

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
March 18, 2014

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 March 18, 2014, 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 March 14, 2014, at 4:45 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
Tom Buchanan, Vice Chairman
Linda Lambert, Secretary
Marilyn Feaver
Ed Fite
Jason Hitch
Richard Sevenoaks

Board Members Absent

Bob Drake
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
Bill Cauthron, Water Quality Programs Division
Lauren Sturgeon, Director of External Affairs
Mary Schooley, Executive Secretary

Others Present

Gregory Combs, Tahlequah, OK
Charles Morrow, Roff, OK
Lynda S. Roberts, Fitzhugh, OK
Velta Wingard, Fitzhugh, OK
Shelby Morgan, Roff, OK
Alan Woodcock, US Fish and Wildlife Service, Tulsa, OK
Paul Morrison, Roff, OK
Larry Heard, Roff, OK
Jerry Lamb, Roff, OK
Debb Warren, Mill Creek, OK
David R. Warren, Mill Creek, OK
Bill Clark, Roff, OK
David Buxton, Ada, OK
C.C. Buxton, Ada, OK
D. Craig Shew, Ada, OK
Frances M. Roos, Roff, OK
Robert C. Roos, Roff, OK
Ronnie Watchow, Fitzhugh, OK
Chuck Roberts, Fitzhugh, OK
Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Brandon Bowman, Oklahoma Department of Environmental Quality, Oklahoma City,
OK
Patty Thompson, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Michael Taylor, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Tom Lazarski, Oklahoma Gas & Electric, Oklahoma City, OK
Robin Simmons, Martin Marietta, Lewisville, TX
Dale Cottingham, Corbin, et al; Oklahoma City, OK
Randy Worden, Central Oklahoma Master Conservancy District, Norman, OK
LeeAnna Covington, Oklahoma Farm Bureau, Oklahoma City, OK
Mike Wofford, Masquelier; Oklahoma City, OK
Steve ___, Tulsa, OK
Candy Masquelier, Fay, OK
Bill Flanagan, TXI,
Mark Farris, Fay, OK
Kimmie Corbin, Hobart, OK
Dee Max Corgin, Hobart, OK
Joel Rydell, Thomas, OK
Daniel Rydell, Thomas, OK
Jeffrey Rydell, Thomas, OK
Russ Doughty, Oklahomans for Responsible Water Policy
Chris Phillips, Chickasaw Nation
Kystina Phillips, Citizens for Protection of the Arbuckle Simpson Aquifer
Cecil Bearden, Masquelier; Piedmont, OK
James Johnson, Johnson Ranch
Paul Warren, Warren Ranch, Mill Creek, OK
John Sparks, TU Ranch, Sulphur, OK

Carolyn Sparks, TU Ranch, Sulphur, OK
William F. Rapier, Ashby Investments, L.L.C., Plano, TX
Paul Hodge, Pittsburg County Rural Water District No. 1, Eufaula, OK
Glenn Glover, Longtown Rural Water and Sewer District No. 1, Eufaula, OK
Al Tankersly, Longtown Rural Water and Sewer District No. 1, Eufaula, OK
M. Scott Carter, Journal Record, Oklahoma City, OK
Chris _____, Roff, OK
Sharon Phillips, Roff, OK

B. APPROVAL OF MINUTES

Chairman Herrmann said the draft minutes of the February 18, 2014, Regular Meeting had been distributed.

Mr. Fite moved to approve the minutes of the February 18, 2014, meeting and Ms. Feaver seconded. There were no questions or changes to the draft minutes.

Chairman Herrmann called for the vote.

AYE: Fite, Sevenoaks, Feaver, Herrmann

NAY: None

ABSTAIN: Buchanan, Lambert, Hitch

ABSENT: Drake, Drummond

C. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, Executive Director, asked Ms. Lauren Sturgeon to present the Legislative Report. Ms. Sturgeon referred to the printed report provided to the members, and stated the deadline for third Reading in the House of Origin was Thursday, March 13, and the list of remaining measures is included with the report. She highlighted the measures that passed of interest to the agency which included SCR 32 by Sen. Ellis regarding an update study of the Red River Watershed Basin, SB 1187 by Sen. Standridge and Sen. Martin regarding water re-use projects, and SB 1430 by Sen. Schulz regarding Drought Proof Communities, along with a few bills in the House regarding personnel issues. Regarding Federal legislation, Ms. Sturgeon reported that the President's budget was released and a breakdown of what was requested from EPA, DOI, and COE was included in the report to members. The information does not include specific details about projects; however, the funding amounts are included which are lower than requests in the past, but not necessarily what will be appropriated, she said. There were no questions by members.

