

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**September 16, 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 September 16, 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 September 12, 2014, at 3:45 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. Following the roll call, he recognized a quorum of members.

**A. Roll Call**

**Board Members Present**

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

**Board Members Absent**

Jason Hitch

**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**

Don Russell, Roff, OK  
Patty Thompson, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Michael Taylor, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Mary Kathryn Lorenz  
Freddie Lorenz  
Robert Shelton, City of Tulsa, OK  
Jeff Everett, Oklahoma Gas and Electric, Oklahoma City, OK  
Jim Barnett, Doerner Saunders Daniels Anderson; Enid/Tuttle, Oklahoma City, OK  
Sam Miller, AEP/PSO/NES, Oklahoma City, OK  
Deena Suddeth, BancFirst, Oklahoma City, OK  
James Ballard, Tuttle, OK  
Tim Young, City of Tuttle, OK  
Sean Fairbairn, Cowan Group Engineers/City of Tuttle; Oklahoma City, OK  
Murali Kalta, City of Enid, OK  
Kaylee Maddy, Doerner Saunders Daniel Anderson, Oklahoma City, OK  
Dennis Thomas, Tuttle, OK

**B. APPROVAL OF MINUTES**

Chairman Herrmann stated the draft minutes of the August 19, 2014, Regular Meeting minutes had been electronically distributed.

There were no changes, and Mr. Buchanan moved to approve the August 19, 2014, minutes, as presented and Mr. Drummond seconded. Chairman Herrmann called for the vote.

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

**C. EXECUTIVE DIRECTOR'S REPORT**

Mr. J.D. Strong, Executive Director, addressed the members and asked Ms. Lauren Sturgeon to present the legislative report. Ms. Sturgeon addressed the members and noted the prepared report and list of Interim Studies which she reviewed. She said that on the federal level, there is little activity except for hearings scheduled that are of importance to the agency, and which are included in report, particularly regarding Waters of the United States rule from EPA and USACE, and the Forest Service Groundwater Directive. Mr. Sevenoaks asked if the agency had attended the state interim study meetings, and Ms. Sturgeon said staff had participated in Rep. Vaughan's study regarding subgroundwater and fracking activities. Mr. Drummond asked the focus of Sen. Field's interim study and she said he is interested in water conservation and an update on the Comprehensive Water Plan. Mr. Strong added it is broad now; the Representative wanted an update on Water for 2060, the maximum annual yield studies due by 2022, and on infrastructure financing. Mr. Fite mentioned an article in the Wall Street Journal about projected infrastructure needs in the US to 2030, totaling \$380 billion dollars in regard to clean water. Mr. Sevenoaks asked about receiving water related articles and Mr. Strong said that is now done electronically and the Board would receive the articles via email.

Continuing his report, Mr. Strong said Rep. Vaughan's interim study focused on saltwater injection and the lack of adequate regulatory oversight in Kay County. However, he had presented

information on groundwater resources in Oklahoma and how much water is utilized by the oil and gas industry compared to other industries and the projections from the OCWP for the future. Chairman Herrmann asked the purpose of the interim studies, and Mr. Strong responded it depended upon what the legislator wanted to accomplish, usually an issue of concern that needs to be explored further and determine whether legislative action is needed in the upcoming session. Mr. Drake mentioned the workgroup Governor Fallin has appointed to respond to the concern about earthquakes, fracking, etc. Mr. Strong said the Board is not part of that task force. Secretary of Energy and Environment Teague is in charge of that effort and is bringing together agencies, academic institutions and industry focused on earthquakes to coordinate information. Regarding future scheduled studies, there are two studies combined that will be heard on October 21 regarding water/water infrastructure and available resources, and on October 8 regarding injection wells.

Chairman Herrmann interjected that he had spoken with Mr. Strong about past action by the Board approving legislative activity and the agency strategic plan in the course of developing the Water Plan and staff will in the future present to the Board the agency priorities for the next year. Mr. Strong added the strategic plan (due October 1) revolves around the approved Water Plan and its priority recommendations and has become the agency's goals and objectives and legislative priorities. In a sense, the Board has approved the strategic plan and legislative priorities when it approved the Water Plan. Staff will present the strategic plan, but did not anticipate legislative recommendations outside of the Water Plan for the next session; however, if there is need staff will communicate with the respective Board's ad hoc committees.

He noted Senator Simpson had conducted a Town Hall on the Arbuckle Simpson Aquifer, and following the meeting today, the City of Moore will have a dedication ceremony for its state-of-the-art, \$53-million dollar wastewater treatment plant, funded through three loans from the OWRB.

Regarding litigation, Mr. Strong said mediation continues in the Choctaw/Chickasha case, and there is one matter to resolve in regard to the preliminary motion stage in the Arbuckle Simpson case.

