

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

July 13, 2004

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Ervin Mitchell at 9:30 a.m., on July 13, 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 Lonnie Farmer gave the invocation.

B. Roll Call

Board Members Present

Ervin Mitchell, Chairman
Lonnie Farmer, Vice Chairman
Bill Secrest, Secretary
Rudy Herrmann
Jack Keeley
Richard Sevenoaks

Board Members Absent

Harry Currie
Mark Nichols

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

Carolyn Sparks, Sulphur, OK
John Sparks, Sulphur, OK
John H. Sparks, Norman, OK
Cathie Arnold, Norman, OK
Steve Burrough, National Park Service, Sulphur, OK
John Callahan, S.M.C. Engineers, Oklahoma City, OK
Janice Preston, Walter Luckert Trust, Tulsa, OK
Peter Fahmy, National Park Service/U.S. Fish and Wildlife Service, Lakeview, CO
John Koster, Washington County rural Water District #7, Copan, OK
James R. Barnett, KIRA, Oklahoma City, OK
Greg Swartz, Piper Jaffrey, Phoenix, AZ
Mike Ray, House of Representatives, Oklahoma City, OK
Bryan Kroeker, Enid, OK
Karen Weehurst, GIT, Oklahoma City, OK
Keith Nettle, McIntosh Rural Water District #13
Jason Aamodt, Tulsa, OK representing John Bruno
Charles Newton, BOK/Oppenheim, Oklahoma City, OK
Rich Sanchez, OWRB, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Steven Jolly, Arbuckle-Simpson Master Conservancy District, Davis, OK
Jack Money, The Oklahoman, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Mitchell stated the draft minutes of the June 8, 2004, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were additional changes.

Mr. Herrmann moved to approve the minutes of the June 8, 2004, Regular Meeting, and Mr. Farmer seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Duane Smith, Executive Director, greeted the members and said that Mr. Currie had plans several months ago to be absent this meeting, and Mr. Nichols needed to meet with the crop adjustor on hail damage to his 1,100 acres of crops. He said there has been some rain, and some large hail across the state, and in southwest Oklahoma at Altus-Lugert, the lake is about one-half full.

He said he met with the Corps of Engineers recently on several issues. He said that there has been some difficulty at the administrative level in approving contracts, so those issues have been discussed and headway is being made. The members asked about the federal lawsuit regarding Sardis Reservoir.

Mr. Smith stated the Arkansas-Oklahoma Arkansas River Compact Commission met in a special meeting July 1, 2004, in Fort Smith, Arkansas. He said the only item on the agenda was the monitoring plan for the scenic rivers. Derek Smithee, and his counterpart, Earl Smith of Arkansas, had met with the technical working group of both states and developed a proposed monitoring plan, which was recommended at the meeting that both states implement. The price of the plan is about \$9.3 million over five years. Mr. Smith noted that while some would argue that money should be spent for implementation, and money is needed for implementation, it is essential that the monitoring is in place to end the arguing over the interpretation of data collected; that the data be collected the same way as over the years it has been discovered that the agencies involved collect and interpret that data differently. Once there is agreement on the monitoring, there can be agreement on the priority regarding the implementation funding into those watersheds that are experiencing the biggest problems. Numerous potential sources of phosphorous have been identified and are leading to the high concentrations of phosphorous. Mr. Smith stated that Randy Young, director of the Arkansas Soil and Water Conservation Commission and he will be traveling to Washington, D.C. to meet with the Oklahoma and Arkansas Delegation members to explain the monitoring plan and ideally to have full federal funding put into a bill for the plan. He commended Mr. Smithee and Mr. Smith for getting together with the technical agencies, but the next hurdle will be the Use Support Assessment Protocol, or in other words, how that data is going to be translated into the determination of impairment. He said the Board sets these rules, and he anticipated the rules process for the USAPs, will be as controversial as the .037 phosphorous limit. He said that tremendous progress had been made on that issue, significant improvement has already been made in the discharge permits of the cities, and he was very optimistic that the issues would be worked out with Arkansas. He mentioned that Dick Seybolt is the Federal Chairman, and he complemented him on his pushing the two states to develop the monitoring proposal.

Mr. Smith stated he and Mike Mathis had met with the City of Sallisaw recently on water rights issues involving Lake Tenkiller. The lake is located in what the Cherokee Tribe contends is their lands and they are claiming ownership to the water. The old Sequoyah Fuels plant that is no longer in operation is closing that area and has made an agreement with the Cherokees to transfer the storage contract, 17,000 acre-feet of storage, to the Tribe. The Cherokee then wants to put in a system that takes water to some of the area communities but the Corps of Engineers said the Tribe must show a water right from the state before they will recognize the transfer, so now there is a controversy between the Corps of Engineers and the Water Board, and the Cherokee Nation saying it doesn't need a permit and that is yet to be resolved. In the meantime, the City of Sallisaw needs water from Lake Tenkiller and there is no more storage to be purchased unless it comes from the 17,000 acre-feet. To reallocate the storage would mean that the COE requires an updated cost estimate, would be very expensive and cost prohibitive. He said that Secretary Tolbert is the Governor's liaison for the Tribal issues, and the OWRB is working with the Secretary to work with several of the tribes. On a side issue, several tribes have applied to EPA for "treatment as a state."

