

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

February 11, 2003

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Grandstaff, at 9:30 a.m., on February 11, 2003, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof.

A. Invocation.

Member Ervin Mitchell gave the invocation.

B. Roll Call

Board Members Present

Grady Grandstaff, Chairman
Richard Sevenoaks, Vice Chairman
Ervin Mitchell, Secretary
Harry Currie
Lonnie Farmer
Richard McDonald
Bill Secrest
Glenn Sharp
Wendell Thomasson

Board Members Absent

None

Staff Members Present

Duane A. Smith, Executive Director
Mike Melton, Assistant to the Director
Dean Couch, General Counsel
Jim Schuelein, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Mike Mathis, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Others Present

Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Michael Hobbs, Texas
Helen Cline, Cline Family, Hennessey, OK
Cathie Arnold, Cline Family, Norman, OK
Wendy Wipperman, Standard & Poor's, Dallas, TX
Mal Fallon, Standard & Poor's, Dallas, TX
Barry Bolton, Oklahoma Department of Wildlife Conservation, Oklahoma City, OK
Janell Smaltz, Oklahoma Department of Agriculture, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independence Petroleum Association, Oklahoma City, OK
Pam Haden, Cline Family, Hennessey, OK
David Hawkes, City of Durant, McKinney, TX
Kelly Hunter, Office of the Attorney General, Oklahoma City, OK
Larry Edmison, Oklahoma Conservation Commission, Oklahoma City, OK
Robert Shelton, City of Tulsa, OK
Larry Swanson, Sierra Club, Oklahoma City, OK
Zack Williams, Oklahoma Gas & Electric, Oklahoma City, OK
Chris Cochran, Capitol West, Oklahoma City, OK
Larry hall, Town of Foss, OK
H.W. Pitzer, Town of Foss, OK
Don Maisch, Department of Environmental Quality, Oklahoma City, OK
Martha Ober, BancFirst, Oklahoma City, OK
Julia Alderett, EPA Region 6, Dallas, TX
Terri Crisp, EAP Region 6, Dallas, TX
Ed Brocksmith, Save the Illinois River, Tahlequah, OK
Jeannine Hale, Sierra Club, Sapulpa, OK
Ed Fite, Oklahoma Scenic Rivers Commission, Tahlequah, OK
Anita Anderson, Lincoln County Rural Water Sewer District #4, Agra, OK
Sarah E. Tenn, Office of the Attorney General, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Grandstaff stated the draft minutes of the January 14, 2003 Regular meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were deletions or additions. Mr. Mitchell moved to approve the minutes of the January 14, 2003, Regular Meeting, and Mr. Thomasson seconded.

AYE: Currie, Farmer, McDonald, Mitchell, Secrest, Sevenoaks, Thomasson, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Sharp

(Mr. Sharp arrived at 9:42 a.m.)

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, began his report by talking about Governor Henry's "State of the State" address, the state's current budget situation, and recommendations for budget cuts, consolidation and transfer of state programs that would affect virtually every state agency.

Particularly regarding the OWRB, Mr. Smith said the Governor has recommended continued BUMP funding, REAP grants funding of \$3.955 million, and a tap fee of \$.50 per tap for rural water users and municipal users to be used for funding of the state's financial assistance programs and address needs of the estimated \$3 billion for water and wastewater infrastructure for the next 20 years. He said the recommendation, while not everyone is supportive for a tap fee, does put the matter on the table for discussion; everyone does agree there needs to be money put into the SRF to meet these needs in the future. The Governor recommended a 3.5% cut from the OWRB budget. Mr. Smith asked Mr. Melton to brief the members on the status of legislation affecting the OWRB.

Mr. Melton said this is the second week of the session, and things are beginning to pick up. He said the first deadline is Thursday, February 13, to get bills out of committee. He said there has been fewer bills filed this session overall, but more environmental bills have been introduced. Mr. Melton provided a tracking report, and reviewed the pertinent legislation with the Board members. Mr. Smith added that it is early in the session and most bills should be considered a "work in progress."

Mr. Smith introduced Mr. Miles Tolbert, Governor Brad Henry's appointment as Secretary of Environment and invited him to make a few comments to the Board. He said the Board has worked with Mr. Tolbert on several issues in the past, and held in high regard his abilities. Secretary Tolbert stated he appreciated the opportunity to address the Board in his new capacity; he has been visiting all the agencies, boards and commissions in the environmental area. He said he wanted to particularly come today because it is clear as he looks at the issues facing the state today, the most critical issues are those that come through this Board. He said this is the most active Board, because of its structure, and because of the personal involvement in the individual proceedings and the operations of the agency.

