

OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

February 13, 2007

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 February 13, 2007, 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 February 6, 2007, at 4:45 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked Mr. Drummond to serve as Acting Secretary in the absence of OWRB Secretary Bill Secrest. He asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

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

Board Members Absent

Bill Secrest, Secretary

Staff Members Present

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

Others Present

Mike Winingham, City of McLoud, OK
Donna McSpadden, Sardis Lake, Clayton, OK
Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League, Oklahoma City, OK
Jess Gilbreath, Poe & Associates, Oklahoma City, OK
Michael Wittingham, McLoud, Shawnee, OK
Jerry A. Taylor, Tuttle, OK
Sharon Crisjohn, City of Yale, OK
Jack Herrian, Garfield County Rural Water District #5, Bison, OK
Wayne Z. Minyard, CRG, Inc., Bennington, OK
Mike Schrammel, USDA Rural Development, Stillwater, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Nate Ellis, PFLG/McLoud, Oklahoma City, OK
Allan Brooks, PFLG/McLoud, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Ellen Phillips, Office of the Attorney General, Oklahoma City, OK
Dan Weitman, Office of the Attorney General, Oklahoma City, OK
Allison Maynard, Office of the Attorney General, Oklahoma City, OK
Kelly Young, Collinville, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Greg Kloxin, Oklahoma Conservation Commission, Oklahoma City, OK
Carl Hensley, Yale, OK
TR Cowley, Garfield County Rural Water District #5, Enid, OK
Landis Fusha, Garfield County Rural Water District #5, Bison, OK
Doug McCleary, McLoud and Tuttle, Oklahoma City, OK
Mark Selvidge, Kutak Rock, LLC, Oklahoma City, OK
Gene Myers, Tuttle, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Paul Smith, McLoud, OK
Bud Ground, Public Service Company of Oklahoma, Oklahoma City, OK
Robert M. Jones, Capitol West, Oklahoma City, OK
Mike Mathis, C.H. Guernsey & Co., Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the January 9, 2007, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Mr. Fite moved to approve the minutes of the January 9, 2007, Regular Meeting, as presented, and Mr. Nichols seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Smith began his report saying this has been a busy month, and it is an exciting time of year with the Legislature in session and lots of water bills. Mr. Mike Melton distributed a written report about the proposed legislation regarding the agency, and other associated measures. Several pieces of legislation concerned the removal of the cap on the Gross Production Tax account, make up of the membership of the Board, CAFO set backs, mining activities, creation of lake oversight committee at Corps of Engineers' lakes, appropriations bills, and other related issues.

Mr. Smith stated that he would like to see the list of ideas brought through the water planning process, which was funded by the Legislature in last year's session. There is interest now in water, and proposals for funding.

Mr. Smith noted a recent article in the newspaper that mentioned bond counsels, and said that will be discussed under the Financial Assistance Division business. However, he said there was one comment made in the article he wanted to address and that regarded the popularity of the OWRB financing program because of low interest rates, but that the Board's requirement of additional engineering work drove up borrowing costs, as well as taking two or more years to get a loan processed. Mr. Smith said the complaint is not new, that the OWRB program is not always the best but that evaluation must be made through a needs analysis. Some service providers complain to convince the borrower to go a different direction, it is a way to gain more fees by going outside the Board, and some of the facts in the paper are not accurate. Mr. Smith stated to date, the OWRB has provided over \$1.5 billion in loans with an interest rate savings of over \$373 million over the 20-year life of the loan. There is no additional engineering work required by the OWRB, all is required to be approved by the Department of Environmental Quality regardless of financing, the average time between application and approval is 156 days on the Clean Water SRF loan, the slowest program because of requirements by EPA. He explained the additional requirements are minor compared to the long-term cost savings associated with the lower interest rates. He provided the example of Woodward's loan for a \$1.4 million Clean Water SRF loan. Garfield County is on the agenda today; the days between application and the meeting is 35 days; Collinsville, 70 days, Tuttle, 55 days, and McCloud was 1,002 days, due to the significant delay of site selection for the wastewater treatment plant.

Mr. Smith informed the Board about meetings he recently met with Save Our Water Lake Eufaula, and will speak to the Oklahoma Municipal League Water Summit. Upcoming meetings are the Interstate Council on Water Policy and Western Governor's Association staff is meeting in Washington, D.C., and he will also meet with the Oklahoma Congressional Delegation on requests for the Water Resources Development Act language. The Canadian River Compact Commission meets March 6 in Oklahoma City, and staff will be participating in filming productions on water issues for a program called "I on Oklahoma City" to be viewed later in the year, PAX cable channel 62.

Mr. Smith concluded his report noting that 30-year dam safety program employee Cecil Bearden will retire at the end of February.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Rural Water and Sewer District #5, Garfield County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the request by the Garfield County Rural Water and Sewer District #5 is for a \$200,000.00 FAP loan. The District is

requesting the loan for drilling two new water wells, and nearly 14,000 feet of water line. The project will be funded through the requested loan proceeds, plus \$99,999.00 Rural Economic Action Plan grant from the Board, and approximately \$260,000 in local funds. Mr. Freeman noted provisions of the loan agreement. He said the District's water connections have increased in excess of 50% over the past ten years; the District has one loan with the Board obtained in 1998. The District's debt coverage ratio stands at approximately 1.6-times, at an estimated \$46,000 by borrowing from the Board. Staff recommended approval of the loan application.

