

# OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

April 13, 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 9:30 a.m., on April 13, 2010, in the Board Room of the Oklahoma Water Resources Board, 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 April 6, 2010, at 2:50 p.m. at the Oklahoma Water Resources Board's offices.

### A. Invocation

Chairman Rudy Herrmann asked for a moment of silence in honor of the lives lost 15 years ago during the bombing of the Alfred P. Murrah Building in Oklahoma City.

### 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  
Kyle Arthur, Director of Planning  
Josh McClintock, Director of Government and Public Affairs

**Others Present**

Ryan Chaffin, Ada, OK  
Angie Burckhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK  
Fred L. Rice, City of Edmond, OK  
Mike Mathis, Chesapeake Energy, Oklahoma City, OK  
Marilyn Baldwin, Tulsa Metropolitan Utility Authority, Tulsa, OK  
Robert Shelton, City of Tulsa, OK  
Kim Sullivan, OWRB, Lawton, OK  
Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK  
Sam Samandi, Oklahoma City, OK  
Jane Bromley, Davenport, OK  
Phil Brown, Davenport, OK  
Chris Phillips, Chickasaw Nation, Durant, OK  
Chester Dennis, Clayton, OK  
Rita LoPresto, City of Konowa, OK  
Robert M. Jones, Capital West, Oklahoma City, OK  
Barry Bolton, Oklahoma Department of Wildlife Conservation, Oklahoma City, OK  
Gary Bartton, Choctaw Nation, Durant, OK  
Jason Aamodt, ORWP, Tulsa, OK  
Ken Senour, Guernsey Engineering, Oklahoma City, OK  
Cheryl Dorrance, Oklahoma Municipal League/Oklahoma Municipal Utilities Providers  
Oklahoma City, OK  
Charlie Swinton, BankFirst, Oklahoma City, OK  
Gary Foemning, Unimin, Roth, OK  
Jim Bonsall, Unimin, Millcreek, OK  
Mark Selvidge, Kutak Rock LLP, Oklahoma City, OK  
Nate Ellis, Public Finance Law Group, Oklahoma City, OK  
Allan Brooks, Public Finance Law Group, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

1. Chairman Herrmann stated the draft minutes of the March 9, 2010, Regular Meeting had been distributed. He stated he would accept a motion to approve the minutes, if there were no changes. Mr. Nichols moved to approve the minutes as distributed, and Mr. Knowles seconded.  
    AYE: Nichols, Drummond, Taron, Sevenoaks, Keeley, Knowles, Fite, Herrmann  
    NAY: None  
    ABSTAIN: Lambert  
    ABSENT: None
  
2. Chairman Herrmann stated there was not a quorum at the March 29, 2010, Water Strategy Seminar.

## **D. EXECUTIVE DIRECTOR'S REPORT**

Mr. J.D. Strong, Interim Executive Director, addressed the members and said Mr. Josh McClintock will present the update on the legislative activities. Mr. McClintock said a little more than half the session has passed, and that the appropriations bills are still moving through the process but no numbers are attached as yet. On April 14 the agency will present to the Senate Natural Resources Appropriations Committee how the agency will absorb additional cuts before the Legislature puts together the budget. Mr. McClintock referred to the written report saying there is a list of bills the agency is still watching; however, most are shell bills. He noted several measures of interest: House Bill 3061, Rep. DeWitt's Water Infrastructure Revolving Account, Senator Syke's SB 1838 floodplain management bill, SB 1882 regarding the extension of the Gross Production Tax, and SB 1849 regarding legislative delegation for rulemaking. He said the House passed a resolution disapproving the groundwater fee the Board approved in February and the Senate deadline is the end of this week. Mr. McClintock concluded his reported updating the members on activities regarding Congress, and noting the Republican House members had agreed not to submit earmark requests, so requests in the OWRB's Congressional Briefing Document that are not a part of the overall agency program request will not be put in by the House; Senator Inhofe will continue to move forward on those issues. He said by the end the next week following the deadlines, staff will have a good idea about where things are. The Congressional moratorium on earmark requests is for one year.

