

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
July 15, 2014

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Linda Lambert at 9:30 a.m., on July 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 July 11, 2014, at 4:45 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

Vice Chairman Lambert welcomed everyone to the meeting, and asked for the roll call of members. Vice Chairman Lambert recognized a quorum of members.

A. Roll Call

Board Members Present

Linda Lambert, Vice Chairman
Bob Drake
Jason Hitch
Marilyn Feaver
Ed Fite

Board Members Absent

Rudy Herrmann, Chairman
Tom Buchanan, Secretary
Ford Drummond
Richard Sevenoaks

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

Dave Taylor, Waurika Master Conservancy District, Waurika, OK
Doug McCleary, Colbert, OK
Deena Suddath, BancFirst, Oklahoma City, OK
Mike Mathis, Continental Resources, Oklahoma City, OK
Patsy Bell, Colbert, OK
Don Bell, Colbert, OK
Russell Doughty, Oklahoma for Responsible Water Policy
Lacey Weger, Bryan County, OK
Jacob Bachelor, Centennial Law, Duncan, OK
Representative Dustin Roberts, House District 21, Durant, OK
Lisa Impson, Chickasaw Nation, Ada, OK
Beth Alexander, Achille, OK
James Gregory Wade, Colbert, OK
Riley Schuth, Colbert, OK
Charles Rainbolt, Oklahoma City, OK
Marla Kelsey, Colbert, OK
Weldon Montgomery, Colbert, OK
Sondra Grace, Colbert, OK
Jimmy Grace, Colbert, OK
El Doris Weaver, Panama, OK
Jeanne Schuth, Colbert, OK
Lloyd Hale, Panama, OK
Krystina Phillips, protestants regarding Weger application; Tulsa, OK
Josh Dill, Rogers County Rural Water District No. 8, Claremore, OK
Chris Phillips, Chickasaw Nation, Ada, OK
Michael Taylor, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Steven Jolly, Arbuckle Master Conservancy District, Davis, OK
Wes Brown, Wilburton, OK
Stephen Brinlee, Wilburton, OK
Thomas Lazarski, Oklahoma Gas & Electric, Oklahoma City, OK
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
LeeAnna McNally, Oklahoma Farm Bureau, Oklahoma City, OK
Jim Barnett, Doerner Saunders Daniel Anderson, Oklahoma City, OK
Jamie Hyslep, US Army Corps of Engineers

B. APPROVAL OF MINUTES

Vice Chairman Lambert read a statement regarding the recommended draft minutes of the June 17, 2014, Regular Meeting. She said the minutes recommended for approval today is the draft that has been available on the website since July 3, 2014 rather than the draft that appears in the packet uploaded to the website on July 11. The improved July 3 draft includes spelling corrections, format modifications, and statement of officer elections. Also, signature page reflects current officers that will sign today. There were no changes in the substance, only modifications.

There were no other changes, and Mr. Hitch moved to approve the June 17, 2014, minutes as presented, and Mr. Drake seconded. Vice Chairman Lambert called for the vote.

AYE: Drake, Hitch, Fite, Feaver

NAY: None
ABSTAIN: Lambert
ABSENT: Buchanan, Drummond, Herrmann, Sevenoaks

C. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, Executive Director, addressed the member and stated prior to presenting his report, Ms. Lauren Sturgeon, Director of External Affairs for the agency, would bring the members up to date regarding legislation. Ms. Sturgeon greeted the members and said that on the State level it is currently the interim session of the Legislature and Interim Studies were approved on Friday, and there are few of interest to the OWRB. On the Federal level, she reminded the members the appropriations for water projects through the Bureau of Reclamation and Corps of Engineers had passed out of the subcommittee, but were pulled (from the full committee). She added the Waters of the US rules were still in discussion.