Mr. Strong reported to the members that mediation continues in the Chickasaw-Choctaw matter and the Attorney General's office will provide an update later in the meeting. The venue for the Arbuckle Simpson case has been established in Oklahoma County and the deadline to file the record was extended to March 21. The Water for 2060 Council met following the February Board meeting focusing on crop irrigation with good attendance and good discussion; Carollo Engineers held a water summit to discuss waste water re-use practices across the Nation on February 25, and later in the day he met with the City of Clinton about re-use opportunities due to lack of water supply. Mr. Strong attended a Lake of the Arbuckles Pipeline meeting on February 26 sponsored by the Master Conservancy District looking at feasibility of a pipeline from the lake to serve Sulphur; he spoke to the Pork Council about drought issues; and the Canadian River Commission met March 4th in Oklahoma City and heard a presentation on Salt Cedars and beetles. Staff hosted three public meetings across the state at Goodwell, Altus and Duncan on March 11-13 in areas identified in the OCWP as Hot Spots

and focused on discussions about conservation. Mr. Strong will be speaking at the National Cowboy and Western Heritage Museum Land and Water Symposium March 28; he will attend the Western States Water Council and Interstate Council on Water Policy Washington D.C. Roundtable in Washington, DC, April 1-4, and will also meet with Oklahoma's Delegation. The Corps of Engineers' FY 15 Civil Works Briefing will be held April 7 in Tulsa, the annual Red River Compact Commission meets April 22 at Hot Springs, AR; he reminded the members the Audit Committee will meet following the Board meeting today, and the next OWRB meeting will be held in Oklahoma City on April 15. He also noted that former OWRB employee, Zach Williams, who worked much of his career at OG&E, had passed away recently.

Mr. Strong concluded his report recognizing two recipients of the Employee Excellence Award, Wilma Beagle and Mary Schooley.

Ms. Lambert asked in regard to the Hot Spot meetings with the public, what is the appetite for conservation-- it's talked about, but what is the real action? Mr. Strong responded staff is devoting time and effort continuing to push that effort. He said water conservation is a major educational effort as well as obtaining the resources to cover upfront costs, and the purpose of these meetings is to begin the dialogue and to engage people in the discussion. Staff shared data from the Water Plan proving with that conservation and efficiency—at least in the agriculture and industrial sectors—it is possible to meet the Water for 2060 Act goal of consuming no more fresh water in 2060 than is consumed today and the data proves that conservation can achieve more than is thought. He said it is also good for staff to learn what is working in those areas already, and he talked about the comments from attendees at the meetings as regards conservation and efficiency efforts ongoing in these areas. He added there has been an increase in interest for recycling and re-use. Mr. Hitch asked if conservation technology is economically feasible, and Mr. Strong responded that technology is being adopted, but there is a large upfront cost for irrigators, so incentives needed to be considered. Mr. Hitch also asked about re-use and problem areas such as Sunset Lake, and Mr. Strong answered that the regulatory climate has changed rather dramatically as well as drought is an incentive as people are getting desperate for water. Chairman Herrmann asked what had changed, and Mr. Strong said there are new rules at DEQ, as well as a change in attitude and the Water for 2060 Act being a priority for the State as established by the Legislature.

D. Monthly Budget Report

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report for February 2014 showed the agency has 59% of funding available with 33% of the fiscal year remaining. She said the agency had received the carryover budget, which is being re-budgeted--a large portion was for the Water Quality database which will not be completed this year and that will have to be re-budgeted for other purposes. Mr. Sevenoaks asked and Ms. Storck and Mr. Cauthron answered that the funds will be rolled over for the project next year; staffing and number of projects had hindered being able to complete the water quality software project this year. Ms. Lambert asked about a report on the success of the consolidation of IT services and Ms. Storck answered that the OWRB is not consolidated as yet, but OMES has information on its website. The members asked for a report at the appropriate time about IT consolidation, status of employees, etc. She noted other activities of the Administrative Services Division, and introduced the agency's new GIS Manager, Ms. Tracy Scopel.

Ms. Storck concluded her report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Longtown Rural Water and Sewer District No. 1, Pittsburg County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the item is a \$600,000.00 funding request from the Longtown Rural Water and Sewer District No. 1 in Pittsburg County. He said the District is requesting the funding for the replacement of 98 meter boxes and meters, construction of 9,500 feet of 4-inch water line, a mixing system and existing water storage tank, and a booster station in order to consolidate services to Pittsburg County Rural Water District No.4. In addition, funds will be utilized to demolish the Pittsburg RWD #4 water treatment plant. He said that funding will be provided through the Drinking Water SRF Regionalization Program, and he noted provisions of the loan agreement. Mr. Freeman said Longtown has been a valued customer of the Board's for several years, and has one outstanding loan. The District's connections have increased by approximately 20% over the past ten years, and the regionalization project will be very beneficial for the area; the current debt coverage ratio stands at approximately 1.35-times. Staff recommended approval of the funding request.

Chairman Herrmann asked Mr. Freeman to speak to the regionalization initiative. Mr. Freeman responded that a few years ago it was learned that the OWRB and the DEQ (as the State) must spend a portion of the Capitalization Grant in the form of principal forgiveness, and it is used to encourage consolidation of districts into when economically feasible, in their best interest, and in the best use of funding. In this instance, Longtown has over 2,000 customers, and Pittsburg #4's plant is older and had problems, so it was feasible to consolidate the districts. Once the project is completed correctly, 20% of the Capitalization Grant must be used in the form of principal forgiveness.

Mr. Paul Hodge, District Chairman; Mr. Glenn Glover, District Secretary; and Mr. Al Tankersly, former chairman of Pittsburg County #4, were present in support of the request.

Mr. Fite moved to approve the Drinking Water funding for the Longtown District, and Mr. Sevenoaks seconded.

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

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

NAY: None

ABSTAIN: None

ABSENT: Drake, 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.

Chairman Herrmann read the statement above, and asked if there were requests to transfer items to the Special Consideration Agenda. There were no requests to transfer items.

