

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

March 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 March 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 March 6, 2007, at 4:30 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Herrmann asked Mr. Kenny Knowles to provide the invocation. He asked Mr. Keeley to serve as Acting Secretary in the absence of OWRB Secretary Bill Secrest.

B. Roll Call

Board Members Present

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

Board Members Absent

Bill Secrest, Secretary
Ford Drummond

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

Dick Wheatley, Wheatley Company, Tulsa, OK
Zack Williams, OG&E, Oklahoma City, OK
Wilt Brown, City of Hobart, OK
Rick Mitchell, City of Beggs, OK
Karla Gaskins, City of Beggs, OK
Mike Schrammel, USDA Rural Development, Stillwater, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Environmental Federation of Oklahoma,
Oklahoma City, OK
Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK
Gene Whatley, Oklahoma Rural Water Association, Oklahoma City, OK
James Gammill, Oklahoma Rural Water Association, Oklahoma City, OK
Tom Liu, UBS Investment Bank, New York, NY
Mark F. Selvidge, Kutak Rock LLP, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,
Oklahoma City, OK
Debi Poe, BancFirst, Oklahoma City, OK
Deene Suddath, BancFirst, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Shanon Phillips, Oklahoma Conservation Commission, Oklahoma City, OK
Roy Foster, City of Tulsa, OK
Clayton Edward, City of Tulsa, OK
Charles Hardt, City of Tulsa, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the February 13, 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 February 13, 2007, Regular Meeting, as presented, and Mr. Nichols seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Mr. Smith began his report bringing the members up to date on the Legislative session. Most of the Committee work is over and many bills have gone away. He spoke about the measures affecting the financial assistance program that are still active, particularly regarding the removal of the cap on the Gross Production Tax fund—"If you want water at the tap, remove the cap!" There is concern about the removal of the cap and the impact to the General Revenue Fund. He added there is also misunderstanding about funding the water plan and the need for

future funding that will be identified through the planning process. Kansas's annual budget for water plan implementation funding is \$25.6 million, for example.

Mr. Smith updated the members on the activities of the Comprehensive Water Planning effort in the absence of David Dillon. On March 30 there will be a "test" Listening Session to practice the format of the local meetings. The Board's Water Plan Committee, Division Chiefs and Staff are invited. Funding has been identified through the Corps of Engineers to be matched by the OWRB funding and to begin the contractor selection process. He noted the schedule of local meetings that were distributed to the members and available on the OWRI website. Chairman Herrmann asked about the four-year versus five-year schedule, and Mr. Smith responded that is a component, but also the implementation funding. There is a five-year limitation (in completion of the plan and funding) and the thought process at the Legislature is that \$6.5 million is needed over five years to do the study, but it would be best to complete the study in a shorter amount of time, but more money would be needed sooner on a compressed schedule because there are needs ongoing and if the five-year limit is lifted, funding of the recommendations could begin. There are also funding issues for projects now across the state, and all these components are included under the water plan umbrella. He said it is estimated that the "bang for the buck" to the state's financial assistance program is that for the \$1.2 million that comes in over five years, there will be \$108 million in financing, a savings of \$30 million dollars in interest. With the water plan, \$6.5 million will bring \$13 million to the water planning process for Oklahoma as that is matched with federal and state and local dollars. He said this program is bringing additional dollars to Oklahoma, with less than 10% administrative overhead on the \$13 million; this isn't an agency growth program or money to expand the Water Resources Board, the money is actually going out to the communities and for implementation outside the OWRB, using very little administrative staff internally to operate the program.

Mr. Smith recognized Cheryl Dorrance with the Oklahoma Municipal League, and Mr. Gene Whatley with the Oklahoma Rural Water Association, who are advocates within their own organizations to get out the word about the local meetings, as well as Jim Barnett with the Environmental Federation of Oklahoma, Farm Bureau and Independent Petroleum Association, among other organizations.

