

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**March 9, 2004**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Grady Grandstaff at 9:30 a.m., on March 9, 2004, 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**

Member Ervin Mitchell gave the invocation.

**B. Roll Call**

**Board Members Present**

Grady Grandstaff, Chairman  
Glenn Sharp, Vice Chairman  
Ervin Mitchell, Secretary  
Harry Currie  
Lonnie Farmer  
Jack Keeley  
Mark Nichols  
Richard Sevenoaks

**Board Members Absent**

Bill Secrest

**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  
Derek Smithee, Water Quality Programs Division  
Mary Lane Schooley, Executive Secretary

**Others Present**

Haskell Harvey, Grady County Rural Water District # 2, Lindsay, OK  
Robert Burtley, Grady County Rural Water District #2, Lindsay, OK  
Cathie Arnold, Norman, OK  
David Davis, Bethany, OK  
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Julie Ferguson, City of Sallisaw, OK  
Brett D. Peters, Hawkins-Weir Engineers, Van Buren, AR  
Shannon Vann, City of Sallisaw, OK  
Bill Baker, City of Sallisaw, OK  
Paul Pratt, Maysville, OK  
Betty Jo Williamson, Lindsay, OK  
Carlos A. Williamson, Lindsay, OK  
Clyde Treat, City of Bethany, OK  
John Shugart, City of Bethany, OK  
Richard Herren, rep. Max O'Hara, El Reno, OK  
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK  
C. I. Maxwell, Jr., Tishomingo, OK  
Ed Shultee, Minco, OK  
B.J. Harris, Oklahoma City, OK  
Jack Money, OPUBCO, Oklahoma City, OK  
Martha Ober, BancFirst, Oklahoma City, OK  
Randy Heckenkeuper, The Territory, Tulsa, OK  
Bobby McSpadden, Sardis Lake, Clayton, OK  
Dan Galloway, City of Bethany, OK  
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK  
Sarah Penn, Office of the Attorney General, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

Chairman Grandstaff stated the draft minutes of the February 10, 2004, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were additional changes.

Mr. Mitchell moved to approve the minutes of the February 10, 2004, Regular Meeting, and Mr. Nichols seconded.

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

**D. EXECUTIVE DIRECTOR'S REPORT**

Mr. Duane Smith, Executive Director, began his report by stating to the members that during the past week there had been rain in virtually every corner of the State, and the Lugert-Altus Reservoir is now 68% full, and most reservoirs in Oklahoma are filling.

Regarding the bond issue, staff met last week with a number of service providers and talked about the future of the financial assistance programs. He noted the report on a proposed \$125 million dollar bond issue: \$20 million reserved for the financial programs, \$15 million for

the Clean Water SRF program; \$83 million for the Drinking Water SRF program; and \$6.5 million for a statewide water plan. Mr. Smith stated he had met with Secretary of Finance Scott Meacham and the Governor supports the program and in looking at ways to fund the program, even it that would include a vote of the people. The Board's service providers have looked at the proposed funding and are supporting the effort, but there will need to be a concentrated effort across the State to make it happen. Mr. Mal Fallon is here to talk about the Board's rating on the bond issue. He said he believed the Board's financial programs are the best the State has in regard to use of \$25 million in seed money to result in \$1 billion in project financing. But we need to look to the future because if rural Oklahoma is going to grow and maintain itself, it will have to have water and wastewater infrastructure, and this program is how that can be accomplished. He said this program is tied to a water-planning bill sponsored by Senator Crutchfield and Representative Hilliard, Senate Bill 903 that passed the Senate 44-1, and outlines the water planning strategy for Oklahoma by dividing the state into 11 regional committees which will then look at developing 50-year water plans for the communities and rural water districts. The \$6.5 million would come to the OWRB to be distributed to the regional committees to completed the plans, and to perform some of the engineering work, also environmental work. This provides a future for Oklahoma for a water plan and financing of water infrastructure for the future. He said it isn't the perfect bill, but it is the vision that can be worked on.

Mr. Smith told the members he had visited the Walters Rotary, and former member Richard McDonald. The Canadian River Compact Commission met on March 1, and Oklahoma is working with the State of Texas regarding advanced notice of any reservoir in that river system, and working with the Attorney General's office to see if the lawsuit is feasible; one of the issues is Oklahoma City's water supply. He talked about the stream flows in the Canadian River, the gage at Seiling, and the average amount of flow and impact from the Palo Duro reservoir. The Arkansas-Oklahoma Arkansas River Compact has a special meeting scheduled for Wednesday, March 10, 2004; Dick Seybolt is the federal chairman. The compact is working on a collaborative monitoring process with the State of Arkansas to get a better idea of the phosphorous content and where its coming from, going up or down, and the controversy in the compact area is not only the phosphorous level, but the monitoring itself, i.e., methodologies and expense and there needs to be agreement on what that should be. He said the process would be applied to all scenic rivers, and late August is the deadline to work out a plan.

