

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

March 9, 2010

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudolf J. Herrmann at 9:30 a.m., on March 9, 2010, in the Board Room of the Oklahoma Water Resources Board, 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 March 2, 2010, at 5:25 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Rudy Herrmann asked Dr. Joe Taron to serve as Assistant Secretary in the absence of Ms. Linda Lambert, and he also asked Mr. Fite to give the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

Linda Lambert, Secretary

Staff Members Present

J.D. Strong, Interim Executive Director
Dean Couch, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary
Kyle Arthur, Director of Planning
Josh McClintock, Director of Government and Public Affairs

Others Present

Gary Froerming, Unimin, Rolf, OK
Shelby Hudgen, Unimin, Rolf, OK
Ben Oglesby, Municipal Finance Services, Edmond, OK
Bryan Kroeker, representing LaVonne Kroeker, Enid, OK
Ken Senour, Guernsey, Oklahoma City, OK
Ryan Chaffin, Assistant Attorney General, Oklahoma City, OK
Marie Wilson, Town of Boynton, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,
Oklahoma City, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Mike Mathis, Chesapeake, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Richard Landes, McIntosh County RWD #4, Shawnee, OK
Vaughn Miller, McIntosh County RWD #4, Council Hill, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the February 9, 2010, Regular Meeting had been distributed. He stated he would accept a motion to approve the minutes, if there were no changes. Mr. Fite moved to approve the minutes as distributed, and Mr. Drummond seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, Interim Executive Director, addressed the members and said that since the last Board meeting he had met with Representative Faught, Vice Chairman of the Administrative Rules Committee and the legislator assigned to the OWRB rules. He said Rep. Faught has indicated to him that there did not seem to be any issues or concerns with the bulk of the rules promulgated by the Board at the last meeting, except the \$50 groundwater fee, which will be the focus of some controversy with the Farm Bureau in particular, and meetings are scheduled with staff of the OFB. He said the Board is not charging people for water, the charge is for the services that the legislature has tasked the OWRB to do in administering the water rights. The full committee review of the rule is scheduled for March 16.

Mr. Josh McClintock reviewed the written and distributed legislative report with the members. He said there were still a handful of various different types of consolidation none of any concern. The House had passed a bill to move the Scenic Rivers Commission to the Conservation Commission and Tourism Recreation Department. Speaker Bengé and Senator Coffee have a bill to move the Liquified Petroleum Gas Board to the Corporation Commission, and Rep. Murphy has a bill to move all financial services functions of the agencies to the Office

of State Finance, which in turn would then send their staff back to the agency. Regarding water related legislation, Mr. McClintock said that Rep. DeWitt has a bill on the day's agenda in the House that creates a water infrastructure revolving account within the existing Water Resources Fund, and would be non-appropriated money that could come from a number of sources. The account would be under the authority of the OWRB for oversight, and the purpose is construction of water infrastructure projects across the state. Mr. Nichols said the fund could ultimately be used for implementation of the water plan; it creates an account, but without funding. Senator Paddack's bill about the creation of the water center has received interest because of Senator Gumm's bill regarding mining water over the Arbuckle Simpson has been attached; the bill has been on the Senate's agenda for several days. Senator Sykes has a measure regarding floodplain management--SB 1838--that eliminates fees. Staff has met with the Senator and will continue to work with him. Mr. McClintock said the Congressional Briefing Document has been submitted to the Oklahoma Congressional Delegation, and the Committee will start its process later this month. Mr. Fite and Mr. McClintock commented about the floodplain legislation, and Mr. McClintock concluded his report. Mr. Strong added it is a relatively calm year on the legislative front, with the exception of some consolidation proposals, which are being monitored by staff; and could ultimately result in an omnibus consolidation bill.

Mr. Strong said he would be traveling to Washington, D.C., March 22 in order to attend the Western States Water Council and Interstate Council on Water Policy Washington Roundtable and Council meetings, as well as make visits with all of Oklahoma's Congressional members about the Congressional Briefing Document to help fund additional projects, comprehensive water plan and implementation work.

The Board's Finance Committee will be meeting today following the Board meeting, and the Floodplain Managers activities at the Capitol; GIS Day at the Capitol is March 10, and the instream flow workgroup will conduct its second meeting on March 18. Mr. Strong said he will be speaking at the 2nd Annual Oklahoma Water Law Seminar in Tulsa, and Dean Couch will make two presentations. The Comprehensive Water Plan Strategy Seminar will be March 29 at the Moore-Norman Vo-Tech Center. The Planning Advisory Board met on February 23 to select the 180 participants to the Town Hall.

