

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

December 9, 2003

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Vice-Chairman Glenn Sharp at 9:40 a.m., on December 9, 2003, in the Board Room of the OWRB 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.

A. Invocation

B. Roll Call

Board Members Present

Glenn Sharp, Vice Chairman
Ervin Mitchell, Secretary
Harry Currie
Lonnie Farmer
Jack Keeley
Bill Secrest
Richard Sevenoaks

Board Members Absent

Grady Grandstaff, Chairman
Richard McDonald

Staff Members Present

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

Others Present

Gary N. Utter, Utter & Associates, Adair, OK
C.A. Borolin, Mayes County Rural Water District #5, Chelsea, OK
George Pepper, Mayes County Rural Water District #5, Chelsea, OK
Dwight Allison, Mayes County Rural Water District #5, Chelsea, OK

Erin Israel, Capitol Network News, Oklahoma City, OK
Keith Siemsen, Guymon, OK
Bobby & Donna McSpadden, Clayton, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Bob Kellogg, Protect Our Water Committee, Oklahoma City, OK
Kurt Hermanson, Protect Our Water Committee, Edmond, OK
Gene Walker, Protect Our Water Committee, Edmond, OK
Ron Jarman, Protect Our Water Committee, Edmond, OK
Lester Proffitt, Rural Water District #1, Oakwood, OK
Mayor Geary Watson, Town of Red Rock, OK
Mike Hall, City of Bartlesville, OK
Steve Brown, City of Bartlesville, OK
Jim Barnett, Kerr Irvine Rhodes Ables/Environmental Federation of Oklahoma,
Oklahoma City, OK
Geraldine W. Jay, Copan, OK
Louise Brown, Copan, OK
Rick Endicott, City of Lawton, OK
Jerry Smith, City of Edmond, OK
Brenda Maxey, representing Edmond and Lawton; Oklahoma City, OK
Doug McCleary, representing Red Rock; Oklahoma City, OK
Melvin Voth, Mayes County Rural Water District #5, Adair, OK
Ann Keeley, Ada, OK

C. APPROVAL OF MINUTES

Vice-Chairman Sharp stated the draft minutes of the November 4, 2003 Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were deletions or additions.

Mr. Keeley moved to approve the minutes of the November 4, 2003, Regular Meeting, and Mr. Sevenoaks seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Smith addressed the members and said that on November 12-15, he and several water board staff members traveled to Quartz Mountain Lodge and attended the Academy for State Goals Town Hall Meeting on Energy and Water. The Oklahoma Academy consists of 60-80 people from across the state from the business, academia, and government arenas that meet and have intensive meetings. At the conclusion, the group developed a preliminary report that supports a comprehensive water plan—how to get water for Oklahomans. There was a lot of discussion about Oklahoma's water law, about financing for water and waste water financing and infrastructure, about future growth based on population projections—1.3 million coming to Oklahoma--and being prepared with the infrastructure and water resources so that we can have economic development in Oklahoma and at the same time, preserve the environment. He said he believed there would be support this year for a comprehensive water plan that looks at

primarily how we are going to get water to Oklahomans and protect the environment. The final report will be available by the end of the month.

The Canadian River Compact Commission met in Amarillo, Texas. The Palo Duro controversy still exists; the basic piece of the meeting is that there is more dry land than wet land in that reservoir, but at the same time is stopping flow to Oklahoma in Palo Duro Creek, and is in violation of the compact. The OWRB is continuing work with the Attorney General's office on possible strategy, and one thing Oklahoma would like to see included in the compact rules is notification of any proposed reservoir, with advance notice to prepare for comments, etc.

Mr. Smith stated he also attended the Western States Water Council Groundwater Management Conference. All of the western states were represented, and the focus was the High Plains. Looking at Texas, Oklahoma, Colorado, Kansas and Nebraska, the water laws in each state are so different, managing the water differently, but the decline in the aquifer is about the same. The discussion focused on the differences in water management philosophy, how much money the states are spending in water management, what the levels of the water actually are. As we look at what we want to do in Oklahoma, particularly with the Ogallala Aquifer, focusing on what we want to protect and how we protect it, the tendency in other states is to build a huge bureaucracy and it really doesn't do anything to help manage the water. For instance, in regard to the Arbuckle-Simpson, Mr. Smith said we need look at it so that we really do manage the water, not build a bureaucracy.

