

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

August 21, 2012

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman F. Ford Drummond at 9:40 a.m., on August 21, 2012, 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 August 14, 2012, at 4:00 p.m., at the Oklahoma Water Resources Board's offices.

A. Roll Call

Board Members Present

Ford Drummond, Chairman
Tom Buchanan, Secretary
Bob Drake
Marilyn Feaver
Ed Fite
Rudy Herrmann
Jason Hitch
Richard Sevenoaks

Board Members Absent

Linda Lambert, Vice Chairman

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
Amanda Storck, Chief, Administrative Services Division
Josh McClintock, Director of Government and Public Affairs
Mary Schooley, Executive Secretary

Others Present

Tim Schook, City of Stroud, OK
Mark Walker, representing Merritt Farms, Oklahoma City, OK
MK Berta, Arizona
Jean M. Casey, Merritt Farms, Hennessey, OK

Tiffany Tillman, Town of Hennessey, OK
Brent Bolay, Noble County Rural Water District #1, Perry, OK
Curtis Turner, Town of Hennessey, OK
Kim Hornbuckle, Poe & Associates, Noble County RWD #1, Oklahoma City, OK
Randy Worden, Central Oklahoma Master Conservancy District, Norman, OK
Ben Oglesby, Municipal Finances Services, Edmond, OK
Virginia Autry, Merritt Farms, Hennessey, OK
Angela Thompson, Wells Nelson & Associates, Oklahoma City, OK
Doug Hall, City of Wagoner, OK
Deena Suddath, BancFirst, Oklahoma City, OK
Anne Burger Entrekin, San Antonio, TX
Jim Barnett, Doerner Saunders Daniels Anderson; Town of Hennessey,
Oklahoma City, OK
Carly Schnaitherman, Office of Secretary of Environment, Oklahoma City, OK
Tyler Powell, Office of Secretary of Environment, Oklahoma City, OK
Patty Thompson, Department of Environmental Quality, Oklahoma City, OK
Leslie Smith, Department of Environmental Quality, Oklahoma City, OK
Vicki Reed, Department of Environmental Quality, Oklahoma City, OK
Charlie Swinton, BancFirst, Oklahoma City, OK
Michael Taylor, Department of Environmental Quality, Oklahoma City, OK
Christy Harper, PFLG
John R. Gritz, Town of Hennessey, OK
Mike Shaw, Town of Hennessey, OK
Bodie Bachelor, Centennial Law, Duncan, OK
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK
Diane Pedicord, Oklahoma Municipal League, Oklahoma City, OK
Brian Woodward, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Tom Liu, Bank of America Merrill Lynch, New York City, NY
Pennie Embry, Oklahomans for Responsible Water Policy, Eufaula, OK
Helen Cline
Michael Langston, Oklahoma Water Resources Research Institute, Stillwater, OK

B. APPROVAL OF MINUTES

Chairman Drummond said the draft minutes of the July 17, 2012, Regular Meeting had been distributed, and he asked if there were corrections to the minutes. There were none, and he stated he would entertain a motion to approve the minutes.

Mr. Drake moved to approve the minutes of the July 17, 2012 meeting, and Mr. Buchanan seconded.

AYE: Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY: None
ABSTAIN: Herrmann
ABSENT: Lambert

C. EXECUTIVE DIRECTOR'S REPORT

Executive Director J.D. Strong began his report recognizing State Representative Mike Sanders, representing Hennessey, Oklahoma. Mr. Strong continued his report announcing several Board Ad Hoc Committee meetings were scheduled in association with the Board meeting: Finance Committee met Monday afternoon, the Budget Committee met prior to the meeting (a subsequent meeting will be scheduled to continue discussions), and the Drought Committee will meet following the meeting adjournment. He mentioned the Drought Monitor report indicating that Oklahoma is suffering the worst drought conditions across the U.S.; last week's report said 95% of Oklahoma is in "exceptional drought," more than any other state. Hopefully, recent rains will have improved the situation slightly. He invited Mr. McClintock to present the legislative report and update members on the Governor's Water Conference.

Mr. Josh McClintock reviewed the two-page prepared legislative report. Congress has recessed for the month of August and there has not been any movement regarding appropriations. Regarding the Governor's Water Conference, Mr. McClintock informed the members that the dates are November 13-14, 2012, at the Tulsa Southern Hills Marriott. Mr. Duncan Dayton is the Keynote speaker has worked with film producer Ken Burns on a documentary on the Dust Bowl which will be released November 18-19. He reviewed the draft schedule which includes the first day primarily devoted to discussions on various types of conservation use, recycling, etc., primarily keyed off by the actions by the Legislature this session and support from the Governor's Office. The second day will start with Mr. Brian Richter, a National Nature Conservancy representative and member of its Local Freshwater Team speaking to TNC initiatives with beverage companies and other conservation issues. Beverage companies have been invited to address corporate initiatives. Water monitoring activities which are a result of Legislative activity will be the topic of the afternoon; water infrastructure financing will also be discussed, especially regarding the state question which will have been voted on the week prior to the conference—SQ 764. The Water Resources Research Institute will be conducting its symposium as in the past years, and will be focusing on conservation discussions. Senator Jim Inhofe is scheduled for the first day luncheon speaker, and the OWRB November meeting will be held on the afternoon of November 14th at the hotel.

Mr. Drake asked if there was any known opposition to the state question. Mr. McClintock and Mr. Strong responded there is not known opposition at this time, everyone seems to understand what the issues are because a lot of time was taken to explain the issues during the legislative session—it's not a bond issue and not a tax increase.

Mr. Strong stated that mediation continues with the Tribes. The Kansas-Oklahoma Arkansas River Compact met in Marion, KS, on July 25 where Ms. Cunningham represented Oklahoma as Mr. Strong testified that same day before Congress regarding reauthorization of NIDIS; he said the timing was appropriate considering current drought conditions across the country. Mr. Strong attended a public meeting at Panhandle State University at Goodwell, Oklahoma, to hear about the recently completed draft Panhandle Regional Water Plan. He said the Oklahoma Panhandle Ag and Irrigation Association and Panhandle Regional Economic Development Coalition, Inc. (PREDCI), together hired Mr. Duane Smith and Jon Rehring to draft a Panhandle Regional Water Plan. He said it goes the next step beyond the statewide plan; comments and input are being accepted by the public, and once finalized, that document may be presented to the Board.

