

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**November 13, 2006**

**1. Call to Order**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on November 13, 2006, in the meeting room of the Oklahoma Water Resources Board, 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. The agenda was posted on November 6, 2006, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

**A. Invocation**

Mr. Secrest provided the invocation.

**B. Roll Call**

**Board Members Present**

Rudy Herrmann, Chairman  
Mark Nichols, Vice Chairman  
Bill Secrest, Secretary  
Lonnie Farmer  
Ed Fite  
Jack Keeley  
Kenneth Knowles  
Richard Sevenoaks  
Ford Drummond

**Board Members Absent**

None

**Staff Members Present**

Duane A. Smith, Executive Director  
Dean Couch, General Counsel  
Mike Melton, Chief, Administrative Services Division  
Jacob Bachelor, Financial Assistance Division  
Monte Boyce, Comptroller  
Lou Klaver, Acting Chief, Planning and Management Division  
Derek Smithee, Chief, Water Quality Programs Division  
Mary Lane Schooley, Executive Secretary

### **Others Present**

Lori Quetone, Oklahoma City, OK  
Mike Ray, Lawton Constitution, Oklahoma City, OK  
Cecil Wildman, Lone Chimney, Stillwater, OK  
David E. Clark, Lone Chimney, Morrison, OK  
David Wood, City of Konawa, OK  
Bob Rounsaville, city of Konawa, OK  
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,  
Oklahoma City, OK  
DC Anderson, Broken Arrow, OK  
Doug McCleary, City of Konawa, OK  
Ken Delasto, Johnston County Rural Water District #3, Manilla, OK  
Curt Howell, Johnston County Rural Water District #3, Ardmore, OK  
Bill Foster, Meers, OK  
Laurie Williams, Ardmore, OK  
Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK  
Dave Dillon, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Shawn Lepard, Edmond, OK  
James Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK  
Gene Whatley, Oklahoma Rural Water Association, Oklahoma City, OK  
John Zelbst, Row Zelbst Stonehocker, Lawton, OK  
George Lodes, Elgin, OK  
Everett R. Rhoades, Oklahoma City, OK  
Edward Hilliary, Meers Saddle Mountain Ranch, Lawton, OK  
Douglas Hilliary, Meers Saddle Mountain Ranch, Lawton, OK  
Beverly Hicks, Anadarko, OK  
Cornelia Karty, Lawton, OK  
Daisy L. Quoetone Mammedaty, Cache, OK  
Carl Dentler, City of Lawton, OK  
Lori Quetone, Oklahoma City, OK  
Deborah Quoetone Wilson, Lawton, OK  
Milton Soro, Caddo Nation, Binger, OK  
Alan R. Woodcock, Bureau of Indian Affairs, Tulsa, OK  
Lawrence R. Edmison, Sierra Club, Oklahoma City, OK  
Billy Penick, Comanche County Rural Water District #1, Lawton, OK  
Maryruth Prose, Lawton, OK  
Bill Cunningham, Lawton, OK  
Tom Lay, Kerr Irvine Rhodes Ables, Oklahoma City, OK  
Dean Reeder, Mountain View, OK  
Belle Reeder, Mountain View, OK  
Bobby & Donna McSpadden, Clayton, OK  
Mike McGilbra, Lawton, OK  
Matthew T. Watkins, Anadarko, OK  
Jennifer Hill Kelley, Green Bay, WI  
Mark Schman, Bureau of Indian Affairs, Anadarko, OK  
Tony Thornton, The Oklahoman, Oklahoma City, OK  
Randy W. Henning, City of Lawton, OK  
David Anderson, Bureau of Indian Affairs, Anadarko, OK  
Gaylon Hayes, Row and Smith Trust, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

Chairman Herrmann stated the draft minutes of the October 10, 2006, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Mr. Nichols moved to approve the minutes of the October 10, 2006, Regular Meeting as amended, and Mr. Sevenoaks seconded.

AYE: Drummond, Farmer, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann  
NAY: None  
ABSTAIN: Fite  
ABSENT: None

**D. EXECUTIVE DIRECTOR’S REPORT**

Mr. Smith began his report saying he would keep his comments to a minimum, as there is a number of people present interested in the agenda items today. He noted the Governor’s Water Conference is a great program and will kick off the Comprehensive Water Plan in the afternoon. He announced Mike Mathis’s retirement dinner is November 20 and extended an invitation to the members. He concluded his report in light of the full day of activities.

**2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Middleberg Public School, Grady County. Recommended for Approval. Mr. Jacob Bachelor, Financial Assistance Division, stated to the members that Mr. Freeman is attending to his duties as Treasurer and member of the Board of the Council on Infrastructure Financing, a national organization that lobbies state financing issues in Washington, D.C.

Mr. Bachelor stated this first item is for the consideration of a \$55,000.00 emergency grant for the Middleberg Public School in Grady County, located southwest of Blanchard. He said the school’s current wastewater treatment operation includes several septic systems that are failing and inadequately treated sewage is surfacing on the school ground. To solve the problem, Middleberg proposed to construct a lagoon treatment system and related appurtenances. The grant requested of the board, plus \$212,864.00 in local funds will provide the school with a project budget of \$267,864.00. Staff recommended approval.