The OWRB and DEQ met with the City of Clinton in regard to its interest in water reuse August 26; he met with Community Water Solution and the OWRB Financial Assistance Division August 20, met with the OK Dept. of Wildlife Conservation regarding various instream flow efforts August 20; and spoke to the Red River Valley Association in Sulphur on August 28. He said it is "drought week" in Oklahoma as the Bureau of Reclamation and the OWRB are sponsoring the "Drought Challenge" at the National Weather Service in Norman. He described the exercises are to allow 25 water users organized in teams to respond to an emergency drought scenario, and long-term planning. Ms. Feaver mentioned the "Future's Game," and Mr. Herrmann said in the industry it's called continuous improvement cycle. On September 18-19, Governor Fallin is hosting the Western Governors' Association Drought Forum where states share successes and failures when dealing with drought—the Oklahoma forum will focus on "Drought and Energy Water Use." There will be four other forums held across the western states.

Mr. Strong said the Tri-State meeting with the USCOE – Oklahoma, Texas, and Kansas – will meet on September 23-24 in Dallas with the new Commander of the Southwest Division of the COE and discuss joint interests. Mr. Strong will attend the 50<sup>th</sup> Celebration of Lake Eufaula Dam on September 25; speak to Leadership Oklahoma about water rights in Durant on September 27; attend Western States Water Council quarterly meeting in Scottsdale, Arizona, October 7-10 and the WGA's Tempe, Arizona, Drought Forum; and the Kansas-Oklahoma Arkansas River Compact meeting will be held October 14-15 in Marion, KS.

Mr. Strong announced the retirement of General Counsel Jerry Barnett effective at the end of the month. A reception will be held on September 26. Chairman Herrmann thanked Mr. Barnett for the support he has provided the agency and the Board. Mr. Barnett also thanked the Board for its confidence in him.

Mr. Strong concluded his report with information about the Governor's Water Conference October 22-23 at the Cox Convention Center in downtown Oklahoma City, and that the monthly meeting of the OWRB will be conducted the afternoon of October 23 at the same location. He reviewed the program speakers and presentations. Chairman Herrmann asked and Mr. Strong responded about authorization of \$1.5 million funding for drought relief in Oklahoma. Focusing on Water for 2060, these drought grant recipients must demonstrate water efficiencies and savings in their proposed project for eligibility. November 26 is the deadline for applications.

And, lastly, Mr. Strong introduced the Employee Excellence Award Recipient, Ms. Laura Oak, an Accountant with the Financial Assistance Division.

Mr. Fite commented about Mr. Gary McManus's presentation at the Oklahoma Floodplain Managers Association Conference regarding the future of drought in the state and template for planning for the future. Mr. Strong said there will be a presentation at the Governor's Water Conference as well by Mr. McManus.

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

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report for August 2014 had been provided. She said the agency has 91% of funding available with 83% of the fiscal year remaining. She said the agency budget request document is due October 1, and she is working with the agency divisions about the information as well as updating the strategic plan to FY 2020. She said the agency "went live" with the OMES Help Desk services so the agency IT help desk tickets are going through OMES and it is going well. Ms. Storck concluded her report.

Mr. Sevenoaks asked the status of other IT services. Ms. Storck answered the agency is now scheduled for consolidation at the end of the fiscal year and staff is working on transferring data to new compatible servers to make the consolidation as easy as possible. Mr. Sevenoaks asked where the servers are located and who paid for them, and Ms. Stock responded at this time they are at the OWRB, and the agency paid for the servers, and she said that had been put on hold since 2012, and explained other issues with the process.

There were no other questions by members.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Quinton Public Works Authority, Pittsburg County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this first item is a \$795,000.00 loan request from the Quinton Public Works Authority located in Pittsburg County. He said the request for the loan is to refinance a Rural Development loan which was secured to replace 82,000 feet of water line. Mr. Freeman said the loan will be funded through the Drinking Water State Revolving Fund loan program, and he noted provisions of the loan agreement. By refinancing, the PWA will be saving approximately \$360,000.00 in interest expense and reduce the loan amortization by ten years. Quinton currently has one other loan with the Board with a balance of approximately \$696,000.00 and the debt coverage ratio stands at 1.77-times. Staff recommended approval of the loan request.

Mr. Alan Brooks, Bond Counsel for the Quinton PWA was present and spoke in support of the application.

Mr. Sevenoaks asked how many meters and Mr. Brooks answered there are 500. Mr. Drummond asked Mr. Freeman if there are capacity issues on the DWSRF program. Mr. Freeman said

that staff is running capacity numbers which should be available today. He said prior to the Oklahoma City loan the Board was in excellent shape, and it looked like Oklahoma City is interested in several loans.

Mr. Fite moved to approve the DWSRF loan to the Quinton Public Works Authority, and Mr. Buchanan seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this item is a \$21 million dollar loan request from the Tulsa Metropolitan Utility Authority in order to provide additional capacity for the 71<sup>st</sup> Street Lift Station to serve new developments, and for improvements to sewer operations. The proceeds will also be used for engineering and construction of sewer lines along Elwood between 81<sup>st</sup> and 91<sup>st</sup> street, and serve unsewered areas as well as remove the North Jones Airport lift station from the Jenks system. Mr. Freeman said the balance of funds will be used for area wide sewer rehabilitation, concrete pipe replacement, and to fund other projects for areas currently not being served. The loan will be funded by the FAP bond issue which was approved at last month's Board meeting. Mr. Freeman noted provisions of the loan agreement. Tulsa has been a good loan customer of the Board's and currently has 27 outstanding loans with a principal balance due of \$222,066,453.00; the debt coverage ratio stands at 1.27-times. Staff recommended approval.

