

**OKLAHOMA WATER RESOURCES BOARD
SPECIAL MEETING
OFFICIAL MINUTES**

June 11, 2010

1. Call to Order

The special meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudolf J. Herrmann at 9:30 a.m., on June 11, 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 June 9, 2010, at 4:40 p.m. at the Oklahoma Water Resources Board's offices.

2. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Mark Nichols, Vice Chairman
Linda Lambert, Secretary
Marilyn Feaver
Ed Fite
Kenneth Knowles
Joe Taron

Board Members Absent

Ford Drummond
Richard Sevenoaks

Staff Members Present

J.D. Strong, Interim Executive Director
Dean Couch, General Counsel
Mary Lane Schooley, Executive Secretary

Others Present

Larry Derryberry, Oklahoma City, OK
Pete Serrata, Oklahoma City, OK
Wayne Wylie, Durant, OK
Steven Jolly, Arbuckle Master Conservancy District, Davis, OK
Senator Jim Wilson, Tahlequah, OK
Representative R.C. Pruett, Antlers, OK

(Attendees Continued)

Amy Ford, CPASA and ORWP, Durant, OK
Charlette Hearn, Broken Bow, OK
Stesha Ferguson, Oklahoma City, OK
Andrew Husky, Talihina, OK
J. Bryan Vest, Porum, OK
Deb Herrmann, Tulsa, OK
Brian McClain, Talihina, OK
Senator Jay Paul Gumm, Durant, OK
Harvey Arnold, Atoka, OK
Dean Post, Clayton, OK
Bob Jackman, Tulsa, OK
G. Calvin Sharpe, Oklahoma City, OK
Robert Cast, Mustang, OK
Rick Smenner, Eufaula, OK
Sam Sylvester, Eufaula, OK
Janna Walker, Oklahoma City, OK
Judy Allen, Durant, OK
Robert Campbell, Oklahoma City, OK
Pennie Embry, Eufaula, OK
Gary Batten, Durant, OK
Alene Arniel, Atoka, OK
Jim Cox, Coalgate, OK
John F. Medlers, Talihina, OK
Don Faulkner, Talihina, OK
Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK
Shaun Lepard, Lepard Consulting, Oklahoma City, OK
Jimmy Westbroom, Valliant, OK
Kinsey Money, Oklahoma City, OK
Marsha Slaughter, City of Oklahoma City, OK
John Estes, Oklahoma City, OK
Michael Strain, Bethany, OK
Jeff Shockley, Poteau, OK
Jill Femull, Valliant, OK
Roy Alford, Red Oak, OK
Bill Case, Midwest City, OK
Representative Brian Renegar, McAlester, OK
Representative Paul Roan, Tishomingo, OK
Melissa Hunter, Oklahoma City, OK
Senator Jerry Ellis, Valliant, OK
David Martinez, Oklahoma City, OK
Priscilla Crawford, Oklahoma Biological Survey, Norman, OK
Representative Dennis Bailey, Broken Bow, OK
Craig B. Keith, City of Oklahoma City, OK

Justin Martin, Oklahoma City, OK
Leslie Taylor, Delaware Nation, Anadarko, OK
Representative Ed Cannaday, Porum, OK
Angie Burkhalter, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Senator Don Barrington, Lawton, OK

Chairman Herrmann recognized special guests attending the meeting: Chief Greg Pyle of the Choctaw Nation; Senator Jay Paul Gumm, Senator Jim Wilson, Representative Brian Renegar, Representative R. C. Pruett, Representative Paul Roan, Senator Jerry Ellis, Representative Dennis Bailey. He thanked them for attending.

Chairman Herrmann stated the meeting today is to consider a water storage contract transfer agreement between the Oklahoma Water Resources Board and the Oklahoma City Water Utilities Trust involving water conservation storage rights in Sardis Lake. He noted the agenda and explained the order of business. There would not be a proposed executive session at the beginning, but would be held as a possibility in abeyance until comments and questions raised that members may want to discussions with legal counsel. He said J.D. Strong will review the proposed contract transfer agreement and the financial ramifications of that, and 30 minutes will be allowed for those members of the audience that wish to speak in favor of the proposed transfer agreement and those members of the audience that wish to speak in opposition to the proposed transfer agreement will also have 30 minutes. There will be a recess following the introduction of the order of business, and during that recess Chairman Herrmann encouraged those who wish to speak to caucus among themselves to make the best possible use of time allotted; the 30 minutes is inclusive of the questions by Board members.

Chairman Herrmann said it is important for everyone to remember that the agenda item is a water storage contract transfer agreement; it is not related to the issuance of a water use permit. The water permit application process which will include appropriate public notice and opportunity for proper public hearing that may at some later date come before this Board depending upon the outcome of the public hearing process, but that is the appropriate forum for those issues pertaining to water rights to be addressed. He said he will ask anyone speaking too much about water rights permit issues to move along as the matter at hand is the contract transfer agreement. He said there will be opportunity for public comment before there is a motion on the table for the Board to consider. Also, he asked speakers not to be repetitive; that different perspectives and points of view be presented, and not the same repeated, which would be more useful for the Board.

Chairman Herrmann read the names of those persons who had indicated on the sign in form they wishes to speak. Other state officials who joined the meeting were: Senator Don Barrington, Representative Ed Cannaday, and Representative Neil Brannon. He then recessed the meeting at 9:40 a.m.

Returning from the break, Chairman Herrmann recognized Ms. Brenda Edwards, Chairperson of the Caddo Nation. He noted there had been several letters received by the Oklahoma Water Resources Board, some in the past and some delivered as recently at today and the Board has reviewed the letters during the break, but he wanted to assure the Board has been provided the information.

