

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**September 15, 2015**

**1. CALL TO ORDER**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Secretary Jason Hitch at 9:54 a.m., on September 15, 2015, in the second floor meeting room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on September 11, 2015, at 4:15 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

Secretary Hitch thanked everyone for their patience with his delayed arrival to Oklahoma City, and he asked for the roll call of members.

A. Roll Call

Board Members Present

Jason Hitch, Secretary  
Stephen Allen  
Tom Buchanan  
Bob Drake  
Richard Sevenoaks  
Ed Fite

Board Members Absent

Linda Lambert, Chairman  
Ford Drummond, Vice Chairman  
Marilyn Feaver

Staff Members Present

J.D. Strong, Executive Director  
Rob Singletary, General Counsel  
Amanda Storck, Chief, Administrative Services Division  
Joe Freeman, Chief, Financial Assistance Division  
Julie Cunningham, Chief, Planning and Management Division  
Derek Smithee, Chief, Water Quality Programs Division  
Mary Schooley, Executive Secretary

Others Present

Kaylee D. Maddy, Doerner Sanders Daniel Anderson; Enid, Roos, Robert; Oklahoma City, OK  
Rebecca Schafer, Willdan Financial Services, Plano, TX  
Jason Childress, Oklahoma Gas & Electric, Oklahoma City, OK  
Justin Hodge, Oklahoma Department of Environmental Quality, Oklahoma City, OK

Dave Taylor, Waurika Master Conservancy District, Waurika, OK  
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK  
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK  
Mike Mathis, Continental Resources, Oklahoma City, OK  
Dean Couch, Oklahoma City, OK  
Eric Edwards, Cimarron Terrace Water Association, Enid, OK  
Bud Ground, Environmental Federation of Oklahoma, Oklahoma City, OK  
Russ Doughty, Oklahomans for Responsible Water Policy, Broken Bow, OK  
Charles Swinton, BancFirst, Oklahoma City, OK  
Steven Hoffman, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Greg Carr, Oklahoma Department of Environmental Quality, Oklahoma City, OK

B. Nomination and Vote to Elect Acting Chairman for the September Meeting Proceedings.

Mr. Hitch stated the Board needed to nominate and vote to elect an Acting Chairman for the meeting as the Chairman and Vice Chairman are both absent.

Mr. Drake nominated Mr. Hitch to serve as Acting Chairman, and Mr. Allen seconded the nomination.

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

Mr. Hitch was elected to serve as Acting Chairman.

C. If necessary, Appointment of Acting Secretary.

Mr. Hitch appointed Mr. Bob Drake as Acting Secretary.

D. Discussion, Amendments, and Vote to Approve Official Minutes of the August 18, 2015, Regular Meeting.

Acting Chairman Hitch asked if there was discussion or changes to the draft minutes of the August 18, 2015, Regular Meeting. There were no changes or discussion.

Mr. Fite moved to approve the August 18, 2015, meeting minutes and Mr. Sevenoaks seconded. There were no comments, and Acting Chairman Hitch called for the vote.

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

E. Executive Director's Report

Mr. J.D. Strong, OWRB Executive Director, stated there is no Legislative report as there is little action at the State level, and Congress is back in session and focused on the President's Iran deal and the ability to pass a continuing resolution to fund government by October 1. Mr. Sevenoaks asked about the status of the WOTUS rules which Mr. Strong stated has been in effect for less and a month in all but the 13 states that had joined in a lawsuit in North Dakota. States are still waiting for guidance from EPA and the Corps of Engineers about implementation, and Mr. Strong said that staff is participating in conference calls and webinars sponsored by EPA and the COE to learn about the new rule and what effect it may have.

He said staff is expecting a few interim studies looking at drought and inter/intra-state water transfers, that the full House was invited to attend the interim study on transfer of water, which has not been posted to date but anticipated to be October 25. Mediation technical meetings are ongoing and there is a proposed executive session for discussion on the Chickasaw/Choctaw case and also the Arbuckle Simpson, although there has only been filing of briefs and he asked Mr. Rob Singletary, OWRB General Counsel to update the members on that matter. Mr. Singletary said there had been 160 pages of briefs filed, and a one-day hearing on the merits has been scheduled for September 23, 2015, before Judge Swinton in Oklahoma County. He explained the process to the members, which includes the presentation of 187 slides and 2,600 pages of administrative record.