Mr. Strong asked about Senator Paddack's bill on the water center and Senator Gumm's bill regarding removal of the exemption of pit water in a sole source aquifer from regulation. Mr. McClintock said the water center bill is dead as it was viewed as something that could be done through the water planning activities, and Senator Gumm is still working on getting the language regarding pit water in a bill. Regarding consolidation, Mr. McClintock said there are a few shell bills available, but he had not heard about a state-wide consolidation of agencies. Mr. Strong added if there will be consolidation of the larger agencies, that will take more time than the last part of the legislative session, but there could be more included in the current bill. The House Republicans have a very strong downsizing government agenda this session and want to have fewer agencies at the end of the session and saw the water center idea as creating government; leadership on the House side is leading the charge on the House side, but the Senate is less eager. Mr. Fite added that in his discussions with legislators regarding consolidation of the Oklahoma Scenic Rivers Commission particularly, the idea of consolidation undermines what the citizens have been working on in regard to the update on the Comprehensive Water Plan. Mr. Nichols asked about brief information that could be provided to the legislators and Mr. Strong said the staff is preparing a status report that will be published before the Town Hall. The members commented they heard from the legislators that the update of the plan seemed to be taking awhile, and Chairman Herrmann said the plan is proceeding according to the pace by which the legislature has provided funding.

Mr. Strong continued with his report stating that he would be attending the Senate hearing on April 14 regarding an additional 10% cut, which would be programs that are largely state funded such as the beneficial use monitoring program and streamgaging program; Garber-Wellington study; and the ability to keep field offices open. The Financial Assistance Program is self-supporting. He mentioned having traveled to Washington, D.C. for the Western States Water Council and Congressional visits. He said Mr. Kyle Arthur is ill today, but regarding the

Comprehensive Water Plan, the Strategy Seminar held March 29 went well, and a good way to "tee-up" the issues and prepare participants for the Town Hall scheduled for the end of May. There have not been any delays in the plan update, and it is also in budget.

The Board's Audit Committee will be meeting following the Board meeting today, as well as an Instream Flow Workgroup that will meet as part of the Comprehensive Water Plan process and there is an agenda item today to allow presentation by Mr. Derek Smithee and Dr. Barney Austin. The 15th Anniversary of the Murrah Building Bombing is Monday, April 19 which had a profound impact to the OWRB having lost two employees, and Mr. Strong asked an interest in prayers for the survivors and others affected, including the Water Board family. There will be hearings coming up on the Hugo case, April 19, and the Tarrant County Case on April 26; and the OWRB, DEQ and several other agencies will be participating in the April 22 ScienceFest where 5,000 from all across the state, 5th graders come to the zoo to learn about environmental and science. The Red River Compact Commission will meet on April 27 in Texarkana, Arkansas, and the Lake Texoma Advisory Committee will meet May 7 in Durant.

Mr. Strong concluded his report with the introduction of Mr. Kim Sullivan, OWRB/OSE Employee Recognition Award Recipient.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Konawa Public Works Authority, Seminole County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item regarding the Konawa Public Works Authority is an emergency grant request. During the ice storms this past January, Konawa had difficulty maintaining adequate water supply for its 640 customers who were recently out of water due to a pump failure and a water main break. The Authority will be installing approximately 15,000 feet of water line, five gate valves, and replacing water transfer pumps. He said it is estimated the project will cost approximately \$92,867.00, and will be funded with the OWRB emergency grant of \$78,937, and \$13,930 in local funds. Staff recommended approval.

Mr. Rita LoPresto, Konawa City Manager, was present in support of the emergency grant request.

Mr. Fite moved to approve the emergency grant to the Konawa Public Works Authority, and Ms. Lambert seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Davenport Utilities Authority, Lincoln County. Recommended for Approval. Mr. Freeman stated that this item is a \$75,000 emergency grant request from the Davenport Utilities Authority. He said there are residents in and around Davenport that have contaminated wells and water is not safe for consumption. He said Davenport desired to assist the residents by providing them

water service, which will require construction of approximately 15 miles of water, and funding will be provided through a \$305,000 USDA Rural Development Loan, a \$94,300 USDA Rural Development grant, a \$150,000 USDA Rural Development Emergency Grant, \$700 in local funds, and the requested OWRB emergency grant of \$75,000.00. Staff recommended approval.

Ms. Jane Brumley, Town Clerk, and Mr. Phil Brown, engineer, were present in support of the grant request.