3. PROPOSED EXECUTIVE SESSION

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(4) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of confidential communications between a public body and its attorneys concerning a pending investigation, claim or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing the pending litigation styled *United States v. State of Oklahoma and OWRB*, CV-98-00521, relating to the payment for construction of Sardis Reservoir, in the United States District Court for the Northern District of Oklahoma, and a pending investigation and claim of Oklahomans for Responsible Water Policy and others relating to the proposed transfer of contract rights to water supply storage in Sardis Reservoir.

A. Vote on whether to hold Executive Session – before an executive session can be convened, it must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

The Board did not vote to enter executive session.

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

There was no designation.

C. Executive session, if authorized

There was no executive session.

4. VOTE ON MATTERS DISCUSSED IN EXECUTIVE SESSION - Return to open meeting and possible vote on any matter discussed in the Executive Session

There was no executive session and therefore no vote.

5. CONSIDERATION OF AND POSSIBLE ACTION ON RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF STORAGE CONTRACT TRANSFER AGREEMENT BETWEEN OKLAHOMA CITY WATER UTILITIES TRUST AND OKLAHOMA WATER RESOURCES BOARD RELATING TO TRANSFER OF RIGHTS TO USE THE CONSERVATION STORAGE CAPACITY IN SARDIS RESERVOIR TOGETHER WITH ALL THE OWRB'S OBLIGATIONS UNDER THE 1974 CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE STATE OF OKLAHOMA WATER CONSERVATION STORAGE COMMISSION ("1974 CONTRACT"), ASSUMPTION BY OCWUT OF REPAYMENT OBLIGATIONS SET FORTH IN THE 1974 CONTRACT SUBJECT TO THE PROVISIONS THEREOF, PAYMENT BY OCWUT OF PAYMENT REQUIREMENTS SET FORTH IN THE U.S. DISTRICT COURT'S SEPTEMBER 2009 ORDER IN UNITED STATES V. OKLAHOMA, UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF OKLAHOMA CASE NO. CV-98-00521, UTILIZATION OF THE RIGHTS TO USE THE CONSERVATION STORAGE CAPACITY IN SARDIS

RESERVOIR, AND CONTAINING OTHER TERMS AND CONDITIONS RELATING THERETO; AUTHORIZING EXECUTION OF SUCH OTHER AND FURTHER INSTRUMENTS, CERTIFICATES AND DOCUMENTS AND TAKING SUCH OTHER ACTION AS MAY BE REQUIRED FOR THE EXECUTION AND PERFORMANCE OF THE AGREEMENT; AND CONTAINING OTHER PROVISIONS RELATING THERETO. Recommended for Approval.

Mr. J.D. Strong, Interim Executive Director, stated to the members that before the Board is a resolution to approve and authorize the Water Board members to execute the transfer agreement. The transfer agreement itself -- which initially a draft was provided to the members in March (2010) and has only been slightly revised since that time -- only transfers water storage, not water rights. The water rights issue will be addressed in a separate process that involves application, public notice, hearings if protests, consideration of the Board order recommending approval or denial of the permit, and include conditions on the amounts of water, location of diversion, lake level protection, and instream flow protections.

Mr. Strong said that specifically, the transfer agreement includes the transferring of all Oklahoma Water Resources Board water rights and obligations under the 1974 contract, recognizes the transfer of contract rights and requires U.S. Army Corps of Engineers (COE) approval -- even though such approval is not precedent to such agreement -- acknowledges and protects the storage of 20,000 acre-feet of water for beneficial use in southeast Oklahoma, including the minor amount already subcontracted to the Sardis Lake Water Authority, and recognizes the OWRB jurisdiction over water rights administration, including specific mention that any existing rights will not be abridged. The Oklahoma City Water Utilities Trust (OCWUT) assumes all debt and obligation under the contract while at the same time understanding that such does not guarantee or prejudice any pending application for stream water appropriation, and the agreement obligates Oklahoma City to provide funds for the payment that is due July 1, 2010, per the September 2009 federal district court order. Oklahoma City agrees to reimburse the State \$15 million for its prior payment and cost in managing the contract rights upon COE approval of the transfer of the contract (modification to draft), and obligates Oklahoma City to make all ongoing payments including operation and maintenance costs per the 1974 contract. The agreement recognizes other laws and regulations that must be complied with such as the OWRB requirement for lake level management plans (OWRB Chapter 20 rules), makes it clear that any water ultimately obtained will be used solely within the State of Oklahoma, all local state and federal laws will be complied with before any release or diversion of water, including all federal laws such as National Environmental Protection Act, Endangered Species Act, and Clean Water Act, etc.

Mr. Strong said it would be useful to summarize briefly where we are today and the history of the construction of the reservoir. He said looking to the 1950s where there was a change from what originally would be a dry, storage-only flood control reservoir, to a reservoir in which significant storage was added for water supply. A public hearing was held in Hugo in 1956 where Senator Bob Kerr and Congressman Carl Albert, along with officials from Oklahoma City, Dallas and Fort Worth, testified to their future needs for water and ultimately added to the justification of the construction of additional water supply storage in this, and several other Kiamichi Basin reservoirs. Mr. Strong said the State of Oklahoma entered a contract with the COE for the construction of Sardis on February 16, 1974; the State acquired

present and future use water storage space to impound water for present and anticipated future demand or need for municipal and industrial water supply. The State agreed to repay the cost of construction, which was originally estimated to be \$16.4 million and upon completion totaled about \$38.4 million. The obligation was then further divided into a present use obligation -- 48% of the storage -- and a future use obligation which equated to 52% of the storage; the present use obligation was payable in 50 annual installments and the future use obligation does not require payment be made until the future use storage is first used, with payments amortized over a 50-year period. Additionally, under the contract the State is required to pay the COE for annual operation and maintenance costs as well as the cost of any major capitol replacement of any specific water supply facilities. Since completion of the lake in 1983, the state has only paid \$7.3 million of its obligation, and of this amount at least \$1,019,327.00 was attributable to annual operation and maintenance costs. The original strategy was for the State to service the debt and pay the annual operation and maintenance costs by selling water from the lake to Oklahoma communities, the most likely of which was Oklahoma City based upon more than 50 years of history and transcripts of hearings and speeches made by leaders, many of which were from southeast Oklahoma and were instrumental in getting the reservoir built originally.