Mr. Drummond asked about the state budget outlook. Mr. Strong responded the bills have been essentially passed and sent to the Governor, and he has signed the budget reconciliation for the current fiscal year. Now the Legislature is looking at FY 2011, but nothing is firmed up and won't likely be until the end of the session. He anticipated the agency will face at the least the level of cuts it is enduring now, and additional cuts for the next fiscal year remain to be seen, but OWRB staff is being very diligent in preparation of the next year's cuts while still delivering services. Mr. Strong concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Town of Boynton, Muskogee County, Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a \$13,607.53 emergency grant request from the Town of Boynton located in Muskogee County. He said Boynton had a 6-inch line at a creek crossing which broke as a result of stream bank

erosion. In order to correct the line break, Boynton moved the 6-inch line under the creek in order to supply the town with a dependable source of water. The total project cost is \$16,008.86, with funding provided by local funds of \$2,401.33 and the OWRB requested emergency grant of \$13,607.53. Staff recommended approval.

Mayor Marie Wilson was present in support of the emergency grant request.

Chairman Herrmann asked what is being done in the interim; Mr. Freeman responded the line has already been replaced.

Mr. Fite moved to approve the emergency grant funding to the Town of Boynton, and Mr. Nichols seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water District #4, McIntosh County. Recommended for Approval. Mr. Freeman stated this item is a \$95,625.00 emergency grant request from McIntosh Rural Water District #4. The District's booster pump station is severely leaking and is beyond repair. If the tank is depleted, all of the District's 275 customers would be without water. The District proposed to solve the problem by replacing the old tank with a new 55,000 gallon storage tank and related construction and appurtenance for a total estimated project cost of \$112,500.00. Staff recommended approval of the emergency grant request.

Mr. Vaughn Miller, District Board member, and Mr. Skip Landes, project engineer, were present in support of the emergency grant application.

Mr. Fite moved to approve the emergency grant to the McIntosh County RWD #4, and Dr. Taron seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Sapulpa Municipal Authority, Creek County. Recommended for Approval. Mr. Freeman stated that the Sapulpa Municipal Authority has requested that consideration of this item be withdrawn at this time.

Mr. Freeman distributed the status report of the ARRA funds that have been withdrawn. He said as of the end of February, all of the ARRA funds are obligated, and that 25% of the Drinking Water ARRA funds have been drawn, and 30% of the Clean Water funds have been drawn. Mr. Drummond asked when it would be known if ARRA funds from other states would be available, and Mr. Freeman answered there will not be any leftover funds, all has been obligated.

3. SUMMARY DISPOSITION AGENDA ITEMS

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

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

There were no requests to transfer items to the Special Consideration Agenda. However, Chairman Herrmann stated there is one Supplemental Agenda Item, 7.A., an extension of time for a contract, and he asked that be added to the Summary Disposition 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.O.

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion.

Mr. Drummond moved to approve the Summary Disposition Agenda, and the Supplemental Agenda, and Mr. Knowles seconded.

AYE: Knowles, Fite, Keeley, Sevenoaks, Taron, Drummond, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert, Nichols

The following items were approved:

C. Financial Assistance Division Items:

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

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
NODA				
a.	FAP-09-0002-R	Goltry Public Works Authority	Alfalfa	\$48,400.00
SODA				
b.	FAP-09-0029-R	Bromide Public Works Authority	Johnston	99,999.00

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

1. Memorandum of Understanding with U.S. Department of Agriculture, Natural Resource Conservation Service.

2. Cooperative Agreement with Oklahoma Conservation Commission.

3. Intergovernmental Subagreement with Oklahoma State University, Department of

Natural Resource Ecology and Management.

4. Planning Assistance to States Supplemental Agreement No. 4 with U.S. Army Corps of Engineers, Tulsa District in support of the Oklahoma Comprehensive Water Plan.
5. Contract with Oklahoma Ground Water Association to Provide Continuing Education for Well Drillers and Pump Installers
6. Contract Amendment No. 2 with Oklahoma Rural Water Association for reduction in funding available for technical assistance and training to rural water and wastewater system operators and board members.
7. Amendment of Joint Funding Agreement with U.S. Geological Survey for Water Resources Investigations/Garber-Wellington Aquifer Management, Central Oklahoma.