Mr. Smith said he had met with the Lugert-Altus Irrigation District on June 15 and while there presented a grant to El Dorado for \$125,000 in order to get water to the school which would have had to be closed without the funding. He said he toured the District and discussed the interference of water rights and economic development and tourism concerns.

The OWRB Management Team met in June to update the agency's strategic plan. The Legislative session is over, and the budget has been approved as well as legislative items. Mr. Smith stated that Mr. Herrmann, an instructor of strategic planning at OSU, had attended. He said the finalized document would be presented to the Board at the August meeting. Mr. Herrmann commented that he was very impressed with the commitment, dedication, and energy that the OWRB staff demonstrated during the entire strategic planning process. He said it is

very interesting to see a governmental organization show that kind of discipline to getting the work done, setting priorities, allocating resources properly, etc.; it was a very good session and he commended the staff for its commitment to making things happen.

Mr. Smith said the Bond Oversight Commission meets on July 29. He reminded the members that at the August meeting the Board will consider approval of the Clean Water and Drinking Water loan program bond issue, and a supermajority of members (7) is required.

Mr. Smith concluded his report reminding the members that the 25th Anniversary of the Governor's Water Conference is scheduled for October 19-20, 2004, at the Cox Business Center in Oklahoma City.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water District #13, McIntosh County, Oklahoma. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the McIntosh RWD #13 had requested a loan in the amount of \$915,000.00. He said the District had been experiencing steady but moderate growth over the last ten years and currently serves over 545 water customers. He said that the District will utilize the loan along with the REAP grant to resolve water pressure problems in the Tiger Mountain area, refinance existing Rural Development loans, establish and debt service reserve and pay related costs of issuance. Mr. Freeman noted provisions of the loan agreement. By obtaining funding from the Board, the District will save approximately \$536,000.00 in total debt service, or approximately \$4.10 per customer per month. Staff recommended approval of the loan request.

Mr. Keith Nettle, District Chairman, was present in support of the loan application.

Mr. Farmer moved to approve the loan to the McIntosh RWD #13, and Mr. Herrmann seconded.

AYE: Farmer, Herrmann, Kelley, Secrest, Sevenoaks, Mitchell

NAY: None

ABSTAIN: None

ABSENT: Currie, Nichols

B. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for Rural Water District #6, Wagoner County, Oklahoma. Recommended for Approval. Mr. Freeman explained that the Wagoner County RWD #6 had requested an increase in funding to the \$450,000.00 loan approved by the Board in January 2003 to construct additional water lines and to replace and loop existing water lines. On December 9, 2003, a one-year extension was granted to resolve water purchase contract issues with the City of Wagoner. The District has now determined it is in its best interest to acquire property to construct a water treatment plant. The District has requested an increase of \$165,000.00 for the property acquisition resulting in a total loan amount of \$615,000.00. The District will have sufficient revenues after the increase in loan size to maintain a debt coverage ratio of approximately 2.08-times. Staff recommended approval of the request.

Mr. Charles White, Chairman, and Mr. John Wolfe, Municipal Finance Services, were present in support of the loan request.

Mr. Secrest moved to approve the extension in obligation of funds to the Wagoner #6 Rural Water District, and Mr. Farmer seconded.

AYE: Farmer, Herrmann, Keeley, Secrest, Sevenoaks, Mitchell,

NAY: None

ABSTAIN: None
ABSENT: Currie, Nichols

C. Status Report on the Issuance of Obligations to Provide Funding for the Clean Water and Drinking Water State Revolving Fund Loan Programs. Mr. Freeman stated this item is to update the members regarding the issuance of bonds for funding of the Clean Water and Drinking Water State Revolving Fund loan programs. He said that since the June Board meeting, Mr. Mark Selvidge with the Oklahoma City office of Kutak Rock has been retained for services of underwriter's counsel and Kutak Rock will also be providing special tax counsel services to the Board on the transaction. A conference call was held recently involving the parties in the transaction, and the closing of the issue remains scheduled for the end of October. He added the resolution for authorization of the issuance would be before the Board at the August meeting.

3. SUMMARY DISPOSITION AGENDA

Chairman Mitchell 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. Mike Mathis asked that the members withdraw consideration of items 3.G.4., regular groundwater permit for Larry Thomas, #2004-528, and I.1., regular stream water permit #2002-040 for Michael & Kara McBrayer due to publication problems.

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. Herrmann moved to approve the Summary Disposition Agenda as amended, and Mr. Farmer seconded.