There were no representatives of the Middleberg Public School available to attend the meeting.

Mr. Sevenoaks moved to approve the Emergency Grant to the Middleberg Public School, and Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann  
NAY: None  
ABSTAIN: None  
ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Drought Grant for Lone Chimney Water Association, Pawnee County. Recommended for Approval. Mr. Bachelor stated this grant application is funded through use of the Board’s Drought Response rules that became effective when Governor Henry declared a drought emergency earlier in the year. Last

month, the first drought grant was approved to Noble County Rural Water District #2, allowing Noble to build a three-mile line to Stillwater because Lone Chimney was unable to provide the district with the quantity of water needed. Now, Lone Chimney is before the Board on its own behalf to seek assistance to modify the intake structure. The Lone Chimney Water Association owns and operates a surface water treatment plant and provides wholesale water from Lone Chimney Lake. Mr. Bachelor said the intake structure has three inlets but the water is currently ten feet below the upper inlet, and only five feet above the lower inlet. The Association is rationing water to all its users, and to solve the problem construction of a large intake structure that will rise up and down with the level of the lake is proposed. The project will be funded through the OWRB grant in the amount of \$100,000.00 in addition to \$18,133.00 in local funds. Staff recommended approval.

Mr. Darrel Clark, Chairman and Mr. Cecil Wildman, engineer, were present in support of the grant request.

Mr. Smith noted this matter is the lead story in The Oklahoman today. He distributed a map and photos depicting the location of Lone Chimney, the lake and the intake structure. He distributed the latest edition of the Drought Monitor, and said that the state is still in the early throws of a very severe drought, and seeing these kinds of issues is a very serious situation. Mr. Smith said the OWRB has rules and regulations that set aside \$500,000.00 in the OWRB grant account for emergency grants for drought, once the Governor has declared an emergency. Last month the OWRB approved a \$100,000.00 for a drought grant in the area, now this grant, and also looking at REAP grants for this situation. He said the State is in the early part of a drought, and just about out of drought money. This type of assistance is not long term, and this is the “tip of the iceberg”. Mr. Clark addressed the Board and said he anticipates there is about 50 days of water remaining, unless this work can be done. He said the barge can reach the deeper levels of water, and essentially will be draining the lake because that is the only source. He said while not knowing how big the channel is, they hope to have about five months of water supply. He said the Association serves 12 entities in four different counties, five schools and two hospitals. The Board’s grant to Noble County allowed that district and Morrison to draw water from Stillwater, and that would help take some pressure off Lone Chimney. The short term solution is to connect to a four-mile line that will help with one-third of the distance, and utilizing the two 16” lines will connect to a raw water line to Kaw Reservoir and another line at a total cost of \$1.5 million; the long term solution is about \$5 million which is a 16” line from Stillwater to Lone Chimney.

Mr. Smith said today is the kickoff of the State Comprehensive Water Plan, and this is the type of issue that is in the heart of the plan; the plan will not solve problems, but people such as Mr. Clark that will lead the way. The Board will provide the infrastructure and facilitate in any way for people to help themselves. Chairman Herrmann echoed Mr. Smith’s comments.

Mr. Secrest moved to approve the drought grant application to Lone Chimney Water Association, and Mr. Knowles seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving Drought Grant for City of Konawa, Seminole County. Recommended for Approval. Mr. Bachelor stated this item for the Board’s consideration is a \$100,000.00 grant request from the City of Konawa and is also funded through the Board’s drought emergency rule. The City of Konawa owns and operates a water distribution system that serves approximately 675 customers. The City

obtains its water from a well field located along the Canadian River in the southwest corner of Seminole County. Due to recent drought conditions, the wells have not been able to supply the City with the necessary quantities of water. The City has rationed water, and even completely run out of water, providing bottled water to citizens. To solve the problem, the City is proposing to drill a deeper water well in a new area; the proposed project consists of constructing a new well and all related appurtenances and the total estimated project cost is \$258,013.76, with funding secured by \$158,013.76 of local funds and the requested drought grant from the OWRB. Staff recommended approval of the grant request.

Mr. David Woods, Manager, Mr. Bob Rounsaville, Mayor, and Doug McCleary, Engineer were present in support of the application.

Mr. Nichols moved to approve the drought grant request to the City of Konawa, and Mr. Fite seconded.

AYE:	Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann
NAY:	None
ABSTAIN:	None
ABSENT:	None

Mr. Sevenoaks asked what happens when the Board has used the entire drought funds. Mr. Smith said once the funds are used, that will be the end, and the fund only receives money from the interest on the reserve from the bonds, which is down. Mr. Monte Boyce said the deposits to the fund vary. Mr. Smith said a legislative initiative this coming session is to remove the cap from the Gross Production Tax REAP Account Water Projects Fund, which is currently capped at \$6.8 million, the OWRB receives one-third for Financial Assistance Programs and Comprehensive Water Planning, and if the cap is removed when funds are available, the OWRB would be able to receive more money. From a broader perspective, however, Mr. Smith said re-capitalization of the financing program will need to be addressed, and unfortunately as a society, we don't do much until there is a tragedy—the Clean Water Act was not passed until our rivers were on fire, we didn't build reservoirs in Oklahoma until we had experienced major floods, and unfortunately to water planning, its not until we are in the throws of drought that we make strides to move forward, and we need to build on strategies to do that.

