

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

February 10, 2004

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Grady Grandstaff at 9:30 a.m., on February 10, 2004, in the Board Room of the OWRB Offices, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof.

A. Invocation

Member Ervin Mitchell gave the invocation.

B. Roll Call

Board Members Present

Grady Grandstaff, Chairman
Glenn Sharp, Vice Chairman
Ervin Mitchell, Secretary
Harry Currie
Lonnie Farmer
Jack Keeley
Mark Nichols
Bill Secrest
Richard Sevenoaks

Board Members Absent

None

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Jim Schuelein, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Mike Mathis, Chief, Planning and Management Division
Derek Smithee, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
John Callahan, SMG Engineers, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Ken Morris, Oklahoma Water Resources Board, Oklahoma City, OK
Bob Kellog, Shipley & Kellog, Oklahoma City
Cecil Wildman, SMG Engineers, Oklahoma City, OK
John Bruno, Tishomingo, OK
Steven Jolly, AMCO, Davis, OK
Jimmy Miller, Town of Tyrone, OK
Fonda White, Town of Tyrone, OK
Jaretia Smith, Town of Rattan, OK
Vicky Gibbs, Town of Rattan, OK
Cathie Arnold, Norman, OK
Charles Newton, Oppenheim, Oklahoma City, OK
Jack Money, The Oklahoman, Oklahoma City, OK
William O'Bannon, Mayes County Rural Water District No 2, Chouteau, OK
Tammy Pitts, City of Tulsa-TMUA, Tulsa, OK
Marilyn Baldwin, City of Tulsa, OK
Stan Jones, City of Tulsa, OK
Bobby McSpadden, Sardis Lake, Clayton, OK

C. APPROVAL OF MINUTES

Chairman Grandstaff stated the draft minutes of the January 13, 2004, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were additional changes.

Mr. Sharp moved to approve the minutes of the January 13, 2004, Regular Meeting, and Mr. Currie seconded.

AYE: Currie, Farmer, Keeley, Secrest, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: Mitchell, Nichols
ABSENT: None

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Smith addressed the members and introduced the Board's newest member, Mr. Jess Mark Nichols of Altus, Oklahoma. Mr. Nichols has replaced Mr. Richard McDonald, who resigned his position from the Board. He said that Mr. Nichols will serve until the end of Mr. McDonald's term, and then will have to be confirmed by the Senate to serve in the next term. Mr. Nichols is an avid member of the Lugert-Altus Irrigation District.

Mr. Smith stated that the Legislature is in session; the agency had been attending several appropriations committee meetings prior to convening. He asked Mr. Mike Melton to present an update on the environmental, personnel and other measures that the agency is following. Mr. Melton distributed a written tracking report of the bills, and said there had been a record number of bills introduced this year, 1750, many related to water and the environment. He said there are 35 measures directly related to the Water Board, and 60 dealing with the

environment and natural resources. Mr. Melton briefly reviewed the bills listed, and noted that the deadline for measures to be out of committee in the House of Origin is February 19, and many bills will go away after that time.

Mr. Smith said that Mr. Robert S. Kerr, Jr., former member and chairman of the OWRB, had passed away and a memorial service was held on February 4. He said he considered being very fortunate to have known "Mr. Water" and had the chance to visit with him about water and especially about his family history. He said Mr. Kerr, and in particular the Kerr family, have been outstanding Oklahomans. He added the staff had prepared a resolution for he and Chairman Grandstaff to sign for Mr. McDonald, and Mr. Smith will present that to Mr. McDonald at the Walters Rotary Club meeting later in the month.

Mr. Smith concluded his remarks stating the Finance Committee will meet following the meeting, and a group photo will be taken of the Board members.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Tyrone Public Works Authority, Texas County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the member that this item is for the consideration of a \$270,189.35 Drinking Water SRF loan for the Tyrone Public Works Authority, located in Texas County. He said Tyrone is requesting the loan to drill a new well, construct a new well house, connect the new well to the current system, and to install 388 new water meters. Mr. Freeman noted provisions of the loan agreement. He said that by borrowing through the Board, Tyrone should save approximately \$193,000 in interest expense. Staff recommended approval of the loan.

