

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**February 21, 2017**

**1. CALL TO ORDER**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Linda Lambert at 9:30 a.m., on February 21, 2017, at the Oklahoma Water Resources Board, at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on February 16, 2017, at 4:30 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, and provided on the agency's website.

Chairman Lambert welcomed everyone to the regular meeting of the Oklahoma Water Resources Board, and asked for the roll call of members.

A. Roll Call

Board Members Present

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

Board Members Absent

None

Staff Members Present

Julie Cunningham, Interim Executive Director  
Robert Singletary, General Counsel  
Cleve Pierce, Chief, Administrative Services Division  
Joe Freeman, Chief, Financial Assistance Division  
Kent Wilkins, Interim Chief, Planning and Management Division  
Bill Cauthron, Interim Chief, Water Quality Programs Division  
Mary Schooley, Executive Secretary

Others Present

Mark Walker, representing the Shrauners; Oklahoma City, OK  
Dale Cottingham, City of Blackwell; Oklahoma City, OK  
Todd Newcomb, Town of Vici; Tulsa, OK  
Lauren Hanna, Boaldin Family LLC; Oklahoma City, OK  
Derek Hardberger, Hall Estill/EOG, Oklahoma City, OK  
Saba Tahmassebi, Department of Environmental Quality, Oklahoma City, OK  
Krystina Phillips, City of Tishomingo; Ada, OK  
Bruce Wooderson, Wooderson Farms, Blackwell, OK  
Linda Scoggins, Wooderson Farms; Oklahoma City, OK  
George Kingston, City of Muskogee, OK  
Adria Berry, Environmental Federation of Oklahoma  
Randy Castor, Vici, OK  
Becky Castor, Vici, OK  
Mike Wofford, Oklahoma City, OK  
Charlie Swinton, BancFirst, Oklahoma City, OK  
Deena Suddeth, BancFirst, Oklahoma City, OK  
Mike Mathis, Continental Resources, Oklahoma City, OK  
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK  
Jared Davidson, Public Finance Law Group, Oklahoma City, OK  
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK  
Bud Ground, Environmental Federation of Oklahoma, Oklahoma City, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the January 17, 2017, Regular Meeting.

Chairman Lambert asked if there were any corrections to the minutes of the January 17, 2017, regular meeting. There were no changes, and Mr. Allen moved to approve the minutes. Ms. Feaver seconded.

Chairman Lambert called for the vote.

AYE: Drummond, Drake, Allen, Sevenoaks, Feaver, Fite, Hitch, Lambert

NAY: None

ABSTAIN: Buchanan

ABSENT: None

C. Interim Executive Director's Report

Ms. Julie Cunningham, OWRB Interim Executive Director, began her report stating it has been a busy month, and the Legislature is in session. The first item of business, however, is the presentation of a Resolution of Appreciation for Richard Sevenoaks, who has served 20 years on the Oklahoma Water Resources Board. Chairman Lambert read the resolution (attached). Mr. Sevenoaks received a standing ovation from the Board members, staff and audience. He said this is the best Board he had been associated with and he complimented the members, and said there are two important areas he asked the Board to focus on in the future that are important to the State: moving water to western Oklahoma and to the south to Texas; and, save the Ogallala Aquifer.

Ms. Cunningham continued her report stating the Senate Energy Committee will conduct confirmation hearings for the two new appointees to the Board, Charles Darby and Robert Stallings on Thursday, February 23. She said the agency had received the "Certified Healthy Business" for the second year due to agency employees participation in intramural sports and other activities; she

provided an update on drought conditions of the state, some areas are in extreme drought conditions, and drought in the southeast areas have been alleviated. Recent meetings Ms. Cunningham has been involved in include the US Army Corps of Engineers regarding partnerships in funding issues; the OSU Water Resources Center director Justin Moss regarding collaboration on research funding and the research symposium held in conjunction with the Governor's Water Conference; she met with representatives of the Grand River Dam Authority to further the work plan for its water planning develop; met with Chairman Lambert and Secretary Hitch regarding the agency's contract with the OMES for IT services; and the Produced Water Working Group is moving forward with the release of its report and preliminary recommendations and meeting on March 1. She added the OWRB, along with the members of the oil and gas industry, have applied for additional grant funding with the Bureau of Reclamation for further research regarding alternatives to deep well injection.

Ms. Cunningham noted the upcoming activities include her presenting to the Oklahoma Municipal League Water Summit on February 24; hosting the annual meeting of the Canadian River Commission on March, and Water Appreciation Day at the Capitol is March 21<sup>st</sup>, as is the March Board meeting which will be held at the OWRB offices at 9:30 a.m.

Ms. Cunningham stated an update concerning activities of the Congress and federal government is included in the meeting materials and contained the status of Cabinet nominations, including the confirmation of Scott Pruitt as Environmental Protection Agency Administrator, and she added Brittnee Preston will be scheduling visits with members of the Oklahoma Congressional Delegation and staff is preparing congressional requests. Regarding the State Legislative Update, Ms. Cunningham stated she had met with several legislators on water issues; staff is tracking measures and will be watching closely what measures make it through for consideration. On January 25, Ms. Cunningham presented budget information to the Committee on Appropriations Natural Resources and Regulatory Services Subcommittee and received questions on the water levels of the Ogallala and the how the water rights systems of other states affects the Ogallala. She noted the printed pictorial summary report of agency programs, activities, and funding sources, and water plan implementation goals. She participated in a, "Water Board 101" orientation with new legislators at the DEQ; and the Oklahoma Floodplain Managers Association sponsored a legislative reception. She asked Ms. Sara Gibson to review the printed distributed update on state legislative measures. Ms. Gibson addressed the members and said all items are in play until the March 3 deadline. She noted the proposed measures by Senator Schultz (SBs 285 and 743) regarding the Produced Water Working Group, and staff is currently working with Rep. Dunnington on HB 1537 creating the Water for 2060 Revolving Fund. Not much is known at the point about appropriations, after next week it will be known what measures are active. She responded to a question by Mr. Sevenoaks about the Governor's budget proposal and reducing the size of government, and said everything is on the table. Ms. Cunningham said several years in a row the agency has received budget cuts, needs to identify other funding sources, and it is the staff goal to fund the recommendations of the Water Plan. She said that 24% of funds that come in through fees, appropriations and the federal government are contracted out for work on technical studies such as the groundwater studies, surface water modeling, etc. Mr. Drummond said meetings will be held today to talk about the shortfall and additional cuts which Mr. Hitch said would be 5%. Ms. Cunningham said the Gross Production Tax funds to the agency were reduced last year by 28% and budgeting and managing the shortfall is very important. , She noted the remaining legislative deadlines.

