

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
July 10, 2007**

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Mark Nichols at 9:30 a.m., on July 10, 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 July 3, 2007, at 2:30 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Nichols asked Mr. Ed Fite to provide the invocation.

B. Roll Call

Board Members Present

Mark Nichols, Chairman
Lonnie Farmer
Ed Fite
Jack Keeley
Kenneth Knowles
Linda Lambert

Board Members Absent

Ford Drummond, Secretary
Rudy Herrmann, Vice Chairman
Richard Sevenoaks

Chairman Nichols noted that Board Secretary Ford Drummond is absent, and he asked Mr. Knowles to serve as Acting Secretary in his absence. Chairman Nichols also welcomed new Board Member Linda Lambert.

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

Ron Cooke, Save Our Water Lake Eufaula, Oklahoma City, OK
Josh McClintock, McClintock Associates, Oklahoma City, OK
Dan Becker, Dolese Brothers, Oklahoma City, OK
Baxter Vieux, Vieux, Inc., Norman, OK
Robert M. Jones, Capital West, Oklahoma City, OK
Don Kiser, Kiser Law Firm, Edmond, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Richard Landes, RNG, Shawnee, OK
Mark Helm, Dolese, Oklahoma City, OK
Dale Foulk, City of Kingfisher, OK
John Niemeyer, Dolese, Oklahoma City, OK
Linda Alexander, Dolese, Oklahoma City, OK
Martin Van Meter, OREC, Durant, OK
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK
Mark Schlachtenhaufen, Capitol News Network, Oklahoma City, OK
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utility Providers,
Oklahoma City, OK
Ron Gripe, RNG, LLC, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Nichols stated the draft minutes of the June 12, 2007, Regular Meeting have been distributed. He stated he would accept a motion to approve the minutes unless there were changes. Ms. Lambert asked that the minutes be amended to reflect the amount of the loan in agenda item 2.A., to the Woodward Municipal Authority. Mr. Fite moved to approve the minutes of the June 12, 2007, Regular Meeting, as amended, and Mr. Knowles seconded.

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

D. EXECUTIVE DIRECTOR’S REPORT

Mr. Duane Smith, Executive Director, addressed the members and audience, welcoming Mr. Nichols as Chairman, and Ms. Lambert. He said it is hard to believe that one year ago this month the state was in its worst drought in history to in some cases now our worst flood in history. He said that the amount of flow now through the Arkansas and Red River systems there are about 263,000 cubic feet of water per second leaving Oklahoma—118 million gallons per minute, 522,000 acre-feet per day, which would be more than the entire cities of Oklahoma City and Tulsa use per year. Regarding the entire water use for all of Oklahoma—surface water and groundwater—that amount is leaving Oklahoma every four days. The most significant area is the flooding in northeastern Oklahoma at Miami; there are two staff persons on site assisting FEMA and the County Floodplain and City Floodplain Boards. He said it is a very serious

situation, there are 600 homes that are inhabitable and people are displaced. Mr. Smith spoke about the state's floodplain management program and that for the last several years floodplain management was not on the "radar screen" and it's difficult to get developers—who don't remember the last 50 years when there's been a flood—to adhere to floodplain regulations. Now, before rebuilding, the rules must be adhered to and any people that want to reconstruct and re-inhabit those homes will not be able to do so without compliance with the new code which in some cases will be to rebuild as much as four feet higher. Some of those homes cannot be elevated four feet, and so difficult times are ahead in dealing with those issues in Miami. The goal of the program is to relocate out of the floodplain, but typically, it is not a buyout situation. Mr. Smith said it shows the importance that in times of drought we have to keep people from building in the floodplains, because a flood will happen. He asked that inquiries by the public be directed to the OWRB office; the Governor's office has asked the Board to be as flexible as possible in terms of assistance to communities, particularly through the Financial Assistance program. For example, there has been severe damage to the South Coffeyville sewage treatment plant and anticipate a new application will come forward. Under New Business, Mr. Smith said the staff recommends the Board discuss and give to the Chairman authority to approve grants for these devastated areas.

Regarding water plan activities, Mr. Smith said Dr. Will Focht will discuss recent activities. Mr. Smith and Jeri Fleming of the OWRRI staff have been on the radio, OCAST and OETA. The Water Conference planning is progressing, October 23-25, and this will be a great water conference, combined with the OWWRI technical symposium and there will be a banquet celebrating the 50-year anniversary of the Board. Former Governors, Mrs. Kerr, former executive directors, members and staff will be in attendance.

