

# OKLAHOMA WATER RESOURCES BOARD

## OFFICIAL MINUTES

December 14, 2010

### 1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:35 a.m., on December 14, 2010, at 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 December 7, 2010, at 5:05 p.m. at the Oklahoma Water Resources Board's offices.

#### A. Invocation

Chairman Herrmann asked Mr. Ed Fite to provide the invocation for today's meeting. He also asked Dr. Joe Taron to be the Assistant Secretary in the absence of Board Secretary Linda Lambert.

#### B. Roll Call

##### **Board Members Present**

Rudy Herrmann, Chairman  
Mark Nichols, Vice Chairman  
Marilyn Feaver  
Ed Fite  
Kenneth Knowles  
Richard Sevenoaks  
Joe Taron

##### **Board Members Absent**

Linda Lambert, Secretary  
Ford Drummond

##### **Staff Members Present**

J.D. Strong, 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  
Kyle Arthur, Director of Planning

Josh McClintock, Director of Government and Public Affairs  
Leslie Nance, Financial Officer  
Mary Schooley, Executive Secretary

**Others Present**

Tim Schook, City of Stroud, OK  
Nate Ellis, Public Finance Law Group, Oklahoma City, OK  
Allan Brooks, Public Finance Law Group, Oklahoma City, OK  
Meredith Morgan, Public Finance Law Group, Oklahoma City, OK  
Rebecca Poole, Department of Environmental Quality, Oklahoma City, OK  
Matt Mueller, City of Guthrie, OK  
Randel Shadid, Guthrie, OK  
Pennie Embry, Oklahomans for Responsible Water Policy, Eufaula, OK  
Vicki Reed, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Jim Ball, Unimin, Roff, OK  
Bob Baxter, City of Okmulgee, OK  
Brian Priegel, City of Okmulgee, OK  
Ronnia Andrews, City of Okmulgee, OK  
Ron Jarman, Apex/Matteson Ranch; Oklahoma City, OK  
Sherrie Matteson, Matteson Ranch, Mooreland, OK  
W.D. Matteson, Matteson Ranch, Mooreland, OK  
Susan Phelps, Matteson Ranch, Mooreland, OK  
Billy Phelps, Matteson Ranch, Mooreland, OK  
Jeri Fleming, Oklahoma Water Resources Research Institute, Stillwater, OK  
Greg Carr, Department of Environmental Quality, Oklahoma City, OK  
Gary Froeming, Unimin, Roff, OK  
Amy Ford, Citizens for Protection of Arbuckle Simpson Aquifer, Durant, OK  
Jim Barnett, Kerr Irvine Rhodes Ables, Oklahoma City, OK  
Luke Martin, Capital Group, Oklahoma City, OK  
Charlie Swinton, BancFirst, Oklahoma City, OK  
Angie Burckhalter, Oklahoma Independence Petroleum Association, Oklahoma City, OK  
Diane Pedicord, Oklahoma Municipal League, Oklahoma City, OK  
Mike Wofford, DSDA, Oklahoma City, OK  
Paul Smith, Okmulgee Municipal Authority, Okmulgee, OK  
Justin Martin, eCapitol, Oklahoma City, OK  
Larry Roach, Guernsey, Oklahoma City, OK

**C. APPROVAL OF MINUTES**

Chairman Herrmann stated the draft minutes of the November meeting had been distributed and he said if the members had an opportunity to review the draft minutes he would accept a motion. There were no corrections, and Dr. Taron moved to approve the minutes of the November 9, 2010, Regular Meeting, and Mr. Nichols seconded.

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

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

Mr. J.D. Strong, addressed the members and asked Mr. Josh McClintock to provide an update on legislative matters. Mr. McClintock distributed a written report, and noted the staff appointments by Governor-elect Fallin, and that OWRB staff would be following up with the staff on the agency transition document that has been provided. He also noted the Legislative Leadership and their Committee appointments in both the House and Senate. Many of those in leadership positions are very familiar with natural resource issues, and have worked with the agency in the past. He said OWRB staff will be meeting with the Committee chairs to discuss issues. Mr. McClintock briefed the members on the activities of the Oklahoma Congressional Delegation, and said that it wasn't known yet where Congressman Lankford will be assigned, but that Congressman Lucas had been named Chair of the Agriculture Committee, and that will be helpful to Oklahoma for him to be the Chair. He noted other Congressional Committee leaders and said he is familiar with their staff and he would be working with them on Oklahoma issues. He said the Republicans have agreed again on an earmark ban, and staff would be working to achieve its priorities while working within that ban. He said that will make the money available through federal agencies and staff will be working on relationships with those agencies in order to obtain funding. He said this is the last week Congress will be in session, and he spoke about the continuing resolution needed by the end of the week, and that Senators Inhofe and Boxer have renewed their push for another WRDA bill in the new Congress, and staff will be working with them on that. Mr. Sevenoaks asked if the OWRB received anything from the last WRDA bill, and Mr. McClintock said there were authorizations, but not funding, except for a few small projects such as the Southeast Study. The agency has received federal funding for the water plan.