Mr. Buchanan asked about the COE and interpretation on flood control and states' rights. Ms. Cunningham responded staff has met with Secretary Teague, and the COE has extended the deadline although it won't affect Oklahoma the same as i.e., states of the Missouri River. Sara Gibson and Brittnee Preston have been working on a comment letter with Secretary Teague's office regarding states' rights, flood allocation and federal control, and will also join with the Western States Water Council letter. Ms. Cunningham said a main issue is surplus water and defining surplus water, COE

lakes and easement issues, and also interstate projects, compacts and allocations and how those will be addressed; there are strong comments about states' rights issues. Mr. Drummond asked about land issue regarding the Red River, and Mr. Buchanan answered it regards a boundary dispute, not between Texas and Oklahoma, but land issue of access to federal property through private property; there are no minerals in the area and it is a matter of overreach.

There were no questions, and Ms. Cunningham concluded her report.

#### D. Financial Update

1. Budget Report. Mr. Cleve Pierce addressed the members and stated the budget report regards financial information for the month ending January 2017. During this reporting period, the agency has expended 51% of the appropriated budget, has expended 34% of the revolving fund budget, and expended 41% of federal dollars. Overall, the total budget remaining is 61%, with 42% of the fiscal year remaining. He said compared to last year, the agency had spent 57% compared to 61%; this will begin to dwindle in the coming months with staff being prudent before spending on larger items, but the agency is doing very well.

Mr. Drummond asked with another shortfall anticipated, is there room for another cut. Mr. Pierce answered he is concerned the revolving funds will be looked at and REAP funds which he will be watching through the budget negotiations. Responding to questions by the members, Mr. Pierce explained that revolving funds are non-expiring funds that come to the agency as fees, federal and reimbursement; but, the funds cannot be used for operations. A portion of the REAP can be used for operations; the money will be used for the communities that are in need, but it is the agency's choice what monies are used first. He and the members discussed the agency's use of funds categorized in lines 4-11 in the report, i.e., what funds are spent on salaries, what funds have to be spent on specific items, and which funds the agency can use discretion, as well as the legislature's moving of monies from one fund to another to fill a budget hole. Staff is working on a mechanism to get the money out the door quicker to the communities.

2. Audit Report. Mr. Pierce said there would be a financial audit of the agency sometime this year. He said that while information has already been provided, there has not been an introductory meeting or engagement letter as yet. The audit was requested by the Governor because of the change in leadership, which is beneficial to the agency to have "fresh eyes" on its operations.

There were no questions by the members, and Mr. Pierce concluded his report.

## 2. **FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Emergency Grant Funds for Depew Public Works Authority, Creek County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a \$3,929.20 Emergency Grant to the Depew Public Works Authority located in Creek County. At the September 2016 meeting, the Board approved a \$32,718.20 Emergency Grant which along with a 15% local match to drill a new offset well next to the existing well, and build a new well house. The new well is needed due to casing failure of the existing well. After approval of the project, bids were received but are over the estimated amount. Mr. Freeman said the Authority is requesting an increase of \$3,929.0. In addition, the Authority will increase the amount of local funds to \$6,467.19. Staff recommended approval of the increase in emergency grant funds.

Representing the Depew Public Works Authority was project Engineer Tim Ward.

There were no questions by Board members, and Chairman Lambert stated she would entertain a motion.

Mr. Drummond moved to approve the increase in emergency funds to the Depew Public Works Authority, and Mr. Drake seconded. Chairman Lambert called for the vote.

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

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Muskogee Municipal Authority, Muskogee County. Mr. Freeman stated this item is a \$110,000.00 loan request by the Muskogee Municipal Authority. Muskogee will use the funds along with \$38,000.00 in local funds to conduct a survey of approximately two miles of drainage channels, bridges, box structures and storm sewers in the Civitan Drainage Basin. He said the basin has experienced flooding events in the past with storm water that overtopped roads and inundated homes in the drainage basin due to undersized storm water infrastructure that needed rehabilitation. Hydraulic analysis of the basin and physical inspection of the infrastructure will be conducted prior to recommending improvement alternatives to reduce the risk of storm water flooding in the future. The loan will be funded through the principal forgiveness portion of the Board's 2016 EPA Capitalization Grant, and Mr. Freeman noted provisions of the loan agreement. Muskogee has been a long-time, good customer of the Board with five loans with the Board with a combined principal balance of \$19,900,000.00. Muskogee's debt coverage ratio stands at approximately 1.97-times. Staff recommended approval of the loan request.

Mr. George Kingston, Assistant Public Works Director, was present in support of the loan application. Mr. Drummond asked if there are many loans for just a study, and Mr. Freeman answered yes; the last loan that funded a study was for the Lawton project approved last October. There are one or two a year, he said. Mr. Drummond asked if the bond covenants allow for this type of project, and Mr. Freeman answered, yes.

There were no other questions, and Chairman Lambert called for a motion. Mr. Fite moved to approve the loan to the Muskogee Municipal Authority, and Mr. Drummond seconded.

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

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

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

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

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

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

Chairman Lambert asked if there were any questions regarding items on the Summary Disposition Agenda. Chairman Lambert asked about item 3.D.5. regarding the letter agreement with the U.S. Army Corps of Engineers raising the contract from \$750,000 to \$851,000 for administrative costs. Mr. Owen Mills, OWRB Director of Water Planning, explained that the agency is performing the study with the USGS whether funds from the COE are received. He said when first calculated it was known the COE takes a 15% administrative fee so the amount was adjusted about 8%; it is not known how much money will be available. He referred to the table in the document that shows the project is \$851,000 but the agency is only asking for \$214,000; the USGS will put in \$210,000 (approved through another contract on the agenda), and he explained the COE funds are Planning Assistance to the States money and when that comes available, the OWRB can request the \$427,000. Mr. Sevenoaks asked if there was an equal division of the \$851,000 and Mr. Mills explained the chart. Mr. Sevenoaks asked where the agency funds come from and if the project is budgeted. Ms. Cunningham answered yes, it is budgeted, the agency dollars are from the appropriated Gross Production Tax funds and the project involves the Roubidoux and Boone study. The agency has also asked for any "turn back" funds available.

Mr. Buchanan asked about item 3.D.3. and identified desalination projects. Ms. Cunningham explained this proposal with the Bureau of Reclamation regards the Produced Water Working Group preliminary findings which haven't been passed through the technical work group but there a couple of areas where additional study will be required. Mr. Mills added the desalinization concerns produced water not municipal water and will involve evaporation.

There were no changes to the agenda.

Chairman Lambert asked if there were other comments or questions regarding the Summary Disposition, and if not, she would entertain a motion to approve the Summary Disposition Agenda. There were no comments or questions.

Mr. Buchanan moved to approve the Summary Disposition Agenda, and Mr. Allen seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

C. Consideration of and Possible Action on Financial Assistance Division Items:

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

Item No.	Application No.	Entity Name	County	Amount Recommended
None				

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

1. Professional Engineering Services agreement between OWRB and Lynker Technologies for Lynker to review OWRB's models for the Upper Washita Stream System.

2. Agreement between OWRB and the United States Geological Survey to conduct groundwater hydrological surveys on the Boone and Roubidoux Aquifers.

3. Resolution to enter into a financial assistance agreement with the Bureau of Reclamation under the Water SMART: Title XVI Water Reclamation and Reuse Program.

4. Contract between OWRB and Oklahoma Floodplain Managers Associations, Inc., to publish informational materials to educate the public, floodplain managers and administrators on flood hazards and the reduction of these hazards.

