

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
June 12, 2007**

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on June 12, 2007, in the meeting room of the Oklahoma Water Resources Board, 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. The agenda was posted on June 6, 2007, at 9:15 a.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked Mr. Ed Fite to provide the invocation. He asked Mr. Drummond to serve as Acting Secretary in the absence of an OWRB Secretary.

B. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Mark Nichols, Vice Chairman
Ford Drummond
Lonnie Farmer
Ed Fite
Jack Keeley
Kenneth Knowles
Richard Sevenoaks

Board Members Absent

Linda Lambert

Staff Members Present

Duane A. Smith, Executive Director
Dean Couch, General Counsel
Mike Melton, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Monte Boyce, Comptroller
Lou Klaver, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Doris Lee and Wallace Howard, Harper County Water Corporation, Woodward, OK
Laurie Williams, Sulphur, OK
Wayne & Evalyn Johnson, Quinlan Com. Rural Water District #1, Mooreland, OK
D.C. Anderson, Broken Arrow, OK
Rick Lang, Rural Water District #4, Wagoner County, OK
Jerald Gammill, Stillwater, OK
Jim Barnett, Kerr Irvine Rhodes Ables; Leverett Family; Oklahoma City, OK
Keith McDonald, Lawton; Oppenheim, Oklahoma City, OK
Wade Rounds, Rural Wagoner County Rural Water District #7, Wagoner, OK
John Griffin, Meridian Aggregates; Crowe Dunlevy, Oklahoma City, OK
Gene Whatley, Oklahoma Rural Water Association, Oklahoma City, OK
Jack Crocker, Wagoner County Rural Water District #7, Wagoner, OK
Gary Crow, Wagoner County Rural Water District #7, Wagoner, OK
Billie Crow, Wagoner County Rural Water District #7, Wagoner, OK
Ron Cooke, Save Our Water, Inc. Lake Eufaula, Oklahoma City, OK
Bob Kellog, AMCD, MPMCD, Rann Williams; Oklahoma City, OK
Josh McClintock, McClintock Consulting, Oklahoma City, OK
Erin Boeckman, Capitol Network News, Oklahoma City, OK
Jim Murphy, Lincoln County Rural Water District #8, Wellston, OK
Rick Petricek, McCurtain County Rural Water District #8; Poe & Associates, Tulsa, OK
Steven Jolly, Arbuckle Master Conservancy District, Davis, OK
Jeanette Nance, Office of the Governor, Oklahoma City, OK
Dale Pratt, McCurtain County Rural Water District #8, Broken Bow, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,
Oklahoma City, OK
Larry Edmison, Sierra Club, Oklahoma City, OK
Janice Edmondson, The Journal Record, Oklahoma City, OK
Marie Whatley, Oklahoma Rural Water Association, Oklahoma City, OK
Shawn Lepard, Lepard Consulting, Edmond, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the May 8, 2007, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Mr. Nichols moved to approve the minutes of the May 8, 2007, Regular Meeting, as presented, and Mr. Knowles seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: Lambert

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, addressed the members and audience, saying it is a special day for the OWRB in recognizing Mr. Bill Secrest and his 24-years of service to the State of Oklahoma and Water Resources Board. He said as the Board celebrates its 50th Anniversary, its an honor to recognize Mr. Secrest's service has been during half of that time. He introduced Senator Mary Easley who read SCR 35 declaring May 8, 2007, Bill Secrest Day at the Capitol. Senator Easley introduced Mr. Vernal Morgan, representing President Pro Tempore Mike Morgan who provided comments regarding Mr. Secrest's quality of character and service to the state, and following Representative Wade Rousselot, co-author of the resolution, who also complimented Mr. Secrest. Ms. Jeanette Nance, representing Governor Brad Henry, presented a Governor's Commendation to Mr. Secrest, and Gene Whatley, Executive Director of the Oklahoma Rural Water Association presented an award in recognition of Mr. Secrest's contribution to the Board on behalf of the state's rural water districts. Mr. Smith expressed his personal appreciation to Mr. Secrest for assistance at the Capitol regarding OWRB legislative matters, in particular, and then read the proposed resolution of appreciation by OWRB Board members and staff, which the Board voted to approve:

Mr. Lonnie Farmer moved and Mr. Kenneth Knowles seconded approval of the Resolution of Appreciation to Bill Secrest.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

Mr. Bill Secrest expressed his appreciation for being able to serve on the Board, his support of the Board members, Executive Director and staff. Chairman Herrmann called for a short break.

Chairman Herrmann reconvened the meeting at 10:00 a.m., and Mr. Smith continued his report to the Board members. He said that Mr. Mike Melton has previously provided a written summary regarding the legislative session, and while the effort for the session had been to remove the cap from the Gross Production Tax water resources fund in order to access more dollars for the Comprehensive Water Plan and financial assistance program, that did not come to fruition during the final days of the session. He said the legislative session was as a drought—in every wet period of time there are a few dry times, and looking at the legislature is similar in that you don't look at what it does in one particular session but what occurs over a longer period of time. Recent years we have received funding for the Comprehensive Water Plan and additional funding through the Gross Production Tax for the financial assistance program, and the REAP Grant fund. Next year will see additional steps to further the management of water supplies in Oklahoma.