Mr. Smith said that Mike Melton represented the OWRB at the Rural Area Development Task Force and gave a very good talk about rural development and is the only one of the group that has talked about water for rural development. A lot of people are talking about roads and schools and economies, which are extremely important, and we believe the water is as critical as any of those. He said that if there isn't water in the rural areas of Oklahoma, it is his view that it is a death sentence and rural Oklahoma cannot survive.

Senator Corn is hosting a meeting concerning the AES plant burning chicken litter. There is activity in legislature dealing with chicken litter, and several legislators are looking at different ideas for burning chicken litter, and the OWRB is involved in these meetings.

Mr. Smith concluded his report saying he would be traveling to Jordan this week and having meetings with the Jordanians and Palestinians and Israel to talk about water issues in the Middle East.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #5, Mayes County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Mayes County Rural Water District #5 had requested a State Loan Program Revenue Bond Loan in the amount of \$1,815,000.00. The District is requesting the loan to go along with \$300,000.00 in local funds to construct 81,000 feet of new water line and two pump stations. Mr. Freeman noted the provisions of the loan agreement, and said that by borrowing through the Board, the District will save approximately \$543,000.00 in interest expense. Mr. Freeman said that staff recommended approval.

Mr. Melvin Roff, Chairman; Dwight Allison, operator; Russ Bolin, Board member; George Pepper, Board member, and representatives of Municipal Finance Services were present in support of the loan application.

Mr. Secrest moved to approve the loan application to Mayes County Rural Water District #5, and Mr. Farmer seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Secrest, Sevenoaks, Sharp

NAY: None
ABSTAIN: None
ABSENT: Grandstaff, McDonald

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Bartlesville Municipal Authority, Washington County. Recommended for Approval. Mr.

Freeman stated that the Bartlesville Municipal Authority had requested a loan in the amount of \$1,607,000.00 in order to refinance an interim construction loan obtained from the Board on December 19, 2002. The interim construction loan is for the construction of 40,100 linear feet of 12-inch force main and a standby pump station to provide wastewater service to a new area. Mr. Freeman stated that \$592,000.00 of the funding will be from the Board's series 2001 State Bond Issue Loan Program, and \$1,015,000.00 will be from the Clean Water State Revolving Fund. Mr. Freeman noted provisions of the loan agreement. Staff recommended approval of the loan request.

Mr. Steve Brown, City Manager; Mr. Mike Hall, Utilities Director; and representatives of Municipal Finance Services were present in support of the loan application.

Mr. Mitchell noted the CWSRF loan rate is zero percent. Mr. Freeman responded that SRF loans on interim construction loans bear a current rate of 3.25%; refinancing of a long-term take-out loan following construction completion, the refinancing is 60% of the bond issue loan program at the market rate, and zero percent. The Board's agreement with EPA on receiving Capitalization Grants is that below-market interest rates will be provided to help communities come into compliance to provide water and wastewater service to communities. Mr. Sevenoaks asked if below market rates meant zero percent? Mr. Freeman responded that the rate is "blended" to get the rate below market. There was some discussion about the Board's financing strategy of blending the rate to comply with the EPA agreement, that the Board should look at a rate or fee increase to help support the program, and it was agreed that a specific agenda item would be placed on a future agenda for detailed discussion on the Board's policy and interest rates on the Board's loan programs.

Mr. Farmer moved to approve the loan to the Bartlesville Municipal Authority, and Mr. Currie seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Bartlesville Municipal Authority, Washington County. Recommended for Approval. Mr.

Freeman explained that this item is for the consideration of a request by the Bartlesville Municipal Authority requesting \$2,147,000.00 for refinancing an interim construction loan obtained from the Board on December 19, 2002, for the construction of 42,000 feet of 2-inch water line, a chlorination station, and a half-million gallon elevated storage tank. He said that \$792,000 of the loan funds will be provided from the Board's Drinking Water SRF loan program, and \$1,335,000.00 from the Board's series 2001 state loan program revenue bonds. Mr. Freeman noted provisions of the loan agreement; he said by borrowing through the Board, the District is expected to save \$649,000.00. Staff recommended approval.

Mr. Steve Brown, City Manager; Mr. Mike Hall, Utilities Director; and representatives of Municipal Finance Services were present in support of the loan application. There was some discussion that the project will service the new economic development center located south of the community.

Mr. Sevenoaks moved to approve the loan to the Bartlesville Municipal Authority, and Mr. Mitchell seconded.