5. Letter Agreement between OWRB and the U.S. Army Corps of Engineers through the District Engineer for the Tulsa District to update or begin hydrologic studies of aquifer basins in northeastern Oklahoma.

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

1. KTO Farms, L.L.C., Canadian County, #2016-560

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

1. Goldsby Water Authority, McClain County, #2011-607

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

1. Jimmie A. & Beverly A. Meeks, Tillman County, #2015-566

2. Reid & Sarah Shrauner, Texas County, #2016-526

3. First National Bank, Goodland, KS Custodian f/b/o Lonnie W. Gilley IRA, Garvin County, #2016-567

4. Jimmie A. & Beverly A. Meeks, Tillman County, #2016-572

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 Rights to Use Groundwater: None

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

1. City of Tishomingo, Johnston County, #2016-023

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

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

1. New Licenses and Operators:

a. Licensee: Tolunay-Wong Engineers DPC-0971

1. Operator: Josh Crow OP-2185

2. Operator: Arlin Barge OP-2188

b. Licensee: Holman Pump & Well Service DPC-0973

1. Operator: Brannon Holman OP-2186

c. Licensee: Alex Eubank Water Well DPC-0975

1. Operator: Alex Eubank OP-2187

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

a. Licensee: JW's Water Well Service DPC-0875

1. Operator: James Eldridge OP-1972

b. Licensee: Two Eight Drilling DPC-0215

1. Operator: Tyler Williams OP-2181

c. Licensee: Aimright Testing & Engineering DPC-0953

1. Operator: Hayden Wilson OP-2182

2. Operator: Brandon Parks OP-2183

d. Licensee: Associated Environmental Industries DPC-0269

1. Operator: James Jones OP-2184

e. Licensee: Hockaday Hardware DPC-0346

1. Operator: Brock Whitson OP-2189

- M. 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, McCurtain County, #FP-16-58
  - 2. Oklahoma Department of Transportation, McCurtain County, #FP-16-59
  - 3. Oklahoma Department of Transportation, McCurtain County, #FP-16-60
  - 4. Oklahoma Department of Transportation, McCurtain County, #FP-16-61
- N. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
  - 1. Kyle C. Clifton, City of Claremore, #FPA-703
  - 2. Charlie L. Ralls, City of Comanche, #FPA-704
  - 3. Jon D. Friesen, City of Kingfisher, #FPA-705

**04000 4. PROPOSED AMENDMENTS TO PERMANENT RULES Chairman Lambert**

**A. Consideration of and Possible Action on Adoption of Rules Amendments in Chapter 45 Oklahoma’s Water Quality Standards**

Chairman Lambert stated the time for public comment on the proposed rules has closed, and the purpose of this meeting is to hear the final recommendation from staff and Board approval as recommended or as amended

Staff recommends for approval the proposed changes of OAC 785:45 listed below:

1. Summary

- Subchapter 1. General Provisions
- 785:45-1-2. Definitions [AMENDED]
- Subchapter 7. Groundwater Quality Standards [AMENDED]
- 785:45-7-1. Scope and Applicability; Purpose [AMENDED]
- 785:45-7-2. ~~Criteria for Groundwater Protection and Corrective Actions~~ Groundwater Quality Antidegradation Policy [AMENDED]
- 785:45-7-3. Groundwater Classifications, beneficial uses and vulnerability levels [AMENDED]
- 785:45-7-4. Criteria for groundwater quality protection [NEW]
- 785:45-7-5. Corrective Action [NEW]

Mr. Bill Cauthron, Interim Chief, Water Quality Programs Division, stated to the members that after receiving public comments at the last Board meeting, both written and oral, staff looked at the comments and made three changes to what had been presented to the Board last month at the hearing, one substantial change, and two minor editorial changes. He said in general, both written and verbal comments were supportive and did receive broad-based support from both industry and special groups. However, Mr. Cauthron stated some comments regarded the possibility of unintended consequences as to implementation of the rules, and he referred to the detailed response to comments which have been provided in the meeting materials, and reviewed the high points of the comments and proposed changes.

Specifically, there were concerns regarding the narrative criteria in 785:45-7-4(b) to all fresh waters and he explained the rigorous process used to review the proposed rules. He said the rules were



no more stringent, and he also looked at the economic aspects and that the proposed rules had been reviewed by workgroups and several agencies. However, legitimate concerns were expressed which have been acknowledged, and staff recommends the following changes to the proposed rules brought to the Board last month: all narrative criteria in 7-4(b) will be moved to 785:45-7-4(c) which will make them only applicable ASR and AR activities. The criteria in 7-4(b) will then remain as it is currently. He said staff believed the change to be warranted as the primary purpose of the proposed revision was to address ASR and AR activities. The Standards revision was broad in nature and there were other issues in 7-4(b) which will be dealt with in the future.

Mr. Cauthron reviewed the two other changes, removing the term, “state environmental agencies” from 7-4(d), and a grammatical error in 7-4(c). Staff recommended approval of the proposed rules. Mr. Cauthron introduced OWRB staff members of the Water Quality Standards section.

2. Questions and Discussion by Board Members. Chairman Lambert asked if there comments or questions by members of the proposed changes.

Mr. Buchanan expressed his appreciation for refocusing to a narrow focus that the rules only apply to ASR and AR projects. He also thanked staff for leaving the door open because he believed the legislation was to encourage Oklahomans to use water differently is better and he hoped these rules encouraged ASR and AR opportunities.

3. Vote on whether to adopt recommended amendments as presented or as may be revised after discussions. Chairman Lambert stated that if there were no further comments or questions, she would entertain a motion to approve the proposed rules as presented.

Ms. Feaver moved to approve the proposed rules to Chapter 45 as presented, and Mr. Fite seconded.

Chairman Lambert called for the vote.

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

Chairman Lambert thanked the Water Quality Staff for their work, and the public for its participation through written and verbal comments.

B. Consideration of and Possible Action on Adoption of Rules Amendments in Chapter 50 Financial Assistance

Staff recommends for approval the proposed changes to OAC 785:50 listed below

1. Summary

Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants)  
Requirements and Procedures

785:50-7-7. Disbursement of funds [AMENDED]

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and  
Procedures

785:50-8-6. Disbursement of funds [AMENDED]

Subchapter 9. Clean Water State Revolving Fund Regulations  
Part 3. General Program Requirements  
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]  
785:50-9-33. Application for financial assistance [AMENDED]

Mr. Joe Freeman, Chief of Financial Assistance Division, addressed the members and stated there have been no changes from the proposed rules as presented last month, staff had not received comments before last month's Board meeting, and have not received comments since the last meeting. Staff recommended approval.

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

3. Vote on whether to adopt recommended amendments as presented or as may be revised after discussions.

Chairman Lambert stated she would entertain a motion to approve the proposed rules.

Mr. Drake moved to approve the proposed rules to Chapter 50, and Mr. Fite seconded.

