

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

April 18, 2022

1. CALL TO ORDER

The Regular Meeting of the Oklahoma Water Resources Board was called to order by Chairman Matt Muller at 1:30 p.m. on April 18, 2022 in the second-floor Board Room of the Oklahoma Water Resources Board located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma 73118. 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 April 14, 2022, at 12:00 p.m. at the Oklahoma Water Resources Board's office at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma and provided on the agency's website.

- A. Roll Call. Chairman Matt Muller welcomed everyone to the meeting and asked for the roll call of members.

Board Members Present

Matt Muller, Chairman
Charles Darby, Vice Chairman
Jennifer Castillo, Secretary
Ron Justice
Robert L. Melton
Bob Latham
Suzanne Landess
Robert L. Stallings, Jr.
Thomas A. Gorman

Board Members Absent

None

Staff Members Present

Julie Cunningham, Executive Director
Sara Gibson, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Bill Cauthron, Chief, Water Quality Programs Division
Chris Neel, Chief, Water Rights Administration Division
Cleve Pierce, Chief, Administrative Services Division

Others Attending

Kris Neifing, City of Edmond, OK

Steve Lawrence, City of Edmond, OK
Allison Christian, McAfee & Taft
Jerin Presley, OMMA
Chris Gander, BOKFS
Rachel Brookins, ODEQ
Bodie Bachelor, Centennial Law Group
Austin North, BOKF
Shannon Epps, BOKF
Eddie Rhandour, ODEQ
Victoria Tran, SOEE

- B. Discussion, Amendments and Vote to Approve Official Minutes of the March 15, 2022 Regular Meeting. Chairman Muller stated members were provided the draft minutes of the March 15, 2022 regular meeting and asked the Board's pleasure regarding the minutes. There were no comments or amendments.

Vice Chairman Darby moved to approve the minutes of the March 15, 2022, Regular Meeting and Ms. Castillo seconded. Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman
NAY: None
ABSTAIN: Muller
ABSENT: None

Discussion, Amendments and Vote to Approve Official Minutes of the March 21, 2022 Special Meeting. Chairman Muller stated members were provided the draft minutes of the March 21, 2022 meeting and asked the Board's pleasure regarding the minutes. There were no comments or amendments.

Ms. Castillo moved to approve the minutes of the March 21, 2022, Special Meeting and Mr. Gorman seconded. Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Darby, Gorman, Muller
NAY: None
ABSTAIN: Landess, Melton
ABSENT: None

- C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, welcomed everyone to the meeting. Ms. Cunningham announced that the day started off with a very successful Water Day at the Capitol hosted by OWRB. She states that it was very well attended and several legislators,

including new legislators, were there to build relationships and have conversations about water issues that they have from different parts of the state. Ms. Cunningham notes that there was a lot of interest in the federal dollars coming in. There was also interest in the upcoming Flood Plan that is included in legislation as well as the hazard mitigation funding coming from the federal government that requires state match. There were 27 entities in attendance at Water Day from federal, state and water interest groups.

Ms. Cunningham proceeds to the retirement of Mr. Robert Melton from the Board, whose appointment ends May 14, 2022. Ms. Cunningham presents Mr. Melton's resolution for five years of dedicated service to the Oklahoma Water Resources Board and representing Region 8 and the municipal water use interests of the Board. The resolution is presented on this day and applause is given as Ms. Cunningham thanks him again for his active participation in the Board.

Ms. Cunningham proceeds to the drought report. She states that most have seen the wildfires, burn bans and exceptional drought, especially in the panhandle. The drought outlook remains the same as there is below seasonal rainfall and above average temperatures for the next few months.

