

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

November 9, 2004

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Ervin Mitchell at 9:30 a.m., on November 9, 2004, in the meeting room of the Oklahoma Water Resources Board, located in offices of the OWRB 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 Harry Currie gave the invocation.

B. Roll Call

Board Members Present

Ervin Mitchell, Chairman
Bill Secrest, Secretary
Harry Currie
Rudy Herrmann
Mark Nichols
Richard Sevenoaks

Board Members Absent

Lonnie Farmer, Vice Chairman
Jack Keeley

Staff Members Present

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

Others Present

Angie Burkhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Jill Daugherty, Office of Congressman Tom Cole, Ada, OK
Mark McAtee, Clinton-Sherman, Burns Flat, OK
David Jones, U.S. Corps of Engineers, Tulsa, OK
Bobby & Donna McSpadden, Sardis Lake Water Authority, Clayton, OK
Mike Spear, Highland Hills Home Owners Association, Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Mitchell stated the draft minutes of the October 19, 2004, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were additional changes.

Mr. Herrmann moved to approve the minutes of the October 19, 2004 regular meeting, and Mr. Nichols seconded.

AYE: Currie, Herrmann, Nichols, Secret, Sevenoaks, Mitchell
NAY: None
ABSTAIN: None
ABSENT: Farmer, Keeley

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, said that Joe Freeman was not present as he was attending a CIFA (Council on Infrastructure Financing Agencies) conference, and will accept the position as Treasurer for the next term. The \$204.3 million bond issue was closed last week, and it is a good time for the OWRB financing programs. Mr. Smith noted the new elections in the State House and Senate, and new leadership, and acknowledged their previous support of the OWRB programs. He said he was very positive about the upcoming session.

Mr. Smith stated this is the time when organizations want to visit with agencies about policy, and he had met with the Oklahoma Municipal League Utilities Committee this week, and will meet with the Farmers Union and OML Legislative committees next week. He said he is explaining to the groups that OWRB's three main high-priority programs are: (1) funding for the Financial Assistance Program; (2) funding support for the update of the comprehensive water plan; and (3) continuation of funding for the Arbuckle-Simpson aquifer. There are other items that are priority programs, and there is a strategy for obtaining the goals under the Special Studies priority. He said there would be new legislators to get to know, and he was looking forward to the opportunity to tell the Water Board story.

He said on November 18-19, Oklahoma State University will be hosting a water conference and there will be a large participation from the OWRB, with Noel Osborn talking about the Arbuckle-Simpson Aquifer Study, and also will be chairing a panel discussion. Mr. Smith and Mr. Mathis will be speaking on water planning. This is the second annual conference on water sponsored by OSU, the first day focusing on the more technical issues, and the second day discussions more on policy issues.

Mr. Smith stated he and Member Rudy Herrmann had met with the Oklahoma Academy for State Goals Implementation Committee about how to implement the

recommendations of the Academy. Clearly, he said, the Comprehensive Statewide Water Plan is one of the recommendations of the Academy again this year. Last year the legislation for the plan became “bogged down” on how the regional planning committees would be composed, and probably because people didn’t understand the intended function of the committee. The Councils of Government planning areas would be used primarily for an assessment of the municipal needs in their area: i.e., current needs, population projections, potential water supplies what are the impacts for accessing those supplies. There are also agricultural needs, hydropower needs, industrial needs, and there should be an overall statewide policy on a number of issues, including water transfer. Mr. Smith said he would like to use the Universities to assist in the assessments and then use a format similar to the Academy Town Hall where interest groups from around the state meet with facilitators and develop recommendations on what water policy ought to be. It is an effective format, and difficult for a person or group with an agenda to twist the Academy recommendations in their direction. He said he would be talking with the Governor’s office and Secretary of Environment to get a process in place. He said the OWRB has the statutory authority to do the comprehensive water plan, and it can be done with or without a broader group, but he favored opening discussions to the broader group.

The State Employee’s Charitable Contributions campaign concluded with the annual chili cook off with 13 employee entrants, Mr. Smith announced. The OWRB employees made contributions in excess of \$600 of this year’s goal of \$7200.

Mr. Smith concluded his remarks with the introduction of the Employee of the Quarter, Mr. Brian Vance, Public Information Officer.

Chairman Mitchell thanked the staff for their assistance with the recent Governor’s Water Conference.

2. FINANCIAL ASSISTANCE DIVISION

There were no Financial Assistance Division items for the Board’s consideration.

3. SUMMARY DISPOSITION AGENDA

Chairman Mitchell 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.

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

There were no other questions pertaining to items on the Summary Disposition Agenda.