Mr. Smith said one of the publications we want to do for the Water Conference is the Water Atlas. A popular publication, the Kerr Foundation and the Wildlife Department are going to put funding in for that update.

On the legislative front, agency consolidation is a subject of interim studies. Mr. Smith said he has met with Representative DeWitt, who will be chairman of the committee to look at potential consolidation of the OWRB and the DEQ. He said there is a misconception there is overlap with the DEQ in various programs, but there is not; the statutes were changed a few years ago that specifically laid out the various authorities of the agencies. He said if the legislators think the agencies can be combined to save money, which could only happen by eliminating staff, and cutting staff means cutting programs, and if that is the goal, then programs can be cut without combining agencies. However, he said that if in the process of looking at how state government is organized, and water issues can be emphasized by improvement of government then the OWRB needs to be at the table to discuss that. Everyone wants more efficient government, and we want water to have more emphasis because we believe water is the next oil, and more important than anything else for the next 50 years in Oklahoma as it will define our economic development, define our quality of life, and so any consolidation that de-emphasizes water quantity and/or quality we will likely be opposed. But, if it improves that and makes it more important, we ought to support that. In conversations with Rep. DeWitt he is in agreement with that concept, and it is not the intent to simply consolidate to have one less agency, but the intent is to save money and have more efficient government.

Mr. Keeley asked if there were any instances regarding consolidation that would cause conflicts of interest, such as the Water Quality Standards? Mr. Smith responded that is a good point, but to combine the agencies there will have to be a fundamental change in water quality

policy – the policy now is the agencies that implement water quality standards issue the permits do the implementation but don't set the standards. He noted that some of the difficult issues of consolidation would be if the permitting agency and the standards setting agency are combined, eliminating conflict between the permit holder and the issuing agency, as well as impact to other agencies, and Chairman Nichols noted the DEQ issuing consent order and the OWRB financing corrective action. Mr. Smith stated the DEQ is a rule-making Board and do not approve permits, etc., as the OWRB Board does, and the issue of public oversight of agency activities would be another issue of consolidation. There have not been any schedule of meetings set regarding the committee meetings as yet.

Mr. Smith said he had received word regarding the performance audit of the agency. He had seen and responded to a draft and in summary, there is no criminal activity, and from a financial standpoint the agency is managing its money appropriately, and following rules and regulations appropriately. Recommendations by the state auditor and implementation of the recommendations will require funding. There is no negative from the audit that requires immediate action by the Board but will be a good source of discussion on what recommendations will be implemented, and Mr. Smith complimented the Auditor's staff. Ms. Lambert asked about whether the Board received an unqualified opinion, and Mr. Smith responded the performance audit is different from a financial audit as it evaluates a particular statute and determines whether that statute was followed and makes recommendations on process. He said no fault to the Auditor's staff, but to have an auditor, who is not an expert in water law, evaluate a statute that is not clear in some cases, and then a set of rules and regulations that are not clear in some cases, and making the sometimes round permit applications fit into the square holes that have been drilled there will inherently be conflict. One of the overall recommendations is that the agency does not receive adequate funding for the permitting program to do everything the law requires. He said the legislature would need to decide whether to reduce the statutes or provide the funding to do what is supposed to be done.

Mr. Smith concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Ardmore Public Works Authority, Carter County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a request for an extension of time to close on the remaining loan proceeds from a \$27 million Drinking Water State Revolving Loan Fund loan which the Board previously approved. He said that to date, Ardmore has closed on approximately \$18.5 million in proceeds being used for upgrading and expanding its water treatment plant and for construction of a two million gallon water tower. Mr. Freeman said the approximate \$8.5 million in remaining proceeds are for additional water distribution system improvement. Mr. Freeman noted provisions of the loan agreement, and said that Ardmore has been a strong customer of the Board since December 2004, and has three other outstanding water and wastewater loans with the Board. It is estimated that Ardmore will save approximately \$2 million on the remaining \$8.5 million in loan proceeds by borrowing from the Board. Staff recommended approval.

Representatives of the Authority were not able to attend the meeting.

Mr. Keeley moved to approve the extension of time for obligation of funds for the Ardmore Public Works Authority, and Mr. Knowles seconded.

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

Mr. Smith said the State Auditor's report noted the Board's Financial Assistance Program is audited, and that is one of the positive points that were mentioned in the performance audit. He noted that Mr. Farmer has set the agenda for the Audit Committee.

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 Nichols read the statement above and asked for requests to move items. There were no requests to move items to the Special Consideration Agenda.