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

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:

REAP				Amount
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
ACOG				
1.	FAP-03-0026-R	Coyle Public Works Authority	Logan	\$99,270.00
ASCOG				
2.	FAP-03-0013-R	Minco Public Works Authority	Grady	amend scope
COEDD				
3.	FAP-97-0062-R	Town of Westport	Pawnee	89,200.00
EODD				
4.	FAP-02-0026-R	Rural Water District #13	Cherokee	amend scope
5.	FAP-03-0028-R	Rural Water District #13	McIntosh	99,000.00
GGEDA				
6.	FAP-03-0033-R	Rural Water District #7	Washington	93,369.00
INCOG				
7.	FAP-03-0032-R	Avant Utilities Authority	Osage	150,000.00
KEDDO				
8.	FAP-02-0013-R	Rural Water District #1	Pushmataha	99,999.00
NODA				
9.	FAP-02-0048-R	Town of Greenfield	Blaine	94,000.00
10.	FAP-02-0016-R	Town of Okeene	Blaine	79,999.00
SWODA				
11.	FAP-03-0012-R	Gotebo Public Works Authority	Kiowa	78,800.00

D. Contracts and Agreements Recommended for Approval

1. Consideration of Agreement with the Oklahoma Conservation Commission for Work Related to Project Water Education for Teachers (WET).
2. Consideration of Professional Services Agreement with W. Kenneth Morris for Work Related to Oklahoma Floodplain Management Activities.
3. Consideration of Professional Services Agreement with Michael A. Albano for Work Related to Water Rights Administration.
4. Consideration of Contract with the Oklahoma Department of Environmental Quality for Laboratory Analyses.
5. Consideration of Intergovernmental Agreement with the Oklahoma Department of Agriculture, Food and Forestry for Work Related to Groundwater Monitoring around Licensed Managed Feeding Operations.
6. Consideration of Memorandum Agreements with Local Cooperators in the Federal-State Cooperative Program with the U.S. Geological Survey
 - a. City of Ada
 - b. AES Shady Point, Inc.
 - c. City of Altus
 - d. Central Oklahoma Master Conservancy District
 - e. Ft. Cobb Master Conservancy District
 - f. Foss Master Conservancy District
 - g. Grand River Dam Authority
 - h. Hardage Site Remedy Corp.

- i. City of Lawton
 - j. Lugert-Altus Irrigation District
- 7. Consideration of Professional Services Contract with the Oklahoma Floodplain Managers Association for Publication of Newsletter and Related Materials.
- 8. Consideration of Interagency Contract with the Oklahoma Conservation Commission for Sampling to Support Wadable Streams Assessment.
- 9. Consideration of Renewal Agreement with Park Place International for Hardware Maintenance.
- E. Applications for Temporary Permits to Use Groundwater:
 - 1. Jon Young, Grady County, #2003-566
 - 2. Jimmie & Kathy Montgomery, Washita County, #2004-521
 - 3. Rex Lundy, Oklahoma County, #2004-538
- F. Applications to Amend Temporary Permits to Use Groundwater:
 - 1. Triple S Farms, Custer County, #1994-508
- G. Applications for Regular Permits to Use Groundwater:
 - 1. Mitchell Ehrlich, Beaver County, #2003-546
 - 2. Bob E. & Cherie L. Beene, Choctaw County, #2003-580
 - 3. Cody & Loretta Cribbs, Tillman County, #2004-522
 - 4. *Larry Thomas, Beckham County, #2004-528--withdrawn*
- H. Applications to Amend Regular Permits to Use Groundwater:
 - 1. Bert Jr. & Joyce Allard, Cimarron County, #1992-537
- I. Applications for Regular Permits to Use Stream Water:
 - 1. *Michael & Kara McBrayer, Johnston County, #2002-040--withdrawn*
 - 2. Michael McBrayer, Atoka County, #2002-048
 - 3. Eloise P. Gamble and Ralph C. Gamble Revocable Trusts, LeFlore County, #2003-024
 - 4. Max & Rebecca Hawkins, Kay County, #2004-010
- J. Applications to Amend Regular Permits to Use Stream Water:
 - 1. City of Ponca City, Kay County, #1993-034
- K. Stream Water Right Reductions and Cancellations:
 - 1. Howard Turner, Wagoner County, #1987-44
- L. Well Driller and Pump Installer Licensing:
 - 1. New Licenses, Accompanying Operator Certificates and Activities:
 - Licensee: American Water Well, L.L.C. DPC-0684
 - Operator: Michael Tabor OP-1375
 - Activities: Pump installation
 - 2. New Operators and/or Activities for Existing Licenses:
 - Licensee: J & B Pump & Supply, L. L. C. DPC-0587

Operator: John L. Stottlemyre, Jr.
Activities: Pump installation

OP-1406

M. Dam and Reservoir Plans and Specifications:
None

N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
None

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

There were no items for 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 Temporary Permit to Use Groundwater No. 2002-590, Carolyn Hunt Sparks, Johnston County:

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that the applicant, Carolyn Hunt Sparks, has requested a permit to take and use 3,191 acre-feet of groundwater per year for irrigation of 1,595.95 acres of pecan trees. The water is to be taken from eleven wells located on the same 1,595.95 acres of land. The land overlies the Arbuckle-Simpson basin in Johnston County. Even though the application states that the water would be used to irrigate the 1,595 acres, at the hearing the applicant's husband testified that he could develop about 800 acres of pecan trees on the land. The evidence in the record indicated that pecans in southern Oklahoma optimally require a total of approximately 50 inches of water per growing season, typically April through October of each year, and since this area receives an average of about 23 inches of rainfall during that growing season, applicant's pecans would need about 27 inches of supplemental water per season. This leads to the result that the applicant can put to beneficial use about 1,800 acre-feet of groundwater each year for the irrigation of pecans. Applicant's husband testified he would probably use either an

underground drip watering system or micro-sprinkler system, and he also testified he would not use more water than is necessary to irrigate the pecan trees. He stated that applicant will select and use a licensed water well driller and have wells drilled and completed in compliance with the Board's minimum construction standards.