Chairman Herrmann asked that there be a presentation at a future time under "Agency Work and Other items of Interest" to discuss alternatives to closing the funding gap.

Mr. Bachelor stated that with the approval of this item, all the drought grant funds will have been obligated, as the rule specifies only \$300,000.00 can be used and further grants will have to come from other sources, unless there is a rule change. He also reminded the members that the Board's Ad Hoc Audit Committee would meet following the December Board meeting.

Chairman Herrmann acknowledged Mr. Ervin Mitchell, former member and Chairman of the OWRB who was present at the meeting. Mr. Smith commented about Mr. Mitchell's service not only to the OWRB, but also other public entities such as the School Board Association and Association of Conservation District for a total of 51 years. He said Mr. Mitchell would receive the OWRB Water Pioneer Award at the Governor's Water Conference. Mr. Smith also introduced Mr. Dave Dillon who will be joining the staff of the OWRB to head up the effort for the State's Comprehensive Water Plan, with the retirement of Mike Mathis. Ms. Lou Klaver will be taking the Chief of Planning and Management Division position.

### 3. SUMMARY DISPOSITION AGENDA ITEMS

Any item listed under this Summary Disposition Agenda may, at the requested of any member of the Board, the Board's staff, or any other person attending this meeting, may 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.

Chairman Herrmann read the statement above and asked for requests to move items. There were no requests to move items.

Mr. Derek Smithee requested that item 3.D.4., Volunteer Monitoring Contract with the Grand Lake Association, be withdrawn from consideration.

#### 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.

There being no further questions or action regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Sevenoaks moved to approve the Summary Disposition Agenda items as amended, and Mr. Fite seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: Secrest on item 3.D.5.; Herrmann on 3.D.7.

ABSENT: None

#### **The following items were approved:**

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

<b>REAP</b>			<b>Amount</b>	
<b><u>Item No.</u></b>	<b><u>Application No.</u></b>	<b><u>Entity Name</u></b>	<b><u>County</u></b>	<b><u>Recommended</u></b>
None				

#### D. Consideration of and Possible Action on Contracts and Agreements, Recommended for Approval.

1. Amendment of Joint Funding Agreement with the U.S. Geological Survey for the FY-2007 Federal-State Cooperative Program to Add Monitoring Water Resources in Area of Meridian Aggregates Company North Troy Quarry.
2. Amendment of Joint Funding Agreement with the U.S. Geological Survey for the Arbuckle-Simpson Aquifer Study to Extend Ending Date.
3. Joint Funding Agreement with the U.S. Geological Survey for Comparative Analysis of Effects of 2006 Drought in Oklahoma.

4. *Contract with Grand Lake Water Watch Inc. for Volunteer Monitoring Program at Grand Lake. Item withdrawn*
  5. Amended Contract with Oklahoma Rural Water Association for Technical Assistance for Rural Water Board Members and Operators.
  6. Letter Agreement with U.S. Army Corps of Engineers for Phase VI Geotechnical Investigation for Mangum Reservoir.
  7. Letter Agreement with Standard & Poor's to Provide Public Financial Rating Services.
  8. Extension and Amendment Agreement with Board of Regents of the University of Oklahoma for Extension of Time on Study in Support of Arbuckle-Simpson Study
- E. Applications for Temporary Permits to Use Groundwater:
1. Town of Cleo Springs, Major County, #2004-589
  2. Eddie & Emma Moore, Kingfisher County, #2006-562
  3. Oklahoma Dept. of Tourism & Recreation, Caddo County, #2006-563
  4. Bryce L. & Elaine K. Hodgden, Woods County, #2006-585
  5. Kris Edward Knauss, Caddo County, #2006-586
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Town of Apache, Caddo County, #1978-575
  2. City of Norman – Utilities Department, Cleveland County, #2005-504
- G. Applications for Regular Permits to Use Groundwater:
1. Mel & Beverly Lively, Johnston County, #2006-561
  2. Brothers Family Co., L.L.C., Canadian County, #2006-573
- H. Applications to Amend Regular Permits to Use Groundwater:
1. Arcadia Farm, L.L.C., Choctaw County, #2005-577
- I. Applications to Amend Prior Rights to Use Groundwater:  
None
- J. Applications for Regular Permits to Use Stream Water:
1. Bobby B. Greene, Bryan County, #2006-021
  2. Don & Cheryl Sims, Marshall County, #2006-033
  3. Bryan Kroeker, Garfield County, #2006-039
- K. Applications to Amend Regular Permits to Use Stream Water:  
None
- L. Well Driller and Pump Installer Licensing:
1. New Operators and/or Activities for Existing Licenses:
 

a. Licensee:	Ace Drilling & Service	DPC-0001
(1) Operator:	Lee Brock	OP-0001
Activities:	Monitoring wells and geotechnical borings	
(2) Operator:	Larry Lee Brock	OP-1515

Activities: Monitoring wells and geotechnical borings

- M. Dam and Reservoir Plans and Specifications:
  - 1. Adair County Conservation District, Sallisaw Creek Site 16, Adair County
  - 2. Sequoyah County Conservation District and City of Sallisaw, Sallisaw Creek Site No. 33, Sequoyah County
  
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
  - 1. Oklahoma Department of Transportation, Latimer County, FP-06-11
  - 2. Oklahoma Department of Transportation, Choctaw County, FP-06-12
  
- O. Applications for Accreditation of Floodplain Administrators:

None

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

There were no questions or discussion by the Board under this item.