Mr. Smith updated the members on the Arbuckle-Simpson study activities, and in particular funding for the completion phase of the study. He said \$1.1 million is needed, and the Oklahoma Congressional Delegation is working to obtain the \$500,000 match. A written report was distributed. He said he believed that at the end, there would be a good handle on how groundwater pumpage will impact surface water that will be modeled and used to evaluate permits and determine recharge. He said the study is on time and in budget, and the study will be finished on time and in budget, with a product that will be technically sound. He complimented Noel Osborn, OWRB project leader on the Arbuckle study, and Bob Fabian, have done an outstanding job designing the study, and keeping the study on time and in budget. Mr. Keeley said that ultimately the Board is to determine the yield of all groundwater basins, and he asked if what is learned from this study can be helpful in the future even though there may be different types of structures (aquifers). Mr. Smith answered he believed that absolutely it was going to be helpful because we have learned more about water management, conjunctive use management, and interaction of groundwater and surface water in difficult formations besides an alluvial deposit. Mr. Keeley and Mr. Smith talked about the valuable lessons from the study, the possible recharge rate for the Arbuckle, and in stream flow levels and key values that affect fish and wildlife.

Ms. Smith distributed copies of a publication that was a joint effort between the OWRB and the US Geological Survey entitled, "Hydrologic Drought of Water Year 2006". He said this is the type of information that will be distributed at the OCWP local meetings. He commented about statements being made that the drought is over because there have been a few rains. The state's soil moisture and lake and stream levels are still very low and additional rain is necessary.

Mr. Smith informed the members he had visited the Oklahoma Congressional Delegation in Washington, D.C., about the Comprehensive Water Plan funding to the Corps of Engineers through the Water Resources Development Act, and he distributed the written report, Oklahoma Water Resources Board Congressional Briefing Document, outlining several water resources funding needs.

The Environmental Protection Agency is sponsoring a conference in Atlanta, Georgia, entitled, "Paying for Sustainable Water Infrastructure." Mr. Smith was invited by EPA, Western States Water Council and Western Governor's Association to make a presentation on specific issues of infrastructure needs of the West, as well as in Oklahoma. One of the issues is the adequate funding levels of the Clean Water and State Revolving Fund programs, and new programs to fund rural communities, the idea being that new additional programs are not needed, only adequate funding for the programs that are in place.

Mr. Sevenoaks asked about the legislative schedule and Mr. Smith said that Mr. Mike Melton is absent, but a written legislative report has been distributed. This time next month the measures will be going into conference committees. Mr. Smith updated the members on the legislation regarding the Aggregates Association and the regulation of mine pit water. He said the Aggregates Association has a bill where they are trying to accomplish two goals: take exploratory drill hole boring and regulation away from the Water Resources Board and give that exclusive jurisdiction of the ODM, and take water that is used or discharged from a pit away from the OWRB to the exclusive jurisdiction to the ODM. First, on taking exploratory drill holes, he said he believed for a couple of reasons it's a bad idea because drilling exploratory bore holes is no different than drilling a geotechnical boring that we license...to have a license and require plugging those wells and having that under one roof to where the drillers know and the landowners know what to expect in terms of plugging is appropriate...the other reason is we use that data and the well logs that are filed in hydrologic studies and evaluation of groundwater basins. The other part on taking the pit water away from the OWRB, is problematic in that if you have a pit and it fills with water and you're discharging water, you potentially could discharge large volumes of water and have an impact on that immediate area...a hydrologic impact on that immediate area. He said he thought it would be problematic to exempt a potential large volume of water coming out of a particular area and then across the fence permit a water well that would have a lot less volume. The discussions are that there has to be some way to manage that in terms of the volume of water coming out so to reduce the impact to the neighbors and the basin in terms of a potential large withdrawal of water. He said the discussions are ongoing.