Mr. Strong said that the agency does have good relations with the new Senate Pro Temp and the Appropriations Chair, but unclear how that will help headed into budget discussions; there was a Government Modernization Interim Study held recently where one group presented a consolidation of water responsibilities of some of the Natural Resource agencies into the Department of Environmental Quality. He noted several meetings with legislators that have occurred and are scheduled as preparations are beginning to ramp up for the legislation session.

He said he would be meeting with the Environmental Federation of Oklahoma Board of Directors, the OWRB Ad Hoc Rules Committee met prior to the Board meeting and Division Chiefs will make presentations today, the OWRRI will be conducting the Water Research Advisory Board annual meeting in January and pre-meeting December 15, and staff is continuing discussions about SB 288. He had agreed to host a meeting at the request of Senator Bingman to talk to interested parties about pit water which has been a controversial subject for the past few sessions, the effort will be to get some agreement prior to the session; that meeting will be held on January 4, 2011. Chairman Herrmann interjected that at the Town Hall it was clear that the

consensus will be to do something. Staff will also be meeting with Hanson and the stakeholder groups to work through those issues before coming to the Board for final approval.

Mr. Strong continued that the OWRB will be co-hosting with the U.S. Army Corps of Engineers a Regional Water Planning Summit with the states of Oklahoma, Texas, and Kansas and held January 5-6 at the National Weather Center in Norman--a follow up meeting to one held in Kansas in 2009, and on January 7 the annual state coordination meeting will be held with the Tulsa District of the Corps. He noted he met in Dallas with the principals regarding the Illinois River and TMDL development; and had attended a Creativity Forum which did have a session on Oklahoma companies that deliver water to underdeveloped countries.

Mr. Strong concluded his report thanking the OWRB staff for its contribution of \$9,312 to the State Charitable Contributions Campaign. And, he announced citizens can follow the agency on its new Twitter page, <http://twitter.com/OKWaterBoard>. He noted the distributed edition of the Lakes Guide now available which is a partnership effort between the OWRB and the ODWC.

## **2. FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Stroud Utilities Authority, Lincoln County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this item is for consideration of a \$660,000.00 loan request from the Stroud Utilities Authority located in Lincoln County. He said Stroud has requested the loan to construct a chlorination/dechlorination facility, a pump station at the north wastewater treatment plant, a SCADA system, and to purchase a standby generator. He said the loan will be funded through the Board's Clean Water State Revolving Loan Program, and he noted provisions of the loan agreement. Mr. Freeman said the Authority has one other outstanding debt obligation, which is a loan from the Board in 2005 for wastewater system improvements. He said that Stroud is a good customer of the Board's, and has a strong debt coverage ratio at 7.14-times. Staff recommended approval.

Mr. Tim Schook, City Manager, was present in support of the loan request.

Mr. Nichols moved to approve the Clean Water SRF loan to the Stroud Utilities Authority, and Dr. Taron seconded.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Drummond, Lambert

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Fairview Utilities Authority, Major County. Recommended for Approval. Mr. Freeman said this item is for the consideration of a request for a \$2,260,000.00 loan by the Fairview Utilities Authority. Fairview is requesting the loan for rehabilitation of its lagoon system by installing rip rap along the dikes, installing a bentonite seal on the lagoon

bottom, and replacing irrigation and transfer pumps. He said the loan will be funded through the Board's Clean Water State Revolving Fund and he noted provisions of the loan agreement. Fairview has been a loan customer of the Board's for over 18 years, and currently has a loan balance of approximately \$300,000.00. Fairview's debt coverage ratio is 1.38-times. Staff recommended approval of the loan request.

City Manager Dale Sites was present in support of the loan request.

