

**OKLAHOMA WATER RESOURCES BOARD**  
**OFFICIAL MINUTES**  
**October 10, 2017**

**1. CALL TO ORDER**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Jason Hitch at 2:34 p.m., on October 10, 2017, at the Oklahoma Water Resources Board office, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. He asked for the roll call of members.

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 October 5, 2017, at 4:15 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.

Vice Chairman Hitch stated that it is an important issue before the Board today and Mr. Charles Darby offered to say a word of prayer prior to the proceedings, which he allowed.

A.1. Roll Call

Board Members Present

Jason Hitch, Vice Chairman  
Stephen Allen, Secretary  
Charles Darby  
Bob Drake  
Linda Lambert  
Robert L. Melton  
Robert Stallings

Board Members Absent

Ford Drummond, Chairman  
Tom Buchanan

Staff Members Present

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

Others Present

Adrian Johnico, Clayton, OK  
Donna McSpadden, Clayton, OK  
Bobby McSpadden, Clayton, OK

Others Present, continued

Mike Brittingham, Moyers, OK  
Paul Marcum, Antlers, OK  
Russell Doughty, Broken Bow, OK  
Michael Riser, City of Antlers, OK  
May (illegible), Antlers, OK  
Kevin Gann, Antlers, OK  
Shawnda Cox, Antlers, OK  
Debbie Leo, Moyers, OK  
Craig Keith, Oklahoma City Water Utilities Trust, Oklahoma City, OK  
Nathan Madenwald, Oklahoma City Water Utilities Trust, Oklahoma City, OK  
Brian Nazareus, Oklahoma City Water Utilities Trust, Oklahoma City, OK  
Dale Jackson, Clayton, OK  
(illegible), Clayton, OK  
Chris Chandler, Broken Bow, OK  
Dr. Kevin R. Kemper, Norman, OK  
Brady McClellan, Finley, OK  
Dale Carter, Finley, OK  
Dean Couch, Gable Gotwal, Oklahoma City, OK  
Kenneth Roberts, Claremore, OK  
Larinda McClellan, Finley, OK  
Debra Williams, Antlers, OK  
B. Redman, Antlers, OK  
W. Myrl Redman/Louise Redman Trust, Antlers  
Tye (illegible), Durant, OK  
Sara Jane (illegible), Norman, OK  
Jim Couch, City of Oklahoma City, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the September 19, 2017, Regular Meeting.

Vice Chairman Hitch asked if there were any corrections to the minutes of the September 19, 2017, regular meeting. There were no changes or comments. Vice Chairman Hitch stated he would entertain a motion to approve the minutes as amended. Ms. Lambert moved to approve the minutes and Mr. Drake seconded.

Vice Chairman Hitch called for the vote.

AYE: Lambert, Melton, Drake, Stallings, Allen, Darby

NAY: None

ABSTAIN: Hitch

ABSENT: Buchanan, Drummond

C. Executive Director's Report

Ms. Julie Cunningham, OWRB Executive Director, welcomed the members and audience and began by reporting on the current drought conditions across the state. She acknowledged the hurricane devastation and staff participated in a clothing drive. She said staff understands tragedies such as at the City of Las Vegas, Nevada, and expressed staff's thoughts and prayers to those citizens. Ms. Cunningham reported the State Legislative Special Session began and there hasn't been much news, but hoped the budget resolve would come soon. On October 5, she met with House Speaker McCall and also invited him to speak to the Governor's Water Conference; other state leaders and Congressional

delegation members have also been invited. The conference will be held October 31-November 1, 2017, at the Embassy Suites Hotel in Norman, and she said there is a great line up of speakers along with the Water for 2060 Awards presentations. The second meeting of the Water Quality Standards rules revisions was held and much work is being done on the ASR/water reuse, and antidegradation policies to protect sensitive water supplies regarding reuse water.