Mr. Jack Perryman, District Manager, Troy Kelly, Vice Chairman, and Landis Fusha, Board member, were present in support of the loan requested today.

Mr. Nichols moved to approve the loan to the Garfield County Rural Water and Sewer District #5, and Mr. Drummond seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Collinsville Municipal Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this item is for a \$1,370,000.00 Clean Water SRF loan request by the Collinsville Municipal Authority. The loan proceeds will be used for construction of a new chemical feed building and required equipment, and for constructing a disc-filter polishing unit. Mr. Freeman noted provisions of the loan agreement. Over the last ten years Collinsville's water connections have increased by over 10%, and sewer connections have increased by over 20%. Collinsville currently has one outstanding loan with the Board, also for wastewater system improvements. The debt coverage ration stands at 1.75-times, and it is estimated that Collinsville will save approximately \$500,000 by borrowing from the Board. Staff recommended approval of the loan application.

Mr. Rick Smith, financial advisor, was present in support of the loan request.

Mr. Farmer moved to approve the loan request to the Collinsville Municipal Authority, and Mr. Sevenoaks seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving Loan for Tuttle Public Works Authority, Grady County. Recommended for Approval. Mr. Freeman stated this item is for a \$3.4 million Drinking Water SRF loan to the Tuttle Public Works Authority. Tuttle is requesting the loan in order to construct an ionic exchange water treatment plant to remove the high nitrate levels in the water. Mr. Freeman noted provisions of the loan agreement. Tuttle has experienced very rapid growth, with sewer connections increasing 20% over the last ten years, and water connections by 75%. The debt coverage ratio is projected at 1.7-times and it is estimated that savings will total about \$900,000 in interest expense by borrowing from the Board. Staff recommended approval.

Mr. Jerry Taylor, City Manager, was present in support of the application.

Mr. Nichols moved to approve the loan to the Tuttle Public Works Authority, and Mr. Fite seconded.

There were questions and discussion by Board members and Mr. Taylor about the ionic exchange process. Mr. Sevenoaks was concerned about new technology, but Mr. Taylor and the Engineering Firm representative explained while this is the first plant in Oklahoma, a pilot test has been conducted. The technology has been in use in California, and across the Nation, and is a proven process. The Department of Environmental Quality has approved the ionic exchange process. Mr. Farmer asked about the comparison of purchasing water for blending, but Mr. Taylor said there was no supply that would meet Tuttle's needs. Mr. Freeman stated that once the Department of Environmental Quality has approved the plans and specifications, the state requirements have been met.

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

D. Consideration of and Possible Action on a Proposed Order Approving Increase in Obligation of Funds for McCloud Public Works Authority, Pottawatomie County. Recommended for Approval. Mr. Freeman stated to the members that at the October 2006 Board meeting, the Board approved \$4.65 million Clean Water SRF loan. As a result of the bids coming in higher than the estimate, McCloud is requesting an increase in loan funds to \$5,315,000.00. The loan proceeds are for the construction of a 700,000 gallon-per-day wastewater treatment plant. The project will include two basins, an aerobic digester, a new lift station, sludge dewatering box and sludge drying decks. The treatment system will include an ultraviolet disinfectant system before discharge, and the loan will also fund the construction of a lab building and equipment. Mr. Freeman noted provisions of the loan agreement; the debt coverage ratio with the increase stands at approximately 1.4-times. It is estimated the PWA will save approximately 1.7 million by borrowing from the Board. Staff recommended approval of the increase in obligation of funds.

Mayor Becky Carpenter, City Manager Mike Whittingham, City Clerk Trisha Webb, City Attorney Mike Warwick, Paul Smith, Financial Advisor and Doug McCleary, engineer, were present in support of the request.

Mr. Knowles moved to approve the increase in obligation of funds to the McCloud Public Works Authority, and Mr. Keeley seconded.

Mr. Drummond asked if there were any changes in the project. Mr. Paul Smith answered there were a few items eliminated such as a paved parking lot that can be added later with growth. He said it is the same project to solve the same problem.

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

E. Consideration of and Possible Action on a Proposed Order Approving Resolution Consenting to Amendment of Lien Position Securing Loan for Yale Water and Sewage Trust, Payne County. Recommended for Approval. Mr. Freeman stated that in June of 1988, the Board approved an \$820,000.00 loan to Yale in order to refinance two outstanding loans with Farmers Home Administration, now known as Rural Development. These loans were originally

for water system improvements. The Water Board loan at closing was secured by a lien on Yale's water, sewer, and electric system revenues, and other revenues thereafter acquired. Subsequent to the loan approval, Yale acquired a gas system serving the town and as a result of the Board's original lien wording, the Board obtained the subsequent lien on the gas system. In March 2003, Yale was in need of making needed improvements to the gas system and were able to acquire financing and the OWRB agreed at that time to allow the lender for the gas system to acquire the first lien on gas revenues and the Board would maintain a senior lien on water, sewer, and electric revenues, and hold a the second lien on gas revenues. As a result of recent drought conditions, Yale's water supplier, the Lone Chimney Water Association has had difficulty in providing adequate service to the community and their concerns regarding future water supply. As a result, Yale has obtained short-term financing from the American Heritage Bank for drilling three water wells for a filtration system. The bank is also the lender for the Town's gas system. The request from Yale is to continue to maintain the same lien relationship with the Board with a senior lien on the water and sewer and electric system revenues and a second lien on gas revenues. Mr. Freeman said that even with the additional \$250,000.00 loan for the wells, Yale will have approximately a 2-times debt cover ratio. Staff recommended approval.