Mr. Mathis said that this application is unique because there is a recently new provision of the law that must be considered as the use of groundwater is evaluated. He reminded the members that in late May 2003, the Oklahoma Legislature enacted Senate Bill 288 to establish new law to amend the existing groundwater law governing certain groundwater applications and the law became effective August 28, 2003, and governs this application. Senate Bill 288 stated the provisions of the law shall be applicable to groundwater permit applications for which no final adjudication has been made by the Board before the effective date of that act, and applies in the Arbuckle-Simpson Aquifer; Section 3 of the bill added the clause of issue and finding that the Board must determine before taking action on an application for a groundwater permit, and that is whether the proposed use is likely to degrade or interfere with streams or springs emanating in whole or in part from the water originating from a Sensitive Sole Source Groundwater Basin or Subbasin (SSSGB). The Arbuckle-Simpson has been defined and designated by EPA as a SSSGB and therefore the section applies in this instance.

Mr. Mathis stated that the primary issue of contention at the hearing regarded whether this usage would have a likelihood of degrading or interfering with springs or streams, including the Antelope Spring, Buffalo Spring, and the Chickasaw National Recreation Area which are located west of the applicant's wells, and the Gregor Spring and two unnamed springs (Spring A and Spring B) east and southeast of the applicant's proposed wells. Mr. Mathis noted the map indicating the locations of the application as well as the area water sources that was distributed to the members. Antelope and Buffalo Springs are located approximately six miles west from the nearest two proposed well locations, and the other well locations are more than one mile further east, and about seven miles east of the named springs, and Gregor Spring and Springs A and B are upstream of the Tishomingo National Fish Hatchery. Applicants proposed well locations are concentrated together in the upper reach of Pennington Creek, approximately eight to nine stream miles upstream and northwest of the hatchery.

Mr. Mathis said that based upon reading of the Oklahoma Geological Survey publication No. 91, Hydrology of the Arbuckle Mountains Area, applicant's husband testified he did not believe the withdrawal of the 3,191 acre-feet of water from the aquifer will likely degrade or interfere the springs. The applicant's husband also testified the groundwater level of stock wells on their land depend on ground conditions.

Mr. Mathis stated that the protestants presented a significant amount of technical testimony at the hearing. The National Park Service (NPS) and the U.S. Fish and Wildlife Service (USFWS) witnesses testified there is insufficient evidence to determine the applicant's use will likely not affect the springs and streams of the basin, and more evidence is needed that the applicant's proposed withdrawal of 3,191 acre-feet would reduce or cease the flow from the Antelope and Buffalo Springs, Gregor Springs and Springs A and B. Additionally, they also stated the Sulphur Falls which runs from a northwest to southeast line and situated between the applicant's proposed well locations and the NPS recreation area, is a natural conduit for Antelope and Buffalo Springs and that additional data is needed to better understand the relationship of water levels in the aquifer and discharge to springs and streams.

Mr. Mathis stated that upon cross-examination the protestant's witness (NPS and USFWS) acknowledged there is a high water divide somewhere in the vicinity of the Sparks's property that can be affected by groundwater pumping. It was further noted in the USGS report, The Hydrology of the Chickasaw National Recreation Area, ... "the influence of the hydrologic system of local municipal and industrial pumping from the Arbuckle-Simpson is difficult to

discern because the system is much more sensitive to precipitation than pumpage...groundwater levels and spring flows in this region respond rapidly to precipitation. The USFWS testified on the results of models it had run on the possible effects of applicants pumping on Spring A and Spring B and Gregor Spring to the fish hatchery to the south and the witness testified it was his opinion that applicant's proposed use would decrease the discharge of Spring A, Spring B on Pennington Creek, but upon cross-examination the witness noted there are differences in the elevation of groundwater throughout the basin.

Mr. Mathis stated that the hearing examiner had a tremendous amount of information to sift through along with considering modeling done on the best available information that was sketchy as best. He said it appears the applicant's proposed withdrawal of groundwater at the rate of 3,191 acre-feet is likely to degrade or interfere with the Antelope and Buffalo, Gregor, Spring A and Spring B springs emanating from the Arbuckle-Simpson Groundwater Basin. It appeared that if the application is limited to 1800 acre-feet of water based on the technical evidence that the applicant provided on supplemental irrigation water of the pecan trees, that applicant will not likely degrade or interfere with those springs and streams. In cases where the maximum annual yield has not been determined, the Board issues a temporary permit subject for a term of one year and subject to annual revalidation. This revalidation requirement provides an opportunity to revisit the permit and its effect on an annual basis, and the facts gathered by OWRB staff and others while conducting the Arbuckle-Simpson study together will also provide opportunity for additional information and may result in a need to reevaluate the conditions of the permit. In summary, Mr. Mathis stated the record showed the application in accordance with the Oklahoma Groundwater Law, the applicant has a valid right to the dedicated land, the land overlies the Arbuckle-Simpson groundwater basin in Johnston County, and the use of 1800 acre-feet of groundwater per year to irrigate 800 acres is beneficial and waste will not occur, and applicant's use is not likely to degrade or interfere with springs and streams emanating from the basin. Staff recommended approval of the proposed findings of fact, conclusions of law and board order.