Mr. Smith recognized Mr. Mike Melton's 35 years of service to the Oklahoma Water Resources Board and State of Oklahoma.

Mr. Smith said the month has been busy with water planning activities with continued meetings in the western part of the State, and in addition he had met with a number of business and civic groups to talk about the water plan. He said there has been a variety of comments, even that the OWRB has an agenda, but overall very interesting and fascinating to see the

“balance idea” come out at virtually every meeting where comments regard balance of water use between environmental protection and water use. He said the OWRRI is doing an outstanding job in conducting the meetings, and he believed it is progressing much better than originally expected. He encouraged everyone to logon to the OWRRI website and find information on the meetings and input being provided by the public both at the meetings and on line. He said Mr. Dillon is doing an outstanding job of coordinating activities between the OWRB and other agencies, and working with the public, and he will provide a more detailed report later in the agenda.

Mr. Smith concluded his report announcing the Tulsa Corps of Engineers will have a change in command at the end of June; the new District Chief is Colonel Anthony Funkhouser.

Chairman Herrmann added that as he ends his second year as Chairman, he is disappointed this year’s report regarding legislative action is not as positive as the first year. He encouraged all the Board members to be prepared to be more visible at the Capitol in the future, meet with respective committees, as it will take everyone to make sure the word is out that this is not an agency-driven agenda, but an agenda that is designed to serve the best interest of the State of Oklahoma.

Mr. Mark Nichols also commented about the OCWP public input meetings he has attended and he encouraged the other members to attend the meetings in their area as well as meetings not in their area so they can hear comments about other issues. He complimented the staff on the conduct of the meetings and the positive comments he has received from the public. He said often people attend with an idea of what the state water law is, however, after hearing the presentations by the OWRB and OWRRI staffs, they then have a different opinion.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Woodward Municipal Authority, Woodward County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a loan request in the amount of \$1.4 million from the Woodward Municipal Authority. The loan is to install 15,000 feet of sewer line and ten manholes in the southwest quadrant of Woodward. He noted provisions of the loan agreement. Woodward’s water and sewer connections have increased by approximately 10% over the ten years. Woodward has been a long-term customer of the Board’s, currently has one other outstanding loan, and its debt coverage ratio is approximately 4-times. It is estimated that the Authority will save \$380,000.00 in interest expense by borrowing from the Board. Staff recommended approval.

Mr. Doug Haynes, Chief Financial Officer, was present in support of the loan request.

Mr. Drummond moved to approve the loan to the Woodward Municipal Authority, and Mr. Sevenoaks seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #7, Wagoner County. Recommended for Approval. Mr. Freeman said the request from the Wagoner County Rural Water District #7 is for a loan in the amount of \$1,575,000.00 from the Drinking Water State Revolving Fund. The District is requesting the loan for the construction of a 400,000-gallon per day treatment plant, rehabilitation of the existing flocculation and sedimentation basins, and rehabilitation of the office building. Mr. Freeman noted provisions of the loan agreement. The District has had steady growth over the past several years with water connections increasing by 12% since 1996. The District's debt-coverage ratio stands at approximately 1.27-times, and it is estimated the District will save approximately \$380,000.00 by borrowing from the Board. Staff recommended approval.

Senator Mary Easley, Representative Wade Rousselot, Mr. Jack Crawford, engineer, and Mr. Gary Crow, were present in support of the loan request.

Mr. Nichols asked about the difference in fees between this loan and the previous loan on the agenda. Mr. Freeman explained that Woodward did not hire a financial advisor. He said that typically the fee is negotiated between the borrower and the service provider.

Mr. Fite moved to approve the loan to the Wagoner County RWD #7, and Mr. Nichols seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: Lambert

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #8, McCurtain County. Recommended for Approval. Mr. Freeman said this item is for the consideration of a Drinking Water State Revolving Fund Loan request for McCurtain County RWD #8. He said the District is requesting a \$4,806,000.00 loan for construction of a new 2-million gallon per day membrane filtration water treatment plant, a new 16" transmission line, a new 1-million gallon clear well, and to modify an exiting booster pump station. Mr. Freeman noted the provisions of the loan agreement. The District's water connections have increased in excess of 25% to over 2,200 connections. The District has no other outstanding indebtedness, the debt-coverage ratio stands at approximately 1.27-times, and it is estimated the District will save approximately \$1.1 million dollars by borrowing from the Board. Staff recommended approval.

Mr. Dale Pratt, Chairman; Mr. Lloyd Swafford, Board member; and Ms. Beth Calvin, Officer Manager, were present in support of the loan request.