Mr. Carl Hensley, City Manager, and Sharon Crisjohn, City Clerk, were present in support the in the loan request.

Mr. Fite moved to approve the resolution consenting to amendment to lien position, and Mr. Sevenoaks seconded.

Mr. Drummond clarified that the Board is not making an additional loan, but agreeing to maintain the first lien position on water, sewer, and electric system, and a second on the gas system revenues.

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

F. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman stated this item is for the consideration of bond counsel for the upcoming state loan program revenue bond issue. Requests for proposals have been distributed to bond counsel firms that are on the State Bond Advisor's approved list of firms. Three proposals were received, and review of the firms was based upon experience with the issuance of new money revenue bonds, pooled revenue bonds, Oklahoma bond issuance experience, experience with attorneys confined to work on Board transactions, and fees. Additionally, Mr. Jim Joseph, State Bond Advisor, has been consulted regarding the proposals. Mr. Freeman stated that following review of the proposals, it was determined additional documentation is needed before the final selection may be made. The Board will work to obtain the additional documentation needed, and request that selection be referred to the Board's Finance Committee. The Committee is comprised of Chairman Herrmann, Mr. Secrest, Mr. Farmer, and Mr. Nichols; the selection will be brought to the next month's Board meeting to be affirmed. Staff recommended approval of the request.

Mr. Sevenoaks moved to approve the request, and Mr. Farmer seconded.

Chairman Herrmann explained to the members that the reason the matter is before the Board is that time is of the essence. He said normally the Board would make the selection and act as a full Board at a Board meeting. There is a time issue relative to closing a loan that has

to be accomplished and the timetable and borrower could be jeopardized. The request is to delegate to the Finance Committee the decision of final selection of bond counsel, to be affirmed by the Board at the next Board meeting.

Mr. Sevenoaks asked who is the Board's current counsel. Mr. Freeman answered the Board does not have a bond counsel; however, for this particular transaction one was selected at the last February's Board meeting, but as a result of an opinion of the Oklahoma Bar Association, counsel will have to either represent borrowers or the Board, and the firm elected to represent borrowers. The situation here is that this issue needs to be closed by March 14 because the loan with Tulsa matures on March 15, plus the Garfield RWD #5, loan and also a Langley loan. The Attorney General's office has also requested documentation needed to select counsel and close the issue.

Mr. Sevenoaks asked for background information on the Bar Association request and opinion. General Counsel Dean Couch responded Secretary Tolbert would be the primary person to respond, but in discussions to clarify what the Board has understood for decades to be actions that were proper and in no way a conflict seeking clarification seemed to be the appropriate thing to do. The new Ethics Committee of the Bar Association decided to fully review, which had been reviewed in the early 1980s. With the change of ethics rules came to the conclusion that counsel who represents state agencies should not likewise represent local borrowers, even though there are separate transactions, separate opinions, for separate reasons, nevertheless was their opinion, and was appealed and affirmed, although now in another appeals process. He said that through an abundance of caution, Mr. Freeman decided to request proposals for a new bond counsel to avoid the situation entirely. Additional documents are needed before staff can recommend a bond counsel. Mr. Sevenoaks asked if the full Board should approve rather than the Committee, due to the nature of the matter. Chairman Herrmann stated he was comfortable taking it to the Committee first because the decision will be affirmed at the full Board meeting in March. He said this approach is being taken because of the interest of time. He added the selection is only for this transaction.

Mr. Sevenoaks asked about the opinion and what entities counsel can represent and for what reasons. Mr. Couch responded the committee opinion had not been reviewed entirely.

Mr. Smith stated this issue came up when the program first begun years ago from a complaint—by other bond counsel. The Fagin Firm, represented by Mr. Don Kiser, has been the only bond counsel that the Board has hired on this particular program. The Board asked the Bar Association for an unofficial review of the complaint years ago, and there was no controversy and the Board has proceeded. When the new complaint came, Secretary Tolbert and the Board asked for review, and the new Ethics Committee indicated there is a conflict. There's a potential conflict with someone who is not even doing business with the Water Board, based upon the opinion, that the OWRB would have to hire bond counsel that is doing no work with any municipality on any type of financing; the concern is that raises the cost and limits the pool. The conflict is not the Water Resources Board, the OWRB does not have a conflict with the bond counsel we hire, it's the firms conflict in representing the two parties. Mr. Smith said the integrity of the Water Board program is not at stake here, its a decision by the firms of whether they want to take the risk of doing that together with the Bar opinion, and they decided they did not want to, so the Board is without a bond counsel. Kutak Rock was the firm that was recommended, and the Attorney General wants additional clarification with the firm about a potential conflict with the poultry litigation so that is the delay. Once the Board received a letter from the Kutak Rock there is no conflict, and waive a potential conflict by the clients in that particular litigation, the Board is ready to move forward. Mr. Smith wanted to make clear all the issues on the table; the firms that have represented the Board have done an outstanding job and there is nothing but high praise, and we don't believe the Bar Association is correct in its opinion, but it is not the Board's decision, the firm has to live with decision. That is why the

Finance Committee needs to have the ability to make the decision so the financing can move forward, the other option is to hold a special board meeting.