Mr. Sevenoaks moved to approve the Summary Disposition Agenda, and Mr. Nichols seconded.

AYE: Currie, Herrmann, Nichols, Secret, Sevenoaks, Mitchell
 NAY: None
 ABSTAIN: None
 ABSENT: Farmer, Keeley

The following items were approved:

C. Consideration of Approval of Extension of Time for Obligation of Funds and Consent to Prepayment of Loan in Accordance with the Proposed Orders:

<u>Loan Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Requested</u>
1.	ORF-03-0007-DW	Edmond Public Works Authority	Oklahoma	\$4,137,271.60
2.	FAP-87-0166-L	Lugert-Altus Irrigation	Kiowa	Prepayment

D. Contract and Agreements Recommended for Approval

1. Consideration of Interagency Contract for Services with the Oklahoma Department of Public Safety for Working Overtime on Assignment to Assist with Traffic Control on Bridges During Installation of Stream Gaging Equipment.
2. Consideration of Agreement with the Association of State Dam Safety Officials to Conduct Dam Owner Education Workshops.
3. Consideration of Extension and Amendment Agreement with the Office of the Secretary of Environment for Work Related to TMDL Development.
4. Consideration of Interagency Agreement with the Office of the Secretary of Environment to Develop a Use Attainability Protocol for Oklahoma Wetlands.
5. Consideration of Amendment Agreement with the Office of the Secretary of Environment for Work Related to Probabilistic Sampling of Oklahoma Streams.

E. Applications for Temporary Permits to Use Groundwater:

1. Raymond and Jason Jantz, Grady County, #2004-545

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. William G. Weaver, Tillman County, #2003-534

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. Foster Jr. and Marie Johnson, Haskell County, #2004-020
- K. Applications to Amend Regular Permits to Use Stream Water:
 None
- L. Well Driller and Pump Installer Licensing:
 New Licenses, Accompanying Operator Certificates and Activities:
 1. Licensee: Darnold Contracting DPC-0686
 Operator: Dean Darnold OP-0686
 Activities: Monitoring wells and geotechnical borings
- New Operators and/or Activities for Existing Licenses:
 1. Licensee: Burgess Engineering & Testing, Inc. DPC-0484
 Operator: Leroy Wynn West OP-1416
 Activities: Monitoring wells and geotechnical borings
2. Licensee: Venture Drilling, Inc. DPC-0215
 Operator: Ivan Stokes OP-1418
 Activities: Groundwater wells, test holes
 and observation wells
- M. Dam and Reservoir Plans and Specifications:
 None
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 None

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

A. Update on Revegetation Efforts in Oklahoma Reservoirs. Mr. Derek Smithee, Chief, Water Quality Programs Division, stated to the members that he was pleased to discuss with the Board today a subject that is exciting, and probably one that most people are not familiar with. He said it is, however, not a high profile program, but is very beneficial to the life of a lake and its inhabitants, and he introduced the OWRB staff who were involved in the work of the program. Mr. Smithee's presentation included information about what revegetation is: "not recreating nature, but helping it along." The program is to help nature do what it was intended to do, and for the re-introduction of native aquatic plants using the three zones of a reservoir: submergent, floating, and emergent. Mr. Smithee said Oklahoma has 130 reservoirs, and 73 are impaired. Revegetation is used for erosion control (caused by natural and human conditions), implements "green treatment technology", reduces incoming nutrients, treats nutrients (physical or chemical) and aeration improves water quality. The advantages of the program include improvement to fishery resources, waterfowl resources, aesthetic pleasure, replacing oxygen, and helping to retain the sediment.

Mr. Smithee stated the OWRB is the lakes agency; however, other state agencies have some responsibilities in lake and watershed areas. Lakes can be high and dry for a number of months, and can also be drowned out for months at a time, and the type of plants introduced

can be affected by the lake level fluctuations. Mr. Smithee updated the members on the status of activities at lakes in the program, and in particular Lake Wister, Thunderbird Lake, Grand Lake and Lake Carl Blackwell. He spoke to the federal funding and assistance with other agencies in order to best utilize resources and administer an effective program for a self-sustaining, reproducing population of plants. Evaluation of success and calculations of growth expansion are also a component of the program activities, he said.

Mr. Smithee's presentation concluded with questions and discussion with Board members. Mr. Duane Smith added that funding for this program is difficult to acquire, and every one of the projects described have a local sponsor, a local legislator, and match money with state and federal funds that come together for the project. The Water Quality Staff has done a good job educating the public in these areas about the need for the projects and obtaining partnerships and funding for support of the program. He said this is part of the agency's high priority programs of "Special Studies."