E. Applications for Temporary Permits to Use Groundwater:

1. Bergen Holdings, L.L.C., Cleveland County, #2009-555
2. Jay Dean & Karen Leierer, Major County, #2009-564
3. Eugene N. & Sherri J. Carlson, Roger Mills County, #2009-565

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. OK Panhandle Farms, Cimarron County, #2009-553
2. Flat Prairie Farms, Inc., Texas County, #2009-563

H. Applications to Amend Regular Permits to Use Groundwater:

1. Dean & Twylah Simmons, Texas County, #1974-113

I. Applications to Amend Prior Rights to Use Groundwater:

1. Flat Prairie Farms, Inc., Texas County, #1968-206A

J. Applications for Regular Permit to Use Stream Water::

None

K. Forfeitures of Stream Water Rights:

None

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- a. Licensee: Etter Water Well, LLC
- Operator: Dale Ball

DPC-0782
OP-1750

- Activities: Water well pumps
Plugging of certain groundwater wells
- 2. New Operators and/or Activities for Existing Licenses:
 - a. Licensee: Nipp Pump Service DPC-0148
Operator: Travis Nipp OP-1748
Activities: Water well pumps
 - b. Licensee: Shady Nook Pump and Supply, Inc. DPC-0261
Operator: Christopher W. Davis OP-1751
Activities: Water well pumps
 - c. Licensee: Leonard Water Services DPC-0710
Operator: Scott Stone OP-1481
Activities: Monitoring wells and geotechnical borings

M. Dam and Reservoir Construction:
None

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

1. Crossland Construction, Ottawa County, #FP-09-21
2. Crossland Construction, Ottawa County, #FP-09-22
3. Crossland Construction, Ottawa County, #FP-09-23
4. Crossland Construction, Ottawa County, #FP-09-24
5. Crossland Construction, Ottawa County, #FP-09-25
6. Crossland Construction, Ottawa County, #FP-09-26
7. Oklahoma Department of Transportation, Seminole County, #FP-10-04
8. Oklahoma Department of Transportation, Noble County, #FP-10-05

O. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the March 9, 2010 packet of Board materials

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS

A. Contracts and Agreements Recommended for Approval

1. No Cost Time Extension with Oklahoma State University Department of Natural Resource Ecology and Management for Oxbow Assessment Grant Project.

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

A. Update Report on Oklahoma Comprehensive Water Plan Activities. Mr. Kyle Arthur addressed the Board and said the Planning Advisory Board met in conjunction with the Academy and the 180 participants for the Town Hall process were chosen. The participants will be

notified and the next milestone in that process will be the Strategy Seminar scheduled for March 29 at the Moore-Norman Technology Center. He said the purpose of the seminar is two-fold: to familiarize each of the participants on the strategies that were developed through the planning workshop phase process--those participants that developed the strategies will not necessarily be assigned to the same group for detailed discussion; and secondly, to educate the participants on the Town Hall process. The Town Hall is scheduled for May 23-26.

Mr. Arthur stated that the background document is being developed and will be sent approximately one month prior to the Town Hall so the participants that will have background information on the strategies as well as other information in preparation for the Town Hall.

Board members are encouraged to attend the strategy seminar on March 29. To ensure the citizens this is *their* plan and based upon factual information, members should attend as observers, but not to be involved in the discussions because the Board will be voting on the plan ultimately. The members talked about the Town Hall process, the Board's involvement and the timeline.

Mr. Arthur concluded the report stating he has had several opportunities to speak to community organizations about the Oklahoma Comprehensive Water Plan.

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. 2009-544, Lavonne Kroeker, Major County:

1. Summary – Ms. Julie Cunningham stated to the members that this application is for a temporary permit to take 320 acre-feet of groundwater for irrigation on 160 acres in Major County. The record showed that the applicant has met the four points of law: the land overlies the Alluvium and Terrace Deposits of the Cimarron River groundwater basin (a maximum annual yield and equal proportionate share has not been determined); irrigation is a beneficial use, and waste will not occur. There is no spacing requirement in this basin; there were a few protests regarding drawdown affect; however, evidence was not presented that would show the use would unlawfully deplete the groundwater table. Other complaints involved completion of

the wells prior to granting the permit, but the hearing examiner found that past practices does not equal future waste.