There being no further discussion, Chairman Herrmann called for the vote on the motion to approve the request for the Finance Committee to select bond counsel.

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

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 any items.

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 discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion. Mr. Fite moved to approve the Summary Disposition Agenda items and Mr. Nichols seconded.

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

The following items were approved:

C. Consideration of Approval in Accordance with the Following Proposed Orders and Proposal: Applications for REAP Grants; and Statewide Water Development Revolving Fund Proposal. Recommended for Approval:

REAP	Application No.	Amount	Entity Name	County
<u>Recommended</u>				
1. KEDDO				
a.	FAP-05-0040-R Talihina Public Works Authority NODA	LeFlore		\$99,999.00
b.	FAP-05-0002-R Rural Water & Sewer District #5	Garfield		99,999.00

2. Consideration of and Possible Action on FY 2008 Proposal for Use of the Statewide Water Development Revolving Fund.

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

1. Interagency Agreement with Grand River Dam Authority for Dissolved Oxygen Monitoring, Fish and Wildlife Mitigation, and Volunteer Monitoring Programs at Grand Lake and Hudson Lake.
2. Contract with Hudson Lake Association, Inc. for Coordination of Volunteer Monitoring Program at Hudson Lake and W.R. Holway Reservoir.
3. Amended Service Level Agreement with the Office of State Finance to Add Computer Network E-Mail and Virus Protection Services.
4. Master License Agreement with Environmental Systems Research Institute, Inc. for Support for GIS Software.
5. Extension and Amendment Agreement with Office of the Secretary of the Environment for Clean Water Act Section 104(b)(3) Wetlands Program.
6. Resolution Authorizing the Chairman to Enter into Agreement with the Oklahoma City Renaissance Hotel and Cox Convention Center to Host the 2007 Oklahoma Governor's Water Conference.

E. Applications for Temporary Permits to Use Groundwater:

1. Matt T. Wiggins, Cimarron County, #2006-559
2. Jimmy & Ginger Emmons, Dewey County, #2006-581
3. Dollar Farms, L.L.C., Kingfisher County, #2006-600
4. Michael & Pam Haden, Kingfisher County, #2006-602

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

1. Arthur Farms, Inc., Garvin County, #2006-572
2. Longbow Enterprises, L.L.C., Woodward County, #2006-599

H. Applications to Amend Regular Permits to Use Groundwater:

None

I. Applications to Amend Prior Rights to Use Groundwater:

None

J. Applications for Regular Permits to Use Stream Water:

1. R. Doyal Hoover, Creek County, #2006-028
2. WHB Cattle, L.P., Grady County, #2006-034
3. Fort James Operating Company, Muskogee County, #2006-046

- 4. Maydoua Moua, Coal County, #2006-059
- K. Applications to Amend Regular Permits to Use Stream Water:
None
- L. Well Driller and Pump Installer Licensing:
 - 1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Ed Hall Enterprises, DPC-0675
 - b. Geothermal Technologies, DPC-0669
 - 2. New Operators, Activities for Existing Licenses:
 - a. Talon/LPE, DPC-0619
 - b. Don Strawn Drilling, Inc., DPC-0189
 - c. Crystal Creek Environmental Solutions, Inc., DPC-0535
- M. Dam and Reservoir Plans and Specifications:
 - 1. City of Duncan, Clear Creek Dam, Stephens County, DS-06-07
 - 2. Basil Savage, Marshall County, DS-06-04
 - 3. Robert Funk, Express Ranches, Canadian County, DS-07-01
 - 4. NRCS, Sallisaw Creek Watershed Site No. 34, Sequoyah County
- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Department of Transportation, Atoka County, FP-06-25
 - 2. Department of Transportation, Rogers County, FP-06-26
 - 3. Department of Transportation, Craig County, FP-06-28
 - 4. Department of Transportation, LeFlore County, FP-06-29
 - 5. Department of Transportation, Pontotoc County, FP-06-30
 - 6. Department of Transportation, Coal County, FP-06-32
 - 7. Department of Transportation, Roger Mills County, FP-06-33
- O. Applications for Accreditation of Floodplain Administrators:
Names of floodplain administrators to be accredited and their associated communities are individually set out in the February 13, 2006 packet of Board materials