Mr. Strong continued his report noting that Senator Simpson held a roundtable on flooding on August 18 and it was apparent the significant flooding was the 50 inches of rainfall and likely wasn't exasperated by mine pit dewatering. He said that on August 19 and 24 staff participated in conference calls and webinars regarding the WOTUS rule; the agency Management Retreat was held August 20 at the Oklahoma Memorial reviewing the strategic plan; staff attended the presentation by the Northwest Water Action Plan (NWAP) representatives on August 21 detailing near-term, mid-term, and long-term strategy for the area; he spoke to the Red River Valley Association in Durant on August 27; participated in the 2<sup>nd</sup> Beaver-Cache Regional Water Planning Roundtable on August 28; met with the Central Oklahoma Water Resources Association on September 2, and he toured the Tyson plant at Broken Bow with the Secretary of Agriculture.

Mr. Strong said in regard to upcoming activities, he will be speaking to the Oklahoma Rural Water Association on September 17, and will attend the drought grant/DWSRF check presentation with local legislators at Altus on September 21; the Arbuckle Simpson Aquifer hearing is September 23 at 10:00 a.m., and he will attend the Arkansas-Oklahoma Arkansas River Compact annual meeting in Tahlequah on September 23-24. The next Beaver-Cache planning meeting is September 25 at Cameron; and September 28-30 the Interstate Oil & Gas Compact Commission/National Rural Water Association/Groundwater Protection Council conference will be at the Cox Center. Mr. Strong said OWRB employee Gavin Brady will be retiring September 30; the Western States Water Council will meet in Manhattan, KS, October 5-9; Chairman Linda Lambert will be inducted into the OCU's Oklahoma Commerce & Industry Hall of Honor on October 14; the Environmental Federation of Oklahoma annual meeting is October 14-16 (he'll be speaking on the 15<sup>th</sup>); and the NWAP Water Law Workshop will be held in Enid on October 22. He concluded his report announcing the next OWRB meeting will be held on October 20, 2015, at 9:30 a.m. in the OWRB Board Room.

Mr. Drake asked about the status of the Oklahoma WOTUS lawsuit and lawsuit of other states. Mr. Singletary and Mr. Strong explained it has not been assigned to a court by the judicial review board, but the rule is effective in Oklahoma and all other states except the 13 states as that filed in the federal district court in North Dakota which decided to issue an injunction. There have been many petitions for injunctions filed throughout the US, but until the actions are consolidated and decided it is technically effective.

There were no other questions for Mr. Strong.

#### D. Monthly Budget Report.

Ms. Storck presented the budget report for August 2015 stating that with only two months into the new fiscal year, the agency has 90% of funding available, and 83% of the fiscal year remaining. She is in the process of entering the agency's budget request including program information into the state system which is due October 1, which she detailed. Mr. Sevenoaks asked about the Board reviewing the Strategic Plan, and Mr. Strong explained that at the retreat staff reviewed the plan but

major updates are due every two years. Ms. Storck added this year's update regarded staff review and update of the action plan for each goal and objective.

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 Ada Public Works Authority, Pontotoc County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$26 million loan request from the Ada Public Works Authority. Ada has requested the loan to construct approximately 11.7 miles of 30-inch water line from Byrd's Mills Spring to the Ada water treatment plant to replace a 24-inch line which has been in service since the 1920's. He said at Byrd's Mill Spring, improvements will include metering, installation of a new SCADA control system, rehabilitation of the Spring's existing water storage facility, and adding security cameras and fencing. The Authority will also be constructing approximately 11.4 miles of 8-inch potable water lines and constructing improvements to its water wells. Loan funds will also be used at the water treatment plant to construct a new chemical building, high service pump building upgrade, new laboratory and 2.3-million gallon storage tank. Mr. Freeman stated the loan will be funded through the Drinking Water State Revolving Fund loan program, and he noted provisions of the loan agreement. The Ada PWA debt coverage ratio stands at approximately 2.0-times. Staff recommended approval of the loan application.