Ms. Cunningham stated there are no protestants in attendance today, and the applicant is represented by Mr. Brian Kroeker. The hearing examiner determined the applicant is entitled to the equal proportionate share, and staff recommended approval of the proposed order. She noted one correction in Finding of Fact #3, the application was considered on March 9, rather than February 9.

2. Discussion and presentation by parties. Mr. Kroeker addressed the members.
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. Sevenoaks moved to approve the proposed findings of fact, conclusions of law, and Board order for temporary groundwater permit #2009-544, and Dr. Taron seconded.

Mr. Drummond asked if wells being drilled before the permit application process happens often, and Ms. Cunningham explained that it does, but it is not a reason to deny a permit. Chairman Herrmann added that has been addressed in the new rules approved last month, and Ms. Cunningham said there is a time for the use of water prior to the permit; there is no intent to drill or an inspection system. Mr. Couch said the test well drilling is very common and because the equipment is there, quite often the driller will go ahead and complete the well if there is sufficient water. Mr. Kroeker said at one time they would get a permit, and then drill the well and then find the water is in a different place on the farm and would have to come back and amend through the whole process again. He said it is more efficient to test drill first, even though it's a risk, to go ahead and place the well and see what it pumps and file for the permit. He said it is not a given the water is where you drill.

Mr. Drummond asked if there are OWRB provisions for test wells, or if that is something the Board needed to address. Mr. Couch answered that from a water well driller's standards and requirements, as far as plugging, how long it may remain in test well status before it needs to be completed or plugged, regarding those kinds of requirements the law simply mentions as an item of waste the drilling of well and OWRB rules try to make the distinction between test drilling and completion of a well that could be pumped without a permit.

There were no further questions by Board members. Chairman Herrmann called for the vote.

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

B. Application to Amend Regular Permit to Use Groundwater No. 1977-754, Kevin Paul Crook, Beckham County:

1. Summary – Ms. Cunningham said this application is to amend a regular permit to use groundwater in the name of Kevin Paul Crook in Beckham County. The existing permit authorizes the use of 80 acre-feet of groundwater for irrigation of 80 acres from one well. The Permittee has recently leased the land to a tenant farmer and is asking for an amendment for two new wells and deletion of the existing authorized well. The Permittee has drilled and completed

test wells which produce approximately 500 and 350 gpm; the irrigation system is being installed and he will need water to run the system for about 6-8 days. Ms. Cunningham stated the record showed the applicant has met the four points of law, owns the land, the land overlies the alluvium terrace deposits of the North Fork of the Red River--that has an equal proportionate share of one acre-foot of water per acre per year--irrigation is a beneficial use, and waste will not occur.

Ms. Cunningham stated that on the issue of waste by depletion, well spacing was contested, and in this case the wells are located within the 1,320 foot minimum spacing requirement. However, the Board's rules do allow for exceptions, and in this case, there was substantial evidence the well requested would not be pumped at a rate or duration that would cause excessive drawdown in the existing wells. To meet this exception, the Permittee agreed to several permit conditions, restricting pumping to 240 gpm, and to only operate one well at a time with a small amount of water that would be adequate to operate the irrigation equipment. Regarding a question by the protestant about potential overuse of water, the permittee stated he would pump as infrequently as possible, and in response to the protestant's inquiry, he would not object to metering. In this case, Ms. Cunningham said, if the protestant had reason to believe he was pumping improperly, there is a condition in the permit for metering and reporting as prescribed by the Board and/or Board staff. She said this doesn't necessarily trigger immediate metering from day one, the language is flexible enough in the order that--as the protestant and applicant discussed at the hearing--if there is a protest that the applicant is pumping improperly, that could trigger the metering requirement. Ms. Cunningham stated with the withdrawal rates, limitations, and metering and well spacing exceptions have been satisfactorily met, staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

2. Discussion and presentation by parties. Neither the applicant nor the protestant were in attendance.

3. Possible executive session. The Board did not vote to enter executive session. However, there was discussion of the permit conditions.

Chairman Herrmann asked if the applicant's agreement to the metering satisfy the protestant's concerns. Ms Cunningham stated they are not present, and she was not aware of any further conversations; they had asked for it in the record. Mr. Sevenoaks said he objected to the wording, did that mean he would wait until the protestant's well is dry before it would be metered, and how will it be known when the water level is down. He added he did not agree with exceptions to well spacing; how often do we do that.