As we all know, Mr. Strong stated over the course of 30-plus years since the reservoir became operational, no contract to transfer Sardis water storage ever materialized nor did the Legislature appropriate sufficient funds to service the debt over all those decades despite the Water Board's annual attempts, including this year, to request such funds. As a result, the State has been unable to pay the obligation. Regarding litigation, the State and the COE have been in litigation since 1998 over the State's failure to make its payment under the contract. On September 3, 2009, the United States District Court for the Northern District of Oklahoma ordered the State to pay \$21.8 million in past due, present-use obligations, and more than \$38.2 million, plus compounding interest, on its future use obligation, current and future use operations and maintenance charges, and joint use repair, rehabilitation, and replacement costs related to the lake. The initial payment, under the 2009 order, was made by the State last year; however, due to the deteriorating FY2009 State budget, State leadership, including leaders in the both the Executive and Legislative branches, agreed the State would be unable to make the next July 1, 2010 payment, or future required payments. At that time, these leaders began negotiations in earnest with the only Oklahoma water supplier to put an offer on the table -- Oklahoma City -- to transfer the storage rights and payment obligations to the City, and a coalition of central Oklahoma communities which have expressed a genuine interest for the water. There is a federal court deadline of July 1, and the potential implications on default on the court order range from the federal government finding some other entity to acquire the storage and assume the debt, to intercepting federal aid coming to the State until it is satisfied (road dollars, Medicaid or any other federal funds coming to the State). He said no one knows of course what a judge might do, but these are some options; this does not foreclose the OWRB's ability to continue discussions with southeast Oklahomans and Tribes to protect their rights and interests, including recreation, fishing, future economic development in southeast Oklahoma, before any water is transferred from the basin.

Mr. Strong stated to the members that the agreement before them, through the resulting draft agreement presented by staff, the OWUT acquires the State's present and future use storage rights under the contract, which does not include 20,000 acre-feet reserved by the OWRB for local and regional use, the State receives as consideration, the following: \$15 million cash upon the COE approval of the transfer, over \$41 million in present use payments to be made over 23

years, \$38.2 million plus compound interest over a 50-year period, and penalty interest -- interest on top of interest that was included in the contract for failure to make payments -- annual operation and maintenance charges averaging \$140,000.00 per year for just the present use portion making the present value of this assumed obligation nearly \$3.5 million and unknown amount of future repair, rehabilitation and replacement costs related to the lake, and the entry into a lake use and management plan to protection of recreational uses of the lake. He stated that according to State Treasure Scott Meacham's calculations, this equates to a total measurable consideration to the State of \$270, 266,594.00 plus retention of 20,000 acre-feet of water for local and regional use plus a lake level management plan to protect recreational use of the lake, plus avoidance of future repair, rehabilitation and replacement costs related to the lake. He said that in sum, the agreement before the Board lifts what ultimately equates to an over \$270 million debt off the back of Oklahoma taxpayers, while at the same time providing a valuable future water supply option to central Oklahoma communities and maintaining Oklahoma's ability to further discuss and evaluate the concerns of Tribal Nations, southeast Oklahomans, and others before authorizing actual withdrawals.

Chairman Herrmann invited questions from Board members. There were no questions.

Before taking any action on the proposed resolution, Chairman Herrmann moved ahead on the agenda to invite comments.

6. COMMENTS FROM BOARD MEMBERS, STAFF AND CITIZENS

Chairman Herrmann invited comments by citizens who are in favor of the proposed transfer agreement to speak to the Board.

1. Mr. Jim Couch, City Manager, Oklahoma City, stated to the members that he is the only speaker in support of the transfer, and he has been working on the project for over 15 years. His first trip with a former Secretary of Environment was to Antlers in 1995 with former Mayor Ron Norick, and expressed interest in assisting the State in this issue. He said as he listened to Mr. Strong outline the agreement, he said he understood Oklahoma City is picking up all the debt, paying \$15 million once the Corps of Engineers approves the transfer, picking up the obligation for the future water obligations costs associated, picking up the annual operation and maintenance costs for the facility; will work toward a lake management plan, and understand none of the water can go outside the State of Oklahoma and only for the benefit of Oklahomans, and also understands there is no real property, just a contract for storage rights, and yet are still willing to go forward. He said there is no need for this water for many decades and there will be a long time before there is change (in the area) and before central Oklahoma has a need for the water, but the City still thinks its important to have future plans to take care of the growth for central Oklahoma. This is not only for Oklahoma City; a coalition of communities is forming from Seminole and Shawnee, to Edmond, Chickasha, Canadian County, Norman, Moore, Midwest City, an area that encompasses about one-third of the State's population. He said all these communities may not be there at the end of the day, but they are working proactively to make a global solution for the entire central Oklahoma.

Mr. Couch said that Oklahoma City has storage right contracts in two other facilities: Canton Lake, the City owns the storage rights since about 1988. He said it is a COE facility and the operation would be similar with Sardis. Secondly, McGee Creek Reservoir is a Bureau of Reclamation facility but very similar relationship with that particular reservoir with the City of

Oklahoma City, the Oklahoma City Water Utilities Trust, the County of and City of Atoka, and the South Oklahoma Development Trust. He said there has been interest in this water for central Oklahoma since the 1950s and he believed one of the purposes would be to supply water to central Oklahoma. He said Mr. Strong concisely stated the terms of the agreement and he would entertain questions.