Mr. Hitch asked if the OWRB provided comments regarding the WOTUS rules, and Ms. Sturgeon said yes, the affected agencies had requested extension of the comment period. Mr. Strong said the State had not yet submitted substantive comments for the record which are due October 21, but he had submitted testimony to Congress. Ms. Sturgeon said the agencies had a session with EPA last week and Mr. Strong provided oral comments. Mr. Strong added that in regard to the State Interim Studies, one request combined water and wastewater infrastructure and available resources. The authors are open to how to approach the issue as to the feasibility to move water from NE Oklahoma to drier parts of western Oklahoma, and members are interested in the recommendations of the Water Plan and what remains for the Legislature to do, or if there is anything not included in the Water Plan the Legislature needs to do to assure reliable water supplies for the foreseeable future.

He continued the report stating the Governor had approved the Board's rules for groundwater (Planning and Management Division) including rules for well placement and sensitive sole source aquifers, and rules for the Financial Assistance Division. A recent article appeared in the Oklahoman featuring Julie Cunningham on the Garber-Wellington Study; staff is preparing a presentation for the Board on this study. He said mediation and technical committee meetings continue in the Chickasaw/Choctaw case; there is no update in regard to the Arbuckle-Simpson case. He said EPA came to town to meet with agencies to discuss its hydraulic fracturing study on June 18, and he was able to accompany the Governor on a tour of Altus and Tom Steed Reservoir on June 30; her first tour of the Bureau of Reclamation project with good discussion about drought. Local citizens have developed a Southwest Water Action Plan and made a presentation to the Governor and it was encouraging to see short-term and long-term priorities to meet the water supply needs for Altus in the region, focusing on water conservation, reuse, recycling, better development of the groundwater resources and little discussion about large scale transfers of water. He said it was complimentary and a natural extension of the 2012 Update of the Comprehensive Water Plan. Ms. Lambert asked if this could be used as a example for other communities, and Mr. Strong answered that yes, and that other regions such as the Panhandle Region completed a plan and the Northwest Region (Enid—Woodward) are developing a plan as well.

Mr. Strong said Secretary Teague and EPA Region 6 from Dallas hosted a Town Hall on July 8 to talk about Waters of the US with a number of agencies and organizations in attendance, and he will be briefing the Governor's Office on the issue. He will be traveling to Helena, Montana, to attend the Western States Water Council meeting this week; a meeting with the Bureau of Reclamation will be held on July 22 on the Upper Red River Basin Study recently approved; the July 23 annual meeting of the Kansas-Oklahoma Arkansas River Compact meeting has been postponed to October 15. He will be speaking to the Oklahoma Cattlemen's Beef Business Committee July 25; the Association of Clean

Water Administrators will meet in Oklahoma City August 3-6; the Water for 2060 Advisory Council will tour the irrigation operations in the Panhandle on August 6-7 (Mr. Drake and Mr. Buchanan are members and Mr. Hitch and other farmers will be hosting). The next meeting of the 2060 Advisory Council will be August 19; the Water Resources Research Advisory Board will be meeting on August 14 at Stillwater, and the next meeting of the OWRB will be Tuesday, August 19, 2014, at 9:30 a.m. He reminded the members a supermajority of members is needed to approve a bond issue, and Mr. Fite will hold a Budget Committee meeting before or after that meeting.

Mr. Strong concluded his report recognizing Representative Dustin Roberts' attendance at the meeting, and that Senator Brecheen had expressed interest to attend as well. There were no questions from the members.

D. Monthly Budget Report

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report for June 2014 had been provided. She said the agency has 37% of funding remaining with 0% of the fiscal year remaining. She said there are a few large outstanding bills which she anticipated coming in within the next few months. She said the agency submitted the overall budget for FY 2015 in June and is for \$18.5 million, down slightly from FY'14. She stated there would be a Budget Committee next month to review the budget.

Ms. Storck concluded her report. There were no questions by members.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Colbert Public Utilities Authority, Bryan County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item is a \$950,000.00 Clean Water State Revolving Loan Fund loan request from the Colbert Public Works Authority located in Bryan County. Colbert PWA is requesting the loan to go along with a \$300,000.00 Community Development Block Grant to convert the primary lagoon cell into two aerated lagoons, remove sludge and rehabilitate a lift station, flow meters, rip-rap, yard piping and lagoon dikes. Mr. Freeman noted provisions of the loan agreement; he said the debt-coverage ratio stands at 2.73-times. By borrowing through the Board, it is estimated that Colbert will save approximately \$330,000.00 through interest savings and principal forgiveness. Staff recommended approval of the loan request.