Mr. Knowles moved to approve the Clean Water SRF loan to the Fairview Utilities Authority, and Mr. Sevenoaks seconded.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Drummond, Lambert

C. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Guthrie Public Works Authority, Logan County. Recommended for Approval. Mr. Freeman said that this item is a \$4,925,000.00 loan request by the Guthrie Public Works Authority. He said Guthrie is requesting the loan to correct inflow and infiltration problems with its wastewater collection system. The project will include repairing and rehabilitating approximately 33,333 linear feet of sanitary sewer line, repairing 180 manholes, and installing a comminutor station. Mr. Freeman said the loan will be funded through the Board's Clean Water State Revolving Fund, and he noted provisions of the loan agreement. Guthrie currently has four outstanding loans on its water and wastewater systems, all with the Board, and at a balance of \$14.9 million (not including this loan); its debt coverage ratio stands at approximately 1.67-times.

Mr. Freeman stated that staff recommended approval, subject to clarification by Guthrie's city attorney prior to closing regarding notification received yesterday of possible legal action pertaining to an initiative petition relating to utility rates. He clarified that a suit was filed by two people concerning a utility fee -- appearing to be any flat fee on a sewer bill to help cover costs of operation -- and a summary judgment was issued a few weeks ago and a letter was received by Mr. Strong yesterday indicating they plan to refile. He said Mr. Couch had a couple of questions, and a meeting will be set with Mr. Shadid, Guthrie city attorney, to make sure everyone understands everything; he did not believe it unusual, but wanted to make a review prior to closing the loan; the loan will not closed until it has been signed off by the attorneys. He said bids will be received Thursday and the City Council is to take action on next Tuesday to approve the transaction with the goal to close the loan by the end of the year. Guthrie is under a consent order by the Department of Environmental Quality; they need to do the project, have inflow and infiltration problems, thus the reason for 35,000 feet of sewer line--he said they really don't have a choice.

Chairman Herrmann said that staff recommended approval. Mr. Freeman noted that Mr. Matt Mueller, City Manager, and Mr. Randel Shadid, City Attorney, are present in support of the loan request.

Mr. Sevenoaks asked about the comminutor station, and Mr. Freeman said that it is basically a big shredder.

Chairman Herrmann said he would accept a motion to approve staff recommendation subject to clarification of the legal matter.

Mr. Nichols moved to approve the Clean Water SRF loan to the Guthrie Public Works Authority, and Dr. Taron seconded.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Drummond, Lambert

D. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Pawnee Public Works Authority, Pawnee County.. Recommended for Approval. Mr. Freeman said this item is for the consideration of a \$6,550,000.00 loan request by the Pawnee Public Works Authority. Pawnee is requesting the loan to construct a new 0.5 MGD Sequencing Batch Reactor treatment plant, and a new lift station. He said the loan will be funded through the Board's Clean Water State Revolving Loan Fund, and he noted provisions of the loan agreement. Pawnee's debt coverage ratio stands at approximately 1.37-times. Staff recommends approval.

Mayor Tom Briggs was present in support of the loan request.

Mr. Fite and Mr. Sevenoaks commented about the low capacity of the plant, and Mayor Briggs said the Board had approved a sewer project for the Authority and since that time a retention pond had been in use but exceeds its capacity and there is no discharge.

Mr. Sevenoaks moved to approve the Clean Water SRF loan to the Pawnee Public Works Authority, and Mr. Fite seconded.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Drummond, Lambert

E. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Okmulgee Municipal Authority, Okmulgee County. Recommended for Approval. Mr. Freeman said this item is a \$650,000.00 loan request by the Okmulgee Municipal Authority to install ten variable frequency drives in the headworks building, to install five new dissolved oxygen transmitters, and to program the logic controller to adjust. The loan will be funded through the Clean Water State Revolving Fund, and Mr. Freeman noted provisions of the loan agreement. He said that Okmulgee has one other loan with the Board, and its debt coverage ratio stands at approximately 1.58-times. Staff recommended approval.

Mayor Brian Priegel, City Manager Bob Baxter, and City Clerk Ronnia Andrews were present in support of the loan request. Mayor Priegel said Okmulgee has had many challenges including quality, quantity, and efficiency, and hopefully with these loans all the obligations will be met. He said in developing the budget they took an aggressive stance to be in the forefront and adjusted rates in anticipation of an increase in costs and revenue and including the debt anticipated here; they are ready to move forward.

Mr. Sevenoaks moved to approve the Clean Water SRF loan to the Okmulgee Municipal Authority, and Mr. Fite seconded.