Mr. Smith concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Loan for Hobart Public Works Authority, Kiowa County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is for the consideration of a

\$950,000 loan request by the Hobart Public Works Authority located in Kiowa County. Hobart is requesting the loan to lay approximately 12,700 feet of sewer line and main and to rehabilitate 15 manholes, construct 16 new manholes, and to construct 2 new lift stations. The loan will be funded through the Board's Clean Water SRF loan program, and Mr. Freeman noted details of the loan agreement. Mr. Freeman said that Hobart has been an excellent loan customer of the Board's for the last several years, and it is estimated Hobart will save approximately \$330,000 in interest expense by borrowing from the Board. The debt coverage ratio stands at approximately 6.0 times. Staff recommended approval of the loan request.

Mr. Wilt Brown, city manager, was present in support of the loan application

Mr. Nichols moved to approve the loan to the Hobart Public Works Authority, and Mr. Sevenoaks seconded.

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

B. Consideration of and Possible Action on a Proposed Order Approving Loan for Beggs Public Works Authority, Okmulgee County. Recommended for Approval. Mr. Freeman stated this \$2,170,000.00 request is from the Beggs Public Works Authority, located in Okmulgee County. He said Beggs is requesting the loan to go along with a \$150,000.00 Rural Economic Action Plan grant to replace its existing flow through lagoon with a sequential batch reactor treatment system. Mr. Freeman noted provisions of the loan agreement. He said the water connections have increased by approximately 10% over the past five years, and the debt-coverage ratio stands at approximately 1.8-times. Staff estimates Beggs will save approximately \$750,000 by borrowing from the Board, and recommends approval.

Mayor Rick Mitchell, City Clerk Karla Jo Gaskins, and Financial Advisor Rick Smith were present in support of the loan request.

Mr. Fite moved to approve the loan to the Beggs Public Works Authority, and Mr. Knowles seconded.

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

C. Report of the Finance Committee on and Board Affirmation of Selection of Bond Counsel in Connection with the Issuance of Obligations to Provide Funding for the State Loan Program. Mr. Freeman reminded the members that at the February Board meeting selection of bond counsel for the pending state loan program revenue bond issue was referred to the Board's Finance Committee. The matter of selection was referred to the Committee at the request of the Attorney General's office that documentation of "no conflict of interest" existed by the firm being recommended as bond counsel for the transaction. The letter was obtained by the Finance Committee composed of Mr. Bill Secrest, Mr. Rudy Herrmann, Mr. Lonnie Farmer, and Mr. Mark Nichols who met in open meeting on February 21, 2007. In addition to the Committee members and staff at the meeting, Mr. Jim Joseph, State Bond Advisor, also attended. At the meeting, Mr. Freeman reviewed with the Committee the request for proposals that had been distributed to eight bond law firms, the pre-defined selection criteria, a summary of the three

proposals received and a copy of the no conflict letter. After discussion, Mr. Secrest made a motion, and Mr. Farmer seconded the selection of the law firm of Kutak Rock as bond counsel. The Committee then voted to select the firm. Following the Finance Committee meeting, Mr. Freeman stated staff has worked closely with the underwriters and attorneys to bring the issue to closing, which will occur on Friday, March 16.

Chairman Herrmann stated that the motion the Board had entered at the February meeting included delegating the selection to the Finance Committee with the understanding the Board would ratify the Committee's recommendation. He asked the Board to make a motion to ratify the Committee's action.

Mr. Nichols moved to approve ratify the selection of Kutak Rock as bond counsel as selected by the Finance Committee, and Mr. Knowles seconded.

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

D. Presentation and Discussion of Financing Methodology and Future Needs of the State Loan Program, the Clean Water State Revolving Fund, and the Drinking Water State Revolving Fund. No Action t b e Taken. Mr. Freeman said this presentation is for discussion of approach to financing alternatives in light of the federal Tax Act that became effective last May. Mr. Freeman asked the Board to consider delaying presentation and discussion until Ms. Anne Berger Entekin is able to arrive from Dallas; her flight was delayed due to weather.

Chairman Herrmann agreed to consider items 3. through 7. to allow time.

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.

