

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**March 8, 2005**

**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 March 8, 2005, in the meeting room of the Oklahoma Water Resources Board, located in offices of the OWRB 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 Harry Currie gave the invocation.

**B. Roll Call**

**Board Members Present**

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

**Board Members Absent**

Ed Fite

**Staff Members Present**

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

**Others Present**

Dave Taylor, Waurika Master Conversancy District, Waurika, OK  
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Wendy Wipperman, Standard & Poor's, Dallas, TX  
Mal Fallon, Standard & Poor's, Dallas, TX  
Robert M. Jones, Capitol West, Oklahoma City, OK  
David P. Page, Whitlock Packaging, Miller & Keefer, Tulsa, OK  
Jeff Erwin, Oklahoma Tourism & Recreation Department, Oklahoma City, OK  
Chris Cochran, Capitol West, Oklahoma City, OK  
Tom Liu, UBS, New York City, NY  
Tom Dupuis, Dolese, Oklahoma City, OK  
Dan Becker, Dolese, Oklahoma City, OK  
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK  
Bob Kellog, Save the Illinois River, Oklahoma City, OK  
Bobby & Donna McSpadden, Clayton, OK

**C. APPROVAL OF MINUTES**

Chairman Mitchell stated the draft minutes of the February 8, 2005, Regular Meeting have been distributed. He said he would entertain a motion to approve the minutes unless there were changes.

Mr. Herrmann moved to approve the minutes of the February 8, 2005 Regular Meeting, and Mr. Nichols seconded.

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

**D. EXECUTIVE DIRECTOR'S REPORT**

Mr. Duane Smith, said the Legislature is in full swing and is often working late. He asked Mr. Mike Melton to present to the members the monthly Legislative Update. Mr. Melton said the Legislature has been in session five weeks; the next week's deadline is for third readings of measures in the House of Origin, probably eliminating several measures. He said the appropriations process has begun and there would be several meetings over the course of the next month. Mr. Melton distributed the written report on the status of agency legislation, environmental legislation, and other measures of interest that are still active in the House and Senate. The members asked about the rural water meter bill, and the Tulsa/Oklahoma poultry waste application (HB 1912); Mr. Melton and Mr. Smith responded to the questions.

Mr. Smith spoke about the various water planning legislation that are under consideration and said there has been some misinterpretation by various groups at the Capitol. He said that the best approach is perhaps for the OWRB to develop a plan, and the OWRB should then be made accountable. He said the most critical consideration is the approval of \$2.5 million appropriation recommended in the Governor's budget (for a total of \$6.5 over three years). He also mentioned the \$25 million for the Financial Assistance program in the Governor's budget included in the Capitol Improvements Bond Issue, and he had met with the Governor's Office and the House and Senate Leadership. Also, funding for the Arbuckle Simpson study is in the appropriations process.

Mr. Smith mentioned that he had made a trip to Washington, D.C. to present the Oklahoma Congressional delegation with the agency's "Congressional Briefing Document" and talk to the members and their staff about water issues. He distributed the document to the Board members, and he highlighted the Clean Water State Revolving Fund and the significant cut recommended by President Bush, and a proposed change in the formula by which the states receive funding. He said Joe Freeman is the OWRB point person working with Senator Jim Inhofe's office, and the Senator has been very supportive of not changing the formula, but understanding that some cuts are necessary. He said the entire Congressional delegation had been very receptive, and he highlighted some of the most critical projects included in the documents including the Oklahoma/Arkansas monitoring plan, Arbuckle Study, lake reallocation studies, chloride control, reservoir operation & maintenance and funding for updating gate maintenance, streamgaging, and update of the state water plan. The Board members were supportive of contacting the Congressional delegation in regard to the proposals.

Mr. Smith informed the members that that Canadian River Compact Commission had met in Albuquerque on March 7, represented by Oklahoma Commissioner Les Kamas. He said the issue with the compact is the Palo Duro Reservoir, which Oklahoma believes Texas built the reservoir outside the compact provisions. A lawsuit would be very difficult and very expensive; however, at the meeting a resolution was approved by the Commission, which was proposed by Oklahoma, which is a notification rule that before any state builds a reservoir in the compact area, notification would be given to the other states. He said that everyone agreed that while the possibility of a lawsuit is still conceivable, the notification rule is a good thing.