Chairman Lambert called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: None

## 5. SPECIAL CONSIDERATION

Chairman Lambert read the first item, and asked Mr. Kent Wilkins to present the matter. Mr. Wilkins, Interim Chief, Planning and Management Division, stated there are three matters that are rather complex, and he will present background and history which are important for the Board to have during consideration.

A. Consideration of and Possible Action on both the Applications for Regular Permits to Use Stream Water Nos. 2014-059 and 2014-061, Wooderson Farms, Kay County, and the City of Blackwell's Protest and Request that the Applications be Remanded to a Hearing Examiner:

1. Summary – Mr. Wilkins explained this item is for two applications for regular permits to use stream water, 2014-059 and 2014-061, in the name of Wooderson Farms, Kay County, Oklahoma. The initial application was for 528.1 acre-feet and the second application was for 533.3 acre-feet, filed September 16, 2014, under the name of Wooderson Farms; a third application was 2014-060, for three diversion points on the Chickaskia River. On December 22, 2014, the City of Blackwell filed a letter with the Board requesting to receive notice when the applications were published, and the letter was placed in the file. On December 4, 2016, the publication of the public notice for application 2014-060 was completed in accordance with all applicable statutory and Board requirements. Nor protests or comments were received during the comment period and the application was approved at the December 2016 Board meeting.

Mr. Wilkins said that on January 9, 2017, publication of public notice for the other two applications was completed in accordance with all applicable statutory and Board requirements, and again, no comments or protests were received at that time, and the applications were placed on the January Board meeting summary disposition agenda. The City of Blackwell became aware the applications were on that agenda and alerted Board staff it had not received notice as requested in the 2014 letter. In response, those applications were removed from the January agenda in order for the

City to file a written request and to give sufficient time for the applicant to respond. On January 24, the City filed a written protest that requested the Board remand the application to a hearing examiner and also filed a supplemental request on February 14 requesting the permit 2014-060 also be reopened. On February 16, the applicant filed a response to Blackwell's request to remand the application. At this time, staff is asking for the Board to consider the City of Blackwell's request to remand the two pending applications to staff.

Prior to proceeding, Chairman Lambert said Mr. Allen would like to make a statement. Board Member Stephen Allen stated that Mr. Cottingham represents the City of Blackwell, and also represents his company in other matters, and he would abstain from participation in the consideration of this matter.

Chairman Lambert invited representatives of the parties to speak, allowing 10 minutes for each, which time can be used for presentation and responses. She asked that the City of Blackwell, represented by Mr. Dale Cottingham, present first, followed by Ms. Linda Scoggins for the Wooderson Farms.

2. Discussion and presentation by parties. Mr. Dale Cottingham addressed the members and introduced the Blackwell officials in attendance: City Manager Chip Outhier, Mayor T.J. Greenfield, and City Attorney Bryce Kennedy. He stated he appreciated Mr. Wilkins' comments about the matter regarding two items on the agenda today. He said the City has asked that permit 2014-060 be placed on the agenda for March to consider it be remanded. He said there are three essential issues, and he referred to a letter from City Manager Outhier of December 14 regarding specific notice of when the application (it is part of the file and the Woodersons are aware). Mr. Hitch asked if that is part of the statutory process for notification, and Mr. Cottingham responded he would review the statute for notice, but it is not the typical practice of the agency. He referred to the *Carlisle Case* which concerns not relying only on public notice but relies that when you know of a name and address of a party that has an interest, then specific written notice needs to be provided. He clarified this is not geared toward the agency, but toward Wooderson, and he noted the lawsuit between the parties regarding interference of the senior rights of Blackwell by the irrigator Wooderson which is currently on appeal and that the lawsuit has been going on since 2014 when the letter was sent. The parties have already negotiated and the Board has approved, conditions on other permits on the Chickaskia River from stream water applications, providing specific conditions on those permits. Despite being aware, Wooderson did not provide notice, and fundamentally, that is the issue and whether Blackwell has received its due process rights. Mr. Cottingham again referred to the Carlisle Trust Case and quoted the court, "Publication notice is not reasonably calculated to provide actual notice instead of actual knowledge of instituted proceedings." It is hence inadequate as a method to inform those who could be notified and thus that is how this is a different process than that which is typically followed by the agency in terms of providing notice. He went on to talk about whether the party's address is known and whether it is reasonable to notify through mail notice or personal service, and that this is deemed a constitutional prerequisite. Did Blackwell receive its due process in this case? He said it is their position that interference occurred in the summer of 2012, and Ms. Cunningham at the time wrote a letter stating that the actions by Wooderson at that time and drought conditions, likely resulted in interference. The matter was litigated, and the District Court of Kay County found there was no evidence of interference. He contended this is not true and at the time of the application for attorney fees came to hearing, the Judge specifically said that there was evidence of interference; however, what was requested was an injunction that requires clear and convincing evidence. Chairman Lambert said there are three minutes remaining.

Mr. Cottingham concluded his remarks stating the District Court found that the City did not satisfy the higher standard but found there was evidence of interference. And further the District Court basically said to go to the agency to resolve the problems, which is why they are here requesting the matter be remanded.

Ms. Linda Scoggins said she is representing the Woodersons in the absence of the associate who is on vacation. The Woodersons were in attendance, as well as Mike Wofford who represented Wooderson Farms in the case which has been referred to which she said is on appeal by Blackwell in Supreme Court and has been pending for some time. She said the issue is notice here, and it was provided as required by this Board. In December 2014 when the City wrote the letter requesting special notice it was aware the applications were pending; the public notice that was given was sufficient to put them on notice and there is no excuse for not watching public notice. The Woodersons take the position Blackwell cannot ask for special exception and also disagree with Mr. Cottingham's argument; there was no interference found and they have not presented any new evidence. She said the regulations require that it must be shown to have adversely affected the interest of Blackwell, and that has not been shown in the protest filed January 24, 2017. She said the OWRB staff has found the applicant has met all criteria necessary to have the applications approved and issued, and it is their position that should be done today. She invited the Board to ask questions about the prior litigation. Notice was given as required under the Board's rules and under the Constitution of the State of Oklahoma; the City was aware the applications had been filed, and are aware when notices were published and probably has a method how to look for published notice; no new evidence has been presented only discussion of a prior case which is on appeal. She said there is no reason for delay and asked the Board to approve the permits.

Mr. Cottingham rebutted Ms. Scoggins' remarks and argued that she had not said Woodersons were not aware of the City's December 2014 letter, that Blackwell was adverse to the applications and that in this instance, the typical procedure is not the one to follow but that due process requires specific notice to the City by Wooderson. In regard to the matter of no interference, Mr. Cottingham argued the transcript of the case and District court does not bear out; it could be interpreted to say there is no evidence of interference before this agency, but the record has not been opened which is what he has requested. Additionally, this body as a result of its rules, places conditions on stream water permits, and he is seeking not a denial of the applications, but a conditioning of the applications, 2014-59 and 61, and requests that 2014-60 be placed on the docket for March.