Ms. Lou Klaver asked to withdraw item number J.1., AES Shady Point II, #2006-014, and to ask that the Board consider item 7.A. on the Supplemental Agenda, Application to Amend Temporary Permit #1997-591 for Greg and Ines Turpin. Ms. Klaver explained the application was a protested matter that subsequently the protest had been withdrawn and an agreement reached. She said the application to amend the groundwater permit is in Hughes County where the land overlies a somewhat limited minor basin, the Sonora Formation and Isolated Terrace of the Canadian River. The applicant, Greg and Ines Turpin, currently hold a groundwater permit approved in 1997 to irrigate 240 acres with 240 acre-feet of groundwater; they dedicated 332 acres of land. The amendment application is not increasing the land dedicated, but requesting the full two acre-feet per acre by increasing irrigation by 124 acre-feet per year, and adding sell

to oil and gas company of 300 acre-feet. The application was highly protested by a number of surrounding neighbors and Hughes County Rural Water District #6. The protest was that the aquifer could not support the District's supply to customers and allow the Turpin's to increase and sell out of the basin. The hearing examiner granted a continuance to allow for settlement discussions. The proposed order includes a stipulation for disposal of the protest and contains a monitoring plan, therefore, Hughes County RWD #6 agreed to withdrawn the protest if the Turpins agreed to drop the request for the additional 300 acre-feet for commercial sale for oil and gas drilling and staying with the original amount of 240 acre-feet to be withdrawn from two wells, and will use that 240 acre-feet for both irrigation and commercial sale. The District will be allowed onto the Turpin's property to measure the static water well, inspect the meters, and the Turpins can check the District's wells keeping a good eye on the groundwater. Ms. Klaver said the agreement indicates that people who care about their water usage can work out an agreement and share their rights. Mr. Smith added that some of the issues in this matter were priority of use in a particular aquifer. The Rural Water District wanted public water supply to have a higher priority of use than the drilling of oil and gas and irrigation, which was a huge conflict. Mr. Smith had conducted a meeting between the parties early on, which was a dismal failure, so the idea that the Water Board can facilitate an agreement, if the parties aren't willing it isn't going to happen. In this case, they both saw weaknesses in their case, they had very good lawyers who worked it out, and it should be celebrated. Mr. Keeley asked if Senator Paddock had a bill dealing with the issue of priority of use, and Mr. Smith said she has a bill that sets up the OWRB in its evaluation of the water plan and as the plan moves forward to consider priority of use. Personally, he said he did not believe there should be boundaries on the comprehensive water plan, the water plan should accept ideas from public meetings and if the people want a priority of use, those ideas should "bubble up" from the public meetings not a statutory mandate.

Chairman Herrmann clarified the Supplemental Agenda item will be approved along with approval of the Summary Disposition Agenda 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 as amended, with the addition of the Supplemental Agenda item, and Mr. Keeley seconded.

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

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:

REAP				Amount
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
ASCOG				
1.	FAP-05-0044-R	Cement Public Works Authority	Caddo	\$89,999.00

EODD

2. FAP-06-0038-R Beggs Public Works Authority Okmulgee 150,000.00

SWODA

3. FAP-06-0007-R Eldorado Public Works Authority Jackson 97,300.00

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

1. Amended Contract with Grand Lake Water Watch, Inc for Volunteer Monitoring
2. Agreement Modification for Extension of Initial Contract with Oklahoma Conservation Commission for Spavinaw Creek Watershed Implementation Project.