Mr. Bob Shelton, City of Tulsa, was present and spoke in support of the loan application.

Mr. Sevenoaks commented about Tulsa's debt service at 1.27-times. He said the city is struggling on the sewer side with consent decrees and the amount of rehabilitation the city has undertaken, and it has been a strain on the budget to manage the debt going forward as the cost of infrastructure has become enormous. Mr. Fite said Tulsa has approximately 1,000 miles of sewer line and he asked how much has been replaced to date. Mr. Sevenoaks answered the city is conducting a comprehensive study to identify the principle needs and an efficiency study ongoing that re-evaluates every capital project to determine risk factors involved. For example, he said if there is a pipe in the ground that is constantly breaking and its only 40 years old versus another pipeline that is 60 years old but functioning, should the 60-year old pipe be replaced because of its age, or replace the pipe that is constantly breaking. The studies indicate that if the risk can be taken to keep a larger pipe running past its useful life, that is part of the savings rather than just replacing pipe because of the age. He said approximately 50% of the pipe has been replaced; there is constant maintenance at the wastewater treatment plant, and within the last 25 years the TMUA has spent close to a half billion dollars on the wastewater side. He said right now the sewer bill is as much as the water bill and in a few years, it will be higher. Chairman Herrmann asked – which is like the same of other cities - how much does the city look to TMUA as a budget source, and Mr. Sevenoaks answered, the City pays an "in lieu of" tax of 5.5% . Part of the new study is to get direct costs from the city and at the end of the year receive indirect costs based on how much is paid for the city council, the mayor's office etc. The new studies say there should be service-level agreements with each department so there is a contractual basis for services to be provided and level of payment, treated like a private entity contract, and the city is trying to determine direct and indirect costs. Chairman Herrmann said the 1.27-times debt coverage is lower than historically, and he asked the Board's criterion, which Mr. Freeman said 1.25-times.

There was no further discussion, and Mr. Drake moved to approve the FAP loan to the Tulsa Metropolitan Utility Authority, and Ms. Lambert seconded.

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

### 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 from the Summary Disposition Agenda 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 changes to the agenda or questions by members, and Chairman Herrmann stated he would accept a motion to approve the Summary Disposition Agenda.

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

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

Mr. Drake departed the meeting room at 10:21 a.m., and returned at 10:23 a.m.

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>
None				

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

1. Second Agreement Amendment with the Office of the Secretary of Energy & Environment (“OSEE”) to increase funding for the Clean Water Act FY 2012-13 § 106 Water Pollution Control Program – Monitoring CA# I-00F5301.
2. Intergovernmental Agreement with Oklahoma State University – Oklahoma Water Resources Center to conduct a joint conference and symposium at the 2014 Oklahoma Governor’s Water Conference presented before government officials and citizens.

3. Agreement Amendment with Office of the Secretary of Energy & Environment (“OSEE”) to extend the budget and project periods of the original FY12§104(b)(3) Regional Wetlands Program Development CA# CD-00F42801 contract from October 1, 2011 to September 30, 2015.
4. Cooperative Agreement with the Oklahoma Department of Wildlife Conservation (“ODWC”) for a pass-through federal assistance grant for publication of an Oklahoma Boating Access-Lakes of Oklahoma atlas.
5. Professional Engineering Services Agreement with FTN Associates, Ltd., to develop breach inundation maps for dams in Oklahoma.
6. Intergovernmental Agreement with Oklahoma State University Department of Zoology (“OSU”) to administer a state program for assessing, monitoring, studying and restoring Oklahoma lakes to establish and implement water monitoring and sampling programs in coordination with other state environmental agencies.
7. Cooperative Agreement with the United States Department of Agriculture (“USDA”) to continue monitoring and evaluating water resources in the Upper Washita River Basin and the Fort Cobb Reservoir.
8. Amendment of Joint Funding Agreement with the United States Geological Survey (“USGS”) to extend the North Canadian Alluvium and Terrace aquifer study to March 31, 2015 with no increase of funds.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:

1. Larry & Linda Dobbins, Custer County, #2014-512
2. Hohmann Farms, L.L.C., Kay County, #2014-540
3. Devin D. Herring, Custer County, #2014-547
4. Melvin & Geraldine DeWitt, Alfalfa County, #2014-560
5. Larry & Patty DeWitt, Alfalfa County, #2014-561
6. Michael & Karrie McAlister, Harmon County, #2014-566
7. Howard K. & Edith Fern Reimer, Trustees of the Howard Reimer and Edith Reimer Revocable Trusts, Major County, #2014-567
8. Stutzman Land, L.L.C., Custer County, #2014-576
9. John David Patton and Peggy Eileen Patton Revocable Living Trusts, Alfalfa County, #2014-581
10. Darrel ZumMallen & Annette ZumMallen, Trustees of the ZumMallen Living Trust, Canadian County, #2014-586

F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:

1. Enid Municipal Authority, Major County, #1980-718
2. Larry & Betty Paul, Seminole County, #2012-660

G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:

1. BPH Enterprises, L.L.C., Beaver County, #2014-523
2. Chad & Jenae Rippetoe, Beckham County, #2014-530
3. E. Donald Rose, Tillman County, #2014-551
4. Andy Schreck, Washita County, #2014-555
5. Gail W. & Darlene Kirk, Tillman County, #2014-558
6. Carl D. Holt, Trustee of the Carl D. Holt Living Trust, Texas County, #2014-584

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:

None

- I. Consideration of and Possible Action on Applications to Amend Prior Groundwater Rights:
  - 1. Gary R. Hall, Greer County, #1950-131
  
- J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
  - 1. Eugene & Coweta Alexander, LeFlore County, #2014-016
  - 2. Francis W. Johnson, Atoka County, #2014-032
  
- K. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:
  - 1. Crescent Services, L.L.C., Grady County, #2014-036
  
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
  - 1. City of Broken Arrow, Wagoner County, #OK30479
  - 2. Dewey County Conservation District, Dewey County, #OK00631
  
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
  - 1. New Licenses and Operators:
    - a. Licensee: XRI DPC-0916
    - 1. Operator: Robert Leininger OP-2056
    - b. Licensee: Steady Stake Renewable Energy Co., LLC DPC-0918
    - 1. Operator: Craig Immel OP-2059
  - 2. New Operators to Existing Licenses:
    - a. Licensee: W. E. Pender & Sons, Inc. DPC-0737
    - 1. Operator: Jeffery Gilbert OP-2057
  - 3. Proposed Consent Order in the Matter of Driller License No. DPC-0346 of Hockaday Hardware and Operator Certification No. OP-1683 of Jimmie Litsch
  
- N. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
  - 1. Oklahoma Department of Transportation, Garvin County, #FP-14-16
  - 2. Oklahoma Department of Transportation, Craig County, #FP-14-17
  
- O. 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 September 16, 2014 packet of Board materials.

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

- A. No items.

**5. SPECIAL CONSIDERATION**

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Two Applications for Temporary Permits to Use Groundwater: No. 2011-672, Fredrick & Mary Kathryn Lorenz, Major County; and No. 2012-693, Enid Municipal Authority, Major County; Recommended for Approval:

- 1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that this item is for the consideration of a proposed findings of fact, conclusions of law and Board order on two applications for temporary permits to use groundwater in the names of Fredrick

and Mary Kathryn Lorenz and Enid Municipal Authority in Major County. She said the applicants have both requested permits to withdraw 133 acre-feet (a.f.) of water from the same 160 acre tract of dedicated land: one for mining/oil and gas, and one for municipal use, and she said the water is proposed to be withdrawn from one well. In this case, a combined hearing was held, and evidence and testimony was heard on both applications, which is why there is one order. She said the Board has received notice from both parties requesting revisions.

Ms. Cunningham briefed the members that the Hearing Examiner (HE) had determined that both applicants met the four points of law and are entitled to the water. Regarding land ownership, the HE determined that both applicants have a valid right to the dedicated land and in the case of the Lorenz application, it is based upon a warranty deed for the 160 acres, and they are the owner of the land. Regarding Enid, the application was based on a 1956 document entitled, "Water Rights Conveyance" which is considered a lease giving Enid the right to drill wells and take water, but limiting its right based on the lessor's right to use groundwater for irrigation or any other purposes, and that the Lorenzes get first claim at water, based on the conveyance lease. She said the Board rules provide that in making a determination the Board will only consider language on the face of the lease instrument, "used to support or oppose this element" (quoted from the rules) and in this case the HE concludes that the water rights conveyance at issue is that Enid has a valid right to drill and take water from the dedicated land. The land overlies the Cimarron River Alluvium and Terrace Deposits, but a maximum annual yield has not been set, and therefore each application is entitled to two acre-feet of water per acre of dedicated land; oil and gas use and municipal use are beneficial uses, and waste will not occur. Mr. Sevenoaks asked about each applicant having the right to 133 a.f., and Ms. Cunningham said that would be addressed.

Ms. Cunningham said the Lorenzes have protested the Enid application based on waste by depletion and the HE determined that Enid has used groundwater without a water right issued by the Board because the City claims a prior right that was never perfected. However, the Board has held in other cases that incidences of past waste does not support a determination that waste will not occur in the future and Enid is now attempting to obtain its water rights. Staff recommended approval of both permits subject to the express conditions of the lease to the effect that Enid's use is subject to the rights of the landowners/lessors to drill and take water for irrigation or the completion of oil wells, and that the permit shall be coterminous with the lease and shall remain valid and in effect only as long as the lease is valid and in effect, and this is contained in the order. Staff recommended approval of the findings of fact, conclusions of law and Board order.

Ms. Cunningham noted a correction on a legal description location in findings of fact no. 1, (SE  $\frac{1}{4}$ , should be SW  $\frac{1}{4}$ ), and potentially a clarification on the question of a combined total of water use of 133 a.f. Chairman Herrmann stated the limitation is implicit, not explicit, and the idea is to make it clear that the limitation is in place. Ms. Cunningham stated staff has proposed language and Mr. Strong said that would be presented after hearing from the parties.