Ms. Lambert moved to approve the emergency grant to the Davenport Utilities Authority, and Mr. Knowles seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

C. Consideration of and Possible Action on a Proposed Order Approving FAP Funding for Owasso Public Works Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated that the Owasso Public Works Authority is requesting a \$700,000.00 FAP loan to refinance its outstanding OWRB variable rate loan into a fixed rate loan. The loan that closed in 1993 was for the expansion of its wastewater treatment facility, replace old water system lines, and replace a portion of the wastewater collection system. The new loan will have approximately an eight-year maturity. Mr. Freeman noted provisions of the loan agreement; he said Owasso has been a long-time customer of the Board's, and its debt coverage ratio stands at 2.14-times. Staff recommended approval.

Ms. Sherry Bishop, Assistant City Manager, was present in support of the loan request.

Mr. Sevenoaks moved to approve the funding for the Owasso Public Works Authority, and Mr. Fite seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman said the Tulsa Metropolitan Utility Authority had requested a \$27,757,000.00 Clean Water State Revolving Fund Loan. Tulsa is requesting the loan for the engineering for nine projects, and the engineering and construction of eight additional projects. Mr. Freeman noted provisions of the loan agreement; he said Tulsa has 19 outstanding loans with a balance of approximately \$105 million, and its debt coverage ratio is approximately 2.0-times. Staff recommended approval.

Representing Tulsa was Ms. Marilyn Baldwin, Financial Services, and Mr. Bob Shelton, Engineer.

Dr. Taron moved to approve the CWSRF loan to the Tulsa Metropolitan Utility Authority, and Mr. Nichols seconded.

Chairman Herrmann asked about whether Tulsa receives any revenue stream from the TMUA and if it has an effect on the debt service calculations. Mr. Sevenoaks answered the City just redid the debt service calculations; he said the TMUA gives 7.5% to the City in lieu of taxes. He said the TMUA had hoped to lower that amount; however, in lieu of the City's budgetary concerns that probably won't happen and so the TMUA will request a 10% increase over the next few years. The TMUA is supposed to fund its needs by itself, and one vehicle is future rate increases. The TMUA will not receive any funds from the additional 1-cent sales tax increase that will be dedicated to a \$600-700 million streets program over the next few years. Mr. Nichols asked if the TMUA had automatic rate increases like other communities, and he answered the TMUA anticipates the need for a two-year rate increase but has never had an automatic increase. He said the TMUA has financial forecasts that project rates increases, but it must present its budget to the Tulsa City Council; the last rate increase was last year at 8%.

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

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

NAY: None

ABSTAIN: Sevenoaks

ABSENT: None

E. Consideration of and Possible Action on a Proposed Order Approving FAP Funding for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this \$32 million request from the FAP loan program by the TMUA will fund engineering and construction for ten wastewater projects, and to fund the debt service reserve. Mr. Freeman noted provisions of the loan agreement. He said that staff recommended approval.

Ms. Baldwin and Mr. Shelton were present.

Mr. Nichols asked if the \$105 million balance included this loan; Mr. Freeman said that balance does not include either of the two loans today.

Mr. Nichols moved to approve the FAP loan to the Tulsa Metropolitan Utility Authority, and Dr. Taron seconded.

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

NAY: None

ABSTAIN: Sevenoaks

ABSENT: None

F. Consideration of and Possible Action on Selection of Underwriters in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman explained that this item is for the selection of underwriters for the state loan program. The Board had previously selected Capitol West Securities, now known as Geary Securities, Inc., as underwriters for the program. He said at the time of the selection a single underwriter, it was anticipated the issuance would be small; however, the Board has since closed another FAP bond issuance for \$2.8 million. Currently, staff is working on the bond issue to fund the Owasso and Tulsa Metropolitan Utility Authority loans that were just approved. The issue will be in the amount of \$30-35 million, and will require the addition of underwriters to help with the retail sale of the bonds. Mr. Freeman stated that following discussions with the Board's Finance Committee and the State Bond Advisor, staff

recommends that the Board add the firms of BOSC, Inc., and Wells Nelson & Associates to the underwriter team.

Mr. Drummond moved to approve the resolution for the selection of underwriters, and Ms. Lambert seconded.

Mr. Drummond, Chair of the Finance Committee, said Mr. Freeman briefed the committee members on the rationale and the committee supports the resolution.

There being no further questions, Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: None

\*\* Chairman Herrmann recused himself on the vote concerning BOSC.

G. Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds, Series 2010 in Aggregate Principal Amount not to Exceed \$35,000,000; Approving and Authorizing Execution of a Seventeenth Supplemental Bond Resolution Providing for the Issuance of Said Bonds; Waiving Competitive Bidding on the Bonds and Authorizing the Sale Thereof by Negotiation and at a Discount Pursuant to the Terms Of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to Said Bonds; Directing Deposit of Proceeds Derived from the Issuance Of The Bonds in the State Treasury and Requesting the State Treasurer to Remit Such Proceeds to the Bond Trustee; Ratifying and Approving the Form of Promissory Note and Loan Agreement to be Executed by Borrowers in the State Loan Program; Authorizing Execution of Such Other and Further Instruments, Certificates and Documents as May be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman stated this resolution authorizes the issuance of bonds to fund the loans for Owasso and Tulsa. He stated the resolution will specifically provide for: issuance of bonds not to exceed \$35 million, authorizing execution of the bond indenture for the issuance, authorizing the issuance be on a negotiated basis, approving preliminary official statement, directing deposit of the proceeds to the State Treasury to remit to the Board's Trustee (BancFirst), approving the form of the promissory and note agreement, directing payment of the bond issuance and payment of other costs associated with closing the issuance. Staff recommended approval of the resolution.

Chairman Herrmann asked for a motion before discussion. Ms. Lambert moved to approve the resolution authorizing issuance of bonds, and Mr. Drummond seconded.

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

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

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Freeman distributed the monthly report on the distribution of ARRA funds, stating approximately \$11 million has been drawn on both the Clean Water and Drinking Water funds, and all projects are under construction.

**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, Ms. Julie Cunningham asked that items 3.E.1., 4., and 5. regarding OWRB office spaces leases be withdrawn at this time; they do not need to be renewed until July. In reviewing budgetary matters, it may be the leases can be reduced.

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

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

Mr. Knowles moved to approve the Summary Disposition Agenda as amended, and Dr. Taron seconded.

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

The following items were approved:

**C. Financial Assistance Division Items:**

- 1. Rural Economic Action Plan (REAP) Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Recommended</u>
EODD				
a.	FAP-09-0034-R	Rural Water District #8	Cherokee	\$ 34,914.00

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

- 1. *Lease Agreement Renewal with ELF Properties, LLC for renewal of OWRB McAlester office lease. Withdrawn*



2. Interagency Agreement with Grand River Dam Authority for 2010 Fish and Wildlife Mitigation Activities within the Grand River Basin.
  3. Amendment No. 1 of Contract with ODEQ to reduce funds available for Original contract for laboratory analysis procedures.
  4. *Lease Agreement Renewal with Burgess & Burgess, Inc. for renewal of OWRB Lawton office lease. Withdrawn*
  5. *Lease Agreement Renewal with Mori White for renewal of OWRB Woodward office lease. Withdrawn*
  6. Professional Services Contract with Record Solutions, Inc., Jann Hook.
  7. Professional Services Contract with Sparks Write, Inc., Terri Sparks.
  8. Professional Services Contract with WK Morris Consulting, LLC, W. Kenneth Morris.
  9. Second Amendment to Interagency Agreement with Grand River Dam Authority for yield study of Grand and Hudson Lakes.
- E. Applications for Temporary Permits to Use Groundwater:
1. Absentee Shawnee Tribe, Cleveland County, #2009-568
- F. Applications to Amend Temporary Permits to Use Groundwater:
1. Deer Creek Water Corporation, Oklahoma County, #1977-785
  2. City of Hinton, Caddo County, #1998-590
- G. Applications for Regular Permits to Use Groundwater:
1. Thackerville Water-Sewerage, Solid Waste & Gas Rural Water District No. 2, Love County, #2007-559
- H. Applications to Amend Regular Permits to Use Groundwater:  
None
- I. Applications to Amend Prior Rights to Use Groundwater:  
None
- J. Applications for Regular Permit to Use Stream Water:::  
None
- K. Forfeitures of Stream Water Rights:
1. Eugene & Glendora Harting, Logan County, #1974-359
  2. Eugene & Glendora Harting, Logan County, #1974-360

3. Glendora Haring c/o Glenhaven Farms, Logan County, #1976-109
4. J. L. Ratcliff & E. J. Browder, Nowata County, #1980-198
5. Estate of Lucille Hurd, Adair County, #1955-303

L. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:

- |    |   |          |
|----|---|----------|
| a. | Licensee: Nick's Pump Service                                   | DPC-0784 |
|    | 1. Operator: Nick Cunningham                                    | OP-1752  |
|    | Activities: Water well pumps                                    |          |
| b. | Licensee: Homestead Drilling, LLC                               | DPC-0786 |
|    | 1. Operator: Timothy Davis                                      | OP-1757  |
|    | Activities: Groundwater wells, test holes and observation wells |          |
|    | Pump installation   |          |
|    | Heat exchange wells   |          |
| c. | Licensee: Erwin Water Well Drilling                             | DPC-0790 |
|    | 1. Operator: Henry F. Erwin                                     | OP-1760  |
|    | Activities: Groundwater wells, test holes and observation wells |          |
| d. | Licensee: Vista GeoScience, LLC                                 | DPC-0788 |
|    | 1. Operator: John V. Fontana                                    | OP-1758  |
|    | Activities: Monitoring wells and geotechnical borings           |          |
|    | 2. Operator: Jason Skjaret                                      | OP-1759  |
|    | Activities: Monitoring wells and geotechnical borings           |          |
|    | 3. Operator: Daniel Buchan                                      | OP-1762  |
|    | Activities: Monitoring wells and geotechnical borings           |          |
|    | 4. Operator: Kenneth K. Fanatia                                 | OP-1763  |
|    | Activities: Monitoring wells and geotechnical borings           |          |
|    | Operator: Richard Freeman                                       | OP-1764  |
|    | Activities: Monitoring wells and geotechnical borings           |          |

2. New Operators and/or Activities for Existing Licenses:

- |    |   |          |
|----|---|----------|
| a. | Licensee: Layne Western   | DPC-0123 |
|    | 1. Operator: John L. Vanholt                                    | OP-1753  |
|    | Activities: Groundwater wells, test holes and observation wells |          |
|    | 2. Operator: Burdette C. Thayer                                 | OP-1754  |
|    | Activities: Groundwater wells, test holes and observation wells |          |
|    | 3. Operator: Randy G. Crowl                                     | OP-1755  |
|    | Activities: Groundwater wells, test holes and observation wells |          |
| b. | Licensee: Leonard Water Services, Ltd.                          | DPC-0710 |
|    | 1. Operator: Robert E. McAnelly                                 | OP-1756  |
|    | Activities: Pump installation                                   |          |
| c. | Licensee: Taylor & Associates, Inc.                             | DPC-0413 |
|    | 1. Operator: Marvin Gulley, III                                 | OP-1761  |
|    | Activities: Monitoring wells and geotechnical borings           |          |
|    | 2. Operator: Harley Sadler                                      | OP-1765  |
|    | Activities: Monitoring wells and geotechnical borings           |          |

- |              |                                  |          |
|--------------|----------------------------------|----------|
| d. Licensee: | Able Environmental Drilling, LLC | DPC-0746 |
| 1. Operator: | Eric T. Haley                    | OP-1698  |
| Activities:  | Pump installation                |          |
| 2. Operator: | Cody Roberts                     | OP-1005  |
|              | Pump installation                |          |

M. Applications to Construct, Enlarge, Repair or Alter Dam and/or Spillway:

1. City of Ponca City, Kay County, #OK11017
2. Louis & Wyoma Spitz, Washita County, #OK30294

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

None

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the April 13, 2010 packet of Board materials

**Chairman Herrmann asked that the Board consider the Supplemental Agenda items before proceeding to the presentation on the Instream Flow Workgroup.**

**7. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS**

A. Contracts and Agreements Recommended for Approval

1. Resolution Authorizing Chairman to Sign Agreement and Contract with the Embassy Suites Norman - Hotel and Conference Center for Services Provided for the 2010 Governor's Water Conference and Water Research Symposium. Mr. Dean Couch noted the Board has approved the resolution before when trying to work out the specific language in the agreement with the facility. The dates for the conference need to be set, and so the resolution allows the chairman to sign the final document. The dates are October 26-27, 2010.

Dr. Taron moved to approve the resolution authorizing chairman's signature, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

B. Corrections to Regular Revised Agenda items, Well Driller and Pump Installer Licensing:

L.1. New Licenses, Accompanying Operator Certificates and Activities:

- |              |   |          |
|--------------|---|----------|
| a. Licensee: | Nick's Pump Service                           | DPC-0784 |
| 1. Operator: | Nick Cunningham                               | OP-1752  |
| Activities:  | <i>Pump Installation</i> (activity corrected) |          |

L.2. New Operators and/or Activities for Existing Licenses

d. Licensee:	Able Environmental Drilling, LLC	DPC-0746
1. Operator:	Eric T. Haley	OP-1698
Activities:	Pump installation	
2. Operator:	<i>Kodi</i> Roberts (spelling corrected)	OP-1005
	Pump installation	

Ms. Cunningham stated this item is for the correction of two items that appeared on the original agenda.