**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. 2005-582, Rural Water District No. 3, Johnston County

1. Summary – Ms. Lou Klaver, Acting Chief, Planning and Management Division, stated to the members that the item involves an application for a temporary groundwater permit filed by Johnston County Rural Water District #3. The District is requesting 168 acre-feet per year, from 80 acres of land under a lease agreement, overlying the Arbuckle Simpson Groundwater Basin. The application was protested by two revocable living trusts asserting ownership of the surface of the 80 acres, and that the lease is not valid. Therefore, the dispute before the hearing examiner is whether the applicant holds a valid lease.

Ms. Klaver said the protestants argued that a water purchase contract entered in 1984 between Johnston County RWD #3 and the owners of the land at that time, is known as the “84

Water Purchase Contract.” The contract allowed the District three years to produce and develop water from the 80 acres, and the agreement also provided it would lapse if the water wasn’t produced within three years, and binding upon the successors and interest to the owners 80 acres. The 1984 owners sold the land by executing an addendum to the water purchase contract with the District in 1993, agreeing to renew the water purchase contract even though the three years had passed, allowing the owners to have the 80 acres as well as additional tracts of land and listed the legal descriptions in the addendum, including the 80 acres dedicated to this application.

One final amendment was made in 1994 by the previous owner of the 80 acres, agreeing with the RWD to amend the contract again to commence production and allow a term of five years from the date of the amendment, or until 1999. The parties found it was impossible for the District to produce and transport water under the time allowed, therefore extending it.

Ms. Klaver stated a well was completed on another tract of land, Section 36, that covered the water purchase contract, and production was begun in 1997.

The RWD initiated a civil action in Johnston County District Court, and the Court ruled in favor of the RWD finding that the water purchase contract, the addendum and the amendment, should be considered as a whole, and that the term of the contract is 50 years. The Court described the tracts of land that the District could produce and transport groundwater from, which included the 80 acres.

The protestants argued that the Court action was only to enforce an arbitration clause in the amended contract. But, the proposed order under consideration today concludes that Johnston County judgment in the civil court proceeding cited that the 1984 contract as amended is still in effect, and runs for a term of 50 years from when water production began in 1997.

Ms. Klaver explained that while the protestants are arguing why the cause of action was brought in District Court, the OWRB jurisdiction is limited, in fact there is no jurisdiction, to look behind the face the court ruling. The proposed order concludes that the District’s production and transportation of groundwater from 1997 from Section 36, validated the water purchase contract with respect to all of the property described in the addendum, including the 80 acres. The hearing examiner is finding the applicant (RWD #3) has a valid groundwater lease, and the hearing examiner finds in favor of the applicant.

Ms. Klaver stated the evidence also showed that there is a valid lease to the dedicated land, the land overlies a freshwater groundwater basin, that the groundwater will be used efficiently and waste by depletion will not occur, that a licensed water well driller drilled two test wells that have been temporarily capped, and there are no unplugged holes or abandoned wells in the area where the District will serve. She said the only remaining question that was not raised at the hearing, but the Board must determine, is because the application is over the sensitive sole source groundwater basin, will the withdrawal of 160 acre-feet by the applicant degrade or interfere with the streams in the area.

Ms. Klaver stated the applicant did have an engineer present who testified that based on his opinion and knowledge of the District and its wells, he did not believe there would be a measurable impact to the area. He also testified that precipitation was the important key that caused fluctuation because recharge of the basin occurred so easily after a precipitation event and was reflected in the discharge.

There are known springs and streams in the area of the applicant, and there is a 40-acre well location area where three wells are planned. They are Three Springs located one and one-half miles northwest, Desperado Springs three miles southeast of the well area, Sandy Creek is one-half mile east, and the Blue River is two and a half to three miles to the southeast. The applicant’s engineer testified that he did not believe there would be a measurable effect by the use of 160 acre-feet, the hearing examiner determined that degradation and interference may occur, and it was determined and proposed in the order that the annual recharge rate of the

aquifer (discussed in circular 91) with the recharge rate of 4.7 inches per acre per year would be an amount that the Board could feel comfortable would not effect Sandy Creek, Blue River, and Desperado Creek.

The hearing examiner is recommending a permit be issued in the amount of 31.3 acre-feet per year. It is a temporary permit to be revalidated annually and allowing an opportunity to see what effect the withdrawal will have, and allowing at that time the amount could be increased or decreased and conditions for monitoring could be added for whatever advances are made in the study that could be helpful. The permit application was found to be in compliance with the Oklahoma Groundwater Law, and staff recommended approval.