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

Mr. Sevenoaks asked about 3.I.1. #2011-066, the City of Edmond application for seasonal permit to use stream water. Ms. Cunningham and Mr. Strong answered the source of the stream water is Lake Arcadia; a stream water permit is for water withdrawn from a reservoir.

Chairman Herrmann asked if there are amendments to the Summary Disposition Agenda.

There were no amendments to the Summary Disposition Agenda, and no other questions by the members. Chairman Herrmann called for a motion.

Ms. Lambert moved to approve the Summary Disposition agenda, and Mr. Buchanan seconded. Chairman Herrmann called for the vote.

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

Mr. Sevenoaks commented about the item regarding the lease for office space, and Mr. Strong said that is an amendment to return certain space and save money.

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>
ASCOG				
a.	FAP-13-0022-R	Tipton Public Works Authority	Tillman	\$99,500.00

D. Consideration of and Possible Action on Contract and Agreements:

1. Addendum to Lease Agreement between OWRB and Oklahoma Property Investors II, LLC.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:

1. Joyce Y. Norton, Donald L. & Joyce Y. Norton, and Bertha P. Baker, Caddo County, #2013-522
2. Loretta Rae Jones, Marilyn Kaye Graham, and Kenneth Dean Hodges, Caddo County, #2013-643
3. John E. & Lola J. Lamle, Alfalfa County, #2013-647
4. Richard Brownen and Joe E. Johns Living Trust, Blaine County, #2013-650

F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:

1. Steve Blevins Revocable Trust, Beckham County, #2013-545

G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:

1. Seaboard Foods, L.L.C., Texas County, #2013-644
2. Ricky Joe & Danna Schweitzer, Canadian County, #2013-646
3. Flat Prairie Farms, Inc., Texas County, #2013-648
4. Patricia Ann Colley Means Revocable Trust and Patricia Means Revocable Trust, Love County, #2013-649

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:

1. Margi Murdock 2009 Trust, Cimarron County, #2003-568
2. Brothers Bottling Company, L.L.C., Canadian County, #2006-573
3. Mitch A. & Marcia L. Cowan, Beaver County, #2012-617

I. Consideration of and Possible Action on Applications for Seasonal Permits to Use Stream Water:

1. City of Edmond, Oklahoma County, #2011-066

J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:

1. Don & Linda Hudspeth, Choctaw County, #2013-039
2. Pollard Farms, L.L.C., Garfield County, #2013-044
3. Pollard Farms, L.L.C., Garfield County, #2013-046
4. Michael Joe & Brenda Sue Frickenschmidt, Garfield County, #2013-049

K. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water:

1. City of Edmond, Oklahoma County, #1974-175
2. Roy T. & Rebecca Oliver, McClain County, #2007-035

L. Consideration of and Possible Action on Dam and Reservoir Construction:

None

M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:

1. New Licenses and Operators
 - a. Licensee: Arrowhead Engineering Co., L.L.C. DPC-0874
 1. Operator: John Wes Nash OP-1536
2. New Operators to Existing Licenses:
 - a. Licensee: Arrowhead Engineering Co., L.L.C. DPC-0874
 1. Operator: Corby Key OP-1443
 - b. Licensee: EST, Inc. DPC-0658
 1. Operator: Alseny Diop OP-2027
 - c. Licensee: Ryan's Water Well Drilling, L.L.C. DPC-0879
 1. Operator: John C. Gilby OP-2030

N. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Oklahoma Department of Transportation, Caddo County, #FP-14-01
2. Oklahoma Department of Transportation, Creek County, #FP-14-02
3. Oklahoma Department of Transportation, Creek County, #FP-14-03
4. Oklahoma Department of Transportation, Seminole County, #FP-14-04
5. Oklahoma Department of Transportation, Seminole County, #FP-14-05
6. Oklahoma Department of Transportation, Marshall County, #FP-14-06
7. Oklahoma Department of Transportation, Caddo County, #FP-14-07
8. Oklahoma Department of Transportation, LeFlore County, #FP-14-08

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 March 18, 2014 packet of Board materials.

4. CONSIDERATION OF AND POSSIBLE ACTION ON ADOPTION OF PROPOSED AMENDMENTS TO PERMANENT RULES, RECOMMENDED FOR APPROVAL:

Chairman Herrmann stated that at the February meeting the Board conducted a public hearing on the proposed amendments to the Board's rules and received input over several hours. Staff and the Rules Committee of the Board has worked diligently to synthesize the information and proposed

changes to the amendments reflecting input from the public. Today is not a public hearing, he said, but the Board's opportunity to take final action, and there will be an opportunity for public comment to the changes that are proposed as a result of last month's hearing.

A. Rules Amendments Recommended for Adoption in Chapter 30 - Taking and Use of Groundwater Subchapter 3. Permit Application Requirements and Processing 785:30-3-6. Well spacing [AMENDED]

1. Summary - Ms. Julie Cunningham addressed the Board and reviewed the proposed changes to Chapter 30, Subchapter 3. She stated that staff received good comments and attempted to incorporate as much as possible and make common sense changes to the originally proposed amendments. She referred to the yellow highlighted language contained in the Board's packet of meeting materials for consideration today, noting the ~~strikeout~~/underline language are changes from the original proposal, and she discussed the proposed amendments: Section (c)(1)(A) added an increment of protection for smaller streams by including a ¼-mile setback for streams that flow 50 or more gpm, or the applicant can determine there will not be an impact if drilling within ¼-mile; Section (c)(1)(B) modified the 2-mile setback for streams flowing 500 or more gpm and removed the requirement the applicant prove no impact, if the Board determined the total water use from all the wells in the area remained below 1,600 a.f. per year, based upon the 2.0 acre-feet times the land acreage within that two miles. She said this provides an option that the presumption is going to be no impact within the 2-mile area, and drilling can be in the area if water is available. Mr. Sevenoaks asked if one person could take the 1,600 a.f. and Ms. Cunningham said yes, but if they want to take more than 1,600 a.f., they would still have to prove through a study that there will be no impact and could choose a withdrawal rate that is lower or a quantity that is lower.

