there is an equivalent provision for the Board, such as the district court, to take action with or without prejudice, and Ms. Hanna stated she was not aware of a precedence for this kind of decision, there is no rule authorizing the Board to force an applicant to continue, and she did not know what that procedure would be. Mr. Barnett asked for clarification and Mr. Drummond restated his question. Mr. Strong stated then if the Board was to make a decision to deny or approve, would it be with or without prejudice and could the applicant reapply later. Mr. Barnett responded there is no clear authority in the Board's rules or the Administrative Procedures Act, or groundwater statutes; this is uncharted territory but he agreed that the district court statutes, rules and procedures are not directly applicable – useful to look at – but not binding or governing for the Board for an informal administrative process. He said when an applicant submits itself to the Board's jurisdiction when it seeks an application, permit or amendment, and if protested, so does the protestant. Now, the parties are submitting to the Board's jurisdiction and ordinarily the applicant has most control over the application and can withdraw, but there is no precedence about where in the process the applicant loses control and the Board exerts control and can still make a decision. Mr. Drummond asked if the Board denied the application to withdraw, would that prevent the applicant from going forward with another application, and Mr. Barnett responded it would not prevent them from seeking additional authority from the Board (additional land for an increase, additional wells, etc.).

Mr. Buchanan asked about the concern of proper notice. Ms. Hanna clarified the HE findings that certain persons who should have received notice did not for lands that were included in the application for which she did not see clear ownership records. Ms. Hanna questioned that she should be before the Board as the attorney of record for that land because ownership was not proven. Mr. Buchanan again asked about notice of the application as written in Finding of Fact (FOF) no. 4 where it appeared that notification was given. Ms. Hanna responded the applicant believed notice was given at the time of the hearing; the issue raised subsequent to the hearing by the HE regarded certain deeds to property the client had leased by a Power of Attorney that did not regard groundwater rights but SSA, so there was a tenant and grandchildren that were not notified.

Mr. Drake asked for clarification that if the application is withdrawn, then next week be allowed to go through this same process again, and Mr. Barnett responded, yes. Mr. Sevenoaks pointed out there is no cutoff--the agenda has been posted and then the application was withdrawn; there is no provision in the rulemaking that an applicant cannot withdraw after any given time.

There were no other questions by the members, but Ms. Hanna stated that whether the application is withdrawn or denied, it is not without prejudice and the applicant can reapply and correct deficiencies and come before the Board; that is not like district court where the rights would be lost forever. Mr. Barnett stated that is correct, and he explained a previous case where a stream water application was denied because of interference, and the applicant put together a better case and came back with another application that was protested and was approved because of what was changed. So, an applicant can always come back, and there may be some value regarding the Board's decision in a later case, but the key is if it is denied today, the applicant can come back.

Chairman Herrmann invited the representative of the protestant to speak to the Board. Mr. Mark Walker, representing Mr. Shrauner, showed a map which had been included as part of the record at the hearing. He first addressed the Board's legal authority to deny the applicant's request to withdraw stated that the Board's rule 785:4-7-11 that states after parties have been heard and presented evidence, the hearing shall be deemed completed and submitted for final order and ruling, and the subject matter of the hearing shall be taken under advisement for final decision and order by the Board. He argued that because the matter had been submitted for final decision the Board has the power to protect the

integrity of the process. He said he was not advocating the Board today make a rule to never allow the withdrawal of an application, but under these facts it won't be allowed and preserve for another day a hard and fast rule. Mr. Walker provided the history of the application and the hearing in 2012 (which is included in the 564-page order which took the HE eight months to produce), evidence provided maps regarding water taken to Kansas, but did not reflect accurately pivots used; did not reveal the pipeline system taking water to Kansas—information the protestant discovered but the applicant admitted under cross examination causing dismissal of the application. A second application was filed, and the hearing in 2013 revealed the Board instructed the applicant on three occasions to cease taking water from Oklahoma to Kansas without a permit, but it was demonstrated the activity was continued. He said this proved prior incidence of waste which the Board is to consider; the applicant admitted to that, and Mr. Walker asked that he not have to come again and prove this same misconduct. He asked the Board to enter an order recognizing that, and to have findings about the prior waste that are binding.