The Lake Texoma Advisory Committee is March 23, and the Red River Compact Commission will meet April 20, 2004. The Red River Compact has been concerned with the building of the Sweetwater Creek Reservoir (in Texas) on building upstream on the North Fork of the Red, which flows into the Lugert-Altus Reservoir. The people of the area are concerned that would reduce flow as well as impact the water quality of the water going into the reservoir. This issue may become a mute issue, as it doesn't look like Texas will obtain funding. Another matter for the compact is the approval of rules and regulations on the main stem of Lake Texoma. Texas's draft –which they want to vote on at the next meeting--includes not counting the non-consumptive uses in the apportionment of the Red River, i.e., hydropower, which most of it is in Texas. He cautioned that if the non-consumptive uses are included, it is likely Texas is out of compliance with the compact.

Mr. Smith announced he would be attending the 144<sup>th</sup> Council meeting of the Western States Water Council, March 29-April 2, 2004. He said a main issue is a survey of the states and how they are dealing with water quantity/quality issues. Mr. Smith concluded his report and invited Mike Melton to update the members on the current legislation and Capitol activities relative to water and environmental measures (distributed written report.).

## 2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Bethany Public Works Authority, Oklahoma County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item for the Board's consideration is a \$10,000,000.00 Drinking Water SRF Loan fund request for the Bethany Public Works Authority to upgrade its water treatment plant on NW 50<sup>th</sup>. The upgrade will expand the plant to a capacity of 8.4 million gpd. Mr. Freeman noted provisions of the loan agreement. He said the Bethany-Warr Acres PWA, providing wastewater services to the town, has been a customer of the Board's for several years, this is the first loan request by the Bethany PWA. Bethany will be able to save approximately \$3.2 million by borrowing from the OWRB, a savings of \$1.77 per customer per month for twenty years. Staff recommended approval.

Representing Bethany PWA was Mr. J.D. Johnston, mayor; Dan Galloway, city manager; David Davis, city attorney; Clyde Treat, city engineer; John Shugart, finance director; Larry Fleming, engineer; and John Wolfe, financial advisor.

Mr. Mitchell moved to approve the Drinking Water SRF loan to the Bethany PWA, and Mr. Farmer seconded.

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

Mr. Currie asked the supply source for the city; Mr. Johnston replied the main source of water is water wells. He said Oklahoma City is a back up supply for emergency use only.

B. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds, Amending Security, and Extension of Time for Obligation of Funds for Durant City Utilities Authority, Bryan County. Recommended for Approval. Mr. Freeman informed the members that the Durant City Utilities Authority had requested an increase in the obligation of funds to an amount not to exceed \$6,792,999.00, or an increase of \$792,000 as stated by bids on the project that were higher than the engineers' estimate. In addition, Mr. Freeman said the City is requiring an extension of time to close the loan with the Board, and requesting to amend the security of the loan to include water and sewer revenues plus a 3-cent sales tax. Garbage revenues had been mistakenly included in the previous order. Mr. Freeman said Durant has been an excellent customer of the Board's for the last several years, and staff recommended approval.

Mr. Eddie Darnell, city engineer; and John Wolfe, financial advisor, were present in support of the loan amendment requests.

Mr. Nichols moved to approve the order approving increase in funds, amending security, and extension of time for obligation, and Mr. Currie seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Sevenoaks, Sharp, Grandstaff  
NAY: None  
ABSTAIN: None  
BSENT: Secrest

C. Consideration of and Possible Action on a Proposed Resolution Authorizing Staff to Request Proposals for Services in Connection with Issuing Obligations to Fund the Clean Water State Revolving Fund Loan Program and Drinking Water State Revolving Fund Loan Program. Recommended for Approval. Mr. Freeman said this resolution will authorize staff to request

proposals for underwriters, bond counsels, tax counsel if necessary, printers, bond insurance if necessary, and liquidity facility if necessary, in conjunction with the new debt issuance for the Clean Water and Drinking Water SRF loan program. He said that currently there is approximately \$30 million in unobligated funds in the CWSRF and a demand for \$115 million estimated over the next 15 months. There is approximately \$59 million in unobligated funds in the DWSRF, with an estimated demand of around \$160 million over the next 15 months. He said the staff would work closely with the Board's Finance Committee—Mr. Sharp, Mr. Mitchell, Mr. Secrest and Mr. Farmer—which met following the February Board meeting and who has already reviewed the proposed requests. Staff recommended approval.

