

OKLAHOMA WATER NEWS

Bimonthly Newsletter of the Oklahoma Water Resources Board



*from
the desk
of the
Director*

Duane A. Smith
Executive Director

In my last column, I told you about the proposal concerning a discounted purchase of Sardis Lake water supply storage. I found support for that strategy when I discussed it with members of the Oklahoma Congressional delegation in July. In the upcoming session of the Oklahoma Legislature, the Water Resources Board will request funding be included in the Capitol Improvement Bond Issue to finance such a discounted buyout. We believe it would be in the best interest of the state to completely resolve the Sardis debt issue before seeking a buyer of the water supply in the lake.

As you know, the OWRB administers the Wastewater Facility Construction Loan Program (SRF) that assists cities, towns and other qualified entities construct or improve wastewater facilities. The success of this program prompted the Oklahoma Department of Environmental Quality to ask the Water Resources Board to assist in administering funds for EPA's new Safe Drinking Water State Revolving Fund. The first year of the program will be funded by \$27.8 million in EPA money that must be matched with approximately \$3.5 million in state money for FY 97 and nearly \$2.1 million for FY 98. We will ask the Oklahoma Legislature to appropriate matching funds for the FY 97 capitalization grant.

A separate proposal by the OWRB and DEQ will seek statutory authority to create an account to underwrite loans to public water systems for acquisi-

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Don't Rely on Courts to Settle Tribal Claims, Says EchoHawk

Governor's Water Conference takes on tough issues: Indian water claims, swine and poultry farming

Larry EchoHawk, born on Oklahoma's Pawnee reservation, stressed cooperation and negotiation in resolving Indian water claims in the state. EchoHawk, a professor of Native American law at Brigham Young University, was one of three authorities on Indian water law who addressed the Governor's Water Conference November 5.

EchoHawk's unique career has placed him on both sides of the issue. He served as tribal attorney for the Shoshone-Bannock Tribe in Idaho, then later, as Idaho attorney general, represented the state in negotiating Native American claims on the Snake River.

"I read in the newspapers that native people in Oklahoma have claimed rights to 85 percent of the state's water," he said. "There is a tendency to believe these ancient claims are not viable, but that is a mistake. The treaty of Dancing Rabbit Creek of the 1830s is the genesis of the claims Oklahoma native people are asserting now," he pointed out.

EchoHawk reminded conferees that Indian rights are controlled by federal law and take priority over rights established by state law. "The fact that state law does not account in any way for tribal rights is symptomatic of the problem," he said.

The documents that created the reservations don't mention water, but the basic premise of the Winters Doctrine is that they do not have to. The water right is implied because the government intended the land to be a permanent homeland. The people living on the reservation could not be expected to

live without water, he said.

"Don't be eager to litigate the Indian claims. It can be an all-or-nothing shake of the dice," he warned. "The only victory will belong to the lawyers, and years and years and millions of dollars later, you still may not have a decision." Then the federal government will be obliged to assert its trustee role and come in on the side of the tribe, at which time, you could face the influence, resources and might of the U.S. Justice Department, he said.

Bob Rabon, general counsel for the Choctaw and Chickasaw nations, emphasized that since 1775, the federal government has dealt with the Indians on a government-to-government basis.

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Larry EchoHawk

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It recognized tribal sovereignty through a series of laws which also prescribed that any ambiguous law is to be interpreted to favor the tribe; only Congress can regulate commerce with the tribes; and the federal government would act as trustee, Rabon said.

In the early 1800s, after years of negotiations, the Choctaws traded land in the southeastern United States for an equal amount in Oklahoma, and subsequently, sold the Chickasaws land. Between the two tribes, they held 13 million acres in southeastern Oklahoma. The land, along with the natural resources, was conveyed by patent from the federal government in 1842.

"The land was regarded by the tribes as communal property until the allotment process divided it among tribal members in preparation for statehood," Rabon said. The property in southeast Oklahoma was conveyed by deed from the tribe.

"We believe the tribes have a reserved right to the water. Both the Organic Act and the Oklahoma Constitution recognize Indian rights," Rabon asserted.

Some surplus water in the Kiamichi basin was offered for sale to the North Texas Municipal Water District by the Water Resources Board in 1991, bringing the issue of Indian claims to the forefront.

Tim Vollmann, regional solicitor for the Southwest Region of the U.S. Department of Interior, said the federal reserve rights doctrine establishes a right for Native Americans to use water necessary to support the land.