Mr. Cody Holcomb, Ada City Manager, and Gary Kender, City Engineer, were present in support of the loan application.

Mr. Sevenoaks asked about the city's water supply and taking water from the Arbuckle Simpson Aquifer. Mr. Holcomb said he deferred to the OWRB General Counsel about questions that are not on this meeting agenda, and Mr. Strong said there can be discussion as it relates to this project. Mr. Sevenoaks asked if this is a new water source, and Mr. Holcomb responded no, the project is for improvements to the existing infrastructure. Mr. Hitch asked if the security improvements related to Department of Homeland Security regulations or the Environmental Protection Agency's Infrastructure protection program. Mr. Holcomb answered it is his understanding the City is not following any formalized protocol other than the City's own interest to protect the source and assets. Mr. Allen asked the schedule of construction, and Mr. Holcomb responded greater than a year, executing contracts within the next few months.

There were no further questions, and Mr. Drake moved to approve the DWSRF loan to the Ada Public Works Authority, and Mr. Buchanan seconded. Acting Chairman Hitch called for the vote.

AYE: Buchanan, Drake, Sevenoaks, Fite, Allen, Hitch

NAY: None

ABSTAIN: None

ABSENT: Drummond, Feaver, Lambert

## **3. SUMMARY DISPOSITION AGENDA ITEMS**

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

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

There were no requests to transfer items to Special Consideration.

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

Mr. Sevenoaks asked about item 3.D.1. regarding the agreement with the USCOE for the Phase 2 completion of surveys and yield analyses of public water supply lakes. Mr. Strong responded that through the COE Planning Assistance to the States program, as funding has been available, the agency has been updating reservoir yield analyses, and is not restricted to Corps lakes but focused on lakes larger than 500 acre-feet. Staff has prioritized the lakes according to the hot spots or drier parts of the state where there are greater water challenges.

Mr. Sevenoaks also asked about item 3.D.4. regarding the agreement with the Texas Commission on Environmental Quality for development of an online data platform. Mr. Strong explained this is the “Water Data Exchange” or WaDE project, which is a project from the Western States Water Council and grant from EPA to the Texas Water Development Board subcontracting with the western states to develop a cohesive water use data network. It is focused on water use report data from permittees to ultimately be made available to the public and allow all the western states to be able to share that data. Mr. Sevenoaks asked if Texas data will be available and Mr. Strong said ultimately it will and Oklahoma is one of the first five states to participate; this part of the project is to develop an online platform.

There were no other questions regarding the Summary Disposition Agenda, and Acting Chairman Hitch stated he would entertain a motion to approve the Summary Disposition Agenda.

Mr. Allen moved to approve the Summary Disposition Agenda as presented, and Mr. Sevenoaks seconded.

There were no questions or comments, and Acting Chairman Hitch called for the vote.

AYE: Buchanan, Drake, Sevenoaks, Fite, Allen, Hitch

NAY: None

ABSTAIN: None

ABSENT: Drummond, Feaver, Lambert

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. Letter Agreement with U.S. Army Corps of Engineers through District Engineer for the Tulsa District for the Phase 2 completion of bathymetric surveys, yield analyses of municipal and industrial public water supply lakes.

2. No-Cost Time Extension Agreement between OWRB and Oklahoma State University, Department of Zoology for water monitoring and sampling programs in coordination with other state environmental agencies.

3. Intergovernmental Agreement with the University of Oklahoma through its University Outreach/College of Continuing Education's Forum & Conference Services ("OCCE") to provide required continuing education for floodplain managers and administrators.

4. Intergovernmental Agreement with the Texas Commission on Environmental Quality (TCEQ) for the development of a common online platform and data transfer methodology and software in association with the Western States Water Council's Water use Data Exchange Project.