Mr. Charles Rainbolt, Bond Counsel, and Mr. Doug McCleary, City Engineer, were present in support of the application.

Mr. Hitch asked about the liner, how would the sludge be removed, and what is the type of aeration system. Mr. McCleary said the liner is in situ clay, which goes to a depth of four feet and two feet will be added; the sludge will be scraped to the lagoon that is not being deepened. He said there are surface aerators on timers to control the amount of air and to supplement the treatment. Mr. Fite asked about the principal forgiveness and Mr. Freeman said \$300,000.00 is the principal forgiveness from the OWRB.

Mr. Rainbolt addressed the members on behalf of Colbert officials who were unable to attend, and expressed their appreciation to the Board particularly regarding the principal forgiveness. Mr. Hitch asked the population of Colbert; Mr. McCleary answered there are 923 water connections for a population of about 1,200 people.

Mr. Drake moved to approve the Clean Water SRF loan to the Colbert PWA, and Mr. Fite seconded.

There were no other comments or questions, and Vice Chairman Lambert called for the vote.

AYE: Drake, Hitch, Fite, Feaver, Lambert

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond, Herrmann, Sevenoaks

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Panama Public Works Authority, LeFlore County. Recommended for Approval. Mr. Freeman stated this item is a \$1,025,000.00 loan request from the Panama Public Works Authority located in LeFlore County. The Authority is requesting the funding in order to refinance two Rural Development loans which were for wastewater system improvements. Mr. Freeman noted provisions of the loan agreement; it is estimated that by financing through the OWRB, the Authority will save approximately \$258,000.00 in interest expense. The debt coverage ratio stands at approximately 1.42-times. Staff recommended approval of the loan application.

Mayor Lloyd Hale and El Doris Weaver, Town Clerk, were present in support of the funding request.

Mr. Hitch moved to approve the loan to the Panama Public Works Authority, and Mr. Drake seconded. There were no questions or comments, and Vice Chairman Lambert called for the vote.

AYE: Drake, Hitch, Fite, Feaver, Lambert

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond, Herrmann, Sevenoaks

C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Rural Water District #8, Rogers County. Recommended for Approval. Mr. Freeman stated to the members that this item is a \$2,175,000.00 loan request from Rogers County Rural Water District No. 8. He said the District is requesting the loan to refinance the District's 2007 revenue bond issue. The previous financing was for installation of water lines and a booster pump station. The loan will be funded through the Board's State Revenue Bond Loan program, and Mr. Freeman noted provisions of the loan agreement. The District's water connections have increased by approximately 6% over the past ten years, and the debt coverage ratio stands at approximately 1.77-times. By refinancing with the Board, the District will save approximately \$376,000.00. Staff recommended approval of the loan funding application.

Mr. Josh Dill, District Manager, was present in support of the loan application.

There were no comments or questions by members, and Vice Chairman Lambert stated she would entertain a motion to approve the application.

Ms. Feaver moved to approve the funding application to Rogers County Rural Water District #8, and Mr. Hitch seconded.

AYE: Drake, Hitch, Fite, Feaver, Lambert

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond, Herrmann, Sevenoaks

D. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Wilburton Public Works Authority, Latimer County. Recommended for Approval. Mr. Freeman stated this item is a \$7.6 million State Revenue Bond Loan request for the Wilburton Public Works Authority located in Latimer County for refinancing an outstanding bond issue. He said the original financing was for water and wastewater system

improvements; he noted provisions of the loan agreement. The debt coverage ratio stands at approximately 1.32-times, and the Authority should save approximately \$1,576,000.00 by refinancing through the Board. Staff recommended approval of the funding application.

Mayor Steven Brinlee and DeDe Richardson, Town Clerk, were present in support of the application.

Vice Chairman Lambert asked if the sales tax had been approved by the citizens, and Mayor Brinlee said that it had. Mr. Drake commented on the savings to the city, that it cost about \$192,000 to get it done. Mr. Freeman said that a 1-point fee on a \$7 million deal is normal, particularly needed was the tax bond counsel and services associated with a separate bond issue; the savings is realized after paying the fees.