E. Applications for Temporary Permits to Use Groundwater:

None

F. Applications to Amend Temporary Permits to Use Groundwater:

None

G. Applications for Regular Permits to Use Groundwater:

None

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. AES Shady Point II, LeFlore County, #2006-01 *Item withdrawn*
2. Sand Springs Materials, L.L.C., Tulsa County, #2006-047

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. Boart Longyear Co., DPC-0671
 - b. Lindamood Water Well Service, DPC-0673
 - c. Craig Water Well, DPC-0677
 - d. Frontier Drilling, DPC-0679
 - e. Ski Line & Equipment Rental, LLC, DPC-0681
2. New Operators, Activities for Existing Licenses:
 - a. Williams Drilling Co., Inc., DPC-0229
 - b. Associated Environmental Industries Corp., DPC-0269
 - c. Citizen Potawatomi Nation, DPC-0641
 - d. Engineering Services and Testing, DPC-0658

M. Dam and Reservoir Plans and Specifications:

None

N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. Department of Transportation, Wagoner County, FP-06-31
2. Department of Transportation, Pittsburg County, FP-06-34
3. Department of Transportation, Canadian County, FP-06-35
4. Department of Transportation, Canadian County, FP-06-36
5. Department of Transportation, Oklahoma County, FP-06-37
6. Department of Transportation, Woods County, FP-06-38
7. Department of Transportation, Pittsburg County, FP-06-39
8. Department of Transportation, Ottawa County, FP-07-01
9. Department of Transportation, Woods County, FP-07-02
10. Department of Transportation, Stephens County, FP-07-03
11. Department of Transportation, Kiowa County, FP-07-04
12. Department of Transportation, Kiowa County, FP-07-05

O. Applications for Accreditation of Floodplain Administrators:

None

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS

A. Application for Amendment of Temporary Permit to Use Groundwater, Greg and Ines Turpin, Hughes County, # 1997-591.

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

A. Presentation of Final Proposed New Permanent Rules and Amendments to Current Rules of the Board.

Chairman Herrmann said this presentation is the third visit of the rules update process, and at the last meeting, each division distributed copies of its proposed rules to the members meeting for review. He asked the Board to take action on each chapter as presented.

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 the changes to Chapter 5, regard an increase in non-resident driller fees. The Well Drillers Advisory Committee recommended the changes and staff recommended approval.

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

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

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

Mr. Fite moved to approve the amendments to Chapter 5 as presented, and Mr. Nichols seconded.

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

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 involves the emergency grant program and Rural Economic Action Plan grant program, and brings equity between an entity installing a water line from a city or rural water district to an individual. 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 proposed rule change is the same as in drought application situations. It is also 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. He said no comments were received at the public hearing on the proposed rule changes, and staff recommended approval.

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.

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

Mr. Sevenoaks moved to approve amendments to Chapter 50 as presented, and Mr. Fite seconded.

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

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 said he has presented the packet of proposed changes to Chapter 45 and Chapter 46 over the past several months. He said the proposal regarding the sediment Use Support Assessment Protocol is the standardized way that Oklahoma state agencies will evaluate clean sediment or erosion and sediment deposition in streams to determine when the fish and wildlife propagation use is impaired that would drive it on to the 303(d) impaired water list that triggers TMDL or other restoration measures. He said there were some technical and philosophical disagreements and staff included revisions to the initial proposed language in response to comments received at last month's Board meeting and he believed the substantive issues have been resolved. He said that would continue to be evolved as it is with all standards.

Regarding the second issue of accuracy of the cost-benefit analysis of the rule impact statement of the Eucha-Spavinaw rule, Mr. Smithee said Mr. Phil Moershel, OWRB Standards Section Head, worked with the Department of Environmental Quality, Conservation Commission, City of Tulsa and others to “sharpen his pencil” to see how much more accurate a cost analysis could be—what is the cost of a voluntary program that may or may not be subsidized, and in the final analysis, the cost was determined to be about \$360,000 and the benefit about \$1 million; he felt this is a positive result in support of the rule.

Mr. Smithee stated that staff recommended approval of the proposed amendments to both Chapter 45 and Chapter 46.

