

# OKLAHOMA WATER RESOURCES BOARD

## OFFICIAL MINUTES

December 6, 2018

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Jason Hitch at 2:45 p.m., on December 6, 2018, at the Sheraton Midwest City Hotel at the Reed Conference Center, Joyner Room, 5750 Will Rogers Road, Midwest City, Oklahoma, 73110. 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 December 3, 2018, at 5:00 p.m., at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, provided on the agency's website, and posted at the meeting place on December 5, 2018.

Chairman Hitch welcomed everyone to the December meeting of the Oklahoma Water Resources Board.

A. Roll Call. Chairman Hitch asked for the roll call of members.

Board Members Present

Jason Hitch, Chairman  
Stephen Allen, Vice Chairman  
Robert Stallings, Secretary  
Jennifer Castillo  
Charles Darby  
Bob Drake  
Ford Drummond  
Robert L. Melton  
Matt Muller

Board Members Absent

None

Staff Members Present

Julie Cunningham, Executive Director  
Sara Gibson, 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

Kathy Edwards, City of Minco, OK  
H. Clay Buford, Ames, OK

(Others present continued)

Dean Couch, Gable Gotwals, Oklahoma City, OK  
Krystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer, Ada, OK  
Elizabeth Nichols, Arbuckle Aggregates, Edmond, OK  
Eric Cowan, Bank of America Merrill Lynch, St. Louis, MO  
Peter Dawson, Arbuckle Aggregates, Plano, TX  
M. Beard, Bluefin Water, Norman, OK  
Michael Mathis, Continental Resources, Oklahoma City, OK  
Tom Liu, Bank of America Merrill Lynch, New York, NY  
John Pugh, Weleetka Public Works Authority, Weleetka, OK  
Robert Vaughan, P.E., Weleetka, ISG., LLC., McAlester, OK  
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK  
Robby Renner, Weatherford, OK  
Ben Oglesby, Municipal Finance Services, Edmond, OK  
Cindy Arnold, City of Broken Arrow, OK  
Elesia Church, City of Elk City, OK  
Bodie Bachelor, Centennial Law Group, Duncan, OK  
Michael Taylor, Cowan Group  
Jered Davidson, Public Finance Law Group, Oklahoma City, OK  
Kimberly Meek, City of Duncan, OK  
Evan Stevens, City of Tipton, OK  
Jennifer Wasinger, Freese & Nichols, Oklahoma City, OK  
Mark Ickert, Freese & Nichols, Oklahoma City, OK  
Kaylee D. Maddy, Doerner Saunders Daniel Anderson, Oklahoma City, OK  
Eddie Rhandour, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Jay Updike, HUB, Oklahoma City, OK  
Justin Hoover, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Mike Spear, Oklahoma City, OK  
Kathy Martin  
Derek Blackshare, Blackshare Environmental Solutions, Tulsa, OK  
Steve Roy, Blue River Foundation, Edmond, OK

A. Discussion, Amendments, and Vote to Approve Official Minutes of the October 16, 2018, Regular Meeting.

Chairman Hitch asked if there was a motion on the draft minutes of the October 16, 2018, meeting. Mr. Allen moved to approve the minutes of the October 16, 2018, meeting, and Mr. Darby seconded. There was no discussion. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

B. Executive Director's Report

Ms. Julie Cunningham, Executive Director, stated to the members she had heard positive feedback about the Governor's Water Conference; there was a diversity of speakers that were on point as well as energizing. In the last month, Ms. Cunningham and staff have attended meetings with the Environmental Federation of Oklahoma, and the Oklahoma Oil & Gas Association, and met in Guymon with the Oklahoma Panhandle Irrigators Association along with Oklahoma State University and the Oklahoma Conservation Commission regarding a potential Master Irrigation Program. Cabinet

Secretaries Teague and Reese signed an MOU with the Arkansas Department of Environmental Quality and Arkansas Natural Resources Commission regarding implementation of the Illinois River Joint Study Commission Recommendations--OWRB staff and OCC staff will be working with the Arkansas agencies. The Produced Water Working Group has reconvened to continue dialogue with the industry as it moves forward in the area of water reuse and whether the group needs to continue to meet regarding related water management issues; and, Ms. Cunningham met with Charles McGuire, newly appointed EPA Regional 6 Office of Water Quality Director.

Regarding State Legislative issues, Ms. Cunningham reported that Governor-elect Stitt has appointed Mr. Kenneth Wagner as the next Secretary of Energy and Environment. Mr. Wagner is currently serving as EPA Headquarter Advisor for Regional and State Affairs. The bill filing deadline for the 2019 session is December 7, and staff has requested legislation for the renewal of the Gross Production Tax which funds the implementation of the Comprehensive Water Plan yield studies and maximum annual yield determinations and other OCWP activities. The GPT sunset date is 2019; the Board began receiving funds in 2006 for the OCWP. She and staff have met with several new legislators and will be working with DEQ to host a legislative workshop. Regarding federal legislation, Ms. Cunningham stated WRDA has been reauthorized and signed by the President; the Farm Bill has not been acted upon.

Ms. Cunningham concluded the report; there were no questions by members.

Chairman Hitch commented this meeting is being held in conjunction with the annual Governor's Water Conference which he felt was very successful, and he thanked the staff and the sponsors for making the Governor's Water Conference possible.

#### A. Financial Update

1. Budget Report. Mr. Cleve Pierce, Administrative Services Division Chief, addressed the members and stated the budget report is for the time period ending November 2018. He said for the time period the agency has spent 32 % of the appropriated budget leaving 68%, has spent 18% of the revolving funds leaving 82% of budgeted funds, and has spent 18% of the federal dollars leaving 82%. Overall, 79% of total budget remains with 67% of the year remaining compared to last year at this time when the agency had 72% of the budget remaining.

He noted that Ms. Judy Jackson with OMES is available after the Board meeting to assist members that are setting up their email accounts with Office 365. And, he updated members on the audit survey information that has been provided to the Office of State Finance and the Transition Team.

