

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

February 9, 2010

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudolf J. Herrmann at 1:30 p.m., on February 9, 2010, in the Board Room of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

The February meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on February 2, 2010, at 5:00 p.m. at the Oklahoma Water Resources Board's offices.

A. Invocation

Chairman Rudy Herrmann asked Mr. Fite to give the invocation.

B. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Mark Nichols, Vice Chairman
Linda Lambert, Secretary
Ford Drummond
Ed Fite
Jack Keeley
Kenneth Knowles
Richard Sevenoaks
Joe Taron

Board Members Absent

None

Staff Members Present

J.D. Strong, Interim Executive Director
Dean Couch, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Mary Lane Schooley, Executive Secretary

Mike Melton, Financial Assistance Division
Kyle Arthur, Director of Planning
Josh McClintock, Director of Government and Public Affairs

Others Present

Dave Taylor, Waurika Lake Master Conservancy District, Waurika
Tom Liu, Bank of America Merrill Lynch, New York, NY
Ken Senour, Guernsey Inc., Oklahoma City, OK
Ben Oglesby, Municipal Finance Services, Edmond, OK
Mike Mathis, Chesapeake Energy, Oklahoma City, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Chris Gander, BOSCO, Oklahoma City, OK
Jim Barnett, Environmental Federal of Oklahoma, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Amy Ford, Citizens for the Protection of Arbuckle Simpson Aquifer, Durant, OK
Brian McDougal, Shawnee Municipal Authority, Shawnee, OK
Randy Brock, Shawnee Municipal Authority, Shawnee, OK
Jim Bierd, Shawnee Municipal Authority, Shawnee, OK
Mike Collins, Industrial Investments, Inc., Oklahoma City, OK
Duane Pedicord, Oklahoma Municipal League, Oklahoma City, OK
Jim Bonsall, Mill Creek, OK
Patty Thompson, Department of Environmental Quality, Oklahoma City, OK
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Shelby Hodgins, Unimin, Rodd, OK
Luke Martin, Capitol Group, Edmond, OK
Cheryl Dorrance, Oklahoma Municipal League/Municipal Utilities Providers, Oklahoma City,
OK
Bob Kellog, Oklahoma City, OK

C. APPROVAL OF MINUTES

Chairman Herrmann stated the draft minutes of the January 12, 2010, Regular Meeting had been distributed. He stated he would accept a motion to approve the minutes. Dr. Taron moved to approve the minutes, and Ms. Lambert seconded.

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

D. EXECUTIVE DIRECTOR'S REPORT

Prior to the Executive Director's report, Chairman Herrmann recognized that at the January meeting, the Board granted Mr. Duane Smith a temporary, six-month leave of absence. He had been requested by the U.S. Army Corps of Engineers to go to Afghanistan to lead a water

planning process for that country. In support of the national security interest of the United States, the Board agreed to grant Mr. Smith that leave of absence, and agreed to name Mr. J.D. Strong, Interim Executive Director, who will be continuing in his responsibilities as Secretary of Environment as well as this additional responsibility until Mr. Smith returns. He expressed the Board's confidence in Mr. Strong and the OWRB staff for stepping up while Mr. Smith is away.

Mr. Strong greeted the members and said we definitely pray for and wish Mr. Smith the best over the next six-months and it was his pleasure to be back at the OWRB where he started while attending college and conducting water quality sampling work during the summer. He said he appreciated the Board's confidence in him, as well as the Governor's confidence.

Mr. Strong thanked everyone involved for the success of Water Day at the Capitol this morning--there was a phenomenal turnout despite the weather. He complimented Mike Melton, Brian Vance and Josh McClintock as well as Joe Freeman and the Financial Assistance Division and Shelly Chard with the DEQ for getting the Stimulus dollars out and under contract in record time, before the Congressional deadline. He said Oklahoma is the only state in the region to accomplish that goal, a testament to the fact we have the best state employees. Speakers were Lt. Governor Askins, Speaker of the House Bengge, and the new EPA Regional Administrator Armendariz--who has been on the job only two months and is the only Regional Administrator who has come to visit Oklahoma this early in their tenure; another great example of the honor the people who work on the SRF programs bring to us.

Mr. Strong stated the legislative report that is typically provided at this time will be done so by Mr. Josh McClintock later in the meeting agenda when he presents the discussion on the Congressional Briefing. He added that a legislative proposal by the Governor concerned a consolidation of several agencies including the OWRB and DEQ, he while he was not aware of the proposal before it was announced, as long as everyone is willing to put everything on the table and talk about how to be more efficient we are happy to participate in that discussion. He said it is not as simple as matching a couple of agencies together to save money; the consolidation in 1993 creating the DEQ took a year's worth of work and there would be budget and statutory work required. He felt the most that could be expected from the consolidation proposal this legislative session is a hardy discussion. He said both the OWRB and the DEQ have been operating a very lean and efficient machine for many years as of all the appropriations committees, these agencies receive the least amount of state dollars. He said if those discussions come up he will ensure the Board's involvement.

Chairman Herrmann added that it will be "business as usual" for the staff, and his earlier comments to the Lt. Governor and members of the Legislature is to please use the public boards as part of the deliberation process as those members are intimately knowledgeable of the agencies, and many have had experience in the private sector.