5. Intergovernmental Agreement with the Office of the Secretary of Energy & Environment for reimbursement of monies for the water monitoring and pollution control programs.

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

1. Barry Bollenbach, Sr., Kingfisher County, #2014-603
2. Keith Alan Welch, Harmon County, #2015-536
3. Commissioners of the Land Office, Jackson County, #2015-537
4. Jeffrey C. Prater, Stephens County, #2015-557
5. Walter A. Bode, II & Rita G. Bode, Major County, #2015-564
6. Paul E. & Gracie J. Cook, Alfalfa County, #2015-571
7. Rempel Farms, Inc., Grant County, #2015-572
8. Withers Ranches, Inc. Caddo County, #2015-577

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

1. Kronseder Farms, Inc., Major County, #1974-055
2. Sue Schroeder, Major County, #1976-673
3. Sandhill Resources, Inc., Grant County, #1980-575

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

1. James & Deann Smith, Pottawatomie County, #2014-592
2. Commissioners of the Land Office, Greer County, #2015-538
3. Keith R. Gray Trust, Murray County, #2015-556
4. Charles D. & Lynda S. Roberts, Pontotoc County, #2015-567
5. Corey Barnes and Greg Barnes, Texas County, #2015-569

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

1. City of Elk City, Beckham County, #1979-568
2. Roos Ranch, Inc., Murray County, #1984-653
3. MPH, L.L.C., Beaver County, #1995-590

I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:

1. Tuls Hemann Enterprises Land, L.L.C., Cimarron County, #1968-347B
2. Joe E. Mackey, Kingfisher County, #1970-296

J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:

1. Alpha Farms, L.L.C., Kingfisher County, #2015-023

K. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:  
None

L. Consideration of and Possible Action on Dam and Reservoir Construction:  
None

M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:

1. New Licenses and Operators:

- |    |                               |          |
|----|-------------------------------|----------|
| a. | Licensee: Walker Pump Service | DPC-0945 |
| 1. | Operator: Doug Walker         | OP-2114  |

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

- |    |  |          |
|----|--|----------|
| a. | Licensee: Van & Company Geothermal, Inc. | DPC-0212 |
| 1. | Operator: Alan Moin                      | OP-2115  |
| b. | Licensee: GSI Engineering, L.L.C.        | DPC-0385 |
| 1. | Operator: Audie Thornburg                | OP-1847  |

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

None

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

1. Town of Buffalo, Brian D. Bowles, #FPA-644
2. City of Catoosa, Craig M. Stokes, #FPA-645
3. Creek County, Meagan M. Vandecar, #FPA-646
4. City of Cushing, Eric L. Smith, #FPA-647
5. City of Newcastle, Rebecca L. Brewster, #FPA-648
6. Tonkawa Tribe, Theresa A. Mills, #FPA-649
7. City of Tulsa, Doug D. Duke, #FPA-650

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

A. No items. There were no items of discussion for the Board's consideration.

**5. SPECIAL CONSIDERATION**

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Temporary Groundwater Permit No. 2012-573, Enid Municipal Authority, Major County:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that this item is a proposed application for a temporary permit to use groundwater by the Enid Municipal Authority (EMA). The applicant has requested a permit to withdraw 320 acre-feet of groundwater from one existing well located on 160 acres of dedicated land in Major County for municipal use. The application was protested by the Cimarron Terrace Water Association (CTWA) that raised issues of the lawfulness of the use, and whether the use would unlawfully deplete the water. Following the issuance of the proposed order, Ms. Cunningham stated last Friday (September 11) the protestant submitted exceptions to the proposed findings of fact, conclusions of law, and Board order which is provided in the members' packet, and also provided to the members last Friday. She said the issues brought in the exceptions are similar to issues previously brought to the administrative hearing and assessed by the hearing examiner. Ms. Cunningham reviewed the four points of groundwater law which must be met by the applicant in order to approve the permit request, and if met, the Board shall issue the permit. First, the city has valid deeds and has specific reservations of rights to the dedicated land in order to access and produce groundwater from the property. Secondly, the land overlies the Cimarron Alluvium and Terrace Deposits Groundwater Basin and in this case the maximum annual yield has not been determined and the default appropriation is two acre-feet of water per acre of land owned, and there are no well-spacing requirements. Protestants alleged the withdrawal of groundwater