Chairman Herrmann stated that each party will have five minutes to speak to the proposed order. Prior to that, however, he asked General Counsel Jerry Barnett to remind the Board the extent of its jurisdiction relative to the leases. Mr. Barnett reminded the Board that on an application for a groundwater permit one of the determinations the Board must make is whether the applicant owns or leases the land that is dedicated. This case is unprecedented where there are two applicants and one is claiming ownership of the land and the other applicant is claiming the right to use the water and has a document which the Board has interpreted as a lease on the same land. Both applicants are asking for the same amount – the amount which is available, 133 a.f. The Board's rules basically state it looks at the face of legal instruments but does not determine title--that is for the district courts--but the Board does have to make a finding: does the applicant own the land or does this applicant have a valid lease to the land. Here, the HE has found that it looks like both of those elements are in place. Staff believes the ownership has superior claim, and is recommending that while Enid also has a lease to that

land, Enid's right under the language in the lease is subordinate to the owner's right. Staff is recommending that both applications be approved but that Enid's approval is subject to those rights of the lessor, which in this case is the owner, Lorenz.

Ms. Lambert stated, then, both the owner and the lessor can withdraw water from the same source, and if the owner has a prior right, what does that actually mean. Mr. Jerry Barnett responded the order recommends that the owner, Lorenz, be authorized for up to 133 a.f.—Chairman Herrmann interjected that is beyond the existing permit—and Mr. Barnett said there are some water rights already in place on this land and 133 a.f. is what is available. It is also recommended that Enid, by virtue of its lease, be approved but it will have to manage its use so that it does not interfere with and is subordinate to the use by the owner. He said there is no model, this is unprecedented, and if the permits are issued as written Lorenz will have the superior claim to the full amount, and if they use it Enid can't use any; and if they use less than that, there will be some available for Enid's use. Ms. Lambert asked how that would be monitored and Mr. Strong answered it will be monitored through the annual water use reports as with other temporary permits that are subject to revalidation every year; and complaints will be followed up as well. Chairman Herrmann reminded the members the Lorenz application beneficial use is for oil and gas, and Mr. Fite asked if the parties discussed splitting the amount to 66.5 a.f. for each one. Mr. Strong said there were attempts early on to see if there could be a compromise which failed.

There were no other questions for staff. Mr. Drummond asked if the current balance for the available water right for irrigation is by the Lorenz family, and Mr. Strong said Mr. Lorenz has a prior right for 187 a.f. for irrigation use. Enid has been historically using water which is why there is a complaint brought up during the hearing of prior waste and one of the findings by the HE is there is interest in getting into compliance now, which has never been fatal to an application before the Board. In the HE report, Enid believed it had prior rights already established in its use of water in this property, and the HE findings discuss OWRB records that indicate those were not perfected even though applied for, but regardless, it was not brought forth by Enid. Mr. Barnett stated the administrative proceeding for the prior right (for Major County) was done in 1979.

2. Discussion and presentation by parties. Chairman Herrmann stated both applicants would be allowed to speak to the Board. Mr. Lorenz, the first applicant, was invited to address the Board first.

Mr. Freddie Lorenz spoke to the members stating he did not have many comments except to say that everything necessary to the case is in the exceptions to the findings of fact he submitted to the Board. He asked the Board stay a decision on the applications until after the hearing in Blaine County District Court for the purpose of determining if that contract is indeed a contract. Chairman Herrmann stated this matter is in Major County; Mr. Lorenz answered Enid sued him in Blaine County, where he lives, but the land is in Major County. Ms. Lambert asked and Mr. Lorenz confirmed his reference to "contract" is the 1956 conveyance. Mr. Drummond asked if Mr. Lorenz has been using water for irrigation, and Mr. Lorenz answered he was not; he bought the land with the intention to put in an irrigation system, but Enid blocked his use, and once it is settled he intended to put in a system. There were no other questions, and Mr. Lorenz had time remaining.

Mr. Jim Barnett, representing the City of Enid, addressed the members and stated his law firm is not involved in the matter between Mr. Lorenz and the City of Enid, so he would not be able to address any questions regarding that. In the matter of the application, Mr. Jim Barnett said in their exceptions there is one primary concern about the proposed order which regarded the Board's denial of the claim to a prior right on this property, and that issue is currently before the Board in the application to reopen the prior right in Major County which is being handled by a different law firm. He said that will get resolved eventually, and at this point he is prepared to accept the order as written. Chairman Herrmann asked and Mr. Jerry Barnett responded the lawsuit in Blaine County described by Mr. Lorenz was first brought to the Board's attention in the exceptions he filed to the proposed order. He

said that did not come out in the course of the hearing and not much is known and staff recommended the Board not wait on the outcome of that case, is confident in the proposed order, and it is right for the Board to act on today. Mr. Strong said he (Jim Barnett) is referring to the request to reopen and consolidate prior rights for the City of Enid under a different procedure, and Mr. Jerry Barnett said different attorneys for Enid have filed an application to reopen the prior rights proceedings from the early 1980s for Major County; staff has reviewed preliminarily but is not ready to proceed. He said regardless of what is done in this case today it need not wait on that application. Mr. Jim Barnett concurred.