Mr. Sharp moved to approve the resolution, and Mr. Mitchell seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Secrest

D. Presentation of Standard & Poor's Credit Rating Analysis of the Oklahoma Water Resources Board's Outstanding Debt Obligations. Mr. Freeman introduced Mr. Mal Fallon of Standard & Poor's Rating Services who spoke to the members about the Board's outstanding debt obligations. Mr. Fallon distributed two reports published on the Board's two major loan programs: the DWSRF and CWSRF, and the State Loan Program. He said the news is good, and in summary as the two reports point out the key rating factors for S&P in both programs reflect the excellent history of borrower payment with no default, use of a large portion of the SRF program, use of a large portion of federal capitalization grants, strong financial management and oversight by the Board and the agency finance department, and strong loan requirements. He said it is important to recognize and to note that the SRF program under the master trust indenture, with the trust collateralization provisions on both the DWSRF and the CWSRF warranted a Triple-A rating or the highest rating. He said on the State Loan Program that has been rated Double-A for some time (since 1984) and was upgraded last year to AA+. He said the difference between the two programs is the SRF programs benefit from the capitalization grants from the federal government.

Mr. Fallon stated in terms of program oversight and management, there is a very good working relationship between Mr. Freeman and his staff, and the ability for S&P to conduct loan analysis on application portfolios is a key underpinning of the process. He said that terms of this sector of public financing, the Board's program is among the highest rated nationally, which results in the Board benefiting by utilizing federalization grants establishing large portfolios of borrower assets supporting the bond initiative in the market place. He concluded his report stating that despite some of the problems the states have had in the past few years in terms of economic situation and severity of financial situations, generally loan programs at the state level have done very well, speaking well of management.

There were no questions; however, Mr. Mitchell commented that the success of the program should be attributed to Mr. Freeman and his staff.

### **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. Currie asked about the situation at Haileyville (REAP grant item 3.C.2). Mr. Freeman responded this REAP grant was approved by the Board in June of 2003. He said that since the \$99,900.00 grant was approved, Haileyville was able to obtain a \$214,000.00 grant from the Community Development Block Grant program administered by the Commerce Department. He said the project was expanded and working with Commerce, the town is able to do more corrections resulting in a reduction in operating costs and having a benefit on the loan side. He said he has visited with Mayor James last week whohe is working hard and will be getting the last audit to the staff, and renewing the insurance; a loan payment is due on March 15.

Mr. Sevenoaks asked about the Tenkiller Utility Authority and the Sequoyah County Water Association and their involvement in the water plant under construction at Tenkiller. Mr. Mike Mathis explained there were changes in the status on the Supplemental Agenda, but those groups have been involved together in the planning of the Tenkiller Utilities Authority's regional water system and the TUA has been having difficulty in moving forward and Sequoyah County Water Association is now moving forward because of their needs, and the regional system is not getting done quickly enough. Staff continues to work with TUA on the process. Mr. Currie asked if Sallisaw would withdraw (water) from the river below the dam? Mr. Mathis stated that is correct; part of the application is on the Summary Disposition Agenda today and there are representatives from Sallisaw present. Mr. Mathis said Sallisaw will be taking water that will be released from Tenkiller Dam down the Illinois River and taken from the lower end of the Department of Wildlife Trout Fishery and would then be diverted onto Sallisaw.

**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 were no other questions pertaining to items on the Summary Disposition Agenda.

Mr. Sevenoaks moved to approve the Summary Disposition Agenda as presented, and Mr. Nichols seconded.

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

**The following items were approved:**

C. Consideration of Approval of the Following Applications for REAP Grants and Amendment to Scope of Project 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 Recommended</u>
ASCOG				
1.	FAP-03-0013-R	Minco Municipal Authority	Grady	\$19,999.00
KEDDO				
2.	FAP-01-0080-R	Haileyville Public Works Authority	Pittsburg	Amend Scope
3.	FAP-02-0051-R	Keota Public Works Authority	Haskell	Amend Scope

SWODA

4. FAP-99-0017-R Town of Roosevelt Kiowa 99,900.00

- D. Contract and Agreements Recommended for Approval  
1. Consideration of Agreement with the University of Oklahoma through its Sam Noble Oklahoma Museum of Natural History for Identification of Fish Species.