would deplete the aquifer and affecting property owners over the basin; however, but no evidence was provided the proposed use would be unlawful, and the hearing examiner ordered the groundwater law is a utilization law and allows for the controlled reduction of groundwater. Regarding the third point of law, Ms. Cunningham stated that municipal use is a beneficial use, and fourthly, waste will not occur. Ms. Cunningham stated the protestants claimed the EMA has committed waste by depletion in the past by using groundwater without a permit and the record indicted the City acknowledges it is working with the Board to solve discrepancies with water rights records and recognized past water use without the proper permit. The EMA is working to resolve and obtain the appropriate permits since 2013 and to obtain temporary 90-day permits. The hearing examiner stated the Board has held in other cases that past waste does not necessarily support a before-the-fact determination that waste will occur in the future.

Mr. Sevenoaks asked if water is currently being taken without a permit and Ms. Cunningham said water is being taken under a 90-day permit. He asked if all pumping is covered by a permit, and Mr. Strong said yes, that which the staff is aware of, and this [order] would clean up this particular process. Mr. Hitch asked if the 90-day permit is being “rolled” continuously and would that have the effect of a issuing a permanent permit, and Mr. Strong said it can be revoked at anytime and is only valid for 90 days at a time. Ms. Cunningham said the 90-day permit is issued by the Executive Director, and is common procedure to issue a 90-day permit while processing the application. She said this is a very complicated case with many amendments, legal briefings and continuances over several years. Ms. Cunningham concluded her presentation stating the hearing examiner determined the applicant has met the four points of law, and indicated the application should therefore be granted. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order for application #2012-573.

Ms. Cunningham stated that both parties are represented today; the applicant is represented by Kaylee Davis Maddy, Doerner Sanders Daniel Anderson, and protestants are presented by Mr. Eric Edwards.

There were no questions by members.

2. Discussion and presentation by parties. Acting Chairman Hitch stated each party will be allowed five minutes total to speak, and he invited the applicant’s representative to address the Board. Ms. Kaylee Davis Maddy spoke to the members and stated she works with Mr. Jim Barnett who is not able attend; they represent the City of Enid and would like to reserve the majority of her time to respond. She said that Enid is very appreciative of the hearing examiner and Board staff while the City is working to get legal.

Mr. Eric Edward addressed the members stating his familiarity with the area and he is a landowner within two miles. He said he represents the members of the Cimarron Terrace Water Association (CTWA) and Mr. Mark Munkers who owns adjacent land south and west of this land. Mr. Edwards noted the issues of the findings to which he had filed exceptions to the hearing examiner’s report. He said Mr. Munkers testified at the hearing the groundwater level has decreased significantly since Enid drilled the well, and since the matter began three years ago, a lot has happened. He said explained the CTWA is comprised of landowners that formed the group about 50 years prior when the City attempted to take the property by eminent domain; the members take 10% of proceeds from water leases and use it for scholarships and other programs to benefit the Town of Ames. He said this is a unique situation in that there are leases between the members of the CWTA and the City of Enid which had been unitized in 1972-74, filed in county records, and the City agreed to 640 acre spacing units; however, some farmers declined to join and some units are less than 640 acres. He wanted to recognize the City of Enid as the operator of these units has a fiduciary duty to the people that are in the CTWA to operate the wells in a fair and reasonable manner. He said here the City has drilled a well where it already has a unit – which is documented in the record -- and drilled across from Mr.

Munkers's land which he felt was an attempt to breach the fiduciary duty and drain the water from Mr. Munkers's and the adjoining landowners. He said here the City has leases and water conveyances for which it pays royalty, and more recently acquiring water rights and attempting to severe groundwater. The law stated to obtain groundwater the land must be owned or have a valid lease, and the City does not have either in this case. He said at one time it did own the surface, but sold it to the Mackies and whatever reservations they made does not comply with the policy of the State, which he contended is to promote conservation and stewardship. He said Mr. Munkers also testified the surface water of the area is connected to the groundwater this well draws from.