Chairman Herrmann asked Mr. Couch to stat his understanding of the fact that this is not related to the issuance of a water permit but is strictly a water storage contract matter. Mr. Couch answered that just as with the other reservoirs mentioned, that is entirely separate issues, and the only issue before us today is trying to purchase what the State has in a contract with the federal government for storage rights in Lake Sardis, it does not include water rights applications; they have made a water right application but that needs to be heard under a separate time.

There were no other questions by Board members. There were no other members of the public that wished to speak in favor of the transfer agreement. Chairman Herrmann stated he will allow Mr. Couch the opportunity to respond to any questions that may arise during the time allotted for the opposing side.

Chairman Herrmann invited comments by citizens who wished to speak in opposition to the transfer agreement to come forward.

1. Chief Greg Pyle, Choctaw Nation, approached the Board and stated he had been in administration for almost 30 years. The Tribe provides 8,000 jobs in their area and economics is something they really appreciate and helps all Oklahomans, and that is what he is interested in. He said he was proud of the Legislature about four years ago when it passed a bill authorizing a study for water for the entire state of Oklahoma. He said he is mystified why there would be a decision on water for the entire state here without waiting for one year. If it has to do with money, his Council has passed resolutions, has talked about it, and has sent it to the Governor they are happy to make up the \$5 million. He said they would make the past payments also. He said he is very concerned about the way we are doing it--he said we support the troops as much as anyone in the United States they are fighting for our freedoms and we are talking about having the chance to have good information. He said it happens in legislation in Congress when after passing legislation people admit they didn't have good information on it. He said he personally has found that if he doesn't have good information he may be 50% right and 50% wrong. To be able to pass something this important without waiting the year for the plan to come in to have excellent information is what is happening in Washington today. He said the Board has made good decisions along the way as it has had good information. Regarding jurisdiction, he said he did not believe the State has jurisdiction over the Tribes nor this body, and not trying to say you're not doing a good job, you are, but also they'd like to have their own plan, verify it, take the time to do it right because they don't want another Atoka where when the water is taken there is nothing but a mud hole. He said the proposal to take 90% of available water that is not needed for at least 20 years is "way out" and he encouraged the Board to take the time to do it right. He said he and Governor Anoatubby penned a letter offering to make all payments. He said he appreciated the members of the Board for taking their time and encouraged the Board to do it right.

Chairman Herrmann asked for clarification about the latter, and Chief Pyle said the letter is dated June 7, 2010. Chairman Herrmann stated the Board did have a copy in the meeting materials.

Mr. Ed Fite asked if the Choctaws were working on a separate water plan, and Chief Pyle responded they have plans to do that, but have not started a plan as yet. Dr. Taron asked who would be involved in making that plan, the Choctaw and Chickasaws? Chief Pyle answered that would be the beginning, but they would want to include all of southeast Oklahoma and the rest of the State. He said they would like to see this study and what is in it, and to verify with experts and have some science behind what they do--good information makes a good decision; they would want everyone's input and have public forums. Ms. Lambert asked if this plan then would be separate from the OWRB strategic 50-year water plan; and Chief Pyle said it would be in addition and also could be separate.

2. Senator Jerry Ellis approached the Board and asked the members of the Legislature in attendance to stand; he said they would not be speaking, and he introduced each member noting most are from the eastern part of the State. Senator Ellis said he did not believe the storage rights and who receives the permit application can be separated. He said you've already gone down the road when you've set the storage rights; its like separating groundwater from surface water. He said this deal is being rushed through and as the City Manager for Oklahoma City just said the water is not needed for decades and there is no sense in making a decision today. He said the deal is rushed by term-limited politicians and is cloaked in secrecy and lacks transparency. Studies must be completed for citing factual scientific data. He said to transfer water before the statewide water study, which was mandated by the Legislature, is completed would make the study a joke. Many Native American Tribes as are represented here, a large number of Oklahoma Legislators, Congressman Dan Boren, County Commissioners, three of the candidates running for Governor, and soil conservation and agriculture groups, plus thousands of Oklahomans are opposed to this application being heard at this time. He said the Oklahoma City plan threatens any sustainable development in southeastern Oklahoma and will result in the citizens of southeastern Oklahoma being adversely effected leaving no other choice than litigation. Senator Ellis stated the Sardis Lake area had suffered long enough; years ago the citizens of the area lost their homes, farms, ranches, businesses and cemeteries relocated and they have not received a dime of tax money for the schools and instead after having submitted two water permits in 1993 have been ignored. He said they believed the OWRB loaded the City of Hugo with water use permits to facilitate a Texas water deal. He said Sardis Lake is located in his state senate district, and he respectfully requested the two aforementioned water permits from 1993 be heard first. He added the Board has nine members but none live in the southeast quadrant where this water is located, and asked the Board to address this discrimination.

There were no questions by the Board.

3. Senator Jay Paul Gumm, representing Senate District No. 6 includes Atoka, Coal, Johnson, Marshall and Bryan Counties. He said approval of this contract would be the Oklahoma Water Resources Board abdicating its statutory authority to manage state waters, handing instead over to Oklahoma City. He asked if those in southeast Oklahoma are to truly believe that Oklahoma City, should it get the storage rights, will truly have the best interest of the constituents he serves at heart; absolutely not, he contended. He said they have yet to be

engaged in or a part of the discussion; it's a rush to justice, to make the decision before certain terms of certain politicians end at the end of the year. He said he believed it is a crisis that's been created; there are other options on the table that will allow for the payment of the debt on Sardis Reservoir. He said there is a chance we have gotten to this point not by accident but by design. As southeast Oklahoma works to grow the economy, they struggle with absentee landlords; they do not invest in the community and have no stake in the community and only see the resource as a means to generate dollars. He said agreement of the contract today by the OWRB would set up Oklahoma City to be an absentee landlord. He said the misguided deal would establish two classes of Oklahomans: rural Oklahomans who through choice or providence live near amazing natural resources and the other side is metropolitan residents, leaders of which feel entitled to pillage resources without engaging those who have it, without vetting the impact of taking the resource, and without providing adequate compensation to a region for use of the God-given resource. This proposed contract, he stated, is not in Oklahoma's best interest, and in the long term this is not the final say, and it is not in Oklahoma City's best interest. Approval of the contract will only benefit attorneys with expertise in water law because this is not the end of the discussion. Senator Gumm said southeastern Oklahoma will not stop fighting to preserve the future and the opportunity for the generations yet unborn.