- E. Applications for Temporary Permits to Use Groundwater:  
1. Robert & Lisa Gunter, Caddo County, #2003-541  
2. Block Sand Company, Inc., Lincoln County, #2003-570  
3. Neill Cattle Company, Craig County, #2003-581  
4. Oklahoma Gas & Electric Company, Muskogee County, #2003-582

- F. Applications to Amend Temporary Permits to Use Groundwater:  
1. Bryan & Lavonne Kroeker, Garfield County, #1996-515  
2. Bryan Kroeker, Alfalfa County, #2000-581

- G. Applications for Regular Permits to Use Groundwater:  
1. Roy Mitchell, Kenneth Mitchell and Brian Mitchell, Texas County, #2003-591  
2. Roy Mitchell, Kenneth Mitchell and Brian Mitchell, Texas County, #2003-596  
3. Roy Mitchell, Kenneth Mitchell and Brian Mitchell, Texas County, #2003-597

- H. Applications to Amend Regular Permits to Use Groundwater:  
1. Town of Calera, Bryan County, #1974-328  
2. Stanley J. Barby, Beaver County, #1979-529  
3. Jerald Radcliff, Beaver County, #1991-512

- I. Applications to Amend Prior Rights to Use Groundwater:  
None

- J. Applications for Regular Permits to Use Stream Water:  
1. City of Sallisaw, Sequoyah County, #1979-107  
• 2. **Tenkiller Utilities Authority, Cherokee County, #2003-028** *item withdrawn*  
3. Wolf Creek Estates Homeowners Association, Canadian County, #2003-033  
• 4. **Sequoyah County Water Association, Sequoyah County, #2003-034**  
*item withdrawn*  
5. Matt Moreland, Grant County, #2003-040  
6. Washington County RWD #3, Tulsa County, #2003-042

- 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:  
Licensee: Lake Country Drilling, Inc. DPC-0674  
Operator: Jody M. Morgan OP-1396  
Activities: Groundwater wells, test holes and observation wells  
Heat exchange wells  
2. New Operators and/or Activities for Existing Licenses:  
a. Licensee: Davis Environmental Drilling DPC-0197

- |   |          |
|---|----------|
| Operator: Adam McHolland                            | OP-1396  |
| Groundwater wells, test holes and observation wells |          |
| Monitoring wells and geotechnical borings           |          |
| b. Licensee: Accurate Drilling Services, Inc.       | DPC-0650 |
| (1) Operator: Wade Williams                         | OP-1168  |
| Activities: Pump installation                       |          |
| (2) Operator: Craig Wenthold                        | OP-1207  |
| Activities: Pump installation                       |          |
| (3) Operator: Juan Bazan                            | OP-1222  |
| Activities: Pump Installation                       |          |

M. Dam and Reservoir Plans and Specifications:  
None

- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma Tourism and Recreation Department, Marshall County, FP-03-17
  2. Oklahoma Department of Transportation, Lincoln County, FP-3-19

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

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

#### 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 to Amend and Consideration of Revalidation of Temporary Permit to Use Groundwater No. 1986-619, Garvin County Rural Water District No. 2, Garvin County.

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that the Garvin County RWD #2 currently holds a temporary permit to use 160 acre-feet of groundwater per year, and the permit authorizes use from one well located on 80 acres of dedicated land in Garvin County. The District has filed an application to amend that permit by adding the location of two wells. The application does not request an additional increase in land



or increase in the amount of groundwater, or any other change. He said the District has been using a well drilled in 1986, also known as “the old Chandler well” but evidence indicated the well was not located on the ten-acre tract of land as thought and is actually located about 500 feet from the ten-acre tract location. At this point in time, the well is unserviceable and the District is in the process of abandoning the well and is asking for the two additional wells as part of the application. The ten-acres and two additional wells covered by the application are located on the land dedicated to the permit which is located over the Purcell Sandstone groundwater basin, but a maximum annual yield has not yet been determined. A licensed water well driller has drilled one, and a multi-purpose completion report indicates it has been constructed in compliance with the requirements of the Board. Additionally, the District’s activity is governed by the Department of Environmental Quality concerning construction for a public water supply system and the District’s manager testified the “old Chandler well” has been abandoned and capped in accordance with DEQ requirements and ultimately in accordance with the Board’s requirements.

Mr. Mathis stated the protestant’s primary objection to the application to amend is they are concerned the District’s withdrawal from the requested wells would interfere with and cause the groundwater to be depleted in the area of their domestic wells. However, there was no evidence or basis in the evidence to find that the District will impermissibly deplete the groundwater contrary to Oklahoma Groundwater Well. He noted the wells are beyond the 1320-foot spacing limit on studied basins.

Mr. Mathis stated the application complied with the Oklahoma Groundwater Law: The District has established the two additional wells will be located on land owned by the District and are necessary to exercise the withdrawal of water authorized by permit #86-619; the wells will be located on lands dedicated to the permit and will be drilled and used to prevent waste by pollution. Staff recommended approval.