Prior to allowing rebuttal by Ms. Hanna, Chairman Herrmann asked if the Board had questions. Mr. Drummond asked if the proposed findings from the hearing stand as the FOF at a future hearing, and Mr. Walker stated if there is usually a final order adopting the FOF making it binding on all parties. He said if a third hearing is held, the protestant would claim those were proposals by the HE, the Board did not agree to them and are not binding. Chairman Herrmann interjected the Board could deny with conditions, which could include the FOF. The protestant has asked for that as the alternative request. Ms. Lambert asked if a denial with conditions is approved, how different is that than the application being denied regarding a future application. Mr. Barnett explained if those conditions have the same teeth as the proposed order denying does, he believed it would have the same effect, there has not been a withdrawal with conditions, but the protestants don't want to have to prove again and want to be able to start with findings the Board has adopted, in some form of an order. Ms. Lambert stated then—without having precedence--if the application is denied by the Board, potentially, that has more teeth than allowing the application to be withdrawn with conditions, and Mr. Barnett stated potentially, he believed so.

Mr. Drummond asked for Mr. Barnett's comment on the citation of the Board's rule by Mr. Walker. Mr. Barnett responded by reading the second sentence of the text of the rule, and said that at face value it is too late to withdraw; this has not been applied under such a scenario. Mr. Strong read the complete rule; noting the important distinction of the word, "shall" rather than "may," and suggests that unless the HE reopened the hearing process it is closed at this point and the final order has been submitted to the Board. Mr. Barnett stated the Board had authority above the HE. Mr. Sevenoaks stated if the Board does this, it is setting precedence to allow the Board to withdraw before voting on the order, and Mr. Barnett answered that is what the Board is deciding. Mr. Barnett said the precedence is when the protestant objects to allowing the withdrawal; it is a very unique precedence. Ms. Lambert asked about the question of "too late" and Mr. Barnett said the rule speaks to the Board's normal procedure and may not contemplate covering this scenario which is extraordinary. Mr. Sevenoaks said the Board needed to be aware of unintended consequences by not having time to contemplate it correctly.

There were no other questions of Mr. Walker, and Chairman Herrmann allowed Ms. Hanna three minutes to make rebuttal comments. Ms. Hanna stated that in 2012 the applicant withdrew the application which would have the same effect as having the application to amend being denied after the HE had closed the hearing, so regarding the rule there is precedence. Regarding Mr. Walker's map, she said in response to a comment by Mr. Sevenoaks, both the applicant and the protestant transport water to Kansas, and at the hearing the protestant confirmed he had taken water to Kansas without a permit before getting a call to get a permit which he did in 2011; Mr. Sevenoaks said that is not the issue. Ms. Hanna stated after the 2012 hearing the applicant hired a farm manager and full time employee to manage water and at the 2013 hearing thought deficiencies had been corrected. Mr.

Boaldin was under treatment for Alzheimer's disease and not present so the testimony from the 2012 hearing was placed into evidence which is why the HE found issue with his credibility. She said it is not as though they brought the same case twice expecting different results, but thought the problems were fixed and because her client was in the hospital and testimony was read into the record from the previous hearing where mistakes were being made, the HE stated in the FOF water use was exceeded, but she submitted it is not an ongoing problem.

Chairman Herrmann stated the Board could deny the application to withdraw, approve the request to withdraw, or approve the request to withdraw with condition.

Mr. Drake moved to deny the request to withdraw the application. Mr. Drummond seconded.

Mr. Sevenoaks stated he agreed it is logical for the protestant who has spent a lot of money but the question is whether there is anything to protest, if there is no allocation there is no protest and was the application withdrawn within a timely manner and nowhere in the records does it say the application cannot be withdrawn, it's a very narrow point but he wasn't comfortable.