Mr. Nichols asked if there were any attempts during the session by either house to come up with the payment. Senator Gumm answered there have been attempts over time to find a way to pay the debt. He said while as an intern in Congressman Wes Watkins' office in 1984, at a staff meeting it was discussed what would happen with Sardis. There has always been discussion which is why there is the belief this is by design that we are where we are today because there have been times we've had the resources to make those payments and for whatever reasons leadership has decided not to do so. Mr. Nichols asked if this session there was an attempt, and Senator Gumm answered those on the side of southeastern Oklahoma were willing to step up and pay for that debt. He added there is another option on the table, the Choctaw and Chickasaw Nations have been willing to step up and pay the debt. He said this is not the only option, despite rhetoric to the contrary, to preserve opportunity and give a chance for the statewide water study to be completed.

There were no other questions by the Board.

4. Senator Jim Wilson from District 3, said Senator Ellis and he had a press conference about this issue several months ago; they were concerned then and are now. He said his big concern is the method and how the transaction is being carried out. He believed it underhanded but it doesn't have to be that way as there is room for a coordinated effort, and Oklahoma City can be a customer, but there needed to be control. In attempting to determine the value of this asset he spoke with wealthy people who were willing to put up the money (not the Tribes) to keep it under local control. Money is a red herring, this is an excuse to sell cheap, and excuse to sell to Oklahoma City. He likened the situation to that of a man forcing himself upon a woman and because he paid \$20 dollars, he absolved himself of responsibility. He said that is what is being asked today, to rape southeastern Oklahoma for a 20-dollar bill.

There were no questions by the Board.

5. Representative Brian Renegar, of Blanco, said he has many constituents that can see Lake Sardis but still drink pond water. He said the City of Oklahoma City is not saving the State of Oklahoma from indebtedness. Two years ago the Legislature passed a bond issue appropriating

\$25 million to Oklahoma State University, \$25 million to the University of Oklahoma to fund chairs and also \$16 million to Tulsa for dams on the Arkansas River that the city had voted down. He said at that time several legislators went to the Speaker and asked that Sardis Lake be added, and were told that has already been worked out, which is what we are seeing today. He said regarding the water study, the OWRB comes to the Legislature when it needs money but not when it needs directions, and with this action today the water study is being thrown out the door. He asked if it would be appropriate for the Legislature in FY2012 to subtract the money spent on the water study from the agency's appropriation for next year.

There were no questions by the Board.

6. Representative R.C. Pruett thanked the Board for the opportunity to address them. He said his District is No. 19, where most of Sardis Lake is located. He said Sardis Lake and water has always been very important to southeast Oklahoma as well as Oklahoma; the Kiamichi River basin is the most prolific part of the state, and provides some jobs in the area. He said that is the most economically depressed part of the State, the lowest per capita income, the highest unemployment and they are trying to determine how water in the present form will help them move into the future. People fish and boat in the lake and that brings recreational income and supports local businesses so he said they are concerned about anything that will interrupt that. Regarding the sale of the lake, he said Title 74 states anything sold by the State should be appraised, and if over \$1 million assets should be sold for no less than 90% of the value. He said he doesn't know the value of the lake; there are others that could come to the table, perhaps several counties within the basin, but they weren't given the opportunity. Representative Pruett thanked the Board members for their service and said he knew it wasn't always easy making decisions.

There were no questions by the Board.

7. Ms. Charlette Hearn, President, Oklahomans for Responsible Water Policy, thanked the members for the opportunity to speak. She said they are gravely concerned about the allocation of over 90% of the storage in the lake because Oklahoma City first plans to buy the storage rights and then will get the water right; why else would they spend \$240 million? She said there has been a total disregard for environmental, economic, legal, and policy consequences in the proposal and under the contract there is no planning, no management, and no science. Because it is such a large allocation, even though the contract says there will be no sell of Sardis water to Texas, she questioned it; she said the bottom line is to allow the sell of water; ultimately 90% of the water rights with no regard to the basin of origin. She noted Texas A&M's review of its statewide water plan that addressed transferring water from a basin and so goes with it the economic development, tourism, and recreation, and the donor basin is left with environmental degradation. She said that someone would be paying the \$240 million; and in response to commitment for a lake plan, she showed photos of Atoka Lake. She said Oklahoma City will not need the allocation for 50 years, and asked if Oklahoma City would be the State's water czar, or the OWRB? She asked the Board if it would honor the water plan with a "no" vote, and suggested the Board is being held hostage to a single plan which will not take care of Oklahoma in the future. She said its about money that is due July 1, and if the Board passes the plan, she hoped they had the reserves for litigation for it is sure to come. On behalf of the all Oklahomans, she asked the Board to vote "no", honor the water plan, the basin of origin, and their way of life.

There were no questions by the Board.