Mr. Fite moved to approve the loan to the McCurtain County RWD #8, and Mr. Knowles seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: Lambert

D. Consideration of and Possible Action on a Proposed Order Approving Loan for Lawton Water Authority, Comanche Count. Recommended for Approval. Mr. Freeman said this Clean Water State Revolving loan request by the Lawton Water Authority is in the amount of \$10,420,000.00. The loan will be used to continue sanitary sewer rehabilitation and improvements. This phase of the project includes work in five subbasins and upgrades in two additional areas of town. Mr. Freeman noted provisions of the loan agreement. Lawton has been a long-time, good loan customer of the Board's and currently has ten outstanding loans for both water and wastewater projects which were for a total original principal balance in excess of \$61 million. Lawton's debt-coverage ratio stands at approximately 1.7-times. It is estimated that Lawton will save over \$2 million in interest expense by borrowing from the Board.

Mr. Keith McDonald, financial advisor, was present in support of the loan request.

Mr. Nichols moved to approve the loan to the Lawton Water Authority, and Mr. Knowles seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

E. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Broken Arrow Municipal Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this item is a request by the Broken Arrow Municipal Authority for a short extension of time to close a loan approved at the Board's June 20, 2006 meeting. The loan is scheduled to close on June 14, 2007, and Mr. Freeman said the Authority is requesting the extension just as a precaution, if there were to be a delay. He said the \$15 million loan is for major improvements to Broken Arrow's Lynn Lane Waste Water Treatment Plant. The expansion and renovation will allow Broken Arrow to increase the plant by 1.5 million gallons per day to a capacity of 8-million gallons per day. Besides the extension of time, all other items of the loan agreement will remain the same. Staff recommended approval.

Mr. Fite moved to approve the extension of time to the Broken Arrow Municipal Authority, and Mr. Sevenoaks seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

3. SUMMARY DISPOSITION AGENDA ITEMS

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

A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items.

Chairman Herrmann read the statement above and asked for requests to move items. There were no requests to move items to the Special Consideration Agenda.

Mr. Smith noted that on page three of the agenda, item 3.D.12. regarded professional services for governmental affairs and information exchange. He explained that particularly over the last couple of months, it appears that working in the federal capacity, going to the state delegation to receive federal dollars for various projects, and comparing what Oklahoma receives to what other states received, Oklahoma is not getting its fair share. Through the various programs, i.e., WRDA bill, this year has been exceptional. This action will authorize the OWRB to join with the DEQ for a government affairs person to assist in organizing efforts to better inter into the discussion and play in Washington, D.C. The OWRB budget is 40-50% federal dollars, and the DEQ is more than that, so it is a substantial piece of the agencies' budget and an ever-increasing need with state dollars not increasing to be able match the state dollars with federal dollars. He said Secretary Miles Tolbert and Governor Henry's Chief of Staff Gerald Adams have agreed to the need to move forward. An RFP will be issued to solicit input from different providers, interviews along with the DEQ and a selection will be made based upon criteria developed. The total cost between the two agencies would be \$60,000.00. He explained some benefits are that doors can be opened and connections made because the person would know their way around and know how to get to the appropriate staff at the appropriate meetings, preparing language in the proper format. The DEQ, OSE and OWRB have different areas of need that can be met through such an agreement. He said he would not say that this action would be to hire a lobbyist, even though the person would cover many duties a lobbyist would, but organization with the agencies and understanding funding mechanisms and funding needs. He said staff would recommend approval. Chairman Herrmann said it is regrettable that is what we have to do in order to get our share, but that is the way the game gets played. Mr. Keeley said he thought it was a very good idea, because getting to know the delegation and committee staff is what gets it done. Mr. Smith added the funding of the WRDA bill is what is needed now.

Ms. Lou Klaver asked to withdraw Summary Disposition Agenda item J. 12., William Gabehart #2007-015 from the Board's consideration.

Mr. Drummond asked if the REAP grant for Lone Chimney, item 3.C.1., FAP-06-0009-R, is the same issue the Board has funded in the past, and Mr. Freeman said it is. Chairman Herrmann said this regarded the wastewater issue.

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.O.

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Keeley moved to approve the Summary Disposition Agenda as amended, and Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: Lambert

The following items were approved:

C. Consideration of Approval of the Following Applications for REAP Grants in Accordance with the Proposed Orders Approving the Grants:

| REAP | | | | Amount |
|------------------------|-------------------------------|--------------------------------|----------------------|---------------------------|
| <u>Item No.</u> | <u>Application No.</u> | <u>Entity Name</u> | <u>County</u> | <u>Recommended</u> |
| COEDD | | | | |
| 1. | FAP-06-0009-R | Lone Chimney Water Association | Pawnee | \$99,990.00 |
| 2. | FAP-04-0021-R | Rural Water District #3 | Lincoln | 79,999.00 |
| EODD | | | | |
| 3. | FAP-06-0011-R | Rural Water District #8 | Cherokee | 99,999.00 |

