

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
December 17, 2013

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:34 a.m., on December 17, 2013, in the Second Floor Board Meeting room at the Oklahoma Water Resources Board offices, located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on December 13, 2013, at 4:00 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

Chairman Herrmann welcomed everyone to the meeting, and asked for the roll call of members.

A. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Linda Lambert, Secretary
Bob Drake
Marilyn Feaver
Ed Fite
Jason Hitch
Richard Sevenoaks

Board Members Absent

Tom Buchanan, Vice Chairman
Ford Drummond

Staff Members Present

J.D. Strong, Executive Director
Jerry Barnett, General Counsel
Amanda Storck, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Lauren Sturgeon, Director of External Affairs
Mary Schooley, Executive Secretary

Others Present

Michael Taylor, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Justin Hodge, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Luke Martin, Capitol Plus, Oklahoma City, OK
Emily Summars, eCapitol, Oklahoma City, OK
LeeAnna Carington, OK Farm Bureau, Oklahoma City, OK
Thomas Lazarski, Oklahoma Gas and Electric, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Liza Impson, Chickasaw Nation, Ada, OK

B. APPROVAL OF MINUTES

Chairman Herrmann said the draft minutes of the November 19, 2013, Regular Meeting had been distributed with minor typographical corrections highlighted on pages 1102-3.

Mr. Hitch moved to approve the minutes of the November 19, 2013, meeting and Mr. Fite seconded.

Chairman Herrmann called for the vote.

AYE: Lambert, Fite, Hitch, Sevenoaks, Drake, Feaver, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond

C. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, OWRB Executive Director, began his report announcing the agency's selection as one of the State's Top Workplaces for 2013; the only state agency selected among the 50 top workplaces named by The Oklahoman. The agency was nominated by its employees.

Mr. Strong introduced Ms. Lauren Sturgeon, the agency's new Director of External Affairs, who will handle legislative and congressional activities. Ms. Sturgeon presented the previously distributed legislative report, and noted the list of deadlines for the upcoming 2014 Oklahoma legislative session. Regarding Federal activities, she stated Congress is working on the budget and the recently introduced Bipartisan Budget Act, which components she outlined in the report. She stated a hot topic is the WRDA/WRRDA Conference and noted the outline of topics contained in both the House and Senate versions of the measures. Also included in the report is an update on the specific issues to Oklahoma i.e., WIFIA (Water Infrastructure Financing Innovations Authority), the Waters of the US rulemaking, and the National Integrated Drought Information System Reauthorization Act of 2013. Ms. Lambert asked the impact of the bill to Oklahoma, and Mr. Strong stated that since the Budget Reconciliation Act has just come up, staff had not fully analyzed what cuts there might be to any of the programs the agency receives federal funds, and the actual budget numbers have not yet been provided. He said the President's recommendation was an increase to the SRF programs, and he and Ms. Sturgeon spoke about the process and the sequestration limits. Mr. Strong also spoke to the WRDA bill provisions regarding the COE appropriations and levy funding for Louisiana, as well as the WIFIA legislation which could limit funding.

Mr. Strong continued the report noting that mediation meetings continue and there is a proposed executive session today. Litigation is ongoing with the Arbuckle Simpson Aquifer, and there have been three appeals filed with the Board and responses, which he explained. He

said all is very preliminary at this time, and January 3, 2014, is the first hearing on the motion to transfer the Oklahoma County action to Pontotoc County. Mr. Herrmann asked about the action tabled at the September meeting on a permit application for change of use, and Mr. Strong said staff would be looking at the next step to bring that matter back to the Board.