Mr. Buchanan stated though the rule speaks that once the HE has put forth the recommendation, it is closed and there is no longer an opportunity to withdraw, and so was not done in a timely manner. Mr. Hitch interjected that was different from the first application. Mr. Drummond stated that normally a withdrawal makes everyone happy, but this case is a protest to the withdrawal and a lot of time and money has been spent, it's a last minute request and does not prejudice them from going forward with another application to correct it in the future, and he is comfortable going forward saying they cannot withdraw. Mr. Fite asked if the Board is certain that in the previous application there was no recommendation, and Mr. Strong answered there was no final order issued by the hearing examiner. Chairman Herrmann stated the path forward is clearer to deny than to approve with conditions, and Mr. Barnett added that there is an order of 64 pages, parties have had an opportunity to review that; and application withdrawal with conditions doesn't exist yet, it hasn't been written, and that is the practical difficulty.

Chairman Herrmann stated there is a motion to deny the withdrawal, it has been seconded, and there have been questions. A yes vote will deny the request to withdraw the application to amend. There being no further discussion, Chairman Herrmann called for the vote.

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

Chairman Herrmann stated the request to withdraw had been denied.

Chairman Herrmann stated the Board would now consider the application to amend regular groundwater permit #1993-582A. He asked staff to present the matter, and then the parties would have five minutes to address the Board.

Ms. Julie Cunningham stated to the members that this application would add water in the amount of 3,521.4 acre-feet of groundwater for irrigation purposes on 1,760.7 acres of additional land and add four new well locations. As previously discussed, the application was protested and the HE determined the applicant has not established that it either owns or has a valid lease to all lands sought to be dedicated to the permit, and that it is likely the applicant would commit waste by depletion in the future. Staff concurs with the hearing examiner and recommended approval of the proposed findings of fact, conclusions of law, and Board order denying the application to amend the permit. There were no questions of Ms. Cunningham, and Chairman Herrmann invited the parties to speak to the Board.

Ms. Hanna approached the members and repeated earlier statements about Mr. Bouldin's testimony in the 2012 hearing, which was used in the 2013 hearing because he was in the hospital. This is a big issue because the Board allows applicants to come before the Board to obtain a water

permit and while that application may be denied, the Board allows the opportunity to correct the deficiencies and to come again to seek relief to use water under their land. Chairman Herrmann asked if there had been a correction of the overuse of water that was not included in the record. Ms. Hanna responded there had been a correction; the FOF states Mr. Shrauner testified he had seen no evidence of overuse of water in 2013. Likewise, the HE found that she did not see that it was likely there had been overuse in 2013. The problem was that the client was not there to correct issues associated with his testimony; in 2012-2013 the client hired employees to manage water usage on the farm and the HE found the employee to be credible, but the problem was that the client was not credible because of the 2012 testimony and the same lack of credibility applied to the employee. She contended she was not being allowed to correct the adverse testimony which is why the request to withdraw, along with other reasons, including the parties are involved in litigation in Kansas over the land that is at issue in the permit, which may affect the issue of whether there is another hearing because the protestant wants to buy back the land. And finally, she said one of the issue used by the HE to impugn the evidence was the manager hired was later fired after his testimony at the 2012 hearing; however, the transcript does not reflect any testimony by him and he did not participate for or against her client at that hearing—that should not be included in the FOF.