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

3. Comments by Public. Mr. Charles Hardt, Director of Public Works for the City of Tulsa, expressed his support for the proposed rule amendment stating the City believed it critical to ensure the water quality of one of its primary water sources, the Eucha-Spavinaw basin. He said the amendment is a critical link in determining the water quality standard and TMDL, and specifically the phosphorous limit for Eucha of 0.0168 mpl, and for Spavinaw 0.141 mpl. Costs associated with additional treatment and other factors that have resulted in the increased loading of phosphorous in the watershed have been provided in the past. In 1998, a new water plant was constructed at Mohawk with the standard treatment, but soon after problems were encountered making it difficult to deal with the increased phosphorous loading creating taste and odor problems as a result of algae blooms. Mr. Hardt said the treatment process was changed, increasing annual expense, but there have been increasing levels of phosphorous in the water, and as a result a number of other types of treatment have been implemented, but still changes in the treatment strategy did not offset taste and odor problems and an alternate source was sought. He said that without the standard, the City runs the risk of losing this water supply so it is absolutely critical in moving forward and establishing meaningful, long-term best management practices for the watershed.

Mr. Mark Derichsweiler, Engineering Manager of the Water Quality Planning Section, Department of Environmental Quality, addressed the members and expressed his department’s support for the adoption of the proposed revisions of both Chapter 45 and Chapter 46. He noted the tremendous amount of work that is involved in the revisions to the standards that are occurring just about every year now. He said Mr. Smithee and Mr. Moershel do an outstanding job of managing the workload and coordinating outreach activities, both formal and informal. As one of the major users of the Water Quality Standards, Mr. Derichsweiler said he believed there is a good working relationship, and a willingness to address the concerns that have been raised. He said he supports the revisions that have been proposed; there was one concern about site-specific criteria that was addressed during the comment process, and the department is completely satisfied that their concerns have been resolved. He said that relating to the phosphorous criterion, it is a significant step forward to protect these important water sources for the people of Tulsa, and northeastern Oklahoma in general. Because so much work has been done on the issue, he believed the state has a good handle on the cost-benefit that isn’t normally known in these type of cases, the development of the criteria was scientifically supported, and the numerical criteria assists the DEQ in developing TMDLs as a numerical target is much better to use than interpreting narrative language. Regarding Chapter 46 revisions regarding Use Support Assessment Protocol for sediment, he noted the general provisions proposed to be adopted mirror what has been done in the continuing planning process that set out the protocols

for 303(d) listing determinations that decide whether a stream is impaired. He said he preferred to have the language in the rule. A numerical, quantitative target for TMDL development is a big help to the DEQ work. He said that adopting the protocol will not lead to additional streams being placed on the 303(d) list because there has to first be documentation of impairment to the fish community in stream, this proposal is really a second step to focus on what is causing the impairment and sediment is just one of several possible pollutants that could be contributing—this will not limit consideration of any other possible contributors to that impairment. The sediment USAP will not lead to additional streams being placed on the 303(d) list, they will already be there due to biological impairment, but it will provide tools to determine what is causing the biological impairment. Mr. Derichsweiler urged the Board’s adoption of the proposed revisions.

Ms. Angie Burckhalter, representing the Oklahoma Independent Petroleum Association, addressed the members and said her concerns regarded the sediment rule in Chapter 46. At the last meeting, Ms. Burckhalter raised significant concerns with the proposed rule, but since that time she has reviewed revisions staff has provided and believe steps have been made in the right direction; that some of the OIPA’s substantive issues have been addressed. She added, though, while the proposed rule is not where they would like to see it, they would not oppose it at this time, asking that during implemented and as new data is gathered that the rule would be refined. She also requested that if any issue or problem is identified with the rule once in place, that Board staff be open to revision.

Chairman Herrmann recognized the dynamic process, that the rough spots have been worked through, and the process is ongoing for improvement as new data is gathered.

Ms. Shannon Phillips, Oklahoma Conservation Commission, addressed the members and expressed the OCC’s appreciation of the OWRB Water Quality staff’s work on these efforts. She said the OCC has worked very closely with the OWRB to develop both proposals for the sediment USAP and cost-benefit ratio for Eucha-Spavinaw, and lends its support for both efforts. She pledged continued cooperation with Board.

