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FOR FURTHER INFORMATION,
PLEASE CONTACT:

Duane Smith, Executive Director
Oklahoma Water Resources Board
(405) 530-8800

***Water Board Discusses New Law
Concerning Water Use for Swine Operations***

At their monthly meeting on July 9, 2002, members of the Oklahoma Water Resources Board agreed to take a "case by case" approach to a new state law governing the meaning of a "camp or recreational site" in the approval of water use permits for hog facilities.

The Board's informal discussion of the matter was prompted by recent passage of House Bill 2330, which supplements the agency's three-mile setback rule prohibiting the approval of water use permits for new or expanded swine operations in Oklahoma if they are within three miles of qualifying camp or recreation sites (with certain exceptions). Anti-hog organizations and others protesting OWRB permit applications have often claimed the existence of recreational sites to block the issuance of water use permits for those facilities.

The new law states the following: "In determining whether any such area or facility is a camp or recreational site, the Board shall consider

- a.) whether a reasonable person, after considering the totality of the circumstances, would determine that the area or facility is *predominately* [emphasis added] used for camping or recreational purposes;
- b.) the type of permanent structures or fixtures of a recreational nature located on the land;
- c.) the frequency with which the site is used for recreational purposes;
- d.) the types of activities which are conducted or engaged in on the site; and
- e.) any other factors the [Board] deems directly relevant to the question of whether a site is recreational in nature."

According to OWRB Executive Director Duane A. Smith, the use of the word "predominately" in the new law was key to the Board's discussion. Smith said staff had researched the definition of "predominately" in several sources and found that all definitions concur that "predominate use" would simply be the most obvious or actual use with the amount of usage being dependent on the context.

"Determining the amount of usage is often a very subjective matter," Smith pointed out. "After some debate, the members of the Board decided it would be prudent, at least for the time being, to decide each permit application potentially impacted by the setback rule on a case-by-case basis consistent with the apparent general intent of the new law and existing agency rules."

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“For example,” Smith added, “the Oklahoma Department of Wildlife Conservation may lease a few tracts of its 15,000-acre Beaver River Wildlife Management Area for cattle grazing. The “predominate” use of the land is for recreation. On the other hand, a rancher may allow a non-profit organization, such as the Boy Scouts of America, to use a portion of included pasture land for occasional camp-outs. That land remains predominately pasture land with only incidental use or camping and/or recreation.”

Agency rules indicate that in making a factual determination whether a given parcel of land is owned or operated as a camp or recreational site by a nonprofit organization, the Board must consider the manner of use, whether the site features permanent equipment or fixtures, the regularity, frequency and duration of recreational use, the number of persons who use the land for camping/recreational purposes, and whether the nonprofit organization holds the land on which the camp or recreational site lies by a deed or lease filed of record in the county clerk’s office.

The next monthly meeting of the OWRB will be held August 13 at Northeastern State University, in Tahlequah, and will feature a guided tour of the Illinois River watershed on August 12. For more information on the OWRB, agency rules, programs, or upcoming meetings, visit the Water Board’s Web site at www.owrb.state.ok.us.

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