Ms. Cunningham said under (c)(2)(B) there was also an added exception for a landowner with dedicated land when land configuration does not allow for drilling of the well. There was discussion in the Rules Committee concerning those small landowners where their total land area is within the two miles. This is the same language from other rules regarding spacing. In (c)(1)(C) the 1-mile setback remains for springs or streams that flow 500 gpm, drilling can be in that area if it is shown there will be no impact, or move outside the area. She said (c)(2)(A) is reorganized, but kept the language that would allow exceptions within the setbacks if the applicant can prove the withdrawal will not degrade or interfere; drilling can be in any area of the basin if it can be proven that withdrawal will not degrade or interfere with springs or streams. Section(c)(3) was added and includes the statutory language reiterating the law so the affected parties have an opportunity to protest even when a well is drilled outside of the setback area. Mr. Strong added staff had received comments about the addition, but it is merely a reflection of what existing law provides that even with the existing well spacing rules, someone can come in and prove an impact within the default setback requirements, and there is the opportunity for notice, protest and hearing, he said. People still have the right to protest an application, for the staff to determine it is a valid protest, send to hearing to weigh the evidence, and bring the Board a recommendation.

Ms. Lambert said that while this specifically restates statute, all of these statements reflect statute, and are reflective of the Board's responsibility. Chairman Herrmann asked Mr. Strong to state the two prongs of the statute, and Mr. Strong said, Senate Bill (SB) 288 is the basis for the Maximum Annual Yield (MAY) approved in October, but also in SB 288 there was a requirement the Board not issue any individual permits that would degrade or interfere with springs or streams so the two-pronged approach was to do the study and establish a MAY that won't interfere with the natural flow of springs or streams, plus the Board won't issue individual permits that would degrade or interfere and that's why there is MAY well spacing requirements to cover both prongs of the law.

Subchapter 9. Maximum Annual Yield Determinations 785:30-9-6. Issuance of regular permit to temporary permit holder [AMENDED]

Regarding the changes in Subchapter 9., Ms. Cunningham stated there were exhaustive comments last month on this subchapter where the original proposed amendments allowing for overall application of the MAY would cause negative impact to the landowners to sell or lease water and potentially postpone action by water suppliers to purchase water rights. Staff is proposing and the Committee agreed this section should be removed from consideration. Staff will address any issue of noncompliance through the channels currently established. Mr. Strong added that change is simply a response to comments; staff was trying to outline what the process “as soon as practical” means in this context, there was an hour’s worth and more of feedback and staff recommends striking that language and following the normal process that is always followed for folks that are wasting water, out of compliance/in compliance with the permit limits, and convert the permits as soon as practical, which is existing language. Mr. Jerry Barnett described the three steps to remedy violations: (1) pursue voluntary compliance, (2) suspend the permit or permits, and (3) cease and desist order or court injunction. Mr. Strong said this is standard operating procedure which staff will follow if the Board agrees and approves the recommendation to remove that language.

Chairman Herrmann asked, and there were no other questions by members.

Mr. Strong summarized that the changes from last month and what the Board received public comments on is the additional ¼-mile setback from smaller streams of 50 gpm or more (the same as from existing setback in well spacing rules), maintain the 2-mile setback from 500 gpm or more springs, and added the ability to drill a well within that 2-mile radius as long as the MAY in that area is not exceeded (1,600 a.f.); consolidated the exceptions and added an exception (as in existing rules) for a landowner whose dimensions of their land precludes the drilling of a well in compliance with these setbacks, and restating that people still have the ability to protest and go through a process even within the setback guideline. Also, strike the language on issuance of the regular permit to temporary permit holders, and add an appendix D., Table 1 and Table 2, which identifies streams that flows 50 gpm or more, and 500 gpm or more which has been compiled by the US Geological Survey, with the ability to modify that list through the rulemaking process with an opportunity for public review. Mr. Sevenoaks restated there is flexibility to add or delete, and Mr. Strong said that is correct.

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

3. Comments by Public. Chairman Herrmann invited members of the public to address the Board regarding the proposed rules amendments. He asked that comments be only relative to the proposed changes since the public hearing. Mr. Strong added the hearing is closed, so all comments that came in afterward have been delivered to the Board members. Chairman Herrmann stated this is public comment regarding the changes, not a reopening of the hearing, and he allowed five minutes per person.

Mr. Bill Clark, landowner, thanked the members and staff for listening to the landowners’ fairness argument by striking that portion regarding the phased-in period, and he appreciated the Board’s favorable vote.