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

D. Consideration of and Possible Action on a Proposed Order Approving Loan for The Lawton Water Authority, Comanche County. Recommended for Approval. Mr. Freeman stated that The Lawton Water Authority had made a request for a loan in the amount of \$3,595,922.80 in order to refinance a portion of an interim construction loan obtained from the Board on November 15, 2001, that was for Phase IIB of the sewer rehabilitation and improvement project. Mr. Freeman noted the portions of the project, as well as the provisions of the loan agreement. Staff recommended approval of the loan request.

Mr. Rick Endicott, Finance Director, and representatives of Wells Nelson & Associates were present in support of the loan request.

Mr. Mitchell moved to approve the loan request to The Lawton Water Authority, and Mr. Keeley seconded.

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

E. Consideration of and Possible Action on a Proposed Order Approving Loan for Edmond Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Freeman said the Edmond Public Works Authority had requested a loan in the amount of \$4,137,271.60 Drinking Water SRF Loan. The loan, along with \$6,259,407.40 in local funds, will be used to refinance an interim construction loan that was obtained from the Board on March 19, 2002, for water treatment plant improvements. Mr. Freeman noted provisions of the loan agreement. Staff recommended approval.

Mr. Jerry Smith, Assistant City Manager, and representatives of Wells Nelson and Associates were present in support of the loan application.

Mr. Sevenoaks moved to approve the loan to the Edmond Public Works Authority, and Mr. Keeley seconded.

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

F. Consideration of and Possible Action on a Proposed Order Approving Loan for Miami Special Utility Authority, Ottawa County. Recommended for Approval. Mr. Freeman stated that the Miami Special Utility Authority had requested an OWRB loan in the amount of \$4,780,000.00 to refinance a portion of an interim construction loan that was for a 3.5 million-gallon-per-day sequencing batch reactor wastewater facility. He said that 1,760,000.00 are to be funded by the Board's Clean Water SRF loan program, and \$3,020,000.00 is to be funded from the Board's series 2003A bond issue. He noted provisions of the loan agreement. Staff recommended approval.

Mr. Jon Wolfe, Municipal Finance Services, spoke to the members of the Board in support of the loan request.

Mr. Mitchell move to approve the loan to the Miami Special Utility Authority, and Mr. Currie seconded.

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

G. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Rural Water District #6, Wagoner County. Recommended for Approval. Mr. Freeman stated the Wagoner County RWD #6 had requested an extension of time to close its \$450,000.00 loan with the Board. The requested loan is for installing 42,800 feet of water line to serve approximately 200 new customers and replace an existing line. The District is in need of the extension until such time when a long-term purchase contract for water can be obtained. Staff recommended approval of the extension request.

Mr. Charles White, Chairman; Mr. Mark Ashburner, Board member; and Municipal Finance Services were present in support of the request for an extension. Mr. Currie asked about the District's water supply source; Mr. White stated the water source is the City of Wagoner. Mr. Secrest added that the District is experiencing water contract problems with the city involving a proposed ambulance fee for members.

Mr. Mitchell moved to approve the extension of time for obligation of funds to Wagoner County RWD #6, and Mr. Secrest seconded.

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

H. Consideration of and Possible Action on a Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds Series 2004A in Aggregate Principal Amount Not to Exceed \$79,660,000; Approving and Authorizing Execution of a Twelfth Supplemental Bond Resolution Providing for the Issuance of Said Bonds; Waiving Competitive Bidding on the Bonds and Authorizing the Sale Thereof by Negotiation and at a Discount Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement With Respect to Said Bonds; Directing Deposit of Proceeds Derived from the Issuance of the Bonds in the State Treasury and Requesting the State Treasurer to Remit Such Proceeds to the Bond Trustee; Ratifying and Approving the Form of Promissory Note and Loan Agreement to be Executed by Borrowers in the State Loan Program; Authorizing Execution of Such Other and Further Instruments, Certificates and Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman stated this item is for the consideration of a resolution authorizing the issuance of up to \$79,660,000 in Water Resources Board Series 2003C loan program revenue bonds. The resolution authorizes the execution of the 12th supplemental bond resolution, authorizes the sale through negotiated basis, approving a preliminary official statement, directing deposit of the proceeds with the State Treasurer, ratifying and approving a form of promissory note and loan agreement, and directing the payment of the cost of issuance. Mr. Freeman stated the bond issue proceeds would be used to refund approximately 29 or so current, outstanding Water Board fixed-rate loans in order to decrease interest and expense cost as a result of the current lower interest rate environment. Staff recommended approval.