Ms. Fonda White, council member, and Mr. Jimmy Miller, operator, were present in support of the loan application.

Mr. Mitchell moved to approve the loan to the Tyrone Public Works Authority, asked if the approximately 10% bond counsel and other fees were average. Mr. Freeman responded that it is the same amount of work, and is one of the lower fees. Mr. Sharp seconded the motion.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSENT: None

ABSTAIN: None

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #2, Mayes County. Recommended for Approval. Mr. Freeman stated this state loan program revenue bond loan request by the Mayes County RWD #2 is in the amount of \$3,085,000.00 The District is requesting the loan in order to construct 76,560 feet of water supply line from the Oklahoma Ordnance Works Authority to connect the District's water supply and transmission system as well as a metering station. Mr. Freeman noted the provisions of the loan. He said the District has been a good loan customer of the Board's that has been growing at a very strong rate. Staff estimates the District will save approximately \$775,000 by borrowing from the Board. Staff recommended approval.

Mr. Jerry O'Bannon, District Manager, was present in support of the loan request.

Mr. Secrest moved to approve the loan to the Mayes County RWD #2, and Mr. Sharp seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSENT: None
ABSTAIN: None

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman said the Tulsa Metropolitan Utility Authority (TMUA) has requested a Clean Water SRF loan in the amount of \$1.6 million. The TMUA will be utilizing the loan proceeds to partially refinance a portion of a \$4 million interim construction loan the Authority received from the Board in 2001. The interim construction loan was for funding improvement to Tulsa's Southside Waste Water Treatment Plant, inclusive of an effluent lift station, intermediate lift station, and a sludge dewatering air quality system. The loan will be funded through the Clean Water Revolving Fund program, and Mr. Freeman noted the specific provisions of the loan agreement. He said Tulsa has been an excellent customer of the Board's for fourteen years, and inclusive of the three Tulsa loan requests presented today, the debt-coverage ratio stands at approximately 1.56 times. Staff recommended approval of the loan.

Representing Tulsa was Mr. Stan Jones, Treasury Services Manager, Marilyn Baldwin, Financial Services Manager, and Tammy Pitts, Treasury Analyst.

Mr. Secrest moved to approve the loan to the Tulsa Metropolitan Utility Authority, and Mr. Farmer seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sharp, Grandstaff
NAY: None
ABSENT: None
ABSTAIN: Sevenoaks

D. Consideration of and Possible Action on a Proposed Order Approving Loan for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman said this item is for the consideration of an application by the TMUA for a Clean Water SRF Interim Construction loan in the amount of \$10,725,000.00. The loan will be used for the construction of an addition to a warehouse at the North Mingo Sewer Basin, rehabilitate an anaerobic digest at the Northside Wastewater Treatment Plant, engineering design to upgrade the Northeast Lift Station, engineering for nitrification improvements at the Northside Wastewater Treatment Plant, construction and improvements to the waste activated sludge thickening storage and pump system at the Southside Plant, engineering for construction and rehabilitation for primary clarifier equipment at the Southside Plant, replacement of temporary flow monitor, and purchase of additional flow monitors. Mr. Freeman noted provisions of the loan agreement. Staff recommended approval of the loan application.

Representing Tulsa was Mr. Stan Jones, Treasury Services Manager, Marilyn Baldwin, Financial Services Manager, and Tammy Pitts, Treasury Analyst.

Mr. Secrest moved to approve the loan to the Tulsa Metropolitan Utility Authority, and Mr. Farmer seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sharp, Grandstaff
NAY: None
ABSENT: None
ABSTAIN: Sevenoaks

E. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for

Approval. Mr. Freeman stated this request from Tulsa is for a \$7,995,000.00 increase in the amount of loan funds approved at the June 2003 Board Meeting. He said that approval of the item would increase the loan amount to \$20,190,000.00. The reason for the request is to increase the loan as the result of the addition of three more construction projects and funds for refinancing a portion of the Authority's 2001(a) Interim Construction loan with the Board. The additional projects include the \$1 million Northeast Tulsa Lift Station Relief Project, the \$704,000.00 Economic Development Wastewater Project, and the \$3 million Airport Industrial Sanitary Sewer Interceptor. Mr. Freeman said the loan will be funded through the Board's State Loan Program Revenue Bonds.