Ms. Lou Klaver asked to withdraw Summary Disposition Agenda item G. 3., permit #2007-506 for the City of Cleveland, from the Board's consideration. She said there were notice issues.

Ms. Lambert asked about item 3.D.1., regarding the contract with the Rural Water Association for technical training. She said she applauded the training concept, but asked about expected measurable outcomes of the training program. Mr. Smith responded the funding comes to the Board as an item in the agency's budget bill from the Legislature to the Rural Water Association. He said the training is for the District Board members regarding activities such as the Open Meeting Law as well as technical assistance to the Districts for assisting with problems, and the performance measures are based upon the number of training opportunities which are listed in the contract, as well as the sight visits that are listed in the contract. Ms. Lambert asked what is expected to be different as a result of the training, and Mr. Smith said he would invite Mr. Gene Whatley, Executive Director of the ORWA to come to a Board meeting and visit about the program and the activities of the ORWA.

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 Nichols asked for a motion. Mr. Fite moved to approve the Summary Disposition Agenda as amended, and Mr. Knowles seconded.

AYE: Farmer, Fite, Keeley, Knowles, Lambert, Nichols
NAY: None

ABSTAIN: None
ABSENT: Drummond, Herrmann, Sevenoaks

The following items were approved:

1. Contract between Oklahoma Rural Water Association and Oklahoma Water Resources Board to provide technical assistance and training to rural water system operators.
 2. Intergovernmental Agreement between University of Oklahoma College of Continuing Education and Oklahoma Water Resources Board for use of OCCE meeting rooms, equipment, lodging, and other services and facilities to administer floodplain management workshops and courses.
 3. Joint Funding agreement for the project “Streamflow Duration Statistics Web Application for Oklahoma” between the Oklahoma Water Resources Board and the U.S. Geological Survey.
 4. Intergovernmental Agreement between the Central Oklahoma Master Conservancy District and Oklahoma Water Resources Board for monitoring water quality in Lake Thunderbird.
 5. Intergovernmental Agreement between Oklahoma State University – Water Resources Research Institute and Oklahoma Water Resources Board for coordination of Symposium and Conference.
 6. Proposed Resolution Increasing Liquidity Facility Commitment of State Street Bank and Trust Company in Connection with Obligations Relating to the Board’s State Loan Program.
 - 7. Amendment to the Resolution between the Oklahoma Water Resources Board and the Renaissance Oklahoma City Convention Center Hotel. *Item withdrawn*
 8. Joint Funding Agreement for the project “Water Use Oklahoma, 1950-2005” between the Oklahoma Water Resources Board and the U.S. Geological Survey.
 9. Extension and Amendment Agreement between Oklahoma State University Department of Natural Resources, Ecology and Management and Oklahoma Water Resources Board for the performance of an in-stream flow study in support of the Arbuckle-Simpson Aquifer Special Study.
- E. Applications for Temporary Permits to Use Groundwater:
1. RWS & SWMD No. 3, Caddo County, #2006-616
 2. Ruel A. & Delma L. Mace, Caddo County, #2007-520
 3. Town of Cleo Springs, Major County, #2007-521
 4. RNG Enterprises, L.L.C., Custer County, #2007-523

5. R. Dean & Linda Smith, Caddo County, #2007-527
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Easton Family Limited Partnership, Tulsa County, #1992-606
 2. Arcadia Farm, L.L.C., Oklahoma County, #2003-565
- G. Applications for Regular Permits to Use Groundwater:
1. Gerald A. & Jolena Ann Graves, Harper County, #2006-517
 2. David Long Enterprises, L.L.C., Texas County, #2007-505
 3. *City of Cleveland, Pawnee County, #2007-506 Item withdrawn*
 4. Steve & Linda Parker, Beaver County, #2007-535
 5. Richard Parker Family Trust, Beaver County, #2007-536
 6. Richard Parker Family Trust, Beaver County, #2007-537
- H. Applications to Amend Regular Permits to Use Groundwater:
None
- I. Applications for Regular Permits to Use Stream Water:
1. City of Coalgate, Atoka County, #2004-009
 2. City of Checotah, McIntosh County, #2006-057
 3. Brown Farms, L.L.C., Rogers County, #2007-019
 4. Steven Derek Oyster, Payne County, #2007-021
 5. Southern Materials, Inc., Bryan County, #2007-022
- J. Applications to Amend Regular Permits to Use Stream Water:
1. Coalgate Public Works Authority, Coal County, #1980-078
 2. Brown Farms, L.L.C., Rogers County, #2004-012
- K. Application for Term Permit to Use Stream Water:
1. Oak Creek Farms, L.L.C. and Jay Holsted Farms, L.L.C., Washita County, #2007-023
- L. Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. GW² Engineering, Inc., DPC-069
 - b. Agricultural Engineering Assoc., DPC-0699
 - c. Ground Comfort, DPC-0703
 - d. Raimonde Drilling Corporation, DPC-0695
 2. New Operators, Activities for Existing Licenses:
 - a. Envirotech Engineering and Consulting, Inc., DPC-0283
- M. Dam and Reservoir Plans and Specifications:
None