Ms. Cunningham states that she attended the Western State's Water Council and Interstate Council on Water Policy. Ms. Cunningham is on the Executive Committee and Ms. Sara Gibson, General Council, is on the Legal Committee. Ms. Cunningham states there is a roundtable meeting every other year in Washington D.C. and it was good for the federal regulatory agencies and the states to hear their position papers. Notable positions were promoting renewable hydrogen and quantifying the needs of rural water infrastructure throughout the West. Ms. Cunningham states that there is federal agency support team called WestFAST that has dedicated staff from The Corps of Engineers, The Bureau of Reclamation, NASA, The Department of the Interior, NOAA, Department of Agriculture, EPA and others. This group is available to the Western States Water Council and the Western Governor's Association to meet about policies that cross those federal agencies. Ms. Cunningham states that this is a good opportunity for direct connection and consultation with the federal agencies.

Ms. Cunningham proceeds to the legislative update. There are now less than 400 bills still alive. Ms. Cunningham states that a majority of our request bills are still alive, we have two gross production tax bills. One of the bills funds all the water studies for water rights, water availability, water administration and water planning activities. These funds have been renewed since the mid-2000's and it paid for out last Water Plan implementation. The 2025 Comprehensive Water Plan contract has now been signed by the Board. At a future meeting, Owen Mills and the Contractor will present the direction, scope of work and timeframe of the upcoming Water Plan to the Board. Ms. Cunningham proceeds to several marijuana bills that include the enforcement for illegal water use of anyone that is using water illegally. There are several other bills including our rules that were approved by the Board and are now being looked at by the appropriations committee along with our budget which is still to be seen. The next deadline is April 28th which is the third reading deadline of the opposite chamber. Sine Die is May 27th. Ms. Cunningham thanks Sara Gibson and Robby Short for their efforts during this legislative session.

Ms. Cunningham gives updates on ARPA and the State ARPA Funding Steering Committee. She states that Joe Freeman and Lori Johnson have been answering questions and looking at the state's ARPA funding needs. Ms. Cunningham asks for any questions the Board may have.

Mr. Melton asks how the Hydrogen Project is coming along.

Ms. Cunningham answers that Secretary Wagoner has been travelling and working on a letter of agreement between Oklahoma, Arkansas and Louisiana so that the states can partner and compete for the hydrogen hub which will be funded from the Department of Energy at the federal level.

Victoria Tran, Deputy Secretary of Energy and Environment, explains that SB 1852 would extend the hydrogen task force and modernize it to be a new energy initiative that will be called the Low Carbon Energy Initiative. This will involve state agencies along with stakeholder involvement to carry on these partnerships. Ms. Tran states that the Oklahoma, Arkansas and Louisiana governors all signed the agreement to chase for the hydrogen hub money on March 10th.

Ms. Cunningham asks for any further questions and concludes her Executive Director's report.

D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Chief, Administrative Services Division, presents the budget report for the period ending March 31, 2022. Mr. Pierce reports the agency has spent 46% of its appropriated budget, leaving 54%; has spent 49% of its revolving budget, leaving 51%; has spent 31% of its federal budget, leaving 69%. Overall, the total budget remaining is 54% with 25% of the year remaining. Mr. Pierce wanted to remind the Board that we do have obligations past the end of the fiscal year.

Mr. Pierce states that we have sent all our documents to the State Auditor for the ongoing audit and have not heard anything back yet. The auditor did lower our bill because there were some issues that did not need addressing such as payroll. We should be hearing back soon and will present the audit to the Board.

Mr. Pierce continues that we will be starting our budget process internally this week to get the budget sheets prepared. Mr. Pierce asks for any questions.

Ms. Cunningham asks Mr. Pierce to explain the USGS project for the Arbuckle-Simpson.

Mr. Pierce answers that periodically he mentions that there is \$2 million dollars in funds sitting in appropriations unable to be spent. This is because those funds were supposed to be transferred to the 235 Fund which is the Arbuckle-Simpson Phase II Study. Mr. Pierce states that hopefully those funds will be transferred over this year if the legislation passes for OMES to have the authority to transfer these funds.