He said that with the inclusion of these three loans approved today, the Board will have provided in excess of \$260 million in total loans since 1990 to Tulsa. Staff estimates that Tulsa overall has saved over the past 14 years, and with the current outstanding loans and the loans presented today, with save approximately \$50 million in interest expense. Staff recommended approval of the loan request.

Mr. Secrest moved to approve the loan to the Tulsa Metropolitan Utility Authority, and Mr. Farmer seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sharp, Grandstaff
NAY: None
ABSENT: None
ABSTAIN: Sevenoaks

3. SUMMARY DISPOSITION AGENDA

Chairman Grandstaff stated that 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.

There were no requests to transfer items to the Special Consideration Agenda; however, Mr. Mike Mathis stated there was one item he needed to withdraw from the Board's consideration today. Agenda item 3.J.2. #2003-033, application for Regular Permit to Use Stream Water for Wolf Creek Estates. He said there was a publication problem.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on the Summary Disposition Agenda and Action on items and Approval of Items 3.C. through 3. N.

There being no other questions regarding any items on the Summary Disposition Agenda, Mr. Mitchell moved to approve the Summary Disposition Agenda as amended, and Mr. Sharp seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sevenoaks, Sharp, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: None

The following items were approved:

C. Consideration of Approval in Accordance with the Following Proposed Orders and Proposal: Applications for REAP Grants; and Statewide Water Development Revolving Fund Proposal. Recommended for Approval:

REAP		Amount		
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
COEDD				
1.	FAP-03-0017-R	Rural Water District #5	Pawnee	\$68,000.00
KEDDO				
2.	FAP-98-0017-R	Rattan Public Works Authority	Pushmataha	100,000.00
SODA				
3.	FAP-03-0018-R	Hendrix-Kemp Rural Water District #9	Bryan	99,999.00
4.	Consideration of and Possible Action on FY 2005 Proposal for Use of the Statewide Water Development Revolving Fund.			

D. Contract and Agreements Recommended for Approval

1. Consideration of Contract for Services with the Oklahoma Department of Public Safety for Traffic Control.
2. Consideration of Contract with Renaissance Convention Center for Convention Space and Guest Rooms for 2004 Governor's Water Conference or Approval of Resolution Authorizing Chairman or Vice-Chairman to Execute Contract.
3. Consideration of Intergovernmental Agreement with the Oklahoma Department of Agriculture, Food and Forestry (Agriculture Department) for water study and rural development initiative involving a poultry litter burning pilot project to reduce degradation of water quality in Wister Reservoir.

E. Applications for Temporary Permits to Use Groundwater:

1. Davis Glenn Estates Water Utility, Logan County, #2003-502
2. Oil City Associates, LLC, Stephens County, #2003-515
3. Kay County RWD #6, Grant County, #2003-563
4. John & Sheryl Winn, Custer County, #2003-600

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. Ernest E. & Marsha A. Barnes, Texas County, #2003-584