Mr. Strong said that he would be speaking to the Red River Valley association at Ardmore on August 23; the OWRB Management Retreat will be held August 22 to update the agency strategic plan; and Brigadier General Kuhla, Southwest Division of the COE, will make a courtesy visit on August 30. Mr. Strong and Mr. McClintock will travel to Topeka, KS, to attend a joint meeting with the COE Tri-State meeting (COE SW Division, Oklahoma, Kansas and Texas) to look at projects on John Redmond Reservoir; September 6 Mr. Strong will speak to the continuing education "Water Class" at Southwestern OSU at Weatherford; attend the Arbuckle Master Conservancy District 50-year mortgage early payoff celebration on September 12; and he will speak to the ORWA annual meeting at Western Hills Lodge on September 13. The next OWRB meeting is September 18, 2012.

Mr. Strong updated the members on the status of the Arbuckle Simpson maximum annual yield determination. He said staff expected sometime this month to receive the report from the hearing examiner. He said there were several hyper-technical issues, testimony and technical data to review prior to completing the draft proposed order. The information is available on the OWRB website.

Mr. Buchanan asked about the State of Arkansas's interest in the .037 issue and possible additional studies. Mr. Strong responded that discussions are ongoing with the State of Arkansas now; he reminded the members that ten years ago the Board approved the .037 phosphorous standard, which was fully promulgated, and scheduled to be fully implemented by June 30, 2012. He said the Illinois River is still not meeting .037; but about one-half the Scenic Rivers are meeting the .037. Arkansas is interested in conducting additional studies to discover if ten years later with all the research that has happened is there better data to support a different number. He said the discussions center on whether additional time should be given to do the research before they are sued for not complying with the .037. Mr. Buchanan asked if efforts are underway to meet the standard, and Mr. Strong answered yes, efforts are and have been underway in both states for a decade to control and reduce phosphorous, and monitoring the past several years has borne that out.

Mr. Fite added that the municipalities in northwest Arkansas that are in the headwaters of the Illinois River basin have expended to date (since negotiations of the agreement in 2003) \$300 million dollars on point source and controls and improvements at Fayetteville, Siloam Springs, Rogers, Springdale, and the NACA facility. In addition, he said, the poultry industry has moved a considerable amount of the waste generated out of the basin to areas where it is not an issue. He said the same has happened in Oklahoma, and there is a lot of progress being made, and there is a location on the Illinois in Arkansas that is at the standard and other Scenic Rivers are meeting the standard. He said the two states are negotiating between the Attorneys General to determine how to go forward and whether there will be a second Principals of Agreement Statement is yet to be determined. He mentioned the lawsuit still pending and while arguments were concluded over two years ago, there has been no decision, but there was an enormous amount of testimony for Judge Frizzell to review.

D. Monthly Budget Report

Ms. Amanda Storck addressed the members and noted the distributed report is to the end of July 2012, or the first month of the fiscal year 2013. She said the report indicates there are 97% of funds left, with 92% of the fiscal year remaining.

Chairman Drummond stated that at this time, the Board will consider Supplemental Agenda item 6.A., Review and discussion of FY-2013 Agency Budget. He noted the Budget Committee met this morning prior to the meeting.

Mr. Ed Fite, Budget Committee Chairman, informed the members that the Committee will meet again in September as there was not enough time to fully vet some of the members' questions, but it was a productive meeting. Ms. Storck added that for the 2013 budget, the agency requested \$3.5 million dollars from the Legislature of which a large portion was received, making the total budget for general revenue appropriations for 2013 at \$6,999,000 and change; with the revolving funds, the total agency budget submitted to the Office of State Finance in July was \$27 million. With the increased funds in Water Quality and Planning and Management, Ms. Storck said, staff will be coming to the Board with a plan for the expenditures of those funds.

There were no further questions by members.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water District #4, Stephens County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated this first item for the Board's consideration is a \$50,673.63 emergency grant request from Stephens County Rural Water District #4. He said the District's wastewater is pumped to a lagoon by a lift station; however, the station's controls have become inoperable which has caused sewage to pool in the station and bypass to a nearby creek. To correct the problem, the District proposes to construct a sewer line on piers that will cross the creek to the lagoon. He said the project will be funded with the grant requested of the Board, along with \$9,000.00 in local funds. Staff recommended approval.

Representing the District was Mr. Gary Brinkley, District Engineer.

Mr. Sevenoaks asked about the creek flow; Mr. Brinkley responded it is an unnamed tributary to the Red River. The floodplain analysis revealed the pipeline is above the 100-year floodplain.

There were no other questions, and Chairman Drummond stated he would entertain a motion.

Mr. Drake moved to approve the emergency grant to the Stephens County Rural Water District #4, and Mr. Buchanan seconded.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond

NAY: None

ABSTAIN: None

ABSENT: Lambert

B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Rural Water District #1, Okmulgee County. Recommended for Approval. Mr. Freeman stated this item is a \$700,000.00 loan request from Okmulgee County RWD #1. The District is requesting the loan to refinance a Rural Development loan which was for the construction of three stand pipes, distribution pipe replacement, installing 16 fire hydrants, and construct a booster pump station. Mr. Freeman said the loan will be funded through the State FAP Bond issue program, and he noted provisions of

the loan agreement. It is estimated the District will save approximately \$550,000.00 by refinancing its indebtedness. Staff recommended approval.

Mr. Butch Burgess, Chairman; Mr. Ken Holloway, District System Manager; and Ms. Debbie Stidman, Office Manager, were present in support of the loan application.

Mr. Herrmann asked the debt service coverage and Mr. Freeman answered it is 1.57-times. Mr. Buchanan asked about the funds the Board decided not to use for refinancing, and Mr. Freeman answered that is the SRF and there is potentially one refinancing on a DWSRF loan to consider. The Finance Committee considered options before moving forward on limiting refinancing outside OWRB loans, based upon the capacity situation. Hopefully, the state question will pass in November. Mr. Herrmann added there are several entities that have been working at refinancing through the OWRB for quite some time and to change the rules in the middle of the process isn't quite fair, so the Committee is assessing good judgment in the transition to a more restrictive approach to refinancing.