2. Discussion and presentation by parties. Mr. Mathis stated representatives of the applicant and protestants were present, all had filed exceptions to the proposed board order which he indicated the documents by colored highlighter. Mr. Duane Smith said he had met the clients on both side of the issue and it's a matter of good people disagreeing with good people, and it is unfortunate there hasn't been some agreement before now. He said this application is the first one considered by the Board since SB 288 was passed.

Chairman Ervin invited the applicant's attorney to approach the members. Mr. Jim Barnett, representing Carolyn Hunt Sparks, stated to the members that he is prepared to go forward; however, he had just learned the members had not had an opportunity to evaluate the exceptions filed by neither he nor the other parties. He said it has been almost two years getting to this point, and if the Board wanted to take more time he would not have an objection. Chairman Mitchell polled the Board, and the majority opinion was to consider the application.

Mr. Barnett stated to the members that he appreciated the staff's extensive presentation of their position. He said he believed though the staff was wrong on a number of issues, that the hearing examiner heard the testimony wrong, transcribed it wrong, and relayed it to the Board wrong. He said he believed it is an inaccurate translation of the testimony that the applicant testified that only 800 acres of pecan trees would be irrigated, needing 27 inches of water per acre per year. He said he attached copies of the transcript pages of testimony to the exceptions, and the clear and unambiguous testimony of Mr. Sparks was that if the applicant, Mrs. Sparks, were to receive her full statutory allocation of 3,191 acre-feet, that would only be enough water to irrigate from between 700 and 1,000 acres. He said the fact that the hearing examiner interpreted that only 800 acres of land would be planted, turns the world upside down. Further, he said that the testimony was that the water would be the limiting factor

on the number of pecans that are planted. And finally, on the statement regarding the calculation to arrive at the 27-inch recommendation, Mr. Barnett stated that for the staff to take it upon itself to determine the amount of water needed based on an average year, it is presumptuous when requesting irrigation water, because requesting irrigation water assumes there will be a dry year, and all of the water will be needed. The testimony in the record by the applicant was that the pecans needed 50 inches of water plus the natural water, and Mr. Barnett stated it was not appropriate for the staff to construe the testimony around to squeeze the amount back.

Mr. Barnett said there are a number of issues in the exceptions that were filed, but he specifically wanted to address two. First, it is his contention the Board did not and does not have the legal authority to reduce the permit below the statutory entitlement of two acre-feet per surface acre. He said the hearing examiner relied on an old Attorney General's opinion, of which he was the author, that seemed to say that could be done; however, Mr. Barnett said it doesn't mean and doesn't say what staff has interpreted it to say. He said the question he had been presented while an Assistant Attorney General and representing the OWRB, was that if an individual made application for water but he doesn't need or want the full amount, could the Board give him less? The answer was yes, but it was not to be construed that if an applicant applies for the full amount that the Board can grant less. He said, in fact, that the opinion is now moot because the legislature changed the law in 1993 to say that the Board did not have to give an applicant all of the water if he didn't want it. Now, it is being used as a basis for the reduction of his client's application.

Secondly, Mr. Barnett stated the condition in the order will be a template for future applications and revalidated permits for the Arbuckle-Simpson. Condition no. 4, regarding the permit being subject to modification when revalidated, the Board shall determine if any further conditions are necessary, including but not limiting to reduction or increase in amount of water and reduction in number or location of wells. Mr. Barnett said no prudent businessman, farmer or otherwise, would invest in a pecan orchard with that kind of a threat. He said this is a major capitol investment which will take five years to realize a return, and he said no one could live with that kind of condition, and if the Board were to put this kind of a template on the application, then on the municipalities and effect on bond ratings, industries and disclosure to stockholders, etc., it just won't work.

Mr. Sevenoaks asked about the same language being inserted into all other temporary permits as they are revalidated, and Mr. Couch responded this is the first after SB 288, and he was not aware of any proposal to change the existing temporary permits to add this condition. He added that it is not clear that the provision of SB 288 about the use of water that would "degrade or interfere" with springs and stream, exactly how that will be implemented. Mr. Sevenoaks expressed concern that there could be separate "classes" of permits because of the template established. Mr. Herrmann asked how many non-protected permits have been revalidated each year; Mr. Mathis answered there had only been one permit on the fringe of the basin. Mr. Couch stated there are approximately 15-20 permits to take groundwater from the area, and protected as a prior right (prior to 1972). Mr. Keeley asked if that is an ex post facto matter that applies? Mr. Couch stated that is subject of litigation in the Oklahoma County District Court, and Mr. Barnett stated the question was raised with the hearing examiner as whether SB 288 applied since it was filed before the law was effective and the hearing examiner determined it was subject to SB 288, which he disagreed with.