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

Mr. Freeman said that items 2.F., 2. G., and 2.H., are three Drinking Water State Revolving Fund loan requests by the Okmulgee Municipal Authority. He said each are stand alone projects, each has the same loan structure features, and after visiting with the Chairman, staff would like to present them together. Mr. Freeman noted the provisions of the loan agreements, and described each project:

F. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Okmulgee Municipal Authority, Okmulgee County. Recommended for Approval:

A \$2,960,000.00 loan request for slip-lining a 36-inch raw water line with 30-inch HDPE pipe;

G. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Okmulgee Municipal Authority, Okmulgee County. Recommended for Approval:

A \$4,895,000.00 loan request to install an automated meter reading system; and

H. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Okmulgee Municipal Authority, Okmulgee County. Recommended for Approval:

A \$10,795,000.00 loan request to construct a chlorine dioxide system for raw water, a rapid mix/splitter box; and alum feed building, filter underdrains, air scour, flocculating clarifier mechanism for all three existing basins, a baffled clear well, a belt filter press, and caustic feed system.

Mr. Freeman said Okmulgee's debt coverage ratio is 1.37. Mr. Baxter spoke to the members and said these are projects that have been worked on for a long time; they are under a consent order by the Department of Environmental Quality on the treatment plant byproducts. The raw water line was taken out of commission in the 1960s, but by slip-lining it, water can be transported by gravity flow to the treatment plant at capacity in excess of what is being pumped currently. The automated meter reading will save energy and other things. This is a culmination of a lot of work on the part of many people.

Mr. Sevenoaks asked the source of raw water. Mr. Baxter answered there are two lakes, Lake Okmulgee and Dripping Springs Lake that are connected--the upper feeding into the lower--and water is supplied to about 40,000 people in the county.

Mr. Fite asked about the slip-line, and Chairman Herrmann commented about the connection made between savings on water costs and energy costs, helping ratepayers over time. Mr. Fite asked and Mr. Baxter answered there are approximately 6,500 meters, both residential and commercial.

Chairman Herrmann stated the staff recommendation is to approval all three loans with one vote.

Mr. Fite moved to approve the three Drinking Water SRF loans (2.F., 2.G., 2.H.) to the Okmulgee Municipal Authority, and Mr. Knowles seconded.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Drummond, Lambert

Mr. Freeman noted there was a team of colleagues from the Department of Environmental Quality involved in these loans.

I. Consideration of and Possible Action on a Proposed Resolution Selecting a Financial Advisor to the Board in Connection with the Board's Financial Assistance Programs. Recommended for Approval. Mr. Freeman said this item regards the selection of financial advisor to the Board for the Financial Assistance Programs. He said proposals were sent to 15 firms, and responses were received by Columbia Capitol and First Southwest. Staff reviewed the proposal based upon each firm's experience as being a financial advisor, the scope of experience of the individual assigned to the OWRB, and the understanding of the scope service to be performed, and fees and expenses for the service. Mr. Freeman stated that with review of the proposals by the State Bond Advisor Tim Martin and three of the Board's Finance Committee members, it is recommended that the Board retain First Southwest, the Board's current financial advisor.

Mr. Nichols moved to approve staff recommendation to retain First Southwest, and Dr. Taron seconded.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None

ABSENT: Drummond, Lambert

### **3. SUMMARY DISPOSITION AGENDA ITEMS**

Any item listed under this Summary Disposition Agenda may, at the requested of any member of the Board, the Board's staff, or any other person attending this meeting, may be transferred to the Special Consideration Agenda. Under the Special Consideration Agenda, separate discussion and vote or other action may be taken on any items already listed under that agenda or items transferred to that agenda from this Summary Disposition Agenda.



**A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items.**

Chairman Herrmann read the summary disposition agenda introduction, and asked if there were any questions about any items, or any items that needed to be separated from the agenda.

There were no requests to transfer items from the Summary Disposition Agenda to the Special Consideration Agenda.

**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.**

Mr. Freeman asked that item 3.D.2., agreement with the Department of Environmental Quality be withdrawn from consideration. And Mr. Smithee asked that item 3.D.3. agreement with OG&E be withdrawn.

Chairman Herrmann asked for a motion on the Summary Disposition Agenda as amended before any further questions.

Mr. Fite moved to approve the Summary Disposition agenda, and Mr. Knowles seconded.