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

Update on Oklahoma Comprehensive Water Plan Activities. Mr. Dave Dillon, Director of Planning for the OWRB, addressed the members and distributed a schematic of the Oklahoma Comprehensive Water Plan Proposed Development. He explained the chart depicts the work that is ongoing divided into two categories: Public Policy and Coordination and Technical Studies, a two-prong attack. He updated the members on work performed by the Water Resources Research Institute, the Listening Sessions will begin in April, (no dates set yet) and there will be a website being created by the Institute. He suggested those interested in receiving an update to register for email alerts from the OWRRI, although right

now there is no information available. Regarding work outlined under Technical Studies, Mr. Dillon explained that is work that will be done by a variety of people i.e., the Corps of Engineers, the OWRB staff, consultants (through COE contract), other state agencies, and Councils of Governments. He said staff has worked very hard over the past month to secure financing through the Corps of Engineers, looking for 50% match. The FY'07 federal budget has been operating under a continuing resolution making it uncertain how much money is available. Mr. Dillon has met on three occasions with the COE since his last report, and has secured money that will allow the planning to begin to lay out the technical framework, which is conceptual but the money has been agreed upon and the OWRB will match. There are other federal monies available from the '07 budget including Planning Assistance to the States, approximately \$140,000. From federal FY'08, a proposal will be presented to the Congressional Delegation after meeting with the COE at its Congressional Briefing, and other partners in the process include the Bureau of Reclamation providing water supply availability information, and other groups are interested in getting involved such as the Climatological Survey. Mr. Dillon concluded his report, and stated he would keep the members updated on activities.

Mr. Sevenoaks asked about the funding through the OWRRI, and Mr. Dillon explained the Institute and its partners contributes \$1.5 million, and the OWRB will contribute \$1.3 million for a total of \$2.8 million; approximately one million will be used for research to support the OCWP, and the remainder for the public participation phase. The members discussed mechanisms to be involved and updated about the OCWP activities, the purpose of the Board's Ad Hoc Committee on Planning, and the review of historical data as well as a way to discover what information is available.

Presentation of Draft Proposed New Permanent Rules and Amendments to Current Rules of the Board And Copies of All Written Comments and Summaries of All Oral Comments. – Not scheduled for Action. The Board is scheduled to vote on the proposed rules at the March 13, 2007, Board meeting. Chairman Herrmann said this presentation is the third visit of the rules update process, and the Board will not take action until the March meeting. Each division distributed copies of its proposed rules to the members for review over the next month.

B. Proposed Amendments to Chapter 5 – Well Drillers and Licensing Fees

1. Summary of final draft proposed rules – Ms. Lou Klaver, Chief of the Planning and Management Division, stated to the members there are only a few changes to Chapter 5, regarding fees. She said under the Water Well Drillers' licensing program, the fees have not been changed since the initiation of the program. The staff has been working with the Well Drillers Advisory Committee that has recommended the changes. In review of other state programs, out of state drillers fees need to be brought in line, along with changes in the Indemnity Fund. In the past, drillers posted a bond in case of unexpected trouble, which was later changed to an Indemnity Fund, also used for education of drillers, accreditation program, and to take action on problems and seek reimbursement from the driller. Costs associated with pulling a well casing or plugging wells have significantly increased, and in an effort to increase the fund, the staff along with the Well Driller's Advisory Council, have recommended an increase the fee for a two year period from \$100 to \$200 covering the license and fees, and additional fees increased from \$40 to \$75, as well as a renewal fee increase from \$40 to \$75.

2. Questions and Discussion by Board Members. Chairman Herrmann asked if the staff had received any comments from the public, and Ms. Klaver responded it had not. Mr. Couch said that no one attended the public hearing, and the fee increases were recommended by the Council. Mr. Sevenoaks suggested the fees could be higher; and Mr. Drummond asked about instate fees.

3. Comments by Public. There were no comments from any member of the public.

C. Proposed Amendments to Chapter 50 – Financial Assistance

1. Summary of final draft proposed rules – Mr. Joe Freeman stated to the members that rules changes proposed by the Financial Assistance Division are minor this year. He said the first change involved the emergency grant program, and recommends the Board to fund projects where water service is extended from a town or a rural water district to individual residences when the individual well is not providing adequate quantity of water. That type of project under the proposal would be moved from a Category 3 to a Category 1, putting this type of project on an equal basis with the same type of project by a city or rural water district if their wells were going dry.

The second proposed rule change is the same as the first, and applies when an individual water source becomes dangerous or unhealthy for consumption and would move the project to Category 1. He said the justification for the changes have come through experiences with these type situations over the past few years and related to drought conditions.

A third change is a recommended change in the Rural Economic Action Plan grant program. It is recommended that 20 points be deducted from a REAP grant application if the applicant has a previous grant which remains unaudited, or if a refund has not been paid to the Board.

No comments were received at the public hearing on the propose rule changes.

2. Questions and Discussion by Board Members. There were no questions or discussion by Board members.

3. Comments by Public - There were no comments from any member of the public.

D. Proposed Amendments to Chapter 45 – Water Quality Standards and

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

1. Summary of final draft proposed rules – Mr. Derek Smithee stated for purposes of the presentation, he would combine discussion regarding the Water Quality Stands in Chapter 45, and Water Quality Standards Implementation in Chapter 46. He said the packet presented is the record of the rulemaking as it occurred. The state and federal government through the Clean Water Act had unique public participation requirements which go above and beyond that which is statutorily mandated for state Administrative Procedures Act purposes only. He said the members had been provided the notice of proposed permanent rule making, the notice of rulemaking intent outlining the rules published November 15, the rule impact statement of analysis of proposed amendments, the original language available from November 15, 2006, until the close of the comment period and hearing, and a copy of all comments received and a summary, and the final recommended changes proposed for adoption at the March meeting.