There were no other questions, and Chairman Drummond said he would entertain a motion.

Mr. Buchanan moved to approve the FAP loan to Okmulgee County RWD #1, and Mr. Fite seconded.

AYE:	Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY:	None
ABSTAIN:	None
ABSENT:	Lambert

C. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Rural Water District #1, Noble County. Recommended for Approval.

Mr. Freeman stated this item is a \$1,161,825.00 funding request from the Noble County Rural Water District #1. He said The District is requesting the funding to install a temporary water tank, construct a 150,000 gallon standpipe and a groundwater storage tank, rehabilitate a pump station, add a chlorination room to an existing pump station, and lay approximately 39,000 feet of water line. The funding will be provided through the Drinking Water SRF program. Mr. Freeman explained the members will recall that beginning with the ARRA Act of 2009, additional subsidization was a requirement and is carried forward to future SRF Capitalization Grants. For the 2010 and 2011 Drinking Water SRF Capitalization Grants, the requirement is that not less than 30% of the grant amount be provided as additional subsidization. For the 2012 Capitalization grant, the requirement is for not less than 20% but not more than 30% for additional subsidization. In Oklahoma, the Department of Environmental Quality and the Oklahoma Water Resources Board, encourage regionalization and consolidation of water systems and focus much of the subsidization projects on those such as the Noble RWD #1 project before the Board today. Mr. Freeman said if the District complies with the regionalization and consolidation guidelines, then the funding will be in the form of principal forgiveness; if not, the funding will bear a fixed interest rate plus a one-half point administrative fee, a maturity not to exceed 30 years from the completion of construction, and will be secured with a lien on the District's water revenues and a mortgage on the water systems. Staff recommended approval.

Mr. Brent Bolay, District Chairman, was present in support of the funding application.

Mr. Herrmann asked about Mr. Bolay's view on the regionalization encouraged by the DEQ. Mr. Bolay said the District Board at first wanted to produce its own water, but upon

further review decided it was a better decision to have an interconnect with two systems on either side. Mr. Herrmann asked the debt coverage ratio if the District does not accomplish regionalization. Mr. Freeman explained there is not yet a calculation because this is in a form of principal forgiveness. If the District does not comply with the regionalization and consolidation guidelines, it would have to institute rates sufficient to repay the loan. Mr. Sevenoaks asked then if the funding is based on principal forgiveness, is there no administrative fee. Mr. Freeman said there is no fee because once the project is completed, there is no additional work for the Board.

There were no other questions, and Mr. Drake moved to approve the DWSRF loan to the Noble County RWD #1, and Mr. Herrmann seconded.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY: None
ABSTAIN: None
ABSENT: Lambert

D. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Stroud Utilities Authority, Lincoln County. Recommended for Approval. Mr. Freeman said item is a \$2,720,000.00 Drinking Water SRF loan by the Stroud Utilities Authority. The loan proceeds are being requested to install an automated meter reading system throughout the town, repair and repaint a 500,000-gallon storage tank, make upgrades to the water treatment plant, and for new pump stations at the Lake Stroud Pump Station. Mr. Freeman noted provisions of the loan agreement, adding that Stroud currently has two outstanding loans with the Board with a principal balance totaling \$1.9 million. The debt coverage ratio is a strong 3.5-times. Staff recommended approval.

Mr. Tim Schook, Stroud City Manager, was present in support of the DWSRF loan application.

There were no questions by the Board and Chairman Drummond said he would entertain a motion.

Mr. Herrmann moved to approve the DWSRF loan to the Stroud Utilities Authority, and Mr. Sevenoaks seconded.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY: None
ABSTAIN: None
ABSENT: Lambert

Mr. Sevenoaks asked if painting as maintenance is typically financed with loan funds, and Mr. Freeman said that as repair and repainting (rehabilitation), yes it is.

E. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Wagoner Public Works Authority, Wagoner County. Recommended Approval. Mr. Freeman stated that this request is a \$4,600,000.00 State Loan program Revenue Bond loan request by the Wagoner Public Works Authority. He said the Authority has requested the loan to refinance a loan it obtained from the Board in 2001. The original loan was for the construction of a new 3.0 MGD water treatment plant, a treated water transmission line, a 250,000-gallon elevated storage tank, and a liner for an existing storage tank. Mr. Freeman noted provisions of the loan agreement; the Authority will save approximately \$500,000 by refinancing its debt, and the debt coverage ratio is 2.8-times. Staff recommended approval.

Mr. Doug Hall, Wagoner Water Superintendent, was present in support of the loan application.

There were no questions by the Board, and Mr. Fite moved to approve the FAP loan to the Wagoner Public works Authority. Mr. Herrmann seconded the motion.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY: None
ABSTAIN: None
ABSENT: Lambert

F. Consideration of and Possible Action on a Proposed Resolution Selecting a Financial Advisor to the Board in Connection with the Board's Financing Programs. Recommended for Approval. Mr. Freeman stated to the members that item is for the selection of a financial advisor for the Board's financing program. He said proposals were requested from 15 firms and staff received responses from Public Financial Management and from First Southwest. The proposals were reviewed based on each firm's experience as financial advisors, the financial advisory experience of the individuals assigned to the Board, their understanding of the scope of services they are requested to perform, and the fees and expenses for their services. Mr. Freeman said after reviewing the proposals, consulting with the State Bond Advisor's Office, and the Board's Finance Committee, staff recommended First Southwest as the Board's financial advisor.

Finance Committee Chairman Rudy Herrmann stated there was a thorough vetting of the process at the Finance Committee meeting, and clearly First Southwest was the winner, and continues a very successful relationship between the Board and First Southwest. The Finance Committee supports staff recommendation.

Mr. Herrmann moved to approve the selection of First Southwest as the Board's Financial Advisor in connection with the Board's financing programs, and Mr. Sevenoaks seconded.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY: None
ABSTAIN: None
ABSENT: Lambert

Mr. Freeman reminded the officers of the scheduled signing of documents for the FAP bond issue following the meeting. Mr. Herrmann said that following the Finance Committee's selection process, Ms. Entriken provided information of the significantly changing financial environment of low interest rates and the implication of the low rates on the program's reserve funds, and what the implication might be for refinancing existing programs. The Committee asked for a tutorial in part or in whole in the future, prior to decisions which may need to be made in the spring.