Mr. Sevenoaks mentioned that he had been reading that Dallas is "very thirsty." Mr. Smith responded that the Red River Compact will meet April 25-26 in New Orleans and one of the issues of discussion will be the Corps of Engineers' reallocation study on Lake Texoma for water supply for the North Texas Municipal Water District. He said Oklahoma has some issues with the allocation, particularly in regard to the Sweetwater Creek matter and that status of the project. He explained the reallocation theory and the compact provisions, and that there are a number of issues with the compact and he felt it would be a very important meeting.

Mr. Smith concluded his remarks.

## **2. FINANCIAL ASSISTANCE DIVISION**

**A. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Oologah Municipal Authority, Rogers County. Recommended for Approval.** Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the Oologah Municipal Authority had made a request for a six-month extension of time to close its loan with the OWRB. He said the OMA had to hire a new engineering firm because the original company ceased operations. The OMA is currently in the process of obtaining documentation from the Department of Environmental Quality in order to obtain a permit for construction and begin the project. The loan, approved in September 2003 in the amount of \$543,500.00, was for the construction of a new aeration basin, new clarifier, filtration unit and installation of necessary piping. The project will allow the community to meet discharge requirements with the DEQ. Staff recommended approval of the request.

Mr. Allan Brooks, bond counsel, was present in support of the request for an extension.

Mr. Nichols moved to approve the extension of time for the obligation of funds, and Mr. Currie seconded.

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

ABSTAIN: None  
ABSENT: Fite

B. Presentation of Standard & Poor's Credit Rating Analysis of the Oklahoma Water Resources Board's Outstanding Debt Obligations. Mr. Mal Fallon and Ms. Wendy Wipperman, representatives of Standard & Poor's Rating Service (Dallas office), were present to speak to the Board about its outstanding debt obligations. Mr. Freeman introduced Mr. Fallon as the Managing Director of S&P's Public Finance Department, and said he has presented to the Board at previous occasions. He introduced Ms. Wipperman, who would speak to the Board today, as the Associate Director of the Public Finance Rating Groups in the Dallas office, and joined the firm in 1998, specializing in general government utilities and other revenue secured bond ratings.

Ms. Wipperman addressed the Board and said the Board had been provided with the most recent rating for both the state loan program and the state revolving fund loan program, as well as the criteria for the ratings. She said the purpose of the presentation today is to review the highlight of S&P's rating action for both programs, and answer questions by the Board. She noted said S&P's AA+ and AAA ratings earned by the Drinking Water and Revolving Loan fund programs, respectively. She said the Board's AAA rating is the first "natural unenhanced rated bond issue in Oklahoma. Ms. Whipperman briefly explained the rationale for the ratings including history of borrower repayment, no loan default, strong financial management and program oversight, and sound underwriting standards and strong loan requirements; and, she described why the state loan program had not received the AAA rating, mainly because of the percentage of loans outstanding that are not investment grade, and the pool's open nature.

Ms. Whipperman concluded her report, and questions and discussion with the Board members followed. Chairman Mitchell expressed his appreciation for the Board's relationship with Standard & Poor's and for the presentation today.

### **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. Jim Schuelein asked that items D.3. and D.4. be withdrawn from the Board's consideration because the contracts had not been received from the other entities.

#### **B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items and Approval of Items 3.C. through 3.O.**

Mr. Sevenoaks asked about the item 3.D.5., Interagency Agreement with the Oklahoma Department of Tourism and Recreation. Mr. Smith responded that this item regards money that was given to the OWRB last year, and Senator Rabon sent a letter that the funds were provided for water projects; a contract was entered with the Department of Tourism, and the OTRD

selects the project. He clarified that the funds are not from the OWRB Financial Assistance Division programs, which is applications are subject to the priority rating process.

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: Currie, Farmer, Herrmann, Keeley, Nichols, Secrest, Sevenoaks, Mitchell

NAY: None

ABSTAIN: Mitchell on item 3.H.