Mr. Fite moved to approve the items, and Mr. Nichols seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

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

A. Update Report on Oklahoma Comprehensive Water Plan Activities. Chairman Herrmann stated that Mr. Kyle Arthur was unable to attend today.

B. Update on Instream Flow Work in the Comprehensive Water Plan. Mr. Derek Smithee, Chief, Water Quality Division, stated to the members that in the development of the Comprehensive Water Plan there are several issues that needed some additional discussion, and one issue was the ability to evaluate stream flows, to not only address the needs of the public/private water supply, but also recreation, aesthetics, downstream water use reliability and dependability, and a myriad of other purposes. He said staff saw those as combined and believed that any holistic discussion of water planning must consider how we address assuring the use of water other than non-consumptive purposes. Pursuant to that discussion, staff contacted Dr. Barney Austin, and Mr. Smithee introduced Dr. Austin and spoke of his credentials and experience in developing instream flows. Dr. Austin worked for the Texas Water Development Board at the time that state was developing a water plan and spearheaded the instream flow effort there. He has since departed state service and works for a private consulting firm--Intera, which the Board has contracted with so that he can assist Oklahoma in developing an instream flow chapter for the Comprehensive Water Plan to ensure that all needs of all Oklahomans are met in the planning process.

Dr. Austin addressed the members and spoke about the activities of the instream flow workgroup. He said the group is composed of stakeholders in order to provide recommendations for the shape of an instream flow approach for the State. Intera has been retained to facilitate the process and to produce a report at the end. He said the term "instream flows" has been thought of in the past as primarily ecological, but it has evolved and is not defined as protecting recreation interests and water rights, but means the amount of water we need to leave in our streams to

protect all the interests in addition to those ecological stresses. In the OCWP planning process, it is important to consider the long-term sustainability and reliability of water resources. The advisory group is composed of 21 stakeholders and alternates each represents a different organization in Oklahoma, state and federal agencies, trade groups, and non-profit organizations and there has been good participation. Three meetings have been conducted to date, and there is a fourth today. He said the science of instream flow has progressed enormously in the past 20-30 years, mostly regarding the involvement of stakeholders, which will ensure the success of the program. He said he has brought to the OWRB the experience of programs that have not worked elsewhere; the goal is not to develop numbers, but to create a program. He said it is an evolving process, such as water resources planning.

Dr. Austin described the activities of the meeting this afternoon, and said it is anticipated the outline of the final report will form the chapter in the OCWP. He complimented staff of the OWRB who have been very responsive in light of the short time frame for the project, and he said he intends to have the draft report by the end of April for review by the workgroup, which will then be available for public review shortly thereafter. Mr. Sevenoaks asked if the members could be provided an executive summary and would it be circulated before public review, and if the group anticipated the definition of "beneficial use" would be changed. Dr. Austin said he hoped the information could be contained in about 50 pages, which may be able to be circulated. He said the idea is not to change a definition of beneficial uses, nor did he foresee any changes to existing water rights. Typical instream flow studies look at how much water you would like to remain in the streams after taking care of existing water rights and existing water uses. He mentioned the Texas program has no impact to existing water rights. There was additional discussion about having some level of flow, determining how much water [the state] would like there to be in a stream to protect uses, the situation in Georgia with Lake Lanier and operation by the COE during an extreme drought event, and what lessons have been learned from other groups. Dr. Austin said that in Texas stakeholders have come together to decide what levels are needed to supply all needs, and heavy stakeholder involvement will drive a successful program.

Chairman Herrmann commented about having attended earlier meetings of the group and what he believed it is important to understand is if done properly, instream flows actually increases certainty for consumptive users and those with discharge permits. He said the lesson from the Lake Lanier situation is to deal with issues before there is a problem; now is a good time to deal with it in Oklahoma because there is adequate water now and this will hopefully avoid a future train wreck. Dr. Austin said Texas has several basins that are over appropriated and there is no certainty, and people think they have a water right and it turns out they don't because too many permits have been issued, but there is clearly enough water [statewide]. He said Oklahoma has an opportunity to identify what basins might have additional water available, and also identify which basins need some form of protection.