Ms. Cunningham concluded her report noting the Congressional Report in the meeting packet, and that on October 5, the Administration asked Congress to forgive the \$16 billion debt owed by the National Flood Insurance Program, but due to the hurricanes and current problems with the program it is yet to be seen.

There were no questions or comments from members, and Ms. Cunningham concluded her report.

#### D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Administrative Services Division Chief, addressed the members and stated the budget report regards financial information through September 2017. For the period, the agency spent 24% of its appropriated budget, leaving 76%; spent 13% of the revolving budget, leaving 87%, and spent 13% of federal dollars. Overall, there is 84% of the budget remaining and 75% of the fiscal year remaining. The overall percentages are exactly the same as last year. He expressed appreciation to the Chiefs and staff for saving dollars.

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

Vice Chairman Hitch stated the only item before the Board today is under the Special Consideration Agenda, and he set the rules for the proceeding allowing each side 20 minutes to present to the Board: for the applicant, Mr. Brian Nazareus, and for the protestants, Dr. Kevin Kemper and Chris Chandler, 10 minutes each (or how they may want to divide their time). Chairman Hitch explained Mr. Kent Wilkins, Chief of the Planning and Management Division, will make a presentation regarding the history of the matter, followed by a statement by the OWRB General Counsel regarding new evidence and testimony, and a statement by the Executive Director. Vice Chairman Hitch said there would then be a statement by the two parties, with possible rebuttal, and questions by Board members. If there are questions regarding legal definitions, the Board could enter an executive session for consultation with the General Counsel.

## 2. **SPECIAL CONSIDERATION**

### Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Use Stream Water, City of Oklahoma City, #2007-017.

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, thanked everyone for attending the meeting today, it is a complicated and complex issue and a very important issue for the State of Oklahoma. He said he would take time presenting the application and hoped to address concerns that have been expressed in the past months.

Mr. Wilkins began stating this item is an application for regular permit to use stream water, #2007-0017, by the City of Oklahoma City to divert water from Pushmataha County, Oklahoma. The original application was filed in March 2007 and the application was revised several times; March 2009, March 2010, March 2013, and a second and final amendment was submitted to the Board January 11, 2017. The final application is a request for a regular permit to annually appropriate 115,000 acre-feet of stream water from the Kiamichi River Basin as currently held in Sardis Lake and in the Kiamichi River for delivery to the point of diversion in the general vicinity of Moyers Crossing, Pushmataha County, Oklahoma. The water will be used beneficially for municipal use by Oklahoma

City and the surrounding public water supply entities in Oklahoma. This is in accordance with the August 2016 Water Settlement Agreement between the City of Oklahoma City, the Choctaw Nation, Chickasaw Nation, and State of Oklahoma.

Mr. Wilkins stated that after the application was deemed ready for notification to interested persons, Board staff prepared a notice for the applicant which was published in Pittsburg, McCurtain, Pushmataha, Latimer, and Choctaw Counties from the week of February 29<sup>th</sup> through March the 9<sup>th</sup> (2017) and the protest deadline was April 10. The notice was published once a week for two weeks, in newspapers of general circulation in each of the five counties, which Mr. Wilkins named. He said the Board contracted with the Oklahoma Attorney General's office to secure the services of a hearing examiner to conduct a hearing and the Attorney General's office did assign Ms. Lyn Martin-Diehl to conduct the hearing and to propose the order before the Board today.

Mr. Wilkins stated the application was protested on or before the deadline of April 10, 2017, by 85 individuals and a pre-hearing was scheduled June 28, 2017. Following the pre-hearing conference 25 protestants were recognized as formal protestants; 12 persons failed to present personally or through counsel representation, and 13 protestants were then formally recognized. Mr. Wilkins explained that in order to be recognized as a formal protestant, the entity must provide specific information to show how approval of the application as proposed may directly or adversely affect legally protected interests of the person filing the protest. The hearing was scheduled on August 21-24, 2017, at the Board's office in Oklahoma City, and the hearing examiner (H.E.) ruled that due and proper notice was given by the Applicant; the Applicant appeared at the hearing represented by attorneys Brian M. Nazareus and Stacy Brownhill of Ryley Carlock & Applewhite, and Oklahoma City Attorney Craig Keith. Attorneys Kevin Kemper of Norman and Chris Chandler of Broken Bow appeared for the Protestants, and Mayor Don Faulkner represented the Town of Talihina.