Mr. Sevenoaks asked if taking water out of the state is allowed, and Mr. Strong said groundwater is allowed, it is not subject of a compact such as stream water, and there are several permits where the place of use is on property in Kansas or Texas because people own property straddling the state line. Ms. Lambert asked to clarify the HE FOF in 2013, did Ms. Hanna state that in that hearing all of the matters in the 2012 hearing had been cured and are in the record in the FOFs in the 2013 hearing. Ms. Hanna stated no, she did not state that, she said the 2012 hearing brought to light a number of issues associated with the Boaldin's farming and water use techniques, from the 2012 hearing the Boaldin's attempted to correct as many as possible and it was thought they were all corrected and came back to the Board in the 2013 hearing. She said they asked to withdraw because they knew the application was not going to be approved by the Board in its current state, there were too many deficiencies. Ms. Lambert stated though it would not be approved because the client was in the hospital, but because of issues that needed to be cured in 2012 which were not cured in 2013. Ms. Hanna said she could not speak to the reason the 2013 permit would not be approved, it was proposed to be denied based on the lack of notice to the proper parties, the lack of standing regarding ownership of property, and the testimony of the client the matters would be fixed lacked credibility.

Chairman Herrmann invited Mr. Walker to address the members. Mr. Walker stated there is no evidence of Mr. Boaldin and Alzheimer's in the record and he mentioned county commissioner offices sought and held by Mr. Boaldin. He responded to Mr. Sevenoaks' comments about water use and Kansas and no new Ogallala wells may be drilled. He said this is a unique situation the Board may not see again where someone has been told to stop violating the law and it continues and also misrepresented to the Board its activity so it could not figure out it was taking the water without a permit-- and taking 2,500 acre-feet of water more than they had right to take. Additionally, at the hearing Mr. Shannon (the employee) stated they would get into regulatory compliance, but continued to grow a corn crop after being told to stop water use and Mr. Boaldin was making the decisions as to when to use the water. He said Mr. Shannon and Ms. Boaldin at the hearing tried to paint it as an honest mistake, but the HE has meticulously outlined the misrepresentations. He said the Board would not be sending a good message to anyone that if they are violating the rules they will still get a permit. He said based on the evidence, the HE has reached the appropriate conclusion.

Chairman Herrmann asked if there were questions by members, and Mr. Fite asked who told the applicant to stop, and who is certain they had gone beyond the allowed amount. Mr. Walker answered Ms. Angie Taylor, a letter from Ms. Cunningham had corresponded with the applicant, and Mr. Strong stated water use was embedded in the proposed order from evidence presented. Mr. Fite asked who calculated the water use, and Mr. Barnett stated the protestants did a lot of leg work to connect dots

and submitted the evidence which was scrutinized by the HE independently and then developed the proposed order. Mr. Fite wanted to confirm they had received several warnings, and staff answered, yes. There were no other questions of Mr. Walker.

3. Possible executive session; **and** 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter Executive Session.

5. Vote on whether to approve the Proposed Order as presented or as may be amended, or vote on any other action or decision relating to the Proposed Order.

Chairman Herrmann stated staff recommendation is to deny the permit application, and he would entertain a motion.

Mr. Drummond moved to approve the proposed order as presented, and Ms. Lambert seconded.

Mr. Drake expressed his desire to second the motion with the additional comment if there are rules in place why it took so long to discover they were disobeying.

Chairman Herrmann called for the vote stating an affirmative vote is a yes to deny the application.

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

B. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any.

There were no items transferred from the Summary Disposition Agenda.

## 6. PROPOSED EXECUTIVE SESSION

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., and Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al.*

Chairman Herrmann stated the Board will not act on this item as there is no representative from the Attorney General's office present today.

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.

There was no statement necessary.

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.

There was no vote to enter executive session.

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

None

C. Executive Session, if authorized.

The Board did not enter Executive Session, and there was no other action by the Board.

**7. 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.

Chairman Herrmann stated there were no New Business items for the Board's consideration.

**8. ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:24 a.m. on Tuesday, April 15, 2014.

**OKLAHOMA WATER RESOURCES BOARD**

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

\_\_\_\_\_Absent\_\_\_\_\_  
Tom Buchanan, Vice Chairman

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

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

\_\_\_\_\_Absent\_\_\_\_\_  
Marilyn Feaver

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

\_\_\_\_\_/s/\_\_\_\_\_  
Bob Drake

\_\_\_\_\_Absent\_\_\_\_\_  
Jason W. Hitch

**ATTEST:**

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