8. Mr. Larry Derryberry, representing Oklahomans for Responsible Water Policy, said that in 1974 when the contract was entered into between the State of Oklahoma and the United States Army Corps of Engineers, he was Attorney General for the State and went to Washington to sign the contract. He said it is a complicated issue and he deemed it more than just water storage; it is about 136,000 acre-feet per year of water intended to be provided to the Oklahoma Water Utilities Trust by the State of Oklahoma. He said the Board is in a tough situation not by its making, the State was negligent in not fulfilling the contract but the Board is on the line. Those who have failed to act won't be involved in what is to come if the contract is approved. He said what is missing from this action is: the completion of the comprehensive water plan, bypassed legislative consideration, bypassed public input and consideration, lack of response to an Open Records Act request, and ignoring the admonition of the COE's approval of the agreement. He advised the Board of two concerns: there will be an appeal to the appropriate appellate process and he predicted winning, and that the people of southeast Oklahoma will come after the Board, the State of Oklahoma, and perhaps the Board individually for unlawful acts he believed would be committed today if approved. He said the Tribes had offered an opportunity he hoped the Board would consider.

Mr. Ed Fite said the members are dealing with the issue head on since he has been on the Board in 2005, with the information provided to them, and they don't converse as a group outside of the meeting room. He said the Board has asked about the issue, repeatedly and have showed leadership. Mr. Derryberry said he did not mean to impune the members but to simply advise.

Ms. Lambert said the Board's perception of unlawful acts is different, that while there are differing opinions the Board believes it has followed the law, and had followed the good advice of its General Counsel. Mr. Derryberry stated he had great respect for the Board's General Counsel, and it is not aimed at him and there is a difference of opinion and that the Board should weigh the consequences of the possibility that your counsel is wrong; a judge will decide who is right.

Dr. Taron said the Board been asked to consider the proposal by Chief Pyle, but it has no information about what goes with that offer. Mr. Derryberry said he had spoken with Chief Pyle and Governor Anoatubby, and had spent a lot of time with the Tribes' legal counsel, and they understand the offer that is set out in their letter is not to purchase the storage rights of Sardis Lake, but to maintain the status quo and to buy the state a year to complete the study.

There were no other questions by the Board.

Chairman Herrmann provided time to Mr. Jim Couch who responded that there had been meetings over the years which he personally attended and there was an open process several years ago when the OWRB put out a request for proposals for storage and the City of Oklahoma City responded as did Texas, but that did not go forward. He said this has not been a secret that for the last 15 years Oklahoma City has been interested on behalf of central Oklahoma procuring the storage rights for future generations of central Oklahoma. Regarding the absentee landlord remarks, Mr. Couch said the landlord is the Corps of Engineers; and the federal government makes payments in lieu of tax dollars for the schools. He repeated this contract is no different from that regarding Canton Lake or McGee Creek and in regard to the Comprehensive Water Plan, he said that is a very important document that needs to be completed. He said there are differing opinions but he believes there is a good understanding of the magnitude of the water in the Kiamichi Basin but it's still important to finish the report.

There were no further questions by Board members.

Chairman Herrmann asked Mr. Strong to respond to the comments. Mr. Strong said that he would not cover the comments he made at the beginning of the meeting, but there were a few comments that were worthy of additional discussion. He said regarding whether the Board is operating outside what the Legislature would like and only seek money and not guidance as Representative Renegar mentioned, he said staff would not have brought the draft agreement before the Board if it was not absolutely in compliance with the statutes that is the Legislature's guidance and direction. He also pointed out that the issue of waiting for the Comprehensive Water Plan to be completed is a valid issue and is very important as the Board considers the water permit, the diversion, the amount of water, as part of the permit process and which the Board will have full involvement in and final decision-making power in. He said he expected that application will be protect, a hearing held, and will take time and in the meantime, the water plan continues. He reminded those who were members of the Legislature in 2008 there was a proposal, draft legislation, for instituting a moratorium on the issuance of water permits for more than 10,000 acre-feet until the water plan is completed, and it failed to get a hearing in the Legislature; the State Chamber and many others lobbied extensively to get that idea killed.

In response to comments about disregarding the basin of origin, Mr. Strong said that is an important term found in the law that authorizes this Board to issue a water permit. He paraphrased the statute, for any permit application considered by the Board involving the transfer of water out of a basin into another basin (interbasin transfer) in addition to all other points of law to consider, the Board also must consider the impacts of basin of origin and ensure the future water needs of the basin of origin are protected before approval of the transaction. This will be reviewed and studied by staff for any water permitting proceeding.

Mr. Nichols asked about the request for proposals mentioned. Mr. Dean Couch, General Counsel, answered that as a result of legislative directive through a joint resolution, an analysis of the water resources and possible development and public hearings were held. In that process there was a directive to seek proposals and that was done and those were received in about 1998. Chairman Herrmann asked what proposals were received, and Mr. Couch said there were about five or six, one being Oklahoma City, a North Texas entity and two or three others. Mr. Nichols asked what happened in that process. Mr. Couch said all was presented to the Legislature for further direction and action, and there was none. Mr. Nichols asked about the 1993 water permit for Sardis; Mr. Couch said there have been those filed for previous requests to use water from Sardis Lake and those will be addressed in any type of permit proceeding which is an adjudication and Board members cannot discuss outside that process. Chairman Herrmann asked if that is still considered valid in terms of first in time first in right, and Mr. Couch responded that is the appropriation doctrine in Oklahoma, those particular applications will have to be addressed in adjudication and that is not before the Board.

Ms. Lambert addressed the Senators and Representatives in attendance, stating it's been the responsibility of the State of Oklahoma to make these payments for many years, which is a legislative responsibility, but the payments have not been made. She asked for their response regarding the negligence of the State Legislature and why the Board finds itself now in this position when it is really the Legislature's position to make the payments. Why is the Board now in this position to pick up the responsibility that the good men and ladies of the legislature have not done, she asked.

Senator Jay Paul Gumm responded to Ms. Lambert saying that certain individuals in certain positions have the ability to "stop up the drain." He said we are not here by accident and some believe very strongly that we are here by design. Somebody felt it was in their better interest or their district's better interest to create a crisis and have someone ride in on a white horse who has lots of money and lots of population and potential water need down the road to save the day. He said that is why there is a great acceleration to the process right now. He said the Legislators here today would vote to make the payment, but you don't always get to vote on what you want to vote for, whether in the majority or minority. He said there has never really been discussion of solutions that have been placed before the Legislature to take care of the problem.