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

## 2. **FINANCIAL ASSISTANCE DIVISION**

### A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Tipton Public Works Authority, Tillman County. Recommended for Approval.

Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a \$22,000.00 Emergency Grant request by the Tipton Public Works Authority located in Tillman County. He said Tipton experienced an electrical fault at its lift station which resulted in a dual pump failure and sewage bypass at the lift station. To remedy the situation, two pumps were installed along with guide rails and supports, a float system and a control panel. He said the project cost \$53,311.59 and will be funded with the \$22,000.00 OWRB emergency grant, and \$31,311.59 of local funds. Staff recommended approval of the emergency grant application.

Mr. Evan Stevens, representing the Tipton Public Works Authority, spoke to the members about the need for the emergency grant in order to come into compliance with the Department of Environmental Quality.

There were no questions by members. Mr. Allen moved to approve the emergency grant to the Tipton Public Works Authority, and Mr. Muller seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Minco Municipal Authority, Grady County. Recommended for Approval. Mr. Freeman stated this item is a \$44,323.17 Emergency Grant request by the Minco Municipal Authority located in Grady County. He explained a water line collapsed and a sewer line collapsed resulting in damages that caused the services to be cut off to 30 homes. In order to correct the problem, 500 feet of water line and 420 feet of sewer line was replaced. The project cost \$52,144.91, and will be funded with the OWRB emergency grant of \$44,323.17, and local funds of \$7,821.74. Staff recommended approval of the emergency grant request.

Representing the Minco MA was Ms. Kathy Edwards, City Council Member.

There were no questions by members. Mr. Drake moved to approve the emergency grant to the Minco Municipal Authority, and Mr. Darby seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Elk City Public Works Authority, Beckham County. Recommended for Approval. Mr. Freeman stated to the members that this item is a \$191,000.00 loan request by the Elk City Public Works Authority which is requesting the funds to go along with a \$572,000.00 grant from the Oklahoma Department of Transportation, and \$1,556,000.00 in local funds for a major downtown pedestrian improvement and stormwater quality runoff project. The portion of the project that will be funded with the OWRB proceeds will be installing permeable concrete pavers, planting trees, and an irrigation system. Mr. Freeman stated the loan will be funded through the principal forgiveness portion of the Clean Water State Revolving Fund loan program, and he noted provisions of the loan agreement. Elk City has one loan outstanding with the Board with a balance of \$5,575,000.00 and the debt coverage ratio stands at 3.0-times. Staff recommended approval of the funding request.

Ms. Elesia Church, City Treasurer, was present representing the Elk City Public Works Authority and explained the importance of the project to maintaining the vitality of downtown Elk City.

There were no questions by the members. Mr. Stallings moved to approve the Clean Water funding to the Elk City Public Works Authority, and Mr. Drummond seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

D. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Weleetka Public Works Authority, Okfuskee County. Recommended for Approval.

Mr. Joe Freeman stated to the members that this application for Clean Water State Revolving Fund loan request by the Weleetka Public Works Authority in Okfuskee County is in the amount of \$400,000.00. The Authority is requesting the funding for a new lift station, installation of 3,000 feet of sewer line, and 12 manholes. Mr. Freeman noted provisions of the loan agreement; the debt coverage ratio stands at 2.73-times. Staff recommended approval of the Clean Water SRF funding request.

Representing Weleetka PWA was Board Member John Pugh, and Engineer Robert Vaughan. Mr. Pugh expressed his appreciation of the Board's consideration of funding the project.

There were no questions by the members. Mr. Drummond moved to approve the Clean Water SRF loan to the Weleetka PWA, and Mr. Drake seconded.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

E. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Broken Arrow Municipal Authority, Tulsa County. Recommended for Approval.

Mr. Freeman stated to the Board members that this item is for consideration of a \$4,255,000.00 loan request from the Broken Arrow Municipal Authority. The BAMA is requesting the loan for improvements to the Lynn Lane Wastewater Treatment Plant which include the rehabilitation of the west clarifier, modification and replacement of the existing scum and RAS pumps, constructing a non-potable water system, and design a disinfection system. The loan proceeds will also be for the design of Phase 1 of the Elm Creek sewer trunk line replacement. In the past ten years, the water connections have increased by 11% and the sewer connections have increased by 14%. Mr. Freeman noted provisions of the loan agreement, and stated that Broken Arrow has been a long-time, excellent loan customer of the Board's, having 15 outstanding loans with the OWRB for a combined principal balance of \$135.8 million dollars. The debt coverage ratio stands at 2.08-times. Staff recommended approval of the loan request.

Broken Arrow Financial Director Cindy Arnold was present representing the BAMA who expressed the Authority's appreciation of the Board's consideration of the funding request. Mr. Muller asked if Broken Arrow had other long scale projects planned for the near future, and Ms. Arnold answered, yes there are plans for which the city will come to the Board in the future. Mr. Allen asked if project completion is based on the description of Phase 1, and Ms. Arnold answered, yes.

There were no other questions by the Board members. Mr. Melton moved to approve the Clean Water SRF loan funding request, and Mr. Allen seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

F. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Eufaula Public Works Authority, McIntosh County. Recommended for Approval.

Mr. Freeman stated that this item is a \$7,185,000.00 loan request from the Eufaula Public Works Authority that is requesting the loan to design and construct water distribution system improvements which will include approximately 60,000 feet of water lines, 40 valves, 70 fire hydrants, install pressure reducing valves, and rehabilitate two existing booster pump stations. Mr. Freeman explained the loan will be funded through the Drinking Water SRF loan program and will be closed in phases. Mr. Freeman noted provisions of the loan agreement, and that the EPWA will be utilizing \$20,000.00 from an Eastern Oklahoma Development Authority District REAP Grant. Eufaula has two outstanding loans with the

Board with a combined principal balance of \$3.7 million; its debt coverage ratio stands at 1.82-times. Staff recommended approval of the DWSRF funding.