Chairman Herrmann asked if there were other questions, and Ms. Lambert asked for clarification that in this order, Enid is okay with having a subordinate right. Mr. Strong and Mr. Jim Barnett stated that “subordinate” is not a term used in the order. Mr. Jim Barnett stated he agreed there is a concurrent right, both are entitled to water under certain circumstances and he also suggested that Mr. Lorenz’s uses are limited by the purposes on the permit. Mr. Strong said the language of the order copies the language from the face of the water conveyance into a permit condition, that as long as the lease is valid (if determined to be invalid the permit goes away) Enid, under the lease, is entitled to use it for public water supply, but the right to use it for domestic use, irrigation, and oil and gas is reserved to the owner to the extent the landowner puts it to that use. There is a reservation for the landowner to use it for certain purposes, and there is a right granted to the City of Enid to use for public water supply—they will have to sort out how they share the water.

Chairman Herrmann asked about language regarding the total amount of water being explicit. Mr. Jerry Barnett stated to the members that staff believed the proposed order to be fine if the Board approves it as is; however, it is implicit but not explicit, that the 133 a.f. is shared, and he believed “concurrent” is a good word to describe it. First, in Findings of Fact no. 1, a correction to legal description, “...existing groundwater well is located in the SE ¼ ” should be “...SW ¼;” the legal description is correct in the order, but a typographical error here (page 5004). Also, he suggested amending language in the order itself, in the third paragraph of the Order that conditions the permit for Enid (page 5011), “The permittee’s use under this permit.....” to page 5012, “...right of the lessor(s) to (and insert) use up to 133 a.f. per year and to drill wells and take water.....” Mr. Jerry Barnett read from the beginning of the paragraph for Mr. Jim Barnett and the Board. Then, after “...wells” he suggested a new sentence, “The permittee’s use combined with the lessor’s use shall not exceed 133 a.f. per year. The permit shall be co-terminous....”

Mr. Jim Barnett stated he could not concur with that condition, it exceeds the terms of the conveyance and is subject to interpretation of the language of the conveyance later; he said he is not confident there is a cap on the total amount of water available for this aquifer. Mr. Strong said the HE’s proposed order as written in the first paragraph clearly states this is a temporary permit to be issued for 133 a.f. and the proposal is to simply make it clear that the combined uses cannot exceed 133 a.f. in case there was any confusion.

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 has made suggested changes, received reaction by the applicants, and he would entertain an action by the Board.

Mr. Fite moved to approve the order with the suggested language by Mr. Jerry Barnett. Ms. Lambert seconded the motion.

Mr. Sevenoaks asked if the language can be changed, assuming the parties had agreed to the order. Mr. Strong explained they had both filed exceptions to the draft by the HE; it is a proposed order which the Board can accept, modify, or reject. Mr. Jerry Barnett added the agenda is worded

broadly enough to include making changes to the proposed order, but the Administrative Procedures Act provides that a proposed order must be served on the parties within a certain period of time prior to being considered. Staff has interpreted that as, any changes that are made cannot be significantly or substantially different from the substance of the proposed order. Staff's thought is it is already implicit, this is limited to 133 a.f. total between the two of them, but this adds language to cover what is implicitly in the order and is not a substantial change, but Enid takes issue with that. Ms. Lambert stated it is a clarification of what is implicit; Chairman Herrmann said it doesn't add anything or take away anything.

Mr. Drummond asked if the current language in the order itself is from the conveyance, and Mr. Jerry Barnett answered the indented paragraph under the third paragraph of the Order is staff's extrapolation/interpretation of all the facts and circumstances of the law, not just the operative language of the water right conveyance instrument. Mr. Drummond said the water conveyance will be litigated and he was concerned about changing the language of the conveyance in the Order. Mr. Strong said the language was the HE's interpretation of the lease, not "block-copied" from the lease, and those terms were not modified by the suggested amendment. Mr. Jerry Barnett clarified that by adding that reference to the 133. a.f., it is true that is not in those documents – the water rights conveyance nor the ownership or deed of Mr. Lorenz. He said what it does, though, is insert the resolution of the contest – two applications for 133 a.f. – and how that is to be concurrently managed. Mr. Drummond said both the paragraphs could state, "It is therefore ordered...is authorized for the concurrent use of 133 a.f."

Chairman Herrmann stated there is a motion and second, and the Board is having discussion about language. Ms. Lambert asked Mr. Drummond if he wanted to make an amendment, and Mr. Drummond said he believed the Board's Counsel had thought it through. Mr. Drake said if the Board is not convinced there is 133 a.f. for each party, then the applicants may have had the same idea—he understood it was 133 a.f., it didn't matter how it was distributed, but the Board should make a statement to clear the confusion.