Mr. Strong announced the Planning Advisory Board will meet on February 23, rules approval is on the agenda today, and he concluded his report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Shawnee Municipal Authority, Pottawatomie County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this

\$13,924,607.00 funding request from the Shawnee Municipal Authority is to replace approximately 48,000 feet of 30-inch, raw water transmission line. The line will convey water from Shawnee Twin Lakes to the water treatment plant; in addition, proceeds will be used to replace three valves at the intake structure and one at the lake. The project will be funded with Drinking Water SRF loan proceeds, and with additional stimulus funds should they become available. He noted provisions of the loan agreement, and said that if stimulus funds are available, they will be in the form of principal forgiveness. Shawnee has been a good loan customer of the Board's since the mid-1990s and currently has two outstanding loans. The debt coverage ratio stands at approximately 1.7-times. Staff recommended approval.

Mr. Brian McDougal, City Manager; Mr. Jim Beard, Utility Director; Mr. Randy Brock, Mr. John Waldo, and Mr. Chris Gander, financial advisor, were present in support of the loan request.

Mr. Sevenoaks asked about Shawnee's water supply, and if there was a dispute involving another community and Wes Watkins Reservoir. Mr. McDougal said Shawnee gets its water from Lake No. 1, the city shares the water responsibility at the lake, and there have been discussions but no other users withdraw water from the lake.

Mr. Drummond asked when it would be known the ARRA funds will be available. Mr. Freeman said the deadline for both Clean Water SRF and Drinking Water SRF was February 1 to request left over funds, and a letter had been forwarded to Washington; he said it would be known after February 17 if there are funds available. The order is worded that if the second stimulus bill is approved, the state would utilize the funds. Mr. Nichols asked if the number of dollars not used is known; Mr. Freeman said the final numbers are not know, but that it is believed all the funds would be used and from a national perspective he believed that would be best for the overall program. Chairman Herrmann clarified those would be funds reallocated that were not utilized in other states.

Dr. Taron moved to approve the Drinking Water SRF loan to the Shawnee Municipal Authority, and Mr. Nichols seconded.

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

Mr. Freeman briefed the members on the status of expended ARRA funds, saying Oklahoma's funding has been fully obligated, and he distributed a spreadsheet.

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.

There were no requests to transfer items to the Special Consideration Agenda. However, Chairman Herrmann stated there is one Supplemental Agenda Item, 7.A., and he asked that be added to the Summary Disposition Agenda.

Ms. Julie Cunningham asked that item L.2.b.1. and L.2.b.2., regarding Sunbelt Industrial Services, Inc., be withdrawn from the Board's consideration.

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

There being no further questions or discussion regarding items on the Summary Disposition Agenda, Chairman Herrmann asked for a motion.

Ms. Lambert moved to approve the Summary Disposition Agenda as amended, and the Supplemental Agenda, and Mr. Drummond seconded.

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

The following items were approved:

C. Financial Assistance Division Items:

1. Application for Grants:

REAP				Amount
<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
NODA				
	FAP-08-0007-R	Town of Marland	Noble	\$79,999.00

2. Consideration of and Possible Action on FY 2011 Proposal for Use of the Statewide Water Development Revolving Fund.

D. Contracts and Agreements:

1. Agreement with Office of the Secretary of the Environment for the Clean Water Act FY 10 §104(b)(3) Regional Wetlands Program Development Grant CA# CD-00F074-01.

2. Contract with Association of State Floodplain Managers, Inc.

3. Interagency Agreement with GRDA.

4. Agreement for shared services with The Office of the Governor.

5. Memorandum of Agreement with Department of Homeland Security, U.S. Citizenship and Immigration Services for participation in the Systematic Alien Verification for Entitlements Program.

6. Modification of Contract with Oklahoma Water Resources Research Institute for work on the Oklahoma Comprehensive Water Plan.

7. Contract with Oklahoma Department of Agriculture, Food and Forestry for work related to the Oklahoma Comprehensive Water Plan.

E. Applications for Temporary Permits to Use Groundwater:

1. City of Clinton, Custer County, #2008-586
2. Industrial Investments, L.L.C., Canadian County, #2009-533
3. Trudy J. & Eugene L. Schmidt, Major County, #2009-545
4. Wauhillau Outing Club, Inc., Cherokee County, #2009-562
5. Duit Construction Company, Inc., Kingfisher County, #2009-566

F. Applications to Amend Temporary Permits to Use Groundwater:

1. City of Ringling, Jefferson County, #1990-560
2. Dewey County Rural Water District No. 2, Dewey County, #1997-586
3. Chesapeake Energy Corporation, Oklahoma County, #2004-520

G. Applications for Regular Permits to Use Groundwater:

1. White Brothers Cattle Co., Tillman County, #2009-552

H. Applications to Amend Regular Permits to Use Groundwater:

1. J. D. & Carolyn Pope, Beaver County, #1974-369

I. Applications to Amend Prior Rights to Use Groundwater:

1. K & S Partnership, Harmon County, #1965-281

J. Applications for Regular Permit to Use Stream Water:

1. Tidwell-Duvall Farm, L.L.C., Sequoyah County, #2009-026

K. Forfeitures of Stream Water Rights:

None

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. 1. Licensee: Riomar Environmental Drilling DPC-0778
Operator: Darrin S. Stark, Sr. OP-1774
Activities: Groundwater wells, test holes and observation wells
Monitoring wells and geotechnical borings
 - b. 1. Licensee: Don Miller Drilling Co. DPC-0780