Mr. William Rapier, Ashby Investments, asked the members about Section (c)(1)(C), and that Mill Creek is considered a perennial stream, and he referred to the legal description that does not concern the Arbuckle Simpson and asked for clarification that it is not subject to the provision of that Section. Mr. Strong says [the rule] is within the outcrop of the aquifer, and Ms. Cunningham stated that she believed he was asking if the rule applied outside the boundary of the aquifer and the answer is, no. Mr. Strong showed a map, and said the rule is a 1-mile setback from perennial streams that flow 500 gpm that emanates from the basin, and there are no setbacks outside of the aquifer boundary. Mr. Rapier was satisfied with the response.

Ms. Kystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer, thanked the Board members for listening to comments and making provisions, but she had two minor comments. They believed the well spacing rule placed an avoidable burden on the agency when there is a potential for a protest at every permit hearing. Additionally, she said that although CPASA is not a water supplier, they recognized the need for water suppliers to implement rules and to not have those rules go into effect overnight. Overall, she stated, CPASA believed the revised rules are a positive step toward implementing SB 288. She asked about the Board's Ad Hoc Rules Committee membership and when it met to review the proposed rules.

Chairman Herrmann stated these are proposed rules and can be changed as deemed impractical and as an opportunity to improve.

Mr. John Sparks, landowner, stated to the members that according to the map, the mile setback may affect Pennington Creek in Johnson County and he described the characteristics of the stream. Ms. Cunningham stated that if the stream is less than 500 gpm, the rules do not apply. Mr. Strong stated what shows on the map is the affected area of the rule, and many streams are not flowing the average as they usually might in the State of Oklahoma, and Ms. Cunningham said the rule applies to streams with designated flows of 500 gpm or greater. Mr. Sparks talked about the stream's flow, and Mr. Chris Neel, OWRB, explained the USGS program determines the flow based on data. The area on the map indicates areas designated by USGS as perennial streams that flow at 500 gpm. Mr. Sevenoaks asked if the stream doesn't flow, could Mr. Sparks talk to the USGS, and Mr. Strong said he could come to the Board through the rulemaking process. He said this is not a change in the rule for the 1-mile setback from streams that flow 500 gpm or more, and public comment closed on this particular proposal; there is the opportunity to review and revise going forward and there are exceptions included, which he explained.

Mr. Bill Flanagan, TXI, addressed the members and stated the Appendix D list is from a 2008 study and NWIS data base that contain information from having only been visited one time for measurement; he asked the Board to review the data base to see if it is still valid. Mr. Buchanan stated these are the best numbers available and Chairman Herrmann added there is a process for review. Mr. Strong stated the public can bring data to the Board to refine the list; he said the original proposal was to adopt the entire list, but staff worked with the USGS to "cull" some of those where data was available.

Mr. Strong will make the map available on the agency website as staff was not allowed to make that as part of the rules.

There was no further comment from the public.

Mr. Hitch asked if it were possible to make available which data identified which stream's flow and Mr. Strong stated that information would be included on the website.

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

Chairman Herrmann stated there are no other questions or comments, and staff recommended approval.

Mr. Hitch moved to approve staff recommendation of the proposed amendments to Chapter 30, and Ms. Lambert seconded.

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

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

NAY: None

ABSTAIN: None

ABSENT: Drake, Drummond

Chairman Herrmann commented eleven years ago there was no doubt a water market would be established as a result of SB 288 and that has now happened. Mr. Strong noted that the rules will need to pass through the legislative and gubernatorial process before final.

- B. Rules Amendments Recommended for Adoption in Chapter 50 - Financial Assistance
Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants)
Requirements and Procedures
785:50-7-1. General procedures [AMENDED]
785:50-7-3. Evaluation procedures for grant applications [AMENDED]
785:50-7-5. Emergency grant priority points system [AMENDED]
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-5. REAP grant priority point system [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 3. General Program Requirements
785:50-9-21. Eligible project [AMENDED]
785:50-9-22. Revenue program [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-28. Pre-application for funding [AMENDED]
785:50-9-30. Planning documents [AMENDED]
785:50-9-32. Plans and specifications [AMENDED]
785:50-9-35. Loan closing [AMENDED]
785:50-9-38. Construction phase [AMENDED]
785:50-9-42. Retainage [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-61. Environmental information required by the Board [AMENDED]
1. Summary – Mr. Joe Freeman stated to the members he had presented the rule amendments for Chapter 50 two months ago, and had not received comments. Staff recommended approval of Chapter 50 proposed rule changes.
2. Questions and Discussion by Board Members. There were no questions or discussion by members.
3. Comments by Public. There were no comments by the public.
4. Vote on whether to adopt recommended amendments as presented or as may be revised after discussion and comment.

Ms. Lambert moved to approve the proposed amendments to Chapter 50, and Mr. Buchanan seconded.

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

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on Application to Construct a New Small Low Hazard Dam filed by Preston and Candy Masquelier, Custer County, Dam Safety ID No. OK30474, Recommended for Approval:

Chairman Herrmann asked Mr. Strong and Ms. Cunningham to review with the Board its responsibilities regarding dam safety matters, as these matters are not seen routinely. Mr. Strong stated

that typically the dam safety matters are found under the Summary Disposition portion of the agenda and are rarely contested. He explained that it is the OWRB's responsibility once a dam is over a certain size and falls within our jurisdiction and under the agency's dam safety regulations. He said this particular matter has some complications and the people involved have asked to bring the matter to the Board. He said this is a dam safety issue, and the only issue before the Board at this moment is, does this particular dam being constructed meet the guidelines and specifications of the OWRB to ensure it is safe to any downstream development. Any issues regarding water rights will be addressed at a different time as a number of people on this stream have applied for competing interest in stream water rights.