- N. Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
1. Oklahoma Department of Transportation, Wagoner County, FP-07-17
 2. Oklahoma Department of Transportation, Noble County, FP-07-26
 3. Oklahoma Department of Transportation, Garfield County, FP-07-27
- O. Applications for Accreditation of Floodplain Administrators: Names of floodplain administrators to be accredited and their associated communities are individually set out in the July 10, 2007 packet of Board materials

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

A. Update on Comprehensive Water Plan Activities. Mr. Dave Dillon, Director of Planning, reminded the members that the OCWP funding was approved last year by the Legislature, and it is a five-year plan where we are in the public input/stakeholder mode, gathering information to develop recommendations for policy that will come before the Board in a few years; the technical work will be conducted through engineers, scientists, etc. Today, Dr. Will Focht will update the members on activities contracted through the Board for \$1.3 million for the public participation process from September 2006 to June 2011; the first phase involves gathering local area input through the 42 public meetings held across the state. Regarding the technical phase, Mr. Dillon said the Board has two federal partners from which it will receive monies in order to enhance planning activities by getting federal dollars to match state dollars in order to get more effort accomplished. Mr. Dillon explained the biggest partner the Board has approached is the U.S. Army Corps of Engineers. The Board has reviewed the scope of work for the planning activity of the engineering work and scientific work that needs to happen over the next four years. He said the OWRB is still waiting on the Notice to Proceed to CDM, which is in the Corps' approval process. This last month the OWRB applied for a matching grant with the Bureau of Reclamation that is interested in being a part of the planning process and wants to provide "turn back" monies from FY'07 to go to the planning effort. Two tasks were identified to do work in particular to modernize the data management system (water rights) at the OWRB that will link with the GIS and to do basic work on baseline water demands.

Mr. Dillon introduced Dr. Focht who spoke to the members about the local public input meetings that have been held, introduced the staff that participate, described the proceedings and the types of attendees as well as the various comments received. He said the most common comments received include that most people are happy with the water law as it is, are concerned about property rights, have mixed views about conjunctive use, make recommendations regarding metering, are opposed to sale of water to Texas, are concerned about water conservation and ecological issues, and water quality standards, and regarding regionalization, there have been recommendations to consolidate rural water districts. There have not been many comments regarding Tribal issues; however, the meetings have not been held in the areas as yet where those concerns may be raised. All comments received at the public meetings can be accessed at the OWRRI/Water Plan website <http://okwaterplan.info>, and comments can also be added when visiting the site. He said the meetings have been universally praised, and that the

public has been happy with the OWRB's past performance; they have congratulated Mr. Smith and the OWRB staff on the work conducted so far.

Mr. Smith said that one reason the OWRB hired the OWRRI is because not only do they have expertise in the public participation realm, but also the Institute has committed to prioritize its research toward the Water Plan, and the OWRB will match that funding. On July 13, the Water Research Advisory Board will meet to discuss the priorities for that research.

Chairman Nichols commented that he has attended several of the meetings, attending meetings in the various regions, and there have been universal comments but there are some regional issues that are very interesting, and he encouraged the Board members to attend some of the meetings. He complimented the OWRRI staff on their various levels of participation at the meetings. Mr. Dillon reminded the members of the schedule of upcoming meetings.

5. SPECIAL CONSIDERATION

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

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

A. Application for Temporary Permit to Use Groundwater No. 2005-550, Dolese Bros. Co., Kingfisher County;

1. Summary – Ms. Lou Klaver, Chief, Planning and Management Division, reviewed with the members the permit requirements for an applicant wanting to obtain a groundwater permit. She said that an applicant is entitled to obtain a groundwater permit if the applicant can establish four elements and that is the applicant must own or lease dedicated land overlying groundwater. In this case, the applicant, Dolese Brothers, has dedicated 111 acres of land in Kingfisher County, and as determined at the hearing, the land does overlie a fresh groundwater basin, the Alluvium Terrace Deposits of the Cimarron River. The third element is whether the use is a beneficial use, and in this case Dolese intends to use the 155 acre-feet of groundwater each year for mining sand and gravel. The fourth element is waste, and the Oklahoma Supreme Court told us that waste is two things: waste by depletion or waste by pollution. The Board must determine the applicant will not commit waste through the use of the water. In this case, the protestants have raised concern about the waste issue and she noted in the proposed order under findings of fact (F.O.F.) #7 and #8, on page 5005; as well as addressed in conclusions of law (C.O.L.) #8 and #9, on page 5008. Ms. Klaver stated the protestant, the City of Kingfisher,

has filed exceptions to the Board's proposed order, which begin on page 5013. Attorneys for the applicant and the protestant are present.