- Operator: Donald R. Miller OP-1745
- Activities: Groundwater wells, test holes and observation wells
- Pump installation
- Heat exchange wells
- 2. New Operators for Existing Licenses:
- a. 1. Licensee: Shady Nook Pump & Supply DPC-0671
- Operator: Christopher W. Davis OP-
- Activities: Pump installation
- b. 1. Licensee: Sunbelt Industrial Services, Inc. DPC-0701
- Operator: Francisco J. Chavez-DeLaCruz OP-1731
- Activities: Monitoring wells and geotechnical borings
- 2. Operator: Edgar G. Alcala OP-1732
- Activities: Monitoring wells and geotechnical borings
- 3. New Activity, Operator for Existing License:
- a. Licensee: Shaddon Laverty Water Well and Drilling DPC-0717
- 1. Operator: Shaddon Laverty OP-1567
- Activities: Pump installation

M. Dam and Reservoir Construction:

- 1. Seminole County Conservation District, Seminole County, #OK01318

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

- 1. Oklahoma Department of Transportation, Comanche County, #FP-09-27
- 2. Northeastern Oklahoma A & M College, Ottawa County, #FP-09-29
- 3. Oklahoma Department of Transportation, Pontotoc County, #FP-10-01
- 4. Oklahoma Department of Transportation, Pontotoc County, #FP-10-02
- 5. Northeastern Oklahoma A & M College, Ottawa County, #FP-10-03

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the February 9, 2010 packet of Board materials.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS

(Approved with Summary Disposition Agenda items)

A. Well Driller and Pump Installer Licensing:

- 1. Licensee: Associated Environmental Industries, Corp. DPC-0269
- Operator: Danny O. Jarman OP-0253
- Activities: Heat exchange wells
- Operator: Joseph N. Datin OP-1747
- Heat exchange wells

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

A. Update Report on Oklahoma Comprehensive Water Plan Activities. Mr. Kyle Arthur addressed the Board and summarized his comments made at the Capitol regarding supply/demand outlook and public input process, as well as infrastructure financing and water plan implementation. He asked Ms. Jeri Fleming to update the members on upcoming meetings.

Ms. Fleming said the Academy Town Hall will be held on May 23-26 in Norman, at the National Training facility and will be Sunday evening through Wednesday noon. She said that 190 nomination letters were mailed to persons who have participated in the workshops, regional meetings and local input meetings. The Academy also mailed invitations to its Board and members; it is anticipated about 180 people would attend. A Planning Advisory Board meeting will be held on February 23, and invitations will be sent out by the Academy to those persons selected. Ms. Fleming said that Academy participants have been asked -- because they have not been involved in the public input process -- to attend the Strategy Seminar that is scheduled for March 29, in Oklahoma City at the Moore-Norman Technology Center. At that meeting, strategies that have been developed at the workshop level will be presented, and then the main topic of the Town Hall is presentation of the strategies and determination of recommendations. Also, the strategy seminar is to review the analysis that's been done by OSU Extension and several state agencies to look at the strategies and advise what is feasible, what will work and what won't, etc. Chairman Herrmann interjected the Academy has made it a requirement for Town Hall participants to attend the strategy seminar. Ms. Fleming explained the process will be to get the newcomers up to speed and also the local workshop participants will be informed about all strategies as most participants worked with only one of the nine groups. Ms. Fleming explained the selection process for the participants by the Planning Advisory Board.

Chairman Herrmann added that the water plan process is getting to the "heavy lifting"-- resolving the sticky issues, putting together final analytics, etc.

Mr. Arthur concluded the report noting the brochure produced for Water Day at the Capitol that illustrated the timeline for the technical studies and policy development aspects of the plan. Chairman Herrmann stated while Board members are not members of the panels, it is very important they are up to speed with the issues but need to have the context whereby the Board will act upon the recommendations that come forward.

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. Consideration, Discussion and Possible Approval of Draft Congressional Briefing Document. Chairman Herrmann stated that in the past, the Board has received the Congressional Briefing document as an informational item. He said he asked that be formalized to put the weight of the Board behind that, as it does reflect broad policy priorities of the OWRB, and can be used then by the agency to increase the credibility of the document, making it more palatable and more effective in Washington.

1. Summary – Mr. Josh McClintock addressed the members and first presented the state legislative report. A written report was distributed, and he highlighted the measures of interest, and spoke to the Governor's recommended 3% additional budget cut. He said this means an additional \$181,000 above what has already been cut for the agency, making the total FY'11 appropriation just over \$5.8 million from \$6.25 million. He said he also included in the report the Executive Summary of the Governor's Budget Proposal. He spoke particularly regarding the measure to limit terms of boards and commission members, and Senator Paddack's water center bill.