Mr. Dean Couch, OWRB General Counsel, responded that exceptions may be more common, questions have been submitted to a court, but the across-the-board requirement -- which the Board has amended to provide a difference between a bedrock aquifer and alluvium aquifer -- by and large to set a specific footage limitation statewide when there are so many variables that are possible, long ago the Board adopted the rule just as the statute provides-- location exception by rule, statute authorizes the Board to establish how location exceptions can be made and that has been done through rule. He said it provides some flexibility from a very rigid exact footage requirement of well spacing. This is one that can be provided to start looking at well interference on a site-by-site basis which does require much more information to be presented which was done in this case. Both the applicant and protestants presented a lot of information, that was assessed, and having the metering provision that could be triggered, not immediately triggered appeared to be acceptable, as metering cannot be required unless there is

agreement, and in view of the evidence and facts this language allows the Board and the permit itself to contain the condition that metering could be triggered, seemed to be the best compromise. The applicant is not present to object and would become a condition, and staff will have to wait for complaints that might occur and to lower water levels, if there are any. Part of the issue was that by virtue of the information known, it wasn't thought there would be a lowering of the water table on these wells that are closer than 1,320 to such an impact they wouldn't be able to get to the water, but if there is some question about that in the future, then metering can be triggered to ensure exactly what is happening. Ms. Cunningham added all the parties have received a copy of the proposed order.

Mr. Nichols stated he agreed with both issues--the Board had granted an exception for less than 1,320, and he didn't like it, and there is a reason the law is there, which says "shall." He said he also did not like metering whether agreed to or not as the issue becomes what is the trigger, who will monitor--the burden is on the OWRB to monitor the meter, and there isn't the staff or ability to do that, and it is a bad precedence to start down that path until there is staff and money to do it. Chairman Herrmann asked Mr. Nichols' his recommendation, and he said was disappointed neither the applicant or protestants were at the meeting and he didn't know if they did agree to the condition because there weren't here, and even if they were here he wasn't sure he wanted to head down that road.

The members and Mr. Couch discussed that the Board cannot and is not mandating metering, when there is agreement with the applicant it is common to address protestant's concern, whether the metering is after the fact or immediate, who is going to be responsible for the metering and whether there is self-reporting, that issues involved with metering which is a tool if necessary to use to determine more accurately what is being used, but that no parties are present. Mr. Sevenoaks said that self-reporting takes the Board out of the loop and doesn't allow the protestants the opportunity to see how much water is being taken; he suggested this issue be addressed in the update of the comprehensive water plan. Chairman Herrmann interjected that is an issue that has come up during the planning process, and there are some strong felt beliefs that some additional metering needs to be required, but there are strong felt beliefs from others why it shouldn't be done. Mr. Nichols asked if there is agreement why is it before the Board, and Mr. Couch responded once the application is protested a hearing is held to move forward and then a findings of fact, conclusions of law, and Board order must be given. Apparently, part of the concern of the issue of being too close was addressed by the conversation between the protestant and applicant regarding a potential for metering and how closely and accurately the landowner would oversee, and there was an agreement to reduce the amount of the capacity of the well and to measure that in a more specific way. He said it was sent out as a proposal, and neither party has appeared to object, and no exceptions have been presented by either party in writing.

Mr. J.D. Strong asked Ms. Cunningham then, the conditions on the permit in the proposed order were agreed to by the applicant in order to satisfy the protestant's concern about drawdown affects on their adjacent wells so they would reduce the volume below what is required by the maximum annual yield allocation, and would only pump from one well at a time which would somewhat remove the concern about spacing; if only pumping one at a time it isn't being pulled from both at the same time. The agreement -- there may be some concern about precedence but apparently its been agreed to before to assuage concern about the spacing, and the applicant has agreed to meter usage if that is what is necessary to satisfy the complaint. He said it doesn't have to be immediate, but allows the Board and staff to have discretion to set the

terms of the metering, which could be specified by the Board now. Ms. Cunningham responded that approving the exception is the rate of withdrawal and duration so as not to impact surrounding wells and the 240 is what was agreed upon in the hearing. In terms of the metering, Mr. Strong said it is expected to be self-reporting which is typical at the Department of Environmental Quality--even with discharges--but the Board has the complete discretion to make the reporting requirement more or less stringent but also anything reported is open record and available to the adjacent landowners. Mr. Couch said the Board could direct the Permittee to send them a copy; it may test the limits to direct the Permittee to allow, if someone complains, on the Permittee's property, but as he reads the language, it would allow that.