2. Presentation by parties. Ms. Linda Alexander, representing the applicant, stated to the members Dolese appreciated the staff's work as well as the opportunity to speak to the Board. She introduced those present also representing the Dolese Bros. Company, and Dr. Baxter Vieux who testified as the expert witness during the hearing. She said the proceedings in this case were extensive and the record includes a report by Dr. Vieux that analyzes the effect of the proposed sand lake, and on Kingfisher's wells on the groundwater in the area. The hearing, held in November 2005, took one day and the City of Kingfisher also had expert testimony, making the record as complete as possible and one that was extensively reviewed by the hearing examiner. Ms. Alexander said the most significant issue raised by the City of Kingfisher involved the recirculation of water – the water is used by a dredge to transport the sand into the processing area where it is sorted and then that water is returned to the lake. As the hearing examiner found, about 5% of the water that is recirculated is adhered to and ultimately transported off the premises. She said that is all of the water that is actually consumed in the process. Dolese has been mining sand in the Dover area since 1935, and has never had a complaint related to any environmental issues. The OWRB has known for over 20 years that Dolese has reported recirculation along with this water use, which she believed addressed Kingfisher's two main issues. The City also is concerned about the migration of nitrates which the hearing examiner has included in the F.O.F. and establishes the City of Kingfisher's wells themselves pumping the water from the area causes more migration of nitrates than does the Dolese operation. She said the proposed order specifically addresses all the exceptions and the hearing examiner did an outstanding job in addressing all the issues, considered the evidence very closely and his F.O.F. and C.O.L. reflects the matter accurately.

Mr. Keeley asked how many acre-feet of groundwater could be moved without a permit? Mr. Smith stated that five acre-feet of domestic use is not required to be permitted.

Mr. Jim Barnett, representing the City of Kingfisher, introduced a city commissioner also present at the meeting. He said this is a very important matter for his client; the City's wells and the Dolese operation are in the same location and have peacefully co-existed for many years. The concern is whether this latest growth of Dolese is putting Kingfisher's sole water supply source at risk. The sand pit this application concerns is immediately east and south of existing wells, and is adjacent to a different existing sand pit, and there are other wells further south that may be impacted—the City has both water quantity and quality concerns about the application.

Mr. Barnett stated he agreed the record is very extensive and complete, but the problem with what is proposed is that it doesn't address a number of significant and relative issues that were raised at the hearing. He said the Board is entitled to have those issues addressed in the proposed F. O. F. that is relevant and important. As a procedural matter, Mr. Barnett noted there is no statement the order was prepared by the assigned hearing examiner, the Administrative Procedures Act and Board rules require the hearing examiner's order is to come to the Board, not a staff amalgam, and he recommended a finding to that fact be included in the Board's orders.

Mr. Barnett noted F.O.F. number 6. regarding beneficial use, stating it to be one of the most significant shortcomings of the order, indicating the figure of approximately 95% of the groundwater is not consumed but recirculated, and makes it not subject to Oklahoma Groundwater Law. He asked, "95% of what" as there is not a finding in the order about how much water is considered, and therefore it is not determinable what Dolese is using. Regarding F.O.F. number 7. and waste by pollution, Mr. Barnett said the Board failed to find the pit is up

gradient from the sand plant where the water and sand is being transported to, and water doesn't run uphill. This is the first time Dolese has made a commitment to take the water back, but there is nothing in the order that says how much water must be taken back, the manner in which it is to be taken back, or even a requirement to take it back. He said if the Board is going to approve the permit, there needs to be a condition that says how, why, and under what circumstances that water is going to go back to the source from which it came. And finally, in F.O.F. 7.b. the City's raised the argument of whether Dolese used water without a permit, but it is not addressed in C.O.L. number 8. as referenced; even though C.O.L. 8. cites the relevant statute that the Board is required to look at that. But, he argued that the Board cannot determine if waste has or will occur unless it is known how much water is used, and if it has been used without a permit. He insisted the record is replete with evidence Dolese has continually used groundwater without a permit for many years, but this order makes no finding whatsoever regarding that subject.