Mr. Drake moved to approve the funding application to the Wilburton Public Works Authority, and Mr. Fite seconded.

There were no other comments or questions, and Vice Chairman Lambert called for the vote.

AYE: Drake, Hitch, Fite, Feaver, Lambert

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond, Herrmann, Sevenoaks

E. Consideration of and Possible Action on a Proposed Resolution Authorizing the Reallocation of Revolving Fund Revenue Bonds, Series 2012B Proceeds. Recommended for Approval. Mr. Freeman stated this last item is for the consideration of a resolution authorizing reallocation of bond proceeds in the Board's Series 2012B bond issue for state matching funds. He explained that in April the Board applied for a 2014 Capitalization Grant from EPA for the Clean Water State Revolving Loan program. The grant was awarded on July 1st, in the amount of \$11,328,000.00 which requires 20% state match in the amount of \$2,265,600.00. The resolution before the Board today will allocate \$2,265,600.00 from the 2012B bond issue for the 2014 Capitalization grant match. There is approximately \$26.7 million dollars available from the 2012B bond proceeds in which to allocate for the match. Staff recommended approval of the resolution.

Mr. Hitch asked if the funds were being moved from "left-hand to right-hand," and Mr. Freeman answered they are being moved from funds available because it saves money instead of doing a separate debt issuance because the costs of issuance have already been paid, and it meets the requirements.

There were no other questions, and Vice Chairman Lambert stated she would entertain a motion.

Mr. Hitch moved to approve the resolution authorizing reallocation of bond proceeds, and Mr. Drake seconded.

AYE: Drake, Hitch, Fite, Feaver, Lambert

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond, Herrmann, Sevenoaks

Mr. Freeman reminded the members that the appointed secretary today would be signing bond documents following the meeting today.

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.

Vice Chairman Lambert asked if there were requests to transfer items from Summary Disposition 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.

There were no amendments to the Summary Disposition Agenda, and Vice Chairman Lambert stated she would accept a motion to approve the Summary Disposition Agenda.

Mr. Hitch moved to approve the Summary Disposition Agenda, and Ms. Feaver seconded. Vice Chairman Lambert called for the vote.

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

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>
ASCOG				
a.	FAP-13-0023-R	Davidson Public Works Authority	Tillman	\$149,900.00
COEDD				
b.	FAP-05-0048-R	Wanette Public Works Authority	Pottawatomie	65,500.00
EODD				
c.	FAP-13-0040-R	Dewar Public Works Authority	Okmulgee	63,112.00
GGEDA				
d.	FAP-13-0014-R	Colcord Public Works Authority	Delaware	84,000.00
INCOG				
e.	FAP-11-0021-R	Fairfax Public Works Authority	Osage	81,380.00
KEDDO				
f.	FAP-12-0019-R	Talihina Public Works Authority	LeFlore	99,999.00
NODA				
g.	FAP-13-0009-R	Town of Braman	Kay	38,500.00
OEDA				
h.	FAP-13-0010-R	Fort Supply Public Works Authority	Woodward	59,000.00
SODA				
i.	FAP-11-0019-R	Ravia Public Works	Johnston	63,000.00

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| b. Licensee: Miller Well Drilling | DPC-0914 |
| 1. Operator: Dennis Miller | OP-2054 |
| 2. New Operators to Existing Licenses: | |
| a. Licensee: Double J Energy, L.L.C. | DPC-0910 |
| 1. Operator: James Ewers | OP-2047 |
| b. Licensee: Williams Drilling & Pride Pump | DPC-0230 |
| 1. Operator: Brian Williams | OP-2053 |

M. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Northeastern Oklahoma A & M (NEO), Ottawa County, #FP-14-11
2. Oklahoma Department of Transportation, Okmulgee County, #FP-14-12
3. Oklahoma Department of Transportation, Tulsa & Rogers Counties, #FP-14-13
4. Oklahoma Department of Transportation, Okmulgee County, #FP-14-14
5. Oklahoma Department of Transportation, Okmulgee County, #FP-14-15

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 July 15, 2014 packet of Board materials.