Ms. Scoggins stated Mr. Wooderson would address the Board for the remainder of their time. Mr. Bruce Wooderson spoke to the Board saying the City of Blackwell claims to have water rights the Woodersons have interfered with, and in a court of law Mr. Kent Wilkins and Ms. Julie Cunningham testified there was no interference found, and that the (OWRB) letter would not have been written if she would have known all the facts which was not presented to the Board by Blackwell when it filed the protest. He said these water rights have been recommended to the Board for reduction which according to the OWRB rules, if you don't use them, you lose them. Blackwell should be reduced in its water rights because it doesn't use all the water rights granted which if returned would be available for others' use. Mr. Mooreland was also named in the suit by the City of Blackwell and wants restrictions on the water rights, and he asked why there should be restrictions.

Chairman Lambert asked if there are questions of the Board.

Mr. Sevenoaks said the board has given legal notice of the hearing which Blackwell did not catch and is the Board under legal obligation to send separate notice as part of the notice process. Mr. Singletary answered there is no separate requirement that the agency provides, specific or direct notice, even if it is requested, although the Board has heard the legal arguments. Mr. Sevenoaks asked if Wooderson is required under the law to give notice to Blackwell, and Mr. Singletary said under OWRB's requirements and matters reviewed to determine whether adequate notice has occurred, is not a specific requirement, but, the Supreme Court interpretation supports the position that said notice could be considered necessary. Mr. Sevenoaks said he considered this a notice issue, he doesn't want to be in the position of not giving adequate notice, and it behooved the Board to take a look.

Mr. Hitch disagreed; he said the rules address that specific point and if the Board breaks its own rules for every party that walks in the door, then why have them. Ms. Feaver asked what has been the staff response in the past to similar requests. Mr. Singletary said he was unaware of any instance where such a specific request has been made, or that has ever become an issue. Chairman Lambert said, while there could be a request, what was the response; did we agree. Mr. Singletary stated there is no response in the record, which Blackwell argues creates expectation that specific notice would be required but there was no communication verbally or in writing, and there has been a significant amount of time.

Mr. Buchanan said that staff states the Board's requirement for notice has been met, and Mr. Singletary said that is correct. Mr. Buchanan asked for clarification on the number of permits, and Mr. Wilkins responded there are two permits on the agenda today, 2014-59 and 2014-61 -- the third permit was approved at the December 2016 Board meeting. Mr. Singletary added there is a request to reopen the permit that has been issued; however, that request is still under review and consideration by Board staff and there is no recommendation. To be reopened, it would have to be by motion of the Board. Mr. Buchanan asked the request is to remand the two permits to go through the process for potential exceptions, and Mr. Singletary clarified the request is to remand to a hearing examiner to hear the protests. Mr. Fite added Mr. Cottingham has requested the third application be considered for remand at the March meeting. Mr. Singletary said that cannot be considered at this meeting as it is not on the agenda, and there must be a motion by the Board.

Mr. Fite asked the yield in the Chickaskia River in July. Mr. Wilkins addressed the question that in 2012 and 2013 there were days the flow ceased and there is a long period of record of flow. Staff has worked with the irrigator to mediate issues, asked for voluntary reduction and the City of Blackwell has a 50-day supply reservoir pulled from the Chickaskia to the treatment plant.

Mr. Hitch asked if Blackwell has ever made use of it full allotment, and Mr. Wilkins answered he would need to review the schedule of use. Mr. Drummond said that in regard to the notice issue, the Woodersons did everything required and that Mr. Cottingham said they were aware and should have notified; but on the other hand, the City of Blackwell has know for two years about the permits and litigation and should have been sensitive to follow the rules and monitor. Mr. Sevenoaks said it is a legal issue versus a moral issue. Mr. Fite asked, what is right, fair and just? And responsible, Chairman Lambert added.

3. Vote on whether to approve or as may be amended, or vote on any other action or decision relating to applications. Chairman Lambert asked if there were any other questions, and is the Board ready to vote. She stated the vote is whether to remand the two permits to the hearing examiner.

Mr. Sevenoaks moved to approve remanding the permits to the hearing examiner because of the notice situation. Chairman Lambert restated the motion to approve to remand to the hearing examiner for permits 2014-059 and 2014-061, and she asked for second to the motion. Mr. Buchanan stated that because the Board has a history to allow protests filed correctly to go through the hearing process, he would second the motion to remand.

There was no further discussion, and Chairman Lambert called for the vote.

AYE: Sevenoaks, Buchanan, Feaver, Fite

NAY: Drummond, Drake, Hitch Lambert

ASTAIN: Allen

ABSENT: None

The tie vote results in a failed motion. Mr. Singletary said the next consideration is for the permits.

Mr. Drake moved to approve the permits, and Mr. Drummond seconded.

Mr. Singletary asked Mr. Wilkins to comment. Mr. Wilkins stated that because the motion did not pass, he would ask the Board to consider the two applications as placed on the agenda.

Chairman Lambert asked if there were comments or questions on the motion to approve the permits on the agenda.

Mr. Sevenoaks asked what if the result if the vote is 4-4, and Mr. Singletary said the permits would not carry (be approved).

Chairman Lambert called for the vote.

AYE: Drummond, Drake, Buchanan, Hitch, Lambert

NAY: Sevenoaks, Feaver, Fite

ABSTAIN: Allen

ABSENT: None

Chairman Lambert stated the motion to approve the permits passes, 5-3, one abstention.

B. Consideration of and Possible Action on both the Vici Public Works Authority's Motion to Reopen and Reconsider and the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Regular Permit to Use Groundwater No. 2004-532, Vici Public Works Authority, Dewey and Woodward Counties:

1. Summary – Mr. Kent Wilkins said this item is for an application to amend regular permit to use groundwater, permit #2004-532 in the name of Vici Public Works Authority (PWA), Dewey and Woodward Counties. Vici PWA has an existing permit approved in 2004 for one well location for 615 acre-feet of groundwater. On May 6, 2015, Vici PWA filed an application to amend to add two additional wells only – no additional dedicated land, nor additional groundwater. He said the land overlies the Ogallala Aquifer, which has spacing requirements of 1,320 feet, and an Equal Proportionate Share (EPS) of 1.4 acre feet of water per acre dedicated. On June 15, the Board directed the PWA to give notice of the application which was done, and on July 24, 2015, Randy and Becky Castor filed with the Board a timely protest, and a hearing was held on June 23, 2016. The applicant was represented by Todd Newcomb and Steven Harris, attorneys at law. The hearing was opened, evidence and argument received, and the proposed order was drafted and served on the parties prior to this Board meeting. Mr. Wilkins said that evidence presented at the hearing indicated that the protestors, the Castors, did not formally protest a spacing waiver on well #1, and since 1989 there have been two additional wells drilled and completed by Vici approximately 900 feet and 700 feet from the protestant's well. Vici has requested an exception to the spacing requirement; the protestants have one domestic well used for household, garden and livestock. Based on the evidence entered in the record, the hearing examiner ruled in the proposed order that Vici had not satisfied the elements for the approval of an exception. On January 10, 2017, Vici PWA filed a motion to reopen and reconsider to accept additional relevant evidence regarding the well spacing exception, and to reconsider the proposed conclusions of law based on that additional evidence. Staff is requesting the Board to consider the motion to remand the matter to the hearing examiner. The Board will not be voting on the application.