Referring to the Congressional Briefing document, Mr. McClintock stated the document is conservative and some of the amounts may change when submitted to the subcommittee, but generally the document is reflective and is in three sections: projects related to the update of the water plan, projects related to the implementation of the water plan, and projects that a request is not formally submitted but rather informational to make the members aware of their status and impact to the OWRB. He said funding is in the appropriation stage; however, it will be Summer before it is through the Congressional process.

2. Questions and Discussion by Board Members. Mr. Sevenoaks asked how many federal dollars the OWRB has received; Mr. McClintock answered that majority of these projects are geared toward the water plan, and in FY10 the agency received about \$2.7 million spread among the projects, and in FY09 about \$2.9 million. The agency should receive a benefit from the staff effort, and Mr. McClintock said, in fact, the Governor's budget summary mentioned the Board had been successful in obtaining federal funding. Mr. Nichols clarified the money does not actually come to the agency, but goes to the local entity. Chairman Herrmann said the staff effort has also brought an emphasis by the delegation that the OWRB set the priorities rather than the Congressional members), and Mr. Nichols added the Congressional staffs preferred that approach. Mr. McClintock said that it appeared the OWRB received the money, but most goes to the Corps of Engineers, and there is a match associated, so the dollar amounts listed does not necessarily mean the OWRB receives the money; there are several difference processes. Mr. Nichols added the OWRB does not receive any funding--there is 100% pass through. Mr. McClintock explained the authorization of the projects, and studies, the funding mechanism, and the increase coordination with the Corps of Engineers. He particularly noted the first section is what is being requested.

Mr. Drummond asked how much of the \$4 million request for the water plan does the agency really need or expect. Mr. Arthur answered he anticipated receiving \$900,000.00 or the same as last year. Ms. Lambert asked if the funding is received, can it be used where we want or does it have to be broken down; Mr. McClintock said there are specific matching requirements

and specific scopes that must be followed, and Mr. Arthur said any money received under the specific items requested, that money has to be spent as those items direct.

3. Vote on whether to approve proposed briefing document as presented or as may be revised. Chairman Herrmann said that staff recommended approval, and Mr. Nichols moved to approve the Congressional Briefing document and Dr. Taron seconded.

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

Chairman Herrmann stated he asked for input from the Board because this is the first time the Board has approved the document. Mr. Sevenoaks agreed the Board should approve the initiatives, and Chairman Herrmann said that in the future the Board's legislative committee could review and then the committee can make the recommendation to the full Board. There were no other comments.

B. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda for further consideration.

6. PRESENTATION OF AGENCY BUDGET REPORT.

Mr. Kyle Arthur said he is now assisting with the agency budget report, and noted the budget-to-actual report that is provided each month, and also a memorandum from Mr. Strong. He said a budget agreement was reached by the Legislature for the FY10 for agency budgets; the OWRB's original appropriation of approximately \$6.5 million has been cut to date at 7.5% (annualized), and looking to FY11 there may be an additional 5%. The agency plans to adjust to the cut through a freeze on additional personnel, and to curtail travel.

Mr. Arthur stated the Gross Production Tax collection is used for the capitalization grants for the SRF program and OCWP effort. A deposit of \$337,000 has been received, and the \$2.7 million cap has been reached.

7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

Consideration of the Supplemental Agenda items was moved to the Summary Disposition Agenda (3.).

8. CONSIDERATION OF AND POSSIBLE ACTION ON ADOPTION OF PROPOSED AMENDMENTS TO PERMANENT RULES

Chairman Herrmann stated that the Board has discussed and has been reviewing proposed rules changes proposed by staff since November, and at the January meeting held a public hearing and accepted comments, unfiltered, from various communities and agencies. He said at

this meeting, the Board will make decisions, and the process will be that staff will summarize the proposal, respond to questions from Board members, allow public final opportunity to comment--and he asked these be new comments--and then move to a vote.

A. Proposed Amendment to Chapter 5 – Fees

1. Summary and final draft proposed rules - Ms. Julie Cunningham, Chief, Planning and Management Division, said staff conducted a planning session which developed the recommended rules changes, as well as proposing initiatives in the water rights, dam safety, and well driller's/pump installer's programs, with an emphasis on water use, and water planning across the state; addressing unauthorized use and reducing staff costs and time; and to deliver programs at the lowest cost to taxpayers through automation and online training. Comments have been received, and Ms. Cunningham proceeded noting proposed fees for activities related to stream water permit application and administration fees, dam safety and inspection fees, groundwater application administration fees, well driller and pump installer licensing fees, and stream water and groundwater petition fees. She said several comments had been received by several entities, and staff has made some changes to the language in section 5-1-9 relating to dam safety. Staff recommended adoption of all proposed amendments.

Ms. Cunningham noted the language change to 5-1-9.a., regarded dam safety application fee structure and proposing a cap. Comments were received suggesting a cap of \$1500 for an application fee; research was conducted and staff proposed a cap of \$3,000 in a 3-tier cost schedule and for projects with a cost of \$20 million there would be a fee of \$10,000.00. She said this is similar to other states. The proposal regarding 5-1-9.e. relates to an annual administration fee for the review of hazard classification, so what is proposed is that dams with a low hazard the owner is to provide an inspection report of downstream development, which requires a change in Chapter 25.