Eufaula City Manager Jacob Foos was present in support of the DWSRF funding request who explained the town is battling a 60% water loss which needed to be addressed now.

Chairman Hitch asked how staff determines the length of the loan and Mr. Freeman responded it depended upon the life of the project, and what the borrower feels it can go for maturity. Mr. Allen asked how long it will take to complete the work, and Mr. Foos responded the Authority's goal is less than three years. Chairman Hitch asked the line materials and the project engineer answered it would be PVC or polyurethane. Mr. Muller asked the population of Eufaula, and Mr. Foos said over 3,000 people, and the Authority serves approximately 4,000 total.

There were no additional questions, and Mr. Allen moved to approve the DWSRF loan to the Eufaula PWA. Mr. Darby seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

G. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Tahlequah Public Works Authority, Cherokee County. Recommended for Approval.

Mr. Freeman stated this agenda item is for consideration of a \$8,920,000.00 Drinking Water SRF loan request. The loan will be used to make improvements to two water treatment plants: at the Teehee plant, rehabilitation of wells and the electrical building, replacement of filters and valves, installation of filter covers and a chemical feed building; at the Tenkiller plant installing new pumps, clarifier cover, storage and feed equipment, a third membrane filtration plant, control panels, chemical resistant liner, modification of baffles, and replacement of return pumps. The loan will be funded through the DWSRF loan program, and Mr. Freeman noted provisions of the loan agreement. Tahlequah has two outstanding loans with the Board with a combined principal balance of \$13.9 million; the debt coverage ratio stands at 2.8-times. Staff recommended approval of the loan request.

Mr. Michael Doublehead, General Manager, was present in support of the funding application. He thanked the Board for its assistance in protecting the Illinois River Watershed.

There were no questions by the members. Mr. Stallings moved to approve the DWSRF loan program funding to the Tahlequah Public Works Authority, and Mr. Melton seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

H. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Duncan Public Utilities Authority, Stephens County. Recommended for Approval. Mr.

Freeman stated that this item is for the consideration of an \$11,325,000.00 loan request from the Duncan Public Utilities Authority. He said Duncan is requesting the loan for the construction of a semi-circular weir at the Clear Creek Lake Dam which includes demolition of the existing reinforced concrete spillway, to be replaced with a new spillway and underdrain system, 3-foot thick riprap and 9-inch bedding. He said the loan will be funded through the Clean Water SRF loan program and he noted provisions of the loan agreement. Duncan has five outstanding loans with the Board with a combined principal balance of \$16.65 million; the debt coverage ratio stands at approximately 2.8-times. Staff recommended approval of the request.

Ms. Kim Meek, City Manager, was present in support of the loan application, who expressed the City's appreciation to the Board for its consideration.

There were no questions by the members. Mr. Darby moved to approve the Clean Water SRF loan program funding to the Duncan PUA, and Mr. Allen seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: None  
ABSENT: None

Mr. Drummond asked if there were capacity concerns with the Clean Water SRF, and Mr. Freeman stated there are not. He explained the legislative changes for 20, 30, and 40-year maturity and the benefits to communities as mentioned by Senator Jim Inhofe in his presentation to the conference attendees. Chairman Hitch added there are more high-dollar projects at the end of the year.

### 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 move items to the Special Consideration Agenda.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items Listed. Chairman Hitch asked if there were requests to make changes to the agenda. There were no requests, and he stated he would entertain a motion.

Mr. Allen moved to approve the Summary Disposition Agenda, and Ms. Castillo seconded. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch  
NAY: None  
ABSTAIN: Stallings on items 3.F.3. #1982-966, 3.M.3. #OK30558, and 3.M.4. #OK30560\*  
ABSENT: None

\*(Mr. Stallings' statement included the permit numbers #30553 and #30558; however, Ms. Gibson clarified at the conclusion of the meeting the permit numbers are 3.M.3. #OK30558 and 3.M.4. #OK30560.)

The following items were approved:

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

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

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
OEDA				
a.	FAP-18-0007-R	Rural Water District #1	Ellis	Change of Scope

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

1. Legal Services Contract between OWRB and the Attorney General's Office ("AGO") for the provision of an administrative hearing officer in proceedings in accordance with the Oklahoma Administrative Procedures Act.
2. Second Amendment to Interagency Agreement between OWRB and the Grand River Dam Authority ("GRDA") to extend the term of the agreement for the development of the Grand Lake Comprehensive Water Plan.
3. Amendment to Interagency Agreement between OWRB and Oklahoma State University ("OSU") extending the budget/project period of the taxonomic identification project.
4. Professional Services Contract between OWRB and the Centennial Law Group for professional legal services in relation to OWRB's administration of the Drinking Water State Revolving Fund Administrative Account funds related to the Public Water Systems with Public Health Violations Projects.
5. Professional Services Agreement between OWRB and the Tarigma Corporation for ongoing services and support for the IFS System in conjunction with the Financial Assistance Division's funding programs.
6. Agreement Amendment between OWRB and the Office of the Secretary of Energy & Environment ("OSEE") to extend the budget/project period of the OK Wetlands Program FY17 - Riverine & Oxbow Study.
7. Agreement Amendment between OWRB and the Office of the Secretary of Energy & Environment ("OSEE") removing Programmatic Condition (M), approving all proposed projects of the OKFY18 604(b) Water Management Planning Program.