Mr. Sevenoaks asked if the Texas Water Plan still contained the recommendation for a reservoir outside of Denton with water from Oklahoma. Dr. Austin said the Texas Plan is updated every 5 years, and regional plans are done 18 months before the state plan and that timing is close. He said he did not know if that is included but the plan is online. Dr. Austin talked about priorities during severe drought in Texas when water suppliers have priority over instream flow rights. Mr. Couch said that is what this group is putting together and what the Board will be deciding. Mr. Smithee commented that this planning process allows natural water management to evolve.

Chairman Herrmann asked if there were comments from members of the workgroup. Mr. Barry Bolton, Chief of Fisheries for the Oklahoma Department of Wildlife, addressed the members and made a statement that Oklahoma is blessed with abundant water resources and wise management will ensure future use for all Oklahomans. He said the future will be determined within the next few months, that while appropriations are based on average annual yields we can't predict weather patterns, there will be increase of water demands and possible interbasin transfers, along with numerous other demands that are impossible to project. He said other states recognize the need for instream flow protections, and he believed the time is right for Oklahoma, and the ODWC applauded the Board's willingness to look at instream flow protection in Oklahoma and pledged the ODWC's support.

There were no other comments by stakeholder representatives, or others. There were no other comments by members.

## **5. SPECIAL CONSIDERATION**

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

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

### **A. Application to Amend Regular Permit to Use Groundwater No. 1977-754, Kevin Paul Crook, Beckham County.**

1. Summary - Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that this was considered by the Board last month. She said it is an application to amend a regular permit to use groundwater in the name of Kevin Paul Crook in Beckham County. She said the applicant is authorized to take 80 acre-feet, has requested two additional wells, but the Board tabled consideration of the proposed order last month and asked for clarification on a condition of the proposed permit concerning metering. To meet a location exception, the original order would have placed conditions on the permit to restrict pumping to 240 gallons per minute and to pump only one well at a time. The applicant also agreed to pump water as prudently as possible and would not object to metering of the usage if the protestant had reason to believe the tenant pumped improperly. As a result, the proposed order included metering upon complaint. In response to the Board's discussion and tabling, the hearing examiner has proposed a second proposed findings of fact, conclusions of law and Board order which includes terms for a metering provision where the permittee will install a metering device and begin metering immediately upon use of the water, and report monthly water use to the

Board as part of the annual reporting. She said the proposed order was mailed to the parties along with a letter explaining staff recommendation. Since the mailing, the applicant has expressed concern about metering immediately upon use and favored another way of monitoring or accounting for the water. Ms. Cunningham stated staff recommended approval of the proposed order presented today. Mr. Couch noted the language added on page 5012 of the packet, which is more specific and contains a trigger when the metering is to begin which is with first use of water, whereas previously it was open-ended.

2. Discussion and presentation by parties. Mr. Crook addressed the members and stated he has been in the process over the past year to obtain the water permit to change locations of the wells. He appreciated the Board's consideration of the case, and his neighbors as well. He wanted to assure the Board that he would be as prudent as possible and will keep logs of water use. He said it is an 80-acre farm and it is a substantial cost to meter, and he committed to keep good records. He asked the Board to reconsider the metering. Ms. Lambert asked about the cost, which he answered is estimated at \$1,500-\$2,000. He believed he would be able to be fairly precise, and would provide records as the Board requested. Mr. Nichols asked if the irrigation system was a side-roll system, and Mr. Crook replied that it is.

Mr. Strong asked Ms. Cunningham if staff received comments from the protestants on the second order, and had the protestant's moved? Mr. Crook said he wasn't sure which neighbor had protested, but one had moved, and he knew the neighbor on the south was concerned about a stock tank as there are farmers on the west and the east. He said, though, he (neighbor) had recently sold the property. Mr. Drummond asked if the protestants had requested metering, and Ms. Cunningham said it was a question at the hearing, and the applicant offered he would not be opposed, so that was included in the proposed order. The only addition now is the new terms for metering that has come about because of the last meeting.