Chairman Herrmann asked Ms. Cunningham to explain on item 3.K., that on a substantial number of the forfeitures, the reported usage was greater than the water right. Ms. Cunningham answered the forfeiture review process happens periodically, and staff cannot always review the so the process reviews the water use reports and sometimes there is greater use and sometimes less, and allows the permit holder an opportunity to make corrections. She said that as staff implements the new data base it is hoped there could be triggers regarding certain use so that the permit holder can be notified if there is more use.

Mr. Couch added that the bottom line is that the forfeiture reduction process by statute is based upon seven continuous years of use it or lose it, and there may have well been seven years of reduced use than what was authorized, or no use, which results in a reduction or cancellation, but the law provides that as an operation of law they have lost the whole water right or a reduced amount, but after that seven years if there is more use than authorized, it cannot be caught back up, it's a matter of overuse reported when correcting, but they can get authority or a permit for that use.

There being no further questions or comments about items on the Summary Disposition Agenda, Chairman Herrmann called for the vote.

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: Herrmann on item 3.E.

ABSENT: Drummond, Lambert

**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>Amount Recommended</u>
None				

- D. Consideration of and Possible Action on Contracts and Agreements, Recommended for Approval:
1. No-Cost Time Extension Agreement with C.H. Guernsey & Company for analysis of the 1980 water transfer plan and evaluation of the viability of undeveloped reservoirs in Oklahoma.
  2. *Agreement between the Oklahoma Water Resources Board and the Department of Environmental Quality for sharing administrative Funds. **Item withdrawn***
  3. *Agreement with Oklahoma Gas & Electric Company for professional surveying and mapping of Horseshoe Lake. **Item withdrawn***
- E. Applications for Temporary Permits to Use Groundwater:
1. Devon Energy Production Co., L.P., Dewey County, #2010-557
- F. Applications to Amend Temporary Permits to Use Groundwater:
- None
- G. Applications for Regular Permits to Use Groundwater:
1. Michael W. White, Woodward County, #2010-552
- H. Applications to Amend Regular Permits to Use Groundwater:
- None
- I. Applications for Regular Permits to Use Stream Water:
1. Frances Berg, Oklahoma County, #2010-004
  2. Roy Gerald Fouts, Sequoyah County, #2010-016
  3. Quail Creek Golf & Country Club, Oklahoma County, #2010-026
- J. Applications for Term Permits to Use of Stream Water:
1. Gary & Lauren Nitschke, Jefferson County, #2010-023
  2. TransCanada Keystone Pipeline, L.P., Atoka County, #2010-024
  3. TransCanada Keystone Pipeline, L.P., Hughes County, #2010-025
- K. Forfeitures (Reductions) of Stream Water Rights:
1. Terryland Farms, Inc., Harper County, #1941-011
  2. R. A. Lotspeich, Harper County, #1941-011E
  3. Dick W. Mundell, Harper County, #1941-011F
  4. Terry D. Mundell, Harper County, #1941-011G
  5. Kenny Lotspeich, Harper County, #1941-011L
  6. Commissioners of the Land Office, Harper County, #1941-011O
  7. Joy Seeger, Harper County, #1941-011R
  8. Terryland Farms, Inc., Harper County, #1941-011S

- 9. Terryland Farms, Inc., Harper County, #1968-167
- 10. United States Gypsum Co., Blaine County, #1998-034

L. Well Driller and Pump Installer Licensing:

- 1. New Licenses, Accompanying Operator Certificates and Activities:
  - a. Licensee: Zavala Drilling DPC-0747
    - 1. Operator: Raul Zavala, Sr. OP-1673  
 Activities: Heat exchange wells
    - 2. Operator: Raul Zavala, Jr. OP-1805  
 Activities: Heat exchange wells
  - b. Licensee: Cox Water Well Service DPC-0826
    - 1. Operator: Shawn Cox OP-1802  
 Activities: Installation of water well pumps
  - c. Licensee: Swink Waterwell Service DPC-0830
    - 1. Operator: Clinton Swink OP-1804  
 Activities: Installation of water well pumps
  - d. Licensee: Arrow Water Well Services Inc. DPC-0832
    - 1. Operator: Vincent Koelzer OP-1808  
 Activities: Groundwater wells, test holes and observation wells  
 Installation of water well pumps
- 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
  - a. Licensee: Environmental Loop Service, Inc. DPC-0257
    - 1. Operator: Ronald Willis OP-1806  
 Activities: Heat exchange wells
    - 2. Operator: David Hix OP-1807  
 Activities: Heat exchange wells

M. Dam and Reservoir Construction:

- 1. Konawa Conservation District, Seminole County, #OK12031

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

- 1. Oklahoma Department of Transportation, Osage County, #FP-10-19
- 2. Oklahoma Department of Transportation, Osage County, #FP-10-20
- 3. Oklahoma Department of Transportation, Ottawa County, #FP-10-21

O. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the December 14, 2010 packet of Board materials.