2. Discussion and presentation by parties. Mr. Haskell Harvey, representing the Garvin County District #2, addressed the members and stated this permit is for a backup well in case there are problems with the other wells in use, and said the District did not plan to withdraw more water. He said water usage had not caused the wells to drop in stability, and it has not been damaging to the aquifer. He said the District conducts monitoring and sends monthly reports to the Department of Environmental Quality. Responding to questions by the Board members, Mr. Harvey said the District has three wells, but only uses one at a time and as alternative use, and that there are 502 customers.

Mr. Paul Pratt, spoke on behalf of the protestants. Mr. Pratt had submitted exceptions to the order, which had been distributed to the members. He said their basic concern is the lack of study of the area, and not complying with the permit for the past 16 years—pumping from unpermitted land. He was concerned about the number of commercial connections and any feedlots the District services. He said the protestants felt that if the permit is revoked, then the landowners would be able to exercise their right to request lower allocations in the future for any re-application for the permit based on the water use report of the past 16 years, including the two permitted wells and the one pumping on the unpermitted land. He said they are concerned that the pumping, without a study, is arbitrary at two-acre feet per acre and a concern.

Mr. Mitchell asked if staff had checked to ascertain the four wells are on correct locations; Mr. Mathis answered staff is working with the applicant on multi-purpose completion reports, and are checking them with global positioning units for accuracy. Mr. Sevenoaks asked for clarification: the well is on the wrong location, but that will be corrected by the permit, and the District will drill a new well so that everything is the way it is supposed to be. At some point a study will be conducted and the Board will be able to determine the actual limit, and because there are not any studies conducted the two-acre feet per acre allocation is standard, but if the study proves it can be lowered, appropriately, and until then it is a temporary permit. Mr. Mathis

responded that is correct. Mr. Sharp added the proposed order states a meter will be installed. Mr. Pratt said that there is no monitoring in the area, and asked if the protestant's hired their own consultant to monitor, would that information be accepted by the Board. Mr. Smith suggested that OWRB staff Kent Wilkins (supervisor the Well Drillers Licensing program), meet with the landowners and enlist some of the wells in the mass measurement program. Mr. Pratt asked when a study might be conducted, and Mr. Mathis stated there is no funding at this time for the study.

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.

Mr. Sevenoaks moved to approve the proposed findings of fact, conclusions of law and Board order for temporary groundwater permit #1986-619 as recommended by staff, and Mr. Keeley seconded

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

B. Application to Amend Regular Permit to Use Groundwater No. 2000-575, Max L. O'Hara, Grady County.

1. Summary – Mr. Mathis stated to the members that this application for a temporary permit for groundwater is #2000-575 for Mr. max O'Hara in Grady County. He said that on June 12, 2002, the Board approved the issuance of a regular permit that authorized the use of 80 acre-feet of groundwater per year for commercial sale for rural water supply, at a rate not to exceed 80 gallons per minute. Mr. Mathis said the land dedicated to the permit consists of 54 acres in Grady County, and the amendment will add 59 acres of land and two additional well locations, including one that has already been drilled as a test well. The additional land dedicated to the application overlies the Washita Alluvium Groundwater Basin; a study has been completed and allocates 1.5 acre-feet of water per acre of land dedicated. The applicant intends to supply water from the two requested wells to the Grady County RWD #1; the District has applied for a water supply construction permit from the Department of Environmental Quality.

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

2. Discussion and presentation by parties. Mr. Mathis stated there were no protestants in attendance; however, a letter was sent as they were unable to attend.

Mr. Richard Herren, representing the applicant as well as the rural water district, stated to the members he was pleased with the order, and the findings were to his liking; however, he did wish to make a few comments. He said the water district is small, and currently has just a few wells it is using but are depleting, and is also buying water from an adjacent district. He said Mr. O'Hara and the District have entered into an agreement to sell water from the wells that are subject today. He said the concern he had regarded the restrictions: (1) to use only one well at a time, and they are concerned about peak water use or an emergency situation such as fire when perhaps more than one well needed to be in use; and (2) the restriction on the test well to be pumped not to exceed 30 gallons per minute (gpm), or in excess of 6 hours per day. Mr. Herren stated it was not his intention to pump in excess of 30 gallons per minute, the limit of 6 hours per day is a problem and he asked for more flexibility in the limit of hours per day because of summer conditions, etc. He noted the original permit was for 80 gpm but there were no restrictions on the hours per day, and the well is approximately 720 feet away from the protestant's well; and now the new well is located 1320 feet away. Mr. Herren asked the Board

to do two things differently than the proposed order: (1) allow the use of two wells at the same time, given conditions of peak use and emergencies, etc., and (2) to remove the restriction of 6 hour per day of use.