Mr. Buchanan asked about why there are only two responses to 15 RFPs, and Mr. Freeman said that staff utilizes the list of financial advisors approved by the State Bond Advisor's Office, and the low response is probably because there are not many firms that concentrate on the Board's type of financing.

3. SUMMARY DISPOSITION AGENDA ITEMS

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

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

There were no requests to transfer items 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 listed.

Chairman Drummond asked if there were any questions regarding the Summary Disposition Agenda items.

Ms. Cunningham asked that item 3.H.7., Application to Amend Regular Groundwater Permit #2003-559, be removed from the Board's consideration.

There were no other requests, comments, or questions about items on the Summary Disposition Agenda.

Mr. Herrmann moved to approve the Summary Disposition Agenda as amended.

Mr. Herrmann asked about the large number of groundwater permits from Texas County. Mr. Hitch responded he could speak to his area, that because of the drought and using the wells more than usual are causing older wells to fail. He said many are replacement wells, and well drillers are working for the oil and gas companies; these are for next year. Ms. Cunningham added that most of the applications are for irrigation, and the number of applications (statewide) are about double the typical number, and is partially due to drought, but also many are for oil and gas. Mr. Sevenoaks asked if the wells are drilled deeper, and Mr. Hitch answered the wells not drilled deeper but typically to the red bed, and because of the old rusty pipes, its best to drill new wells and use a plastic liner. He added that the old wells were set in the middle of the quarter near the irrigation and new rules prescribe the replacement wells can only be drilled within so many feet, which requires a new permit when moved to the corners.

Mr. Drake seconded the motion.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond

NAY: None

ABSTAIN: None

ABSENT: 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>
ASCOG				
a.	FAP-10-0021-R	Rural Water District #3	Grady	Extension of Time
GGEDA				

b. FAP-11-0033-R Delaware Public Works Authority Nowata \$79,900.00

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

1. Memorandum Agreement with USGS and the City of Norman for water monitoring and data collection.
2. Intergovernmental Agreement with the City of Ardmore for Bathymetric Survey of Mountain Lake and Ardmore City Lake, Firm Yield Analysis of Lake Jean Neustadt, Lake Scott King, Mountain Lake and Ardmore City Lake.
3. Interagency Agreement with Oklahoma Department of Agriculture, Food and Forestry to collect groundwater samples at monitoring wells of licensed managed feeding operations.
4. Memorandum Agreement with USGS and Lugert-Altus Irrigation District for water monitoring and data collection.
- 5. *Joint Funding Agreement with U.S. Geological Survey for the project “Water Quality, Hydrological Surveys, and Groundwater-Flow Model of the Canadian River Alluvial Aquifer, Western Central Oklahoma”.* Item Added
- 6. *Joint Funding Agreement with U.S. Geological Survey for the project “Update of the Hydrological Surveys Groundwater-Flow Models of the North Fork Red River Alluvial Aquifer Southwestern Oklahoma”.* Item Added

E. Applications for Temporary Permits to Use Groundwater:

1. Rebecca A. Moore Revocable Trust, Caddo County, #2011-650
2. Don E. Muegge Minors’ Trust and Bonnie M. Muegge, Grant County, #2012-510
3. Don E. Muegge, Bonnie M. Muegge, Chad F. Muegge, Jill S. Muegge, Clay A. Muegge and Jennifer Muegge, Grant County, #2012-512
4. Dennis & Judith Maser, Delaware County, #2012-585
5. Doug & Nancy Lee Testerman, Harmon County, #2012-590
6. John Lee & Carol A. Wright, Major County, #2012-609
7. Darrel L. & Sharon K. Mauck, Kingfisher County, #2012-610
8. Rickey & Deana Squires, Dewey County, #2012-611
9. Rickey & Deana Squires, Dewey County, #2012-612

F. Applications to Amend Temporary Permits to Use Groundwater:

1. Osage County RWD No. 21, Kay County, #1975-575

G. Applications for Regular Permits to Use Groundwater:

1. Guyla Marie Smith Carnes and Janet Diane Smith Hayes, Greer County, #2012-554
2. Shane & Robin Metcalf and Luke Metcalf, Texas County, #2012-560

3. Shane Metcalf and Luke Metcalf, Texas County, #2012-561
4. Joey & Kelli Rippetoe, Beckham County, #2012-575
5. Centurion Pipeline L.P., Lincoln County, #2012-588
6. Julio & Sandra Jimenez (aka Navajas), Beaver County, #2012-595
7. Don Carlisle, Harper County, #2012-603
8. Mark Witt and Neal Hofferber, Texas County, #2012-607
9. Mark Witt and Neal Hofferber, Texas County, #2012-608
10. Denver Buck Irrevocable Trust, Texas County, #2012-613
11. Lo-Buck Farms, L.L.C., Texas County, #2012-614
12. Darren & Julie Buck, Texas County, #2012-615
13. Mitch A. & Marcia L. Cowan, Beaver County, #2012-617
14. Hood Ranch, Inc., Texas County, #2012-620
15. T V Arnold L.P., Texas County, #2012-626

H. Applications to Amend Regular Permits to Use Groundwater:

1. Tim L. & Sherry Williams, Texas County, #1975-756
2. Fischer Family Farms, F.L.P., Texas County, #1990-517
3. O K Farms, Inc., Texas County, #1991-599
4. 3 Point Ranch, L.L.C., Texas County, #1994-664
5. Murphy Family Farms, L.L.C., Ellis County, #1996-616
6. City of Elk City, Beckham County, #2000-525
7. *Tyler & Dodie McIntyre, Beckham County, #2003-559* item withdrawn
8. Fischer & Fischer, Texas County, #2009-543B

I. Applications to Amend Prior Rights to Use Groundwater:

1. Kelli Litsch, Washita County, #1957-494

J. Applications for Regular Permits to Use Stream Water:

1. Verdigris Valley Sod Farms, Rogers County, #2011-071
2. Verdigris Valley Sod Farms, Rogers County, #2011-072
3. K 4 Ranch, L.L.C., Dewey County, #2012-012
4. Johnnie M. Sisemore, Osage County, #2012-030
5. Alvin R. & Debra Jo Stein, Lincoln County, #2012-032
6. Charles Sisler, Tulsa County, #2012-036

K. Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Roper Company DPC-0852
 1. Operator: Steven Kizziar OP-1903
 - Activities: Groundwater wells, test holes and observation wells
Pump installation
 - b. Licensee: *Professional Pump Installation Company, Item Corrected* DPC-0870
 1. Operator: Christopher R. Tackett OP-1929
 - Activities: Pump installation
 - c. Licensee: Cactus Plumbing of Ada, LLC DPC-0872
 1. Operator: Jacob Brauning OP-1930

- Activities: Pump installation
- d. Licensee: Arrowhead Engineering Co., LLC DPC-0874
- 1. Operator: Corby Key OP-1443
- Activities: Monitoring wells and geotechnical borings

- 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:**
- a. Licensee: White Drilling Co., LLC DPC-0800
- 1. Operator: William B. Atkins OP-1776
- Activities: Monitoring wells and geotechnical borings

L. Dam and Reservoir Construction:

- 1. Westlake Dam & Spillway, Oklahoma County

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

- 1. Oklahoma Department of Transportation, Grant County, #FP-12-17

N. Applications for Accreditation of Floodplain Administrators:

Names of floodplain administrators to be accredited and their associated communities are individually set out in the August 21, 2012 packet of Board materials.

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

A. No items.

There were no items of agency matters for presentation to the Board.

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 Amendment to Temporary Groundwater Permit No. 2009-541, Hennessey Utilities Authority, Kingfisher County:

1. Summary – Ms. Julie Cunningham, Chief of the Planning and Management Division, stated to the members this application is a request for an amendment to temporary groundwater permit #2009-541 by the Hennessey Utilities Authority located in Kingfisher County. The application is to add 96.9 acre-feet of groundwater per year and 48.45 acres of dedicated land, and to change the name of the permit to the Hennessey Utilities Authority from the Town of Hennessey. Currently, Hennessey has a permit to withdraw 80 acre-feet of groundwater for municipal water supply from 40.1 acres of land from three wells. With the additional acre-feet, the total is 176.9 acre-feet.

Ms. Cunningham provided background on this case stating that the landowner can dedicate land anywhere over the aquifer and withdraw the water from a specific location (“straw in the bucket” theory). In this case, the land requested to be added is not contiguous with the existing land but they are requesting to take the additional water from the same wells doubling their existing water rights (wells 4, 5 & 6 on the distributed map.) The record showed the applicant does have a valid right to the land, they hold a lease with the protestant (a lease for the land and the wells), the land overlies the Cimarron Terrace Groundwater Basin, municipal use is a beneficial use, and waste will not occur. The applicant has met the requirements, and staff recommended approval of the request with a condition to prevent potential adverse and unreasonable effect to the protestant’s groundwater irrigation well during the summer irrigation session.

Explaining the purpose of the condition, Ms. Cunningham stated there were several protestant landowners in this case: Ms. Jean Ann Casey, Ms. Virginia Lee Autry, and Mary Kathryn Berta (under the name of their L.L.C. farms). The protestants are represented by Mr. Mark Walker of Crowe Dunlevy, who presented a case that Hennessey’s proposed withdrawal of additional water from these three authorized wells would dry up their permitted irrigation wells which would be unreasonable and impermissible under applicable law. Expert witnesses performed modeling, and testimony included information about irrigating pecan trees during July-August-September each year using approximately 40 acre feet of water; the protestant’s allotted permit authorizes 240 acre-feet of groundwater.

Ms. Cunningham said the Hennessey Utilities Authority (HUA) is represented by Mr. James R. Barnett of Doerner Saunders who presented groundwater modeling evidence that indicated that under most circumstances, the HUA’s proposed additional use would not have adverse effects on the protestant’s groundwater irrigation wells. However, under one scenario, which represented summer time pumping by the protestant of their full amount, and the applicant withdrawing the new permitted water at a constant rate throughout the year, would dry up the well. She clarified that each scenario by the protestants expert, and one scenario by the applicant’s expert, showed there would be an adverse effect on the well.

Having evaluated the record, Mr. Cunningham said the hearing examiner stated in the proposed Board order, and staff concurred, the expert analysis employed by the HUA was more persuasive due to the parameters used that pumping during the summer months would at the very least dry up the protestant’s well sooner than if the HUA had not pumped the increased amount (FOF #15), which would be an unreasonable and impermissible result. She said that to counter, the HUA argued that there is no basis of law to consider reasonableness or impose conditions on the permit in order to prevent unreasonable affect by another person’s well. In conclusions of law #12, the hearing examiner cites references to conclude the evidence that when there is

evidence substantial enough to support a FOF that the proposed wells will likely cause adverse and unreasonable effects on the groundwater or wells of another, the Board is authorized to impose conditions that may be necessary and warranted to prevent the unreasonable effect. Ms. Cunningham stated the applicant has submitted an "Exceptions" document which had been previously distributed to the members. She suggested there may be opportunity for the parties to find resolution; there are no negotiations at this time; however. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

Chairman Drummond asked if the members had questions regarding the presentation of the facts in this case. Mr. Herrmann asked about the dedication of non-contiguous land, and Mr. Strong responded that the land is adjacent to the dedicated land, there are unusual circumstances in this case and while not rare, the law provides for that ("straw in the bucket") as long as the land is over the same aquifer. He added that the applicant's own expert presented at least one scenario where their withdrawal would cause interference with the protestant's existing water withdrawal. He reminded the members of the four points of law which must be met by the applicant and stated the key question is whether the Board can go further in the face of evidence that shows an impact on another's property right and impose conditions to prevent that interference; the unreasonable, possible taking of someone else's private property right. This situation is not totally unfamiliar to the Board as the Messer-Bowers case is cited in the proposed order, and he suggested the Board take time to review before choosing that road.