Mr. Sevenoaks asked if there is a staff recommendation. Mr. Wilkins said there is no recommendation at this time. Mr. Drummond asked the hearing examiner's recommendation, and Mr. Wilkins responded the hearing examiner recommended denial of the location exception request and therefore denial of the proposed well locations. Mr. Hitch asked if it is common to drill a well and add it to a system without receiving a permit first. Mr. Wilkins explained the drilling of a test well is allowed, and a pump test of the well. Mr. Hitch asked if the well is completed, and Mr. Wilkins said these wells have been fully completed but they are not in the system at this time. Wells are completed

to determine if there is water in the quantity needed, then the well is tested and put on line. Mr. Wilkins said he did not believe these wells had been put on line, but have been completed.

2. Discussion and presentation by parties. Chairman Lambert invited the Vici PWA representatives to address the Board, allowing ten minutes including time to respond. Mr. Todd Newcomb, stated he is representing the applicant Vici, and in regarding to the matter before the Board, said he was not present at the 2016 hearing but the proper evidence was not introduced before the hearing examiner at the 2016 hearing. The information he reviewed was before the Board when the original permit was issue in 2004; an additional 10 test holes were dug in 2015 outside the location exception of 1,320 feet, and ultimately yielded no result. He said the applicant is not asking for additional water, the 2004-532 permit allows the withdrawal of 615 feet from the Ogallala Aquifer calculated at 1.4 acre feet per year for 439 acres. He said there are actually two completed wells, the second completed in 2004 before the original permit was issued and was part of the testing done before the initial permit was issued. In 2014, the well known as #3, was tested but did become the permitted well in 2004 because of nitrate levels found. He said because of the mix up at the hearing all the testing information was not properly presented, and although he makes no excuses, ultimately that is what has led to the corrective measures put forth now to reopen and reconsider to allow the Board to take notice of the additional testing information that was not on the record, and allow the staff of the OWRB to promulgate a new findings of fact and conclusions of law, adequately reflecting all the information in regards to this permit. He said the applicant believed that as long as competent evidence in before the Board, no more unnecessary measures will need to be taken and ultimately if the proposed order is passed as is, the PWA will need to appeal the order either before the Board or is District Court. They believe there is enough information to prevent the unnecessary steps if the Board vote to accept the additional evidence and allow the staff present a new order.

Mr. Newcomb further explained that in the motion to reconsider, exhibit 1, there were nine existing water wells before the 2004 permit was issued testing for viable water and all of the wells failed (page 29). Five test holes were drilled in 2004 – 2005 by the town of Vici and the second well is test well #3, (page 31) and brings to the current position of the need for assurance of a supply of water. Vici is asking for no addition of water, other than the 615 acre feet, and in Janaury-Februry 2010, on page three of the motion to reopen and reconsider, ten test holes were drilled by Vici and all were outside the 1,320 foot requirement. Now, he hesitated making a conclusion but said the testing indicates only two of the test locations take water and further testing can be conducted. At this point, the motion only asks the Board to allow additional evidence be submitted before the Board so a proper decision can be made. He reserved the remaining time for response.

Mr. Sevenoaks asked if nitrates were found in the Ogallala and Mr. Newcomb said, yes. Mr. Hitch said these are shallow wells on the eastern edge. There were no other questions of Mr. Newcomb.

Chairman Lambert invited the protestants to address the members, allowing ten minutes. Mr. Randy Castor spoke to the members saying this is a serious situation to him, the residential well is at stake here. He said after the original well was drilled, his well pumped sand and they pulled up the well pump and there has not been a problem since that point. He said the situation here is that when the well was drilled they did not approve, the City of Vici official was his friend, who admitted the mistake and asked to be able to go ahead with the well which he and his wife allowed, but now regrets it because they did not anticipate any further problems. Well #3 was drilled 100 feet closer and Mr. Castor contacted the OWRB. In June 2016 a lot of evidence was presented by the PWA and Mr. Castor noted his January 30, 2017 response letter received at the Board and reflects their position of the situation. He said he does not support the motion to reopen as there has been ample opportunity to present evidence which has been available for 5 months at that time and was in their possession. Mr. Castor said he is asking that the Board not allow the matter to be reopened and reconsidered.

Mr. Hitch asked if the City of Vici and their well service offered to connect them to the water well system, or tried to work around the impact to their situation. Mr. Castor responded that is in evidence, they did offer although there is no paperwork by either party, a verbal agreement the city would provide a water tap and it is on his property, but it is not connected to his house, although there is a line to his son's house and he pays for city water. He said if he connected to the tap he would have to pay for the water and he does not want to be on city water, his well is good water, and one of the nine wells tested was his own personal well, which did not test high in nitrates.

Mr. Sevenoaks asked if there was a compromise, and Mr. Castor said he does not want money, he want the city to be outside the limit that is set forth by the regulations of the Oklahoma Water Resources Board.

There were no other questions of Mr. Castor. Chairman Lambert stated Mr. Newcomb and the City of Vici have three minutes remaining.

Mr. Newcomb said there was an agreement to provide the tap, but this application does not speak to the 2004 permit, but to the two backup wells for the current permitted well. No matter the result of today, the City of Vici is still permitted under the 2004 permit to withdraw 615 acre feet of water at 300 gallons per minute. The two back up wells, even if used at the same time, would draw 150 gallons per minute for each well and would not exceed the draw of the current permitted well. The back up wells provide assurance to Vici so that if something happens to more than one well this will allow them to withdraw the same amount of water that it is currently permitted to withdraw under the 2004 permit issued by this Board.

Mr. Hitch commented that since 2004, Vici has been aware of the variance nature where it drilled its wells and having been given notice, when drilling the other wells they would have drilled father away. Mr. Newcomb responded that the evidence they seek to enter into the record was the testing in 2016 that showed well #1 is the best source of water and it is located outside the well spacing and the exception is needed. Mr. Hitch asked and Mr. Newcomb answered the offer of the tap was at no charge and it is a tap directly from the well, not treated, but off of the groundwater well. Mr. Hitch said he preferred to avoid exceptions as it becomes more difficult to know where the line is, and he asked why the evidence in the city's possession wasn't presented. Mr. Newcomb said half of the evidence denying existing water wells and the five test holes that were drilled was presented to the Board before the issuance of the original permit, and there was oversight about resubmission before the hearing examiner for the actual application and amendment process.

Mr. Singletary interjected that this is an Article 2 proceeding and the Board does have the option to go into Executive Session for deliberations on this matter.

3. Possible Executive Session. As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of "e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act."

(a) Vote on whether to hold Executive Session. 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. Allen seconded.

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

NAY: Sevenoaks

ABSTAN: None

ABSENT: None

(b) Designation of person to keep written minutes of Executive Session, if authorized.

(c) Executive Session, if authorized.



The Board entered Executive Session at 11:20 a.m. and designated Mary Schooley to keep written minutes.

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

At 11:24 a.m., Mr. Drake moved to return to Regular Session and Mr. Buchanan seconded.