Mr. Peter Fahmy representing the National Park Service and the US Fish and Wildlife Service, addressed the members and stated he would speak on behalf of both agencies. Connie Rudd of the Chickasaw National Recreation Area and Steve Burrow head of the park's natural resources division also attended. He commended the OWRB staff for its proposed order that seeks to actively manage the groundwater withdrawal of the Arbuckle-

Simpson basin in such a manner as to prevent the degradation and interference of springs and streams emanating from the basin. Furthermore, he said he commended its superb work in implementing the legislative directive, that the hydrogeology of the aquifer be thoroughly studied, and keeping the public informed through its newsletter of the management of the water of the area. He said the federal government has commissioned substantial funding for the study and is committed in the future. But, there is not enough data to conclude interference or degradation, and there is only a "best guess" based upon modeling. He said it is the recommendation of the USFWS and the NPS and based upon Secretary Norton's commitment that natural resource management decisions be based on sound science that is essential on making these decisions. He said the suggested modifications to the Board's order have as their objective the development of a database sufficient to permit the Board to actively manage the proposed withdrawal of the applicant in order to avoid the degradation of the springs and streams of the basin. He further stated the federal government's commitment to continue work with the Board, local communities, businesses and conservation groups and private citizens to advance the goal of using sound science to manage the resource in the basin for all Oklahomans. Regarding Mr. Barnett's comments, Mr. Fahmy said that review of the record indicates the hearing examiner made the right call, and he sighted the publication used to reference the 50 inches of water recommended for the growing season. Mr. Fahmy concluded his remarks stating he believed SB 288 was a step toward developing sound science and the study needs to be "seen through" in order to manage the resources for all users.

Mr. Sevenoaks asked about the current state law to mine water, and he asked if the NPS was asking the Board to set priorities or allow a different interpretation of the law that the owner can't take all water that is allowed? Mr. Fahmy responded the NPS/USFWS are simply asking the applicant be helped to comply with the terms of SB 288 which specifically says the withdrawals cannot interfere or degrade the springs or streams; it is not asking for any change in the law. The NPS/USFWS are deserving of the protection envisioned in SB 288 for the springs and streams. Mr. Sevenoaks asked if this condition would be transferable to the other aquifers; and the response was, no. Mr. Fahmy said the NPS/USFWS looks at these applications on a case-by-case basis, looking at all data and the potential impact to springs and streams. Senate Bill 288 applies specifically to the Arbuckle-Simpson aquifer.

Mr. Jason Aamodt, representing Mr. John Bruno, stated to the members in response to Mr. Sevenoaks question about priorities, that the legislature has imposed a policy priority for protecting springs and streams in sole source aquifers in Oklahoma. Currently, the only sole source aquifer in Oklahoma is the Arbuckle-Simpson. In instances where it is the only source of water for all of the inhabitants and has to be shared and properly managed, then there is a priority that has to be placed on the springs and streams that emanate from the aquifer. He reminded the members that an aquifer is very deep and contains lots of water, but the springs and streams are at the very top and if the top of the aquifer is diminished by reducing some of the water, then the springs and streams are degraded. Because the aquifer cannot be artificially perched, when water is withdrawn in the case of a sole source aquifer, you have to be very careful in this case to not issue a permit that would violate 82 O.S. 1020.9, or the provisions of the SB 288 containing the limitation on when permits can be authorized. Mr. Aamodt stated that Mr. Bruno requested the Board do one of three things today: (1) deny the application because no findings have been made showing that the requested application will not adversely affect the springs in the Chickasaw National Recreation Area or Pennington Creek where Mr. Bruno has his farm; (2) remand this matter to the hearing examiner to entertain further evidence to be provided by the applicant that may substantiate the applicant's claim that his withdrawal would not negatively impact the springs and streams, or in the absence of evidence deny the permit; and (3) if the permit is approved today, Mr. Bruno asks that the Board impose the conditions of the NPS for management of the aquifer which would limit the negative

impacts to Pennington Creek, and additionally monthly reporting of metering at the withdrawal points in order to have a more clear picture of the impact to the aquifer to go along with the study. Mr. Aamodt stated Mr. Bruno also requested because he is very concerned about the impact of sprays and fertilizers in upstream use, that the Board impose a limitation that the applicant provide quarterly reporting of the volume of sprays and fertilizers that are used, along with the applicant allowing access to the state for future monitoring during the term of the permit to support the OWRB's continuing study. Mr. Aamodt stated there is one last request by Mr. Bruno, and that is that in this and later orders that relate to these important resources in Oklahoma that the Board implement SB 288 and look at the permit uses to determine if the top of the aquifer is effected. Mr. Aamodt continued to present information that substantiated the requests made by Mr. Bruno, reiterating what the NPS presented. He said the Board would be setting a precedent no matter what its decision, and that while it is true that SB 288 will have a negative effect upon development within the region, that was a policy choice made by the legislature and is not one the Board must make, although the Board is bound to follow the legal requirements. He suggested that further study is necessary because this is being implemented for the first time, it is important that Board get it right, and that there either is or isn't sufficient evidence to show that the springs and streams will be degraded.

Mr. Sevenoaks asked if Mr. Bruno irrigated and had permits from the aquifer; Mr. Aamodt responded that he believed he irrigated or watered cattle with surface water and does not have a groundwater permit.