D. Consideration of and Possible Action on Contracts and Agreements, Recommended for Approval:

1. Interagency Agreement with Department of Environmental Quality for sharing of OWRB Woodward and McAlester office space.
2. Third Amendment to Agreement with the Office of the Secretary of the Environment for the Clean Water Act FY 03 §104(b)(3) Total Maximum Daily Loads (TMDL) Development (Special Purpose) CA# X7-976525-01.
3. Amendment to Agreement with the Office of the Secretary of the Environment for the Clean Water Act FY 05 §104(b)(3) Water Quality Cooperative Agreement CA# CP-966144-01.
4. Intergovernmental Subagreement with the Board of Regents of the University of Oklahoma for continued maintenance of the Oklahoma Mesonet weather station located near Fittstown, Oklahoma.
5. Lease Agreement with Department of Central Services for OWRB Tulsa office.
6. Planning Assistance to States Supplemental Agreement No. 1 between the OWRB and United States of America, extending time to complete Water System and Supply Study for the City of Bristow.
7. First Amended Interagency Agreement with GRDA to provide additional compensation to OWRB in its performance of the dissolved oxygen monitoring plan, the fish and wildlife mitigation project and the volunteer monitoring and outreach program.
8. Letter Agreement between U.S. Army Corps of Engineers and OWRB under Planning Assistance to States Program titled "Programmatic Planning Support for Oklahoma Comprehensive Water Plan".
9. Contract for Volunteer Monitoring between Grand Lake Water Watch, Inc. and OWRB. GLWW to coordinate the efforts of the volunteer monitors at Grand Lake.
- 10. *Intergovernmental Agreement between the Central Oklahoma Master Conservancy District and OWRB. OWRB to provide routine water quality monitoring for Lake*

Thunderbird. Item withdrawn

11. Interagency Agreement with the Department of Environmental Quality Regarding the Drinking Water State Revolving Fund.
 12. Resolution to Authorize Chair or Vice-Chair to Execute Interagency Agreement with Department of Environmental Quality Regarding Professional Services for Government Affairs and Information Exchange.
- E. Applications for Temporary Permits to Use Groundwater:
1. The White Family Trust, Bryan County, #2006-567
 2. City of Choctaw/Choctaw Utilities Authority, Oklahoma County, #2006-609
 3. NRH Medical Park West, L.L.C., Cleveland County, #2007-511
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Easton Family Limited Partnership, Tulsa County, #1992-608
 2. Larry E. & Dixie E. Claflin, Grant County, #2003-529
- G. Applications for Regular Permits to Use Groundwater:
1. Gerald A. & Jolena Ann Graves, Harper County, #2006-518
 2. Gerald A. Graves, Beaver County, #2006-532
 3. Tom & Ricky Ingram, Ellis County, #2006-578
 4. Meadows at River Bend West Lakes Owners Association, Inc., and the River Bend West Lake Owners Association, Inc., Canadian County, #2007-510
 5. Allan & Rita Baugh Revocable Living Trust, Creek County, #2007-514
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Gerald A. & Jolena Ann Graves, Beaver County, #1979-552
 2. Jerald & Deborah Radcliff, Beaver County, #1991-512
- I. Applications to Amend Prior Rights to Use Groundwater:
None
- J. Applications for Regular Permits to Use Stream Water:
1. AES Shady Point II, LeFlore County, #2006-014
 2. Charles R. Freeman, II, Kiowa County, #2006-043
 3. Warren Gene Heavener, LeFlore County, #2006-045
 4. Two States Sod Farm of Spiro, Oklahoma, LeFlore County, #2006-066
 5. James H. Burt, Tulsa County, #2006-069
 6. Daube Ranch & Mineral Limited Partnership, an Oklahoma Limited Partnership, Carter County, #2006-070
 7. Ravenswood – The Island, L.L.C., Wagoner County, #2007-007
 8. Richard C. & Joni S. Barrett, Hughes County, #2007-009
 9. Jamie Ross Gilliam, LeFlore County, #2007-010
 10. John Troyer, Coal County, #2007-011
 11. Chris McComas, Grady County, #2007-012
 12. ***William Gabehart, Caddo County, #2007-015 item withdrawn***
- K. Applications for Term Permits to Use Stream Water:
1. William S. Howard, Pushmataha County, #2007-020

- L. Well Driller and Pump Installer Licensing:
 - 1. New Licenses, Accompanying Operator Certificates and Activities:
 - C. Jason Lance Hockersmith, DPC-0691
 - D. Ecovac Services, DPC-0693
 - 2. New Operators or Activities for Existing Licenses:
 - C. Citizen Potawatomi Nation, DPC-0641

- M. Dam and Reservoir Plans and Specifications:
None

- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Department of Wildlife Conservation, Dewey County, FP-06-06
 - 2. Department of Transportation, Okfuskee County, FP-07-10
 - 3. Department of Transportation, Custer County, FP-07-11
 - 4. Department of Transportation, Garfield County, FP-07-12
 - 5. Department of Transportation, Wagoner County, FP-07-13
 - 6. Department of Transportation, Osage County, FP-07-14
 - 7. Department of Transportation, Pittsburg County, FP-07-15
 - 8. Department of Transportation, Delaware County, FP-07-16
 - 9. Department of Transportation, Comanche County, FP-07-18
 - 10. Department of Transportation, Carter County, FP-07-20
 - 11. Department of Transportation, Carter County, FP-07-21
 - 12. Department of Transportation, Payne County, FP-07-22
 - 13. Department of Transportation, Payne County, FP-07-23
 - 14. Department of Transportation, Okmulgee County, FP-07-24
 - 15. Department of Transportation, Hughes County, FP-07-25