On August 24-25, the H.E. allowed a period for public comment for those persons not recognized as official protestants who had an opportunity to present to the H.E. The record was also left open until September 1, 2017, for receipt of additional public comment; thereafter, the record was closed, a proposed order was prepared, served on the parties, and presented to the Board for consideration today. The Board subsequently received a protestant's exception to the proposed order and request for oral argument dated October 5, 2017, from Attorney Kevin Kemper in response to the proposed order. At the hearing, the Applicant presented testimony and data indicating the population of Oklahoma City and the surrounding central Oklahoma communities will increase beyond the water currently available to those communities and based on this information, the Applicant has a future need of the requested 115,000 acre-feet of stream water per year for public water supply and municipal use purposes. The Applicant's proposed use of public water supply has been recognized by the Board as a beneficial use.

Mr. Wilkins stated the Protestants contested the calculations of the Kiamichi model that was used to evaluate the application based on what they said were flawed assumptions regarding domestic uses within the basin, software used for the model was allegedly unsuited for stream flow, failed to consider whether adequate instream and environmental flows would be available, and the Settlement terms failed to consider the views of the citizens local to the Kiamichi Basin. No evidence was presented by the Protestants regarding availability of stream flow that was more accurate than what the Board had found in calculations, based on calculations of the model. The Protestants also expressed concerns regarding further instream studies needed for environmental and aesthetic purposes; however, those issues are not contemplated by the Board's statutes when calculating available water and stream flow. Protestants also disputed the model set aside for domestic use but provided no alternative basis for quantification of domestic use. Board rules provide that absent the presentation of more accurate evidence, the Board shall estimate the amount of water required to satisfy domestic use to be six acre-feet per household per year, which is what the model used.

In summary, Mr. Wilkins stated the H.E. found that Board staff did use the model and evaluated the application developed pursuant to the negotiations during the Tribal Settlement Agreement. The Hydrologic model—Kiamichi model—was designed to represent Settlement terms, including a lake level management plan for all lakes that was reviewed by the Department of Wildlife Conservation, and also a 50 cubic feet per second (cfs) bypass requirement anytime Oklahoma City is removing water, and set a maximum withdrawal rate of 250 cfs. He said that within the current rules, there is a 20,000 acre-foot set aside for future permitting use just for the southeast region. Oklahoma Water Resources Board staff found that the Kiamichi model did adequately represent Settlement terms as well as satisfying OWRB stream water rules and statutes for permitting in the basin. He explained the settlement agreement provisions using the period of record flow from 1926-1971 which is the most unaffected by the presence of Sardis Reservoir and representing the most natural flow conditions. Furthermore, the 45 years of record include several major droughts as well as several wet periods. In evaluating the application, Board staff preliminarily calculated the following information regarding the diversion point at Moyers Crossing: (1) the available water at the diversion point was estimated at 749,172 acre-feet per year; (2) the estimated permitted usage at or above that diversion point was 7,192 acre-feet per year and are senior water rights that have a right in time to any future permits that would be issued; and, (3) estimated the domestic use of the diversion point was 20,722 acre-feet (six acre-feet per one-quarter section in the watershed), thus the total water available for appropriation at the diversion point at Moyers Crossing was determined to be 721,258 acre-feet per year. Furthermore, the model took into account downstream domestic use of 13,694 acre-feet downstream of the diversion point and 2,508 acre-feet of existing permits downstream. Mr. Wilkins noted that the City of Antlers has a permit downstream from Moyers Crossing with a senior water right holder and would be able to receive water without interference from junior permit holders.