Acting Chairman Hitch indicated Mr. Edwards is out of time and allowed him to wrap up his comments. Mr. Edward continued describing the former Dolese sand pits which has been impacted due to the City withdrawing water and dropping the water table. He argued the City is not putting the water back into the aquifer like an irrigation system, and he asked the Board to consider the City has not met the statutory requirements to obtain a permit, and has shown repeatedly to commit waste by depletion by producing water without a valid permit. He said it is not in the interest of conservation or in the best interest of the state to allow water to be drawn from this well when there are other wells.

Mr. Sevenoaks asked about his statement water is being withdrawn without a permit, but staff says they have a permit. Mr. Edwards said the evidence at the hearing was the City's representative acknowledged it did not have permits for all wells and he contended he did not have notice of a temporary permit issued by the board. Mr. Strong interjected the City may have been referring to the fact it does not have a regular permit, which is what it is attempting to do with this application, but has had 90-day temporary permits issued under the discretion of the Executive Director which aren't noticed and don't go to hearing, and can be revoked at anytime. Mr. Sevenoaks asked about the statement the City doesn't have a lease or own the land, and Mr. Edwards said the land was sold to the Mackies. Mr. Strong said the applicant can address these issues.

Mr. Allen summarized saying, the City sold the land to the Mackies with the reservation of one property right, and he asked if Mr. Edwards believed that reservation did not constitute ownership and satisfy the statute. Mr. Edward said the policy of the State is stated specifically the land must be owned or have a valid lease so that the severance of groundwater is not promoted which is not like oil and gas—the groundwater sources are not a finite source and cannot be separated from the surface water sources within a few miles away. He said by promoting this severance, the Board is condoning Enid's attempt to buy water rights in the area; the landowners care about water in the future and the City of Enid did not have a stake in the land. He said if the Board allows it to continue, it will promote waste by depletion.

Mr. Buchanan asked if Mr. Munkers' personal belief is that this would impact his well. Mr. Edwards said it is a fact and the city engineer recognized there is a pumping order –first wells it owns, secondly, wells where there is a conveyance, and third, wells where it pays a royalty; moreover, the proximity of the well by common sense indicates it will affect the well.

Acting Chairman Hitch invited Ms. Maddy to address the members, and allowed her seven minutes.

Ms. Maddy responded to Mr. Edwards statement that there is no evidence the water level will decrease, there is no spacing issues, and there are numerous wells nearby. She believed the issue is that the City of Enid will use this well instead of the CTWA wells, and there is no necessary evidence of that. The City needs a lot of water to take care of its citizens and is doing what it can to find sources. She said the hearing examiner has heard Mr. Edwards' points which have been briefed many times as to being relevant to this case, and the hearing examiner made the decision the application has met the four points of law. She contended that Mr. Edwards's points about surface right issues, which she said the Board has decided in the past to severe rights and still have a right to groundwater, and she referenced *Mack Oil Co. v. Laurence* and *Medicine Lodge Investments*. Mr. Sevenoaks asked and Mr. Strong confirmed the practice of severing rights. Ms. Maddy continued that Enid reviewed its

situation with a new city engineer, Mr. Gdanski, and began to file multiple temporary applications to get legal and has filed for 90-day provisional temporary permits in the meanwhile processing the temporary permits. Ms. Maddy concluded her remarks stating the permits are for temporary applications because the hydrologic study has not been completed, and the two acre feet allowed is the only number to use until the study is completed, which Mr. Strong stated is underway. She said the City of Enid believes the Board has made the correct decision, and the City has met all the requirements to obtain a temporary permit on this well. She addressed Mr. Sevenoaks' question that Mr. Gdanski testified Enid filed for temporary permits, and during this time Enid has all the provisional 90-days permits for all the wells. There were no other questions by the members.