There were no other presentations by protestants. Mr. Mathis asked if there were other protestants that had permits from the aquifer. Mr. Keeley asked how much of the 27 inches would be recharged, as opposed to being taken out of the basin. He said he viewed the matter as an opportunity rather a problem; this is the first time the state is looking at the conflict of use for the same gallon of water. There are three legitimate and equal uses of the Arbuckle: the landowner who has a right to groundwater, people taking surface water for domestic or municipal use, and the maintenance of the base flow of the springs and streams. He suggested the Board grant the permit, conduct real time water level measurements at the appropriate places (the aquifer responds very quickly to stress) and after the first well is drilled and after 1-2 years have passed the Board will have intelligence to make decisions rather than speculation.

Mr. Herrmann asked about the evidence presented that if the applicant used 1,800 acre-feet per year would not likely degrade...what is the evidence used to make that statement and what is the difference between 1800 and 3191 a.f.? Mr. Mathis responded the hearing examiner looked at lot of information, listened to a lot of testimony, as well as modeling and balanced that with the private property right consideration and being protective of the springs and streams, and the reduction to what is needed--based on the Oklahoma State University information on requirements of actual irrigation that--would be a good balance based on best available information, and knowing that it may need to be changed.

Mr. Barnett rebutted comments by Mr. Aamodt regarding the possible addition of sole source aquifers, that is not accurate because EPA has abandoned that program and the language of SB 288 applies only to the sole source aquifers effective as of the date of the legislation, and there won't be any more designations. The suggestion that we go back and somehow prove more than has been adequate is unacceptable, and to demand that an applicant for water right prove a negative that they will not effect springs or streams in the area is ludicrous as every farmer would have to hire a hydrologist to prove he won't effect the NPS. Mr. Barnett stated he agreed with the hearing examiner in that he recognized there are some limitations on what the Board can do including such things as the NPS request to micromanage the client's property, that the Board direct the applicant to do things the NPS wants done, but the Board doesn't have the authority to require those things. Mr. Barnett also commented on Mr. Fahmy's remarks about sound science and that the 700 acre-feet will have an effect. He

argued that what was presented by the federal government modelers and testimony had glaring problems, they didn't include recharge, they incorrectly assumed it is a confined aquifer, that it is a homogenous aquifer and it is not etc., and that is why the hearing examiner disregarded the information. He conceded that in a letter submitted by the applicant's husband reciting publications regarding the amount of water needed for pecans did state 50 inches and under that theory, after deducting the natural rainfall the difference could be used, but the information stated the 50 inches was to be used in addition to natural rainfall. He concluded stating the clear statutory authority of the Board is that it *shall* not give less than what is the statutory requirement. He said the hearing examiner was trying to "cut the baby in half" and comply with the law and satisfy the protestants, but Mr. Barnett stated he believed that is not accurate and not right.

Mr. Herrmann asked if the applicant was willing to go along with Mr. Keeley's proposition and learn based on the input and technical information gathered from a well. Mr. Barnett stated the hearing examiner correctly found the application would not adversely affect springs and streams but the quarrel is that it is understood how it was determined for 1800 acre-feet but not 3191 acre-feet as there is nothing in the record that warrants it. Mr. Herrmann repeated his question about whether the client would be willing to participate in monitoring relative to study of the Arbuckle-Simpson. Mr. Barnett responded he believe his client should receive the full allocation without the condition, but they are willing to work with the Board and staff. Mr. Barnett argued that condition no. 4 (of the order) states that the Board can take back the water next year, and that is a fiscal impossibility. Mr. Secret expressed his concern that condition 4. could strongly hinder cities or rural water districts from borrowing money; Mr. Barnett stated he believed that would cause a lender heartburn. Mr. Farmer asked about the status of development of the project; Mr. Barnett responded nothing had been done; the applicant is not going to invest the money until the permit is granted.

3. Possible executive session. Chairman Mitchell stated that a member had requested that the members enter executive session. Mr. Sevenoaks explained his request stating there are two different issues, the one immediately before the Board, but a broader one of a policy decision and he would like the opportunity for discussion.

(a) Vote on whether to enter executive session. Chairman Mitchell called for a vote:

AYE: Herrmann, Keeley, Secret, Sevenoaks, Mitchell

NAY: Farmer

ABSTAIN: None

ABSENT: Currie, Nichols

(b) If executive session approved, designation of person to keep minutes. Chairman Mitchell designated Mary Schooley, Executive Secretary, to keep minutes of the session.

(c) Executive session on proposed order. The members entered executive session at 11:20 a.m. and returned to regular session at 11:30 a.m. Chairman Mitchell opened the regular session, and stated that the Board had taken no action during the 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 that the Board approve the permit and order as written and authorizing 27 inches per acre for the 800 acres (equaling 1800 acre-feet).

Mr. Herrmann added that technical monitoring standards would be developed to apply uniformly across the aquifer going forward. Mr. Sevenoaks clarified that would not be part of the wording of this permit authorization.

Chairman Mitchell stated the temporary permits that have been issued must be renewed on an annual basis at which time any protest can be filed.

Mr. Keeley seconded the motion.