"The priority of Indian water rights is based on the date of creation of the reservation, and state law is not applicable," Vollmann said.

The Winters Doctrine stemmed from a U.S. Supreme Court decision in a Montana case. In 1889, a group of non-Indian water right holders began diverting water upstream for irrigation. The court ruled those holding water rights junior to the Indian rights had to release water for downstream users. Not until 1963 was the doctrine revived, when *Arizona v. California* asked the Supreme Court to determine rights to water in the Colorado River, including rights to water for reservations near the state line. The court ruled the Indians were entitled to water to irrigate land on the reservations.

In 1976, the Supreme Court authorized state courts to settle disputes on water rights held by Indian reservations, Vollmann said.

"Seniority of the water right depends on the date it was conveyed to the tribe or the establishment of the reservation," he pointed out. "In Oklahoma, it is clear that the tribes were here first and possess senior water rights."

He noted that Oklahoma is a late-comer to the Indian water rights arena because the state receives more rain than states farther west.

OWRB Executive Director Duane Smith, speaking on a panel devoted to state issues, said he believed early in the Sardis negotiations that Indian claims could confuse or cancel any state initiatives to sell Sardis water. "However, now the focus is on what we can do to promote economic development and proper water management. I believe there are lots of things we can agree on with the tribes."

Also speaking on the State Agency Issues panel were Mark Coleman, executive director of the Department of Environmental Quality; Dennis Howard, commissioner of the Department of Agriculture; and John Hassell, director of water quality programs of the Conservation Commission.

Confined animal feeding operations, CAFOs, provided another complex topic. It was the issue addressed by Tulsa Mayor Susan Savage and Attorney Janie Hipp of the National Agricultural Law and Research Center.

A strong economy and clean environment can coexist

Mayor Susan Savage said Tulsa has been working for more than a year to protect its water supply from pollution by nutrients contributed by millions of chickens housed in the watershed. She pointed out that poultry farms apply enormous amounts of litter to the rocky land of eastern Oklahoma.

"It is equivalent to placing 11 homes on a single acre of land and providing little or no wastewater treatment," she said. Tulsa supplies drinking water to 500,000 Oklahomans and has a primary role in protecting that water supply.

"The most difficult group to get to the discussion table are the companies whose exclusive interest is their bottom line," Savage noted. Their argument is that waste management is the responsibility of the contract grower, but it misses the point, she said.

"All parties must make the commitment to solve the problem of pollution from animal waste disposal." The

agencies must coordinate activities, set standards and hold the growers and producers responsible, she said.

It is much too costly to treat contaminants out of the water supply

Agricultural regulations are extremely complex issues, noted Janie Hipp, with federal laws such as the Clean Water Act, Clean Air Act, Safe Drinking Water Act and the Endangered Species Act providing the base for state regulation.

"Environmental issues associated with agriculture remain a moving target," Hipp said, "however the strong regulatory programs historically in place in Iowa and Minnesota have not harmed their agricultural production. Nine states, including Oklahoma, have passed anti-corporate farming laws, but the exemptions granted in those statutes have eaten the rule, she pointed out.