Mr. Barnett said Dolese has committed to abide by setback regulations, which is 300 feet, but his client does not believe that is adequate for the volume of water and there will be adverse affect on their wells. On page 5007, the order states that the Dolese withdrawals are comparatively insignificant to those of the City of Kingfisher, but the only way that is plausible is to assume none of the pumping used to transport water is to be counted, indicating that the groundwater law is a consumption law, not a use law, and that has not been supported by the court or other authority. He said the record reflects--even though there is some disagreement--Dolese calculated some 526 acre-feet would be used to transport and that is basically the same amount of water the City uses; or, using the water use reports submitted to the Board by Dolese actually reported the water transported is about 4-times that much so for the staff to say those withdrawals are insignificant compared to the City belies reality.

Regarding the C.O.L., Mr. Barnett said it was important to note the Board did include the waste statutes and indicated the Supreme Court has required the Board to look at those statutes in context with water right permits, and that is what was proved, that [Dolese] has been using water without a permit, and he was in disagreement that the Board can conclude that a separate permit authorization is not required because the water goes back into the same source. He said there is no authority for the Board to reach that type of conclusion, and to claim that mining operations have a separate body of law, boggles the brain. The order essentially states the mining operations receive credit for return flows, and other users will want credit as well, and he referenced the Meridian Aggregates case the Board decided in 2006 that was the opposite conclusion that use of groundwater from the mining pit is prohibited unless and until the use is permitted, and the law has not changed. He also mentioned that C.O.L. number 10. regarding other issues the City contended regarding the applicant mined sand on the Borelli land for years without a groundwater permit and he said there was no finding to determine whether that was important or significant. He said it is important that the F.O.F. address the issues that are raised. In closing, Mr. Barnett stated he is not asking that the Board deny the permit, but send the matter back to staff to address the issues that have been raised and come forth with a proposed order that does address all of the issues and the Board can be comfortable that whatever it decides will stand up in court and is reflective of what the Board wants to do.

Mr. Fite asked if the setback is 300 feet or 100 feet; Mr. Barnett answered he understands the DEQ rules state 300 feet, but he doesn't know for a fact. Mr. Fite reiterated his concern about when groundwater is surface water, and that it is inception in the alluvial deposits.

Mr. Keeley said he agreed water can be returned, but he asked for clarification the operation had not had a permit for a number of years. Mr. Barnett explained the company had

two water rights for a substantial amount of water, but none of those rights covered some of pits where they were mining, and he contended the volume that was authorized may have been exceeded on a occasion, but the Board chose not to make a determination of whether the allocation had been exceeded. He said there are a number of older pits in the area, but this permit is for a new one that Dolese proposed to be opened.

Ms. Alexander responded to the issue that perhaps there is additional water that is some how escaping from the sand lake into the Cimarron River and therefore being lost. The F.O.F. from the hearing examiner established that 95% of the water is recirculated and 5% is lost by adhering to the sand. She wanted to make certain the Board understands the lake that is holding the water and where it is being recirculated is surrounded by a dam that is earthen and clay and has existed since before Dolese began the operation in the Dover area, more that 70 years ago. It has been reinforced and the evidence was clear there is no loss of water. She explained the rising of the water level and said that if water were escaping, it wouldn't be rising and to suggest that water is being lost to the river that is not being accounted for by the hearing examiner that is simply incorrect and not supported. She responded to the issue of nitrate migration saying the evidence was clear that the City of Kingfisher pumping the wells causes the majority of the migration of the nitrates, and the Board may want to address how the nitrates got into the water in the first place. She suggested there is an issue that relates to exactly what a sand lake consists of – whether it is groundwater or surface water—the hearing examiner F.O.F. and C.O.L. based on the evidence that was presented at the hearing is clearly included in the record and contrary to counsel's statements it is supportable and a review by the District Court would find it correct.

Mr. Fite asked about the catch basin compaction rate on the dam, and Ms. Alexander said she had that information, but there had not been a problem and she was not aware of any migration of the water but that was not a specific issue at the hearing. Mr. Fite asked how close the sand lake is to the City's wells, and Ms. Alexander and Ms. Klaver said a map had been provided in the record that shows the layout. Mr. Dan Becker with Dolese answered the wells are along the western side of the property line and he indicated (on a map he shoed) the proposed area, and expressed Dolese will comply with any setback regulations, but it is not considered a pollution source.