Representative Renegar suggested the Board vote no and throw it back on the Legislature. Senator Ellis suggested the Board accept a check from the Tribes to solve the problem.

Representative Paul Roan said the Contingency Review Board, comprised of the Governor, Speaker of the House, and President Pro Tempore of the Senate, and with a two majority vote could withdraw the \$5.2 million payment from the over \$100 million remaining in the Rainy Day Fund.

Chairman Herrmann asked Mr. Couch to comment about the open meetings and full disclosure process in regard to threats the Board has acted illegally. Mr. Couch answered that as has been on the agenda an executive session, for instance, to discuss the litigation which is inclusive of the September 2009 order to make payments. As to questions as to whether that was a way to have a closed session to discuss the contract and its term and recognition of that concern and issue as the Board recalls that was declared not to be a matter to go into executive session and there was none. Other issues and concerns with respect to the valuation issue and whether the transaction is one supported by adequate consideration or a fair market value are complicated issues in other context but there are decisions by the courts with respect to that issue and not looking beyond the sufficiency or adequacy of consideration for instance, the University Hospital's transaction and sale and likewise Phillips University by the City of Enid, some of those questions were raised on that very point have been addressed. He said other issues that have been raised over the years, the fundamentally authority of this Board to make this kind of contract and indeed there is not express statutory legislation mentioning Sardis Reservoir as a matter for transfer; however, he believed in looking at the actual state agency that entered the contract at the time in 1974, the Water Conservation Storage Commission (WCSC), there was statutory authority, and that was contemplated by the Legislature that state agency could fill the gap between immediate need for water supply and if the federal government--Corps of Engineers and Bureau of Reclamation--were building these large reservoirs that agency could contract for the storage and was specified in the legislation that applied to that agency to turn around and transfer the facilities that might come from that. He said that agency, WCSC, that executed the 1974 contract was later sunsetted and the OWRB was directed to assume all obligations of that agency; the only obligation of that agency is the 1974 contract rights and there is general authority for this agency to do all things necessary and proper as it deems appropriate and to enter contracts as general duties and authorities of this agency and putting those two together, it is our view that this agency has authority to enter into a transfer agreement. He said with respect to the approval by the Corps of Engineers, it was well understood long ago that provision is in the 1974 contract and is a typical provision and the COE does specify that any transfer or assignment of all the rights shall be subject to COE approval. The Board has simply looked at

that initially as a possibility; if the COE does demand approval the transferees, the City of Oklahoma City as written would seek and obtain that approval. He said that after the Corps submitted the letter it absolutely will require approval that adjustment was made to the contract to specify and acknowledge that approval will be required, whether approval ahead of time -- as part of the legality before the transfer can be agreed to -- that is not the our view or understanding. These are among major topics that have been raised not only in this particular transaction, but in years past about authorization for the Board to transfer rights in Sardis Reservoir storage. Lastly, Mr. Couch said a major issue was the constitutionality--if the Board transfers a property of the State, this contract right, for less than adequate value, is there a constitutional provision; are we giving a gift--and in analysis, we are comfortable in saying it is not giving a gift, not giving a credit of the State to a municipality or any other kind of entity. He said while there have been questions raised, and there is some legal analysis needed, he is comfortable with all of those issues this is a legal contract that would be entered.

Ms. Lambert asked for clarification about the role of the Corps of Engineers. And Mr. Strong added that he had contacted the Corps after the letter was received and summarized what is in the agreement which they had not seen prior to issuing the letter and agreed the way it was addressed in the letter recognizing that COE approval would be required ultimately for a transfer to occur and recognizing this is not a guarantee of a water right and is not a water right process. The COE said what had been raised in the letter had been adequately addressed in the draft agreement and therefore there was no need to intervene. Ms. Lambert again asked about the COE's role, and Mr. Couch responded it holds real property, deed interest to the land ownership and will remain so and that was always contemplated. She wanted to clarify that the COE still owns the property, and Mr. Couch said they still operate the dam, flood control and other authorized purposes in addition to water supply.

There were no further questions by Board members.

Chairman Herrmann asked Mr. Strong to summarize staff recommendation. Mr. Strong said he wanted to mention the fact that the characterization that the Board is being forced into making a bad decision he believed is not accurate. He said certainly there are circumstances that result in the Board having to make an eminent decision today, but the fact that the State of Oklahoma entered a contract originally envisioning additional water supply would be built in a reservoir to be used for future water supply for central Oklahoma and possibly others is being realized, potentially, and ultimately in the original intent of the contract. As Mr. Couch has stated, Mr. Strong said we believe its fully legal, fully authorized by the State Legislature through statutory authority of the Board.

With that, Mr. Strong said, staff is presenting the Board with a resolution approving and authorizing the Board members to execute the transfer agreement. He had summarized the contents agreement itself which the Board has had in advance for an opportunity to review. He believed it is the legal thing to do and the right thing to do and does not foreclose at all future discussions with Tribes, southeastern Oklahomans, other concerned citizens about the issues of water rights, the issues of volumes of water kinds, of withdrawals and locations of withdrawals, maintaining lake levels to protect recreational uses and all of those other things, the majority of which are concerns that were levied today. Staff recommends approval.

Chairman Herrmann said he would accept a motion from a Board member.

Dr. Taron asked Mr. Strong to state the consequences of not approving the transfer. Mr. Strong responded there is a July 1, 2010, payment date ; there is no idea what a judge might do if

the Oklahoma Water Resources Board, which is under a court order to make the payment, fails to do that, the intercept of federal aid coming in until the federal government feels adequately compensated, ultimately finding the COE on its own to find someone else to assume the obligation, significant fines and possibly many other things.