"As part of the changing regulatory
Continued on page 5

1. Speaker of the House of Representatives Loyd Benson outlined his expectations for the upcoming legislative session.

2. Janie Hipp said strong regulatory programs need not harm agricultural production.

3. Executive Director Duane Smith spoke on the State Agency Issues panel.

4. Cecil Wildman, Phillip Klutts and R.K. Johnson visit during the coffee break.

5. Bob Rabon spoke on Chickasaw and Choctaw claims in southeast Oklahoma.

6. Bill Cauthron, Reese Daugherty and Rich Coughlin check recording equipment.

7. Dave Dillon of the DEQ visits with Mike Melton, OWRB assistant director.

8. Tulsa Mayor Susan Savage told conferees how the city is protecting its watershed.

9. Native American conferees visit with speaker Larry EchoHawk, left.

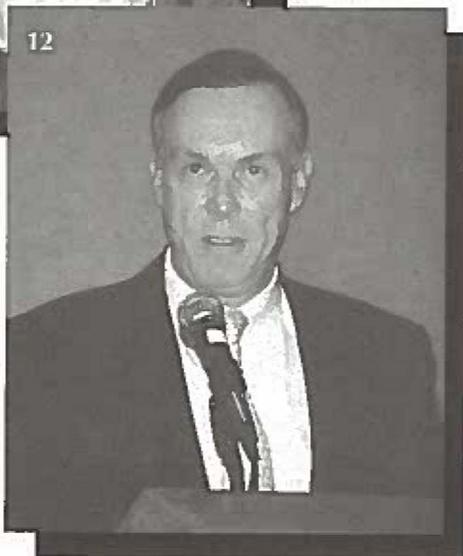
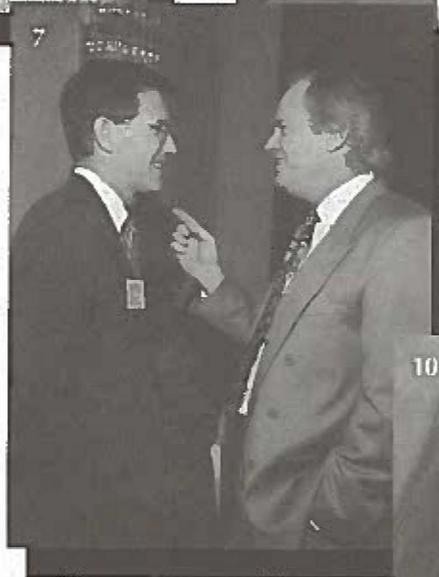
10. Lynda Loucks and Christy Davis explain the Water Watch program to a visitor.

11. Tim Vollmann explained the priority of Indian water rights.

12. Secretary of Environment Brian Griffin updated conferees on the Animal Waste and Water Quality Protection Task Force

13. Kim Brown of the OWRB Financial Assistance division explains Board's financing options.

14. Mary Nell Brueggen and Linda Eaton assist with registration



Eighteenth Annual Governor's Water Conference - November 5, 1997



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tion of land or conservation easements to protect watersheds that supply drinking water.

In an initiative related to the Wastewater Facility Construction SRF, the Board will ask that present language restricting loans for the abatement of nonpoint source pollution be removed from Oklahoma Statutes.

Conference Honors Three Water Pioneers

In a continuing effort to recognize Oklahomans who have made significant contributions in the field of water resources, three men were presented Oklahoma Water Pioneer Awards at the Eighteenth Annual Governor's Water Conference November 5. Dr. Wayne Pettyjohn, Stillwater; John "Jack" Story, Tulsa; and Lonnie L. Farmer, Davidson, were honored by the Oklahoma Water Resources Board and 27 other water-related organizations.

Presenting the awards were Speaker

Federal statutes permit funding of nonpoint source projects, and with the proposed amendment, Oklahoma would be aligned with the federal program.

All of us look forward to the 1998 Legislative Session to strengthen programs that are already enormously successful at the OWRB.

To all our readers and customers, a Joyous Holiday Season!

Loyd Benson, Oklahoma House of Representatives, and OWRB Chairman J. Ross Kirtley.

The Oklahoma Water Pioneer Award was initiated in 1985 to honor Oklahomans who have made outstanding contributions in the planning, management, development and conservation of the state's water resources.

Dr. Pettyjohn, OSU professor emeritus, holds a Ph.D. in geology and was admitted to the Bar of the State of North Dakota. He taught hydrogeology to hundreds of petroleum geologists stranded by the collapse of the oil industry in the early 1980s. He has authored or co-authored more than 150 publications.

Conference, continued from page 2

environment, the ability to file nuisance suits challenging the corporate farms must be examined in tandem with right to farm laws and the changes on the federal level," she said. "Oklahoma is certainly at the front in feverishly changing its agriculture regulatory structure."

She said little has been accomplished in making the contract grower liable. In most cases, the contract grower simply does not have the resources to implement the changes in waste management regulations. She believes the state legislature needs to examine the right to farm laws and determine who they are supposed to protect. Hipp said the answer is in addressing environmental issues with fairness and building in incentives to encourage compliance.

Secretary of Environment Brian Griffin continued the topic of corporate farming in his luncheon remarks. Griffin, chairman of the Governor's Animal Waste and Water Quality Protection Task Force, said it is a shining example of people working together and putting aside private agendas. The task force is composed of seven state agency representatives and eight citizen members.

Griffin said the final report will recommend county option votes on whether to allow corporate farms; suspending the issue of new CAFO licenses; and keeping regulation of CAFOs at the Department of Agriculture, with additional funding appropriated for expanded enforcement activities.