2. Questions and Discussion by Board members - Mr. Drummond asked if it had been determined the cost of conducting a dam inspection, and Ms. Cunningham answered the fee is comparable to covering the costs of an inspection. There are 147 high and significant hazard dams at an estimated cost to inspect of \$480, which is an average of built-in costs if there are hearings, meetings, etc. for some matters. Staff looked at other states programs.

Mr. Nichols asked the amount of the stream water and groundwater fee increases. Ms. Cunningham said for stream water the application fee is increased \$5, which will not provide a significant increase in fees. The groundwater use fee is the more significant--\$50 per groundwater right, which may realize \$318,000 to the program. Mr. Strong interjected that amount still does not cover one-half the administrative costs of the program.

Chairman Herrmann asked for more explanation because that was a comment received. Ms. Cunningham responded comments had been received about charging for the use of a personal property right, and water rights administration is the purpose for creating the OWRB, and the OWRB is statutorily required to regulate the use of water. The statute details the requirements of a permit, the requirement of an annual use report by the permit holder, and revalidation of rights for the ongoing management of a groundwater permit. Statutorily, there are required administrative expenses to the ongoing management of a groundwater permit. There are approximately 10,000 permits, and it's a lot of work and staff has managed very well - there used to be an entire Groundwater section with field offices, which has recently been cut the past ten years from five full time employees to two part time employees in dealing with

groundwater and permitting. She said a \$50 per water right fee is very reasonable for the work and statutory requirement that go with each permit; the idea is that water use reporting and water right management in general affects the groundwater resources, and ensures that interference is handled, and that there is staff to verify location, interference, well spacing, and abandoned wells. She said it's considered a benefit to the state to conduct hydrologic studies and set maximum annual yields, so both the state and the water right holder should bear the costs.

Mr. Drummond asked if the fee is \$50 per water right, and not water well. Ms. Cunningham answered yes, and Mr. Couch interjected there is a cap, as staff recognized some irrigators in the Panhandle may have 20 water rights.

Dr. Taron asked what can the Board do if this fee is not enough. Ms. Cunningham said staff would seek another amendment. Chairman Herrmann said it would be through the annual rules process.

Mr. Strong added that he had been working to get up to speed and studying the comment responses and summary, and he felt it was done in a very thorough manner, very explanatory, and while at the end of the day people aren't necessarily going to agree with the final recommendation of staff on the proposed rule, but it can be seen by the response and summary how the recommendation was derived, and understand that the fee still doesn't even cover one-half the expense of the administrative cost to oversee the program that benefits the public and currently is essentially paid for by the public, and to ensure the both quantity and quality is assured in the future.

Mr. Nichols added it will still go before the Legislature, and the Governor.

3. Comments by Public - Chairman Herrmann invited anyone from the public to have final opportunity to make a comment about anything new to what the Board has heard before.

Ms. Marla Peek, Oklahoma Farm Bureau, stated to the members the Board had been asked to send notification of the proposed fee increase to all the groundwater permit holders and that has not occurred. She said Title 82, Section 1085.4 states, "...the OWRB shall prepare and charge a schedule of reasonable fees for services rendered," and one of her comments is that it is unclear that service will be rendered to those who already have their groundwater permit. Another comment: it appears that this fee will be used for many things not related to any one person's groundwater permit like application processing, administrative procedures, queries, field verification, change of ownership administration and enforcement activities. She suggested that if funding is needed for these services, why not charge for them individually.

In the response to comments document, Ms. Peek read, "The OWRB has received many public comments for increased oversight of water use, new modeling technologies for aquifer studies and compliance on enforcement." Her comment is that if new modeling technologies for aquifers are needed, that should be taken to the public to see what the Board thinks is needed. Additionally, are these things the Board thinks it needs to do because the public wants them, is statutorily required, or does the Board do them because of public comment. And, Ms. Peek asked how the OWRB detailed the expenditures for all the things that it thinks it needs in the response to comments document, and have those been reviewed by the Board and the OWRB Legislative Oversight Committee. She concluded her comments stating the OFB opposed the fee proposal for groundwater right administrative fee in Chapter five, and asked that the Board table the groundwater fee.

Ms. Cunningham responded that regarding the line item (assessing charge per activity); the rule impact statement covered all the fees i.e., change of ownership, which is under the

application fee and is not part of the groundwater right fee. Regarding enforcement and field verification, that is directly impacting individual water rights as staff investigates calls about interference issues or report of abandoned wells, comments received at the water plan input meetings and about metering or monitoring systems.

Mr. Dean Couch, General Counsel, added the statute noted is the broad provision about fees which has been on the books for quite some time but in the general authority and duties of the Board, which is amended virtually every year, the OWRB's authority to promulgate rules and make orders deemed necessary to exercise any powers or performance of any duties (read from the statute), and separately from that (which is redundant) states a laundry list of items (read from the statute), and the statutory authority of the Board is broad with respect to fees and kinds of fees, and it is clear that any fees or rules and rulemaking are subject to Gubernatorial review.

Ms. Cunningham stated a detail of expenditure per service has not be conducted; but staff has looked at staff levels versus the number of water rights and the elevation of water rights issues along with moving forward on the water plan as the work is important.

Chairman Herrmann added the existing water rights holders benefit from proper water rights administration, and there is a private interest benefit that goes along with the public interest being protected.