Representatives of the Board's bond counsel and underwriters were present. There were no questions by the Board.

Mr. Secrest moved to approve the resolution authorizing issuance of series 2003C bonds, and Mr. Mitchell seconded.

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

3. SUMMARY DISPOSITION AGENDA

Vice Chairman Sharp 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 to the Special Consideration Agenda; however, Mr. Jim Schuelein asked that items 3.D.3. and 3.D.7. be withdrawn from the Board's consideration. Mr. Mathis asked that items 3.E.1. #2003-524, and 3.H.1., #1974-328. Mr. Mathis additionally asked for conditional approval on item 3.L.1., for license for Lambert Water Well Drilling, upon receipt of water well logs.

Mr. Currie asked about the permit for Seaboard Farms in Beaver County. Mr. Mathis responded that the Ogallala—from which the permit is authorized—is a studied basin and the permit will be a regular permit (not renewed annually). Mr. Mathis stated this application is part of the Settlement Agreement on the Dorman facility between the Department of Agriculture and the Attorney General's office.

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.

There being no other questions regarding any items on the Summary Disposition Agenda, Mr. Sevenoaks moved to approve the Summary Disposition Agenda as amended, and Mr. Sharp seconded.

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

The following items were approved:

C. Consideration of Approval of the Following Applications for REAP Grants in Accordance with the Proposed Orders Approving the Grants:

<u>REAP</u> <u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount</u> <u>Recommended</u>
GGEDA 1.	FAP-03-0038-R	Copan Public Works Authority	Washington	\$150,000.00

NODA				
2.	FAP-03-0024-R	Red Rock Public Works Authority	Noble	99,500.00
OEDA				
3.	FAP-03-0027-R	Rural Water District #1	Dewey	99,990.00
SODA				
4.	FAP-03-0029-R	Town of Stonewall	Pontotoc	23,400.00

D. Contracts and Agreements Recommended for Approval.

1. Consideration of Amendment to Joint Funding Agreement with the U.S. Geological Survey for Stream Gaging on the Little Washita River Basin.
2. Consideration of Amendment to Joint Funding Agreement with the U. S. Geological Survey for Reductions in the Federal-State Cooperative Program.
3. ***Consideration of Interagency Agreement with the Oklahoma Department of Public Safety – Oklahoma Highway Patrol for Temporary Traffic Control. withdrawn***
4. Consideration of Intergovernmental Agreement with the Office of the Secretary of Environment for Ecoregion Delineation and Refinement in Oklahoma.
5. Consideration of Intergovernmental Agreement with the Office of the Secretary of Environment for Monitoring in Support of Total Maximum Daily Load (TMDL) Development in the Upper Kiamichi and Upper Little River Watersheds.
6. Consideration of Professional Services Contract for Maintenance of Agency Information Technology Equipment.
7. ***Consideration of Interagency Agreement with the Oklahoma Office of State Finance for Services Related to Development of OWRB Web Applications. Withdrawn***
8. Consideration of Memorandum Agreement with the Oklahoma Transportation Authority for Floodplain Management Review.

E. Applications for Temporary Permits to Use Groundwater:

1. ***Bobby J. & Barbara E. Henry, Caddo County, #2003-524 withdrawn***
2. Ray Kluver Revocable Trust, Caddo County, #2003-551
3. Ernest Ray Kluver, Reta F. Hamilton, Geneva N. Sisson and Nelda F. Carlisle, Caddo County, #2003-552
4. Deep Fork Farm, LLC, Oklahoma County, #2003-565