1. Summary – Ms. Julie Cunningham said this application is for approval of the construction of a new embankment dam with a maximum height of 27 feet, an elevation of 1,650 feet, and a length of 680 feet. The maximum storage capacity of the dam is 426 acre-feet. The dam will be used for domestic and non-domestic purposes and is classified as low hazard. As defined in the dam safety rules, low hazard is one that will result in no-probable loss of human life, or economic loss downstream. She explained in this particular situation, the dam was constructed prior to application for a permit from the Board; however, now the applicant is attempting to gain compliance with the permitting rules upon instruction by Board staff that has visited the site. To satisfy requirements, the applicant has contracted with a state licensed professional engineer who has certified the project and that the dam does meet requirements with the exception of the absence of a valley floor drain, which allows passage of water through the dam and is a requirement of the Board's rules. She said the engineer has requested a waiver for the drain and as an alternative has proposed a permanent siphon system which will enable the drawdown of the reservoir, which is required for domestic use for senior water right holders downstream. Staff concurs with the consulting engineer and has determined the application meets OWRB dam safety requirements, finds there are no remaining issues particularly in regard to dam safety requirements, and recommends approval of the application for the construction of the low hazard dam.

Ms. Cunningham stated that staff investigated two complaints by downstream landowners that the dam had been built without a permit, cutting off water for downstream use and there is not enough water to support the applicant's use. The application is for domestic and non-domestic uses; the existing uses are domestic. She said that staff also received a protest letter on behalf of one of the complainants requesting a hearing be scheduled on the dam application and the applicant's stream water use. Board's rules do allow for a hearing; however, staff is satisfied there are no dam safety issues remaining, and the protests regarding the separate stream water application will be heard at a separate hearing. The applicant has requested approval as soon as possible in order to have sod installed and established prior to potential rains.

Mr. Sevenoaks confirmed that the proposal is to have the siphon installed, and Ms. Cunningham answered, yes. Mr. Hitch asked about the dam safety concerns by protestants, and Ms. Cunningham said they were concerned about building a dam without a permit.

There were no other questions of staff by the members, and Chairman Herrmann stated the Board would hear from the parties. Mr. Strong added that the siphon is required because the applicant had sought a variance to have the dam approved as-is without the ability to pass water downstream and staff worked with the applicant to make sure this design was put in place to enable the passage of water downstream. The dam is impounding water at this time.

2. Discussion and presentations by applicants and persons opposing the application. Ms. Cunningham stated the applicant is present and represented by Mr. Mike Wofford, and the protestants are also present and represented by Mr. Dean Couch.

Mr. Mike Wofford approached the Board and provided background information about the applicant building the dam and then discovering a permit was needed and therefore hired an engineer.

Water is impounded, but is also flowing at this time. There are pending applications for water rights along this stream, but this application is just for the approval of the dam construction. He said the protestants will raise the issue of statutory requirements for hearings of this type and may cite the case *Delaney v. Oklahoma State Department of Health* which he explained the Oklahoma Supreme Court required a trial-type hearing under the Administrative Procedures Act for adjacent landowners and minerals owners when there is an application to construct and operate a landfill. He contended that ruling does not apply in this matter – this is a low hazard dam, located ¼-mile upstream of the boundary of the applicant’s property and there is no landowner within a ¼-mile downstream of the dam. He said argued the Delaney case regarded the ability to drill through the landfill for oil and gas giving the landowners the ability to have a hearing and was about potential groundwater pollution, but that is not faced here, and he spoke to the analogy of permitting a wastewater treatment plant. He asked the Board to approve the application for the design of the dam.

Mr. Dale Cottingham, an attorney and colleague of Mr. Dean Couch, said he was appearing before the Board to address what they believed to be a due process issue to have an open hearing on the matter. He explained that this morning he had filed a request for a remand hearing, not a request to deny the application today, but an opportunity for notice, and he provided a copy of the request. Mr. Cottingham said he was representing the Corbins, Farisses, and Rydells, who are families and owners of the land since the 1890s and 1920s that is subject of the stream water, and are impacted by the impoundment. He said the dam was constructed without permission from the OWRB or the Corps of Engineers, and has impounded water making it necessary to move cattle to another location due to the lack of water. Specifically, Mr. Cottingham focused his argument on the Board’s jurisdiction here, saying that not purely dam safety but dam engineering – has the dam been engineered according to the Board’s rule and requirements. He suggested there needed to be an evidentiary hearing for two reasons: the Board’s rules require an outlet conduit and a valley floor drain, and the dam was built first so the adding of a siphon later needed to be discussed by engineers—how flow is provided should be discussed; and, that the applicant currently only has domestic rights and has described what is needed for other uses, such as to sell oil and gas interests which is the subject of their application, but right now only has domestic use and the impoundment exceeds domestic use.

Mr. Cottingham continued his argument in regard to constitutional issues and he cited two cases, *Delaney* and the *Daffin* case regarding the Department of Mines saying the issue is the government is requesting to take action and doing so without notice and the opportunity to be heard by others that are implicated. That is the fundamental issue decided by the cases, and he is insisting the agency abide by providing notice and the opportunity to be heard.