There were no further questions. Chairman Herrmann asked the staff recommendation; Ms. Cunningham stated staff recommended adoption of the Chapter 5 amendments document before the Board, dated February 9, 2010.

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

Ms. Lambert moved to approve, and Mr. Keeley seconded.

Chairman Herrmann asked if there any further discussion by Board members. Mr. Nichols commented as one who does pay these fees, and no one that is in business -- no matter what it is, likes to pay any more for anything. This Board and past members in the same position have not done a good job with keeping pace over the years of slightly raising the fees and now are in a "catch up" mode. As an existing permit holder, he felt it very important this is in place in order to protect the Board. He said he is a member of the OFB, and understands they don't like any fee, but he believed this is one occasion the Board needed to do. There were no other comments or questions by Board members, and Chairman Herrmann called for the vote.

AYE: Lambert, Nichols, Drummond, Fite, Sevenoaks, Keeley, Knowles, Taron,
Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

Chairman Herrmann added that in view of the public comment process, he believed the rules have become stronger substantially by virtue of the public input, and he thanked those members of the public for their participation. And while not every comment was incorporated in the way it may have been wanted, the net result is a set of rules and rules proposal that is stronger.

Ms. Cunningham stated that several of the comments have been incorporated.

B. Proposed Amendments to Chapter 20 – Appropriation and Use of Stream Water

1. Summary of final draft proposed rules – Ms. Cunningham said these proposals would provide a disincentive for non-domestic, unauthorized use of water by doubling the application fee, and to also shorten the processing by allowing e-filing. Staff recommended adoption of the language proposed.

Ms. Cunningham stated a comment was received from the Oklahoma Municipal League simply acknowledging the revised method to incentivize timely application, and the Oklahoma Independent Petroleum Association was opposed believing it would discourage users from voluntarily disclosing water use and obtaining a permit. Staff believed it would incentivize compliance.

Another comment received from the Environmental Federation of Oklahoma regarded the addition of the citizenship affidavit certification, which is a requirement of the Oklahoma Taxpayer and Citizen Protection Act of 2007 verifying the person has a lawful presence in the United States in applying for a state or local benefit. Staff has interpreted the Act through an Attorney General's opinion that this affidavit is required for water right permit holders and well driller's licenses. A separate document has been required, and this amendment actually adds it as part of the application.

Mr. Dean Couch, General Counsel, responded to Chairman Herrmann's request. He said in 2008, after the legislation passed questions arose about HB 1804, and the AG issued an opinion to clarify that indeed the language used referred to federal law, and the use of the language, "state and local benefit" mentions that it is inclusive of the phrase "commercial license" -- a right or permission granted in accordance with law to engage in some business, do some act, or engage in some transaction that if unlicensed would be unlawful. The definition of "commercial" is "relating to commerce." Mr. Couch said that in looking at a well driller's license there is no question that is a license for the state or local public benefit for working in that business. The question that comes up is about the permit and whether the authorization reflected by the issuance of a permit is similarly a license and is also the definition of a license in the Administrative Procedures Act and that definition includes the word, permit. Looking at state law about these kinds of requirements which refers to the federal law, staff viewed that it applies to permits for the use of surface water or groundwater as some kind of act of authority to carry out activities of commerce—and water is an article of commerce. Therefore, it is staff's view that a permit for use of stream water or groundwater as well as well driller's licensing program should all be covered.

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

3. Comments by Public - Mr. Jim Barnett, Environmental Federation of Oklahoma, addressed the members and said that overall he was very pleased with staff's response to his comments to the rules. He said he would not be here today if the Board had not changed its policy from a year ago as far as how the Board now conducts the rulemaking process. The Administrative Procedures Act has been in place since 1963, and the Board has been operating that entire time and has not been burdened with the chore of listening to lawyers about their opinion about the law. He said the opinion that came from the Court of Appeals he believed the Board has taken too much to heart. He said the Wildlife Commission was not operating the same way the Board has operated and there is no reason why a hearing examiner cannot go through this process and limit the Board's time and effort. He suggested the Board's review as it could be a very burdensome process in some years.

Regarding the citizenship affidavit, Mr. Barnett said that staff has not looked deep enough into the law as it has decided that a water right is a commercial license, and they have no authority for that proposition. He said the Oklahoma Digest states that in respect to real property, licenses are extinguished from other rights of land, so if you accept the proposition that your water is part of your

“bundle of sticks”, it is real property and then your use of that is not a license under Oklahoma law. He noted the case of Haas v. Brandon says a license is an authority to a particular act or series of acts on another’s land without possessing a state variance, or if you own a part of the estate you don’t have to have a license to utilize your estate. The Water Board is an administrative agency issuing a permit for you to make use of your own private property; it is not a benefit of the state to use your own water and turns the whole concept upside down. He said the legal reasoning is weak, and he encouraged the Board to seek an Attorney General’s opinion because it defies common sense to say a property right is a commercial license. If it's not a commercial license, it's not under the federal definition, therefore no affidavit is required.