Ms. Lambert said the City contended Dolese is exceeding its permit and asked if that is correct. Ms. Alexander said the issue becomes whether the permit is for use by the consumption of water or the recirculation of water. She said what happens with respect to the sand pit is the water is used to transport the slurry from the sand pit to the plant where the sand is sorted and the remainder of the fines and the water is returned and is simply recirculated. Dolese has been reporting its water consumption and its water recirculation to the OWRB for 20 or more years, and that is the distinction, and there is no evidence that more water is being used than has been permitted. She said that is the underlying basis for all of the exceptions that the City of Kingfisher has made to the hearing examiner on the proposed order.

Mr. Barnett responded that Ms. Alexander may be correct on the capacity of the holding pit, but if that is true, there needs to be a finding to that effect as he has reservations about looking at the sand pit and the river and believing that none of the water is going to the river.

Mr. Smith said to the members that this application is not on the bell curve; it is different and is somewhat of a round peg trying to fit into a square hole. He explained that typically in a groundwater permit application there is a well drilled by a water well driller where there are well construction standards. In this particular case, the well is the [sand] multi-acre pit, and the issue becomes how to deal with groundwater use in that situation. The Board has dealt with Dolese

for a number of years, wrestling with the idea of how to get a permit from a sand pit. He likened comments about the \$5.5 million Arbuckle-Simpson study not being specific enough to the same perspective by those involved in this case that not enough was addressed in the order. However, the hearing examiner looked at the evidence in the record. Of the four points of law that must be met to grant a permit, Mr. Smith said the waste by depletion issue is the closest call the Board must decide. Is it the entire amount that comes out or the 5%? What is the impact to the aquifer, and what is the evidence in the record? He said the returning of the water back to the pit, and circulating the water in the pit, is different than any other use—it will not affect irrigators and municipalities as Mr. Barnett suggested—this is the way every other permit to Dolese that has not been protested had been dealt with. He said he did not believe that the Board would now have to take this permit that is on the edge of the bell curve and apply to every permit that is being issued. He said we deal with different permit issues differently and this is one where the hearing examiner wrote the order based on the evidence that was presented and proposed what he believed was accurate; the things that are irrelevant, don't come up in the order. He said to look at the issue of waste, the rules say the Board “may” consider, not “shall”. The protestants brought up the issue, but in order to reach that waste absolutely occurred as a matter of finding of fact, you have to buy into the idea that the entire slurry amount is what is actually used and should've be permitted. Once you look at the 5%, the evidence regarding waste becomes unclear on whether waste occurred. You have to look at the impact to the aquifer; the bigger picture and the hearing examiner did that. There is a part of the statute that deals with reasonableness, and the hearing examiner was reasonable. Historically, this has been treated as groundwater, and therefore the hearing examiner based upon that review and his belief on what the law is said this is a groundwater permit and recommended so, and this is why staff has recommended approval. He admitted the legal call on depletion is closer than staff would like and would like it to be clearer. Kingfisher's wells are leased from Dolese, so they have co-existed for a number of years and now differ based upon their view of facts. Staff lookrf at that, believes the hearing examiner has done a good job of evaluating the totality of the evidence, and so put the recommendation before the Board.

Mr. Keeley said he mentioned the five-acre feet as an amount that is trivial, and the amount of sand that would have to be taken to get five acre-feet per year is a lot. He asked how the Board could use this instance in order to clarify the issues the Board faces? Mr. Fite stated that Dolese has had this operation for 70 years, and Mr. Barnett said Kingfisher has had its wells there for about the same amount of time. Mr. Keeley reiterated his thought that this issue could be used to provide further guidance because there will be more.

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

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

Mr. Keeley moved that the matter be tabled for one month to come up with a way to resolve this issues fairly through committee perhaps to be used in the future. Chairman Nichols restated the motion that the matter be tabled for one month and sent to the Rules Committee for discussion and possible solution. Ms. Lambert seconded

Mr. Dean Couch, General Counsel, commented that his procedural concern is that this is an individual proceeding that has been through the hearing process for gathering evidence and the difficult issues here are the conclusions of law. There may some dispute about evidence and weighing of the evidence, but the primary focus of the motion would be further discussion of legal conclusions. He said that is fine for purposes of Board member discussions, but would

caution that having less than the Board members at a Board meeting have those discussions may be a procedural error, unless the applicant and protestant would agree that these discussions of the Rules Committee take place, not subject of debate and further presentation or evidence. But, in fairness for presentation of legal argument about opposing legal views and positions he asked would the instructions be the Committee allow counsel for both sides to appear at the Committee, and further make presentation about legal issues and then have that Committee come back with a further or separate or additional proposed changes to the proposed order that the full Board would then address?