Mr. Smith concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that Tulsa is requesting a Clean Water SRF Interim Construction Loan in the amount of \$2,570,000.00 to replace the Southside Treatment primary clarifiers number one and two; rehabilitate two lift stations, manhole and pipeline rehabilitation, replacement of two pumps and loaders at the Apache lift station, and for an engineering design report and preliminary plans to rehabilitate two anaerobic digesters at the Northside wastewater treatment plant. Mr. Freeman noted provisions of the loan agreement. He said Tulsa has been a long-time, and excellent, loan customer of the Board. He said Tulsa is the Board's largest loan customer, with 14 outstanding loans with the Board, providing over \$200 million dollars over the past 13 years. Staff recommended approval of the loan request.

Mr. Bob Shelton, Senior Special Projects Engineer, was present in support of the loan application.

Mr. Secrest moved to approve the loan to the Tulsa Municipal Utility Authority, and Mr. Mitchell seconded.

AYE: Currie, Farmer, McDonald, Mitchell, Secrest, Sharp, Thomasson, Grandstaff

NAY: None

ABSTAIN: Sevenoaks

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman said this item is for the consideration of a \$8,730,000.00 request for a State Loan Program Revenue Bond loan program for the Tulsa Metropolitan Utility Authority. He said Tulsa is requesting the loan to replace sewer lines in the Coal Creek, the Flatrock Creek, and the Central Park relief basins. He said the loan will be funded through the Board's series 2001 bond issue with a variable or fixed interest rate in place at the time of closing. Mr. Freeman noted other provisions of the loan agreement. Staff recommended approval of the loan request.

Mr. Shelton was present in support of the loan application.

Mr. Secrest moved to approve the loan to the Tulsa Metropolitan Utility Authority, and Mr. Farmer seconded.

AYE: Currie, Farmer, McDonald, Mitchell, Secrest, Sharp, Thomasson, Grandstaff
NAY: None
ABSTAIN: Sevenoaks
ABSENT: None

Mr. Sevenoaks commented that the TMUA had spent \$500 million for the City of Tulsa's sewer projects over the past ten years, and projected a need for \$800 million more over the next twenty years.

C. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds, Deobligation of Funds, and Increase in Obligation of Funds for Durant City Utilities Authority, Bryan County. Recommended for Approval. Mr. Freeman said this item is a request from the Durant City Utility Authority for an increase in loan amount of \$6 million and extension of time to close their drinking water state revolving fund loan, which the Board originally approved on September 11, 2001. Mr. Freeman said that, in addition, approval of this Board order would de-obligate a \$1,585,000.00 loan, which the Board also approved in September 2001. Durant will now use just one loan combined, increased SRF loan for the project. The loan funds will be used for numerous improvements to Durant's water system, including construction of a booster pump station, 1.5-million gallon storage tank, install two 1,800-gallon per minute pumps, construct a laboratory with equipment, and purchase necessary land for the projects. Mr. Freeman said that Durant needed additional time in order to complete the engineering and environmental work on the project, and the increase in loan fund is in anticipation of higher bids being expected. With this loan, and two other additional proposed loans, Durant has a strong debt-coverage ratio at approximately 3.5-times. Staff recommended approval of the Board order.

Mr. Jon Wolfe, Financial Advisor, and Mr. David Hawkins, Engineer, were present in support of the application for extension of time and deobligation of loan funds.

Mr. Mitchell moved to approve the Board order and Mr. Thomasson seconded.

AYE: Currie, Farmer, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Thomasson, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: None

D. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for Rural Water and Sewer District #4, Lincoln County. Recommended for Approval. Mr. Freeman stated the Lincoln County RWDS #4 requested an increase in their loan

approved at the October 2002 Board meeting. He said the \$40,000 increase will make the loan \$335,000.00. The reason for the increase will be for a \$25,000 for new sewer cleaning equipment, and \$15,000 as a result of bids coming in high. The loan, along with \$129,999.00 CDB grant from the Department of Commerce will be used to install a pump station and seven miles of water lines for purchased water from the City of Chandler. Even with the increase in the loan amount, the District will have a 4-times debt coverage ratio. Staff recommended approval of the increase in loan amount.

Ms. Anita Anderson, General Manager, was present in support of the increase in obligation of funds.

Mr. Secrest moved to approve the increase in obligation of funds, and Mr. Thomasson seconded.