2. Discussion and presentation by parties. Mr. Kenneth Delashaw, Jr., representing the applicant, stated to the members that he supported the order and asked for the Board's approval. He said that the hearing examiner carefully considered all of the evidence, listened to the arguments, and the record was supplemented post hearing with documentation from files in District Court in the case that was involved. The protestants basically had tried to use this permit system to attack the validity of the District Court of Johnston County's judgment there is a valid lease, and the hearing examiner rightfully concluded this is no way to appeal the District Court's judgment, and that should have been done through processes of the Supreme Court. He said the applicant could live with the 31 acre-feet with the caveat that it will be reviewed the next year.

Mr. Gaylon Hayes, representing the protestants addressed the members and stated that he takes exception to the comment this is an appeal. He said the original contract is in the name of a nonprofit organization that does not exist and did not exist at the time of the contract, and same is true of the addendum. He said the lawsuit that was brought in Johnston County was brought in the name of a nonprofit corporation that did not exist and doesn't exist today. There is no valid contract behind that, and the Court when looked at, did not know it was a non-corporation, and the Judge ruled based upon the name that was on the contract. Mr. Hayes said they sued the named trust, not the names of the trustees and what happened later when they were sued for trespassing they said they were not a nonprofit, but a unit of government organized under the OWRB statutes. He argued then that the decision of the Court don't affect the true parties which is the water board (district) that identified itself for the first time at the hearing. Mr. Hayes asked the Board to deny the application based upon the fact that the name of the application is not a legal entity.

Mr. Sevenoaks asked for clarification for the basis of Mr. Hayes' request to deny the permit. Mr. Hayes said the name in the contracts is not the corporation that is making the application. The lawsuit brought against the trustees was brought in the name of a non-existent entity that was the result of the declaratory judgment. He said court was not aware nor was he at the time of the court ruling, and assumed that was a legal entity in the State of Oklahoma. Mr. Sevenoaks asked if Mr. Hayes is asking the Board to overturn the court ruling? Mr. Hayes answered he is asking the Board to look at the evidence submitted at the hearing and look at the names and identify who the parties are and deny the permit. Mr. Secret asked if Mr. Hayes is stating that Rural Water District #3 does not exist, and Mr. Hayes said no, he is saying that the Rural Water District #3, a non-profit corporation, does not exist and has never existed. He said that is who the contracts are with and that is who sued his clients.

Chairman Herrmann asked Ms. Klaver to further clarify the matter. Ms. Klaver referred to the proposed order and stated that the 1984 owners who entered the original water purchase contract, Brookwood Inc., and Carl R. Landrum, with Johnston County Rural Water District #3. The contract is binding in all heirs assigned, successors and interest, and the 1984 owners agreed with the applicant to use groundwater beneath several tracts of land, one of them the 80 acre tract added in an addendum, and allowed three years to produce and transport the water, which was renewed in an addendum and in an amendment. The Court said (on page 5005 of

the packet), “the contract must be considered as a whole, the term of the contract is 50 years, the addendum provides additional rights, and District may recover water from the permit as described in the water purchase agreement, which shall not go on any other tract.” The hearing examiner concluded the Board couldn’t look behind the District Court Order to determine if it was properly issued, but to look at the face of the judgment ruling.

Mr. Sevenoaks asked what is the name of the water permit the Board will issue. Ms. Klaver answered the name, like most rural water districts, is Johnston County Rural Water District #3, and is called as the statute requires, “Rural Water, Sewer, and Solid Waste Management District #3, Johnston County, Oklahoma” and commonly the name is shortened to Rural Water District. Mr. Sevenoaks was concerned about the name on the permit and the name in the court order being the same.

Mr. Delashaw answered Mr. Sevenoaks question about the name in the court order that it referred to Rural Water District #3, Johnston County. Mr. Couch said that is a shorthanded way to refer to the district such as the phrase “Johnston County” on page 5005 in the packet, finding 4. (f), but the actual case name is presented as part of the record and part of the evidence. He referred to page 5013 of the packet, in the order, no. 1, the proposal is that the permit shall be issued in the name of.... which is the long name that is the statutorily correct name. He said there was no confusion in the court’s mind about who was before it. He said what the protestant has raised is that perhaps the original contract, which has also been presented for the record, is in some nonprofit corporation name that he asserts does not exist, but what the hearing examiner has proposed is while all of that might have been something that could and should have been argued at the District Court, the agency does not have authority to adjudicate title or interest and contractual rights. The District Court entered its order about this contract without a mistake as to who was presenting those arguments. Mr. Couch said the plaintiff who brought the lawsuit in District Court--they might not have used the exact legal name--apparently thought the defendant in the case did not raise the issue or see to it sufficiently the District Judge clarified the matter. What the hearing examiner simply recognized in a very limited role is that which the statute told us to look at--that the applicant owns or leased the land with the contractual requirement that is a sufficient lease hold interest for the purposes of groundwater withdrawal. He said it is suggested the permit name be very official and formal as to exactly whom the permit is issued to. Mr. Smith added that is also discussed on item no. 1, page 5013 in the packet, and the hearing examiner determined in the order that the Rural Water, Sewer, and Solid Waste Management District No. 3, Johnston County, and Rural Water District No.3, Johnston County are the same for purposes of issuing the permit.

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

Ms. Klaver stated staff recommended approval of the application in the amount of 31.33 acre-feet per year.