H. Applications to Amend Regular Permits to Use Groundwater:

None

I. Applications to Amend Prior Rights to Use Groundwater:

None

- J. Applications for Regular Permits to Use Stream Water:
1. Fox Lake Homeowners Association, Oklahoma County, #1997-005
 2. **Wolf Creek Estates, Homeowners Association, Canadian County, #2003-033 withdrawn**
- K. Applications to Amend Regular Permits to Use Stream Water:
None
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Joe Teague Drilling DPC-0203
Operator: Joe Teague OP-0312
Activities: Groundwater wells, test holes and observation wells
 - b. Licensee: Knutson Irrigation Design, LLC DPC-0670
Operator: Ken Chohon OP-1381
Activities: Pump installation
 - c. Licensee: Houck Drilling and Pump Services DPC-0672
(1) Operator: Gary Houck OP-1387
Activities: Groundwater wells, test holes and observation wells
Pump installation
 - (2) Operator: Eric L. Houck OP-1388
Activities: Pump installation
 - d. Licensee: Oklahoma Department of Agriculture Food & Forest DPC-9001
Operator: Dr. G.A. (Jim) Shirazi OP-1386
Activities: Monitoring wells and geotechnical borings
 1. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: Cherokee America Drilling DPC-0060
Operator: Kevin Bryan Wilkie OP-1377
Activities: Monitoring wells and geotechnical borings
Pump installation
 - b. Licensee: Tackett Drilling DPC-0196
(1) Operator: Paul Tackett OP-1389
Activities: Groundwater wells, test holes and observation wells
Pump installation
 - (2) Operator: Chris Tackett OP-1390
Activities: Groundwater wells, test holes and observations wells
Pump installation
 - c. Licensee: Davis Environmental Drilling, LLC DPC-0197
Operator: Larry Nottingham OP-0919
Activities: Pump installation
 - d. Licensee: Fire & Ice DPC-0432
Operator: Barry W. Martin OP-1382
Activities: Heat exchange wells
 - e. Licensee: TWF Drilling, LLC DPC-0623
(1) Operator: Brent Todd Wages OP-1384
Activities: Monitoring wells and geotechnical borings
 - (2) Operator: Edwin Wilson OP-1385
Activities: Monitoring wells and geotechnical borings

M. Dam and Reservoir Plans and Specifications:
None

N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Oklahoma Tourism and Recreation Department, Cherokee County, FP-03-18

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

Presentation of Draft Proposed New Permanent Rules and Amendments to Current Rules of the Board – (Scheduled for consideration and action at March 9, 2004 Board meeting):

A. Background and Summary of Public Participation – Executive Director Duane Smith stated to the members that the staff had presented the Water Quality Standards rules amendment proposals at the February meeting and those rules will be discussed under another agenda item. He said this item is to present the remainder of the agency proposed rules amendments for a one-month review before consideration at the March meeting. He said that some of these rules have been quite controversial, with the Arbuckle-Simpson rules, and meetings have been held with public, and Mr. Mathis will propose that those rules recommendation be amended. He said the agency had received a lot of comment, not all negative, and he believed that people understand that staff preferred to put a rule in place that does protect the springs and rivers and put in some balance. The timeline the agency is working within in regard to the Administrative Procedures Act to get the rules approved as permanent rules has pushed the comment period short. He said he would feel more comfortable not trying to fit within the permanent rulemaking deadlines, conduct more meetings with the local people and talk about the issues more with the people that live in the area, and to come back with an emergency rule if that is appropriate. Mr. Smith stated he wanted everyone to have an opportunity to understand the proposed rules.

Mr. Mathis suggested that he present the proposed changes in each chapter, and accept public comment after that time.

B. Proposed Amendments to Chapter 25 –Dams and Reservoirs

1. Summary of final draft proposed rules – Mike Mathis stated to the members that the proposed changes have come from applicants and consulting engineers that staff has worked with in this area. The two proposals are: adding the provision for a variance for “good cause,” being consistent with existing safety requirements in the dam safety rules, and clarifying language on the height of conduit, which concerns drier years and low flow conditions.

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

C. Proposed Amendments to Chapter 30 – Taking and Use of Groundwater

1. Summary of final draft proposed rules – Mike Mathis highlighted the proposals that Mr. Smith earlier spoke about. He said the rule amendments were in response to Senate Bill 288 passed during the Legislative Session. He said the rules are what the law itself states, along

with basic language and portion of the existing rules as they are at this time. Interpretation and implementation will be discussed later at public forums with possible emergency rules.

A highlight of the proposals include:

- a. Adds a definition for sensitive sole source groundwater language (from the statutory language);
- b. Adds language for new application new applications plus moratorium language;
- c. Clarifies language on well location exceptions;
- d. Clarifies annual revalidation procedures;
- e. Adds SB 288 requirements on revalidation in Sensitive Sole Source Groundwater Basin; and
- f. Adds requirement on determination of MAY in a Sensitive Sole Source Groundwater Basin.