AYE: Currie, Farmer McDonald, Mitchell, Secrest, Sevenoaks, Sharp,
Thomasson, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

E. Presentation by Standard & Poor's of its Credit Rating Analysis of the Oklahoma Water Resources Board's Outstanding Debt Obligations. Mr. Freeman introduced Mr. Mal Fallon and Ms. Windy Wipperman, with Standard and Poor's who presented to the Board a report on the Board's outstanding debt obligations. Mr. Mall Fallon, Managing Director for the Public Finance Department, and manager of the Dallas office, and is assigned to the local and regional government group. Ms. Wipperman is the primary analyst for Oklahoma.

Mr. Fallon addressed the members and stated that in summary S&P affirmed its outstanding ratings on all of the OWRB bond issues during a recent review of the state loan program in February. He said the underpinning of the rating is the Board's strong financial oversight, stable credit quality, and strong financial performance. He said that in the last year, S&P has reviewed all of its criteria and ratings in the public finance department including criteria for state revolving loan funds. He had previously distributed an article noting the changes in criteria, which result in a more consistent rating across the state, creates a credit cushion for more seasoned portfolios with a large number of borrowers, and ability to achieve higher ratings. Mr. Fallon also provided information about a list of pool ratings across the nation, and loans reviewed in the past year.

Mr. Sevenoaks asked if the Board's rating would be negatively impacted by the state's budget shortfall. Mr. Fallon responded that local ratings usually are not affected by state budgets, unless there is a widespread economic regional event where the downturn in economy has a negative impact on local economies, that could have a ripple effect, but typically that has not been seen.

In a related matter, Mr. Currie asked about the status of Haileyville. Mr. Freeman responded that the town has provided proof of liability insurance and the mayor indicated they were in the process of obtaining an auditor. He said the town also had not provided the expense statements, and had sent several people for training in operation of the treatment plant. The next payment is due March 15, and that is expected to be made.

3. SUMMARY DISPOSITION AGENDA

Chairman Grandstaff stated that any item listed under this Summary Disposition Agenda may, at the request of any member of the Board, the Board's staff, or any other person attending this meeting, 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; however, Mr. Mathis asked that agenda items J.3., regular permit for David Spear #2002-045, and K.1., amendment to regular permit for stream water for Dolese Company #1972-269, be withdrawn from the Board’s consideration.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on the Summary Disposition Agenda and Action on items and Approval of Items 3.C. through 3. N.

Mr. McDonald moved to approve the Summary Disposition Agenda items, as amended, and Mr. Thomasson seconded.

AYE: Currie, Farmer, McDonald, Mitchell, Secrest, Sevenoaks, Sharp, Thomasson, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

C. Consideration of Approval in Accordance with the Following Proposed Orders and Proposal: Applications for REAP Grants; and Statewide Water Development Revolving Fund Proposal. Recommended for Approval:

<u>REAP Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
COEDD				
1.	FAP-01-0061-R	Meeker Public Works Authority	Lincoln	\$97,984.00
INCOG				
2.	FAP-02-0028-R	Fairfax Public Works Authority	Osage	98,922.39
OEDA				
3.	FAP-02-0024-R	Rural Water District No. 1	Woodward	99,999.00
SWODA				
4.	FAP-99-0037-R	Town of Foss	Washita	150,000.00

5. Consideration of and Possible Action on FY 2004 Proposal for Use of the Statewide Water Development Revolving Fund. Recommended for Approval.

D. Contracts and Agreement Recommended for Approval.

1. Consideration of Term Pricing Service Agreement for Business Access Lines with Southwestern Bell Telephone Company for the Oklahoma City, Lawton, McAlester and Woodward Offices.

2. Consideration of Renewal of Research Agreement with the USDA, Agricultural Research Service Grazinglands Research Laboratory for Stream Gaging Program on the Little Washita River.

- E. Applications for Temporary Permits to Use Groundwater:
 1. Marlow Municipal Authority, Grady County, #2002-595
- F. Applications to Amend Temporary Permits to Use Groundwater:
 None
- G. Applications for Regular Permits to Use Groundwater:
 1. H. Kathy Moore, Woodward County, #2002-574
 2. Loyd Coats, Cimarron County, #2002-577
 3. Edward & Robin Dunn, Harper County, #2002-584
- H. Applications to Amend Regular Permits to Use Groundwater:
 None
- I. Applications to Amend Prior Rights to Use Groundwater:
 None
- J. Applications for Regular Permits to Use Stream Water:
 1. Kerr McGee Corporation, Payne County, #1999-012
 2. Tanner Ranch, Rogers County, #2002-041
 3. **David E. Spear, McIntosh County, #2002-045 withdrawn**
 4. Mark Ichord, Pittsburg County, #2002-046
- K. Applications to Amend Regular Permits to Use Stream Water:
 1. **Dolese Brothers Company, Logan County, #1972-269 withdrawn**
- L. Well Driller and Pump Installer Licensing:
 1. New Licenses, Accompanying Operator Certificates and Activities:
 a. Licensee: MagnaCore Drilling and Environmental Services, Inc. DPC-0579
 (1) Operator: Cedric Cascio OP-1336
 Activities: Monitoring wells and geotechnical borings
 2. New Operators and/or Activities for Existing Licenses:
 a. Licensee: Davis Environmental Drilling, LLC DPC-0197
 (1) Operator: Joseph Lee Redman OP-1337
 Activities: Groundwater wells, groundwater test holes and
 Observation wells
 Heat exchange wells
- M. Dam and Reservoir Plans and Specifications:
 None
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 None
- 4. QUESTIONS AND DISCUSSION ABOUT AGENCY WORK AND OTHER ITEMS OF INTEREST.**