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

1. City of Oklahoma City, Oklahoma County, #2017-538
2. Todd A. & Jessica D. Parker, McClain County, #2018-517
3. Jech Family Trust, Kingfisher County, #2018-519
4. David & Marcy Bailey, Blaine County, #2018-541
5. Loan Vo, Delaware County, #2018-554
6. Black Mountain Sand, LLC, Blaine County, #2018-558
7. Comanche Exploration Co., LLC, Dewey County, #2018-564
8. Charles E. Roberts & Connie Kay Roberts Revocable Trust, Dewey County, #2018-567
9. United Ag, LLC, Harmon County, #2018-569
10. Delarose Poultry, LLC, Delaware County, #2018-585
11. Jech Family Trust, Blaine County, #2018-592
12. Oklahoma City Waste Disposal, Inc., Oklahoma County, #2018-601

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

1. Landgraf Farms (Landscape), LLC, Marshall County, #1978-688B
2. David & Marcy Bailey, Blaine County, #1979-570
3. Enid Municipal Authority (City of Enid), Major County, #1982-966
4. United Ag, LLC, Harmon County, #1988-581
5. David & Marcy Bailey, Blaine County, #1999-505
6. Charles D. & Charles W. Testerman Joint Venture, Harmon County, #2012-590



- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. Rod & Twylia Keck, Major County, #2017-530
  2. Jerald & Deborah Radcliff Revocable Family Trust, Beaver County, #2018-522
  3. Rendel & Gayla Nightingale, Major County, #2018-536
  4. Rosanna Easterling, Johnston County, #2018-537
  5. Arthur & Deborah Bohlmann, Texas County, #2018-552
- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
1. Ailene & Terry DeMoss, Blaine County, #1983-505
  2. Pride Feeders, LP, Texas County, #1989-585
  3. J & R Transport, Inc., Canadian County, #2006-573
  4. Gale & Mattie Gail Thompson, Beckham County, #2013-586
- I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:
1. David & Marcy Bailey, Blaine County, #1954-910
  2. David Bailey, Custer County, #1956-073
- J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
1. Boyd Family Trust, Grady County, #2018-033
  2. Ricky & Tammi Bailey, Grady County, #2018-034
  3. Kay Moore, Kingfisher County, #2018-048
  4. Marshall & Andrea Dougherty, Canadian County, #2018-053
  5. Pam Chain, Kingfisher County, #2018-056
  6. Dale Wayne & Lori Gwen Glazier, Blaine County, #2018-061
- K. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:
1. Roger Holsted d/b/a Oak Creek Farms, LLC and Jay Holsted Farms, LLC, Washita County, #2018-016
  2. Cimarex Energy Company, Blaine County, #2018-035
  3. Bluefin Water Solutions, LLC, McClain County, #2018-040
  4. Imogene Hairrell Harris 1990 Revocable Trust, Pushmataha County, #2018-060
- L. Consideration of and Possible Action on Applications for Seasonal Permits to Use Stream Water:
1. Oklahoma Department of Wildlife, Comanche County, #2018-042
- M. Consideration of and Possible Action on Dam and Reservoir Construction:
1. CIC, LLC (Grand Sec 1), Oklahoma County, #OK02407
  2. RK Hall Sawyer Plant (West Settlement Pond), Choctaw County, #OK30553
  3. Continental Resources, Inc. (North Storage Pit), Grady County, #OK30558
  4. Continental Resources, Inc. (South Storage Pit), Grady County, #OK30560
- N. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
    - a. Licensee: Dawson Water Well Service DPC-0978
    - Operator: Correy Dawson OP-2262
  2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses
    - a. Licensee: Howard Drilling DPC-0105
    - Operator: Justin Brown OP-2260
- O. 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, Craig County, #FP-17-96
  2. Oklahoma Department of Transportation, Craig County, #FP-17-97

3. Oklahoma Department of Transportation, Latimer County, #FP-18-01
4. Oklahoma Department of Transportation, Latimer County, #FP-18-02
5. Oklahoma Department of Transportation, Latimer County, #FP-18-03
6. Oklahoma Department of Transportation, Latimer County, #FP-18-04
7. Oklahoma Department of Transportation, Latimer County, #FP-18-05
8. Oklahoma Department of Transportation, Latimer County, #FP-18-06
9. Oklahoma Department of Transportation, Latimer County, #FP-18-07
10. Oklahoma Department of Transportation, Latimer County, #FP-18-08
11. Oklahoma Department of Transportation, Latimer County, #FP-18-09
12. Oklahoma Department of Transportation, Latimer County, #FP-18-10
13. Oklahoma Department of Transportation, Bryan County, #FP-18-12
14. Oklahoma Turnpike Authority, Pittsburg County, #FP-18-47
15. Oklahoma Department of Transportation, Cherokee County, #FP-18-48

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

1. Valerie Brinson, Town of Avant, FPA-765
2. Russell Hayman, City of Barnsdall, FPA-766
3. Ryan W. Murray, City of Cleveland, FPA-767
4. Bernard W. Blue, Coal County, FPA-768
5. Samuel R. Strecker, Garfield County, FPA-769
6. Athena K. Martin, City of Harrah, FPA-770
7. Alexander W. Wallis II, City of Idabel, FPA-771
8. Amanda B. Clark, Noble County, FPA-772
9. Summer D. Aldridge, Ottawa County, FPA-773

Q. Consideration of and Possible Action on Applications to Merge and/or Acquire Assets:

1. Grove Municipal Services Authority, Delaware County, #RWA2008-0001
2. Kaw City Municipal Authority, Kay County, #RWA2018-0002

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

- A. None. There were no questions or items of discussion by the Board members.

**5. SPECIAL CONSIDERATION**

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Temporary Permit to Use Groundwater No. 1980-697, H. Clay and Mary Beth Buford, Kingfisher County:

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, stated to the members that this item is the application for a temporary permit to use groundwater, #1980-697, in the name of H. Clay and Mary Beth Buford in Kingfisher County. He said that on February 14, 2017, the applicants submitted an application to amend a temporary groundwater permit adding 2,609 acre-feet of groundwater and 1,304.5 acres of dedicated land, six additional well locations, and deleting one well location (for a total of 2,766.2 af). He said the application was revised several times and ultimately the applicants reduced the amount sought under the application to 2,606.1 acre feet of groundwater per year. He noted the original permit had been issued to Orin Buford on June 9, 1981 to use 160 acre-feet of groundwater per year for irrigation and mining and oil and gas operations. The land dedicated overlies the alluvium and terrace deposits of the Cimarron River; no maximum annual yield has been completed for that basin, therefore the equal proportionate share for each landowner of two acre-feet

per acre per year is allowed. The application notice was published on October 26, 2017, and November 2, 2017, in the Fairview Republic in Major County and the Hennessey Clipper in Kingfisher County as the land is located in both counties. On November 22, the Board received a timely protest letter on behalf of Mr. James Buford who contended he owned land in the southwest quarter which had been dedicated to the existing temporary permit issued by the Board. At the hearing, the evidence presented confirmed the surface estate had in fact been conveyed to the protestant and the applicant held no ownership interest in that land. The protestant further contended he owned the well on the tract of land and that well should not be authorized for use under permit #1980-697. Mr. Wilkins continued that the record showed that while the applicant did submit documentation of ownership of the land in the southwest quarter, a revised application sought to remove the land from the permit, and a revised application would remove 160 acre-feet of groundwater that would have been associated with that tract of land. The hearing examiner found that based upon the findings of fact, conclusions of law, and Board order determined the applicant has satisfied the elements of law for obtaining a temporary groundwater permit provided, however, the tract of disputed land located in the southwest quarter would no longer be authorized under the temporary permit. Therefore, Mr. Wilkins stated the record showed the applicant has a valid right to the dedicated land; the land overlies the Alluvium Terrace of the Cimarron River, is entitled to two acre-feet of water per acre, that irrigation, mining, and oil and gas operations are beneficial uses, and future waste by pollution or waste by depletion will not occur. It is therefore recommended the application in the name of H. Clay and Mary Beth Buford shall be approved, provided the disputed tract of land and well are no longer associated with that permit.

2. Discussion and presentation by parties. Mr. Clay Buford was present representing the applicant. There were no protestants or representatives of the protestant in attendance. Chairman Hitch invited Mr. Buford to make a statement. Mr. Buford responded that the matter was addressed at the hearing, and he had no disagreement with what the Hearing Examiner found.

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 an 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. There were no questions by the Board members.

Mr. Stallings moved to approve temporary groundwater permit #1980-697, and Mr. Drummond seconded. There was no further discussion, and Chairman Hitch called for the vote.

AYE:	Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch
NAY:	None
ABSTAIN:	None
ABSENT:	None

B. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Regular Permit to Use Stream Water No. 2016-033, Arbuckle Aggregates, L.L.C., Johnston County:

1. Summary – Mr. Kent Wilkins stated this item is for a regular permit to use streamwater, #2016-033, in the name of Arbuckle Aggregates, LLC, for water to be used in Johnston County. Mr. Wilkins provided background on the permit application which was received in December 2016 for an allocation of 250 acre-feet of streamwater per year from two diversion points on Mill Creek in Johnston County and the proposed use of the water is for the purpose mining and industrial use. Notice of the application was published in April 2017 and completed in accordance with statutory and Board rules in the Johnston County Capitol Democrat and Madill Record, and he named the protests that were filed with the Board (see page 1 of the proposed order). A prehearing conference was held on June 30, 2017, and the parties were combined as Citizens for the Protection of the Arbuckle Simpson Aquifer

representing a number of local landowners, and Dean Couch representing the Paul Warren Revocable Trust, and the David M. and Mary C. Warren Revocable Trust; individuals Kenneth Meyers, Carlyle Hill, and James Johnson represented themselves on their own behalf and a formal hearing was held on October 10, 2017, and continued December 18, 2017. The OWRB Planning and Management Division employees testified at the hearing that the OWRB standard streamwater availability model was used and the analysis showed there is sufficient unappropriated streamwater available on an annual basis at the diversion points on Mill Creek. Mr. Wilkins said the intended use of the water is for dust suppression, washing aggregate and associated activities which are according to testimony and evidence presented lawful and economically necessary to the operation of the quarry. Witnesses testified Arbuckle Aggregates planned to withdraw from Mill Creek at high flow and would reduce or cease diversion during periods of low flow, and that water would be used within the basin and not removed out of the stream system. Protestants' witness, Dr. Neel Deeds, testified he had conducted analysis of the flow characteristics of Mill Creek including the OWRB availability model, provided supplemental work of the OWRB's analysis, and made certain recommendations regarding permit conditions which might serve to prevent Arbuckle's proposed diversion from interfering with domestic and existing appropriative uses.

Mr. Wilkins explained that under the provisions of Chapter 20 of the OWRB rules the OWRB must take into consideration the mean annual precipitation runoff in the watershed above the points of diversion, mean annual flow, streamgage measurements, domestic uses, and all existing appropriation for other designated purposes in the stream system, and the Board testified there appeared to be water available for appropriation in Mill Creek on an annual average basis. The Hearing Examiner found that before taking final action on any stream water application, the Board must determine the proposed use does not interfere with domestic use or existing appropriative uses in order to protect the welfare of the citizens of Oklahoma which must be made from the evidence presented at the hearing. If the evidence presented indicates interference as a result of the proposed streamwater application, the Board may determine that conditions or restrictions can be placed on stream flow. Mr. Wilkins stated the Hearing Examiner found it was necessary for the Board to place specific conditions on Arbuckle's requested permit for there being such interference, and those conditions are: (1) the permit holder shall not divert water under this permit when the flow of Mill Creek as measured by the USGS gage 07331200 or another equivalent method could not be diverted if there is less than 8.0 cubic feet of flow; (2) the permit holder shall not divert water at a rate that reduces the flow of Mill Creek to a rate of less than 8.0 cfs at the same gage; (3) the permit holder may divert water at a rate of 2,500 gpm during periods of time the flow of Mill Creek exceeds 13.1 cfs as measured by the same gage or method; (4) the permit holder must construct works for the storage or transportation of water diverted from Mill Creek which are capable of making beneficial use of the appropriated water under the permit; and (5) in the event the water rights of a downstream prior appropriator are cancelled the permit holder can petition the Board for modification of its permit conditions. Therefore, according to the record as the Board testified unappropriated water was found to be available in the amount applied for, the applicant has a present and future need for the water, the applicant intends to put the water to beneficial use, the proposed use will not interfere with domestic or existing appropriative uses, use of the water is within the stream system, and therefore, will not interfere with uses inside the stream system. Mr. Wilkins stated the Board received a response brief from the applicant objecting to the conditions placed on the potential permit, and he recommended that the parties explain to the Board their position, and OWRB staff is available to answer questions the Board may have.