Mr. Wilkins stated the H.E. found that the Board should adopt Kiamichi model calculations verified by Board staff and finds that the amount 721,258 acre-feet is available for appropriation on an annual basis at that diversion point; the amount is in excess of the amount of 115,000 acre-feet requested by the Applicant. Based upon the facts set forth, the Board finds that unappropriated water is available at the diversion point in the amount applied for by the applicant. Upon consideration of the evidence, the H. E. finds that the permit should contain a general condition prohibiting interference with domestic or existing appropriative uses; such conditions could also include (1) a 250 cfs maximum discharge by Oklahoma City diversion rate, (2) a 50 cfs bypass when removing water, and (3) the 20,000 acre-foot set aside. All these conditions were found to be protective by the H.E. of domestic and existing appropriative uses. He said that because the Applicant seeks to transfer water outside of the basin where the water originates, the Board must also consider and disallow any proposed use that would interfere with existing or proposed beneficial uses within that stream system. The Board evaluates water needs of each region of Oklahoma based on its legislatively assigned duty, and Board staff has, to date, studied the water needs of southeast Oklahoma during litigation from the Settlement Agreement, formulation of the Kiamichi Basin model during compilation of the Oklahoma Comprehensive Water Plan, and during ongoing litigation between the OWRB and the United States of America regarding Sardis Reservoir. Based on all the available evidence, Mr. Wilkins stated the Board finds that the proposed use is not anticipated to interfere with any existing or proposed beneficial uses within the stream system or the needs of the water users therein. Further, there appears to be adequate water available for future needs within the basin for municipal, industrial, domestic, and other beneficial uses. Mr. Wilkins explained the Settlement Agreement provisions require the agency to evaluate the evidence submitted to determine whether the permit shall be issued pursuant to the applicable provisions of 785 of the Oklahoma Administrative Code and Title 82 of the Oklahoma Statutes – all state law requirements for any applicant--and also requires the City of Oklahoma City must satisfy even more requirements.

Mr. Wilkins stated the Hearing Examiner concluded that the record showed the following:

- (1) unappropriated water is available in the amount that was applied for;
- (2) the applicant has a present or future need for water in the amount of 115,000 acre-feet of water per year, and the applicant intends to put that to a beneficial use;
- (3) the proposed use will not interfere with domestic or existing appropriative uses, if it is appropriated subject to the conditions described earlier; and
- (4) the proposed use does not interfere with the existing or proposed beneficial uses within the stream system and the needs of the water users therein.

Accordingly, Mr. Wilkins stated, the Hearing Examiner concludes the application must be approved by issuing a permit to appropriate 115,000 acre-feet of stream water per year subject to the conditions specified in the application and on the permit granted. Therefore, staff recommends approval of the proposed findings of fact, conclusions of law, and Board order.

He said representing the Applicant is attorney Brian Nazareus, representing the Protestants are Kevin Kemper and Chris Chandler.

A gentleman and citizen of the area requested to ask questions because he had not received notice. Vice Chairman Hitch stated the formally recognized parties would be able to speak. The gentleman contented the Board did not make proper notice and General Counsel Rob Singletary cited the statute that instructs the applicant about publication of notice and read the requirements Board staff complies with when ensuring proper notice. Mr. Wilkins said the applicant published in five newspapers and the Hearing Examiner ruled due and proper notice had been given. The gentleman continued to speak and the security personnel on duty escorted him outside the meeting room. Mr. Dale Jackson protested, and Vice Chairman Hitch stated the Board is conducting a civilized process. Mr. Jackson continued to speak out regarding the permit application accusing the Board of not caring about the river.