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

**A. Update Report on Oklahoma Comprehensive Water Plan Activities.** Mr. Kyle Arthur, Director of Planning, stated to the members that Mr. Monte Porter would be making today's presentation and include how the data that is collected as an agency--as well as by other agencies--on water quality information has been applied to the water planning process. He said that a few years ago with OCWP funding, the Water Quality division contracted to take the data that has been accumulated over the years and try to understand the trends in water quality that are being seen across the state. Furthermore, to use the trends developed to understand the health, or condition, of the surface water resources across the state. This information will be manifested in the OCWP in two ways: (1) through each of the regional reports and the trend information for certain key parameters as regards the usability of the water as a supply source, and (2) to take the trend information and look at whether beneficial uses are being attained, relative to the Standards, and to develop condition scores for water bodies across the state to understand as we look at priority areas where there are issues--there could be other concerns such as availability or infrastructure--but whether there are water quality issues.

Mr. Monte Porter addressed the members and presented a Power Point presentation on why to look at trends--to look backward as well as forward, and to look at it in context in where you've been and where're you're going rather than only where you are currently. He said there may be impairment, but also improvement; something may not be showing impairment but trends show upward or downward, and trends give context to the data sets and can then be used to see how it fits into the scheme of the things, allocate resources, effectiveness of monitoring and implementation programs, and determination of possible future costs, i.e., treatment costs.

Mr. Porter said that a Trends Advisory Committee was formed comprised of various state and federal agencies that met twice, once for streams and once for lakes, to determine what needed to be looked at, what period of record to use, and what parameters to apply to the selection of sites and data. A workplan was developed, and the group decided that for lakes 65 of the 130 available lakes, chosen because of the 10-15 year period of record available and no longer than a 5-year data gap, continuous stream gage, and broad base of parameters. Regarding methodology, Mr. Porter said that data solicitation was a difficult exercise (obtaining data in consistent format), and was solicited from a number of agencies and Tribes, and cities of Tulsa and Oklahoma. He said the data needed to be reviewed to distinguish between apples and oranges and apples and apples; data was grouped in historical record sets and analyzed period of record and concentrations; common sites were created and data analyzed by whole segments; conducted statistical analysis by analyzing significant relationships at various confidence levels, ultimately combining the various analyses for each parameter at each site to develop one single determination/trend. He said the results by numbers and the data points for lakes were approximately 200,000 and streams 350,000 actually performing 15,000 analyses for lakes and for stream approximately 24,000 analyses. Mr. Porter said the group wanted to understand the best way to look at different parameters in different situations so as the analysis is done on a continuous basis every 2-5 years, we will understand from a statistical approach what provides the most consistent, most significant look at a particular parameter and how that information is available. He provided graphs illustrating trends that were established on lakes

and streams and rivers using data from the 1970s to current, particularly highlighting nitrogen as an example which he noted some trends are up and some trends are down, indicating the problem hasn't been solved. There were some questions by members.

Mr. Porter concluded his presentation stating that in regard to future needs and opportunities, there needed to be a commitment to conducting this kind of work because unless we understand how the data relates to where we've been and where we're going, we're only getting part of the picture. He said there needs to be a planning process so that the trends analysis is consistently updated, and it needs funded. He noted some of the areas staff would like to concentrate on in the future, including analyze trends in the context of regulatory and water use end points, watershed and planning basin trends, include in indicator stressor relationships, identify analytical and logistical opportunities, broaden the geographic scope, and how to take the data and put it into a format that is succinct, useful, and interactive.

Mr. Sevenoaks and Chairman Herrmann commented about methodology and the relationship to causation.