Regarding rulemaking, Mr. Strong stated that typically staff brings the rules to the Board at the January meeting; however, this year because the rules are largely related to the Arbuckle Simpson in terms of well spacing and phase in of the maximum annual yield --and because the Board's action was in October and a motion to reconsider in November—the draft rules will be brought to the Board at the February meeting. There is a new pre-review process, and the proposed rules were provided to Governor Fallin and the Attorney General on December 5 for a 45-day review. This year, there are only proposed changes in Chapter 30 regarding groundwater and the Arbuckle Simpson well spacing and the MAY implementation rules, and essentially housekeeping cleanup in Chapter 50 regarding Financial Assistance. Mr. Strong said there were several items in Water Quality Chapters 45 and 46 which will be held over until next year regarding the Class I action on the Arbuckle Simpson, given the resources needed to implement the MAY and considering various litigation. He said regarding Chapters 30 and 50, the notice of rulemaking intent will be published January 2, for a 30-day public comment period, and the public hearing will be held at the February 18, 2014, Board meeting, with anticipated action at the regularly scheduled March 18 Board meeting, both will be held in the OWRB Oklahoma City office. The rules are required to be provided to the Legislature by April 1 for its review by the end of May. Mr. Strong stated the draft rules will be available on the agency website January 2 at the start of the 30-day public review process; persons who would like a copy beforehand may contact the agency.

Mr. Strong updated the members on the activities of the Water for 2060 Council meeting following the November Board meeting, the Council discussed conservation and reuse incentives and education in the public water supply sector. The next meeting of the Council will be following the February meeting and will focus on the crop irrigation sector and conservation and reuse incentives and education. Mr. Strong noted the various organizational and other meetings he had spoken to and the upcoming meetings including, meeting with the American Farmers and Ranchers Policy Board, Senator Paddock regarding wastewater reuse, Water Resources Advisory Board Grants Committee and then its full Board meeting, the Environmental Federation of Oklahoma Board, the Board Finance Committee conference call, Senator Schulz and the City of Clinton, the Scenic Rivers Joint Study Committee, the Emergency Drought Commission, Oklahoma Groundwater Association, and the Instream Flow Workgroup.

Mr. Strong concluded the report noting the next OWRB meeting will be held Tuesday, January 21, 2014, in Oklahoma City, when a supermajority of members is needed to consider a bond issue. Happy Holidays!

D. Monthly Budget Report

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that 58% of the fiscal year remains, and there are 75% of the agency's expenditures remaining. She stated the carryover funds are not yet available as another inconsistency in payroll from last year was discovered while processing the carryover revision and that needs to be corrected which she hoped to report at next month's meeting. She updated the members about the personnel vacancies for which the agency is interviewing candidates.

There were no questions by the members, and Ms. Storck concluded the report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Kiefer Public Works Authority, Creek County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item is for the consideration of a \$664,215.00 loan request by the Kiefer Public Works Authority located in Creek County. The Authority is requesting the loan to make improvements to the sewer system to correct discharge violation, and will be funded through the Clean Water State Revolving Fund loan; he noted provisions of the loan agreement. He said that in the last ten years, Kiefer's sewer connections have increased by about 40%, and the 2000-2010 Census indicated the population has increased by about 60%; the debt coverage-ratio is 2.45-times. Staff recommended approval of the loan request.

Ms. Rita Stover, Town Administrator, was present in support of the loan request application.

Mr. Hitch asked about the disposition of the wastewater, and Chairman Herrmann asked the population of Kiefer. Ms. Stover responded that the population is 1,860 and that the wastewater is discharged to Childers Creek; the Authority is complying with requirements of the Department of Environmental Quality.

Ms. Lambert moved to approve the CWSRF loan to the Kiefer Public Works Authority, and Mr. Drake seconded.

There were no other questions, and Chairman Herrmann called for the vote.

AYE: Lambert, Fite, Hitch, Sevenoaks, Drake, Feaver, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Muskogee Municipal Authority, Muskogee County. Recommended for Approval. Mr. Freeman stated that this item is for the consideration of a \$7,300,000.00 loan request from the Muskogee Municipal Authority, located in Muskogee County. He said Muskogee is requesting the loan to correct inflow and infiltration problems of the sewer system, and the wastewater collection system. He said that the project will consist of the rehabilitation of approximately 70,000 linear feet of 8-inch and 10-inch sewer lines and 800 manholes. He said the loan will be from the Clean Water State Revolving Loan Fund, and he noted provisions of the loan agreement; Muskogee currently has six outstanding loans with a principal balance of \$26.3 million. Muskogee's population has increase by 2.4 percent over the last ten years and the debt coverage ratio stands at 1.72-times. Staff recommended approval of the loan application.