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

A. Presentation and Discussion Previewing Rulemaking on Water Quality Standards and Implementation Rules Anticipated for Adoption in 2015, Including but Not Limited to Subjects, Issues, Public Input, and Language Under Consideration. Mr. Derek Smithee, Chief, Water Quality Programs Division, addressed the members and stated that this item is to provide a snapshot on the upcoming Water Quality Standards (WQS) Revisions. He said the staff wanted to inform the Board about what is on the “radar screen” as the staff works over the next several months and revisions are presented to the Board later. He reminded the members the WQS are often called the cornerstone of water quality management in the State of Oklahoma, and all state and federal governments work in partnership with the OWRB to develop the WQS and represent common water quality goals. He said it is a requirement of both state and federal law according the Pollution Remedies Act in Oklahoma and the Clean Water Act (CWA) and agencies work in concert to achieve the WQS. He said there are three parts: beneficial uses, criterion, and anti-degradation policies, and a key component is their dynamic. Required by the CWA to be revised at least every three years, typically the OWRB makes revisions more often than three years, and the mandatory triennial review will be upcoming in 2015. Mr. Smithee said the last standards revision was brought to the Board during the last triennial review and adopted by the Board in February 2013, approved by the Governor in April and approved by the Legislature in May, followed by EPA approval in November. He said the main issue in the 2013 revision regarded the Arbuckle Simpson Aquifer and classification of Class I Special Source Groundwater, but that recommendation was not moved forward, nor were any other standard revisions considered in 2013. Mr. Smithee stated there are several high-profile items coming up the next several months and staff will be working internally with state and federal partners and the regulated community on these subjects – water effects ratio, potassium site-specific criteria, Appendix H, dissolved oxygen, and wetlands standards. He introduced Mr. Jason Childress, Section Head for the WQS, who with his team is directing the revisions for these subjects.

Mr. Childress addressed the members and introduced the WQS staff, Ms. Rebecca Veiga, and Ms. Lynda Williamson, and he briefly reviewed the items that the WQ Division is currently working

on and will likely consider in the Fall in rulemaking. He stated the EPA requires a full review of the WQS every three years, which OWRB does more frequently, and is known as “interim revisions.” He explained the proposed issues regarding water effects ratio was requested by the City of Broken Bow; site specific criteria involving potassium criteria that will be applicable to the Deep Fork River (working with DEQ and private industry); there also is the Appendix H regarding groundwater and additions, and documents areas of known contamination (working with Corporation Commission); further refinement of the dissolved oxygen due to earlier changes; and an effort to develop WQS specific to wetlands.

Ms. Rebecca Viega, Environmental Scientist and Lead Technical Staff working on wetlands WQS, briefly introduced the project to the members and explained why staff is working on wetlands WQS, the development process, and actions planned for later this Fall. She described the biological diversity of wetland waterbodies, they are a water of the state and are protected by Oklahoma’s WQS by a default standard originally developed for lakes and streams but often are not suitable for wetlands waterbodies, creating scientific and regulatory challenges in implementing the standards for wetlands. The effort now is to develop wetlands-specific WQS, which are being developed cooperatively by the Oklahoma Wetlands Technical Group with OWRB leading the effort as the state agency with authority to promulgate standards. The group is composed of all Oklahoma environmental agencies, USCOE, OSU, NRCS, EPA, INCOG and ASCOG. Mr. Hitch asked if most wetlands were located on government land, and Ms. Viega answered wetlands are located on a mix of land privately and publicly. He asked about private representation and Ms. Viega said private interests are represented in the larger stakeholder meetings, and she explained the wetlands management scheme in Oklahoma involving the Oklahoma Conservation Commission coordination of the Wetlands Work Group, a broad stakeholder group, and a subcommittee of the larger group that specifically works on technical issues and meets monthly. Stakeholder meetings will be held with the larger Oklahoma Wetlands Workgroup and small group meetings with specific stakeholders of interest and concern, and individual meetings, if necessary, to address policy and programmatic concerns. It is part of the formal rulemaking process and will be brought to the Board in the Fall.