Mr. Muller asks for any further questions. There were none.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for The Elk City Public Works Authority, Beckham County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, greets the Board and states that the first item he has is a \$1.7 million dollar loan request from the Elk City Public Works Authority. They are requesting the loan for laying approximately 8,720 feet of 6-inch PVC water lines in various parts of the city. The loan will be funded through the Drinking Water State Revolving Fund (SRF) loan program with a fixed interest rate plus half point administrative fee. The loan will mature within 30 years of completion of the project and will be secured with a lien on Elk City's water, sewer, and sanitation system revenues. Their debt coverage ratio stands at 3.53 times and staff recommends approval. Elk City asked Mr. Freeman to read the following comment on their behalf "Elk City appreciates the Board's consideration; this low interest loan will enable the city to move ahead on their important water projects."

Chairman Muller asked for questions or a motion. Vice Chairman Darby moved to approve the application and Mr. Stallings seconded. There were no questions or discussion and Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: None
ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Enid Municipal Authority, Garfield County. Recommended for Approval. Mr. Freeman continues to the next item for a \$4 million dollar loan request from this Enid Municipal Authority. They are requesting the loan for laying approximately 5,500 feet of 12-inch, 10-inch and 6-inch PVC water line in an area of the city which has experienced low water pressure. The loan will be funded through the Drinking Water SRF loan program with a fixed interest rate plus half point administrative fee. The loan will mature within 20 years of completion of the project and will be secured with a lien on Enid's water, sewer, and sanitation system revenues plus a two-cent sales tax. Enid has been a long-time good loan customer of the Board and they currently have 8 loans with the Board with a combined balance of \$174.7 million dollars. Their debt coverage ratio stands at 2.27 times and staff recommends approval. The Mayor of Enid provided the following in support of the loan request "Enid is grateful for the consideration of this loan. This loan will allow the city to continue to upgrade Enid's water infrastructure system."

Chairman Muller asked for questions or a motion. Mr. Gorman moved to approve the application and Ms. Castillo seconded. There were no questions or discussion and Chairman Muller called for the vote.

AYE: Latham, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: Stallings
ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Oklahoma City Water Utilities Trust, Oklahoma County. Recommended for Approval. Mr. Freeman presents a \$31,645,000 loan request from the Oklahoma City Water Utilities Trust. They are requesting the loan proceeds for the following projects: replace the ozone system at the Lake Hefner Water Treatment Plant, various improvements and rehabilitation to the Draper Water Treatment Plant, rehabilitation of the interior and exterior of the elevated water storage tank at MacArthur Blvd and NW 28th St, the replacement of an 18-inch aerial water line crossing the South Canadian River at NW 10th St and County Line Rd, and the replacement of a 24-inch aerial water line crossing near the Interstate 44 and NW 36th St. The loan will be funded through the Drinking Water SRF loan program with a fixed interest rate plus half point administrative fee. The loan will mature within 30 years of the completion of construction and will be secured with a lien on Oklahoma City's water, sewer, and sanitation system revenues. Oklahoma City's water and sewer connections have increased by approximately 16% over the last ten years and population by over 17%. The Trust currently has 18 loans outstanding with the board with a combined balance of \$428.8 million. Their debt coverage stands at 2.42 times and staff recommends approval.

Representing Oklahoma City is Chris Browning, Utilities Director, and John Samuel, Financial Operations Manager. Mr. Browning addresses and thanks the Board for the half a billion dollars in loans which saves the rate payers a lot of money. Mr. Browning states that he appreciates the partnership he has formed with the Board and is looking forward to the continued relationship. Mr. Browning puts into perspective that the next 10-year capital budget is 3.3 billion dollars to resiliency, reliability, and water supply for Central Oklahoma.

Chairman Muller asked for questions or a motion. Mr. Stallings moved to approve the application and Vice Chairman Darby seconded. There were no questions or discussion and Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: Castillo
ABSENT: None

Mr. Freeman proceeds and states the next three agenda items are for the Edmond Public Works Authority. The loans are for a new raw water intake structure at Lake Arcadia and for substantial improvements at Edmond's Water Treatment Plant. Two of the loans will be financed through the Drinking Water SRF loan program and one loan will be through the State Revenue Bond loan program also known as the FAP loan program. The reason for financing the projects through the two programs is that in managing the capacity of the Drinking Water SRF loan program, we are not currently able to provide additional Drinking Water SRF funds for Edmond.