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.

Mr. Mitchell asked that at peak production, how long did Mr. Herren think the well would have to be pumped? Mr. Herren answered that is a good question for an engineer; there are two wells they will be pumping from, but the second well they have not drilled a test well and so that is unknown. He said that the information that has been provided is that at peak production 60,000 gpd are needed, and the well under the current restriction would only provide about 11,000 gpd, or one-sixth the requirement of production. At a normal level of usage, Mr. Herren stated, it provided about one-third of the required amount of the current usage.

Mr. Sevenoaks asked about the protestant's industrial well. Mr. Mathis said there is no permit for that well and is technically unauthorized. From the standpoint of spacing, though, the rules would apply that it is not a legitimate well location. In the order, he said, regarding the pumping limit on the domestic well, the proposed well location is slightly within the 1320 well spacing requirement, so that has to be looked at as a well location exception. He said the hearing examiner and staff looked at the testimony in the record by the applicant, evaluated it, and determined the restrictions would reasonably protect the groundwater in the domestic well. He said it is close, but still within the distance requirement. Mr. Sevenoaks said if the proper spacing was used, there would not be a distance requirement. Mr. Mathis responded it would certainly help the situation, but there still could be some impact, but at this point it is within the well location spacing distance. Mr. Herren stated the evidence showed it is exactly 1320 feet, as measured by the OWRB with the GPS, with plus-or-minus some percentage.

General Counsel Dean Couch noted the matter is addressed in finding of fact no. 7(b)(ii) and evidence presented is that the White's domestic well is within the 1320 distance, whether a foot or two, or not; that is the well spacing and the hearing examiner used the best evidence that was present at the hearing with respect to draw downs and impacts, and these can occur at one-foot differences. He said that is not the particular issue, the issue is the well spacing requirement and the potential impact, and this is now a location exception on two well spacings. He said there is a burden to show and demonstrate a lesser impact as the best evidence presented as explained in the fact.

Mr. Smith said the hearing examiner looked at the technical part, looked at what the applicant said it wanted, and the evidence was that the applicant would be using the well 6 hours per day, and then looked at the impact on the well. He said it is a studied basin and well spacing comes into play so impact is looked at, and the OWRB technical people looked at the draw down on that well and in reality, allowing the applicant suggested they wanted to do, and is protective of the domestic well. He said the order does represent a balance, and if the applicant wants the super-flexibility, the well should be moved outside the 1320 feet. He said a foot did make a difference on the application, and in the technical information.

Mr. Currie was concerned about an emergency situation. Mr. Smith responded that if there were to be an emergency situation, they could apply for a temporary provisional permit, and staff will absolutely work with them in an emergency situation such as fire protection. He said the Board could add that kind of language, but the staff did not think it necessary and is committed to work with citizens and entities regarding fire protection.

Mr. Nichols moved to approve staff recommendation as presented, and Mr. Sharp seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Sevenoaks, Sharp, Grandstaff  
NAY: None

ABSTAIN: None  
ABSENT: Secrest

C. Application for Regular Permit to Use Stream Water No. 2003-013, Oil City Associates, L.L.C., Stephens County.

1. Summary – Mr. Mathis stated this application, #2003-013, is by the Oil City Associates, for a permit to use stream water in Stephens County. The applicant requests a permit to take and use a total of 200 acre-feet of stream water per year for irrigation of the golf course. The applicant will be diverting water from Stage Stand Creek to irrigate the fairways and the golf course and is requesting authorization for two diversion points.

Mr. Mathis stated that the conditions placed on the proposed order will ensure that the releases made for the structure will be protective of downstream uses, which was essentially the protest in this matter. He said the application is in compliance with the Oklahoma Stream Water Law, and staff recommended approval.

2. Discussion and presentation by parties. There was a representative of the applicant present; however, there were no protestants in attendance.

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.

Mr. Sharp moved to approve the proposed order as submitted, and Mr. Keeley seconded.

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

D. Consideration of items transferred from the Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda. However, Mr. Currie asked about the procedure to withdraw water from the Illinois River? Mr. Mathis responded there are several entities that use water from the Tenkiller Reservoir, but only a handful of small users withdrawing from the river. Mr. Currie was concerned about Sallisaw's withdrawal below Tenkiller Dam; Mr. Mathis said that the proposed application incorporates that as part of the Department of Wildlife Project. Mr. Mathis said the City did make application, and it was determined that water was available, but evaluation will be made during dry times.