Mr. Smith added that he had received a call from Mr. Morris Hodgens of southeast Oklahoma on the Mountain Fork River. In the standards, the designation of high quality water is being extended on portions of the Mountain Fork. Mr. Hodgens was not able to attend the meeting, but Mr. Smith indicated he would state for the record the Mr. Hodgens supports the continued designation.

There were no further comments regarding the proposed revisions to Chapter 45 and Chapter 46.

Chairman Herrmann asked for a motion to approve the amendments.

Chapter 45 – Water Quality Standards

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

Mr. Fite moved to approve the proposed amendments as presented, and Mr. Nichols seconded.

Mr. Keeley said he had two issues he wished to be addressed: (1) comments received during the process that the proposals were not based on “sound science” and staff’s response that the proposals were based on sound science.

Mr. Smithee said the operative word is “sound,” unlike chemical analysis, engineering or mathematics work, there is more ambiguity on the tale of the bell curve, so conservative

assumptions have been made with the biological community trying to avoid the possibility of a false-positive impairment determination so that when there is impairment to the aquatic community, staff is positive it is occurring. He said staff is working to enhance the science the EPA has developed and the standards work is based upon; it is well publicized and well used. He said he is confident and comfortable that the decisions made are scientifically valid, sound, and work to narrow the potential errors to avoid potential problems in the future.

Mr. Keeley's second question regarded the technical definition of "geometric means is the nth root of the product of the sample." Mr. Smithee said staff would be working to refine some of the definitions, such as "geometric means" to be user-friendlier so that everyone can understand.

Chairman Herrmann said there is a motion and second (to approve the rules), and he called for the vote.

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

Chapter 46 – Water Quality Standards Implementation

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

Mr. Fite moved to approve the proposed amendments as presented, and Mr. Nichols seconded.

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

Mr. Smithee acknowledged the active participation of others in the process, and Chairman Herrmann extended that appreciation to members of the public.

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).

There were no Special Consideration Agenda items for the Board's consideration. There also were no items transferred to the Special Consideration Agenda from the Summary Disposition Agenda.

Chairman Herrmann announced the Financial Team was assembled, and he asked Mr. Freeman to introduce the presentation.

3. D. Presentation and Discussion of Financing Methodology and Future Needs of the State Loan Program, the Clean Water State Revolving Fund, and the Drinking Water State Revolving Fund. No Action to be Taken. Mr. Joe Freeman said this presentation regards financing methodology that is being undertaken in light of the Tax Reconciliation Act of 2005 that passed Congress this past Spring. Mr. Freeman said Ms. Ann Berger Entekin, Managing Director and Tim Peterson, Senior Vice President, First Southwest Company, who serve as the Board's financial advisors on the State Revolving Fund program, as well as Tom Liu, Managing Director, UBS Investment Bank and Senior Manager of the Board SRF issues, and Chris Cochran, Senior Vice President of Capitol West Securities and Senior Manager for the Board's FAP bond issues and co-manager of the SRF bond issues, are present to assist in today's presentation. The presentation consisted of a PowerPoint illustration—as well as a written presentation--of the Act itself, the Act's impact on both the Financial Assistance Programs and the State Revolving Fund loan program, the various options developed to address the Act, and the course of action.

Mr. Freeman said in May of 2006, Congress passed the Act in an attempt to address problems that occurred with a few blind pool bond issuers. The bonds were being sold, but the proceeds were never used, then the bond issue would collapse and all that happened was fees being paid to buyers. However, Mr. Freeman said this was not the case with most blind pool issuers who did issue bonds and build projects, and there was no problem at the Oklahoma Water Resources Board. He said the Board had worked aggressively to oppose the Act through communications with the Oklahoma Congressional Delegation, as well as through the agency's involvement in the Council on Infrastructure Financing Authorities. Mr. Freeman said that three amendments of the Act directly affected the Board's program as well as the Board's borrowers. The expectation was that an issuer could reasonably expect to lend 95% of loan proceeds within three years of closing the pool's issue, with no punitive impact if not met. The new rule adds that 30% of bond proceeds must be lent within one year as well as 95% within three years. If either percentage is not met, the issuer must redeem within 90 days the amount of the bonds not loaned that did not meet the test. Another major negative change is that small borrowers from pooled issues are no longer able to take advantage of the small issuer exception from arbitrage rebate requirements; previously, a borrower with less than \$5 million in debt issuance in one year was able to take advantage of the exemption.