Mr. Keeley said his concern is to learn how legal and technical issues can somehow meld. Mr. Couch said the Rules Committee could discuss trying to get clarification in rules about sand pit operations and how the application at that stage, additional information would be needed and that proposed rules changes may be helpful. However, he would be concerned that on an individual matter a separate group of the Board would discuss how to improve [the order].

Mr. Keeley said he is not questioning or proposing to change this document, but to give the Rules Committee time to make suggestions on how to address these issues. He said the Committee could return it to the hearing examiner with recommended changes. Mr. Couch said that could be a result of the Committee, which could report to the full Board to then take action. He said once instructions are given to the hearing examiner and that is brought back [to the Board] again, then counsel for both sides would have opportunity to make presentations about the new revised proposed order.

Chairman Nichols said the motion and the second then is to table the matter for one month, send it to the Rules Committee which would bring recommendations to the full Board at the August Board meeting that might then be sent to the hearing examiner.

Ms. Lambert asked if this case is so unique there is no precedence for it, and would this be establishing a precedence going forward? Mr. Smith answered it would set a precedence going forward in terms of how sand pits are handled; it could provide guidance as there are a number of them in operation.

Chairman Nichols named the current members of the Rules Committee as Jack Keeley, Chairman, Ed Fite, Kenny Knowles, and Richard Sevenoaks.

Mr. Smith commented to Ms. Lambert's question saying he thought staff knew all about irrigation permits but it is surprising how much different they [applications] are when they come in, and to say that it will be absolute guidance for sand permits it won't be because there will be a different one that comes in; it depends on the evidence.

Chairman Nichols called for the vote if there were no other questions.

AYE: Farmer, Fite, Keeley, Knowles, Lambert, Nichols

NAY: None

ABSTAIN: None

ABSENT: Drummond, Herrmann, Sevenoaks

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Monte Boyce addressed the members and presented the final financial report for fiscal year 2007. He said the agency has expended and obligated 89% of the budget and collected 96% of the budget. The status of the FY'08 budget has been entered into the PeopleSoft budgeting system then will be sent to the Office of Financial Assistance for approval,

sometime in the next week. Chairman Nichols asked if the agency was allowed to keep the small percentage that was expended; Mr. Boyce responded that any state appropriations that are left over may be carried over for a period of one year, and federal money is subject to the timetables in the grant, while revolving funds carry forward. There were no other questions by Board members.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA, IF ANY.

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

8. NEW BUSINESS

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

Mr. Smith said he had described the flooding issues in Northeastern Oklahoma and South Coffeyville. He said that yesterday at 9:39 a.m., less than 24 hours before the Board meeting, he became aware of South Coffeyville's issues, qualifying as a New Business issue because it was not known about 24 hours in advance of the Board meeting. He said that South Coffeyville is in the process of applying for an application for an emergency grant, and there may be others. He said the request is for the Board to authorize the Chairman to approve a grant proposal for the flood- devastated areas of Northeast Oklahoma.

Ms. Lambert asked if there would be a cap, and Mr. Smith responded there is a cap on the amount of the emergency grants, \$100,000.00 is the maximum amount, and a number of rules must be met as well as the necessary ranking on the priority list--for example, the required local contribution of 15%, etc. Typically, those applications come before the Board for approval. Without the resolution, he explained, the community could go to a bank and get the loan then the Board can reimburse. The ability to be nimble in cases of emergencies is good perception for the Board and the Governor has asked the agencies to try to do that, and the request is in that spirit. Staff recommended approval.

Mr. Fite moved that the Chairman be given the opportunity to give emergency grants to any community within the State of Oklahoma that is devastated by recent flooding. Mr. Farmer seconded the motion.

AYE: Farmer, Fite, Keeley, Knowles, Lambert, Nichols.

NAY: None

ABSTAIN: None

ABSENT: Drummond, Herrmann, Sevenoaks

There were no other items of New Business for the Board's consideration.

9. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the regular meeting of the Oklahoma Water Resources Board at 11:28 a.m. on Tuesday, July 10, 2007.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Jess Mark Nichols, Chairman

_____/s/_____
Rudolf J. Herrmann, Vice Chairman

_____/s/_____
Lonnie Farmer

_____/s/_____
Edward H. Fite

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
Linda Lambert

_____/s/_____
Richard Sevenoaks

ATTEST:

_____/s/K.Knowles, Acting Secretary
F. Ford Drummond, Secretary (Absent)
(SEAL)