Chairman Herrmann said he would entertain a motion and a second. If there is no motion and second the Board would adjourn; if there is a motion and second, then there could be discussion.

Chairman Herrmann said he would entertain a motion consistent with staff recommendation. Ms. Lambert moved to approve. Ms. Feaver seconded the motion.

Chairman Herrmann said there is a motion that has been seconded, it is on the table and he asked if there was further discussion.

Mr. Fite said in regard to the 1974 contract with the Water Conservation Storage Commission and Colonel Driskell and Dr. Church and O.B. Saunders and what was contemplated then, and former General Derryberry, and that is that Commission was going to be the agency to store the water, a permanent right to store the water once the contract was paid. He said thanked Oklahoma City, the Choctaw Nation and those unnamed parties wanting to come forward to pay, but said we have assumed the Water Conservation Commission authority and he wished there was a way to fund that at the OWRB today because he feels that the Board should have the permanent storage rights so that we don't find ourselves contemplating arguments in the near future when Oklahoma City raises the issue it has the storage right to the Lake, yet we are permitting the water that comes from the lake. He said he is torn with that, and with the fact that we have been somewhat involved with information that has been disseminated in April, but all has come before the Board for the most part this week.

Chairman Herrmann asked the Board for final questions before the vote.

Dr. Taron said he was a new "kid on the block" and didn't have as much information as he would like to have but he said the state attorney has had the knowledge since 1974 that this asset was there. He wondered why no one in that region had set forth a plan (that he is aware of) to develop the water. All this time the water has been there and all of a sudden someone wants to buy it and there is contention over it. Ten years ago the people in the Kiamichi Basin devised a plan to sell water from Hugo to Texas for a fee and it was stated those people had worked out an agreement the funds would be split 50% for the basin economic development, 50% would go to the Choctaw and Chickasaw Tribes, with 37.5% and 12.5% . He said they devised the plan to sell the water that they didn't have a right to do so the stated stepped in and said it couldn't be done but it would work out a plan. At the same time, the court says the mandate must be met by July 1, and Dr. Taron said it concerned him to vote for this because he's heard what they say and they have a legitimate concern, but it concerns him to vote against it because he is between a rock and a hard place and may get sued either way. He said it is difficult to know how to vote, so he has relied on information provided him to make an informed judgment.

Ms. Lambert said she agreed, the Board is between a rock and a hard place and no one is going to walk away as happy as she would like. She said she made the motion based on two things: The COE will own the property, the City of Oklahoma City does not own the property; and the right for use of that water will have to come through permitting process. She said she had a lot of confidence in the Board and there are certain criteria that every permit has to meet when its before the Board. It is the responsibility of the Oklahoma Water Resources Board to issue the water permit, not any city in Oklahoma; the OWRB she believed represents the State of Oklahoma in all its varied interests and all its diversity, and all its beauty and one of the ways

that's done is through the permitting process. She said she has confidence whether today or next week or next month; every water permit has to meet certain criteria whether central Oklahoma, southeastern Oklahoma or the Oklahoma Panhandle; and she has the confidence the Board has been lawful, and confidence in everyone around the table, when the water permitting process comes, those rules will be followed. The City of Oklahoma City, the City of Hugo, no one determines that but this Board; the property is owned by the COE, the right to the water is determined by this Board. She is confident that the process will be followed lawfully, legally, and as fairly as possible.

Mr. Nichols said he agreed with Dr. Taron and Mr. Fite and there were many issues and he had read the contract--the storage is to be used to impound water for present and anticipated future demand and for need for municipal and industrial water supply (read from the contract). Doesn't say where, its for Oklahoma. He said he has worked hard for funding for the Water Plan; he understands the Board is not permitting the water, but he does understand the argument it would be more palatable for folks if the Plan was finished. He said he is upset this Board has been put in this position by many folks for a long time. Other members agreed.

Chairman Herrmann stated it has not been a secret the hole has become deeper and deeper on this matter and the question is to "kick the can down the road" or take action.

Mr. Nichols said he can't imagine that someone in the Legislature at some point in time couldn't have but should have addressed this issue. He said the Board does not get paid to be here and are concerned citizens trying to do the right thing for the State of Oklahoma. He hoped that everyone understands whatever action is taken, the Board is doing what it believes is the right thing.

Ms. Feaver said that in all due respect to the presenter, she did not personally believe that we have ended up where we are intentionally. She said looking at the Legislative leadership and Administration there has been both sides of the isle leading that charge, we haven't gotten here overnight, we have ignored the fact there is the debt, and if anyone of us did that in our own personal life or business we would face foreclosure. She said she has great admiration for the work the Board has done and she had confidence the Board that is here today is trying its best to represent the entire State of Oklahoma as we look toward the future.

There were no further questions or comments by Board members. Chairman Herrmann stated there is a motion on the table that has been seconded, and there has been adequate opportunity for public comment.

A citizen interrupted asking to make comments, and Chairman Herrmann ruled there is a motion and second on the table, there has been adequate opportunity for public comment outlining a variety of concerns, and if there are no further questions or comments by Board members, he would ask for a roll call vote.

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

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

Chairman Herrmann stated the Board had approved the proposed transfer agreement.

7. ADJOURNMENT

There being no further business, Chairman Herrmann adjourned the Special Meeting of the Oklahoma Water Resources Board at 11:30 a.m., on June 11, 2010.

OKLAHOMA WATER RESOURCES BOARD

_____/Absent_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Jess Mark Nichols, Vice Chairman

_____/s/_____
Edward H. Fite

_____/Absent_____
Richard Sevenoaks

_____/s/_____
Marilyn Feaver

_____/s/_____
Kenneth K. Knowles

_____/Absent_____
F. Ford Drummond

_____/s/_____
Joseph E. Taron

ATTEST:

_____/s/_____
Linda P. Lambert, Secretary
(SEAL)