Above, Board Chairman Ross Kirtley presents Water Pioneer Award to Dr. Wayne Pettyjohn, OSU professor emeritus.



Kirtley and Speaker Loyd Benson shown above with Lonnie Farmer, center, named Oklahoma Water Pioneer.



Kirtley congratulates Water Pioneer Jack Story, honored for his work in development of the Kerr-McClellan Arkansas River Navigation System.

Jack Story, Tulsa, was influential in the development of the McClellan-Kerr Arkansas River Navigation System and creation the Arkansas-Oklahoma Port Operators Association. He served as an officer and board member of the Arkansas Basin Development Association.

Lonnie L. Farmer, founding member of the Oklahoma Rural Water Association, banker and former mayor of Davidson, has long been involved in bringing ample supplies of good quality water to rural Oklahomans. He is a member of the Oklahoma Water Resources Board.



Rules Hearing January 22

Derek Smithee, chief of the Board's Water Quality Programs division, announces a formal hearing on Oklahoma Water Quality Standards will be held at 7 p.m. January 22 in the Board Room of the Water Resources Board, 3800 N. Classen, Oklahoma City.

According to Smithee, revisions are proposed in Chapters 45 and 46 of the Rules and Regulations. Proposed rules are a result of comment gathered at informal public meetings.

Copies of the proposed rules are available at OWRB offices or by calling Smithee at (405) 530-8800. Oral comments will be welcomed at the hearing; written comments will be accepted through January 22.

Board Asks Public Participation

Duane Smith, executive director, invites water users and customers of the Water Resources Board to attend informal meetings on changes proposed to the Board's Rules and Regulations. All members of the public are invited to attend and present suggestions for rule changes.

The OWRB adopts rules to carry out duties as required and authorized by state law, including administration of stream water and groundwater rights, water well drillers and pump installers' licensing, safety of dams and floodplain management on state property.

The Board is considering changes in several subject areas, including waste by pollution for groundwater applications, clarifying meaning of municipal use and public water supply use, rules on water well locations in areas of wastewater lagoons, well cementing and sealing requirements, making the requirement to show beneficial use more stringent and exempting certain uses from floodplain management requirements.

The public is invited to sit down with staff in informal sessions and discuss these and other areas of rule changes.

Meetings are scheduled as follows:

GUYMON - December 16, 7 p.m. - Texas County Activity Center

WOODWARD - December 17, 7 p.m. - High Plains Institute of Technology

McALESTER - December 30, 7 p.m. - First National Bank Conference Room

Smith pointed out that a meeting will be scheduled in Tulsa and the date announced later. For information on the meetings or proposed rule changes, please call Mike Mathis, chief, Planning and Management Division, (405)530-8800.

FINANCIAL ASSISTANCE PROGRAM UPDATE

Approved at September and October 1997 Board Meetings

FAP Loans

4.372% 1997 Bonds, 30-year maximum term

| | |
|----------------------------------|-----------------|
| Broken Arrow MA | \$ 2,805,000.00 |
| Mayes County RWD#2 | \$ 825,000.00 |
| Rogers County RWD#3 | \$ 750,000.00 |
| Grand Lake PWA | \$ 655,000.00 |
| Mayes County RWD#3 | \$ 465,000.00 |
| Nowata County Cons. RWD #1 | \$ 245,000.00 |
| Duncan PUA | \$ 2,480,000.00 |
| Checotah PWA | \$ 3,025,000.00 |
| Chouteau PWA | \$ 1,015,000.00 |

SRF Loans

| | |
|-----------------------|-----------------|
| Broken Arrow MA | \$ 1,570,000.00 |
| Duncan PUA | \$ 1,431,132.24 |
| Perry UA | \$ 177,016.00 |
| Tulsa MUA | \$ 2,272,400.00 |

FAP Grants

None

TOTALS

| | FAP Loans | FAP Grants | SRF Loans |
|-----------------|------------------|-----------------|------------------|
| APPROVED | 192 | 409 | 61 |
| Amount | \$238,610,000.00 | \$23,033,209.32 | \$220,851,733.70 |
| FUNDED | 176 | 388 | 57 |
| Amount | \$233,430,000.00 | \$21,153,279.76 | \$214,768,118.24 |

Mary E. Whitlow, Editor

Barry Fogerty, Writer, Photographer

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