## 6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report saying the budget-to-actual report is in a new format, and provides basic information about money that the agency has encumbered and expended from each fund. He noted the amount for professional services is an obvious error in the Office of Secretary of Environment, so there is an error in the coding, which will be corrected. Mr. Schuelein stated the agency is doing fine, and no budget cuts have been proposed and a budget cut is not anticipated this year. He encouraged the members to contact him if they have any questions.

**7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.**

**A. Contracts and Agreement Recommended for Approval.**

1. Consideration of Interagency Agreement with the Oklahoma Office of State Finance Information Services Division for Services Related to the Oklahoma Water Well Drillers On-Line Application System.

**B. Applications for Regular Permit to Use Stream Water**

1. Tenkiller Utilities Authority, Cherokee County, #2003-028. Mr. Mathis stated that after some further discussion following the posting of the Supplemental Agenda, it was determined that the protest was not withdrawn on the Tenkiller Utilities Authority application. He asked that the consideration of approval of this permit be withdrawn.

2. Sequoyah County Water Association, Sequoyah County, #2003-034.

There was no other discussion.

Mr. Farmer moved to approve the Supplemental Agenda Items, and Mr. Mitchell seconded.

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

**8. PRESENTATION OF FINAL DRAFT PROPOSED NEW PERMANENT RULES AND AMENDMENTS TO CURRENT RULES OF THE BOARD**

A. Background and Summary of Public Participation. Mr. Duane Smith stated that staff has explained the summary of public participation at last month's meeting. He suggested the members proceed to consideration of the proposed amendments.

**B. Proposed Amendments to Chapter 25 –Dams and Reservoirs**

1. Summary of final draft proposed rules – Mr. Mathis stated the proposed amendments to the rules had been distributed to the Board members. He said the changes would give staff flexibility on variance requests, and add language on the hydro conduit. He said no changes had been made since the presentation at the February meeting. Staff recommended approval.

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

3. Comments by Public – There were no comments by the public.

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

Mr. Farmer moved to approve the proposed amendments to Chapter 25 as presented, and Mr. Nichols seconded.

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

C. Proposed Amendments to Chapter 30 – Taking and Use of Groundwater

1. Summary of final draft proposed rules – Mr. Mike Mathis stated the changes proposed in this chapter were in response to last year’s Senate Bill 288 language and there has been significant amount of discussion on the rules. Comments have been incorporated into the version presented at the February Board meeting. No additional comments have been received.

He said Mr. Keeley had provided comments in letter regarding many good recommendations and additional information; however, much is beyond what has been provided in notice during this process of rulemaking. Work will begin right away and the next process will include those comments. Staff recommended approval.

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

3. Comments by Public – There were no comments by the public.

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

Mr. Mitchell moved to approve the proposed amendments to Chapter 30 as presented, and Mr. Sharp seconded.

AYE: Currie, Farmer, Mitchell, Nichols, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: Keeley

ABSENT: Secrest

D. Proposed Amendments to Chapter 35 – Well Drillers and Pump Installers Licensing

1. Summary of final draft proposed rules - Mr. Mathis stated that the Well Driller’s Advisory Committee had worked hard on the proposed amendments and are essentially changes to continue the modernization of the rules by proceeding with current technology. Mr. Mathis stated that no additional comments had been received since the February Board meeting. Staff recommended approval.

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

3. Comments by Public – There were no comments by the public.

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

Mr. Farmer moved to approve the proposed amendments to Chapter 35 as presented, and Mr. Nichols seconded.

AYE: Currie, Farmer, Keeley, Mitchell, Nichols, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Secrest

E. Proposed Amendments to Chapter 45 – Oklahoma’s Water Quality Standards

1. Summary of final draft proposed rule – Mr. Derek Smithee stated to the members that in January he distributed the proposed amendments recommended to Chapters 45 and 46 of the Water Quality Standards, and Standards Implementation. Specific to this agenda item, he said, on Chapter 45 several modifications have been made to that chapter, including several comments, and a final proposed rule. Consideration was not made by the Board at the February meeting to provide individuals the opportunity to work with the lone remaining controversial issue of Culturally Significant Waters. Mr. Smithee recommended approval of Chapter 45 amendments, with the exception of the language regarding the Culturally Significant Waters, allowing time for the Office of the Secretary of Environment and the Governor’s Office

to work out language to resolve outstanding discrepancies on culturally Significant Waters, and at such time as new language is developed, the emergency rule-making process can then be pursued to be included in Chapter 45. Additionally, Mr. Smithee stated that several very good suggestions had been made by the Attorney General's office, and staff has agreed to work on those suggestions in future WQS revisions. Staff recommended approval of the proposal, with no changes made to the section on Culturally Significant Waters (CSW).