ABSENT: Fite

**The following items were approved:**

C. Consideration of Approval of the Following Application for REAP Grant in Accordance with the Proposed Order Approving the Grant:

<u>REAP Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
SODA				
1.	FAP-04-0012-R	Rural Water District #1	Love	\$90,000.00

D. Contract and Agreements Recommended for Approval

1. Consideration of Subagreement with the University of Oklahoma Board of Regents through its Oklahoma Climatological Survey to Install Equipment for the Arbuckle-Simpson Hydrologic Study.
2. Consideration of Amendment to Joint Funding Agreement with the U. S. Geological Survey for Investigating Recharge Dates of Groundwater in the Garber-Wellington Aquifer at Tinker Air Force Base.
3. *Consideration of Amendment to Subcontract Agreement with Science Applications International Corporation (SAIC) to Extend the Time for Performance on Project to Investigate Recharge Dates of Groundwater in the Garber-Wellington Aquifer at Tinker Air Force Base. **Item withdrawn***
4. *Consideration of Amendment to Specific Cooperative Agreement with the U. S. Department of Agriculture – Agricultural Research Service for Monitoring and Evaluating Streamflow Height in the Little Washita River Experimental Watershed. **Item withdrawn***
5. Consideration of Interagency Agreement with the Oklahoma Department of Tourism and Recreation for Water Resources Projects at Beavers Bend State Park.
6. Consideration of Subagreement with Weather Decisions Technology for Evaluation of Weather Modification Activities.

E. Applications for Temporary Permits to Use Groundwater:  
None

- F. Applications to Amend Temporary Permits to Use Groundwater:  
None
- G. Applications for Regular Permits to Use Groundwater:
1. H. A. Kilgore & Sons, L.L.C., Texas County, #2004-517
  2. Town of Byars, McClain County, #2004-583
  3. Dolese Bros. Co., Pottawatomie County, #2004-591
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Ervin & Emma M. Mitchell, Beaver County, #1975-806
- I. Applications to Amend Prior Rights to Use Groundwater:  
None
- J. Applications for Regular Permits to Use Stream Water:
1. Porum Public Works Authority, McIntosh County, #2001-007
- K. Applications to Amend Regular Permits to Use Stream Water:  
None
- L. Well Driller and Pump Installer Licensing:
- New Licenses, Accompanying Operator Certificates and Activities:
- |   |          |
|---|----------|
| 1. Licensee: John Haven   | DPC-0633 |
| a. Operator: John Haven   | OP-1426  |
| Activity: Pump Installation                                     |          |
| 2. Licensee: Panhandle Area Sales and Service                   | DPC-0635 |
| a. Operator: Brandy Nelson                                      | OP-1427  |
| Activities: Pump installation                                   |          |
| 3. Licensee: Kitchens Corrosion Control, Inc.                   | DPC-0637 |
| a. Operator: Darrin S. Stark, Sr.                               | OP-1429  |
| Activities: Groundwater wells, test holes and observation wells |          |
| 4. Licensee: ESN – Great Plains                                 | DPC-0639 |
| a. Operator: Jason Lauer  | OP-1430  |
| Activities: Monitoring wells and geotechnical borings           |          |
- New Operators and/or Activities for Existing Licenses:
- |                                  |          |
|----------------------------------|----------|
| 1. Licensee: American Water Well | DPC-0684 |
| a. Operator: Grady Bedell        | OP-1428  |
| Activities: Pump installation    |          |
- M. Dam and Reservoir Plans and Specifications:
1. Payne County Conservation District & Stillwater Creek Conservancy District No. 16, Payne County, DS-05-01
  2. Summit Lake, L.L.C., South Lake Dam, Oklahoma County, DS-05-02
  3. Summit Lake, L.L.C., White Pine Trail, Oklahoma County, DS-05-03
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:  
None

- O. Consideration of Agreed Settlement and Consent Order Relating to Harold W. Newman d/b/a Newman Water Well Drilling, License No. DPC-0573 and Operator Certificate No. OP-1247, Recommended for Approval.

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

There were no items presented to the Board.

**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. 2004-547, Whitlock Packaging Corp., Muskogee County:

1. Summary – Mr. Mike Mathis, Chief, Planning and Management Division, stated to the members that the applicant, Whitlock Packaging Corp of Muskogee County, made application to take and use a total of 1,153.4 acre-feet of groundwater per year for commercial use. He said the water is proposed to be withdrawn from two wells located on 576.7 acres of dedicated land that overlies the Alluvium and Terrace Deposits of the Arkansas River groundwater basin. A study has not been completed for this basin; therefore, the equal proportionate share has not been determined and each landowner is entitled to two acre-feet of water per acre of land dedication.