Chairman Herrmann stated there is a motion. Ms. Lambert asked Mr. Jerry Barnett read the language, and Mr. Strong reminded the members of the legal description correction (FOF#1). Mr. Barnett to read the third paragraph (beginning at the bottom of page 5011):

"It is Further Ordered that the Enid Municipal Authority permit shall contain the following express conditions:

"The permittee's use under this permit shall be subject to the terms and conditions of the pertinent lease upon which this permit is based, including specifically the right of the lessor(s) to (insert) use up to 133 a.f. per year and to (end insert) drill wells and take water for irrigation of for building and primary completion of oil and gas wells. (Insert new sentence) The permittee's use combined with the lessor's use shall not exceed 133 a.f. per year. (End inserted sentence). The permit shall be coterminous with the lease and shall remain valid and in effect only as long as the lease is valid and in effect."

Mr. Sevenoaks asked if the Board is relying on the permittee's use that it is used for drinking water, otherwise it says to drill wells for irrigation, oil and gas. Mr. Jerry Barnett said Enid is seeking the water for municipal use, and Chairman Herrmann clarified the application from Lorenz is for oil and gas purposes, and this broadens the definition. Mr. Strong said Enid has only applied for municipal use, and Mr. Jerry Barnett directed the members to the second paragraph of the Order (above), fourth line which states...."authorized use of 133 acre-feet of groundwater per year for municipal purposes, subject to the express conditions stated in the next paragraph herein." He said if a Board member thinks the proposed language to make it explicit is too much of a substantial change, the procedure would call for remanding the order to be re-written and served on the parties and come back to the Board. If the Board thinks it is not substantial and is only for clarification, then it can be inserted today as an amendment to the order.

Mr. Sevenoaks asked Mr. Jim Barnett if he thought it a substantial change, and he replied he wasn't sure, it did lend credence to the idea that it broadens the actual language of the conveyance document that both parties rely on for purposes of their application. Mr. Jim Barnett read from the conveyance document, saying this is the language which is causing the issue (and is in FOF #13 of the order) ... "Nothing herein contained shall prevent the owner from producing water for the above described property for irrigation, domestic purposes, for the building of oil wells." That is the exception to the lease, and the question here becomes Mr. Lorenz made an application for oil and gas, he did not make an application for irrigation water—his contention is that language is going to wait further consideration to exactly what those words meant at the time in 1956. He didn't believe they mean what they mean today, but he was willing to accept the proposed order as written. The change Counsel has suggested somewhat changes the context of the language by putting it in the Order when he wasn't convinced that where there is a prior right, and regular permits have not been issued, there won't be more than 133 a.f. available. Mr. Strong said that would go through the process of a temporary permit being converted to a regular permit.

Chairman Herrmann stated perhaps then that implicit is adequate or maybe it isn't, but could the Board be explicit about the total 133 a.f. without changing the language of the conveyance. Mr. Drummond suggested that each of the two paragraphs of the Order read, "It is therefore ordered....A temporary permit shall be issued which authorizes (insert) concurrent (end insert) use of 133 acre-feet of groundwater...." Mr. Jerry Barnett concurred.

Mr. Fite withdrew his motion, and Ms. Lambert withdrew the second.

Chairman Herrmann stated he would accept a new motion. There was discussion about whether the language suggested achieves the purpose.

Mr. Drummond moved that the words "concurrent" be inserted before "use of 133 acre-feet" in the first two paragraphs (for Lorenz and for Enid Municipal Authority). And Mr. Drake seconded the motion.

Chairman Herrmann asked if "concurrent" meant anything in the Order, and Mr. Jerry Barnett said it acknowledges the competition or the sharing, and Mr. Strong said the lease does not state a split of the amount. Mr. Jerry Barnett said this motion would be in lieu of the earlier proposed language.

Chairman Herrmann clarified the change would only be to insert the word "concurrent." He asked the applicants to comment. Mr. Lorenz asked for clarification. Mr. Strong said the order that was drafted and presented, received in the mail by the applicants 10 days ago, would only be modified to add the word "concurrent" in the first two paragraphs of the Order as a clarification to remind both parties – Enid and Lorenz – cannot use more than 133 acre feet of water combined in their combined use under these temporary permits, and has nothing to do with Mr. Lorenz's prior right of 187 acre-feet of water. Mr. Lorenz said only 133 a.f., not 133 a.f. for each, and Mr. Strong said the clarification sought by the Board is that it is not 133 acre feet for Mr. Lorenz, plus 133 a.f. for Enid, but 133 a.f. combined to be used concurrently. Chairman Herrmann interjected the original lease language would apply. Mr. Jim Barnett said that change is acceptable.

Mr. Sevenoaks asked if the motion included the correction to the legal description, and Mr. Drummond stated that it did. Mr. Buchanan asked if Mr. Lorenz accepted the change; Chairman Herrmann said, yes, he had "nodded." Mr. Lorenz said he had another question; the original permit was for irrigation, and he came to the Board to amend the application for oil and gas, and then later wanted to help the Town of Okeene with its need for water supply. He said he was told he could amend the application to include municipal use and he wondered if he wouldn't be able to do that now. Chairman Herrmann said that question is not before the Board. Mr. Strong responded that nothing has changed there, what is before the Board is an order that grants Mr. Lorenz the ability to use up to 133 a.f. under a temporary permit for oil and gas use, and what he was informed about the amendment process has not been changed by this order. He advised Mr. Lorenz will have to go through the

process and procedure to file an amendment, and depending upon the amendment, can be protested by others and go back to a hearing process, etc. Mr. Lorenz indicated he understood.