Mr. Sevenoaks asked if, until the study is completed, is there a way to compromise and issue a temporary permit with one-acre foot per acre. There was discussion about whether the Board has discretion, about concern for future requests and mining of the groundwater, and recognizing what the state statutes allow and don't allow. Mr. Buchanan said the statutes allow that each permittee that meets the four parameters is to have access to two acre-feet until the study is done and to change that would treat permit requests differently. Mr. Strong said the statutes state, "shall not be less than two acre-feet per acre" and the Board's discretion is to allow more. Mr. Singletary added though, unless the majority of the landowners of the basin request less, which would be a separate request. Acting Chairman Hitch said the Board's choices are to vote to approve or disapprove the order, or to table consideration. The members recognized the City needs the water and that the application was filed in 2012.

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. Sevenoaks moved to grant Enid the water, and Mr. Buchanan seconded.

Acting Chairman Hitch asked if there was further discussion. Mr. Drake stated it is his understanding staff has recommended approval, the hearing examiner has recommended approval, the four points of law have been met, and he understands by rules and laws it should be two acre-feet, and Ms. Cunningham answered that is correct.

Mr. Singletary asked Mr. Sevenoaks to clarify the motion; and Mr. Strong said to give Enid the water or approve the order. Mr. Sevenoaks stated he moved to approve the order as written, and Mr. Buchanan stated that is the intent of his second.

Acting Chairman Hitch asked if there was any further discussion. There was not, and he called for the vote.

AYE: Buchanan, Drake, Sevenoaks, Fite, Hitch

NAY: None

ABSTAIN: Allen

ABSENT: Drummond, Feaver, Lambert

Mr. Hitch stated he agreed, but also sympathized with Mr. Edwards.

B. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. No items were transferred from the Summary Disposition Agenda.

## 6. PROPOSED EXECUTIVE SESSION

Acting Chairman

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 (1) 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. and (2) Oklahoma Farm Bureau Legal Foundation, et al., v. Oklahoma Water Resources Board, v. Tishomingo National Fish Hatchery, 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.

Acting Chairman Hitch asked for a statement by the General Counsel.

OWRB General Counsel Singletary stated that pursuant to section 307(b)(4) of the Open Meetings Act it is his advice as General Counsel that the disclosure of the communications and discussions that are proposed under agenda item 6. related to the litigation referenced in the agenda would seriously impair the ability of the Board to conduct the pending litigation in the public interest.

Acting Chairman Hitch stated the Board would take a ten minute recess. The Board recessed at 10:55 a.m.

The Board returned from recess at 11:15 a.m. Acting Chairman Hitch asked for a motion on the proposed Executive Session.

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

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

AYE: Buchanan, Drake, Sevenoaks, Fite, Allen, Hitch

NAY: None

ABSTAIN: None

ABSENT: Drummond, Feaver, Lambert

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

Acting Chairman Hitch designated Executive Secretary Mary Schooley to keep written minutes.

C. Executive Session, if authorized.

The Board entered Executive Session at 11:17 a.m. on Tuesday, September 15, 2015.

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

At 11:25 a.m., Mr. Drake moved the Board return to open meeting, and Mr. Buchanan seconded.

A YE: Buchanan, Drake, Sevenoaks, Fite, Allen, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: Drummond, Feaver, Lambert

There was no action taken by the Board regarding matters discussed in 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.

There were no New Business items for the Board's consideration. However, Mr. Hitch mentioned a recommendation of a demonstration farm in Illinois regarding waste management.

**8. ADJOURNMENT**

There being no further business, Acting Chairman Hitch adjourned the meeting of the Oklahoma Water Resources Board at 11:26 a.m. on September 15, 2015.

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Linda P. Lambert, Chairman

\_\_\_\_\_/Absent\_\_\_\_\_  
F. Ford Drummond, Vice Chairman

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

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

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Tom Buchanan

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen B. Allen

*ATTEST:*

\_\_\_\_\_/s/\_\_\_\_\_  
Jason W. Hitch, Secretary (SEAL)