Mr. Smithee said there were essentially five changes as a result of public comment at the hearing and written comments: (1) navigation use and proposed removal of municipal and industrial process cooling water hydropower navigation that have never been used in water quality management is now recommended to be retained; (2) Appendix E Site Specific criteria and removal of the Department of Environmental Quality from the rule requirement of notification of changes; (3) Appendix A correction to a legal description; (4) change to sediment Use Support Assessment Protocol (criteria compared to ambient water quality data and information to make a decision on whether standards are being met)*; and (5) toxic Use Support Assessment Protocol clean up language.

*Mr. Smithee explained that the sediment USAP had been proposed in 2006 rulemaking; however, due to comments received, the proposal was not considered and following proposal this year staff received comments from all state agencies, and especially the Oklahoma

Department of Environmental Quality and Oklahoma Conservation Commission strongly encouraging the rule move forward, and following meetings with the Oklahoma Corporation Commission, a letter has been received recommending moving forward.

Mr. Smithee said the rules process has gone smoothly this year, staff has worked hard, and he concluded his presentation.

2. Questions and Discussion by Board Members. Mr. Sevenoaks said the EPA had commented on the nutrient criteria for Lake Eucha and Spavinaw, and he asked for clarification. Mr. Phil Moershel and Mr. Smithee responded EPA supported the proposed language which protects nutrient enrichment through the protection of fish and wildlife propagation, not water supply. Oklahoma is one of few states that looks at the water supply aspect.

3. Comments by Public. Ms. Angie Burckhalter, Oklahoma Independent Petroleum Association, commented about the sediment USAP proposal (Chapter 46) and that her organization had opposed the change in 2006 and had hoped for interim meetings with the OWRB staff to resolve their issues, but no contact had been made. The OIPA had submitted written comments, and there were a number of other organizations that had concerns with the proposed rulemaking. After questions by Mr. Sevenoaks, Ms. Burckhalter explained the concerns of the OIPA with the proposed rule and the relation to realistic conditions of what is being compared that she did not support the rule as written, but she had not seen any revision to the proposal. She said she had attended the October meeting where the proposal was re-introduced, which is basically that proposed in 2006, and she had made comments. She said she had hoped for an industry-working group meeting with other interested parties, not just a one-on-one meeting with the OIPA.

Marla Peek, Oklahoma Farm Bureau, stated to the members the OFB had made comments to the proposed change in Chapter 45 with regard to the nutrient criteria for Lake Eucha and Spavinaw. She wanted to bring to light that the last time a numeric criteria was proposed for the Illinois River litigation followed, and it is well known the Eucha Spavinaw watershed has been involved in litigation and the poultry farmers in both Oklahoma and Arkansas have been living by the settlement agreement, significantly reducing how much poultry litter is applied. Hopefully this has helped the water quality in those two lakes, but the OFB concern is what will happen after the result of the documentation, and what is the price tag, the rule impact statement did not attempt to quantify and the OWRB should go to the Oklahoma Conservation Commission to find the cost because the rule has the effect of law. Ms. Peek also commented on the sediment USAP, and the addition of Lake Chickasha to the nutrient limited watershed list and their concern about quantifying the cost.

Mr. Fite stated Ms. Peek said the .037 phosphorous standard resulted in litigation? Ms. Peek responded that she did not know that was the main reason but the litigation followed after the standard was put in place, but she would not say it was the cost. He asked her if she felt the standard influenced the lawsuit, and Mr. Peek answered she believed it gave Oklahoma more ammunition to say there is a number that is not being met.

Mr. Sevenoaks stated Ms. Peek commented regarding the degradation of Eucha-Spavinaw watershed and the expiration of the settlement agreement. He said the watershed continues to degrade and he asked if the Agriculture Industry would support Tulsa to codify the settlement agreement in law through legislation this session? Ms. Peek answered she did not believe so, the OFB did not believe that improved water quality, but putting Nonpoint source practices in place on the ground improved water quality. She said she is concerned that if the settlement agreement and what the poultry producers have done as a result has not helped the watershed, then what is going on there? Mr. Sevenoaks the only point source in the watershed has rebuilt their plant, and everything else is Nonpoint source and the Conservation Commission is working with the landowners of the area to implement practices, Tulsa is contributing 319 monies, and he wanted to understand what the OFB position is and why it

would be opposed to those activities. She said she is not against conservation work, but wanted to know the price tag—how much does it cost to achieve that numerical criteria. Mr. Sevenoaks asked why she wouldn't agree with cleaning up Eucha-Spavinaw and find a way to reduce phosphorous so it can be a drinking water supply. Ms. Peek answered the OFB supports clean water and clean drinking water supply and she couldn't say the organization supports a settlement that was made between two parties.