Vice Chairman Hitch asked if the Board had questions of staff. Ms. Lambert asked the current water use in the area. Mr. Wilkins responded from the river, which could include Sardis Reservoir, is 7,192 acre-feet above the diversion point and is allocated to senior water rights holders, and 2,508 acre-feet allocated below the diversion point, all senior to any future permit issued and subject to any interference condition placed on the permit. He explained that every permit instructs that it may not interfere with domestic use or existing appropriative uses, and interference complaints are investigated by staff. She asked and he responded domestic use is the number one priority in Oklahoma and takes precedence over any other junior or senior permit holder; in this case, Oklahoma City is junior to every other permit holder and domestic use. Ms. Lambert said the current use is about one-half of the set aside amount, and Mr. Wilkins answered that is right, as well as 13,000-plus acre-feet below. Mr. Darby asked who monitors interference and how it is determined. Mr. Wilkins responded permits are issued with the condition; if a call of interference is placed by any user staff would investigate and then shut down or modify use if needed. Executive Director Cunningham interjected that interference is routinely investigated, particularly in times of drought. Mr. Darby asked how many times this permit had been modified since it was originally filed, and Mr. Wilkins answered there was the original application and three revisions and then an amendment for a total of five, from 2007 to this year. Mr. Melton asked if the revisions were a result of negotiation, and Mr. Wilkins said there were a number of things that occurred, and the amount was reduced and then settled through the Settlement Agreement on the 115,000 acre-feet; there were discussions about different diversion points, and the Agreement also included five potential diversion points at Moyers Crossing.

Vice Chairman Hitch asked General Counsel Singletary to make a statement. Mr. Singletary said the Oklahoma Administrative Code provided an opportunity to provide evidence and testimony originally during the administrative hearing which was held in August, and when a proposed order is being considered that came from an administrative hearing as it is today, the Board is restricted to hearing only the testimony and evidence that was presented during that administrative hearing and is part of the record the hearing examiner's proposed order is based on.

2. Discussion and presentation by parties. Mr. Brian Nazareus, representing the Applicant, addressed the members and introduced others in attendance on behalf of the application: Mr. Jim Couch, City Manager, Mr. Craig Keith, City Attorney's Office, and Mr. Chris Browning, Utilities Director. First, he followed up on earlier questions saying the 20,000 acre-feet set aside is storage in Sardis, the other water referred to is senior flow water and domestic rights that are protected by their seniority and the analysis that has been done in the case. The 20,000 acre-feet of yield and the space is 30,000 acre-feet and that is in the Settlement Agreement for the future of southeast Oklahoma, and will always be senior to Oklahoma City (City). The City agreed to the set aside when it entered the Settlement Agreement and the Storage Contract transfer with the OWRB.

Mr. Nazareus stated the application and the permit that is proposed is a reasonable balance of the needs of the Oklahoma City area, and the evidence is undisputed it will grow in the nature of the 115,000 acre-feet that is needed within 50-60 years. He said the permit goes toward the needs of the City and the protection of southeast Oklahoma needs for recreation and future water use. The City reduced the amount from 136,000 acre-feet to 115,000 acre-feet per year as part of the negotiation, as well as implementing state of the art water conservation measures, and agreed not to divert from the Kiamichi basin unless there is 50 cfs is flowing by the point of diversion on top of the City's diversion. He said the evidence is undisputed that in times of drought there will not be flow in the Kiamichi in those times, the City will release water from Sardis to Moyers Crossing that will be enough for the diversion and to meet the 50 cfs so the river will be better as a result of the Settlement. The 50 cfs bypass is based upon the only instream study that was done for the Kiamichi River basin for the mussels and fish and is part of the record; and another piece of the Settlement is the City's release from Sardis is subject to a strict lake level management plan. Mr. Nazareus distributed and reviewed a watershed map that is in the record depicting the reservoirs in the basin noting Sardis, McGee Creek, and Atoka, with a pipeline to Stanley Draper Lake in central Oklahoma. He said the City had agreed to leave behind most of the storage in Sardis Reservoir for the fish and recreational uses, even though the City has paid for a substantial amount of that space. In wet years, the City will only be able to use the top four feet of the lake, and in dry periods it can take up to the top ten feet and there will be extreme drought limitations in place and lake level limitations for the City's other reservoirs including Canton, Lake Overholser and Stanley Draper, having to draw down those lakes before withdrawing from Sardis under the four foot limitation. The burden of drought will not only be carried by Sardis, but also the City's reservoirs. He said this is the benefit of the Settlement Agreement and the permit application before the Board.