Mr. Strong added this is typically how all WQS rulemaking is developed through the basic requirements of law by distributing draft proposals, 30-day notice and comment period, a public hearing conducted and then presentation to the Board. He said because standards are so technical yet have a widespread impact, the process is started months in advance to obtain input before initiating the required process.

Ms. Lynda Williamson, WQS staff, provided the abbreviated schedule of the rulemaking timeline and activities; the formal public meeting(s) will be held in October, notice of rulemaking intent will be published in November, the comment period will be November – January 2015, and presentation to the Board hearing in January and possible consideration in February or March meeting. Ms. Williamson said staff is additionally looking at the 2015 triennial update and those topics -- EPA has drafted updates to the national recommended WQ criteria for various chemical pollutants to protect human health and aquatic life. For the 2012-2013 triennial revision, there were 25 updates to the human health criteria and this revision will be focused on aquatic life updates and regard ammonia and selenium criteria, chlorine, aluminum, cadmium and copper. The updates are draft and the comment period has been extended and staff is reviewing historical data which has not been updated since the 1988 triennial revision.

Mr. Smithee concluded the presentation stating there is much work going on in WQS and is there will likely be some controversy. Mr. Drake asked about the latest regarding Water of the U.S. (WOTUS) and EPA, and if approved, how will that affect the state’s WQS. Mr. Smithee answered that will not affect WQS management in Oklahoma, the state’s definition of waters of the state is much broader than WOTUS, and standards affect all waters of the state as defined by the State of Oklahoma. Mr. Strong added that is true of WQS, and is delegated to the state, and expansion of WOTUS has a

larger impact on those programs that aren't delegated to the State, or in the areas that are not managed by the State the same as the WOTUS, i.e., USCOE 404 permitting.

Vice Chairman Lambert thanked the WQS staff for their year-round work on the state's standards.

5. SPECIAL CONSIDERATION

Vice Chairman Lambert read the agenda item language, and stated that following Ms. Julie Cunningham's presentation of the application, she will provide ground rules for discussion of the application.

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Temporary Groundwater Permit No. 2001-567, Lacey and Diana Weger, Bryan County, Recommended for Approval:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members this application to amend a temporary permit to use groundwater is in the name of Lacey and Diana Weger in Bryan County. The applicant has requested to add 14 groundwater wells to the existing permit for a total of 16 irrigation wells authorized; the applicant is not requesting additional land or additional water. The application was protested by landowners in the vicinity and the parties are represented by counsel today.

Ms. Cunningham explained that Board rules required the applicant meet the four points of law, and if so, the Board shall issue the permit: the applicant owns or has title to the land dedicated to the permit, the land overlies the groundwater basin from which the water will be withdrawn, the use will be beneficial, and waste will not occur. In this case, the applicant does own the dedicated land—east of Lake Texoma—and is located over the Woodbine formation which does not have a maximum annual yield (MAY) determination, therefore, the amount of groundwater allowed is two acre-feet of water per acre of land dedicated. The Woodbine study is complete, and the MAY request will be brought to the Board in the future which may change the amount of water that can be withdrawn from the basin. Ms. Cunningham stated that irrigation is recognized as a beneficial use, and waste will not occur.

Ms. Cunningham stated the protestants expressed concern but presented limited data that the proposed withdrawal of water would cause interference with use of the property owners' water. The Hearing Examiner acknowledged the protestants' understandable concerns about potential adverse impact by the neighbor's use of water; however, the evidence was inconclusive and it was not found that the applicant's use of the water would cause groundwater in the area to become saline, adversely impact groundwater in the area, or that the proposed use of private property would be impermissible or unlawful. The protestants claimed the applicant had wasted water, but the applicant provided testimony that he had installed safeguards on irrigation systems to shut off the water flow from the road. The Hearing Examiner determined the record did not support a finding of waste by depletion as described under Oklahoma Water Law; however, it was proposed a special condition be added to the permit reiterating the permittee shall not cause waste by depletion, and what steps the Board may take if that occurs. Ms. Cunningham stated the applicant has met the test of the requirements of groundwater law for the additional wells and to utilize the equal proportionate share of the groundwater basin; all the landowners are equally entitled to the use of their property under that law. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order for amending temporary groundwater permit 2001-567. She added it is a temporary permit revalidated each year and any protestant may come before the Board if there are concerns.