Mr. Freeman explained that the IRS determined the definition of "lent proceeds" is the borrower is unconditionally responsible for the repayment of the principal and interest related to the lent amount, and the borrower must receive the benefit of interest earnings attributable to borrowed but unspent amounts. The Board has, for over 20 years, issued large blind pool bond issues, and then loaned the proceeds within three years, which means all borrowers were not identified at the bond issue closing. The Board will no longer be able to operate this way. Mr.

Freeman introduced Ann Entrekin, who visited with the members about the impact to state's programs, and the OWRB programs, and described how other states have reacted to the Act's new rules. Mr. Chris Cochran spoke to the members about how the program started, why it has been successful, what needs the program met in the market place, and impacts of the Tax Act changes to the FAP program, and challenges for the future. Additionally, he updated the members on the bond issue closing on March 16. Mr. Tom Liu reviewed the Act's impact on the SRF program and funding strategies that are available, in particular utilization of the "Reimbursement Financing Method."

Mr. Freeman summarized the presentation providing the members with information regarding the Board's current status of meeting demands for wastewater and drinking water projects. He said that while the Board is facing additional hurdles in being able to provide the most flexible and cost effective financing alternatives, the program is also facing a funding gap in the future that must be addressed. Over the past 21 years, the Board has approved nearly \$1.6 billion in loan funds through the FAP Clean Water SRF and Drinking Water SRF program. In doing so, the Board has saved Oklahomans approximately one-half billion dollars in interest spent. The savings results in lower utility bills for Oklahoma consumers. Based upon EPA's water and wastewater needs survey data over the next 20 years, it is projected Oklahoma will have a funding shortfall of approximately \$3.5 billion utilizing the current funding mechanism. He said this highlights the importance of finding sources of funding for additional capitol investment that may then be leveraged for bond issuances to meet the funding gap. He said Mr. Smith is working at the Capitol with regards to lifting the cap on the Gross Production Tax Fund. There was brief questions and discussion with the Board members about the size of the Board's next issue, the 30% risk aspect, blending rates of the programs, and the need for cash to be made available to the program; the federal matching funds for the SRF are decreasing but the demand and needs are not, and the need to inform the State Legislature and Congress about the financing needs of the state programs.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce addressed the members and stated the financial report for the month ending February 2007. He said the agency has completed 67% of the fiscal year, have budgeted and spent 77% and collected 66% of the budget. Chairman Herrmann asked about whether there has been a shortfall in state revenues to the agency; Mr. Boyce answered there is certainly the possibility and the agency strives to spend funds in a premium mix.

There were no other questions regarding the budget report.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

The Supplemental Agenda was considered by the Board under the Summary Disposition portion of the agenda.

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 he thought it would be appropriate for the Board to hold an executive session for the purpose of discussion of the Tarrant Regional Water District v. Herrmann, et al litigation. 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 he would entertain a motion from the Board to enter an Executive Session.

Mr. Nichols moved that the Board hold an Executive Session, and Mr. Knowles seconded. There were no questions or discussion.

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

10. 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.

11. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 12:20 p.m. on Tuesday, March 13, 2007.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Jack W. Keeley

_____/s/_____
F. Ford Drummond

_____/s/_____
Richard Sevenoaks

_____/s/_____
Edward H. Fite

_____/s/_____
Kenneth K. Knowles

ATTEST:

_____/s/_____
Bill Secrest, Secretary
(SEAL)