But we can finance the additional funds needed through the FAP loan program. This method of funding projects through the two programs falls in line with the financing plan set forth in the Water for 2060 plan. This plan led to the passage of State Question 764 in September of 2012 which created the Water Infrastructure Credit Enhancement Reserve Fund which greatly enhances the capacity of the FAP loan program as well as the subsequent adoption of the 2016 FAP bond indenture which created additional features benefiting the program and our borrowers.

D. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for The Edmond Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman explains that the first Edmond request is for \$45 million dollars for the low lift pump station for intake of raw water from Lake Arcadia. This includes a wet well, three 60-inch diameter screened intake lines, five variable speed vertical turbine pumps, 2 feed systems, and a 42-inch discharge raw water transmission main. The loan will be funded through the Drinking Water SRF loan program with a fixed interest rate plus a half point administrative fee. The loan will mature within 30 years of the completion of construction and will be secured with a lien on Edmonds's water, sewer, sanitation, and electric system revenues as well as a 2-cent sales tax. Over the past ten years Edmond's water connections have increased by approximately 17% and sewer connection by approximately 15%. They currently have 5 outstanding loans with a combined balance of \$45.8 million dollars. Edmond's debt coverage ratio stands at 2.65 times and staff recommends approval.

Representing Edmond today is Kris Neifing, Director of Water Resources for the City of Edmond and Steve Lawrence, Engineering Services Supervisor. Mr. Neifing expresses appreciation for the consideration of these loans and asks for any questions.

Mr. Muller asks what the projections and capital outlays are for future updates. He is inquiring if this will be substantial to get them down the road or if there are other requests coming.

Mr. Neifing answers that there is one more large water project and there are a couple others that are smaller in comparison to finish out the water development, not only for water treatment but for delivery as well.

Chairman Muller asks for any further questions.

Mr. Gorman asks Mr. Freeman if their debt coverage ratio takes into account the new loans that are being applied for today, with the assumption that they are approved. For clarification, Mr. Gorman asks if it is a forward-looking debt service coverage ratio a backwards-looking debt service coverage ratio.

Mr. Freeman answers that all three loans have been taken into consideration for the reported debt coverage ratio.

Chairman Muller asks for any further questions. There were no further questions.

Chairman Muller asked for or a motion. Vice Chairman Darby moved to approve the application and Mr. Latham seconded. There were no questions or discussion and Chairman Muller called for the vote.

AYE:	Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY:	None
ABSTAIN:	None
ABSENT:	None

E. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for The Edmond Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman proceeds to the next item which is a \$140 million dollar loan request from the Edmond Public Works Authority. This loan is for improvements to their water treatment plant including modifications to the existing maintenance building, replacement of the granular activated carbon filters, construction of an elevated storage tank for backwash water storage, the construction of two new finished water clear wells, a new lift pump station, a new water meter vault, two new wastewater basins, a recycle pump station, and a new electrical building. The loan will be funded through the Drinking Water SRF loan program with a fixed interest rate plus a half point administrative fee. The loan will mature within 30 years of completion of construction and will be secured with a lien on Edmond's water, sewer, sanitation and electric systems revenues and a 2-cent sales tax. As Mr. Freeman mentioned previously their debt coverage ratio stands at 2.65 times and staff recommends approval.

Chairman Muller asks for the Board's pleasure. Mr. Latham moved to approve the application and Ms. Castillo seconded. There were no further questions or discussion and Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: None
ABSENT: None

F. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for The Edmond Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman proceeds to the next item which is a request from Edmond for a \$83.2 million dollar state revenue bond loan known as a FAP loan. The proceeds of this loan will be utilized to provide the additional funds needed for the completion of the intake structure and water treatment plant work as described in the two previous agenda items. The loan will bear a fixed interest rate and will have a 30-year maturity. As with the two previous loan requests, this loan will be secured with a lien on Edmond's water, sewer, sanitation and electric systems revenues and a 2-cent sales tax. As Mr. Freeman has mentioned their debt coverage ratio stands at 2.65 times and staff recommends approval.