Vice Chairman Lambert asked for questions by the Board members regarding the facts of the case.

There were no questions at this time.

Vice Chairman Lambert stated the Board's expectation regarding the proceedings. She said that many in attendance had traveled a long way to be present today, and while this is a public meeting, it is not a public hearing. A public hearing was held in May 2014 and at that time any and all comments were heard. Ms. Lambert stated that both the applicant and the parties to the protest have engaged counsel to represent them today, and for this proceeding, the counsel for both the applicant and the parties to the protestants are the only persons addressing the Board. She recognized there are differences of opinion; however, it is the expectation of the Board that this proceeding will be held in an orderly fashion with personal decorum and mutual respect by all in attendance. Each counsel for the applicant and protestant will have five minutes to make their case; she reminded both counsels that the issue at hand are only those issues that are included in the public record; any issues of circumstances or events outside of or substantive to the public hearing or the record will not be admitted. The Board's General Counsel will ensure adherence to this directive.

2. Discussion and presentation by parties. Vice Chairman Lambert invited counsel for the applicant, Mr. Jim Barnett, to address the Board.

Mr. Jim Barnett, representing Lacey and Diana Weger, addressed the Board and said he would make brief comments and reserve time to respond to the counsel for the protestants. He said the application was filed in October 2013, and Mr. Weger has worked closely with staff and has complied with all requests. He said he became their counsel in April 2014, the packet is in order and all information is correct, and he found the Hearing Examiner's order acceptable in all respects.

Mr. Krystina Phillips, representing the protestants, addressed the Board members and introduced her clients (by standing), property owners in Bryan County that surround the sod farm. She said the decision the Board makes today will immediately impact their lives. Based upon the evidence presented at the formal hearing, it is undisputed the existing wells by the applicant are to interfere with the groundwater wells of the protestants, and testimony was given on how their wells have been depleted, i.e., Ms. Kelsey was without water for three weeks last summer; she and her husband are retired and in poor health. Ms. Phillips stated it is also undisputed based upon the expert evidence that granting the permit application will further exacerbate the interference of the current wells, and will expand the "ring of interference." She said it is also undisputed the matter could have been resolved, and she read the Board's rules regarding waste by depletion regarding the unauthorized use of wells for groundwater which includes drilling a well without a permit, except for domestic use. She said in this case, the applicant drilled and completed 14 wells in the Woodbine Aquifer without obtaining a groundwater permit and she contended that had the applicant received a groundwater permit first, the protestants could have expressed their concerns and the applicant could have drilled in the Antlers Aquifer which is below the Woodbine, receiving the same amount, quality, and increased pressure, and drilling deeper wells would not interfere with the neighbor's wells.

Ms. Phillips expressed concern about a "culture" developing where applicants break the rules now and come to the OWRB and beg forgiveness later which she believed was contrary to the Board's rules and places innocent Oklahoma citizens in the position of not having water. Ms. Phillips requested the Board add a condition requiring the applicant to drill to the Antlers Aquifer, providing more water to the applicant and the protestants who do not have an alternative water source since the area rural water district is not able to take on additional customers.

Mr. Hitch asked if this is a new application, and Ms. Phillips answered there are four existing wells currently on the permit on the north end of the property and the 14 additional wells are on the south end of property, located closer to the protestants. Mr. Hitch asked if the protestants had access to the Antlers Aquifer, and Ms. Phillips stated it was cost prohibitive for these retired residents who have had water until the sod farm started operations. He also asked if the neighbors protested the permit application in 2001, and Ms. Phillips said she was not aware.

There were no other questions of Ms. Phillips, and Vice Chairman Lambert allowed Mr. Barnett four minutes to address Ms. Phillips' comments.