F. Applications to Amend Temporary Permits to Use Groundwater:

1. City of Miami, Ottawa County, #1977-868
2. Bryan Kroeker, Garfield County, #1998-526

G. Applications for Regular Permits to Use Groundwater:

1. Seaboard Farms, Inc., Beaver County, #2002-606

- H. Applications to Amend Regular Permits to Use Groundwater:
 1. **Town of Calera, Bryan County, #1974-328 withdrawn**
- I. Applications to Amend Prior Rights to Use Groundwater:
 1. John R. Doggett, Caddo County, #1970-395
- J. Applications for Regular Permits to Use Stream Water:
 1. Deep Fork Farm, Oklahoma County, #2003-025
 2. TXI Operations, L.P., Bryan County, #2003-026
 3. Cimarron Land Trust, Caddo County, #2003-027
 4. Noble Coy, Beckham County, #2003-029
- K. Applications to Amend Regular Permits to Use Stream Water:
 None
- L. Well Driller and Pump Installer Licensing:
 1. New Licenses, Accompanying Operator Certificates and Activities:
 a. Licensee: Lamberth Water Well Drilling DPC-0631
 (1) Operator: Kenneth C. Lamberth OP-1369
 Activities: Groundwater wells, test holes and observation wells
 Monitoring wells and geotechnical borings
 Pump installation
 Heat exchange wells
 (2) Operator: Emmet Divine OP-1370
 Activities: Groundwater wells, test holes and observations wells
 Pump installation
 2. New Operators and/or Activities for Existing Licenses:
 a. Licensee: Tim Hall, Inc. DPC-0445
 (1) Operator: Lyal Glover OP-1372
 Activities: Groundwater wells, test holes and observation wells
 Pump installation
 (2) Operator: Phillip Thomas OP-1373
 Activities: Groundwater wells, test holes and observation wells
 b. Licensee: Professional Service Industries, Inc. DPC-0625
 Operator: Johnny Jarman OP-1364
 Activities: Monitoring wells and geotechnical borings
- M. Dam and Reservoir Plans and Specifications:
 1. City of Bartlesville, Hudson Lake, Osage County, DS-03-09
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 1. Oklahoma Water Resources Board, Cotton and Comanche Counties, FP-03-15
 2. Oklahoma Transportation Authority, McIntosh County, FP-03-16

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

There were no items of discussion or questions about agency work.

5. SPECIAL CONSIDERATION

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. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the 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 the pending investigation, litigation, or proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

A. Application for Regular Permit to Use Groundwater No. 2003-510, Creek County RWD No. 5, Creek County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that Creek County Rural Water District No. 5 had made application for a regular permit to use groundwater. He said the applicant requested a permit to take and use a total of 310 acre-feet of groundwater per year for rural water supply purposes. He said the water is proposed to be withdrawn from two wells located on 155 acres of dedicated land in Creek County. A study has been completed on the Vamoosa-Ada groundwater basin for which the maximum annual yield has been determined to be two acre-feet of water per acre of land dedicated. The District is seeking to extend its service to approximately 120 families, including a volunteer fire department, and a water supply construction permit has been obtained from the Department of Environmental Quality for these wells and water line extensions.

Mr. Mathis stated the application was in compliance with the Oklahoma Groundwater Law, and staff recommended approval.

2. Discussion and presentation by parties. There were no representatives of the protestants or the applicant in attendance.

3. Possible executive session. The members did not vote to enter executive session.

4. Vote on whether to approve the proposed order as presented or as may be amended, or vote on any other action or decision relating to the proposed order.

Mr. Farmer moved to approve the regular permit to use groundwater #2003-510 to the Creek County RWD No.5, and Mr. Sevenoaks seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Secrest, Sevenoaks, Sharp

NAY: None

ABSTAIN: None

ABSENT: Grandstaff, McDonald

B. Application for Temporary Permit to Use Groundwater No. 2003-543, Lee W. Young, in his capacity as Trustee of the Lee W. Young Revocable Trust, Logan County.

1. Summary – Mr. Mathis stated to the members that item is for the consideration of an application by Lee W. Young Trust for a temporary groundwater permit, #2003-543, in Logan County. The applicant is requesting a permit to take and use 200 acre-feet of groundwater per year for irrigation purposes. The water is to be withdrawn from three wells located on 160 acres of dedicated land, overlying the Garber-Wellington formation. The maximum annual yield has

not been determined, therefore, each applicant is entitled to take up to two acre-feet of water per acre of land dedicated. The applicant has a stable with horses, and is irrigating 100 acres of grass pasture for the horses. The applicant intends to pump the groundwater into a two-acre pond where it is impounded, and before being pumped automated, computer-operated irrigation system with ground level sprinklers. The applicant testified he would irrigate primarily at night from about 7:00 p.m. to 7:00 a.m. that will help minimize loss from evaporation. Mr. Mathis stated the applicant's farm manager will monitor rainfall and shut down the system whenever it starts raining in order to be conservative of the water. During the hearing, the applicant's farm manager represented that a float valve would be installed in the pond to shut off the pumps and prevent overflow.

Mr. Mathis stated the protestants contended that the applicant's use of the fountain to aerate the pond is wasteful, allowing groundwater to be lost to evaporation that would not otherwise be lost. The applicant countered with testimony by a civil engineer and hydrologist that a fountain is the most common way to aerate a pond to prevent algal bloom, and later that same witness conceded that there is some evaporative loss with a fountain that would not otherwise occur; the loss is outweighed by the benefit of the activity.