Chairman Hitch asked if the Board members had questions at this time; there were no questions by the members.

Mr. Wilkins stated representing the applicant is attorney Ms. Elizabeth Nichols, Mr. Pete Dawson, and Mr. Geoffrey Canty. Representing the protestants is Ms. Krystina Phillips of CPASA.

Chairman Hitch allowed the representatives six minutes to address the Board.

2. Discussion and presentation by parties. Ms. Nichols stated to the members that as set forth in her exceptions brief submitted prior to the Board meeting that there was testimony during the hearing that there is no other stream water permit that has a flow restriction and the proposed flow restrictions on Arbuckle Aggregates makes the permit junior to any subsequent stream water permit issued on Mill Creek without a flow restriction. She said this upends the very definition of priority contained within the OWRB definitions of priority -- an appropriative streamwater right that is governed by the time the right is filed. She argued there is a general condition placed on all streamwater permits that prevents a permit holder from interfering with the rights of domestic user or senior permit holders and that these flow restrictions placed on the proposed Arbuckle Aggregates stream water permit are unnecessary. She said it was testified at the hearing another mining operator, P&K that applied for and received a streamwater permit downstream from Arbuckle Aggregates and is the same type of operation and the same stream system of Mill Creek, but no protests were received on that application. The proposed order by the Hearing Examiner sets a different standard for streamwater permits that have not been protested versus those that have been protested, and there is no identification in the proposed order of how Arbuckle Aggregates' operation is so unique or in any way different from the P&K operation. She said that interference has to be real and physical and not hypothetical and Mr. Wilkins testified to that fact, and Arbuckle Aggregates has not commenced the mining operation and has not received a permit so it is impossible for there to be actual interference. She said that under the Board's rules there is no procedure to pre-emptively claim interference, and the proposed order states interference "might occur" under certain circumstances which is an admission there is no real or physical interference. Ms. Nichols said the Hearing Examiner's proposed order relied on the testimony of the CPASA expert Dr. Neel Deeds who admitted he skimmed but had not read the OWRB statutes and administrative rules regarding stream permits, had not reviewed Arbuckle Aggregates' application prior to his testimony, never participated in the application of a streamwater permit and admitted he was not aware of the general condition on a streamwater permit requiring interference. She contended the proposed order disregarded the experience of OWRB employees by recommending Arbuckle Aggregates' streamwater permit be granted with the usual exceptions. The calculation of the available water is inaccurate as it takes into consideration permits that are subject to reduction and cancellation so the actual downstream water users is not 8 cfs but 2.3 cfs so the proposed order mandates that Arbuckle Aggregates wash available water flow downstream into the Washita River which creates waste. Ms. Nichols stated that Arbuckle Aggregates is asking the permit be granted with the general conditions.

Chairman Hitch asked if there were questions by members of Ms. Nichols. Mr. Allen asked about Ms. Nichols' statement that interference must be real and not hypothetical and under what circumstances a permit could be issued if water hasn't been used based upon interference. Ms. Nichols replied the proposed hypothetical interference would have to be that there is a different calculation on available water use, if the OWRB determined there wasn't available water. She is relying on the testimony of OWRB personnel that it has to be real and physical, and not proposed and hypothetical.

There were no other questions by the members.

Ms. Kystina Phillips asked if it would be acceptable for an individual to make comments, would that be included in the six minute presentation or would six minutes be allowed for each. Ms. Sara Gibson, OWRB General Counsel, asked if Ms. Phillips represented the individual at the hearing, and she answered she did; Ms. Gibson stated that would be part of the parties' allowed six minutes.

Ms. Phillips stated she is representing Citizens for the Protection of Arbuckle Simpson Aquifer, Eric Chapman a senior appropriator on Mill Creek, and Shannon Shirley and Reginal Robbins, who utilize Mill Creek for domestic riparian uses. She urged the Board to approve the proposed order as written because the OWRB rules allow the Board to place conditions on a permit in order to protect existing beneficial uses and rights, and to deviate from the proposed order with sufficient basis would constitute arbitrary and capricious action subject to revocation by District Court. She referred to

785:20-5-5(d)2 regarding the Board's authority to determine conditions necessary to protect existing beneficial uses which she contended is what the Hearing Examiner proposed after listening to multiple days of testimony from her clients about their insufficient flow. She concluded her remarks by stating her clients followed the rules set out by the Board for timely protest and formal hearing and are asking the Board to follow its own rules and issue the proposed permit with the conditions to protect rights; that the Board is authorizing the requested amount but without interfering with the clients' existing prior rights. She said to issue the permit without conditions would upend the prior appropriation system by allowing a junior appropriator to interfere with a senior appropriator's permit, and with riparian rights. She yielded the remainder of her time to Ms. Shannon Shirley.

Chairman Hitch stated there is one minute 30 seconds remaining.

Mr. Allen asked Ms. Phillips to respond to the argument that if the Board includes conditions on the permit how that would upend the prior appropriation precedent if the Board granted a permit that did not have conditions in the future. Ms. Phillips referred to Ms. Nichols' comments regarding P&K which is close to where Mill Creek enters the Washita and there are no downstream users but the Arbuckle Aggregates' diversion is at the top of the Mill Creek system. She said the OWRB needed to be consistent in conditions but in the end the Board is to protect existing uses, this is not theoretical interference and evidence in the record showed there is interference today because water is not there consistently. Mr. Muller asked if there are permit holders above the diversion site. Ms. Phillips answered not to her knowledge, and Mr. Wilkins agreed as he was not aware of permitted uses. Mr. Drummond stated then Ms. Phillips is not referring to permitted interference, but of drought. Ms. Phillips answered the flow of Mill Creek is not what it used to be and Dr. Deeds was looking at the actual flow from the USGS gages on Mill Creek that takes measurements every 15 minutes and she explained his calculations. Mr. Drummond stated for clarification, there is no interference from existing upstream permits, and Ms. Phillips responded not from a permit but there is inconsistent flow and the Board can set conditions to protect these uses. Mr. Drummond said the existing rights of Ms. Phillips' clients would still be senior and a junior permit would have to reduce use if it interfered with the senior right. Ms. Phillips answered that is correct but she is referring to the ability to enforce interference as Ms. Shirley has claimed interference but there has been no tangible action. She described the inconsistent flow of Mill Creek and said it is reasonable for the OWRB to protect existing users.