There were no questions or items for discussion about agency work and other items of interest.

5. SPECIAL CONSIDERATION AGENDA ITEMS

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. Supp. 2000, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. Supp. 2000, Section 309 and following.

A. Application by Pig Improvement Company, Inc., for Rehearing, Reopening or Reconsideration of Board orders Approving Applications for Temporary Permits to Use Groundwater No. 19934-520 and No. 1993-593 (“Bryan Sow Farm” and Lacey farm L6”), Kingfisher County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that these applications were approved by the Board in November of 2002. In December, the permit holder asked for a rehearing and reconsideration based on discussion at the meeting, and it was decided to postpone consideration of that request until this Board meeting. He said the request for reconsideration is around specific language in the conclusion of law regarding waste in those two final orders.

2. Discussion and presentation by parties. Mr. Jeff Hartman, representing Pig Improvement Company, addressed the members and stated the request regards six words, “in knowing disregard of the law.” He said there are four items for the Board’s attention that call for the removal of the six words from the orders: (1) *intent* is not an element in the proceedings; (2) *intent* is not an element of waste based on 1020.15(a); (3) the record contains no evidence of *intent*; and (4) any findings “in knowing disregard...” are not supported by the record. He said the criminal aspect of the case was made the subject of a proceeding in Kingfisher County, and that proceeding terminated and there was no finding of “...disregard of the law.” He argued there is no basis for the six words, and they should be removed from the order.

Ms. Pam Haden, representing herself and her brother, her sister and her father, reminded the members about the issue of intent that was brought up. She quoted the transcript of the hearing where a PIC official recognized that the wells were manifolded together, that they were drilled to a capacity of 250 gallons, and were in use after approval of the Board, however, she contested the Board had not approved the use of the wells and had not been informed of the presence of the wells. She talked about the OWRB hearing examiner’s memorandum to the Attorney General that the wells had been drilled without a permit, used the water without permit, and that once the error was discovered and upper management was informed, they did not stop use. She said that is knowing disregard and in violation of the law.

Mr. Michael Hobbs stated the matter had been adequately summarized, that the statements in the record reflects the company knew the wells were there, and once they did know, they did not stop; he mentioned pivot systems, and pumping requirements for the area, and he read from the record. He said that once the company was caught, they needed to recognize their responsibility. Mr. Hobbs asked that the words remain in orders.

In Mr. Chapman’s rebuttal, he said the facts about the permits were brought to the Kingfisher District Attorney, and criminal cases were filed, but were disposed of in that forum, and that body had jurisdiction to take action. Criminal intent was not a matter before the Board, no notice was made to PIC that that matter would be heard, and were outside the issue and outside the record of the Board. Mr. Chapman asked that for that reason the words be eliminated from the orders.

3. Possible executive session – the Board did not vote to enter executive session.

4. Vote on whether to approve the application or vote on any other action or decision relating to the order.

Mr. Thomasson asked the staff's recommendation for action on the application. Mr. Smith responded the staff's recommendation from the hearing examiner's original order included the language. He said obviously because the Board filed the misdemeanor complaint, staff felt PIC was in violation of the law more than a normal type of situation where people may be unaware of the law. He said that whether the words are or are not included are not relevant to the outcome of the permit, but because of the facts of the case, the hearing examiner included the words in the original proposed order, and staff's recommendation is that they remain in the order.

Mr. Mitchell moved that the order remain as approved, and to deny both applications for rehearing and reconsideration. Mr. Currie seconded.