## **5. SPECIAL CONSIDERATION**

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

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

### **A. Application for a Regular Permit to Use Stream Water No. 2010-007, W.D. & Sherrie Matteson, Major County, Oklahoma:**

(1) **Summary-** Ms. Julie Cunningham stated to the members that this item is for consideration of an application for a regular stream water permit under the name of Sherrie and W.D. Matteson in Major County on Main Creek which flows into the Cimarron River. This application was protested--there are no protestants in attendance today--and she explained the request was to take a total of 132 acre-feet of water per year for irrigation of 88 acres of land from two points of diversion at a maximum rate of 500 gallons per minute. She said the Board has seen this application before, in 2006 when staff recommended and the Board denied the permit as it was proposed for the withdrawal of 168 acre feet. In 2006, there was a severe drought and the applicant failed to prove there would not be interference to the downstream uses, and the application was denied. The Board order provided that denial of the original permit was not a bar from seeking a future water permit.

The Mattesons have applied for a second permit, as well as three provisional temporary permits, testing pumping scenarios to minimize effect with the guidance of staff within certain time frames. They have hired environmental consultant Dr. Ron Jarman, Apex Environmental, who helped to establish a regime of stream flow measurements and record keeping to make observation of stream flow before and after pumping in different locations above and below the actual withdrawal location. During the past three summers, the applicant has kept records of the withdrawals and stream flows with each of the permits to ensure accurate withdrawal for the downstream user is available. Ms. Cunningham stated that with these restrictions, the record shows today there is no evidence of interference to the protestant's domestic use has occurred and the restrictions on the temporary permits have been adequately protective.

Ms. Cunningham reviewed the points of law regarding the application. The evidence in the record showed the unappropriated water is available--the OWRB rules prescribe certain calculations for runoff and surface water available--calculations show 1,366 a.f. are available on an average annual basis, and the request is for 132 a.f. There is a present and future need -- the water will be used in appropriate amounts for alfalfa, irrigation is a beneficial use, and the water will be used within the stream system and within the State. Staff believes interference will not occur with the conditions outlined in the proposed order. The applicant has agreed to the conditions which Dr. Jarman has certified and testified that in his opinion these conditions will ensure flow for downstream users under normal conditions but if unusual conditions cause the stream to become dry, the applicant will cease irrigation. She said the conditions are listed in findings of fact no. 16.

Ms. Cunningham said this permit was protested by downstream landowners concerned about interference. However, staff found the application to meet the points of law, especially regarding the interference issue, and the hearing examiner did find that if the conditions are followed the applicant will not cause downstream interference with domestic users, therefore, staff recommended approval of the application for regular stream water permit 2010-2007 subject to the conditions in the proposed findings of fact, conclusions of law and board order.

- (2) Discussion. The applicant was in attendance. There were no protestants at the meeting.
- (3) Possible Executive Session. The Board did not vote to enter executive session.
- (4) Vote on whether to approve the findings of fact, conclusions of law and board order as presented or as may be amended, or vote on other action or decision relating to the proposed order, findings of fact, conclusions of law.

Mr. Nichols moved to approve the proposed findings of fact, conclusions of law and Board order for regular stream water permit 2010-007, and Dr. Taron seconded.

Mr. Nichols commented about the number of conditions in the order which the applicant has agreed to. Mr. Fite asked about the aquatic community of Main Creek, and Mr. Couch said that the beneficial use designation for Main Creek is to protect, which goes without question according to the Water Quality Standards. There is not often a review water quality stands in an application for appropriation, but these conditions were for conditions of interference not beneficial uses. Chairman Herrmann said there are a lot of conditions, it appeared to provide adequate protection but if there is a problem, a phone can be made to staff.

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

AYE: Fite, Nichols, Feaver, Sevenoaks, Taron, Knowles, Herrmann

NAY: None

ABSTAIN: None  
ABSENT: Drummond, Lambert

Chairman Herrmann commended the applicants and staff for the hard work on the application to do their part responsibly.

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

## **6. AGENCY BUDGET REPORT.**

Ms. Leslie Nance stated the November revenue and expense report has been provided. Mr. Sevenoaks asked if there were estimates for the next budget cycle. Mr. Strong responded the estimate is a \$400-\$600 million dollar deficit for the next budget cycle, and most anticipate additional cuts beyond the 16% already made over the last two fiscal years, but what those cuts will be are up in the air, and will depend upon whether there are cuts across the board, or designated cuts for certain agencies. Ms. Nance said they are beginning discussions about looking at the budget structure for streamlining purposes. There were no other questions.