The hearing examiner listened to quite a bit of testimony on the matter, and upon consideration of that issue, the record indicates there was no evidence to quantify the amount of groundwater loss due to evaporation in this case, and under the circumstances, it appeared that this loss is incidental and negligible, and does not warrant a special restriction on the use of the fountain. Mr. Mathis stated the protestants also requested the Board limit the amount of the permit to 100 acre-feet; however, there is no basis in the groundwater law or Board rules to impose such a limitation on the applicant under the circumstances in this case. He did note the applicant had requested a reduced amount by applying for only 200 acre-feet rather than the 320 acre-feet he is entitled to from the 160 acres of dedicated land.

Mr. Mathis stated that in summary, the record showed the application to be in compliance with the Oklahoma Groundwater Law: the applicant has a valid right to the dedicated land, it overlies the Garber-Wellington water basin in Logan County, irrigation is a beneficial use, and waste will not occur. Staff recommended approval.

2. Discussion and presentation by parties. Mr. Rich Propester, representing the applicant, addressed the members and described the property and the operation of the commercial horse farm, stating the applicant's investment is approximately \$5 million, that he is involved extensively in the industry and there is considerable revenue to the state because of the horse operation that he described. He stated the application was presented on September 16, 2003, during the height of one of the driest summers the state has experienced and water was in use on the farm under a temporary permit. He said there was no evidence presented by any of the many protestants that the area domestic wells had been impacted in any respect by Mr. Young's use. Likewise, there was no evidence of depletion, no evidence of pollution, and there was extensive testimony that the irrigation system was very sophisticated and designed to minimize use and conserve the efficiency of the use of the groundwater table. He said that the evidence presented to the staff examiner indicated the three wells that are subject of this application actually withdraw water from a deeper strata within the Garber-Wellington formation, that is approximately 140 feet deeper than any neighboring landowner, and does not affect any of the neighboring landowner's use. He said since the time the presentation was made, Mr. Young has made efforts to further conserve the water with the installation of the float valve on the pond, with virtually no possibility the pond will overflow. He requested the Board approve the permit as presented.

Mr. Bob Kellog, representing the more than 250 protestants, stated to the members that he was here to talk about history, and preserving what has happened so that when looking back in history it can be judged what should be done in the future if there is a problem. He said he

was not going to ask the Board to deny the permit, or to complain about the proposed order. He and the 257 neighboring groundwater users are concerned about what the proposed order does not say. Mr. Kellog said the Board had not seen the record, and he talked about the small part of the evidence referred to by Mr. Propester, and based on that, he asked the Board to add one sentence to the order, modify another, and add one permit condition.

Mr. Kellog referred to Conclusion of Law 4., stating that if the Board finds for the applicant (785:30-3-5) then the Board shall approve the application. The protestants have no argument with that; however, paragraph (e) of that rule – which is not included in order--states that the Board in determining whether waste will occur, shall consider the history and incidence of past waste. This is the sentence he is requesting the Board add to the order. He said the request is relevant because the proposed order and the evidence of the hearing shows the applicant has a history of waste and therefore could do so in the future. He noted the history of waste is found in Conclusion of Law 10(b), where the applicant admitted use for one year of water before obtaining a permit. The conclusion in the order states the violation was cured by obtaining the permit; but does contradict the suggestion in Finding of Fact no. 4(c) stating there was no evidence or indication that in the future the applicant would commit waste. Mr. Kellog said that because of the contradiction, the sentence should say instead of “no evidence”, “some evidence.”

Mr. Kellog stated to the members there is more history of waste than what was introduced into the evidence at the hearing that is not contained in the order. He directed the members to Finding of Fact no. 4(a), beginning, “During the hearing the applicant’s farm manager...” regarding the float valve. He said the order mentions the installation of the float valve, but doesn’t say why. He explained that the applicant constructed a pond with berms to exclude rainfall runoff from entering the pond, so that the pond is only filled with groundwater. The pond has a fountain with lights and sprays water into the air. The pond has three wells that pumps water into it, and an irrigation system that pumps the groundwater out. The farm manager testified, as Mr. Propester mentioned, that the system is checked daily and was installed by professionals and is computer-controlled. At the hearing, a videotape, filmed during one week in August, showed what was calculated to be two acre-feet of groundwater flowing from the pond and offsite through a tinhorn. Therefore, the applicant offered to install the float valve. Mr. Kellog contended the proposed order overlooks the important point that the applicant wasted water before it was brought to his attention. He asked that the Board modify the order to state, (adding the underlined language to Finding of Fact 7.a.) “During the hearing....a response to evidence that at least two acre-feet of water had overflowed from the pond in August 2003....the applicant’s farm manager represented...”