Mr. Farmer moved to approve the temporary groundwater permit no. 2005-582, and Mr. Drummond seconded.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secrest, Sevenoaks, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

B. Application for Regular Permit to Use Groundwater No. 2003-598, Meers-Saddle Mountain Ranch, Comanche County;

C. Application for Regular Permit to Use Groundwater No. 2003-599, Meers-Saddle Mountain Ranch, Comanche County;

D. Application for Temporary Permit to Use Groundwater No. 2004-572, Meers-Saddle Mountain Ranch, Comanche County;

E. Application for Regular Permit to Use Stream Water No 2003-041, Meers-Saddle Mountain Ranch, Comanche County

Chairman Herrmann asked Ms. Klaver to present the items that were considered by the Board at the September meeting, and remanded for reconsideration at the November meeting.

Ms. Klaver introduced the second proposed orders for the permit applications, addressing all four applications, through a summarization and PowerPoint presentation. The Meers-Saddle Mountain Ranch is the applicant which is owned and operated by the Hilliary Family, and the proposed use is sale to a rural water district (Comanche County RWD #1). There are three applications for groundwater: regular permit no. 2003-598 in the amount of 1439 acre-feet, regular permit no. 2003-599 in the amount of 1024, temporary permit no. 2003-572 in the amount of 1732, and one stream water permit no. 2003-041 in the amount of 464.

Ms. Klaver illustrated the locations of the applications in Comanche County, indicating the dedicated lands and well locations, as well as the stream water diversion point. She explained the first groundwater application, 2003-598, is recommended for approval as a regular permit. The application requested 1439 acre-feet from 894 acres from one well; ownership of the land was uncontested, the land overlies a groundwater basin where the equal proportionate share has been set at 1.6 acre-feet from the Hennessey-Garber minor groundwater basin, and the applicant demonstrated that supplying water to Comanche County Rural Water District #1 is beneficial use of groundwater. Evidence was presented that the area is growing that is served by the District (northwest of the Lawton area), which currently buys its water from Lawton and because of sharp rate increases over the past few years is looking for another source at a lesser cost. The Hilliary Family and the District have a draft agreement, and the evidence presented the maximum amount of water that would be needed by the year 2053 would be 594 acre-feet. Ms. Klaver reminded the members that the definition of "beneficial use" is, "using an amount for the purpose that a reasonable person of intelligence and diligence would place to beneficial use an amount that is economically necessary." The Board found in the proposed order that 594 acre-feet was the maximum amount economically necessary. The hearing examiner also found that waste would not occur by depletion or by pollution; the evidence indicated there were eight test holes left open for eight months but have since been completed as domestic wells. The hearing examiner found that while the applicant was negligent in completing the test holes, the risk of pollution to the groundwater was not likely.

Chairman Herrmann asked how the 594 acre-feet relates to the need of the rural water district. Ms. Klaver responded the District currently has 1120 taps and have seen a sharp rise in population and are concerned there won't be enough water to supply future growth. When the growth rate is extended 50 years it was found that the amount of water that would be necessary is 594 acre-feet.

Ms. Klaver said there were many issues raised, and the protestants were concerned about depletion of the groundwater basin, but the hearing examiner found that while the maximum annual yield had been determined to be 1.6 acre-feet per acre of land dedicated, the reduced amount of 594 would be more within the range of not causing depletion. All

landowners are located more than 1320 feet away, and staff recommended approval of permit application number 2003-598 in the amount of 594 acre-feet per year.

Regarding the three other permit applications, Ms. Klaver said other issues that were raised including the stream water that would be impacted, but because the hearing examiner found that 594 acre-feet was the most the applicant could beneficially place to use, the hearing examiner in the proposed order is recommending denial of the two other groundwater applications because the need has already been met, the beneficial use cannot be established, there is no more quantity economically necessary, and also found that under the stream water permit a present and future need for the extra 464 acre-feet per year could not be established. Therefore, staff recommendation is the approval of one Board order, application 2003-598 in the amount of 594 acre-feet, and recommends denial of the remaining three applications based upon failure to find beneficial use, and failure to find present and future use.

Additionally, Ms. Klaver said regarding Jimmy Creek Spring--that flows 40 feet onto the applicant's property before entering Jimmy Creek--a number of the Kiowa Tribe own land downstream and consider the place as sacred, and raised the issue of the federal water right. The hearing examiner addressed that issue the same way, that the Board order is not binding on any federal right; this order is only under Oklahoma groundwater law, not under the federal law.

Ms. Klaver said the proposal is made by the hearing examiner after the matter was tabled following discussion at the September Board meeting. Mr. Smith added the hearing examiner was to look at what use would protect the springs, and because one application would supply the need for the District, there is no need for the other applications. The review was conducted in-house for a timely review.