AYE: Currie, Mitchell, Secrest, Sevenoaks, Sharp, Thomasson, Grandstaff
NAY: Farmer, McDonald
ABSTAIN: None
ABSENT: None

B. Considerations of Items Transferred from Summary Disposition Agenda, If any.
There were no items transferred from the Summary Disposition Agenda.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, stated that the budget report distributed in each members' packet reflects that each month the agency has operated well within its budgetary limits established by the Legislature and the Governor. Regarding announced budget cuts from the Office of State Finance, Mr. Schuelein stated a plan to accommodate the cuts is in place and will be sufficient, unless there are additional budget cuts.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

A. Consideration of Authorization for Chairman to Execute Contract for Hearing Examiner.

Mr. Duane Smith explained to the members that the Board had hired Judge Don Barnes to act as hearing examiner for the Arbuckle-Simpson hearings. Judge Barnes had been involved in a car accident and his recovery has not been as successful as anticipated. Therefore, in the essence of time, Board staff has researched the possibility of another hearing examiner and interviewed Judge Stewart Hunter who indicated an interest in serving as hearing examiner. He said the Board retained Judge Barnes at a rate of \$200 per day as was the approved rate at that time; however, the court has increased that to \$300 per day for such services. Mr. Smith stated he believed a pre-hearing conference could be scheduled within 4-5 weeks, with the formal hearing following within a few weeks. He said the hearing will be very complicated both technically and legally; there are 15 lawyers and 1600 protestants.

Mr. McDonald moved to approve the authorization for the Chairman to execute contract for hearing examiner, and Mr. Farmer seconded.

AYE: Currie, Farmer, McDonald, Mitchell, Secrest, Sevenoaks, Sharp,
Thomasson, Grandstaff
NAY: None
ABSTAIN: None
ABSENT: None

8. Presentation Of Draft Proposed New Permanent Rules And Amendments To Current Rules Of The Board – Scheduled for consideration and action at March 11, 2003, Board meeting:

A. Background and Summary of Public Participation – Mr. Smith stated that public meetings allowing comment and participation have been conducted regarding the proposed rules, which will be for a vote at the March meeting, providing thirty days review by the Board members. He said there might be members of the public in attendance today who wish to speak to the proposed rules. The next item will be for the approval of the water quality rules, and there may also be members of the public present to speak to those rules as well. He asked Mr. Mathis and Mr. Freeman to distribute the rules:

Mr. Mathis began his presentation speaking to the proposed changes to Chapter 5 regarding fees. He said the proposed changes regard fees associated with being able to file applications on line, instead of filing paper copies. He said staff is working with the Office of State Finance and through the State Portal system, to implement an agency-wide application system. Mr. Couch added the Legislature had approved legislation last session to allow agencies to institute a fee charge for on-line transactions. That is the only amendment proposed regarding fees.

B. Amendments to Chapter 20 – Appropriation and Use of Stream Water. Mr. Mathis noted the significant proposed change regards a flow restriction of 35cfs on the Barren Fork in Adair and Cherokee Counties. This rule is needed because a portion of the Barren Fork is designated as a scenic river area and the appropriation of water from the streams that are tributaries have diminished that flow. The purposes of the Scenic Rivers Act is to protect the special resource, and staff has been working long and hard with state partners in the project such as the Department of Wildlife Conservation, Scenic Rivers Commission, representatives of the Attorney General's Office, and local users. He said the board had some time ago sponsored a detailed study of the Barren Fork, titled an intream flow study to obtain technical guidance for what was necessary for protection and sustainability of the resource while balancing the need for water use in the area and the current users of the area. Part of the process included the cancellation and reduction of water rights and reduced a total permitted amount 5,388 acre-feet as a result of the process, the actual permitted amounts has been reduced significantly, to 1177 acre-feet.

Mr. Mathis explained that by setting an instream flow at 35 cfs, permits issued after July 1, 2003, may find it necessary to develop alternative sources of water, whether an irrigator, rural water district, or industry, and can include a storage site to pump water to during low flows, or look to other alternative sources such as groundwater, or out outside the basin. Mr. Mathis stated that the largest user in the area, Adair County Rural Water District #5, has participated in a Planning Assistance study with the Corps of Engineers, for approximately \$130,000.00, to evaluate how to provide water with this type of flow restriction. He said there is a significant potential impact to water users, but the objective is to protect the resource and balance use. Mr. Mathis added that partners inside the OWRB included consultation with the Water Quality Division.

Mr. Mitchell said he viewed the rules as a water management plan, to puts users on notice there may not be water available during low flows. Mr. Mathis added that existing permits would be grandfathered, and a notification system would be developed so that when the flows begin to slow and a critical level is approaching, to alert the permit holders to look to alternative sources or for example, an irrigator would "stand down" from irrigating. He said this is the first recommendation for an instream flow rule, and it is a work in progress that will be monitored closely. Mr. Secret asked if the Barren Fork is fully allocated; Mr. Mathis responded that there

is actually a lot of water in the Barren Fork. But the volumes of water that go through the Barren Fork are quite large, but there is a “tunneling” during drier times and the flow will need to protect the fishery.