Mr. Mathis stated the applicant produces beverages such as soft drinks and juices for companies including Pepsi, Nestles, and Ocean Spray. He said there was no evidence presented that leaks or losses would occur from the use of the water from the wells. If a leak were to occur, there are personnel on site that would be able to detect and repair immediately. He said the wells would be completed by a licensed water well driller in compliance with the Board’s construction standards.

Mr. Mathis stated the protestants in this matter were the Town of Fort Gibson that objected to the application based on the grounds the company has been a customer of the city in the past years, and they did not want to lose a customer of this size. The applicant did not dispute the town’s concerns, but said the water provided by the town was not the quality of

water that is required for the water bottling operation for a client, but the groundwater of the area appears to be of the quality needed.

In summary, the record showed the applicant to be in compliance with Oklahoma Groundwater Law, and staff recommended approval of the application.

2. Discussion and presentation by parties. Mr. David Page, attorney for the applicant, was present and spoke to the members. He thanked the members for their consideration, and reiterated the importance of the permit to the company. He said there is a THM issue with the city water, but the groundwater met the customer's requirements. Mr. Sevenoaks asked where the wells will be located; Mr. Page responded on the Whitlock property. He asked how much water the company uses from Fort Gibson; Mr. Page answered about 400,000 gallons per day.

There were no representatives of 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 temporary permit to use groundwater #2004-547, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Fite

B. 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 stating the there was no printed report distributed this month as he and staff have been in training to implement the human resource section of the PeopleSoft program. He said in regard to the REAP water project funding, we needed to average about \$575,000 per month in order to get to funding for the Arbuckle-Simpson, and last month was a record, taking in \$1.17 million in one month. He said it is a surge, and that particular account was doing well and should be able to fund the Arbuckle. He said the agency is operating within the statutory limits.

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

There was a Supplemental Agenda for the Board's consideration.

A. Consideration of Resolution to Authorize the Chairman or Vice Chairman to Enter into a Memorandum Agreement or Joint Funding Agreement between the U.S. Geological Survey and the Oklahoma Water Resources Board for additional monitoring and sampling program to capture high storm flows. Mr. Schuelein stated that the Office of the Attorney General would like to do additional monitoring on the scenic rivers between the states of Arkansas and Oklahoma. He said the proposed resolution for the Board's consideration today is to modify the monitoring program between the OWRB and USGS for a limit of up to \$200,000.00. He said



staff may return to the Board in the future to amend the joint funding agreement with the USGS to add additional sites and parameters for monitoring.

Ms. Kelly Burch, Assistant Attorney General, was present in support of the resolution.

Mr. Sevenoaks asked what additional sites are needed. Ms. Burch answered the agreement is not for additional sites, except for possibly sites across the border, and nutrients will be primarily targeted in the high flow sampling, with the addition of metals, total organic carbon, antibiotics, hormones, and bacteria. She said the list has not been finalized yet, and she is working with OWRB staff to determine the list of parameters.

Mr. Smith added that part of the problem is that the USGS does not have funding to match the \$200,000.00 and cost is a major factor in what can be monitored. He said this is another instance where the OWRB is working with the Attorney General's office in a cooperative agreement, and this project is to look at and analyze what is in the water. Mr. Sevenoaks asked the difference in cost of a static monitor for water level versus one of real time that tests all constituents. Mr. Smith answered that if the streamgaging is conducted just for flow, the cost is \$12,500 per year per site; the others depend upon the constituents being monitored and how often. Mr. Smith added that in the congressional briefing document the request for funding is \$10 million a year for monitoring ; this agreement will not complete but is only a piece of the sampling needs, many groups are trying to come up with ways to get the monitoring done.

Mr. Nichols moved to approve the resolution, and Mr. Sevenoaks seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Fite

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

A. Background and Summary of Public Participation – Duane Smith said staff had made the formal presentation at the February meeting so that will not be done, but each chapter will be considered individually to allow the public an opportunity comment on each rule.

B. Proposed Amendments to Chapter 1 - Organization and Procedure of the OWRB

1. Summary of final draft proposed rule – Mr. Smith stated this amendment is for the Board chairman to be elected annually, but for no more than two consecutive terms.