Mr. Jim Barnett, Environmental Federation of Oklahoma, stated to the members the EFO provided a comment letter basically reflecting the OIPA comments regarding sediment and their concerns are the same. He said there is a detailed letter from Richard Smith of INCOG criticizing the science behind that, and he found that letter convincing. He said he had not seen staff's response or any changed language in response. He said the EFO criticism regards whether the proposal was adequately and scientifically based. He said otherwise, there is no opposition to the standards as proposed.

Mr. Fite asked Mr. Smithee if there has been a change related to the sediment USAP. Mr. Smithee responded that the staff should have spent more time with the interested parties reviewing in detail the proposals and potential revisions that might address all concerns. He said the justification document outlines the "whys and wherefores" and the science for the sediment USAP, and have worked very closely with the Conservation Commission, Department of Environmental Quality who are strong advocates not only for the proposal, but the scientific underpinnings of the proposal. That has been distributed in the members' packet, and the Conservation Commission comment letter is included. A change happened as a result of the comments following the comments and contact with the Corporation Commission. He said the interested parties had not seen the revision, but essentially from the technical perspective it regards how biological information is woven into making a sediment USAP decision based on whether the biological community is impaired and why.

Mr. Smith commented about the cost issue. He said there is constant criticism about a rule by the Board and the cost is not identified well enough. He said the other perspective is that as an agency in water quality standards and trying to decide what is impaired, its not the water purity level but the impairment level. He said society needs to understand there is cost involved in not implementing best management practices, and having impairment concerns with sediment runoff and phosphorous runoff, which create a lot of costs, i.e., to the City of Tulsa to treat the water, and to set a number and try to characterize it as a cost on a particular landowner the landowner has a responsibility to the cost as well. The landowner has to implement best management practices and if they don't and it causes pollution in the stream, that's a cost caused by the individual landowner, not the state that set the number. He said it is very difficult for the Board on a voluntary program to identify the cost, most Nonpoint source programs receive federal cost money, the state contributes match money and the cost to the individual landowner varies somewhat. What is the responsibility of the individual landowner in terms of not allowing runoff from their property? Mr. Smith said all that needs to be evaluated in determining the costs, and what the OWRB determines is when the stream is impaired, which translates into a lot a different programs and if the money was spent initially and the stream wasn't impaired, the Water Quality Division would go away.

Mr. Fite commented about his work with the Board prior to his being a Board member, and that is the staff goes up and beyond to include folks in deliberation.

Chairman Herrmann asked if a rule impact statement was included in the documents presented, and Mr. Smithee answered that it is included.

There were no further comments by the public, nor questions or discussion by the Board members regarding the proposed rules.

5. SPECIAL CONSIDERATION

For INDIVIDUAL PROCEEDINGS, a majority of a quorum of Board members, in a recorded vote, may call for closed deliberations for the purpose of engaging in formal deliberations leading to an intermediate or final decision in an individual proceeding under the legal authority of the Oklahoma Open Meeting Act, 25 O.S. 2001, Section 307 (B)(8) and the Administrative Procedures Act, 75 O.S. 2001, Section 309 and following.

A majority vote of a quorum of Board members present, in a recorded vote, may authorize an executive session for the purposes of CONFIDENTIAL COMMUNICATIONS between the public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct the pending investigation, litigation, or proceeding in the public interest, under the legal authority of the Oklahoma Open Meetings Act, 25 O.S. 2001, Section 307(B)(4).

A. Application to Amend Prior Right to Use Groundwater No. 1971-012, Mark D. Cook, Alfalfa County; and

1. Summary – Ms. Lou Klaver, Chief, Planning and Management Division, stated to the members that the applications to use water by Mr. Mark Cook were consolidated at the hearing, and she presented the matters together. She stated the reason it was consolidated was because the requests are made by the same applicant, on the same piece of land, involving the same purpose (irrigation) and very similar protests.

Ms. Klaver provided background on the prior right stating the previous owners had obtained a groundwater right in 1971, before the groundwater law was amended. The landowner applied for 320 acre-feet to irrigate 154 acres. The land was sold to Mark Cook, and the prior right, recognized by the Board, was transferred.

Ms. Klaver said that what has happened is that Mark Cook has put in place a drop-sprinkler pivot irrigation system to more efficiently irrigate in Alfalfa County, raising Bermuda grass, corn, wheat; a variety of crops. He found that one existing well that came with the prior right could produce on about 250 gallons per minute, and the irrigation system needs 750 gallons per acre. He came to the Board to make application to amend the prior right. Mr. Cook is not asking for more than 148 acre-feet on the prior right, but is asking to add two wells and use three to withdraw the total amount so the pivot irrigation system will have enough water pressure to operate.

The hearing examiner determined the land overlies the Cimarron Alluvium and Terrace Deposits and below that at a depth of 100 feet, a basin named the Cedar Hills Sandstone begins.

Ms. Klaver said that two protestants appeared at the hearing concerned that the additional wells, even though there was not additional acre-feet requested, would still impact their ability to use their domestic groundwater. Both protestant's wells are located further than one-fourth of a mile from the additional wells.

The hearing examiner found the irrigation would be efficient, there are no open or poorly drilled wells that would cause pollution, open holes have been plugged and a licensed well driller has been used to drill the two additional well, which were tested to produce up to 250 gallons per minute, and that both wells are necessary to operate the irrigation system. No issue

of pollution was raised, and the hearing examiner recommended approval of the amendment to the prior right to add the two wells.