2. Questions and Discussion by Board Members.

Mr. Keeley asked about whether the “10%” regarding recharge had been taken out; Mr. Mathis responded it had. He said the first draft had percentages in it, but many comments were received about how the numbers were arrived at, and so it has since been removed.

D. Proposed Amendments to Chapter 35 – Well Drillers and Pump Installers Licensing

1. Summary of final draft proposed rules – Mr. Mathis said the agency’s Well Driller’s and Licensing Advisory Committee continues in its “yeoman’s” effort to review and make recommendation about the rules in Chapter 35. He said they are very active in assisting the agency to be using current technological terms, etc. Mr. Mathis highlighted the changes recommended by the Council:

- a. Adds definition of heat exchange and sand point wells;
- b. Adds examination category for heat exchange well drilling;
- c. Amends well location standards from pollution sources for consistency;
- d. Amends standards for surface seal to provide options for site-specific conditions
- e. Adds construction standard for sand point wells which do not fit under traditional construction standards and are consistent with other states;
- f. Adds new standards for heat exchange (making permanent the emergency rules passed in 2003); and
- g. Adding language on plugging contaminated wells.

Mr. Mathis provided a chronology of events concerning the rulemaking process so that any proposed rule or rule amendment is approved by July 1, 2004.

2. Questions and Discussion by Board Members. There were no specific questions regarding Chapter 35 proposed changes.

However, Mr. Smith directed the Board’s attention to Chapter 30, (785:30-3-6(4)), and said it is a good time to discuss philosophically the Board’s permitting rules, rather than when the Board considers a permit. He named the studied groundwater basins, and said that well spacing is implemented at 1,320 feet from an existing well. There is a mechanism for location exceptions so that if an applicant wants to place a well closer than the 1320 feet, one of the listed location exceptions must be met. The existing rule says a location exception can be granted on an existing well, but what has happened—and is common practice in Oklahoma—is to hire a driller to drill a well, see where there is good water, and then the driller while already in the hole, completes the well. Then, the applicant comes in with an existing well and requests a location exception. The proposed rule changes the language to state that now when a well

location is authorized it will be on a well that is drilled, completed and used prior to the date of the maximum annual yield (MAY) determination, so once a MAY is completed, the existing wells won't have to adhere to the new rule, but every well drilled after that time will have to adhere to the rule. Mr. Smith anticipated there would be issues in the future with new applicants requesting location exceptions. He said that staff is assuming then that once the MAY is determined, the landowners and well drillers will know and the driller will advise the landowner a well cannot be placed within the 1320, and the landowner should do due diligence in getting the application so that the well is not closer than 1320 feet. If it is, then staff can look and see if it has a major impact on the existing well, and if it doesn't have, the location can be approved; if it does have, then the location will not be approved. The determination would be made at the hearing when evidence is presented by the applicant followed by OWRB staff evaluation. He noted that under 785:30-3-6((2)) the language, "historic average static water levels of" had been deleted.

Mr. Currie asked how the staff would be able to make that determination. Mr. Smith answered that the applicant will request a certain rate of pumpage, and that will be analyzed by staff as part of the evidence. Mr. Mitchell added that the driller would determine an estimated average yield on the well. Mr. Currie asked if the Board would then allow the maximum, or what the applicant requests; Mr. Smith responded that most likely it will be what the applicant states is needed.