Chairman Muller asked for questions or a motion. Ms. Castillo moved to approve the application and Mr. Gorman seconded. There were no questions or discussion and Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: None
ABSENT: None

G. Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds in an Aggregate Principal Amount not to Exceed \$250,000,000; at a Net Interest Cost not to Exceed Six Percent (6.0%); Providing for the Issuance of Said Bonds in One or More Series; Approving and Authorizing Execution of a Series 2022B Supplemental Bond Resolution and, if Deemed Advisable, an Additional Supplemental Bond Resolution for Each Additional Series; Waiving Competitive Bidding on the Bonds and Authorizing the sale Thereof by Negotiation and at a Discount Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to Said Bonds; Authorizing the Chairman or Vice Chairman to Deem Preliminary Official Statements for Additional Series of Bonds Final; Directing Deposit of Proceeds Derived from the Issuance of the Bonds in the State Treasury and Requesting the State Treasurer to Remit Such Proceeds to the Bond Trustee; Ratifying and Approving the Form of Promissory Note, Loan Agreement, and Note Purchase Agreement to be Executed by Borrowers in the State Loan Program; Authorizing Execution of Such Other and Further Instruments, Certificates and Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman closes with his last item which is a resolution requesting approval for the insurance of up to \$250 million dollars in state loan program revenue bonds also known as the FAP. In March of 2021 the Board approved a resolution for an issuance of FAP bonds. Approval through the Oklahoma Council of Bond Oversight is good for six months plus one 6-month extension which will be expiring this month. Mr. Freeman states that under the bond authorization of March 2021, we closed 4 FAP bond issues which funded loans for Tonkawa, Hobart, Blackwell, Jones, Boise City, Duncan, Guymon, Wagoner, Broken Arrow, Okemah, Harrah, and El Reno. Due to the one-year approval expiring this month we need additional approval of issuance for the FAP bond issues of which the first will fund the FAP loan just approved for Edmond. Mr. Freeman states that the resolution before the Board authorizes the issuance of not to exceed \$250 million dollars in FAP bonds in one or more series, provides for the approval of their preliminary official statement, authorizes the chairman or vice chairman to deem preliminary official statements for an additional series of bonds final, authorizes the sale of the bonds to be on a negotiated basis, directs the bond proceeds to be deposited and the state treasury and then remitted to BancFirst as your trustee, ratifies the form of promissory note, loan agreement, and note purchase agreement. In addition, the resolution authorizes execution of other documents required for the issuance of the bonds in direct payment of the costs of issuance. Mr. Freeman states that staff recommends approval and asks for any questions.

Mr. Latham asks if there is a bond council that reviews and issues this.

Mr. Freeman answers that yes, the bond council here today is Centennial Law Group and each borrower will also retain bond council.

Chairman Muller asked for questions or a motion. Mr. Stallings moved to approve the application and Mr. Latham seconded. There were no questions or discussion and Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: None
ABSENT: None

3. SUMMARY DISPOSITION AGENDA ITEMS

All of the items listed below under this Summary Disposition Agenda are recommended for approval.

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

- A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda and Action on Whether to Transfer Such Items. Chairman Muller asked if there were any items being requested to be removed. There were no requests to remove items to the Special Consideration Agenda.

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

Chairman Muller asks for the Board's pleasure considering the items listed.

Ms. Landess has a comment on Item G as it pertains to Weinkauf Petroleum, Inc. This item is for the "Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater." Ms. Landess states that she does not want to remove the item from the agenda but wants to be clear that she is against it. She explains that there is not enough fresh water available in the Panhandle for their use.

Chairman Muller notes her comment and asks for the Board's pleasure again.