Chairman Herrmann stated what is before the Board is an application for oil and gas and that is what it will act on. Any other matter is beyond the scope of what the Board is considering.

Chairman Herrmann stated the motion is to accept staff recommendation with the clarification of the language of the legal description, and under the Order in both [paragraphs] add the word, “concurrent.” There were no other comments or discussion by the Board members, and Chairman Herrmann called for the vote.

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

Chairman Herrmann stated the motion was approved.

B. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Temporary Permit to Use Groundwater No. 1983-612, City of Tuttle, Grady County; Recommended for Approval:

1. Summary – Ms. Julie Cunningham stated this item is an application to amend a temporary permit to use groundwater by the City of Tuttle, requesting to add water, land, and well sites. The record showed the City owned all of the platted land but only parts of the unplatted land. She said since the order had been issued, the agency had received an exception by the applicant who submitted an affidavit that it did have title to the property. Chairman Herrmann interjected the exceptions were received late yesterday, after the close of business September 15.

General Counsel Jerry Barnett stated that the order is very complicated, there are several different issues—ownership of land, platted land, unplatted land, different wells and a number of issues raised by protestants. He said the exceptions filed by Tuttle late Monday raised a number of issues that should be given due consideration. There are protestants in attendance today, and depending upon any presentation by them, staff believed that in light of Tuttle’s exceptions this matter should be remanded to staff and the hearing examiner. Chairman Herrmann stated the exceptions would be communicated with the protestants, and then returned to the Board.

Mr. Sevenoaks asked if the Board is allowed to accept the late filing even though due notice has been provided. Mr. Jerry Barnett responded the written exceptions could be disregarded because of the lateness, but, the party would have the opportunity to make presentation and state the exceptions today as well. Mr. Sevenoaks and Mr. Strong talked about the protestants having to return to the Board or having to respond to exceptions unprepared, that the Board could proceed and hear the presentation on the exceptions, and that the hearing examiner had ruled, and then exceptions were filed after 5:00 p.m. Mr. Jerry Barnett stated the written exceptions can be disregarded, they do not have to file written exceptions and in light of what the staff has been alerted to--and in anticipation they would present those in their presentation today--staff recommended to consider those rather than having confusion today.

Ms. Lambert asked why the exceptions were so late. Mr. Strong said the hearing examiner’s order points to defects that can be cured potentially, and much of what was provided in the exceptions are attempts to cure some of those. Rather than sorting through a complicated web of different deeds, rights of way easements, etc., the Board can ignore the exceptions and go forward with the original proposed order, or hear that information and make a decision today, or remand to staff and the hearing examiner to work with the protestant, sort through it, and bring it back to the Board.

2. Discussion and presentation by parties. There was no presentation by the parties.

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.

Mr. Drake said it appeared that after hearing the information today it may be remanded to staff anyway. He then moved to remand the proposed order to staff. Mr. Drummond seconded. Mr. Strong asked if that included the hearing examiner as necessary, and Mr. Drake said, yes.

Chairman Herrmann said the motion is to remand; there was no further discussion and he called for the vote.

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

Mr. Buchanan departed the meeting at 11:11 a.m.

C. 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

**Chairman Herrmann**

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.*

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. General Counsel Jerry Barnett stated to the members that he did advise that disclosure of discussion of the litigation will seriously impair the ability of the Board and State to conduct the litigation in the public interest.

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.

Chairman Herrmann stated he would accept a motion to enter Executive Session.

At 11:20 a.m. Mr. Drummond moved and Ms. Lambert seconded that the Board enter an Executive Session.

AYE: Lambert, Feaver, Drake, Sevenoaks, Drummond, Fite, Herrmann  
NAY: None

ABSTAIN: None  
ABSENT: Hitch, Buchanan

**B. Designation of person to keep written minutes of Executive Session, if authorized.**  
Chairman Herrmann designated Executive Secretary Mary Schooley to keep written minutes.

**C. Executive Session, if authorized.**  
The Board entered Executive Session at 11:25 a.m.

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

At 11:49 a.m. Mr. Drake moved to return to Regular Session, and Ms. Feaver seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Hitch, Buchanan

The Board did not vote or take action on any matter discussed in the Executive Session.

## **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. He polled the members and determined there would not be a quorum of members at the City of Moore facility dedication. Chairman Herrmann asked Mr. Drummond to serve as Acting Secretary in Mr. Buchanan's absence.

## **8. ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:51 a.m. on Tuesday, September 16, 2014.

## **OKLAHOMA WATER RESOURCES BOARD**

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

\_\_\_\_\_/Absent\_\_\_\_\_  
Linda P. Lambert, Vice Chairman

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Marilyn Feaver

\_\_\_\_\_/Absent\_\_\_\_\_  
Richard Sevenoaks

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

\_\_\_\_\_/s/\_\_\_\_\_  
Jason W. Hitch

***ATTEST:***

\_\_\_\_\_/s/\_\_\_\_\_  
Tom Buchanan, Secretary  
(SEAL)