Dr. Taron asked if the variance in spacing was permitted after the drilling of the wells, or was the spacing requirement approved prior to drilling? Ms. Cunningham said the wells have been drilled and completed but the Permittee is awaiting the permit. Mr. Nichols asked about the original location that was not drilled; Mr. Bob Sandbo answered a test well was drilled but there was insufficient water in that location.

Chairman Herrmann said he is hearing that the spacing issue has been worked out between the neighboring landowners, and that the order states, "shall" not "may" indicating it would be metered from the outset, as agreed by applicant and protestant. Mr. Sevenoaks said he was interested in consistency, and if there is going to be metering, it should be metered from the outset, and not after the fact. Chairman Herrmann said he didn't read that it would be any other than at the "git-go," and that is has been agreed to by the applicant and protestant, and it is within the Board's authority to okay that. Ms. Cunningham said she had discussed the issue of flexibility with the hearing examiner, and Mr. Sevenoaks said he thought the permit should be approved and there not be any policy and let that come from the Comprehensive Water Plan. Mr. Fite said regarding this specific permit, if they have agreed to meter, it should be from the get go regardless of the water plan. Mr. Keeley said he didn't read where it wouldn't be at the beginning.

The members and staff discussed the language and the agreement to meter and whether that would be at the outset, that the issue be included in the water plan, that the Board can set the terms and then if approved the applicant is subject to separate violation, and how to administer the monitoring. Mr. Fite said he was concerned about complaints if not metered from the outset; it should be validated from the beginning. Mr. Nichols said there should be language about how it will be monitored. Mr. Couch said that is all part of the terms directed by the Board and staff, and to the extent that is changed, added to, or to be more specific, the applicant and protestant would need opportunity to listen to the discussion and determine whether those would be acceptable.

Mr. Fite moved to table the matter until the protestant and applicant are present. Mr. Nichols seconded the motion.

The members discussed that the metering should be from the beginning, and the result of the metering should be reported to the Board for access by anyone.

Chairman Herrmann stated that there is a motion to table, with an expectation of clarifying the details of the metering requirement.

Mr. Couch said the tabling to write up those terms and conditions where the current provision that is before the Board would allow staff to do exactly what has been said and all the details to be provided by staff to the Permittee and the Permittee now is agreeing to that; but if its simply to bring back after a month with those details hammered out for the Board to discuss and

agree, seems like staff has a sense of what the Board intends and could immediately put together by letter to the Permittee indicating when the meter must be installed and other details such as type, calibration, etc., instead of waiting a month.

Mr. Fite suggested he could withdraw the motion, and Mr. Nichols said he would not withdraw the second.

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.

Chairman Herrmann stated then a motion has been made to table and the alternative if not tabled is to act on staff recommendation. He asked for the vote to table the application but to get clarification.

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

Mr. Keeley commented during the vote he read the order to meter at the outset, and secondly, regarding the distance between to two wells--if both the wells are pumping both drawdowns are added together, so when pumping one well at a time, the distance is irrelevant. Dr. Taron said he was concerned about tabling the matter rather than postponing.

Chairman Herrmann said the vote will table to clarify what has been discussed. Mr. Nichols said if possible he would like to see both parties present when it is considered. Chairman Herrmann stated he thought it was clear the order had been agreed to by both parties, but there is room for negotiation and difference of opinion. He said there is a danger of the public Board micro-managing the process, but there is enough ambiguity to trigger the concern.

C. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for further consideration.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Kyle Arthur said noted the budget-to-actual report that is provided each month, and said it had been updated to reflect Mr. Strong's remarks about the budget reconciliation bill, which now amounts annually to 7.5% cut for most agencies, OWRB included. As a matter of information, he said the money appropriated to the ORWA for training has been reduced accordingly. Mr. Strong added the Office of the Secretary of Environment has been reduced accordingly as well.

Mr. Arthur added there was no deposit from the Gross Production Tax collections for the Water Infrastructure Development Fund because the cap has been reached, and the balance is exactly what was received last year.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

Consideration of the Supplemental Agenda items was moved to the Summary Disposition Agenda (3.).