Mr. Nichols pointed out that a permit for a new pivot system is required by NRCS through the OWRB to have a flow meter to determine gallons per minute. This is a side roll system; and there is a difference between a flow meter, and a meter. Mr. Couch said the applicant is discussing as an alternative proposal that use can be calculated by use of electricity over time multiplied by the capacity of the well without a cumulative meter. Mr. Crook said he could determine flow capacity and it would just be a matter of time to calculate. Mr. Couch asked that as an alternative that the metering requirement not be included; and Mr. Crook said he didn't think it should be required because he can calculate fairly accurately. Mr. Sevenoaks said there are two questions, and what is being discussed now is how to meter water. He said that what needs to be decided is that through the OCWP the Board can decide whether metering should be required; the other issue is this specific case and regards well spacing. He said the neighbor was uncomfortable the water would be drawn down, and the question last month is whether the metering could be or should be required/asked, and if it would be done at the beginning or not. He said his concern was whether the Board would be involved again if the protestant were to come back, and its either going to be measured or it isn't. Ms. Lambert said there are two ways to measure.

Mr. Strong said the original order provides staff flexibility about how and whether the water use should be measured and metered, on a complaint basis. The neighbor could complain the livestock water is effected and staff can ask for measuring as listed in the terms. He suggested staff be allowed the flexibility that are in the original terms, without the additional terms, to determine when and how to meter based upon the true impact, and with only pumping

one well at a time should alleviate some spacing requirements. Ms. Lambert said, regarding the wording on page 5011, if "shall meter" should be "may meter"? Mr. Strong said it is stated, "in accordance with terms directed by Board or staff." Mr. Nichols suggested using the language on page 5012, 2., that the records be kept monthly, or whatever is acceptable to staff. He said he wanted to avoid requiring a meter, and believed the records could be kept accurately and submitted timely.

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.

After further discussion about the proposed language on page 5012, and whether there is flexibility to staff in the language on page 5011, Mr. Drummond moved to amend the recommendation to approve the order without the language on page 5012.

Mr. Couch asked if the word "meter" was a problem, and could say "shall determine his use and report some determinations to the Board." Mr. Nichols was concerned an attorney could read that to mean a meter. Ms. Cunningham suggested the word "measure."

Chairman Herrmann said there was no second to the motion, and Mr. Nichols seconded the motion. Ms. Lambert questioned the use of the word "meter" in the last paragraph on 5011 and said it needed to be clarified whether that is a physical thing or a recording process. Mr. Nichols asked Mr. Drummond to amend his motion; Mr. Drummond said then, "to measure his usage." Chairman Herrmann suggested the motion be restated.

Mr. Drummond moved the order be amended with the language on 5011 to read, "The permittee shall measure his usage from his wells, and report the results of such measuring to the Board in accordance with terms directed by the Board or its staff." And that provisions on page 5012 be removed. Mr. Nichols seconded the motion.

Chairman Herrmann said this would avoid whether the Board has the authority to require metering, and Mr. Nichols added if the parties had appeared last month the Board could have settled the issue.

There were no further questions or discussion, and Chairman Herrmann called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Sevenoaks commented during the vote about his concern how the Board should deal with well spacing, whether through Comprehensive Water Plan, whether there has been hydrologic study of a basin, and that there should be a definition about measuring water.

Ms. Lambert asked that staff report back as to what the terms are so that the "circle" is closed.

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. Strong said that since the departure of the Board's comptroller, Ms. Leslie Nance has stepped up and worked many extra hours and has been completely invaluable during this budget time. Ms. Nance stated to the members said there were no changes to the FY10 budget as presented. She said the agency is currently preparing for possible additional cuts in the FY11 budget. There were no questions.

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

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

**8. NEW BUSINESS**

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

There were no New Business items for the Board's consideration. However, Mr. Drummond noted the May meeting will be Mr. Keeley's final meeting. Mr. Nichols asked about whether the Board could look at holding a meeting outside the Oklahoma City area. Mr. Strong mentioned once the budget is completed, it will be known if there is travel budget available.

**9. ADJOURNMENT**

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:25 a.m. on Tuesday, April 13, 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

\_\_\_\_\_/Absent\_\_\_\_\_  
Kenneth K. Knowles

\_\_\_\_\_/s/\_\_\_\_\_  
F. Ford Drummond

\_\_\_\_\_/s/\_\_\_\_\_  
Joseph E. Taron

***ATTEST:***

\_\_\_\_\_/s/\_\_\_\_\_  
Linda P. Lambert, Secretary  
(SEAL)