- O. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the June 12, 2007 packet of Board materials

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

A. Update on Comprehensive Water Plan Activities. Mr. Dave Dillon, Director of Planning, stated to the members that agenda item 3.D.8., agreement with the Corps of Engineers under Planning Assistance to the States, is good news because the COE found an additional \$150,000.00 for use for the state water planning effort. Regarding the budget, Mr. Dillon noted the Water Infrastructure Development Fund collected \$1.2 million through the Gross Production Tax, and of that \$155,000.00 has been expended, and \$300,000.00 has been encumbered. He said at the end of the fiscal year more than \$1 million will be carried over; however, as soon as the scope of work is completed, and once contracts are entered for the work, and once the OWRRI bills come in, the balance will drop. Regarding technical planning, Mr. Dillon stated he is waiting for a response from the COE/IWR; the next step is for the COE to meet with CDM to negotiate a price, and will then advise the OWRB what the cost match will be, of which there are limits. Lastly, he commended Mr. Nichols for having attended several OCWP public meetings,

and he encouraged the Board members to review the comments on the water plan website saying interesting comments are being submitted but overall the process is going well. Mr. Drummond asked about the timeframe; Mr. Dillon stated that the plan completion date is still 2011 since the cap on the fund was not removed during the legislative session in order to speed up to 2010. There was brief discussion about the WRDA bill funding.

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 to Amend Term Permit to Use Stream Water No. 2004-022, Randall R. Williams, Jackson County.

1. Summary – Ms. Lou Klaver, Chief, Planning and Management Division, began by distributing a map to the members illustrating the permit situation. She stated to the members that the matter before the Board today is a petition to change a location of a diversion point on an existing stream water term permit. Mr. Randall Williams has a term permit to appropriate 121 acre-feet of stream water each year to irrigate 85 acres of cotton in the northwest portion of Jackson County. The term permit, as opposed to a regular permit, was granted for a ten year-term. The OWRB grants term permits on rare occasions, and authorizes an amount from an approved source, but does not vest the holder with a permanent right, and expires when the term expires. Ms. Klaver explained that Mr. Williams' irrigation permit will expire in 2014, and he seeks to amend the diversion point approximately ½-mile upgrade from the present location.

Usually when the Board issues a term permit, it is in cases where permit holders abide by a schedule of use from reservoirs, and are used any time when the Board finds it will not disrupt the rights of the parties, and when water is not available. In this case, there was a lateral line from the Irrigation District that added water and the Altus treatment plant also discharges in that location. The matter to be adjudicated is to move the point of diversion on Stinking Creek, leaving all other aspects of the permit the same, including the condition that downstream water rights may not interfere with the senior water rights holder permit. The petition to change the diversion point was protested by neighbors to the west, the Leveretts, located west of the land Mr. Williams intends to irrigate. Ms. Klaver noted on the map the location of the authorized diversion point and the proposed diversion point on the unnamed tributary to Stinking Creek.

The Leveretts own a dam and hold two stream water permits, which water held by the dam benefits both parties. The two authorized permits of the Leveretts include a 1964 stream water right for 134 a.f. for irrigation, and 1991 permit for 502 a.f. for irrigation as illustrated. The Leveretts protested on two grounds, one is procedural and one is substantial. First, they asserted that notice contained an error in that the accurate name of the creek was not published; the creek name is "Unnamed Tributary to Stinking Creek" but Stinking Creek was published. However, the hearing examiner ruled that notice was properly given and did not contain a material error or substantial deviation nor prejudicial because the 10-acre tract of land where the diversion point is to be moved is accurate and more specific. The applicant has a pump at the proposed diversion point so there is notice he is diverting on the unnamed tributary. The local residents refer to the creek as Stinking Creek, but did not realize until conferring with the USGS map that it is actually the unnamed tributary. Ms. Klaver noted the protestant's first letter even referred to the creek as Stinking Creek before publication and the hearing examiner did not feel that materially misled nor prejudiced any of the parties, he ruled that notice was properly given. Chairman Herrmann noted the protestant's were not excluded from the process by virtue of that.

Ms. Klaver said the next objection to the change of diversion point is that the Leveretts would be impacted by moving the diversion point from below their dam and two permits, to above the permits, and there would not be enough flow to sustain senior appropriator's rights. The hearing examiner found the Williams permit is already conditioned and cannot interfere with domestic uses or existing senior appropriators. Mr. Williams has been using stream water at the unauthorized diversion point when staff made him aware the authorized diversion point was below. He filed for a provisional temporary permit and filed the application to amend the diversion point. Ms. Klaver noted that last summer during dry conditions Mr. Williams ceased pumping to allow water to flow in order to meet the senior appropriator's needs, demonstrating that Mr. Williams is aware and understands the appropriation doctrine, that he is junior in time, and will have to stop pumping to allow flow to the senior appropriator in those conditions.