Mr. Drake noted that both sides agree that during July-August-September there will be a depletion of water to the landowner's well and Mr. Strong added, there could be depletion under at least one scenario by the applicant and all scenarios by the protestant. But, that has not played out because the scenario uses all 240 acre-feet of water (by the protestant) during that irrigation season and that has not been presented as having been used before--they have only used 40 acre-feet; it is a worst-case scenario. The question is whether that scenario ever happens in reality, and should the Board condition the permit to prevent that from happening. The Board can decide whether to impose the condition to prevent that from happening as proposed by the hearing examiner, or state in a different way those conditions that may be more practical for both parties. Ms. Cunningham said the idea was presented that there could be notification the 240 acre-feet was not going to be used and the other amount would be available.

Chairman Drummond directed the members to ask factual questions. Mr. Herrmann asked if there were multiple protestants with multiple land holdings, and Ms. Cunningham answered that the holdings are joint, all the parties own the permit. Mr. Fite asked if the wells depicted on the map are existing wells and if each square on the map is 10 acres; staff answered yes to both questions. Ms. Feaver asked if Hennessey is in danger of running out of water. Ms. Cunningham answered that the town wants to increase its water rights and have obtained provisional temporary (PT) permits to get through the summer months, and typical use is about 150 acre-feet. Mr. Strong said they have to obtain PTs in order to have sufficient water supply for their citizens in the summer months. The permit is temporary and validated each year until the basin study is completed and maximum annual yield set. Mr. Herrmann asked if there is a lease agreement in place between the protestant and the applicant relative to the proposed dedicated land (and the wells). Mr. Strong said yes, the lease agreement was reviewed before determining there is a valid lease to the land overlying the basin; term of the lease is ten-years.

Chairman Drummond invited the applicant and protestant to speak to the Board, keeping presentations to ten minutes each.

2. Discussion and presentation by parties. Mr. James Barnett, representing the HUA, addressed the members and introduced his clients: Mayor Wes Hardin, Vice Mayor John Gritz, Trustee Mike Shaw, Town Administrator Tiffany Tillman, Public Works Director Curtis Turner, and Representative Sanders.. He addressed issues raised by the Board: (1) regarding whether the wells were drilled on the new dedicated land, that is across the highway and costly to bore the well and lay pipeline; and its legal to take the water on dedicated land; (2) regarding the use of the word, “takings” under the law as long as you don’t use more than your share, the Supreme Court has ruled that cannot be a taking; and (3) regarding the need for the water, the HUA is operating under a PT and if the application is denied or approved with the conditions imposed, the town will be out of water. Mr. Barnett complimented the staff s correctness on the two fundamental issues: (1) the town is entitled to have its application approved; and (2) the town has met the burden of fulfilling all four objective criteria to obtain a water right. He said, though, the Board claims a “5th point of law” pertaining to “reasonableness” allowing an objective decision to be made and trumps the four other objectives and to place conditions on the applicant using its water, citing as authority for the decision the Messer-Bowers case and statute that has no applicability to this situation.

Mr. Barnett reviewed the points of his argument as included in the Exceptions filed with the Board, noting three Supreme Court cases where this issue has been addressed, and in summary the Court said reasonableness means complying with the four objective criteria (if you’ve complied, your use of the water is reasonable). He referred to the Texas County case where the Court said under the current groundwater law it was incumbent upon Mobile to present evidence the intended use was reasonable by establishing having met the four criteria. He also referenced the Kline Case, reiterated the Texas County decision that reasonableness is based on meeting the statutory requirement...based on information provided by hydrologic survey. He said the subjective determination of reasonableness--what one might believe to be reasonable as opposed to another-- has no role in groundwater permitting regarding private property and limitations thereon. He said most importantly, regarding the Messer-Bowers Case (he was attorney of record) the Court did not hold that reasonable was a fifth point of law, and a plain reading of the wording in the case, “the Water board must determine four issues in deciding whether to grant a groundwater permit (reiterating the four objective standards), and, “the first three of these issues were not contested, the third and fourth issues measure the reasonableness use of fresh groundwater and if the Water Board finds for the applicant in all four issues it must issue a permit.” Mr. Barnett reiterated the Court stated the measure of reasonableness is if the four objectives are met, and there is no fifth point of law having to do with reasonableness. He quoted a recent OWRB hearing examiner statement regarding reasonableness not being supported by the law, but today we are arguing whether this should be injected into this matter to preclude the town of Hennessey from obtaining water.

Mr. Barnett continued by assuming if reasonableness had something to do with this case, the conditions the staff has proposed are totally unreasonable: (1) it is not reasonable to tell the town in the hot summer months when the water is needed the most it is limited to 49 gmp from all three wells when the least that can be pumped from the wells is 200 gmp, basically directing the wells be shut in during the summer months; (2) under the current permit issued, the town can take 80 a.f. any time of year, but under the proposed amendment they can take nothing—not reasonable to roll back from what they have now; and (3) is it reasonable to protect the protestant’s 240 a.f. when the testimony is clear they have never used any amount like that, and testimony clear they are not capable (not tillable), making the worst case scenario one that hasn’t

happened nor can happen and testimony showed if they pumped their own well 240 a.f., whether the town pumped or not, they would dry up their own well. Lastly, Mr. Barnett mentioned regarding working out something between the parties, there is long history between the parties and the chances of that occurring is not likely and the Board should not put out the incentive to ask for financial enumeration. He asked the Board to approve the permit, but delete the conditions and the conclusion of law upon which it is based.

Mr. Hitch, r. Barnett, and his client discussed the size and type of pump in the wells making the point the gallons per minute pumpage is chosen by the size of pump installed so that is the limitation on the well. Hennessey also has a lack of storage capacity. Mr. Hitch also said the wells went dry on either party, it would be a hardship. Mr. Barnett responded his expert witness testified if the well was pumped to full allocation it would not go dry, and would not adversely impact the protestants' wells as long as they did not pump more than they had in recorded memory. Mr. Hitch asked what if they replaced their well and went to full capacity, and Mr. Barnett responded that would be a different situation if they wanted to drill a new well; they would have to come back before the Board for authorization. Mr. Barnett said he did not know if one well could pump the full allocation.