Mr. Barnett responded to comments regarding the law and the Board's rules. He said Ms. Phillips' reading of the law is incorrect; both the statutes and the Board's rules clearly discuss drilling wells and using water -- in 1020.7 an application for a permit to use water is not required to be filed for testing. He said historically the OWRB has always allowed the drilling of test wells and then apply for a permit; it is not known whether a well location is where there is water, and the OWRB has recognized that. Secondly, Mr. Barnett responded to the "undisputed facts" as stated by Ms. Phillips, and he claimed they were loudly disputed at the hearing where the arguments were well presented and considered by the Hearing Examiner. It is clearly stated in the proposed order that a cogent argument was not presented and the concerns are not real. The applicant's wells have not and will not affect the protestant's wells, and even if they were that is not the criterion for making a decision. He concluded his remarks stating that under current law his client is entitled to 240 acre-feet more than he has requested. The 900 acre-feet is less than the actual entitlement to 570 acres of dedicated land, so his client had come partway toward meeting the protestants, the Water Board staff has done a yeoman's job investigating every complaint, the Hearing Examiner made a diligent effort to investigate the allegations and concerns, and the order is detailed in all those respects. He encouraged the Board's approval of the proposed order.

Vice Chairman Lambert asked Mr. Jim Barnett to address the Woodbine and Antlers Aquifers. Mr. Barnett responded in that area the Antlers is considerably deeper than the Woodbine and would not be cost effective to drill a well that deep for the protestants nor his client. Mr. Hitch asked how much deeper is the Antlers, and Mr. Chris Neel of OWRB staff answered the Woodbine is 400 feet deep and the Antlers is below that level. Mr. Hitch said a 600-footwell is common in his area (Panhandle). Mr. Barnett and Mr. Hitch discussed deep wells construction and cost effectiveness, and Mr. Barnett said that because the wells will be operated through a manifold system, he believed the issues have been addressed. Mr. Weber described the casing and pump specifications and pump testing by the driller, and said the average well pumps 30-40 gpm.

Mr. Fite asked if the 570 acres is all under production for sod and hay, and Mr. Weber answered not all is in production as there is timber, and there are 7 large ponds. The ponds are permitted for stream water use as well and have been rehabbed to catch more storage. Mr. Fite calculated there would be 293 million gallons of water equating to 18.9 inches of water over 570 acres. Mr. Barnett reiterated no additional water is being requested, the amount of water has already been established when the permit was approved in 2001. Mr. Fite said he was drawing in his mind what it would be like.

Vice Chairman Lambert asked if there were any other questions. Ms. Phillips clarified the evidence at the hearing indicated the top of the Antlers Aquifer is at a depth of 600 feet. Mr. Strong reiterated the Woodbine is unstudied and therefore permits are temporary. The study has been completed and that will be brought to the Board through the process and if the study dictates the equal proportionate share needs to be reduced from the default 2.0 acre-feet per acre, which will happen as a result of the scientific investigation, therefore, permits could be reduced before becoming permanent. Ms. Feaver asked when that was anticipated, and Mr. Strong answered it is difficult to say as these processes have become legally challenging, and there is also the Garber Wellington ahead of it which will be very extensive as it will affect a large part of the state's population; the Rush Springs will also follow the Garber Wellington.

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.

Vice Chairman Lambert stated the staff has recommended for approval the amendment of temporary groundwater permit #2001-567. She asked for any additional comments or questions. There were none, and she stated she would entertain a motion.

Mr. Hitch moved to approve the proposed findings of fact, conclusions of law and Board order to amend temporary groundwater permit #2001-567, and Ms. Feaver seconded. Vice Chairman Lambert called for the vote.

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

Mr. Drake commented at the vote the Board operated under a set of laws, and staff has spent a great deal of time in the area, and considering his experience with the Arbuckle Simpson Aquifer he respects the staff and the recommendation. He said he could not vote against the recommendation, with the understanding the permit will be looked at again during final adjudication of the water.

Ms. Feaver stated she voted yes as the permit met all four points of law for groundwater.

Vice Chairman Lambert thanked everyone for their participation and attendance.

- 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. 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.

Vice Chairman Lambert stated there were no New Business items for the Board's consideration. She reminded the members the next meeting would be held on Tuesday, August 19, 2014, at 9:30 a.m. in the Oklahoma City meeting room.

7. ADJOURNMENT

There being no further business, Vice Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 10:45 a.m. on Tuesday, July 15, 2014.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

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

_____/s/_____
Edward H. Fite

_____/s/_____
F. Ford Drummond

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

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