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

NAY: None

ABSTAN: None

ABSENT: None

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.

Upon returning to Regular Session, Chairman Lambert stated the action is the consideration and possible action on both the Vici Public Works Authority's motion to reopen and reconsider **and** the hearing examiner's proposed findings of fact, conclusions of law, and Board order on the applications to amend permit to use groundwater no. 2004-532, Vici Public Works Authority, Dewey and Woodward Counties, Oklahoma. She asked if there was a motion.

Mr. Hitch moved to deny the motion to reopen and reconsider, and Mr. Drake seconded. There were no further comments or questions, and Chairman Lambert called for the vote. She stated the motion is to deny the request.

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

NAY: None

ABSTAN: None

ABSENT: None

Mr. Newcomb inquired about appealing the action, and Mr. Singletary stated the Board's determination is final. He said Mr. Newcomb's request is noted, but the Board's decision to reject the request is the final determination to base the appeal.

Mr. Singletary said the Board needed to rule on the hearing examiner's proposed order. Mr. Wilkins stated that staff would recommend approval of the proposed findings of fact, conclusions of law and Board order denying the application to amend the permit by adding wells.

Chairman Lambert asked if there was a motion, and Mr. Hitch moved to approve the proposed findings of fact, conclusions of law, and Board order.

Mr. Sevenoaks asked to clarify the vote. Mr. Hitch said this action regards the original application to add wells. Mr. Singletary said the Board voted on whether to remand the matter, and there is also a proposed order where the hearing examiner has proposed to disapprove the applicant's variance request.

Mr. Drummond seconded the motion. Mr. Sevenoaks asked for clarification. Chairman Lambert stated the Board is upholding the hearing examiner's proposal to deny the request.

There was no other comment or question, and Chairman Lambert called for the vote.

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

NAY: None

ABSTAN: None

ABSENT: None

C. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for a Regular Permit to Use Groundwater No. 2015-605, Boaldin Family, L.L.C., Texas County:

1. Summary. Mr. Kent Wilkins said this item is an application for a regular permit to use groundwater, 2015-605, Boaldin Family, Texas County. He said this request is for a permit to use 1,267.7 acre-feet of groundwater per year from two existing wells on 633.8 acres of dedicated land for the purpose of irrigated crops in Texas County, Oklahoma, and also Morton County, Kansas. A timely protest was received from Ms. Linda Martin, Scott Schrauner and Reid Schrauner, who were represented by Mr. Mark Walker, that expressed concern prior waste on the property owned or leased by the Boaldin Family would continue if this permit is granted. He said supporting this claim is the Board's order denying the application of Bob and Diane Boaldin, Living Trust, to amend the groundwater permit 1993-582a, dated April 15, 2014. In response, Mr. Trent Boaldin, on behalf of the Boaldin L.L.C., testified that he was familiar with the prior application and understood the compliance issues and testified that changes had been made to assure compliance with the Board's statute and rules. The hearing examiner acknowledged the protestant's understandable concern; however, based on the evidence submitted, the Boaldin's have taken steps to improve oversight of the wells to prevent waste by depletion. Therefore, the hearing examiner ruled that the incidents of past waste did not necessarily support a before-the-fact determination that waste will occur in the future. Mr. Wilkins stated the record showed the applicants have met the points of groundwater law: the applicant owns or has a valid lease of dedicated land—with one exception, there is a disputed agriculture lease of 153.8 acres in the NW1/4 of Section 19 T6N R10E; the land is located over a fresh groundwater basin, the Ogallala and the Maximum Annual Yield has been determined at 2 acre-feet of water per acre per year; the irrigation use will be beneficial use; waste will not occur, either waste by pollution or depletion. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

Mr. Wilkins stated representing the applicant today is Ms. Lauren Hanna, and representing the protestant, is Mr. Mark Walker.

Mr. Sevenoaks asked why the Board is considering a permit in Morton County, Kansas, and is there going to be a pipeline to his land in Kansas because he can't get a permit in Kansas. Mr. Wilkins responded the applicant does have a pipeline into Kansas which the Board issued one permit previously that does allow him to irrigate his area of use in Kansas. Mr. Sevenoaks asked if that is a common occurrence for the Board to allow transfer of water out of state, and is that against state regulations. Staff said State regulations regard stream water. Mr. Sevenoaks said we are allowed to move groundwater out of state but can't move stream water. Mr. Wilkins said staff has identified several areas where groundwater has been taken across state line, the area of use must be indicated on the permit.

There were no other questions by the Board at this time.

2. Discussion and presentation by parties. Chairman Lambert invited the representative of the protestants to address the Board, allowing ten minutes, including response to the applicant. Ms. Lauren Hanna addressed the members and stated she is here with Trenton and Susan Boaldin, son and daughter in law of her original clients, Bob and Diane Boaldin. She said this has been an extremely contentious proceeding going back several years. Ms. Boaldin has stepped down from their portion of administration of the farm, and Mr. Boaldin passed away. She said at the hearing Mr. Trent Boaldin had testified he had taken reigns of the farm, made structural changes to address compliance issues previously identified by protestors, including a full time farm manager and full time irrigation foreman to handle all aspects of compliance, and she described the measures taken to monitor water use which is submitted to the OWRB each month. This is an effort to show good faith that the issues will not carry forward, and was presented to the hearing examiner. The protestors presented the prior order denying the previous permit and the issues of waste associated; those issues were thoroughly discussed

and ultimately the hearing examiner proposed the Boaldin's be allowed to get the permit and show they can continue to operate in compliance with OWRB's rules. Ms. Hanna addressed Mr. Sevenoaks' questions there is a pipeline to Kansas, permitted by the OWRB (water use put to a beneficial use). The members and staff discussed that the Board did not permit the pipeline but the water use, it is common to move groundwater out of state, and that the states' have different restrictions. Ms. Hanna concluded her remarks.

Mr. Mark Walker addressed the members on behalf of the protestants; Mr. Scott Schrauner was also present. He referenced the Board's April 15, 2014 Board order denying a groundwater permit to the Boaldins unprecedented in his view and driven by the egregious facts of the case. The order found the Boaldins had taken 2,500 acre feet of water each year knowingly, intentionally, and without a permit for six and a half years, or roughly 16,000 acre feet that was taken without a permit and knowingly and intentionally after the Board staff told the Boaldins not to do that on three separate occasions, all in the 2014 order. Mr. Walker provided a history of the matter and spoke to abuse of the Ogallala, the application in 2011 and hearing in 2012 where Mr. Bob Boaldin testified of being in compliance but admitted to taking water to Kansas without a permit and had lied in his testimony about the amount of water used to irrigate corn. That application was dismissed. Two months later, Boaldin Living Trust filed another application, Bob Boaldin does not attend, Diane Boaldin does attend to admit there had been abuse which she was unaware of, but safeguards have been implemented, it was learned that water was still being taken without a permit, and at this hearing the Board the Board denied the application. Mr. Walker read from the 2014 Board order recognizing the Boaldin's violations, that the Boaldins have a history of committing or causing waste by depletion, and that whether it continues depended upon the credibility of the Boaldins, which the Board said they were not credible. A year later, the Boaldins transfer these properties from the Living Trust to the Boaldin Family L.L.C., and apply to permit the same lands in the permit denied, and only the son who is president of the L.L.C. attends the hearing. Mr. Walker argued there are no presidents of an L.L.C., that this is the same people but recycled and providing the Board assurance the law will be followed. Chairman Lambert warned there are two minutes remaining. Mr. Walker continued asking the Board to be aware that if the Board grants the permit there are no consequences to the Boaldins having taken the 16,000 acre feet of water and he asked that Board to consider the Boaldins should have to credit the water (1,267 acre feet) against the 16,000 acre feet taken before. Chairman Lambert stated 30 seconds remain. Mr. Walker asked the Board to deny the permit.