Mr. Mark Walker, representing the protestants, addressed the members and introduced his clients, Virginia Autry, Jean Ann Casey, and Mary Kathryn Berta. He stated their position saying his clients own 120 acres and have had the irrigation well for years, and the town's wells #4, 5, & 6, are located on "postage stamps" pieces of property, less than .05 acres. He said the town's wells are essentially on his client's property, but the town owns that tracts. For years, the town produced large amounts of water from the three wells without a permit. Once challenged, ultimately it was resolved by the town leasing from the protestants a 40-acre tract of land that are contiguous to the three wells, helping the town to obtain regulatory compliance, and continued use of the wells (2009 permit). Soon after, the town sought to add another 97 acres to the 2009 permit from land the town purchased. Mr. Walker said their concern was the town's "super concentration" of withdrawal of water in the middle of their property, and he thought it rare to have two experts who agree that if both withdraw the permitted volume, his client's well would go dry. He said their position is that if everyone used their permitted amount spread over the year—1/12 each month--it would dry up his client's well and hydrology was presented to support that. The town challenged that as not being a reasonable scenario, but what really needed to be looked at were everyone's needs in the summer. His client's do not want the Board to allow the town to add the new acreage to the permit at all, but that the town should drill on land elsewhere and the withdrawal could be spread out. He said when you need water it costs money and he didn't think it unreasonable for the town to have to drill a new well; he also mentioned the town has a an overlapping prior right permit for 184 acre feet on the northwest corner of his client's 120 acres. As stated in the proposed order, essentially there are 601 acre feet of water that can be withdrawn from 120 acres, and he supported the hearing examiner's proposed to allow use of the full amount throughout the year (177 a.f.) except during the three-month period (critical summer season) be held to the 80 a.f. currently authorized.

Mr. Walker argued the Board has legal authority in addition to the four requirements to inquire as to reasonable use and impose such conditions necessary to cause the use to be reasonable under 82 O.S. 1020.2, a declaration of policy that groundwater rules are to provide reasonable regulation for the allocation for reasonable use. He said there is a section in Messer-Bowers that addresses reasonable use and he described the details of the case saying there were 4,500 a.f. of groundwater being taken from 40 wells, with almost one-half the amount from a

small tract of land, 240 acres and six wells; the protestants claimed that would “super concentrated withdrawal.” He said the Board decided to authorize—because of the super concentration—three wells, limiting the amount of water that could be taken, which is what was appealed. He said the Board did exercise a restriction based on reasonable use and the Supreme Court upheld it, and he read from the case. He claimed there was no difference between the Messer-Bowers case and this case, and he referred to other permits issued by the Board: #96-524 where the Board placed restrictions citing Messer-Bowers and the Board’s authority to impose reasonable use restrictions making the point this is not uncharted waters, and he said there are other cases where the Board recognized and applied some condition upon the permit holders’ right to use and withdraw groundwater. Mr. Walker said he is not happy the Board is allowing the addition of land, but the hearing examiner’s recommendation should be upheld by the Board.

Mr. Drake asked for clarification, saying that what the Board (the hearing examiner) has proposed is that for nine months out of the year the applicant can use more water, but the three months they need the water, they can’t use more than they use today. He said he also heard that both experts agree that under certain conditions in those three months the landowner’s well could dry up. Mr. Walker said that is correct. Mr. Drake said the Board is asked to deny or approve the request that Hennessey doesn’t want. Mr. Strong interjected it is the Town of Hennessey’s request, and he reviewed the Board’s options: deny the application, approve the application, or somewhere in the middle, approve with conditions, and consider the issue of whether the Board has the authority to issue with conditions based upon the “reasonableness” factor.

Mr. Hitch asked about the usage in the permit, i.e., 240 a.f. allocated but only using 40 a.f. so were there plans to use more water? Mr. Walker there is not at this time, but they might and they have reserved the right to do so. He said the order addresses the concern by stating the landowners are to advise if they are not going to use the 240 a.f., the excess could be freed up for the town to use addressing that concern. He added that there is 200 gpm pumps on the wells and the whole year’s water could be pumped in 9 months; he said they could put a smaller pump in one well and still have adequate capacity. Mr. Hitch asked what the landowners’ pump horsepower is and Mr. Walker did not know.

Mr. Sevenoaks asked about negotiations and encouraged neighbors to work together. Mr. Walker answered he had contacted Mr. Barnett to look at doing something, and would like to have a dialogue.

Mr. Fite said there are 1420 acres and 27 wells depicted on the map provided, and there may be others so there are many wells concentrated on the less than 2.5 square miles of land. He asked how deep are the wells. Mr. Walker stated they are shallow, less than 80 feet as it is alluvial water. Mr. Fite suggested the people in the area needed to control their own destiny and Mr. Strong said everyone in the area received notice and had an opportunity.

There were no further questions for Mr. Walker and Mr. Barnett approached the members to address some of the concerns brought by Mr. Walker’s presentation. He challenged Mr. Walker’s comments about Messer-Bowers as he was the attorney of record. He said [we] voluntarily withdrew the application for the additional wells, the OWRB did not direct it to happen; his clients said they could live with three wells to satisfy the protestants, but it did not. He said the Messer-Bowers case does not bless some OWRB action, because there was no OWRB action to take wells away from the clients. Mr. Barnett addressed the large pumps; they are needed because the town has reverse osmosis, fire protection and little storage; only one well is pumped at a time. He concluded saying that the idea of the well going dry, the testimony is if

the protestants pumped their own well to capacity it would go dry. Finally, there has been a long history between these parties, money has changed hands and the town is trying its best to establish a system to stop paying money to the Merritt sisters. And, regarding the condition about notifying the town if their water is not going to be used is totally unreasonable to expect they would do that without some type of compensation.

Chairman Drummond stated there is a proposed order and the Board has a number options. He allowed questions from the Board members. Mr. Tom Buchanan asked about the current permitted amount (80 a.f.) and Mr. Strong said they are requesting the amendment to add an additional 97 acre feet, for a total of 176. a.f. of water. They discussed what is described in the order, what is permitted, what is being requested, the illustrations on the map, and the condition limits of the permit to take only in the summer months means they can only take one-fourth of the 80 a.f. –currently, there is no limitation on the amount that can be taken any time of year. Mr. Sevenoaks commented and Mr. Strong clarified that it would be better not to seek additional dedicated lands if it will impose restrictions that they don't have today. What has gotten lost in the discussion is that while the protestants would seek not to have any additional land dedicated, the scenarios that were modeled showed that if during the summer months there was a limit of the current 80 a.f. withdrawal, that might be acceptable under the model scenarios – translating to a 49 gpm limit, becomes much more restrictive. He said the Board may want to consider if there is room to modify the condition, recognizing the significant legal question of whether the Board has the authority to set additional conditions based upon reasonableness. If the Board wants to impose additional conditions, one area to explore might be whether the 49 gpm limitation--which is rather infeasible under the current pumping scenario—is translated into a different amount, more monthly or quarterly, and still pump without hitting the interference scenario. He noted this is a two part condition based on the applicant's model runs, not just 80 a.f. on Hennessey's part, but 240 a.f. being pumped at the same time during June, July and August on the protestants' part.; it takes both conditions being satisfied before there is interference. Mr. Hitch asked if unused water use expires, and Mr. Strong answered only regarding surface water.