2. Questions and Discussion by Board Members – Chairman Mitchell stated he strongly supported the proposed rule. Mr. Currie asked if a person after serving chairman would be able to return after two years. Mr. Mitchell said that is next expressly stated, but that is how he intended it, a person could serve two years and would just need to lay out a term before being elected chairman again. There were no questions or other comments by Board members.

3. Comments by Public – There were no comments.

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

Mr. Herrmann moved to approve the proposed amendment to Chapter 1, and Mr. Sevenoaks seconded.

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

NAY: None

ABSTAIN: None  
ABSENT: Fite

C. Proposed Amendments to Chapter 20 – Taking and Use of Streamwater

1. Summary of final draft proposed rules – Mr. Mathis stated there are three proposals in this chapter: navigation releases on Corps of Engineers reservoirs, loss of right in streamwater use and showing of cause, and use of water from mine pits.
2. Questions and Discussion by Board Members – there were no comments.
3. Comments by Public – There were no comments.
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 proposed amendments to Chapter 20, and Mr. Keeley seconded.

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

Prior to voting, Mr. Sevenoaks asked about the italicized language in the presented documents; Mr. Couch answered that indicates statutory language. He clarified what the forfeiture law instructs if a person doesn't use the water right within the schedule of use or 7-year period. He said the staff will conduct a hearing to determine if there was use, or an excusable non-use, but the cancellation or reduction actually occurs regardless under the operation of law. Failure of the OWRB to conduct the hearing does not change the loss of right, and whether there was use after the seven years, if there was not use during the seven years, there is still a loss of right.

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

1. Summary of final draft proposed rules – Mr. Mathis stated the Advisory Council had suggested several grammatical changes, and the only significant change regards the reference to grout seal and bentonite solids, and the education requirement. Mr. Smith commented about Mr. Dudley Williams's stated objections to the education requirement and he had asked for a "grandfather" clause for drillers that had been licensed for 20 years. Staff presented that to the Council, but it did not recommend an exemption; therefore, staff has presented the proposal without the exemption to the Board for approval.
2. Questions and Discussion by Board Members – Mr. Keeley asked about what is being sampled in the unsaturated zones; and Mr. Kent Wilkins explained this applies to the deeper zones where water may be migrating. Mr. Mitchell explained most of these wells are classified as monitoring wells and used around hog lagoons to catch any possible leachate from the lagoons. There were no other questions or discussion 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. Herrmann moved to approve the proposed amendments to Chapter 35, and Mr. Keeley seconded.

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

E. Proposed Amendments to Chapter 46 – Water Quality Standards Implementation

1. Summary of final draft proposed rules – Mr. Phil Moershel addressed the members and explained the process for reviewing the proposed changes to Chapter 46 and the following comment period and procedures in accordance with the required provisions. He said the proposed changes included the addition of definitions relating to the monitoring and assessment of the scenic rivers criterion, typographical errors, changes to the testing procedures, modification on the language for chloride, additional methods of testing with peer review methods and attaching quality assurance requirements, and extending spatial temporal review requirements for observational data as well as the samples, and a revision adding biological criteria for the Great Plains ecoregion. He said there is also an extension revision to add an assessment protocol for assessing aesthetics for the scenic rivers for total phosphorous and specifically how to assess the .037 using the geometric mean, and finally revisions to the water quality standards implementation plan mostly updating the WQS and changes to the Financial Assistance Program.

2. Questions and Discussion by Board Members – (included below).

3. Comments by Public – Mr. Bob Kellog, representing STIR, said he was present to express STIR's willingness to cooperate and STIR's sincere desire that the Board always do the best for the state's scenic rivers. He said the organization appreciated the good, hard work of the OWRB staff with respect to the phosphorous standard and with respect to the USAP in measuring the phosphorous standard. He said he was pleased to note the staff will revisit the proposed USAP for phosphorous in the future if it shows that the Illinois River is not impaired but its rocks are still green. Therefore, and although this particular USAP is not the most stringent and so not the best that we can have, he said, and STIR does not oppose this proposed USAP so long as it does not weaken.