Ms. Klaver summarized the facts as previously stated, and added the appropriation doctrine does not provide protection for upstream or downstream locations, the date is what provides protection. Staff recommended approval of the petition to change diversion point.

2. Discussion and presentation by parties. Mr. Bob Kellog, representing the applicant, addressed the members and introduced his clients. He mentioned facts that were presented at the hearing but had not been mentioned in the presentation, such as the applicant built the dam and shared the cost with the protestants, and they constructed the dam because they lease the property from the protestants. He said Mr. Williams has curtailed the use of his pump to make sure the Leveretts would have sufficient water as well as others downstream users and testimony at the hearing was clear that he coordinates with all the users on the creek. He said that all over Oklahoma there are junior appropriators, this is not different and in fact there are junior and senior water rights above and below Mr. Leverett. He asked the Board to take the staff recommendation, issue the permit; Mr. Williams' promise not to interfere with Leveretts will come to fruition, and maybe that will put some trust back into the relationship.

Mr. Drummond asked if the applicant leases land from the Leveretts, and that the water is being withdrawn from the two diversion points; and Mr. Kellog responded, yes.

Mr. Jim Barnett, representing the protestants, addressed the members and stated he would present what he believed to be a more accurate and complete picture of the facts in the case. He said he did not agree with very much of what the staff put in the proposed order, and he filed exceptions on June 7; Mr. Couch responded he had not seen the exceptions, but Ms. Klaver

noted she had only the day before the meeting. Mr. Barnett distributed copies and noted what he believed to be inaccuracies and problem statements. He said the dam is located on the Leverett's property, but the Williams paid for the construction in order to obtain a term lease to operate the farm, so they have no ownership interest in the dam or the land. He said the record is contrary to Ms. Klaver's statements that the Board even considered the Altus-Lugert plant to be a source of water. The Board issued the permit to Mr. Williams' predecessor in interest Irene Yates, based on a report the Board placed in evidence there was excess water—spillage and seepage—from the Irrigation District, and it is that water they determined to be available on a temporary basis and suitable for a term permit. At the time of issuing the predecessor's permit, Mr. Williams had encourage the Leveretts to protest that applicant's request for a diversion point at the same location Mr. Williams now wants to place the diversion point; the diversion point was then moved downstream, the Leveretts withdrew the protest and the permit was issued. He said the record reflects the Board was originally going to issue a 20-year term permit, but determined there was not enough water on a long-term basis because of the measures the Irrigation District was taking to decrease its seepage and issued the 10-year term permit, which he added that to his knowledge the water has not been used under that permit. He also said the Williams land is located within the District and receives water, whereas the Leverett's land is not in the district and not eligible for District water, so there is no real need for water from the Williams land when they can get District water.

Mr. Barnett continued his argument stating the staff had prepared an order that was basically “hiding the ball” from the Board. The Board's role is to determine whether the change in diversion point would be a detriment, but then the Board states in conclusion of law 3. that the dispositive issues is whether the Board may grant or deny the change of diversion point and place conditions on such grantings—no one would argue the Board has that authority. He argued the dispositive issue is whether there will be a detriment to the protestant; that was the issue at the hearing and the order does not mention the word, “detriment,” nothing to indicate that is really the Board's job to determine. Mr. Barnett distributed a copy of the language from the statute indicating the Board's authority, which he said in COL 3.a. the Board makes reference to two of those sections of law (105.22, 105.23), and also 105.10, and when read together it is clear that the determining factor here is whether moving the diversion point would be a detriment to the Leveretts. Mr. Barnett stated he believed uncontroverted evidence to that fact was presented and in case there was any concern about what detriment means, he discussed the definition of the word. He said to say no loss or harm has occurred is amazing as the evidence was clear; a detriment has occurred when there is a loss of water, when the upstream users can decide who gets water first and has the advantage, that would be to the Leverett's detriment. Mr. Barnett stated he believed the Board received a distorted and erroneous dissertation of the law and Ms. Kalver's presentation of the appropriation doctrine is not correct.

Chairman Herrmann asked if someone is junior, then they are junior, period. Mr. Barnett said the point of the issue is not to allow a junior appropriator to take advantage and do something to the detriment of the senior appropriator. The purpose of the statute is to protect the right of the senior appropriator, and if that isn't done, there is no purpose in the doctrine. He disagreed with staff's argument that it cannot be challenged whether there is enough water for both because that would be a collateral attack on what the Board had done before. He argued there was nothing in the record anywhere to show that the Board counted any water from the Altus-Lugert plant for purposes of term permits from the agency. They relied on a draft report prepared by the Board in July 2001 which was totally discredited by a Bureau of Reclamation