Mr. Nazareus addressed points in the Protestant's exceptions. First, there is no basis the hearing examiner's recommendation is biased and unfair. No Board member participated in the Settlement Agreement, and the application has to be reviewed in accordance with the law, and the Board is not mandated to accept the permit. He said there is extensive evidence in the record to support the City's application with three days of testimony and 14 witnesses --nine engineers, two OWRB staff, one demographer--and 87 exhibits; the hearing examiner is a qualified, experienced administrative judge that heard all the evidence and is recommending a detailed, factually supported decision fully supported by Oklahoma law. He said the Protestant's case lacked any technical expertise or evidence, for example, the attack on the model but did not call a single engineer in support of their case, and showed a complete misunderstanding of water availability models. He described the credentials of the

model's author, the model was peer-reviewed by experts for the Chickasaw and Choctaw Nations and staff, Department of Interior's staff, as well as former OWRB director Duane Smith. He said no technical evidence by the Protestants in objection to the model was presented. He said the availability model was properly done. Because the Protestants were unable to provide any evidence they are seeking to use this proceeding to change Oklahoma law through arguments of the needs of the basin -- which is protected -- and leaving flow in the Kiamichi River. This Board does not have the authority to create instream flows and the record has no evidence of what a proper instream flow would be. Dr. Karen Vaughn of the University of Oklahoma testified about mussels but admitted she had not ever conducted an instream flow study, and the hearing examiner ruled she lacked expertise in that field. They presented no evidence on any issue and their argument appealed to emotion and not fact. He said the Protestants version of an instream flow is all the water in the Kiamichi - the bypass and other protections contained in the Settlement are not good enough. He said the Oklahoma Supreme Court has said riparian rights are not entitled to the full flow of the river but to reasonable use, and there was no evidence of what reasonable use is for riparian rights or what an appropriate instream flow would be. Mr. Nazareus concluded his presentation and reserved time for rebuttal.

Vice Chairman Hitch stated Mr. Nazareus has 4.5 minutes for rebuttal. The Board members did not have questions at this time. Mr. Hitch invited the representative for the Protestants to speak, and Dr. Kevin Kemper approached first; Mr. Chris Chandler will speak second, and Mayor Faulkner was unable to attend. Dr. Kemper commented about the gentleman being escorted out of the meeting, about being gentlemanly forbearance and feelings of anger. In response to Mr. Nazareus comments about no evidence being presented, Dr. Kemper said there was evidence presented, and there was evidence he was not allowed to present. He referred to the rule of law noted in paragraph 8. of his exceptions referencing OAC 785:20-5-5(a)(1) regarding direct diversions from a stream and water available for appropriation considering the mean annual precipitation run-off in the watershed above the point of diversion. He asked if the Board had that evidence, he wasn't able to bring it for which he took responsibility, and they didn't bring an engineer because they are the wrong scientists as the right scientist would have been a hydrogeologist, and his witness was not allowed to testify as a federal employee of the USGS. He did bring Dr. Karen Vaughn who testified about the impact of less water upon endangered species in the Kiamichi River, and his clients who testified about beneficial uses. Mr. Singletary reminded Dr. Kemper about new evidence, and Dr. Kemper responded he would only refer to evidence in the record and in documents filed before, during, and after the hearing. He talked about the Board's data reference before Sardis Lake which dams the Jack Fork River (a tributary to the Kiamichi River) referencing the watershed map saying whoever controls Sardis Lake controls the Kiamichi River, and that between Moyers Crossing and Hugo Lake is a deeply imperiled river. He said evidence was brought to the hearing but not reflected in the order that would have the effect of killing endangered species and hurting beneficial uses, and he said stream gage measurements should come from the 21<sup>st</sup> century. Dr. Kemper referred to the Supreme Court ruling in *Franco-American Charolaise, Ltd.v. Oklahoma Water Resources Board* and criteria for issuing permits after finding surplus water when considering all appropriations, riparian uses perfected, riparian domestic uses, all riparian uses deemed reasonable, and all anticipated in-basin needs. He said what he brought in evidence is not reflected in the order, and he encouraged the Board to review the entire record, consider what the Court determines as reasonableness (which he named) as Oklahoma City used a model that did not follow the statute. He argued the burden of proof is not upon the Protestants, debated what peer review is, and said the Constitution guarantees property rights cannot be taken without due process which includes notice. He believed OWRB staff to be professional but the regulations are constitutionally deficient and violate due process, and -- pointing to the gentleman who protested earlier-- said that Oklahoma City could have found each property owner. He said he was offended by opposing counsel's comments his clients were making more than what the reality is because of cultural