AYE: Farmer, Herrmann, Keeley, Secret, Sevenoaks
NAY: None
ABSTAIN: Mitchell
ABSENT: Currie, Nichols

B. Application to Amend Temporary Permit to Use Groundwater No. 1996-516, Bryan & Lavonne Kroeker, Garfield County:

1. Summary – Mr. Mathis stated the Board issued a permit to Bryan and Lavonne Kroeker in April 1996 for a total of 196 acre-feet of groundwater per year for irrigation of 98 acres of land. The water was to be taken from 12 wells located on 100 acres of dedicated land in Garfield County. The Permittees are requesting to amend the permit by adding four acre-feet of groundwater for a total of 200 acre-feet per year, and by deleting three permitted well locations and adding one additional well location for a total of ten wells. The additional well is needed because the Cedar Hills Sandstone groundwater basin in this area is low-yielding and it is necessary to have additional wells and a capacity to operate a center pivot system. Mr. Mathis noted the computerized irrigation system had experienced a problem earlier, but once the hole in the line was located, it was replaced and there has been no excessive leaks or substantial loss since that time. The additional well will be drilled by a licensed water well driller according to the Board's requirements.

Mr. Mathis stated the protestant was primarily concerned that the Permittee's groundwater withdrawal would interfere with and deplete the Protestant's springs, groundwater and domestic wells. However, there has not been a hydrologic study conducted for the basin, and therefore it is not known how much groundwater is available. He said it is understandable about the concern for supply, but there is no evidence to show there would be an impermissible impact on the protestant's well or groundwater.

Mr. Mathis stated that the summary of the record showed the application to be in compliance with the Oklahoma Groundwater Law, and staff recommended approval.

2. Discussion and presentation by parties. Mr. Bryan Kroeker addressed the members and stated he and his wife are farmers, they have had this permit for some time and offset pumping of the wells at different times, requiring a new location and increased pumping when wells are shut down in order to meet the needs of the crop. He said the three wells that are being deleted were never drilled, and the new well will be located at as great a distance as possible from the protestant.

Ms. Janice Preston, representing the Walter Luckert Trust, addressed the members and stated her concerns about the applicant pumping more water during the off-peak rate period. Regarding beneficial use, she said that Mr. Kroeker stated at the hearing that relocating the well was not an economic necessity but that he could, thereby indicating there is no need for the additional acre-feet. She questioned which aquifer the wells would be located over as that was not indicated at the hearing, and if the wells were located in the Cimarron Terrace, they would be subject to well spacing and yield restrictions. She was also concerned with pollution because of nitrate and gasoline problems in the area and possible draw down effects, and recharge during drought.

There were no questions or discussion by Board members.

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 amendment to temporary permit #1996-516, and Mr. Farmer seconded.

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

C. Application for Temporary Permit to Use Groundwater No. 2003-613, Rod Ferguson, Woods County:

1. Summary – Mr. Mathis stated this applicant requested a permit to take and withdraw 320 acre-feet of groundwater per year for irrigation of 160 acres. The water is proposed to be withdrawn from one well located on 160 acres of dedicated land in Woods County. The record shows that the Applicant has a valid right to the dedicated land, the land overlies the Dog Creek Shale and Blaine Gypsum basin for which maximum annual yields and equal proportionate shares have not been determined; therefore, each landowner is entitled to two acre-feet of water per acre of land dedicated. Staff recommended approval of the permit application.

2. Discussion and presentation by parties. There were no representatives of the applicant or the protestant 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. Herrmann moved to approve the proposed findings for permit #2003-613, and Mr. Keeley seconded.

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

D. Consideration of items transferred from the Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Jim Schuelein, Chief, Administrative Services Division, began his report saying the new fiscal year began July 1, 2004, and the budget was just submitted and approval has not yet been received. The budget to actual report reflects how the agency did last year, and there may be a few more claims that come in for payment. He noted the People Soft problem indicating over spending in the Office of Secretary of Environment is in error. Mr. Sevenoaks asked about the differences in the budget from last year's; Mr. Schuelein stated the budget would be up some and there are some things budgeted for next year but it is uncertain if the funds will be received, i.e., Gross Production Tax and will just have to wait and see if those funds come in. He encouraged the members to contact him if they have any questions.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

There was a Supplemental Agenda item for the Board's consideration; however, Mr. Schuelein asked that the item be withdrawn.

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, Chairman Mitchell distributed ad hoc committee assignments.

Mr. Herrmann reiterated that staff was challenged under the discussion of item 5.A. to develop uniform technical standards regarding the temporary permits to be issued in the future from the Arbuckle-Simpson aquifer.

9. ADJOURNMENT

There being no further business, Chairman Mitchell adjourned the regular meeting of the Oklahoma Water Resources Board at 11:55 a.m. on Tuesday, July 13, 2004.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Ervin Mitchell, Chairman

_____/s/_____
Lonnie Farmer, Vice Chairman

_____/s/_____
Harry Currie

_____/s/_____
Rudolf J. Herrmann

_____/s/_____
Jack W. Keeley

_____/s/_____
Jess Mark Nichols

_____/s/_____
Richard Sevenoaks

(Vacant)

ATTEST:

_____/s/_____
Bill Secrest, Secretary

(SEAL)