Mr. Darby moved to approve the application and Mr. Gorman seconded. There were no questions or further discussion and Chairman Muller called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

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

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

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
ASCOG				
a.	FAP-22-0059-R	The Grandfield Public Works Authority	Tillman	\$66,560.23
SWODA				
b.	FAP-22-0003-R	The Mountain Park Public Works Authority	Kiowa	99,999.00

2. CWSRF Principal Forgiveness Loan Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
a.	ORF-21-0009- CW	The Langley Public Works Authority	Mayes	\$64,000.00

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

1. Intergovernmental Agreement between OWRB and Central Oklahoma Master Conservancy District to provide water quality monitoring support of Lake Thunderbird for state fiscal years 2022 and 2023.

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

1. D A Investments, LLC, Caddo County, #2021-528

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

None

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

1. Weinkauf Petroleum, Inc., Texas County, #2021-532

- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
None
- I. Consideration of and Possible Action on Applications to Amend Prior Right to Use Groundwater:
None
- J. Consideration of and Possible Action on Applications to for Term Permits to Use Stream Water:
None
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
None
- L. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water:
1. Pittsburg County Rural Water District #14, Pittsburg County, #1990-006
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
- | | |
|---|----------|
| 1. Licensee: CoreCO USA | DPC-1010 |
| Operator: David Smith | OP-2399 |
| Operator: Daniel Spaust | OP-2400 |
| 2. Licensee: MenDenhall Enterprises & Contracting LLC | DCP-1012 |
| Operator: Matthew MenDenhall | OP-2401 |
2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
None
- N. Consideration of and Possible Action on Dam and Reservoir Construction:
1. Liberty Ranch (Liberty Ranch Dam), #OK30596, Osage County
 2. City of Claremore (Lowry Pond Dam), #OK30597, Rogers County
- O. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
None
- P. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
1. Ricky NeSmith, City of Nicoma Park, #FPA-032
 2. William Jones, Town of Lone Wolf, #FPA-033
 3. Charlie Clark, City of Lexington, #FPA-034

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

A. No Items

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on the Application to Amend Prior Groundwater Right No. 1968-350, Billy and Kimberly Mizer, Cimarron County, Oklahoma:

1. Summary –

Mr. Chris Neel, Chief, Water Rights Administration Division, greets the Chairman and Board. Mr. Neel explains that the special consideration item is an application to amend a Prior Right Permit to Use Groundwater, Permit No. 1968-350, under the name of Billy and Kimberly Mizer in Cimarron County. Mr. Neel states that on April 22, 2021, Billy and Kimberly Mizer submitted an application to amend the groundwater permit in Cimarron County, OK. The existing Prior Right Permit authorizes 280-acre feet of groundwater for irrigation purposes from one well referred to as the West Well. The Applicant is requesting an additional well location and well exception referred to as the East Well, in addition to the already existing well location. The groundwater to be withdrawn is to be withdrawn from the Ogallala panhandle major groundwater basin which has a maximum annual established with an equal portion share of 2-acre feet per acre per year. The notice of application was published in the Boise City news in Cimarron County on August 25, 2021, and September 5, 2021. The Board received a protest to the application in a timely manner and a hearing was conducted on January 28, 2022.

Ronnie and Audrey Cochran protested the application and were made parties herein and claimed that the location of the East Well violates the well spacing requirements because of close proximity to their well. During the hearing, the Applicant testified to have never pumped the East Well and that it was used in the 1970's and 1980's by his uncle. The Applicant testified that they would like to use the East Well as an insurance in case something happens to the West Well, claiming that corn yield will be hurt if the crop goes without water for 7 days. The Applicant testified that they intend to only use the East Well in case the West Well fails and the Applicant is not requesting additional water.

The Protestant, Mr. Ronnie Cochran, raised a concern of depletion of his irrigation well if the Applicant uses the East Well, which would negatively affect his well by drawing down the water table. Mr. Cochran testified the East Well is approximately 130 yards from his permitted well. In April of 2021, the Protestant, Mr. Cochran, received an additional permit that increased his water usage from 320-acre feet to 960-acre feet. The Hearing Examiner issued the Proposed Order to the agenda today to approve the amendment to the Application No. 1968-350, including the Well Spacing Exception in the name of Billy and Kimberly Mizer. Mr. Neel states that staff recommends approval of the Proposed Findings of Fact, Conclusions of Law and Board Order including approving the Well Spacing Exception. On April 14, 2022, OWRB received an Exception to the Hearing Examiner's Order which was provided to the Board via email.