Mr. Smith commented that anyone who wants to use the Barren Fork as a public water supply, is going to have to plan for off stream storage. The rule indicates that the Barren Fork should not be depended upon as an only source, because recreation and sustainability of the fish must also be provided. Mr. Smith said there has been some difference between the OWRB and ODWC about what the number should be, but the Scenic Rivers Commission and Adair RWD #5 were satisfied with the 35 cfs.

Mr. Mathis noted other proposed changes in the Chapter to allow for electronic filing of applications, grammatical changes, and updated citations.

C. Amendments to Chapter 30 –Taking and Use of Groundwater. Mr. Mathis said this year there were minor changes to Chapter 30. One proposal is for the electronic filing of applications, grammatical changes, updating citations, and typographical changes.

There were no questions or discussion by the members.

D. Amendments to Chapter 35 – Well Drillers and Pump Installers Licensing. Mr. Mathis explained that the Well Drillers Advisory Council had been hard at work reviewing the rules and making several proposals to update technology, and the significant change is adding education requirements. He said it is anticipated an arrangement with the Groundwater Association could be made to partner in the training, as well as looking for opportunities for reciprocity with sister agencies in other states.

There were no questions or discussion by the members.

Chairman Grandstaff asked for public comments regarding the proposed changes to Chapter 5, 20, 30, and 35 as presented.

Mr. Barry Bolton, Oklahoma Department of Wildlife Conservation, told the members he appreciated the opportunity to provide comment about the landmark rule to protect instream flows on the Barren Fork. He said he has participated in the public hearing process, and that dozens of meetings and hundreds of hours have gone into the proposal before the Board. He said that he applauded Mr. Smith and the OWRB staff in moving forward on the difficult and important issue. Mr. Bolton said that two instream flow studies have been conducted and the results are similar; flows in the Barren Fork vary on a weekly and monthly basis, and choosing one number to protect the wildlife community of the stream can be a daunting task. He said the best information available indicated that somewhere between 80-90% of habitat in the Barren Fork would be protected at a 50 cfs flow during July, August, and September. At the proposed 35 cfs, that percentage drops to between 70-80%. Mr. Bolton said that if it were assumed that 36 permitted users are grandfathered-in totaling 1,770 acre-feet, and assumed the pumpage is at 200 g.p.m., the potential exists there would be an additional 15 cfs withdrawn from the stream. This is not occurring today. He contended the 15 cfs protection, drops to a 20 cfs protection and at this level, the ODWC model predicts that up to 40% of available habitat and small mouth bass would be lost. The Barren Fork is one of the state’s scenic rivers and outstanding resource waters, and the ODWC believes it should be afforded the highest level of protection, consistent with existing water quality standards. The ODWC does not believe the 35 cfs achieves that goal. Mr. Bolton stated he believed they were close in agreement on the issue, and he recommended the Board direct staff to seek additional input from state resource agencies and possibly other outside experts in instream flow before finalizing the rules.

Chairman Grandstaff asked Mr. Bolton what happens to the habitat now that there is no protection during the low flow period? Mr. Bolton said the experts say fish populations track median flows, and the population now follows that. He said the ODWC is interested in reducing the median flows. Mr. Mitchell asked if there has been any significant loss of wildlife during low flows. Mr. Bolton responded the fish populations don't track a change in flow immediately, but over a lengthy period of time. He said both questions were good, tough questions to answer.

Ms. Marla Peek, Oklahoma Farm Bureau, stated to the members she agreed with Mr. Mathis that this is new science, and she was concerned about the Rural Water District having enough water. She said the issues her members are always concerned about are loss of land taken by eminent domain for reservoirs, and it sounded like that is a possibility when offstream storage is required. The OFB would like to see the 35 cfs established at this point; it can be changed in the future if that is deemed to be necessary.

Mr. Ed Fite, Oklahoma Scenic Rivers Commission, encouraged the Board to continue to press forward with seeking the instream flow. He said Mr. Bolton raised good issues. He said in the mid-1980s, they thought a flow of 13 cfs was established after setting 12.8 cfs for Flint Creek. The issue has been deliberated a long time, and he supported a benchmark being set. He said the Barren Fork reached its highest point in 2000 at 26.1 feet, highest recorded, and the Illinois River in 1950 was at less than 1 cfs, so there is fluctuation in the streams. He commended the Board for its bold efforts over the past two years in protecting Oklahoma's Scenic Rivers. He said the court of public opinion in Oklahoma want rivers like the Barren Fork and Illinois protected, not just for canoeing and recreation, but for the aquatic community, and for the aesthetic value. He supported the agencies reaching an agreement over the next month. He also recommended that water supplies next to scenic rivers be funded for infrastructure being in place to adequately provide water to the users, and takes water during high flows.