Regarding the historic average, the water law contemplates taking the water, but well spacing has to do with protecting the aquifer not the individual well. Usually, a well is drilled only until water is reached, but there is a much deeper reservoir to access. Mr. Smith said the application should be looked at how the law creates the control not what is thought philosophically ought to happen. The control that is in the law and the rules is that every landowner owns a portion of the water, domestic use does not require a permit, every user has the same right to the water, and there no priority of use in the law. He said if the Board wants to make changes to the permitting, now is the time during the rulemaking process. Mr. Currie asked about well spacing outside a studied aquifer. Mr. Smith said the Attorney General has said the OWRB is without authority to set well spacing in an unstudied basin. Mr. Currie expressed concerns about commercial operations "stacking the corners" of a piece of property in an unstudied basin, possibly affecting other wells in the area. Mr. Smith said the statutes would have to be changed in order to set well spacing outside of the studies basins, which would be a good thing in the management of water, but the Board also needs to balance the ability to protect within the law domestic users, but also the landowner that wants the ability to use his water as well. Mr. Smith said that the law does not set priorities among uses; we cannot say that domestic use is a higher use than commercial use for groundwater. He said when staff brings an application before the Board, and the protestant says my use on my land is more important than use of water here, then by statute is not something we can consider, and is not something staff wants to recommend. If the Board wants to change that, then the Board needs to get the statute changed to look at priorities among uses, Mr. Smith explained that is why Senate 288 was passed; the Legislature didn't want municipal use outside of the sole source aquifer to happen, and the law the way it is currently written, wouldn't allow the Board to prioritize the use—domestic use over local use.

Mr. Sevenoaks said that each year when the Board decides legislative priorities, the Board could make those recommendations to the Legislature. Mr. Smith added that those ideas can be taken to the public during the public hearing process, and the comments can then be brought to the Board. Mr. Sevenoaks made some statements about philosophical approach to managing water across the state...according to political will or deciding use for the aquifer, and it is incumbent upon the Board to go ahead and give direction, rather than having to be in the responsive mode, but to be proactive. Mr. Smith recommended that the Water Law Advisory

Committee convene and gather together the various interests and have some discussion and public meetings over the course of the next year, and make recommendations. He said there are many water measures in the Legislature now, i.e., water conservation, water banking, and it is needed.

Mr. Keeley wanted to make comments regarding the rules in Chapter 30 that were proposed, but were withdrawn, regarding the Arbuckle-Simpson Aquifer. Specifically, he was concerned about the proposed 25% depletion language, which he believed to be arbitrary, that the “bucket” of water can be divided into three pieces. The beneficial use of the water now, the groundwater that belongs to the surface owner, and the springs and rivers, but all is dependent upon recharge for their existence and their magnitude. He said the number shouldn’t be 25%, it should be 33%; he said the language is out but the philosophy is still there. Mr. Sevenoaks said the landowner may do what they want, as long as it is put to beneficial use, and the Board should set the philosophy. Mr. Smith said that the Board should be the reciprocal of the ideas that come in from the public, and the way it is now is that legislators approach one another and the Board should be receptive and proactive, and the things that make sense should be brought to the Legislature.

Mr. Currie expressed his concerns about municipalities allowing subdivisions with one-acre tract homes to use sprinkler systems. He said that it might be problem in 20 years.

Mr. Keeley commented about the language proposed in Chapter 30, and specifically, the terminology, “not like to degrade” which he believed reflected quality, and the word, “diminish” should replaced it. The terminology “natural flow” has no meaning to a hydrologist, and he proposed two definitions be added: (1) natural flow – means the base flow of streams rivers and springs which are fed entirely by groundwater after runoff events from rainfall have ceased; and (2) “will not to degrade or interfere” means that it will not significantly diminish the base flow of rivers and streams. Mr. Keeley also commented about the definition of “Life of a groundwater basin or subbasin” and he suggested that the words “total overlying land of” be deleted, and adding “aquifers in”, the rest of the paragraph makes sense. Mr. Keeley also spoke about “recharge”, and the current USGS report of a 4.7 inch recharge, and if the recharge is increased 1-inch, 60 million gallons of water per day have been added to the data. He was concerned about the use of a fictitious number such as the 25%, and the use of the water over the next 2-3 years while the basin is still under study.

Mr. Couch interjected that Board members should not use specifics because those matters will be presented and the Board will be judges.

Mr. Keeley stated that the Board needed to look at whether the amount of use or beneficial use has been increased significantly, and the fact that the permits are all temporary, so there is next year to fix any permit that is issued.