Mr. Herrmann asked Mr. Couch to comment about the Messer-Bowers Case. Mr. Couch responded that the issue of whether there is authority and to what extent the Board wants to exercise if there is that authority, to impose conditions based upon reasonableness. This law was passed to allocate and quantify the amount of water that could be pumped based on surface acreage (1973). Not long after, a couple of Panhandle irrigators got crossways about whether use was beneficial or was waste. Ultimately, he explained the Court stated (in 1976) that before a permit is issued or any water used, a technical decision could be made until there was actually use of water, and used the phrase, "after the fact" – after the permit is issued, after the water is used—then there can be a complaint. There are provisions in the Oklahoma Groundwater Law to address that after the fact. He said the general view is that this agency would look at the four points of law and the permit is issued—and how the agency has operated for decades--if there is a problem, we can try to get involved but the Court said the parties can take their dispute to court. This agency has authority to issue permits, but is not the sole way to address that, so how much of this agency's effort should be focused on anticipating a problem ahead of time, even with that, what kind of conditions should be placed. Is the agency in a role to make those recommendations and impose those actual conditions, or wait and see. He referenced the Messer-Bowers case was a different way of looking at the same situation, and addressed it stating the Board has the potential to put these conditions on; the agency has authority, but does

the agency want to do it, and what are the implications of exercising it. Much effort goes into the process when parties have to put in evidence, staff has much effort involved, and he viewed it as a fundamental threshold policy decision as to how much to exercise this “reasonableness” as overriding consideration for just these four points of law.

Chairman Drummond announced the Board needed to consider an Executive Session and asked that discussion be concluded within 10 minutes.

Mr. Herrmann asked what recourse the protestant has if there are damages. Mr. Couch said the Oklahoma Supreme Court made it clear there can be a claim of damages to property in a court of law. He said this is an unstudied basin, and every year there is a revalidation, the view taken by the Board in years past is to wait until the after the fact events occur, see if there is a problem, and then if necessary address the issue at that point in time.

The members reviewed the Board’s position during the issuance of hog farm permits, that Hennessey will be penalized (approved for less amount than today), whether Hennessey’s long term needs are addressed, whether there are storage issues, the town’s other options and the cost of drilling, that the basin is unstudied, the water rights necessary to meet the needs of the citizens of Hennessey, and the Board’s options regarding its action: approve, deny, approve with conditions, table for one month, recess to executive session and return to decide.

3. Possible executive session – the Board did not vote to enter executive session.

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

Mr. Drake moved to table consideration for 30 days, until the September Board meeting. Mr. Herrmann seconded.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond

NAY: None

ABSTAIN: None

ABSENT: Lambert

B. Items transferred from Summary Disposition Agenda, if any.

There were no items transferred from the Summary Disposition Agenda.

Chairman Drummond called for a break at 11:40 a.m.

6. CONSIDERATION OF SUPPLEMENTAL AGENDA ITEMS, IF ANY

A. Item A. was considered under the Monthly Budget Report, item 1.D.

B. PROPOSED EXECUTIVE SESSION

Chairman Drummond

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 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 a pending investigation, litigation or proceeding in the public interest.

Returning from the break, Chairman Drummond read the purpose of the proposed executive session as listed on the Supplemental Agenda:

Pursuant to this provision, the Board proposes to hold an executive session for the purpose of discussing *Chickasaw Nation and Choctaw Nation v. Fallin, et al., Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al.* and *Tarrant Regional Water District v. Herrmann, et al.*

Statement by legal counsel advising on whether disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest.

General Counsel Dean Couch advised that disclosure of the discussion would seriously impair the ability of the Board and State to conduct the litigation in the public interest.

1. Vote on whether to hold Executive Session upon determination that disclosure of the discussion of the litigation will seriously impair the ability of the Board and State to conduct the present and proposed litigation in the public interest. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Mr. Buchanan moved that the Board enter executive session for the purpose stated, and Mr. Herrmann seconded.

AYE: Herrmann, Drake, Buchanan, Sevenoaks, Feaver, Fite, Hitch, Drummond
NAY: None
ABSTAIN: None
ABSENT: Lambert

2. Designation of person to keep written minutes of Executive Session, if authorized.
Chairman Drummond designated Executive Secretary Mary Schooley to keep written minutes of the executive session.

3. Executive Session, if authorized.
The Board entered Executive Session at 12:00 noon on Tuesday, August 21, 2012.

Return to open meeting and possible vote or action on any matter discussed in the Executive Session.

Chairman Drummond declared the adjournment of the Executive Session at 12:25 p.m.

C. VOTE(S) ON POSSIBLE ACTION(S), IF ANY, RELATING TO MATTERS DISCUSSED IN EXECUTIVE SESSION IF AUTHORIZED.

There was no action by the Board on matters discussed in Executive Session, or any other matter.

7. NEW BUSINESS

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

There were no New Business items for the Board's consideration. However, the members asked about the Hennessey permitted amount, whether it had been exceeded, and provisional temporary permit issued, and asked that staff provide additional information.

8. ADJOURNMENT

There being no further business, Chairman Drummond adjourned the meeting of the Oklahoma Water Resources Board at 12:30 p.m. on Tuesday, August 21, 2012.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
F. Ford Drummond, Chairman

_____/s/_____
Linda P. Lambert, Vice Chairman

_____/s/_____
Edward H. Fite

_____/s/_____
Rudolf J. Herrmann

_____/Absent_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

_____/s/_____
Tom Buchanan
(SEAL)