8. CONSIDERATION OF AND POSSIBLE ACTION ON ADOPTION OF PROPOSED AMENDMENTS TO PERMANENT RULES

A. Proposed Amendments to Chapter 45 – Oklahoma’s Water Quality Standards

1. Summary of final draft proposed rules – Mr. Derek Smithee, Chief, Water Quality Standards Division, introduced the members of the OWRB WQS Team. He said what is before the Board today is relatively controversy-free. The proposed revisions were considered by the Board at the public hearing and there was one item that generated some controversy that concerned the language regarding "naturally occurring conditions," a recognition that Water Quality Standards when promulgated statewide are in some circumstances more stringent than is absolutely required to maintain beneficial uses. He said he wanted to "build a doorway" so that industry and municipalities could access a site specific study for that criterion to allow for their permit to reflect naturally occurring pollutant concentrations, primarily around minerals, like chlorides, sulphates and total dissolved solids. Mr. Smithee said that several comments were received from the sister state agencies, EPA, and the regulated community that were generally in favor of the concept, but as often happens, the details were not "ironed out." He said staff has worked for the past two months for language that everyone could agree to on how to do a study to document naturally occurring pollutant concentrations and in the end were not successful in getting everyone on the same page. He said that staff recommended the withdrawal of that language, which has been provided to the members electronically, and a workgroup of all the interested parties will be formed to come back during next year's rulemaking process with language that is agreed to by all.

Mr. Smithee said for this year, there is a proposal regarding site-specific criteria on Nine Mile Creek and there has been a minor change based on comments from EPA where American Electric Power and PSO agreed to take an amended recommendation and rather than 2,500 TDS have agreed to take a 1,680 more stringent which is still within the acceptable range. Also, criteria for color, phenal, acrolene, and some special beneficial use designation areas for groundwater. Mr. Smithee said he did not believe there were any controversial issues on the table, and staff recommended approval of the Water Quality Standards as presented electronically.

2. Questions and Discussion by Board Members. There was no discussion by the Board members.

3. Comments by Public. There were no comments by members of the public.

4. Vote on whether to approve proposed amendments as presented or as may be revised after discussion and comment.

Mr. Nichols moved to approve the proposed changes to Chapter 45, and Mr. Knowles seconded.

Chairman Herrmann asked if there is a "date certain" from the EPA regarding the "naturally occurring condition" and Mr. Smithee responded, no, that is an Oklahoma-driven

activity. Chairman Herrmann asked if there are best practices in other states that can be used as a reference, and Mr. Smithee stated yes, staff will be working on that and is confident they will be able to bring it back to the Board next year that EPA will accept.

There being no further questions, Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Lambert

Chairman Herrmann expressed his appreciation to the regulated community for their input, and he also complimented the OWRB staff. He said it is not the first time that staff has worked to come back the next year and present something that is appropriate and protective of the water quality of the State of Oklahoma and has people on board.

Mr. Fite complimented Mr. Strong on his performance; staff has relayed to him that he is doing a good job and the atmosphere is good, things are getting done, and he thanked him.

9. PROPOSED EXECUTIVE SESSION

Chairman Herrmann

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 attorneys 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:

Discussion of Tarrant Regional Water District v. Herrmann, Hugo v. Nichols, and Apache v. Herrmann

A. Vote on whether to hold Executive Session – before an executive session can be convened, it must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Chairman Herrmann read the statement for the Executive Session, and asked the members for a motion for the purposes of discussing the three items.

Mr. Drummond moved that the Board enter executive session, and Mr. Fite seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Lambert

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

Chairman Herrmann asked Executive Secretary Mary Schooley to keep written minutes.

C. Executive session, if authorized.

The Board entered executive session at 11:00 a.m. on March 9, 2010.

10. VOTE ON MATTER DISCUSSED IN EXECUTIVE SESSION - Return to open meeting and possible vote on any matters discussed in the Executive Session.

Chairman Herrmann adjourned the executive session and declared the regular session of the Board convened at 11:45 a.m. on March 9, 2010.

There was no action recommended or action taken by the Board as a result of the executive session.

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.

12. **ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:47 a.m. on Tuesday, March 9, 2010.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Richard Sevenoaks

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
F. Ford Drummond

_____/s/_____
Joseph E. Taron

ATTEST:

_____/s/_____
Linda P. Lambert, Secretary
(SEAL)