2. Presentation and discussion by parties. Mr. Tom Lay, representing the applicant, stated to the members there were many issues regarding these applications that would all be relevant, but he will focus on what the applicant believes affords perhaps the only opportunity for the project to work. He said it is a good project by which the client can exercise his property rights and sell potable water to a rural water district, which would benefit the District because of the water supply and the rate, and it would benefit the members. Mr. Lay said that regarding the proposed orders he said he was very surprised based on the earlier discussions at the Board meeting, surprised by the number of orders that were actually revised, surprised by the manner in which they were revised, and by the absence of opportunity to offer input to staff. He said the proposed orders are project killers, with four applications and three are recommended for denial and one approval for drilling in one area for a limited amount of water, and that area has been established as one that cannot produce water. The area is Section 14, approximately 7 test holes were drilled where there were dry holes, trace amounts of water and 15-60 gallons per minute; the District preference is 250 gpm.

Mr. Lay said the Board's options are to: Approve the orders that are proposed, which will kill the project and puts the applicant in a position to decide whether to appeal, or wait for a period of time and try again; or, the Board can approve the original three recommended groundwater permits, which the applicant would prefer. Mr. Lay said he would ask the Board to remand the orders to the administrative law judge to allow for further hearing or to allow for mediation between the parties. He said they have talked with some of the protestants, but nothing has been worked out yet, but not to say it cannot. The large number of protestants is a difficult process to manage, but he believed it could be done with the assistance of Board and staff; concerns could be addressed and the project could go forward. He said a delay would not hurt the protestant or the Board, but would hurt the applicant, but he would like the opportunity to see if it can be saved.

Mr. Sevenoaks asked if permit #598 were not enough water, would there be enough if permit #041 and #572? Mr. Lay said the only permit where water was produced was in Section

17 and that is the section where the stream is located. Mr. Lay said what needed to be determined is where and how in Section 17 enough water can be found that is needed for the project and have the least impact. They discussed the assumed location of water within the rock formations, but it is not known that water withdrawn from Section 17 would impact the spring.

Mr. John Zelbst, representing several protestants, thanked the staff for the proposal. He said the only test well in Section 17 where Jimmy Creek Spring is produced water at 60 gpm, and he asserted the applicant has always intended to get into the spring. Regarding the attempts now for mediation that the community has for some three years attempted to work with the applicant to talk, but there has not been any interest, until now when there is a recommendation to turn down the applications. He continued saying that while there cannot be any new evidence, he believed Mr. Lay made an incorrect statement, and that regarded statements about the City of Lawton and the District. Mr. Zelbst asked that all the permit applications be denied, because there is no contract with the District, and because of recent changes, this is no longer a viable option. Additionally, because this area is within the City's water district area, an ordinance was passed condemning the water rights in the area, including the spring. He said there is no scientific basis for Mr. Lay's statements about the geology of the water in the area. He asked the Board to follow staff's recommendation, with the exception to also deny application #598.

Mr. Sevenoaks asked if the Board denied the permits, would Mr. Zelbst be willing to sit down with the applicant and negotiate where wells could be located in good faith so that if they were to come back with an additional application that would not affect Jimmy Creek Springs, then the Board could approve that? Mr. Zelbst replied he wanted to be reasonable, but the other side was not reasonable but he would be happy to see if something could be worked out, although he did not believe water could be found in that section without tapping into the spring at some point. Chairman Herrmann asked, if that particular groundwater permit request is looked at in the Jimmy Creek area where there is concern the creek is underground, is Mr. Zelbst willing to be open to identifying if an area in that particular area of dedicated land where water could be produced without interfering with the spring? Mr. Zelbst answered he is open to it, but it is doubtful that it could be found.

Mr. George Lodes addressed the Board and said he was not present to protest anyone's property rights, but he questioned staff's calculations of the acre-feet of water estimated to be needed to the year 2053. He said that amount of water in the settlement is for one-half billion gallons of water per year, which beneficial use could not be determined, and he said there was a miscalculation on the acre-feet, one acre-foot was used when 1.6 acre-foot should've been used. Mr. Lodes said he lives in Section 13, across from Section 17, and he did not have water; he asked the Board to deny all the permit applications.

Mr. Nichols asked about the application regarding Section 21 and what water was found there; Ms. Klaver responded there were no test wells drilled in Section 21. She said both sections regard the same permit, so water could be sought in either section. Mr. Drummond asked about the acre-feet issue Mr. Lodes mentioned, and Ms. Klaver stated that some time earlier the Board had conducted a maximum annual yield study and determined how much water is in the Hennessey-Garber minor groundwater basin, and found the equal proportionate share that each landowner who owns one acre could withdraw 1.6 acre-feet; this amount would

actually allow the landowner to withdraw more water than what is proposed at a the lesser amount. Mr. Keeley asked about the determined yield of 1.6 acre-feet per acre, and the statements by protestants that water cannot be found. Ms. Klaver said the Board cannot guarantee every acre will yield 1.6 acre-foot per acre, but basin-wide as a whole, the yield is estimated through general modeling and determined to be 1.6 acre-foot. Mr. Drummond asked about the settlement; Mr. Smith said the settlement between the applicant and the City of Lawton, which has been incorporated in the order. The new development is new evidence.

Chairman Herrmann stated that it was the hope that when the matter was tabled, that staff could make an assessment and make a determination that could be satisfactory to all parties, and his observation is that it is not satisfactory to all parties. He asked Mr. Smith to comment.