Ms. Sara Gibson asks Mr. Neel if staff noted anything that needed to be amended in the Order.

Mr. Neel answers that the Board Order indicates that the Protestant, Mr. Cochran, received

an additional permit that increased his water usage to 320-acre feet. Mr. Neel states that this is incorrect and that they had a Prior Right Permit for 320-acre feet, but they requested and received an additional 640-acre feet of water with their regular permit.

Ms. Sara Gibson clarifies that the water usage listed on the Board Order should be 960-acre feet total as opposed to the 320-acre feet listed.

Mr. Neel explains that the Exception to the Hearing Examiner's Order states that the East Well is not necessary in order to withdraw the amount authorized by the existing permit under Chapter 30-7-4(a)(1) of the Proposed Order of these rules and that the term "necessary" is not defined in OWRB regulations. The Exception also points out that the Protestants made it clear to the Hearing Examiner during a hearing that the application should be approved and reasonable restrictions should be placed on the East Well under Chapter 30-3-6(b). There is no representation for the Applicant at today's Board Meeting. Representing the Protestant is Allison B. Christian of McAfee & Taft. Mr. Neel asks for any questions.

Ms. Gibson states that the rule is whether it is inequitable or unreasonable not to grant it, which comes as a situation-by-situation evaluation.

Mr. Stallings asks if there were any technical experts or evidence at the well.

Mr. Neel states that there was no technical evidence to discuss the potential drawdowns or the effect of that well due to their proximity. Mr. Neel also answers that the Water Board did not do an analysis of the well.

Ms. Landess asks how far away the Cochran's well is from the East Well.

Mr. Neel answers that during testimony they stated that it is 130 yards and Google places it further approximately 550-600 feet.

Ms. Landess opens the discussion and the possibility of the wells drawing down each other.

Chairman Muller asks for any more questions for Mr. Neel. There were no further questions at this time.

2. Discussion and presentation by parties

Chairman Muller calls Allison Christian to present to the Board on behalf of the Protestant. Ms. Christian greets the Board and introduces herself as an attorney for McAfee & Taft here on behalf of Ronnie and Audrey Cochran in this matter. Ms. Christian states that pursuant to Oklahoma Title 75 Section 322, a Hearing Examiner's order may be reversed for a few reasons. Ms. Christian states that it should be overturned for two reasons: first, the Hearing Examiner broadly interpreted the term "necessary" in violation of Oklahoma Law and the Water Board's regulations and second, the Order wholly failed to address Protesters requests that protections and reasonable restrictions be placed on the use of the East Well. The Protesters request that the Board denies this application or alternatively provides reasonable use restrictions to be placed on the East Well in accordance with Oklahoma Administrative Code Section 785:30-3-6(b)(2) to protect the Protesters existing water rights. Ms. Christian provides a map to show how close the wells are to each other.

Mr. Gorman asks Ms. Christian what are the reasonable restrictions that the Protestant would request.

Ms. Christian answers that there are options. One option is to remand this to the Hearing Examiner, and they could perform that analysis in conjunction with the Water Board. Option two is the Board could craft those restrictions today. Or an alternative option is that they would request the right to come back with priority rights to the East Well if there are any water issues and they are unable to withdraw their water effectively.

Mr. Muller opens discussion on the possibility of an approval of the application, as well as a denial of the application stating that he can see it from either side. He states that restrictions could be put on the permit to limit its use only in emergency situations would be his choice, but in the essence of time it is difficult to come up with those restrictions. Mr. Muller states that he would like to act and give direction to the Staff, Applicant and Protestant to arrive at a summary.