Mr. Muller asked about claims of interference when there is no permit upstream, and Ms. Phillips answered there is no permit upstream but there are users of groundwater, i.e., a large mining operation and she described the hydrologic impact which is the opinion of individuals that live along this area. Ms. Gibson asked if groundwater use was discussed at the hearing, and Ms. Phillips answered she was not aware, but she was answering the question. There was discussion of the Martin Marietta operation pumps and its groundwater and surface water permits and the location to Arbuckle Aggregates. Ms. Phillips clarified her response there are no permits upstream to Arbuckle Aggregates, but there are permits between Arbuckle Aggregates and Ms. Shirley and Mr. Chapman. Mr. Muller asked if there was ever interference found as a result of the investigations, and Ms. Phillips stated not to her knowledge. Mr. Wilkins added that he conducted many of the investigations and at no time was the water level below Ms. Shirley's pumps so that she could not withdraw water--flow had reduced and ceased through the creek, but the pump was in a huge pool of water. Martin Marietta was taking water at the time of the claim but during the investigation interference was not identified.

Mr. Allen asked if the permit is granted without conditions and an interference claim is brought subsequently, what is the remedy, are conditions then place on the permit? Mr. Wilkins responded that staff responds immediately and all variables are investigated. The first option is to gain voluntary compliance to get everyone water, and if not, the Board has the ability to go to District Court to seek an injunction to shut down the junior user, but special conditions have not been placed on a permit after

the fact. Ms. Gibson said there is a provision for the Board to seek injunction in Court or the landowner or permit holder can seek an injunction. There was discussion about timing and cost.

Ms. Castillo asked when the last investigation of interference was conducted. Mr. Wilkins responded during the 1990s-2006. She asked if there had been any significant occurrence since the last investigation and the time of the hearing that would change Ms. Shirley's potential claims. Ms. Phillips said that the interference has not stopped, but Ms. Shirley has stopped making claims because nothing is done--the pool quickly depletes when she uses the pump, but there is no helpful resolution.

Chairman Hitch asked about the ability to use the full 8 cfs on a continuous basis and the recharge rate of Ms. Shirley's pool. Ms. Phillips did not know the answer. There was discussion about water pooling in sand and in granite, that the pump was always in a pool of water, that domestic use is five acre-feet of water when determining available water, and that the USGS gage is not permanent or within the OWRB control and could go away if the mining company closed. Mr. Wilkins said staff feels it is inconsistent to place conditions on the permit as that has not been done on a single permit before water is used, although the Board has the ability. Mr. Darby asked about Mr. Cogburn's testimony and the use of the streamgage data that can be considered, and Mr. Wilkins answered that data can be considered when determining available water in addition to the model but the gage has been in place 11 years and the model incorporates 30 years of historical precipitation measurements.

Chairman Hitch invited Ms. Shirley to speak for 1.5 minutes. Ms. Shirley expressed her appreciation to the Board and explained the use of water by her small farm and that a well is not an option. She said the water does not come up into the pool often, and that she lives in the top 25% of Mill Creek where there are no feeder streams. She described where her neighboring protestants live and the history of her association with the OWRB, the local mining operations, and the inconsistent flow of Mill Creek, describing the occurrences of 2006 during the one of the worst droughts of record. Chairman Hitch said he allowed an additional two minutes, and would like for the Board to ask Ms. Shirley questions. She concluded her remarks asking the Board to approve the permit with the conditions. Chairman Hitch asked where the gage is from her farm and Ms. Shirley answered it is closer to Arbuckle Aggregates' withdrawal point than her, and approximately four miles upstream. The gage was placed there in agreement between the National Park Service, USGS, and Martin Marietta, now sold to Vulcan who will keep the gage. Chairman Hitch commented about the permit being tied to the gage that is potentially transitory.

Chairman Hitch invited Ms. Nichols to use the remainder of time, plus an additional two minutes. Ms. Nichols stated that there has been discussion as to what is on the record and her exception brief cites what is exactly in the record and many items discussed today were not in the record and should not be considered by the Board, and that the vote is relied upon what is in the record and referenced in the order or her brief. She yielded the remainder of her time to Mr. Pete Dawson. Mr. Dawson, president of Arbuckle Aggregates, addressed the members and respectfully requested the permit application be approved with standard conditions, with the ability to withdraw 250 acre feet of water per year up to 2,500 gpm, and he understands there shall be no downstream interference for domestic or downstream users. He said as discussed, there are periods of high flow which regards the request for the ability to divert water and harvest water during those periods of high flow--there are two pumps, a small one for times of normal flow and a second pump that will pump more gpm. He explained there is a need for the water for the operation of the quarry and he anticipated the water use will be higher during the initial phase of site development and initial operation but as the quarry is deepened it will intercept groundwater which will be able to provide sufficient volume of water for operation of the quarry which has happened at the Vulcan operation which no longer uses its stream water permit as the groundwater within the quarry provides all the water needed for the operation. He said the 8 cfs suggested limit takes into account 5.7 cfs of water rights subject to cancellation and 2.3 cfs remaining, and of that 1 cfs is in regard to downstream domestic users, 1.3 cfs is downstream permitted use, and he believed setting a flow requirement is unnecessary and would promote waste in

their inability to withdraw water during times of flow sufficient to satisfy downstream users as well as harvesting of water at a rate less than 2,500 gpm. He said based on testimony in the record and staff recommendation of what is satisfactory flow for the applicant to use the water, he respectfully requested the Board's approval of the permit with standard conditions. There were no questions of Mr. Dawson by the Board members.