reasons, but Oklahoma City wants to come to the poorest county in Oklahoma and have water without compensation, which he said is unconstitutional taking, and theft. He said people won't come to the area because they can't predict the river for canoes, and don't know if their property values will fall. He said the OWRB was created to deal with fights, and he spoke about James Madison's theory of the "Tyranny of the Majority," where the bigger would take over the smaller, i.e., Oklahoma City getting a permit. He said approval will kill the river, the people, and all the flora and fauna, and he asked for reconsideration for more evidence.

Mr. Chris Chandler spoke on behalf of the Town of Talihina. He asked why the Board used data between 1920s and 1970s because that was unaffected by Sardis Reservoir, when the people of the area are effected by Sardis Reservoir and there should be data from the new millennium. He said Oklahoma City does not need the water until 2060 and there is time for a study for accurate information regarding the dynamics of the river today to make decisions that will affect people now and in the future. He said the Board shall consider the needs of the basin within the last five years, and transferring water to Oklahoma City is transferring wealth and the 20,000 acre-feet per year set aside is not adequate for the next 60 years and if the Board grants the permit in that amount, it abrogates any future development of the area. He said Talihina was not part of the Settlement Agreement and Oklahoma City could take water from Kiamichi and Atoka and put into storage while maintaining levels in its other lakes; there is no protection because Oklahoma City owns more than the four lakes in the Settlement Agreement. Mr. Chandler asked the Board to consider the time factor, the evidence that was collected more than 50 years ago, and consider a study can be done with accurate scientific data at a time that doesn't require water be taken from people now and in the future.

There were no questions by the Board members of the Protestants.

Mr. Nazareus addressed the Protestants arguments stating he did leave out Atoka when speaking earlier but it is listed in the Settlement Agreement in paragraph 1.2.3. and subject to drawdown limitations, published notice is standard in the west and individual notice is not required, and notwithstanding there were 85 protests so notice was made effectively. Regarding the 20,000 acre-foot set aside, he referred to paragraph 6.5.3. of the Settlement Agreement (page 57) which indicates the percentages of the amount of Sardis conservation storage allocated as a result of the agreement and 48% is for lake level maintenance for recreation, fish and wildlife, 13% to the administrative set aside, and 39% is for the City's use. He said the City is providing 48,000 (acre-feet) to hold up the reservoir for fish and recreation, as well as 13% storage for future growth in the region, and the amount being used from the 20,000 is 600 acre-feet. He explained the cultural comment was the result of an objection he made to Mr. Kemper's cross examination of his witness who has a graduate degree from MIT, the question of whether she was from the area rather than regarding the technical model put together for the region, and that the questioning was irrelevant. He said any scientific testimony is welcome, Mr. Kemper didn't have an engineer, and he explained it is standard that the US Department of Justice prohibits employees from testifying without proper permission but that person wasn't an engineer; all the engineers that reviewed the model agreed it is the proper analysis. And, regarding the hydrology of Sardis, Mr. Nazareus said that Sardis will be operated differently than it has since it was built as use has been very small, so the best way to understand is to go back and look at historical stream conditions, add in all the uses to understand the full impact, and then take into account the City's permit.