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. Application for Temporary Permit to Use Groundwater No 2004-505, Highland Hills Property Home Owners Association, Inc., Cleveland County.

1. **Summary** – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that the applicant requested a permit to withdraw a total of 100 acre-feet of groundwater per year to include 90 acre-feet for recreation, fish and wildlife and 10 acre-feet for irrigation. The water is proposed to be withdrawn from three wells located on 60 acres of dedicated land in Cleveland County. Mr. Mathis stated the record showed the applicant has a valid right to the dedicated land, the land overlies the Garber-Wellington groundwater basin (for which the maximum annual yield and equal proportionate share have not been determined and each landowner is therefore entitled to two acre-feet per acre). Staff recommended approval of the findings of fact, conclusions of law, and Board order.

2. **Discussion and presentation by parties.** Mr. Mathis stated there were no representatives of the protestants in attendance; however, the applicant was present.

3. **Possible Executive Session.** The Board did not vote to enter executive session.

4. **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. Nichols moved to approve the temporary groundwater permit no. 2004-505, and Mr. Herrmann seconded.

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

B. Application for Regular Permit to Use Groundwater No. 2004-531, City of Clinton, Washita County.

1. Summary – Mr. Mathis informed the members that this application by the City of Clinton for the use of groundwater is to withdraw 55 acre-feet of groundwater per year for commercial use to supply an industrial airpark. The water is to be taken from one well located on 55 acres of dedicated land overlying the Elk City Sandstone Groundwater Basin, for which the maximum annual yield and equal proportionate share has been determined by the Board, and each land owner is entitled to one acre-foot of water per acre of land dedication. Mr. Mathis stated the application has been determined to be in compliance with the Oklahoma Groundwater Law, and staff recommended approval.

Mr. Sevenoaks asked and Mr. Mathis responded that the Board's well spacing rule does apply in this application. He said that was the contention of the protestant who does not yet have any wells but anticipated acquiring some in the future for irrigation, and that the applicant's well would impose restrictions on them. He explained that if in the future the protestant did apply for a groundwater permit, there are variances to the well spacing rules where certain circumstances apply which may be considered in their situation if necessary.

2. Discussion and presentation by parties. Mr. Mathis stated that there were neither protestant nor a representative of protestants in attendance. The applicant was represented.

3. Possible Executive Session. The Board did not vote to enter executive session.

4. 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. Herrmann moved to approve regular groundwater permit 2004-531, and Mr. Currie seconded.

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

C. 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 he had provided the monthly-to-budget actual report for expenditures and the agency is operating well within the limits set by the Legislature and the Governor. There were no questions from the Board members.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

8. Consideration of Request to Seek Amicus Status in Appeal Involving Order for Release of Water from Dam

A. Background and summary – Mr. Dean Couch, General Counsel, stated to the members this item was prepared to be discussed under executive session, as the Open Meeting law provides that an executive session may be held by a public body for confidential communication between the public body and its attorney concerning pending investigation, claim, or action. He read the sentence in the paragraph for item 8.B. stating the Board may enter executive session by the advice of its attorney if disclosure will seriously impair the ability of the public body to process the claim, etc., and he cited the legal authority. Mr. Couch stated it is his advice that these discussions would seriously impair the Board's position on certain matters, and for discussion purposes only, as the OMA provides, he recommended the Board enter executive session. Any action taken would have to be a vote taken in open meeting.

B. Possible executive session - 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)

(1) Vote on whether to enter executive session. Mr. Herrmann moved that the Board adjourn into executive session. Mr. Currie seconded.

AYE: Currie, Herrmann, Nichols, Secret, Sevenoaks, Mitchell

NAY: None

ABSTAIN: None

ABSENT: Farmer, Keeley

(2) If executive session approved, designation of person to keep minutes. Ms. Mary Schooley, executive secretary, was designated by the Board to keep the minutes of the executive session.

(3) Executive session to discuss request (vote or action taken on any item of business considered in executive session must be taken in public meeting). The Board entered executive session at 10:27 p.m.

Following the executive session, the Board reconvened the regular session at 10:45 a.m. Chairman Mitchell announced that no action was taken during the executive session, nor would the Board vote on any matter at this time.

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.

9. ADJOURNMENT

There being no further business, Chairman Mitchell adjourned the regular meeting of the Oklahoma Water Resources Board at 10:46 a.m. on Tuesday, November 9, 2004.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Ervin Mitchell, Chairman

_____/s/_____
Lonnie Farmer, Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Jack W. Keeley

_____/s/_____
Jess Mark Nichols

_____/s/_____
Richard Sevenoaks

(Vacant)

ATTEST:

Bill Secrest, Secretary

(SEAL)