Chairman Lambert asked if the Board members had questions or comments; the members did not.

Chairman Lambert invited Ms. Hanna to respond. Ms. Hanna clarified that during the time period the permits have been contended, since 2011, Mr. Bob Boaldin suffered from dementia and the family did not realize the severity until about two weeks after the first hearing; during the second hearing when the permit was denied he was not present because he had been placed in a facility for dementia until his death this year, and his testimony was spotty in that he did not remember things he had said, denied things which were shown to have been done, and she contended there were mitigating circumstances surrounding that, and now the son who was not previously involved is now running the farming operation. She said the lands were transferred to the L.L.C. for estate planning purposes and there was no attempt to hide the identity of the people involved, the testimony showed the protestants have had a pipeline to Kansas from the 1990s to 2011 which had not been permitted but was permitted just prior to the Boaldin's chance to permit and he escaped the same issues but now both parties have permitted water going to Kansas. She corrected Mr. Walker's statement the safeguards are the same as now, Mr. Scott Schrauner had testified for the protestants against the Boaldins but has now been hired by the Boaldins to be their full time farm manager so that he could implement the safeguards which he had testified the Boaldins were not meeting. Chairman Lambert warned two minutes remain. Ms. Hanna described other measures to ensure the OWRB the numbers align, and will notify the OWRB of

changes in personnel or leadership of the farm. Mr. Hitch asked if this withdrawal is already permitted, and will there be new water authorized by the permit.

Mr. Sevenoaks asked if the Boaldins already have a permit, and Ms. Hanna responded yes, there are several permits and this is an effort to combine them. She said there is a network of permits, and Mr. Singletary stated this is water that was not previously permitted; it is new water.

3. Possible Executive Session As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized.

Chairman Lambert stated the Board had the opportunity to enter Executive Session for the deliberation and she asked if there was a motion to do so. There was no motion, and the Board did not vote to enter Executive Session.

Mr. Wilkins clarified that the permit at this time will be authorized for 968 acre-feet and 480 acres of land until the lease agreement issue is cleared up on the northwest quarter of Section 19, T6N, R10E, at the time the documentation is provided the additional land and water will be authorized. Mr. Sevenoaks asked about the number of acres remaining, Mr. Hitch commented, and Chairman Lambert stated approval will be conditioned upon the 153 acres. Ms. Cunningham said the condition is stated in the proposed order. Mr. Singletary stated the hearing examiner proposed the permit be approved conditioned upon the clarification being submitted.

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 moved to approve the findings of fact, conclusions of law and Board order approving permit 2015-605, and Mr. Drummond seconded.

Chairman Lambert stated the motion and asked if there were further questions or comments. There were none and she called for the vote.

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

D. 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 Lambert

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(1) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee.

*Pursuant to this provision, the Board proposes to hold an executive session for the purpose of consideration, discussion and possible action regarding the recommendation of Search Committee for the review of applications for the position of a new permanent Executive Director of the Oklahoma Water Resources Board*

A. Vote on whether to hold Executive Session. 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 Lambert read the statement for the proposed Executive Session.

Mr. Buchanan moved the Board enter Executive Session, and Mr. Allen seconded. Chairman Lambert added that Mary Schooley would be designated to keep written minutes.

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

B. Designation of person to keep written minutes of Executive Session, if authorized.  
Executive Secretary Mary Schooley kept the written minutes of the Executive Session.

C. Executive Session, if authorized.  
The Board entered Executive Session at 12:04 p.m.

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

At 12:34 p.m., Mr. Sevenoaks moved to return to Regular Session, and Mr. Hitch seconded.

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

There was no action by the Board 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.

There were no New Business items for the Board's consideration.

## 8. ADJOURNMENT

There being no further business, Chairman Lambert adjourned the meeting of the Oklahoma Water Resources Board at 12:35 p.m. on February 21, 2017.

## OKLAHOMA WATER RESOURCES BOARD

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

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

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Charles Darby

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

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

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

***ATTEST:***

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

RESOLUTION OF APPRECIATION  
RICHARD SEVENOAKS, FEBRUARY 2017

FOR twenty years of dedicated service to the Oklahoma Water Resources Board, including serving as Vice-Chairman and Secretary, representing both industrial and municipal water use;

FOR serving as chairman on the OWRB's Water Policy/Rules and Administrative and Budget Committees, and for membership on the OWRB's Finance, Legislative Affairs, Audit, Water Policy and Planning, and Special Personnel Review committees;

FOR your support of the critical passage of the 0.037 milligram per liter criteria for phosphorus in Oklahoma's scenic rivers;

FOR your support of the historic Maximum Annual Yield Determination for the Arbuckle-Simpson Aquifer, which will provide for the fair and scientifically defensible appropriation of groundwater while protecting area springs and streams;

FOR your support during the Tarrant Regional Water District v. Herrmann lawsuit, which resulted in a favorable U.S. Supreme Court ruling that will ensure the protection of Oklahoma water;

FOR your support of the historic agreement between the State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, and Oklahoma City, which will resolve decades of uncertainty over water resources in southeastern and south central Oklahoma;

FOR contributions in furthering important water policy initiatives, including those offered through the 2012 Update of the Oklahoma Comprehensive Water Plan;

FOR promoting the 2012 Water for 2060 Act, establishing a statewide goal of consuming no more fresh water in 2060 than was consumed in 2010;

FOR your support to sustain the success of the OWRB's \$3.6 billion dollar financial assistance programs, which have provided funding for drinking water and wastewater infrastructure improvement projects to both rural and urban communities in all 77 Oklahoma counties;

FOR promoting the utilization of Oklahoma's water resources to provide maximum benefit to the economic, social, and environmental welfare of state citizens while preserving supplies for Oklahoma's future;

FOR your efforts to ensure the proper use and protection of Oklahoma's water resources in a manner consistent with the intent of state and federal laws;

FOR unwavering fairness and courtesy in dealing with your colleagues and the citizens of Oklahoma in matters of deliberation before the Board.

NOW, THEREFORE, BE IT RESOLVED that the members and staff of the Oklahoma Water Resources Board express their sincere appreciation for the immeasurable contributions made throughout your term of devoted service to the Board and citizens of Oklahoma.

Presented February 21, 2017.

Julie M. Cunningham  
Interim Executive Director

Linda P. Lambert  
Chairman