Vice Chairman Hitch asked if the Board members had questions for Mr. Nazareus or Dr. Kemper. Ms. Lambert asked about checks and balances in the permit and the Settlement Agreement that are in place to secure the cause and effect and are there remedies. Mr. Wilkins responded there will be data available at some point to evaluate the reservoir levels and the bypass for the public to review, and if there is a complaint of interference with domestic or existing appropriate uses, that will be investigated immediately and evaluated on a case-by-case basis. If there is interference that is

identified, the Board will take the appropriate action to remedy that. Mr. Nazareus added there is extensive accounting that was provided as part of the Settlement Agreement (section 7.) that will show the lake levels by the City in times of drought, to ensure those provisions are implemented, and that the 115,000 acre-feet limit is respected. Russell Doughty stated that provision is 6.1.6.4. of the Settlement Agreement states the City will provide its own accounting, which he likened to the Cookie Monster guarding the cookie jar. Mr. Nazareus responded there is extensive testimony in the record on the matter, and there was peer review by counsel and engineers. Dr. Kemper stated he is obligated to clear up any misrepresentation and said he had no expert witnesses and wasn't able to get in other witnesses, and said it was not standard for a federal government employee to not provide witness, but he insisted there was evidence the Board should have. Vice Chairman Hitch asked if Dr. Kemper could address Ms. Lambert's question. He replied, regarding checks and balances, here there is a state agency authorized by the legislature to do legislative authority, there are issues with the feds and issues with the Tribes, but his concern when referring to Madison and checks and balances regarded his reading of the mandate of this Board which is to protect the little one.

Mr. Stallings asked about exhibit 13 regarding the lake levels, what is the Sardis Lake going to look like at maximum drawdown. Mr. Nazareus responded that Sardis will not be drawn down below 10 feet as a result of the City's operation. He said there is an exhibit in the record that references the actual water accounting sheet.

Ms. Lambert commented that this Board's duty is to represent all of Oklahoma – the little people, other people, agriculture, irrigation, rural, municipalities, and the whole state. Mr. Darby asked if it is correct that the Agreement stated the permit is to come before the Water Board within 45 days. Mr. Singletary responded the Applicant was to submit an amended application within a set amount of days after the enactment of the Settlement legislation, the Water Board had 180 days to evaluate the application and conduct an administrative hearing which was held August 21-25, and then 45 days after the conclusion of that hearing that the proposed order from the hearing examiner would be presented to the Board. Mr. Darby said the Board has met that condition by considering the matter today, and Mr. Singletary stated that is correct. Mr. Darby said the Board has met that condition, but the Agreement did not guarantee the permit would be approved. Mr. Singletary said there was no predetermined outcome but consideration by the Board within a set amount of time, and that has been met.

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

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

Vice Chairman Hitch asked if there were other questions. There were none. Ms. Lambert moved to approve the application, and Mr. Allen seconded. Mr. Hitch asked for the vote.

AYE: Lambert, Melton, Drake, Stallings, Allen, Hitch  
NAY: Darby  
ABSTAIN: None  
ABSENT: Buchanan, Drummond

Vice Chairman Hitch announced the motion passed.

**3. 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.

**4. ADJOURNMENT**

There being no further business, Vice Chairman Hitch adjourned the meeting of the Oklahoma Water Resources Board at 4:05 p.m. on October 10, 2017.

**OKLAHOMA WATER RESOURCES BOARD**

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

\_\_\_\_\_/s/\_\_\_\_\_  
Jason Hitch, Vice Chairman

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

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

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Robert L. Melton, Sr.

\_\_\_\_\_/s/\_\_\_\_\_  
Robert Stallings

***ATTEST:***

\_\_\_\_\_  
Absent  
Stephen B. Allen, Secretary (SEAL)