Mr. Duane Smith stated that if the parties are willing to work together, staff is willing to work with the parties, but he asked for direction from the Board because the matter had been remanded to protect the spring. If it is again remanded, the first ground rule is the protection of Jimmy Creek, and if the applicant can find water without impacting Jimmy Creek and the protestants are satisfied then that is the potential solution. He said he would like to meet with the parties and see how they want to proceed, which may include going back to hearing. He said if the Board approves the staff recommendation and denies the permits, the issue is not going away. Mr. Sevenoaks said the Board needs to come to a decision; staff's view has been presented and both parties express willingness to negotiate, but staff has made a recommendation and the Board should act.

There was discussion about the applicant's position if the permits are denied, if staff could build a consensus with the applicants and protestants and bring back an application to both sides, whether to accept staff recommendation and a denial would then be subject to appeal in District Court which would not allow an opportunity to start over with a new application. Remanding the order would keep the matter within the administrative law process and mediation is good idea if it can be reached but if not, then the Board should return to consideration of the proposal before the it today.

Mr. Sevenoaks asked if 30 days would be enough time. Mr. Zelbst stated mediation would not work because that within the last few weeks there was a lawsuit between the District and the City of Lawton, and they reached an agreement to sell the District all the water it needed at a reduced price, and the City of Lawton since the application process began has condemned the water rights within the watershed, acquiring the rights of the spring, and he felt it was difficult to mediate in light of the fact the equation has changed. Mr. Nichols asked if there was a way to consider the new information without going through the costly hearing process. Mr. Smith said the matter could be remanded to staff for rehearing.

Mr. Nichols moved that the permit applications be remanded to staff to allow review of the new evidence. Chairman Herrmann added to remand to staff including the possibility of new hearings to allow new evidence to be entered. Mr. Nichols added that to his motion.

Mr. Sevenoaks seconded the motion.

Mr. Smith stated that the protection of Jimmy Creek/Spring should be included. Mr. Nichols and Mr. Sevenoaks agreed. Mr. Keeley said it would not do the Board any good to issue a permit where there is no water, but since we don't know where there is water, so the new evidence should include that as well.

Chairman Herrmann enumerated the three points that should be included in the motion: new evidence would include where water is located, the issue of the needs of the District and any contract that might exist, and can groundwater be found in sufficient quantities in a way that protects Jimmy Creek.

Mr. Nichols restated the motion: That the Board remand the four applications to staff to address the three concerns, where is water located, protection of Jimmy Creek and new information regarding Lawton. Mr. Sevenoaks was concerned about a time limit; Mr. Smith

suggested a monthly update to the Board. Mr. Sevenoaks was interested in seeing the matter resolved relatively soon. Mr. Sevenoaks agreed to second the revised motion.

Chairman Herrmann asked Ms. Schooley to read the motion. Ms. Schooley said the motion is to remand the four applications to staff to consider the three concerns, where water is available, that Jimmy Creek be protected, and new information regarding the city, and that a thirty day update would be made by at which time the Board would decide whether to continue with the update or act on the Board orders.

Mr. Couch stated that is the motion, but he was concerned that while this would be simultaneously going on, the word "mediation" is not included. Mr. Nichols said that is his intent, and he would add that to the motion. Mr. Sevenoaks seconded the addition to the motion.

Mr. Farmer requested to hear from the attorney from the City of Lawton. Mr. Couch stated a motion is being considered, and the remand is to gather information from the city. He said if another hearing is held and the information about a contract or separate negotiations could be evidence in that, he was concerned about a presentation now, except on the procedure. Mr. Farmer withdrew his request.

There being no further questions or discussion from the Board members, Mr. Nichols called the question and Chairman Herrmann asked for the vote.

AYE: Drummond, Farmer, Fite, Keeley, Knowles, Nichols, Secret, Sevenoaks, Herrmann  
NAY: None  
ABSTAIN: None  
ABSENT: None

Chairman Herrmann challenged both sides, that the Board is working very hard to be sensitive to the needs of property owners and their property rights, and also working very hard to do that in a way that protects a very sensitive resource, and he asked the people involved to work very hard to find a common ground, as the Board is trying to set the table for that to be accomplished.

- F. Consideration of items transferred from the Summary Disposition Agenda, if any.  
No items were transferred from the Summary Disposition Agenda.

## **6. PRESENTATION OF AGENCY BUDGET REPORT.**

Mr. Monte Boyce addressed the members and stated the financial report for the month ending October 31, 2006, is found on page 6000 in the notebook. He said we have completed one-third of the fiscal year, and have budgeted, expended and obligated approximately 58% of the budget, and have collected approximately 32%. Chairman Herrmann asked about any surprises, and Mr. Boyce noted fund 25000 where a correction had been made from the last month's report. The correction involved miscommunication on transfer of funds between the OWRB and the Tax Commission. There were no other questions by Board members.

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

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

**8. NEW BUSINESS**

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

There were no new business items for the Board's consideration.

**9. ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 11:28 a.m. on Tuesday, November 13, 2006.

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Rudolf J. Herrmann, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Jess Mark Nichols, Vice Chairman

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

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

\_\_\_\_\_/Absent\_\_\_\_\_  
F. Ford Drummond

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Kenneth K. Knowles

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Bill Secrest, Secretary

(SEAL)