Mr. Drummond asked if Mr. Barnett saw other ramifications. Mr. Barnett said the OWRB rules say the attorneys can file applications for their clients, but cannot sign an affidavit the client is a citizen, making it one more step. He asked why the OWRB is in the role of worrying about illegal immigrants, why go the extra step to assume the duty you that don’t have to; the Legislature did not say the Board had to do it, the lawyers took it upon themselves. Ms. Cunningham added the affidavit is a requirement now; the action makes it a rule.

Ms. Cunningham stated staff’s recommendation is adoption of the language proposed in the December 15 revised proposed amendments (same as February 9, 2010).

Ms. Lambert asked for clarification. Mr. Sevenoaks stated he agreed that it made no sense to sign you are a citizen of the United States. Mr. Fite suggested the Board ask for an Attorney General’s opinion. Chairman Herrmann asked if there had been a formal AG’s opinion, and Mr. Couch answered it is not to the OWRB for issuing a permit to use groundwater/stream water, but it is a formal AG opinion asked by a state senator. He stated the Board’s request would be to ask about specifically issuing permits to use groundwater or stream water, we do not have a formal opinion on that. Ms. Lambert asked the Board’s liability if it were to issue a permit to someone that is not a U.S. citizen; Mr. Couch answered he had not researched the Board’s liability regarding violations under HB 1804, and to what extent members have culpability, but to the extent the law requires it and you are not following the law there may be a variety of remedies and repercussions, including by the legislature who instructs it be carried out.

Mr. Fite asked if that portion of the rule could be stricken. Chairman Herrmann stated for clarification, the motion would be to approve the changes except for the citizenship requirement and ask for a formal Attorney General’s opinion. Mr. Sevenoaks asked if that would be to include this year or take out this year. Mr. Fite answered to strike out that portion and seek clarification. Mr. Sevenoaks suggested leaving it in until there is a clarification. Mr. Fite withdrew his motion.

Ms. Lambert moved to approve the motion (proposal) with the understanding the Board would seek clarification on the affidavit by a formal opinion of the Attorney General. Chairman Herrmann said the Board can go back and revisit that paragraph based upon the result of the formal Attorney General opinion. Dr. Taron seconded the motion.

Dr. Taron asked if the Board is charged with compliance of any sort, what authority does the Board have, if there isn’t an issued license, to see if there is compliance? He said, if the Board issues a license, and it’s the responsibility of the Board to manage water, then it has a right to see if there is compliance; if there is no license, then the Board cannot see if there is compliance. Dr. Taron called for the question.

Chairman Herrmann stated the motion is to approve the rule changes, and the members asked about formal versus informal opinion, and Mr. Couch asked for clarification -- that the motion is to approve the proposed amendments as presented, including the citizenship affidavit, and instructions to staff to request an Attorney General’s opinion, with no guarantee it would ever be issued. He asked if the Board meant to approve but not be affective until such time as an opinion is received.

After some comments, Mr. Sevenoaks asked the motion on the table, and Ms. Schooley said the motion is to approve what has been proposed with a request for a formal Attorney General's opinion. Mr. Strong stated then, to go forward with the promulgated rule—irrespective of the AG opinion, but go ahead and request the opinion—and then the Board can change the rule later. Chairman Herrmann hoped the AG opinion would come in 30 days, and Mr. Sevenoaks said the rule will go forward, and an AG's opinion will come at some point in the future. Mr. Couch added that what is approved has to be filed with the Legislature which can then approve or not approve.

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

There were no other questions, and Chairman Herrmann called for the vote.

AYE: Lambert, Nichols, Drummond, Fite, Sevenoaks, Keeley, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

Chairman Herrmann commented about his displeasure that Board has been placed in a position to deal with property rights through the citizenship process, but that the staff has acted in an abundance of caution to make sure the Board is to the letter and according to statute.

C. Proposed Amendments to Chapter 25 - Dam Safety

1. Summary of final draft proposed rules – Ms. Cunningham said the recommendations were proposed by the study group created by HB 1884 and enacted by the Legislature in 2009 regarding reclassification triggered by downstream development. Comments were received by OIPA, EFO, OG&E, Oklahoma Conservation Commission, Natural Resource Conservation Service and changes in the language have been incorporated where appropriate. She said staff appreciated public comment on these rules, and changes have been made on almost every section. Staff recommended approval of the final amendments.

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

3. Comments by Public – There were no further comments by 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 changes to Chapter 25 as proposed, and Mr. Fite seconded.

AYE: Nichols, Drummond, Fite, Sevenoaks, Keeley, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Lambert

D. Proposed Amendments to Chapter 30 – Taking and Use of Groundwater

1. Summary of final draft proposed rules – Ms. Cunningham said this proposal would provide disincentive for the non-domestic, unauthorized use of groundwater by doubling of the application fee, and a separate well spacing requirement for bedrock and alluvium and terrace deposits, simplify well spacing requirements by placing limits on exceptions, issue criteria for change of ownership to expand, expedite the application process, simplify the application, and including a citizenship affidavit. She said comments were received same as for Chapter 20 from: OIPA, EFO, and OML. Staff recommended adoption of the proposed amendments.