3. Comments by Public – Chairman Grandstaff opened the floor for comments by the public. Mr. Earl Brewer stated to the members that he supported no decision today by the Board, and commended staff’s efforts to work with the public and educate the public on various areas. He said he was confident that a reasonable solution could be reached. He said the Board’s job is to react, and to form rules and regulations to implement laws. He said the Board is not a lawmaking body, but he supported Mr. Currie’s ideas, and continued work with the OWRB staff. He thanked the Board for staff’s work in the area (Arbuckle-Simpson) and he believed that postponing the rules is a good step.

Mr. Grandstaff complimented members of the Well Drillers Council who have significantly improved several areas where weaknesses exist. Mr. Sevenoaks asked about the hazard classification on dams. Mr. Currie added that oftentimes he has been aware of instances, i.e., a mobile home is moved onto property in the country and a well is drilled, but the homeowner moves away; is there some way to plug the abandoned well? Mr. Smith said that it

is the landowner's responsibility to have those wells plugged, and when we know about that, abandoned wells can be plugged with funds from the Well Drillers' Indemnity Fund. Staff just needs to be aware so that action can be taken against the current landowner.

5. SPECIAL CONSIDERATION

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation, or proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

A. Consideration of items transferred from the Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report saying the budget-to-actual report is in a new format, and provides basic information about money that the agency has encumbered and expended from each fund. Mr. Schuelein stated the agency is doing fine, and no budget cuts have been proposed and a budget cut is not anticipated this year. He encouraged the members to contact him if they have any questions.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There were no Supplemental Agenda items for the Board's consideration.

8. PRESENTATION OF FINAL DRAFT PROPOSED NEW PERMANENT RULES AND AMENDMENTS TO CURRENT RULES OF THE BOARD

- A. Proposed Amendments to Chapter 45 – Oklahoma's Water Quality Standards and
- B. Proposed Amendments to Chapter 46– Implementation of Oklahoma's Water Quality Standards

1. Summary of final draft proposed rules – Mr. Derek Smithee, Chief, Water Quality Programs Division, stated to the members that last month he had addressed the Board discussing the myriad revisions to Oklahoma’s Water Quality Standards in Chapter 45, and also in Chapter 46, Implementation of the standards. He said it was anticipated the Board would consider the proposals today; however, in the intervening month, there has been significant amount of communication and discussion about several of those amendments, but the only one that has brought controversy to the table involved the amendment regarding the “culturally significant waters” (CSW). Mr. Smithee briefly presented the position on the CSW, saying that essentially it was a recognition in the late 1990s that states and tribes could both benefit by partnering in water quality programs and standards, and the tribes informed the Board they generally believe the WQS were accurate and protective, but there may be a few instances when tribes may want to request something unique to protect cultural uses on tribal areas. Then the CSW rule was promulgated; however, there has not been a time when the rule has been implemented, so staff has proposed that the language be withdrawn. In the last month comment both pro and con to removing the language have been received. He said several non-governmental organizations, state agencies, Indian tribes, and other all commented. Staff has recently received formal communication from the Governor’s office, officially asking the Board to delay consideration of the CSW language for at least one more month and attempt to reconcile both polar issues. In response to the Governor’s office, staff is requesting the board to allow OWRB staff, the Governor’s Office and Secretary Tolbert more time to resolve the conflict. He said the options today are: to withdraw consideration of just the CSW language, and go ahead and vote on the remaining rules proposals, and then vote at the March meeting on the CSW language; or, to delay consideration of all proposed rule amendments until the March meeting. He said that delaying the rulemaking on these two chapters would not impact the staff’s ability to carry forward the rules to the Governor and the Legislature.

2. Questions and Discussion by Board Members. There were no questions by the members at this time.

3. Comments by Public. Chairman Grandstaff invited anyone wishing to present comments to the Board about the proposed rules changes to do so.