Muskogee Interim City Manager Roy Tucker and Public Works Director Mike Stewart were present in support of the loan request.

Chairman Herrmann asked if the City was under a consent order, and Mr. Tucker replied that it is. Mr. Hitch asked the discharge point of the system, and Mr. Tucker answered it is at the end of the Arkansas River.

There were no other questions, and Chairman Herrmann asked for a motion.

Mr. Hitch moved to approve the CWSRF loan to the Muskogee Municipal Authority, and Mr. Fite seconded.

AYE: Lambert, Fite, Hitch, Sevenoaks, Drake, Feaver, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond

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.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items and Approval of Items listed.

Chairman Herrmann asked if there are amendments to the Summary Disposition Agenda. Ms. Julie Cunningham asked that items 3.E.3., (temporary groundwater permit for Scott Wiehle) #2013-631 and E.G.2., (regular groundwater permit for John McCullough) #2013-612, be withdrawn from the Board's consideration. There were no other changes to the Summary Disposition Agenda, and no questions by the members.

Mr. Hitch moved to approve the Summary Disposition agenda as amended, and Ms. Feaver seconded. Chairman Herrmann called for the vote.

AYE: Lambert, Fite, Hitch, Sevenoaks, Drake, Feaver, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Buchanan, Drummond

The following items were approved:

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

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

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
	KEDDO			
a.	FAP-11-0008-R	Haileyville Public Works Authority	Pittsburg	amend scope

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

1. Professional Services Agreement with First Southwest Company for financial advisor services related to the Board's financial assistance programs.
2. No-Cost Extension Agreement with Oklahoma State University for the 2013 Oklahoma Water Resources Research Institute Research Program.
3. No-Cost Extension Agreement with the USGS for the Garber-Wellington Project.

O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the December 17, 2013 packet of Board materials.

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

A. Presentation and Discussion on Oklahoma Comprehensive Water Plan Recommendation regarding Water Quality and Quantity Monitoring, Update on Groundwater Monitoring Assessment Program, and Other Monitoring Activities. Mr. Derek Smithee, Chief, Water Quality Programs Division, presented a Power Point presentation and “show and tell demonstration” by staff of equipment and methods for the water quality monitoring programs. He stated that you don’t have to have data to make decisions, but you do need good data to make good decisions. The OWRB Water Quality Division is dedicated to collect data to assist the State in making good decisions. He reminded the members that the Oklahoma Comprehensive Water Plan recommended that \$2.25 million dollars be appropriated to the OWRB for surface and groundwater monitoring in terms of quality and quantity; ultimately, the agency received an additional \$1.5 million appropriation to supplement the existing monitoring program. He explained the funds were to be expended in three areas: surface and groundwater quality and quantity monitoring, additional dollars dedicated to the Beneficial Use Monitoring Program which focuses on biological collections, and the State’s stream gaging network in order to know how much water was moving in streams and rivers on the surface of Oklahoma.