2. Questions and Discussion by Board Members – Mr. Drummond asked if well spacing applied to a studied basin, and Ms. Cunningham said that it did. He asked the well spacing for an unstudied basin, and she said there is no well spacing. Mr. Sevenoaks and Mr. Nichols talked about changing the rule now or waiting until next year, and Mr. Couch stated there is an Attorney General’s opinion not long after the 1973 law was put in place that specified that well spacing applies only after a maximum annual yield has been determined, and for regular permit issuing rather than temporary permit issuing. That is an interpretation of the law. Mr. Sevenoaks asked that it be scheduled for discussion as an agenda item at a future meeting, and Chairman Herrmann suggested the Board’s Ad Hoc Rules Committee could address that and then report back to the Board. Mr. Fite asked that Mr. Barnett’s other question be referred to the Rules Committee as well.

Mr. Drummond asked if there is a proposal for a change for alluvial basins because there are a lot of exceptions. Ms. Cunningham said there had been a request and staff has been looking at two different well spacings and technical staff made the recommendation.

3. Comments by Public – There were no further comments by 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 Chapter 30 as proposed by staff. He said an Attorney General opinion will be requested (under Chapter 20 rules approval) so there is no need to do anything else. Mr. Fite seconded.

AYE: Lambert, Nichols, Drummond, Fite, Sevenoaks, Keeley, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

E. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing

1. Summary of final draft proposed rules – Ms. Cunningham stated the proposals for changes to Chapter 35 have been recommended by the Well Drillers and Pump Installers Advisory Council, and staff findings. Amendments would allow use of direct push monitoring well technologies, changes to minimum construction of plugging standards, amending the renewal process, and continuing education with online courses, and amending well seal standards. A final comment by the Council after the last meeting has been incorporated. Staff recommended approval of the final amendments recommended for adoption.

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

3. Comments by Public - There were no comments by the public.

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

Mr. Drummond moved to approve the proposed recommendations, and Dr. Taron seconded.

AYE: Lambert, Drummond, Fite, Sevenoaks, Keeley, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Nichols

F. Proposed Amendments to Chapter 45 – Oklahoma’s Water Quality Standards

1. Summary of final draft proposed rules – Mr. Derek Smithee stated to the members that based upon comments received last month at the hearing and written comments, Water Quality staff requested an additional month to work with the Department of Environmental Quality staff to develop language regarding, "naturally occurring conditions."

Chairman Herrmann asked about staff's response to comments regarding the 2012 review date of the .037 criteria. Mr. Smithee said staff will be compliant with re-evaluating the .037 phosphorous criteria. Mr. Sevenoaks asked what the process will be; Mr. Smithee answered new science will be reviewed, and a look at what EPA has proposed for other states. Mr. Strong added this is in response to the Statement of Joint Principals and Actions that was signed between the two states and EPA. He said it doesn't concern the language that was promulgated in the standards regarding the .037, and there is a commitment in the statement to re-evaluate the standard by 2012. Mr. Sevenoaks asked if EPA is part of the re-evaluation process, and Mr. Smithee answered yes, it approved the .037 and if the number is changed, EPA would have to approve. Mr. Sevenoaks asked if EPA has asked it be changed, and Mr. Smithee said it has not asked, but Oklahoma will be compliant with re-evaluating that criteria. Mr. Sevenoaks asked for information about what "re-evaluate" means. Mr. Fite added the pending development of the TMDL study for the Illinois River Basin in Arkansas and Oklahoma is going to be focused around the .037 number, and he would say the number will go down.

G. Proposed Amendments to Chapter 50 – Financial Assistance

1. Summary of final draft proposed rules – Mr. Joe Freeman said there were no written comments received, and no comments at the hearing about the proposed rules changes. The changes included amendments to the environmental review process rules to coordinate with EPA regulations the Board is required to follow, amendments to designation of green projects because green projects will be included in CAP grants, changes to engineering requirements for non-traditional green projects, changes to the CWSRF priority ranking structure to include green projects, changes in REAP grant rules to allow applicants to request an extension of time for circumstances outside their control and will mirror the rules for the emergency grants, and also changes regarding closing a loan prior to receiving bids. Staff recommended approval.

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

3. Comments by Public - There were no comments by the public.

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

Ms. Lambert moved to approve the proposed amendments, and Mr. Drummond seconded.

Mr. Drummond asked if approving the loan before acquiring bids would prevent cities from coming back to the Board and changing the loan amount. Mr. Freeman said they would have to come back and get another loan, if the loan has been closed.

AYE: Lambert, Nichols, Drummond, Fite, Sevenoaks, Keeley, Knowles, Taron, Herrmann

NAY: None

ABSTAIN: None

ABSENT: None

Chairman Herrmann thanked everyone for their tenacity.

9. **NEW BUSINESS**

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

There were no New Business items for the Board's consideration. However, Mr. Fite thanked Mr. Strong and the OWRB staff for "stepping up" during the process with Mr. Smith's leave of absence.

Chairman Herrmann stated the rules process is not done, there will be review at the Legislature, and he anticipated further activity regarding the fees.

10. **ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 3:44 p.m. on Tuesday, February 9, 2010.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Richard Sevenoaks

_____/s/_____
Jack W. Keeley

_____/s/_____
Kenneth K. Knowles

_____/s/_____
F. Ford Drummond

_____/s/_____
Joseph E. Taron

ATTEST:

Absent
Linda P. Lambert, Secretary
(SEAL)