Mr. Sevenoaks asked if there was concern about how the water is moved, why not the quantity of water, and Mr. Cottingham answered they are concerned about both, and he read from the OWRB rules about the requirement of an outlet conduit to prevent interference with natural flow for downstream domestic users.

Ms. Lambert asked staff what is the Board’s job today, and if the use of water should be decided first. Mr. Strong answered that dams are built everywhere just for domestic use noting the many farm ponds built to water cattle which do not require a permit. This is a dam safety issue, other issues have been raised which staff has reviewed, and staff dam safety engineers analyzed this small, low hazard dam and did not see any deficiencies. The issue of sufficient water is another matter.

Mr. Sevenoaks and Chairman Herrmann asked Mr. Jerry Barnett to explain the Board’s process regarding dam safety issues. Mr. Barnett explained the rules provide staff may direct notice and opportunity for hearing in instances of significant and high hazard dams but the rules do not specify what form the notice might be and staff has discretion about a range of possible notices, which he described. Staff’s view was because it is a low hazard dam, and because it had been evaluated from the rule requirement perspective, staff did not see a concern to direct this applicant under these circumstances to give notice and subject it to a hearing. He explained staff had received a letter from

Mr. Couch asking for a hearing and while there wasn't a reason to grant a hearing --- and ordinarily the matter would have been on the Summary Disposition portion of the agenda --- to be fair, staff suggested offering opportunity to speak to the Board under the Special Consideration portion of the agenda. Staff believes that under the facts and circumstances, even after reference to the other cases, that notice and hearing is not warranted, but the Board may choose to. A high hazard application is when staff would direct toward notice and a hearing, and rules allow for significant classification, but are silent on low hazard classification. Mr. Barnett added he had read the Delaney case but not the Daffin nor had he had the opportunity to read the material Mr. Cottingham distributed although he had listened to the argument. He said he respected both attorneys as leading water lawyers in the state, but on the issues before the Board today, he tended to agree with Mr. Wofford this morning.

Mr. Hitch asked how much would the dam specifications have to be decreased in order not to be under the Board's jurisdiction, and Mr. Strong responded that below 25 feet and impoundment of 50 acre-feet is not regulated; the rules do not state "valley floor" but "conduit to pass water downstream" and he read from the rules. This structure is 27 feet, and the proposal is a 10-inch siphon, all of which was reviewed to make sure that all dam safety requirements are met.

Mr. Cottingham stated it is clear that staff had been in contact with the applicant and thought a better informed decision could be made if there is input from others that are impacted, which is why due process concerns exist. Mr. Wofford responded that the immediate downstream party is a lease holder and the landowner immediately downstream is not protesting. He explained a permit was not sought because originally the dam was designed to be 22 feet and circumstances resulted in bringing it under Board rules and they sought a permit. He talked about the Board granting a hearing would result in every low hazard dam to have a trial-type evidentiary hearing, and the *Delaney* and *Daffin* cases do not apply, which he explained because this matter is about the Board's technical review of the design for a low hazard dam and not about water rights.

Ms. Lambert wanted clarification the Board's responsibility is about whether the dam is safe and what does that mean, and Mr. Strong again stated that staff engineers have reviewed it against all regulations and specifications and determined that it is in fact safe according to all rules.

The members had questions about how the design increased to 27 feet, whether the dam is complete, is the siphon in place, and has a P.E. stamp of approval. Mr. Cecil Bearden, project engineer, spoke to the members about the increase in design to allow for settlement and the Board's freeboard requirement that the COE reviewed but does not have jurisdiction; he explained the decision that the proposed siphon be larger than required, can be installed within a week, and is more reliable than a valley floor drain.

Mr. Sevenoaks commented about the Board airing on the side of transparency and because there had been protests, to do some type of notice and opportunity to be heard. Mr. Strong said that could be reviewed during the next rulemaking cycle.

Chairman Herrmann stated he would entertain direction from the Board.

Ms. Lambert moved to approve with the caveat that notice be included in the next rulemaking, and there were comments that not be part of the motion, and Ms. Lambert restated her motion to just approve the application.

A citizen asked for a point of order to be allowed to speak to the members. Chairman Herrmann allowed comments from the public.

Ms. Kim Corbin spoke to the members to clarify the ownership of land which is in trust. Mr. Max Corbin spoke to the location of the dam, the lack of information regarding the flow, and about gravity flow versus a siphon, and there should be a hearing to bring forth the facts. Chairman Herrmann stated the water rights issues he mentioned would be considered under a water rights hearing.

Ms. Lambert asked if the applicant would still need to come back to the Board for a water permit, and Mr. Strong answered for any use other than domestic. He said it is the OWRB's job to make sure water is passed to meet downstream domestic use needs. Mr. Corbin asked for due diligence to be applied in this case.

Mr. Daniel Rydell, landowner one-fourth mile downstream, spoke to the members about the merits of a siphon and the 10" conduit. Mr. Strong answered the flow issue regarded water rights, and the conduit requirement is to pass water so that the dam won't be breached, that downstream appropriator and domestic use is in place, and the rules prescribe the diameter of the conduit that needs to be in place based on the volume of the water impounded by the dam to pass water. The rules are in place based upon the public participation process and when approved by the Legislature and Governor there is the expectation that if someone wants to build a dam and follows the rules of the Board that those are going to be approved, and that is what has happened in this case. Staff has reviewed it for compliance with the rules and recommends approval.