Ms. Jeannine Hale, Oklahoma and National Sierra Club, stated to the members she was present today to support the position of the Oklahoma Department of Wildlife Conservation. She said this rulemaking proceeding has gone on for a long time, and the Sierra Club has submitted comments supporting the US Fish and Wildlife Service and the ODWC over a year ago. She said there hasn't been a compromise, and she believes the OWRB and the Legislature has already struck the balance because it has been designated a scenic river and the OWRB has designated it an outstanding resource water in the WQS. The water quality is to be maintained and approved, and the problem with the cfs is it allows a lowering of water quality and isn't protecting the fish to 100%, allowing an impact on the fish community. She contended that does not meet the anti-degradation provisions in the WQS. Ms. Hale said the experts are the ODWC and USFWS, but there may be other species that are not being protected, and a 35 cfs means that that could be a minimum year round which would be an added stress on the fish. Ms. Hale stated that she knew the Board recognized this matter as a serious decision, and that it took it seriously, but would recommend that further study be done until there is a compromise reached that everyone can agree to.

There were no other public comments.

Mr. Mitchell commented that the recommended 35cfs is a minimum and when there is rain, the flow will be a lot higher and he did not see that there would be a continuous minimum flow of 35 cfs. Mr. Smith responded that technical expertise has been obtained, and in the studies conducted by Dr. Fisher at OSU and Dr. Bill Lehr from Arkansas, the results are very similar and further study is not going to produce different results. He said the staff looked at critical times, and at other times the average is much higher. Dr. Fisher included in his report that the grandfathered permits have not had any impact on the fishery. There were permits totaling over 5,000 acre-feet, and that has been reduced to 1,770 acre-feet so from a practical stance, those permits are not impacting the stream flow. Any new permit will have this limitation. He said to say that because of future use potentially the Barren Fork would be at a

flow of 35 cfs year round, means you do not understand the hydrology of the area. He said 35 cfs will make Adair RWD #5 establish off stream storage and get off the Barren Fork as a sole source of supply, they will have to have 300 days of off stream storage, and the District supports that because they recognize they cannot be dependent on the Barren Fork if they want future growth. All municipal users will have to have off stream storage, and irrigators will know that most summers they will not be able to use the stream and will have to have off stream storage or cease pumping. Regarding degradation, Mr. Smith said it is not just an impact to fisheries, the standard regards a long-term degradation and a 35 cfs would not provide a long-term degradation and would not be a violation of the water quality standards. He said that basically the difference is that the ODWC wants to protect 80-90% of the habitat, and the OWRB is at 70-80%.

Ms. Hale countered that the issue is not whether there is long-term degradation, that regards there cannot be degradation even in an average stream. The scenic river requires a level of protection much higher, and she believed the protection would not be at a level for even an average stream.

Chairman Grandstaff asked Mr. Freeman to present proposed rule changes on Chapter 50.

E. Proposed Amendments to Chapter 50 – Financial Assistance. Mr. Joe Freeman explained that the proposed changes in Chapter 50 are a result of Senate Bill 1247 during last year's legislative session, subchapter 8 needs modification to allow communities with a population of 1,750 to be a higher priority for a Rural Economic Action Plan grant. This is an increase from a population of 1,500. For rural water districts, the change is from 450 non-pasture taps to 525 taps. The proposed rules follow the statutory change in those two areas.

Mr. Freeman stated that in subchapter 9, changes are needed as a result of House Bill 1995 during last year's legislation session. This change enables the Clean Water State Revolving Loan Fund program to fund non-point source pollution control projects, along with traditional point source wastewater treatment and collection infrastructure construction projects. He mentioned non-point source projects funded in other states are structural best management practices such as retention ponds, stormwater wetlands, and to purchase land for conservation easements. The proposed rule changes incorporate non-point source projects in the programs priority ranking structure. In addition, the rules better align the program with the state's human health protection and water quality goals. The ranking criterion incorporates Oklahoma's water quality standards anti-degradation policy, and expands human health and water quality restoration criteria. Mr. Freeman said that at the public hearing held last week, no public comments were made regarding the rules changes, nor have any written comments been received.

There were no comments from the public nor questions or discussion by Board members regarding the proposed changes to Chapter 50.