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

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

## **8. PRESENTATION OF PUBLIC DRAFT PROPOSED AMENDMENTS TO PERMANENT RULES**

Staff will briefly present highlights and summaries of draft proposals that have been made available for public review and comment for the following chapters of the permanent rules. The formal public hearing to receive comments about the draft proposals is scheduled before the Board members at the January 11, 2011, monthly meeting. Thereafter, final draft proposals for all chapters will be forwarded to the Board and are scheduled for consideration and action by the Board members at the February 8, 2011, monthly meeting.

Prior to staff presentation, Mr. J.D. Strong informed the members that there are some proposed rule changes which will be summarized today. To his knowledge there is no controversy or concern related to any of the proposed changes that staff is aware of. He said going forward there are a couple of more meetings and the Board will be provided the actual proposed rule changes and justification documents for review. The January 11 Board meeting is the official public hearing before the Board with regard to the rule changes with Board adoption of official rule changes anticipated at the February 8, 2011 Board meeting.

A. Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing - Ms. Julie Cunningham said Chapter 35 has not been controversial and comments have not been received. The proposed changes are a result of discussions with the Well Drillers and Pump Installers Advisory Council, established to make recommendations to the Board. Staff has also worked with the Oklahoma Construction Industries Board that oversees construction and plumber licensing. The proposals have been made to streamline enforcement and reporting, improve consistency of OWRB enforcement action between agencies, protection of water quality, and to reduce construction and reporting costs of the well drillers and pump installers.

The members were provided a summary of the five proposed rule changes which Ms. Cunningham reviewed: (1) amend rules to establish an administrative fine schedule and provide for issuance of administrative citations and providing for hearing date; (2) require monitoring well and geotechnical boring multi-purpose completion reports to be submitted electronically; (3) revise the separation distance from a water well to an aerobic spray area from 15 feet to 25 feet; (4) allow the use of bentonite chips and pellets for filter pack seal on monitoring well construction; and (5) remove the notary requirement for variance request.

B. Proposed Amendments to Chapter 45 – Oklahoma’s Water Quality Standards; and

C. Proposed Amendments to Chapter 46 – Implementation of Oklahoma’s Water Quality Standard- Mr. Derek Smithee reviewed the proposed changes to both Chapters 45 and 46. He said Chapter 45 is the "what" and Chapter 46 is the "how" of water quality management. He reviewed the revisions process as it is done differently because it is done under federal law which has different requirements. An informal meeting has been conducted with other state agencies and interested parties to resolve issues before the proposed changes go through notice of rulemaking intent and final consideration by the Board.

Reviewing the proposed changes, Mr. Smithee noted the revision topics revolve around how the standards are utilized and translate that standard into making an impairment decision that goes on the 303(d) impairment list triggering a TMDL or more aggressive restoration activities that all the state agencies have to follow. The EPA and State have a difference in philosophical approach in regard to the impairment decision. He enumerated the changes that include: (Chapter 45) (1) bacteria assessment removal, (2) fecal coliform language changes, (3) stream dissolved oxygen assessment; and (Chapter 46), (4) making DO implementation consistent, (5) determining impairment to reservoir; (6) interpreting minerals for USAP and permitting, (7) removing "average" regarding long term average criterion (8) regarding public water supply, modification of fecal coliform for assessment purposes, (8) correction to navigation USAP, (8) language clarification requested by DEQ and OSE, and (9) proposed high quality water designation for Saline and Little Saline Creeks.

D. Proposed Amendments to Chapter 50 – Financial Assistance . Mr. Joe Freeman stated there are minor changes, mostly language clean up. He reviewed the handout and enumerated the changes to include: (1) adding "brownfield" to references of stormwater, (2) correcting typographical error regarding the REAP program, (3) and (7) better defining "consultant" and "financial advisor", and "firm" registration with Securities Commission, (4) language for funding of green projects, (5) correcting typographical error regarding nonpoint (6) regarding engineer



requirements for green projects, and (8) required additions to borrowers loan agreements to include certain language when receiving CAP grants from EPA.

There were no questions or discussion by members.

**9. NEW BUSINESS**

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

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

**10. ADJOURNMENT**

There being no further business, Chairman Rudy Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 11:32 a.m. on Tuesday, December 14, 2010.

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Rudolf J. Herrmann, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Jess Mark Nichols, Vice Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Edward H. Fite

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Sevenoaks

\_\_\_\_\_/s/\_\_\_\_\_  
Marilyn Feaver

\_\_\_\_\_/s/\_\_\_\_\_  
Kenneth K. Knowles

\_\_\_\_\_/Absent\_\_\_\_\_  
F. Ford Drummond

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

**ATTEST:**

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