Ms. Feaver asked if the order of the process would be to have a permit before building the dam, and Mr. Strong responded not necessarily because people have the ability to impound water for domestic use purposes that don't require a permit from the OWRB. He talked about how the size of the dam does not preclude the right to impound water.

Mr. Bill Rydell spoke to the members about the Board's rules regarding water rights, and Mr. Strong again stated this matter concerns only the dam safety issue. They discussed the water rights process, that only the right to domestic use would be authorized until the applications for other use are processed, and whether the "cart was before the horse," which Mr. Strong said the rules do not say the water rights must be approved before the dam may be approved. He emphasized again that domestic use does not require a permit and the other uses the applicant has applied for are not approved until those applications are processed, which is why there must be the ability to pass water downstream and not to impound more than their domestic use right. Mr. Rydell contended the Board was not following its own rules and asked for explanation which Mr. Strong offered to do further after the Board meeting.

Mr. Mark Fariss said he owned 155 acres involved with this stream, he was concerned about the water flow being stopped, and he said that the applicant had begun building the dam without an engineer with no regard for other landowners. He said the applicant has a right to build the pond, but he and others had a right to water as well.

Mr. Jeff Fariss, landowner, expressed his concern about "natural flow" and Mr. Strong responded the numbers are not arbitrary but calculated by engineers before it went through the rulemaking process. Mr. Fariss was concerned about measuring flow, and Mr. Strong said the Board had the ability to model flows. Chairman Herrmann stated those questions would be considered during the water rights hearing, which will go to notice.

Ms. Lambert stated that it is her understanding the Board's job is to adhere to the rules as they are, not as we'd like for them to be, and she moved that the application be approved. Mr. Buchanan seconded.

Chairman Herrmann asked for Board discussion. Mr. Fite asked Mr. Bearden about the comment made that a spring had been covered by the dam, and if there is a spring, would that cause an issue. Mr. Bearden stated that is not the case and he explained the original SCS group building the dam is of high integrity and would have moved the core had there been a spring; there is a leak in the toe of the dam and he provided a comparison about other structures and characteristics that concern normal leaking of dams. Mr. Fite said he was concerned about it being an institutional constraint to safety, and Mr. Strong said there are after-the-fact provisions for inspection to maintain integrity.

Ms. Feaver asked about the "Possible Executive Session" stated on the agenda item, and Mr. Strong and Mr. Barnett answered that is standard; the practice began a few years ago because it is

allowed by the Open Meeting Act for Boards to go into Executive Session to discuss contested cases if the Board chooses to have discussion outside the parties' hearing, and is an option.

Ms. Lambert clarified that the application is only about dam safety, the dam is a small earthen structure and the uses that are mentioned must be applied for, and cannot happen as a result of what the Board decides, and Mr. Barnett stated that is correct, they cannot lawfully use water for non domestic purposes.

3. Possible Executive Session; and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter Executive Session.

5. Vote on whether to approve or deny the application, or vote on any other action or decision relating to the application.

Chairman Herrmann stated Ms. Lambert has made the motion and seconded by Mr. Buchanan.

Mr. Buchanan said he did second the motion, but would like to offer a friendly amendment regarding a timetable on the installation of the siphon to be installed within one month. Ms. Lambert agreed to the amendment to the motion.

Ms. Feaver asked about the timeframe regarding when the Board would hear the requests for permit issues, and Mr. Barnett stated the evaluation of the water rights applications has not finished, then there will be notice and hearing process, and it could be a significant amount of time.

Chairman Herrmann stated a motion had been made, seconded, and an amendment for a 30-day timeframe for the completion of the siphon and grass, which was agreed to. He asked if there were any other questions. There were no other questions or discussion, and he called for the vote.

AYE: Buchanan, Fite, Feaver, Lambert, Hitch, Herrmann

NAY: Sevenoaks

ABSTAIN: None

ABSENT: Drake, Drummond

Ms. Feaver stated she voted on the dam safety only. Chairman Herrmann commented that in situations when the cart is before the horse (dam safety regulations and using water without a permit), it puts the Board in a difficult situation; they are volunteer members trying to do their best to comply with the law, and he asked that people follow the rules.

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

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 a proposed Executive Session for the purpose of discussion of *Chickasaw and Choctaw (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)*, etc., and he asked the Board's legal counsel if that would be appropriate in this particular case.

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.

Mr. Jerry Barnett, General Counsel, stated to the members that he did advise the disclosure of the discussion of this litigation as reflected on the agenda will seriously impair the ability of the Board and the State of Oklahoma 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.

Chairman Herrmann stated he would accept at motion to enter Executive Session, and Mr. Buchanan so moved. Mr. Hitch seconded the motion.

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

NAY: None

ABSTAIN: None

ABSENT: Drake, Drummond

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

Executive Secretary Mary Schooley was designated to keep written minute of the Executive Session.

C. Executive Session, if authorized.

The Board entered Executive Session at 11:47 a.m. on Tuesday, March 18, 2014.

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

Mr. Hitch moved to return to Open Session, and Mr. Buchanan seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Drake, Drummond

The Board returned to Regular Session at 12:04 p.m.

There was no action taken by the Board as a result of the discussion in Executive Session.

7. 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.

Chairman Herrmann stated there were no New Business items for the Board’s consideration.

8. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 12:05 p.m. on Tuesday, March 18, 2014.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Tom Buchanan, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
F. Ford Drummond

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

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