Finally, Mr. Kellog stated the protestants asked the Board to add a permit condition to meter the water into the pond. The reason for the meter is because of the history of waste at this facility, and yet another reason discovered at the hearing that is that there are three wells dedicated to this permit pumping 25 gallons per minute each for the commercial irrigation operation. The farm manager testified there are nine other wells on the land, including a geothermal and wind well, and at least two of the wells pump 50-60 gallons permit minute, one to a residence and one to a machine shop. Mr. Kellog suggested that was a high number of wells for domestic use. He said this applicant needed a “tether” and if the order reflected a clear evidence of waste, then in the future should it happen again, there would be a history with which to judge.

Mr. Mitchell mentioned that there was no mention of twelve wells on the property, and that there may be more than domestic use from some of those wells. Vice Chairman Sharp asked if the Board could modify the order; Mr. Couch answered the order is proposed, and the Board may determine whether to approve as presented, or as amended. And, the members asked about why there is a pond, and if the applicant had been approached about installing a meter.

Mr. Propester responded to Mr. Mitchell's comments about the number of wells saying there are only three wells connected to the irrigation system, and the remaining six wells are used totally for different purposes recognized as domestic uses, and have no relationship to the permit. He explained that a well is used for Mr. Young's residence, a second well for the manager's residence, a third well for the stable operations, a fourth well for the machine shop, and one well remotely located and connected to a windmill, and a final well that has no connection whatsoever to the irrigation system that is subject of the permit. He said the other wells are not designed to ever be connected to the system.

Mr. Smith interjected that the domestic use for the machine shop is analogous to domestic use of a barn, and is not something that staff would interpret to be a non-domestic use. The three wells are what the applicant has applied for, and there is no requirement for the other wells, except that they have been drilled by a licensed water well driller and have proper construction. That information is typically not mentioned in the order. Regarding the issue of the history of waste, Mr. Smith said there are applicants that come to the Board that have drilled a well, have used water, and they are given a temporary permit and they make application for a permit. The matter of the history of waste has never been included in the Board order. He said it is staff's view that history of waste won't happen again because there is a permit; the history of waste is because no permit is issued for the use. Once that permit is issued, and as long as the permit requirements are complied with, that waste should not happen again, and that is why the Finding of Fact is in the order. Regarding well metering, Mr. Smith stated that if the applicant wants to agree to well metering, it can be included in the permit, but however unreasonable the Board may think it is, the law says a majority of the landowners overlying the basin must vote before requiring the meter. Mr. Currie asked if the applicant would be willing to install a meter, and Mr. Propester answered there was no denying that the pond overflowed during several days in August, but while the homeowners were aware of the overflow, they did not bring it to the attention of the farm manager. Mr. Currie pressed the matter, and Mr. Propester said he believed that with the controls that have been put on the wells at this time there will not be water loss in the future. Mr. Currie asked why the water is being pumped into the ponds instead of to the irrigation system. Mr. Propester responded that currently the three wells have a capacity of about 55 gallons per minute (for each well) and collectively 160-170 gallons permit. For the irrigation system to operate on its own, has a higher capacity than the three wells combined, about 300 gallons per minute, so consequently, the water will be pumped into the pond.

Mr. Mitchell continued to asked about commercial operation and the additional wells. Mr. Propester responded that it is a commercial operation because there is a profit. Mr. Smith added that the permit is for the irrigation of the Bermuda grass, the commercial operation is the selling of the horses. He said that from a permitting standpoint, the watering of horses is a domestic use. Mr. Mitchell said washing the equipment would be a commercial use; Mr. Propester said the three wells that are subject of the permit are not being used to wash the equipment.

Mr. Kellog rebutted that the 257 neighbors do not want to prevent the application from going forward, but are asking that the order reflect the true history of this facility so that in the future when this is the only available record, if there is another problem there is a record and can be acted on appropriately. He also suggested that the law would support the Board in ordering the installation of a meter on the water that is pumped into the pond because of the history of waste by operating without a permit plus the water that ran over the reservoir is sufficient evidence to suggest "this dog needs a leash"; a meter. Mr. Kellog reiterated he is not advocating that the applicant not obtain the permit, but asks that the record accurately reflect the history.