There is open discussion and questions on if there is authority to come up with and place those restrictions on the permit. Ms. Gibson confirms that yes, the Board does have the authority to do so, but this is usually not handled with groundwater cases.

There are questions about if this has ever been permitted in the past. Mr. Neel states that he believes there has never been a case where there is a permit for someone to have a back up well and not use it.

Ms. Castillo states that she is struggling with the word “necessary”. She states that there are some inconsistencies with what is in the Order as opposed to what was in the Exception. If the Applicant is applying for the permit only as a backup “insurance” plan, does that really deem it “necessary”.

Mr. Muller gives some calculations as to why it may be necessary for the Applicant to use the water for the corn crops if the West Well were to go down for more than 7 days, losing many bushels and therefor affecting the yields and profits of the crops.

3. Possible Executive Session

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

- (a) Vote on whether to hold Executive Session. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.
- (b) Designation of person to keep written minutes of Executive Session, if authorized.
- (c) Executive Session, if authorized.

Mr. Muller announces the option to discuss this matter in Executive Session, but an open discussion is preferred by the Board to come to some type of conclusion.

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

Open discussion and questions for the case continue by the Board and OWRB staff. Questions arise about the history of the well being drilled as it predates the rules. Ms. Gibson states that it was drilled after the prior rights were done and it was drilled before the maximum annual yield was done, so it fell into a gray area where it was never permitted.

There are many concerns by multiple Board members about approving the application as it is today.

Ms. Cunningham states that she knows there are cases that have been remanded back to the parties to have further discussion about restrictions the can both agree upon restrictions at a later date.

Ms. Christian is called back to answer what restrictions she believes the Protestant may be able to live with. Ms. Christian is concerned with the cost implications of remanding the case back to the parties in the interest of her client. She asks if the Water Board has resources to perform a study in order to better place informed restrictions on the groundwater well and its use.

Mr. Muller asks Mr. Neel what types of hydrological studies could be done and what kind of costs estimates could be done by OWRB. Mr. Neel states that there are some calculation tools available to make a better-informed decision, even though these are generally estimates.

Ms. Gibson advises that the Board could Table the application and give instruction to the parties to propose restrictions to bring to the next meeting. Another option is it could be remanded to the Hearing Examiner for further findings and development of proposed restrictions. Ms. Gibson states that OWRB staff could provide whatever assistance we can to facilitate these discussions.

Mr. Muller polls the Board preliminarily to note if any of the members would consider granting the permit as it is today with no restrictions. There was no support by any members of the Board. Therefore, Mr. Muller proposes that we ask each party what restrictions they would propose and what restrictions they would accept. The Applicant would then have the opportunity to come up with restrictions that would have to be discussed with the Protestant.

Discussion about the enforcement of these restrictions is discussed. Mr. Muller proposes a requirement of notification if the applicant needs to use the East Well if their West Well goes down.

Ms. Christian asks to provide context to the climate of the parties. She states that the Applicant does not have counsel and therefor the Protestant is the only party incurring costs. Ms. Christian proposes that someone from the Water Board could serve as a mediator for these discussions in coming up with certain restrictions.

Ms. Gibson states that yes, the Water Board does have mechanisms in place to mediate and allow these parties to discuss in a room.

Ms. Cunningham expresses her support in the Water Board being able to mediate this.

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.

Ms. Castillo has a proposed motion that the Board Tables this matter for one month to allow the parties the ability to work with OWRB staff to mediate and come up with proposed restrictions. This would then allow for the presentation of this matter at the next Board Meeting.

Mr. Latham has an addition to Ms. Castillo's motion. Mr. Latham would also include that in the case of no agreement by the parties, the OWRB staff member who mediates the case would propose a recommended restriction for the well.

Ms. Castillo accepts this addition as a friendly revision. Mr. Gorman seconds the motion. Chairman Muller asks for any questions or discussion. There was none and Chairman Muller proceeded to call for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby, Landess, Gorman, Muller
NAY: None
ABSTAIN: None
ABSENT: None