9. Presentation Of Final Draft Proposed New Permanent Rules And Amendments To Current Rules Of The Board

A. Proposed Amendment to Chapter 45 – Oklahoma's Water Quality Standards, and

B. Proposed Amendments to Chapter 46 – Implementation of Oklahoma's Water Quality Standards

Mr. Derek Smithee stated to the members the proposed revisions to Chapter 45, Oklahoma Water Quality Standards, and Chapter 46, Implementation rules on the Water Quality Standards as applicable to general implementation by all state agencies and specific

implementation by the OWRB, were presented at the January Board meeting. He said at that time, there were two issues left somewhat outstanding:

The first issue dealt with providing clarification on how the Department of Environmental Quality does 401/404 Water Quality Certifications or Dredge and Fill permits. When the Corps of Engineers does a permit for a dredge and fill operation the DEQ is required to certify that the activity will meet the WQS; if they do not meet, they will have to establish requirements to ensure compliance with the law. There has been much discussion in the intervening months on that discussion, the Farm Bureau, Oklahoma Independent Petroleum Association, State Chamber of Commerce and others have all expressed significant concerns on that language. Staff recommendation today is that language distributed last month in 785:45-3-2(f) regarding 401 and 404 certifications be withdrawn from the Board's consideration today. The state agencies and regulated entities will work together over the next year to come up with language that will capture the way Oklahoma should deal with water quality certifications for dredge and fill permits.

Mr. Smithee stated the second issue regarded the total phosphorous language specifying full implementation. Mr. Sevenoaks had specifically requested additional language about full implementation of the 0.037 total phosphorous criteria. Through coordination with Mr. Sevenoaks, the Attorney General's office, Secretary of Environment and others, state agencies and interested parties have worked cooperatively to develop clarifying language on full implementation.

Mr. Sevenoaks spoke to the matter saying that last month he suggested that the language regarding the ten-year implementation be clarified to ensure that implementation does not begin in 9 years and 11 months, but that implementation is completed within ten years after the rule became effective. The rules under discussion are 785:45-5-19(c)(2)(B) aesthetic beneficial use, and 785:45-5-25(d) implementation policies for the antidegradation policy. The language distributed last month included the wording, "...shall be fully implemented by June 30, 2012 as authorized by state law through Water Quality Standards Implementation Plans and other rules, permits, settlement agreements, consent orders, compliance orders, compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012."

Mr. Sevenoaks stated that to clarify when the criteria became effective and what is meant by fully implemented, he suggested, and he would make the motion at the appropriate time, to the effect that staff proposed language for the two rules be revised to read, "...such criterion become effective July 1, 2002, and shall be implemented as authorized by state law through Water Quality Standards implementation plans and other rules, permits, settlement agreements, consent orders, compliance orders, and compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012."

Mr. Smithee summarized that staff would recommend approval of the proposed rules, with the two amendments proposed today that the Board withdraw consideration of the 401/404 certification language and approve the changes as recommended by Mr. Sevenoaks.

Mr. Smith noted that Mr. Sevenoaks' suggested language added the date "July 1, 2002", but it is staff's view that that is the effective date, and the addition does not change anything, but is a recitation of what already is. Mr. Sevenoaks explained that the proposed language emphasizes that the rule is effective, but there is an implementation schedule, and that schedule has to be negotiated to a point where we don't wait for 9 years and 11 months to start working on it, but that it is crucial to get started right away. Mr. Mitchell added that the Board's committee originally recommended that the rule become effective immediately, but the completion date would be 2012. There was brief discussion by the members on the clarifying language.

Ms. Angie Burkhalter, OIPA, addressed the members and said the focus of her comments regarded the withdrawal of the wetlands language. She said she had met with DEQ and OWRB and there is an understanding of the OIPA concerns. She said she appreciated their time, fully supports withdrawal of the language, and looks forward to working with them over the next year.

There were no other public comments.

Mr. Sevenoaks moved for approval, and Mr. Thomasson seconded.

AYE: Currie, Farmer McDonald, Mitchell, Secrest, Sevenoaks, Sharp,
Thomasson, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: None

10. NEW BUSINESS

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

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

11. ADJOURNMENT

There being no further business, Chairman Grandstaff adjourned the regular meeting of the Oklahoma Water Resources Board at 11:45 a.m., February 11, 2003.

OKLAHOMA WATER RESOURCES BOARD

Grady Grandstaff, Chairman

Richard Sevenoaks, Vice Chair

Harry Currie

Lonnie Farmer

Richard McDonald

Bill Secrest

Wendell E. Thomasson

Glenn A. Sharp

ATTEST:

Ervin Mitchell, Secretary

(SEAL)