Mr. Currie suggested the matter be tabled and allow staff to work with the applicant to incorporate these requests into the order. Mr. Smith responded that the information Mr. Kellog refers to is in the permanent record; but the order reflects the condition of the permit. He said the Board could take the information out of the record and put it in the order; however, he said there is a history of the use, and putting it in the record does not give it any more emphasis, and it is not required to be in order because it is in the record. Regarding the meter, the only way for it to be added is for the applicant to agree. Vice-Chairman Sharp asked the applicant if he would agree to a condition of the order to install a meter; and Mr. Sevenoaks stated he didn't think the Board should coerce an applicant to install a meter, as the Board has not made that request to any irrigators or farmers, etc., in the past. He said he felt the applicant was addressing the issues brought by the protestants. Mr. Smith said the issues of the waste were the permit and the overflow, and both issues have been addressed, and because it has been listed in the order, it is a condition of the permit, and it has already been done. Mr. Smith added that there have been instances when staff would have preferred to require a meter, and staff has been to the legislature about requiring meters and received opposition, primarily the agriculture industry. He said he had recently spoken with litigators in southwest Kansas, and it costs \$1,500 to install a meter, then there are other associated costs of maintenance, as well as compliance with the State of Kansas rules requiring meters, enforcement issues, etc. Requiring a meter is a regulatory burden the OWRB is not ready to back up. He said if the applicant agrees to a meter, then he is also agreeing to maintaining it.

Mr. Kellog responded to Mr. Smith's comments about requiring a meter. He said this case stands on its own merit, and he is not asking the Board to require the same of any other applicant. He said he believed the Board can require the meter on a case-by-case basis, and this case stands on its own.

3. Possible executive session. The Board did not vote to enter executive session.

4. Vote on whether to approve the proposed order as presented or as may be amended, or vote on any other action or decision relating to the proposed order.

Vice-Chairman Sharp stated he believed there had been adequate presentation, and he wished to call for the question at this time. He asked if there is a motion for the application to be approved as submitted.

Mr. Sevenoaks moved to approve the proposed finding of fact, conclusions of law and Board order as presented, and Mr. Keeley seconded.

AYE: Currie, Farmer, Keeley, Sevenoaks, Sharp

NAY: Mitchell, Secret

ABSTAIN: None

ABSENT: Grandstaff, McDonald

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report saying the budget-to-actual report is for the period ending October 31, 2003. He said the report is about one month behind due to the change over in the new state software for purchasing and budgeting. He said that has been a very arduous and complicated process; however, the agency is operating well within the budget set forth by the Governor and Legislature.

Mr. Sevenoaks asked if the agency is anticipating any cuts during the coming legislative session. Mr. Schuelein said the agency is cautiously optimistic that the state revenues will remain above what had been projected. Mr. Smith added that the agency is being told that if

the tax collections continue to come in as they have, there won't be further cuts; however, do not expect additional revenues.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There were no Supplemental Agenda items for the Board's consideration.

8. 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. However, Mr. Sevenoaks asked that the Board have discussion on the agenda at a future meeting about the Drinking Water SRF program, and the zero percent interest rate, and to talk about revenue enhancement for the financial assistance program. There was some discussion about the program and financing strategy and needs of the communities, and Mr. Smith agreed that there would be a presentation made to the Board.

Mr. Currie referred to the population projections Mr. Smith mentioned in his director's report, and he also noted some of the issues that have been brought up such as today with an irrigator in a residential area. He said the Board should be looking down the road how to accommodate urban sprawl and the use of domestic wells. Mr. Smith responded that the housing developments that are going into the rural areas outside city limits need to have a water plan.

Mr. Keeley complimented Mr. Smith for his and Mr. Mathis's presentation regarding the Arbuckle-Simpson Aquifer study to the Ada Kiwanis Club recently.

9. ADJOURNMENT

There being no further business, Vice-Chairman Sharp adjourned the regular meeting of the Oklahoma Water Resources Board at 11:20 p.m. on Tuesday, December 9, 2003.

OKLAHOMA WATER RESOURCES BOARD

Grady Grandstaff, Chairman

Glenn Sharp, Vice Chairman

Harry Currie

Lonnie Farmer

Richard McDonald

Bill Secrest

Jack W. Keeley

Richard Sevenoaks

ATTEST:

Ervin Mitchell, Secretary

(SEAL)