report at the hearing. The problem with the report is that it was calculated that the District was losing more water from seepage and spillage every year than was actually being turned out for crops. Then staff states it cannot be considered because it is a collateral attack on the Board's determination there was water there. He asked, "How can you prove that what is happening is a detriment, if you can't show that there is not water there?" The evidence will show there is not water, and the evidence is in the record and [staff] closed their eyes. He said there are so many things wrong with the order: the notice issue didn't hurt the protestants as they knew what was going on, but for the Board to set a precedence that you can go to public notice and name the wrong creek and claim that is not misleading or confusing to the public....and, anyone that did not show up is foreclosed from ever complaining and that is not a correct reading of the law. And finally, Mr. Barnett asked that because Mr. Williams shut off the pumping last year during dry times as Mr. Kellog and Ms. Klaver stated in order for the Leveretts to have adequate water for irrigation, does that really prove that is the way he will behave in the future? Mr. Barnett said he (Mr. Williams) promised to do the right thing, he also promised not to move the diversion point upstream, but under oath said he did not remember making the statement.

Chairman Herrmann invited questions by Board members. Mr. Drummond asked about the statement regarding moving the diversion point when it is where it has been. Mr. Barnett responded that Mr. Williams, after having purchased the property wrongfully and illegally, started taking water upstream without authority and when found out, came in and filed this application. His clients did not want Mr. Williams to lose his crop and agreed to the 90-day provisional temporary permit with the new diversion point. Mr. Drummond asked if since that time had there been a detriment? Mr. Barnett answered there has only been one year of operation but yes, absolutely, and his clients had to complain about the William's operation. He said this is a "trust me" situation and the reality is why should the burden be shifted to the senior appropriator? Mr. Keeley asked if the amount of water has changed? Mr. Barnett said it has and explained the availability of the Irrigation District water for both parties, saying the Board is giving "icing on the cake" at the expense of the guy that just has the cake. Mr. Farmer asked if there was any water at the lower point, and Mr. Barnett responded that Mr. Williams' own testimony was that at least on one occasion, there was not enough water to satisfy both farms, and he shut off the water from his farm in order to ensure there was water for the Leveretts, but the "trust me" reality is not how the appropriation doctrine is supposed to work.

Mr. Kellog countered that he respectfully disagreed with Mr. Barnett's characterization of the evidence, and the order speaks for itself. The diversion point has been upstream since Mr. Williams has had the land, and ½-mile downstream the flow is so slow a dam would have to be constructed and re-run pipe at an approximate \$30,000 expense, and that is a waste.

Mr. Smith commented about statute reference 105.13 regarding seasonal temporary, term, and provisional temporary permits. The Board can issue any of the three permits at any time the Board finds issuance of such will not impair or interfere with domestic uses or existing rights or prior appropriator, and may do so even where it finds no unappropriative water is available for a regular permit. The term permit is not for discussion, the statute says the Board can issue at anytime, even if no unappropriated water is available. He said Mr. Barnett claimed "detriment" is if his client has to complain to the OWRB, and that has not ever been detriment, but detriment would mean his client would not be able to use the water and exercise his permit if the junior water right holder is taking more water. If the junior water right holder quits and the senior water right holder can still pump, that is not a detriment to the water right, and that is why the hearing examiner ruled as he did. Mr. Smith said these are all good people who just don't agree,

and the Board is saying it appears they can move the diversion point, however, the applicant is on notice that if the other water right cannot get water, the applicant will have to quit and that is admitted by the applicant. The only issue is, if there is disagreement, the ability for the staff to react, but we commit to respond to a complaint to the best of our ability to resolve it, based upon what is at the site at the time.

Mr. Sevenoaks expressed his concern on the notice issue in identifying the wrong tributary and theoretically not giving proper notice to surrounding landowners. He said he thought it set a precedence he may not want to get involved with, and that he wanted to make sure that proper notice is given in everything the Board does and that rule is followed. Mr. Smith responded that everyone present was notified, so the only issue is not to the protestants, but only to those people who did not appear at the hearing. He said that had the diversion points been described improperly so that anyone that wanted to protest, had they read the notice, would've had to "squeak" through the issue of Stinking Creek being improperly named as a tributary to Stinking Creek, but the legal descriptions of the diversion points were accurate. Had those descriptions not been accurate, the hearing examiner would have returned the matter for additional notice.

Mr. Keeley asked Mr. Nichols for his comments, and Mr. Nichols responded he uses water from this creek below this particular diversion point and he will abstain from discussion and vote.

There being no further discussion by Board members, Chairman Herrmann stated he would entertain a motion. Mr. Drummond moved to approve the proposed findings of fact, conclusions of law and Board order as presented by staff, and Mr. Sevenoaks seconded. Chairman Herrmann asked if there was any further discussion, and Mr. Sevenoaks called for the vote.

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|----------|---|
| AYE: | Drummond, Fite, Keeley, Knowles, Herrmann |
| NAY: | Farmer, Sevenoaks |
| ABSTAIN: | Nichols |
| ABSENT: | Lambert |

The motion passed.