Ms. Angie Burckhalter, director of regulatory affairs, Oklahoma Independent Petroleum Association, addressed the members and said there are three areas she would like to make comments about. Regarding the CSW proposal, the OIPA fully supported the Board’s proposals to delete that language from the rules as there are no federal requirements, nor do surrounding states have any such rules, and the OIPA believed it to be a first step in checker boarding water quality standards across the state. She said the organization also felt it would be a detriment to small business if standards were too onerous or too stringent. The second area of the rulemaking comments Ms. Burckhalter said is that neighboring states do not have specific narrative criteria for minerals language, and those that do are generic in nature and do not identify specific parameters, and she requested that the specific narrative be deleted from the OWRB rules. And thirdly, Ms. Burckhalter spoke to the change regarding oil and grease; she said that any water body being evaluated for oil and grease should be made by an analytical method as the industry is required to use those methods when verifying contaminants at a site or for cleanup standards, and she requested the state be held to a similar standard.

Mr. Keeley asked why the OIPA objected to the naming of the minerals. Ms. Burckhalter responded one state agency that samples for minerals, for instance, tests for i.e., boron, which is not used at industry sites. It is confusing why there would sampling for criteria when it isn’t an issue.

There were no other comments from the public.

4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment. Mr. Smith stated that staff would prefer to delay voting on any of the rules recommendations for administrative purposes. He said there didn't seem to be any controversy in delaying consideration of the rules amendments until the March meeting.

Mr. Mitchell moved to delay consideration of the proposed rule amendments to Chapter 45 and Chapter 46, and Mr. Sevenoaks seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Secrest, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSENT: None

ABSTAIN: None

Mr. Keeley stated that since last month's meeting he had had the opportunity to meet with the Chickasaw Nation and one of Governor Henry's official and he seemed confused that the state had anything to do with water quality standards, and he asked about enforcement which the Tribe responded they did not have enforcement ability. He said there seemed to be a lack of communication. Mr. Smithee explained that Tribes have the ability under the Clean Water Act to promulgate their own water quality standards for a portion of tribal lands and there is a process they are required to go through for that "power" to be bestowed upon them, "treatment as a state," and the determination is made by the U.S. Environmental Protection Agency. None of Oklahoma Tribes have entered the "treatment as a state" process or promulgated water quality standards, so there are no tribal water quality standards today, but if all 39 tribes attempted to promulgate their own water quality standards, in theory, there would be a myriad of water quality standards in place on particular water bodies. OWRB staff believes that partnering is the answer for cohesive promulgation and implementation.

Mr. Smith commented that staff's effort regarding the CSW was not to cause checker boarding of water management in Oklahoma. He said staff had talked about this issue ten years ago, and had recognized it is a potential problem and put CSW language in the standards so the Tribes would have the ability to come to the state if there were water quality matters that needed to be done, and they would not go to EPA to get it done. They haven't used that, and are going to EPA anyway. Once it is removed, the Tribes won't have any recognized access and will be treated like the general public and will have to go on their own to EPA. Mr. Smith stated he believed that working with the Tribes is a good concept, and does not cause but rather reduces the possibility checker boarding. He said the problematic problem is how to deal with different sets of standards, and everyone is opposed to that. The only way to resolve it is through federal legislation that changes what the Tribes can do, or some type of agreement with the Tribes to figure out what to do on water quality management. He said if the Tribes came and made a request, the Board would look at it just like any other entity. The CSW language isn't very good, and that is why staff has proposed to remove it, the Governor has requested to work with the Tribes, so hopefully it will be resolved over the next month.

9. NEW BUSINESS

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

There were no new business items for the Board's consideration; however, Chairman Grandstaff asked Mr. Nichols to assume the ad hoc committee assignments where Mr.

McDonald served, and at the end of the meeting the Board will convene downstairs for group photo, and the next meeting of the Board will be at March 9, 2004.

9. ADJOURNMENT

There being no further business, Chairman Grandstaff adjourned the regular meeting of the Oklahoma Water Resources Board at 11: 20 p.m. on Tuesday, February 10, 2004.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Grady Grandstaff, Chairman

_____/s/_____
Glenn Sharp, Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Lonnie Farmer

_____/s/_____
Richard Sevenoaks

_____/s/_____
Absent
Bill Secrest

_____/s/_____
Jack W. Keeley

_____/s/_____
Jess Mark Nichols

ATTEST:

_____/s/_____
Ervin Mitchell, Secretary

(SEAL)