B. Application for Temporary Permit to Use Groundwater No. 2006-579, Mark D. Cook, Alfalfa County

1. Summary - Ms. Klaver continued the presentation stating that application 2006-579 was filed by Mr. Cook on the same piece of property, except 148 acre of the same tract of land is dedicated and now has three wells. Mr. Cook seeks a temporary permit of 148 acre-feet, using both the prior right and the temporary permit to the full temporary amount, giving him a total of just under two acre-feet per acre. The applicant will then irrigate 148 acres with 148 acre-feet from the three wells all subject of the prior right.

There was the same protestants, and the same findings. The hearing examiner determined the applicant owned 154 acres and the 148 acres, in the same plot, and the well overlies the Cimarron Alluvium and Terrance deposits, but found the oldest well—the prior right well—actually is 300 feet deep and the other wells are less than 80 feet deep. The hearing examiner noted the oldest well draws water from the Cedar Hills Sandstone, and the new wells will withdraw from the Alluvium and Terrace deposits of the Cimarron River. The protestant's wells are in the Alluvium and Terrace deposits of the Cimarron River, and are concerned the older well is less than one-fourth mile away.

The hearing examiner found the applicant owned the land, irrigation is a beneficial use, and is a reasonable amount, and that waste by pollution and waste by depletion will not occur. There are no problems with wells or open holes.

Mr. Drummond asked why is there 154 acres for the prior right, and 148 acres for the temporary permit. Ms. Klaver answered the previous owners irrigated 154 acres and some of that is not being placed into production by Mr. Cook. He will be irrigating 148 acres, but the total requested (between the two applications) is 296 acre feet of water per year, below the two acre-feet per acre allowed.

2. Presentation and Discussion by parties. Mr. Jim Barnett, representing Mr. Cook, addressed the members and said this is a classic example of how the current groundwater law is supposed to work. He said the bottom line is that the groundwater law is a method for quantifying each landowner's private property rights. The legislature has determined to do this through the mechanism of a hydrologic study and deduct out the prior rights which is the use authorized prior to the law coming into effect. He added that statement at there is no priority in the system, is not correct. The old established uses were recognized, they have a priority, and are not included in the amount of water that is divided among other landowners. This landowner has a prior right so his get his off the top, and he is also entitled to share of what is left, and because there is no hydrologic study, it is uncertain what his share is, and at that time it could be less or could be more, but for right now the legislature says that every landowner is entitled to their two acre feet on a temporary basis, and that is what the applicant is asking for.

There were no protestants and no representatives of protestants in attendance.

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

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

Chairman Herrmann stated that under advice of the General Counsel, two separate motions are required, one to amend the prior right, and one to approve the new temporary permit.

Mr. Fite moved to amend the prior right, #1971-012, and Mr. Knowles seconded. There were no questions or discussion

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

Mr. Nichols moved to approve the new temporary permit, #2006-579, and Mr. Fite seconded.

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

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce addressed the members and stated the financial report for the month ending January 2007. He noted the Water Infrastructure Development Fund has received an additional deposit of \$200,000, making the total collections just under \$2.4 million.

There were no other questions regarding the budget report.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

8. PROPOSED EXECUTIVE SESSION

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a 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 a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an Executive Session for the purpose of discussing the Tarrant Regional Water District v. Herrmann

A. Vote on whether to hold Executive Session - before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Chairman Herrmann stated that each of the Board members were named in official capacity as Board member in a lawsuit filed in the federal district court by the Tarrant Regional Water District, a Texas State Agency. In reviewing the case, Chairman Herrmann stated he had several questions, and in discussion with the General Counsel, it was advised that public disclosure of confidential communication would seriously impair the Board's ability to process the litigation in the public interest. By holding an executive session, the Board would agree with the advice of Mr. Couch, and in addition to Mr. Couch and Mr. Smith, Chairman Herrmann said

he had invited Secretary of Environment Miles Tolbert, Assistant Attorneys General Dan Weitman, Allison Maynard, and Neal Leader to attend the executive session. The executive session is authorized by the Oklahoma Open Meeting Act, as written in the agenda, and may be held for the purpose of confidential communication between a public body and its attorney concerning a pending investigation claim or action of the public body.

Chairman Herrmann said the Board should decide whether to vote to enter an Executive Session, with the invitees mentioned.

Mr. Sevenoaks moved that the Board hold an Executive Session, and Mr. Drummond seconded. There were no questions nor discussion.

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

B. Designation of person to keep written minutes of Executive Session, if authorized.

Chairman Herrmann designated Mary Schooley, OWRB Executive Secretary, to keep the written minutes of the executive session.

C. Executive Session, if authorized.

The Board members and invited guests entered the executive session as authorized.

9. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.

Return to open meeting and possible vote or action on any matter discussed in the Executive Session.

The Board members returned to regular session. Chairman Herrmann announced there was no action to be taken as a result of matters discussed in the Executive Session.

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.

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:51 p.m. on Tuesday, February 13, 2007.

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:

_____/Absent_____
Bill Secrest, Secretary

(SEAL)