Chairman Herrmann asked that the Board consider the Supplemental Agenda.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

A. Application for Temporary Permit to Use Groundwater, Recommended for Approval.

1. Meridian Aggregates Company, A Limited Partnership, Johnston County, # 2006-601. Ms. Lou Klaver said a settlement agreement has been entered by the parties regarding the Meridian Aggregates application to use groundwater over dedicated land located in the Arbuckle-Simpson outcrop area. The Company submitted an application to use 320 a.f. from 804 acres of land to be used for mining purposes from two wells in Johnston County. The application garnered attention and quite a number of protests and the attorneys and parties were able to reach an agreement. The agreement is to issue an A. permit and B. permit. The amounts and wells and the land for both the A. permit and the B. permit --which is on the outside of the outcrop area--were separated. Permit 2006-601A would authorize one well for 105.2 acre-feet

from 268.8 acres, and 2006-601B would authorize one well and 215.4 acre-feet from 550 acres. The applications are for the recharge rate of 4.7 acre-inches per year. The protests were withdrawn provided that the two wells are metered and monthly reports of withdrawal are submitted to the OWRB each month. Staff recommended approval of the A. and B. permits and the stipulation and informal order.

Chairman Herrmann recognized those in attendance regarding the application and protests. He commented to everyone that he respected the fact that people came together to realize it is a shared resource and are prepared to make tradeoff decisions around how best to make multiple uses from that shared resource.

Chairman Herrmann said he would entertain a motion. Mr. Sevenoaks moved to approve the permits as presented, and Mr. Knowles seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: Lambert

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce addressed the members and presented the financial report for Fiscal Year 2007 through May 2007. He said that 92% of the budget year has been completed, 87% expended and obligated and collected 92% of the budget. In the next two weeks the FY 2008 budget will be finalized; the approximate operational budget will be \$27 million. Budget limits were increased this year to accommodate certain federal dollars for the Office of the Secretary of Environment and the Comprehensive Water Plan. And, an additional \$57,000.00 for the three months of pay raise for this fiscal year, although that amount does not entirely cover the cost. He said he is anticipating increased retirement and insurance of about \$152,000.00. There were no other questions regarding the budget report.

Chairman Herrmann said out of consideration of the audience he would ask that the Board now consider the Election of Officers and New Business prior to the Executive Session.

10. ELECTION OF OFFICERS

Chairman Herrmann

Chairman Herrmann said there are three officer positions open, Chairman, Vice Chairman, and Secretary. He asked for nomination for Chairman.

Mr. Farmer proposed the motion that because there are three positions open, he would move the Board elect the following as officers:

Mark Nichols as Chairman, Rudy Herrmann as Vice Chairman, and Ford Drummond as Secretary. Mr. Fite seconded the motion.

Mr. Sevenoaks said it is his personal opinion, and no reflection on the current members of the Board, from his perspective the vice chairman position should be a prelude for the new chairman to come into office in two years and be familiar with the budget cycle and other issues

that will be in front of that chairman. He said he believed the new members should have an opportunity to participate in the different positions.

Chairman Herrmann said he shared Mr. Sevenoaks concern. Mr. Sevenoaks asked that the Board vote on each individual officer rather than the full slate of officers as proposed.

Mr. Farmer withdrew the motion, and Mr. Fite withdrew the second.

A. Mr. Farmer moved that Mark Nichols be nominated as Chairman. Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

B. Mr. Farmer moved that Rudy Herrmann be nominated as Vice Chairman. Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols,

NAY: Sevenoaks

ABSTAIN: Herrmann

ABSENT: Lambert

C. Mr. Farmer moved that Ford Drummond be nominated as Secretary. Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

11. 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.

8. PROPOSED EXECUTIVE SESSION

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a 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 a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing the Tarrant Regional Water District v. Herrmann

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.

Mr. Nichols moved that the Board enter executive session as authorized, and Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Sevenoaks,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: Lambert

B. Designation of person to keep written minutes of Executive Session, if authorized.

Chairman Herrmann designated Executive Secretary Mary Schooley to keep the minutes of the Executive Session.

C. Executive Session, if authorized. The Board entered Executive Session at 11:40 a.m.

9. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.

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

The Board returned to Regular Session at 12:10 p.m. Chairman Herrmann announced there were no actions to be taken on matters discussed in the Executive Session.

Mr. Nichols suggested Mr. Drummond bring up a concern to staff regarding the exceptions filed in the earlier case, and Mr. Couch recommended reconsidering the New Business item for discussion now if that is preferred. Mr. Smith said staff would report next month. Mr. Nichols asked that the current committee assignments be distributed to the Board members for new assignments to be made and to contact him about any preferred changes to assignments.

Chairman Herrmann thanked everyone for their support during the two years he has served as chairman.

Incoming Chairman Nichols asked in regard to out of town meetings, would the Board be interested in touring the Weather Center in Norman in conjunction with a future meeting, and the Board did express an interest to do so.

12. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:12 p.m. on Tuesday, June 12, 2007.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Jess Mark Nichols, Chairman

_____/Absent_____
Rudolf J. Herrmann, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Edward H. Fite

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Linda Lambert

_____/Absent_____
Richard Sevenoaks

ATTEST:

_____/Absent_____
F. Ford Drummond, Secretary
(SEAL)