Mr. Smithee provided an update on the purpose and status of the current monitoring activities, implemented recommended changes to the current program for improved monitoring and evaluation in the BUMP program, explained the USGS and OWRB stream gaging program and improvements, and increased coordination with sister state agencies and federal partners. Mr. Smithee explained the components of the newly established groundwater monitoring program—Groundwater Monitoring Assessment Program—are possible because of the OCWP recommendation and additional funding. He explained the history and underfunded effort that had been ongoing in earlier years, i.e., the mass measurement program (depth-to-water), the monitoring efforts with the Oklahoma Department of Food, Forest and Agriculture in regard to monitoring CAFO facilities (Concentrated Animal Feeding Operations) and data collection by the Department of Environmental Quality for groundwater quality. Mr. Smithee discussed the primary objectives for the newly funded program which will look at water quantity and quality of 21 aquifers through 700 wells, the one-year results, the 2013 water quality sites, the completed Group A (200 wells) baseline data, and the planned monitoring areas in future years to be completed by 2016. He said a major component of the new program is a new database that will be coming online, and an integrated report on groundwater monitoring will be produced in 2017 covering the state monitoring results through 2016.

Mr. Smithee introduced the members of the five water management teams of the Water Quality Program Division. In particular, Mr. Smithee introduced Ms. Brittany McCall and Ms. Sara Yepez, who demonstrated -- with equipment -- the technical and very precise well sampling procedures for stabilizing and sampling water wells for measuring the water quantity and quality of the State’s groundwater.

The Board members asked and staff addressed questions regarding what other states (Kansas) are doing and shared data if any, that CAFOs site monitoring includes biological

sampling, about water level metering and the use of drift oil, the time required for implementing the procedures at each well site, how the information is used and if landowners are provided a report—and specifically if problems are discovered—and that wells are sampled the same way each time. Staff said it will take several years of monitoring before trends can be discovered and a trends network has been established where 25% of the wells are sampled more than once each year.

Mr. Smithee concluded the report.

5. SPECIAL CONSIDERATION

A. No items. There were no items for the Board's consideration.

B. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda to the Special Consideration Agenda for the Board's consideration.

6. 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 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 Chickasaw Nation and Choctaw Nation v. Fallin, et al., and Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al.

Chairman Herrmann stated there is an agenda item for a proposed Executive Session and he noted the case referenced in the statement above.

Statement by legal counsel advising on whether disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest.

Chairman Herrmann asked if OWRB General Counsel Jerry Barnett would make a statement. Mr. Barnett stated he did advise that disclosure of the discussion of the litigation as stated will seriously impair the ability of the Board and the State to conduct that litigation in the public interest.

A. Vote on whether to hold Executive Session upon determination that disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest. 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. Drake moved that upon the advice of Counsel, the Board enter Executive Session and Ms. Lambert seconded.

AYE: Lambert, Fite, Hitch, Sevenoaks, Drake, Feaver, Herrmann
NAY: None
ABSTAIN: None
ABSENT: Buchanan, Drummond

The Board voted to enter an Executive Session at 10:50 a.m. in Tuesday, December 17, 2013.

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 as authorized, at 10:52 a.m. on Tuesday, December 17, 2013.

The meeting room doors were opened, and the Board voted to return to Regular Session.

Mr. Fite moved to return to Regular Session of the Oklahoma Water Resources Board, and Mr. Drake seconded.

AYE: Lambert, Fite, Hitch, Sevenoaks, Drake, Feaver, Herrmann
NAY: None
ABSTAIN: None
ABSENT: Buchanan, Drummond

The Board returned to Regular Session at 11:14 a.m. on Tuesday, December 17, 2013.

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

There were no matters for discussion or action taken as a result of the Executive Session being conducted.

8. NEW BUSINESS

Chairman Herrmann

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

There were no New Business items for the Board's consideration.

9. ADJOURNMENT

Chairman Herrmann

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:15 a.m. on Tuesday, December 17, 2013.

OKLAHOMA WATER RESOURCES BOARD

Rudolf J. Hermann
Rudolf J. Hermann, Chairman

Tom Buchanan
Tom Buchanan, Vice Chairman

Edward H. Fite
Edward H. Fite

F. Ford Drummond
F. Ford Drummond

Absent
Marilyn Feaver

Richard Sevenoaks
Richard Sevenoaks

Bob Drake
Bob Drake

Jason W. Hitch
Jason W. Hitch

ATTEST:

Linda P. Lambert
Linda P. Lambert, Secretary