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 an Executive Session.

The Board's discussion included Mr. Melton's comments there are three options: (1) approve the permit without conditions, (2) approve the permit with conditions, or (3) not approve the permit. Mr. Wilkins said staff would be in favor of recommending the application be approved without the conditions as written, which is inconsistent with past practices and could set a precedent affecting permits in the future since a permit has not been issued with conditions that addressed interference before water had been used. The Board does not guarantee water is available at the time or in the amount needed but that domestic users have the highest priority followed by the senior users and then junior users, and it is the policy of the State of Oklahoma to put water to beneficial use under permitting conditions. Mr. Drake asked if a hearing examiner had made the recommendation before and Mr. Wilkins said he could not find that had occurred. Chairman Hitch asked what another "method of measurement" is and Mr. Wilkins stated a situation that would require more manpower to follow and update a method which would be problematic for the Board with current staffing.

Mr. Allen followed Mr. Melton's comments and added a fourth option to remand the matter to the (ALJ) Hearing Examiner to come up with another order. He said looking at the order itself the Board is bound by the facts presented which support the conclusion the proposed diversion would interfere with domestic or appropriative uses. He struggled to approve a permit without conditions, understanding the hearing examiner may have done something that has not been done before, when there was a finding that they would interfere.

Mr. Wilkins explained how staff determines unappropriated water using a GIS computer model using a diversion point and area of the basin above, along with a runoff model based on 30 years of historical precipitation which generates a flow on an average annual basis considering the permits above and below, the watershed volume, and any application and domestic use is deducted, and then determines the water that is available at the point on an average annual basis. It was determined interference would not occur because there is unappropriated water at that point on an average annual basis. This does not guarantee that water will be available at any time or at any quantity as that is not expected in Oklahoma. If there is interference that is dealt with on the "back end" by working with the entities or by going to District Court, which has worked well for the Board throughout the years when there have been calls of interference and staff has worked with irrigators, for example. Mr. Allen asked then, if the Board staff finds there is no interference but the Hearing Examiner did find interference, that could be an error, and Mr. Wilkins explained the process for determining available water. Mr. Allen stated he felt constrained by the language, and Mr. Wilkins reiterated that staff's position is there is unappropriated water available in the amount and there is no anticipation of interference. Mr. Darby and Mr. Muller asked and Mr. Wilkins discussed the testimony presented, that there had not been a case of an interference complaint in court that resulted in conditions on a permit, that there had not been instances of loss of life (livestock) or property due to the lack of water, (except when a cattle was lost because of being stuck in the mud from low flow), and all instances of interference complaints were resolved voluntarily.

Mr. Stallings asked if the conditions could be removed from the order and Ms. Gibson responded the Board is the final decider of the order and it can amend it based on what is in the record.

Mr. Drummond stated he is sympathetic to downstream domestic users but also concerned about setting a precedent and shifting the burden of proof to the applicant to show noninterference. He



suggested remanding the matter back to staff to obtain more information as he was uncomfortable with the proposed order and the information Mr. Wilkins presented in light of the precedent that could be set. Mr. Muller concurred, there could be conditions based on past practices, but a 8 cfs setting is too high for intermittent stream flow and there should be more information to make a decision. There was discussion by the members regarding the merits of this option including whether more information can be presented, whether to remand the matter to staff, to the same hearing examiner or a different hearing examiner as there is a difference of opinion on fact, and who would bear the additional cost (the applicant).

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 asked Mr. Allen to propose a motion. Mr. Allen moved that the matter be remanded for further consideration. He did not recommend a hearing examiner, and said the Board is in an impossible situation and there are different options. Mr. Darby seconded the motion.

There was discussion among the members about who to remand the matter to and the time frame to return the matter to the Board; what the Board wants to know i.e., consider facts and law regarding the determination of interference and the implications of approving a permit with conditions that are a precedent; and that the parties should be able to brief the issues of facts and law of interference. Mr. Melton asked if the Board is required to follow the recommendation of the hearing examiner, and Ms. Gibson stated the Board may amend, approve or deny an order in opposition of what the hearing examiner has proposed but that has to be based on the facts in evidence. Chairman Hitch stated the Board has the option to enter executive session for further discussion.

Mr. Darby asked the motion on the table. Ms. Gibson stated the motion is to remand to the hearing examiner for additional consideration of the facts and law regarding interference with existing domestic and appropriative users.

Mr. Melton asked if the matter won't be at the next meeting, could there be an executive session about the matter then; Ms. Gibson said that should be done at this meeting. Mr. Drake said there is a motion and a second on the floor and asked what would be accomplished that hasn't been already. Ms. Gibson said when the matter comes back to the Board there would be an opportunity for an executive session.

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

AYE: Muller, Stallings, Allen, Darby, Drummond, Drake, Castillo, Melton, Hitch

NAY: None

ABSTAIN: None

ABSENT: None

C. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. There were no matters transferred from the Summary Disposition Agenda.

## 6. NEW BUSINESS

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda. There were no new business items for the Board's consideration.

**7. ADJOURNMENT**

There being no further business, Chairman Hitch adjourned the meeting of the Oklahoma Water Resources Board at 4:32 p.m. on December 6, 2018.

**OKLAHOMA WATER RESOURCES BOARD**

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

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen B. Allen, Vice Chairman

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

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

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

\_\_\_\_\_/Absent\_\_\_\_\_  
F. Ford Drummond

\_\_\_\_\_/s/\_\_\_\_\_  
Jennifer Castillo

\_\_\_\_\_/s/\_\_\_\_\_  
Matt Muller

***ATTEST:***

\_\_\_\_\_/s/\_\_\_\_\_  
Robert L. Stallings, Jr., Secretary

(SEAL)