2. Questions and Discussion by Board Members – There were no questions by the members at this time.

3. Comments by Public – Ms. Angie Burckhalter stated to the members that the Oklahoma Independent Petroleum Association provided written comments on three areas of the proposed rule making, and staff is willing to work with the organization on two of the issues. She said the most important issue to the industry the Board is considering today is the Culturally Significant Waters, and the OIPA encouraged the Board to delete the rule because the rule change has been properly noticed to the public, comments have been received and the time is ripe, the existing rule is not required by the federal government and is redundant, the state's water quality standards are adequate to protect, and the OIPA's concern about a potential for "checker-boarding" of standards with 39 Tribes that may be more stringent than the state and too onerous. She said the OIPA membership is concerned about the "loss of opportunity" and she urged the Board to vote to approve the deletion of the CSW rules.

Ms. Marla Peek, Oklahoma Farm Bureau, stated to the members that the OFB originally proposed deletion of the language, and still believes it is a good idea. She said the language allows the tribes to determine what may be culturally significant to them, and they can then to compel the Water Board for the criteria. She said she was concerned about further "work" by the Governor's office, and while waiting for the Governor's office to negotiate with the tribes, with the language in tact they can request the designation, putting the Board in an awkward position. Ms. Peek said she supported the comments by the OIPA and she too asked the Board to delete the current CWS language from the standards.

Ms. Cheryl Dorrance, Oklahoma Municipal League, stated to the members that there is a very diverse group of interests today appearing before the Board to request deletion of the CWS language. She said there is a letter on file from the OML Executive Director Danny George and Jay Hays, Chairman of the Oklahoma Municipal Utilities Providers, that encouraged resending the language. She said the way the language is currently written it is overly broad and cumbersome for the Board. She applauded the Board for the direction it is trying to go, but believed the Board should act to resend the language.

Mr. Currie said there has been thirty days since there was a request to delay, what is trying to be negotiated? Mr. Smith stated he did not disagree with the comments made; the language does need to be changed. He said staff also believed that it is a good concept to work with the Tribes on the standards, and the process is to work with the Tribes, through the Governor's Office, through the Secretary of Environment and come up with language to work with the Tribes but not be such broad language. Mr. Smith explained that the original proposal was to delete the language; and, now we are trying to modify the language so that it is acceptable to the State and to the Tribes, and he hoped to come back at some point with emergency rule language.

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

Chairman Grandstaff asked for clarification, stating the recommendation is to approve the proposal as is, or to delete the changes to the "culturally significant water". Mr. Smithee clarified that the staff's recommendation is to approve staff recommendation (the proposed rules) with the exception of the culturally significant water language, and take no action on that,

meaning the current language would remain. Mr. Smith added staff wanted to table consideration of the culturally significant water portion of the rules, and approve the rest.

Mr. Farmer so moved, and Mr. Sharp seconded

AYE: Farmer, Mitchell, Nichols, Sevenoaks, Sharp

NAY: Currie, Grandstaff

ABSTAIN: None

ABSENT: Secrest, Keeley

The motion was approved.

F. Proposed Amendments to Chapter 46– Implementation of Oklahoma’s Water Quality Standards

1. Summary of final draft proposed rule – Derek Smithee explained that this chapter provides two forms of implementation for the WQS, one is general implementation that all agencies follow in implementing the standards. He said the second is the OWRB implementation for programs of the Board’s that impact water quality. He said the proposal was presented in January, and staff recommended approval.

2. Questions and Discussion by Board Members – There were no questions by the Board.

3. Comments by Public – There were no comments by the public.

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

Mr. Nichols moved to approve the staff recommendation for Chapter 46, and Mr. Farmer seconded.

AYE: Currie, Farmer, Mitchell, Nichols, Sevenoaks, Sharp, Grandstaff

NAY: None

ABSTAIN: None

ABSENT: Secrest, Keeley

**9. 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.

**10. ADJOURNMENT**

There being no further business, Chairman Grandstaff adjourned the regular meeting of the Oklahoma Water Resources Board at 11: 20 p.m. on Tuesday, March 9, 2004.

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Grady Grandstaff, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Glenn Sharp, Vice Chairman



\_\_\_\_\_/s/\_\_\_\_\_  
Harry Currie

\_\_\_\_\_/s/\_\_\_\_\_  
Lonnie Farmer

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Sevenoaks

\_\_\_\_\_/s/\_\_\_\_\_  
Bill Secrest

\_\_\_\_\_/s/\_\_\_\_\_  
Jack W. Keeley

\_\_\_\_\_/s/\_\_\_\_\_  
Jess Mark Nichols

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Ervin Mitchell, Secretary

(SEAL)