Ms. Angie Burckhalter, Oklahoma Independent Petroleum Association, addressed the members and stated her concern in regards to the testing procedure and data requirements referenced in 785:46-1-4, and 785:46-15-3. She said that the written comments she had provided focused on the language regarding the approved testing methodology and practices. She said their concern regard the use of conductivity meters in the field to sample for total dissolved solids and that results are used to make beneficial use decision. She suggested the language be tighter to clarify the issue. She said the industry is not allowed to use these type of meters to show compliance, and though conductivity meters may be "institutionally recognized" it is not an appropriate testing procedure that is defensible in making critical beneficial use determinations. She presented the suggested language to make it more stringent and limit the use of this tool.

Regarding the data requirements, Ms. Burckhalter stated the OIPA disagreed with the "observation" of oil and grease, and preferred that the observation be confirmed by laboratory analysis to provide confidence that the observed results are consistent, reliable, and defensible.

Mr. Keeley stated he noted there were other comments similar to the OIPA's and he was concerned why there were other comments because he could not find where in the rule the use of the conductivity meter, that is not uncommon, would be replaced by laboratory analysis. He said he did not believe the Board wanted to use conductivity as a substitute for laboratory analysis. Ms. Burckhalter responded that she was aware of instances when that type of data were used to place waters on the 303(d) list, and she did not see a problem with the data as long as it is backed up by analysis. Mr. Phil Moershel explained the process whereby the collection and testing of data are considered with a plus or minus 10% or plus or minus .05 with virtually every parameter. He said every agency has a quality assurance plan that is EPA approved, and with a QA plan, and specific methods and the accuracy of those methods are specified. There was discussion between Mr. Moershel, the Board members, and Ms.

Burckhalter about how the data on a field test is conducted, how the data is interpreted, and the proposed language

Mr. Smith addressed the comments on 785:46-1-4, and read the current language and said staff agreed with the principle that we want good, scientific data, and the change to “practices institutionally recognized and ...documented” he believed would prohibit someone from taking a sample from an instrument that is not institutionally recognized as a screening procedure, or documented as a tool, to make impairment decisions. He said the proposed language is an improvement over the current language, not to say it couldn’t be better. The key words are “institutionally recognized and ... documented.”

There was discussion about whether to re-word the proposal, or lay over consideration of the rule. Mr. Smith stated there is concern with absolute accuracy by the methods used by the agencies to make impairment issues, and he said staff is on the same page with fixing that.

Chairman Mitchell said that Ms. Burckhalter’s comments make a good point and the Board needs to stress that once the test is conducted to go to a laboratory and verify it. He said the rules need to get to the Legislature, and if OIPA could agree to the language now, the Board will work on the language when revisited again if there is a problem. Mr. Moershel reiterated it is being done according to the quality assurance plan, and Mr. Sevenoaks said it doesn’t always go to a laboratory but the quality assurance plan is accepted and inside the quality assurance plan there is a set of protocol that is followed. He understands the comments that if there is a spike in the date, that shouldn’t automatically be accepted, but should be addressed in the QA plan. Ms. Burckhalter added her concern is with the other agencies in following the OWRB’s model; that the other agencies should “get on board.” Mr. Smith said each agency develops its own QA plan and each agency puts its own standards implementation plan together so the OWRB sets up the guidelines, but each agency constructs its plan. This was part of the argument years ago; each agency preferred to develop its own plan.

There were no other comments.

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

Mr. Keeley moved to approve the proposed amendments to Chapter 46, and Mr. Sevenoaks seconded.

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

F. Proposed Amendments to Chapter 55 – Floodplain Management

1. Summary of final draft proposed rules – Mr. Mathis stated the proposals implements rules in HB 2284 approved last April on floodplain manager accreditation and education training standards. The language has been reviewed and approved by the Floodplain Managers Association, and the Association of County Commissioners. He noted the accreditation goes above and beyond the federal program.

2. Questions and Discussion by Board Members – There were no questions or discussion 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. Nichols moved to approve the proposed amendments to Chapter 55, and Mr. Herrmann seconded.

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

ABSTAIN: None  
ABSENT: Fite

**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 Mitchell adjourned the regular meeting of the Oklahoma Water Resources Board at 11:25 a.m. on Tuesday, March 8, 2005.

**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

\_\_\_\_\_/s/\_\_\_\_\_  
Edward H. Fite

ATTEST:

\_\_\_\_\_/Absent\_\_\_\_\_  
Bill Secrest, Secretary

(SEAL)