

OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES
September 17, 2013

1. Call to Order

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Rudy Herrmann at 9:30 a.m., on September 17, 2013, in the Second Floor Board Room of the Oklahoma Water Resources Board Offices, located at 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 September 13, 2013, at 2:45 p.m. at the Oklahoma Water Resources Board's offices, and provided on the agency's website.

A. Roll Call

Board Members Present

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

Board Members Absent

None

Staff Members Present

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

Others Present

Joan Riley, City of Enid, OK
J. Rasar
Alan Woodcock, US Fish and Wildlife Service, Tulsa, OK
Mike Bigheart, Enid, OK
Peter Burck, US Fish and Wildlife Service, Albuquerque, OK
Dave Taylor, Waurika Lake Master Conservancy District, Waurika, OK
David B. Wyatt; Tecumseh; Oklahoma City, OK
Michael Warwick; Tecumseh; Shawnee, OK
Becky Fleming, Tecumseh, OK
Cathy Condit, Tecumseh, OK
Don Kiser, Edmond, OK
Eddy Parker, Tecumseh, OK
Jimmy Stokes, City of Tecumseh, OK
Jim Barnett, Doerner Saunders, Daniel Anderson, Oklahoma City, OK
Marcy Lamb, City of Stillwater, OK
Robert B. Johnston, City of Frederick, OK
Eddie Whitworth, City of Frederick, OK
Amy Ford, Citizens for the Protection of the Arbuckle Simpson Aquifer, Durant, OK
Tom Liu, Bank of America Merrill Lynch, New York City, NY
Dan Blankenship, City of Stillwater, OK
Mark Secrest, Oklahoma Department of Mines, Oklahoma City, OK
Jim Kelly, JPM, Chicago, OK
Mike Mathis, Chesapeake, Oklahoma City, OK
Jill Daughtery, Chickasaw National Recreation Area
Lee Anna Lovington, Oklahoma Farm Bureau
Chris Cochran, BOSCO, Dallas, TX
Greg Carr, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Pennie Embry, Oklahomans for Responsible Water Policy, Eufaula, OK
Christina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer
Logan Layden, State Impact
Bodie Bachelor, Centennial Law Group, Duncan, OK

B. APPROVAL OF MINUTES

Chairman Herrmann said the draft minutes of the August 20, 2013 Regular Meeting had been distributed, and asked if there were corrections to the minutes. There were none, and Mr. Buchanan stated he would entertain a motion to approve the minutes.

Mr. Buchanan moved to approve the minutes of the August 20, 2013, meeting and Mr. Hitch seconded.

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

C. EXECUTIVE DIRECTOR'S REPORT

Prior to the Executive Director's report, Chairman Herrmann noted the members had been provided correspondence from Secretary Doerflinger regarding the recent salary survey for executive directors, confirming the status of the OWRB director, and not requiring any action.

Mr. Strong began his report updating the members on the drought conditions around the state, and noted that Ms. Storck is not present today because she is representing the agency at the Legislative Drought Interim Study Committee meeting. The Special Session convened after Labor Day, but there were no water related issues. He said there is activity in Washington, D.C.; Congress is working on continuing resolutions as it is not anticipated a full budget will be passed by the start of the Federal Fiscal Year, October 1. The House released its version of WRRDA—adding “Reform”; the Senate version does not, and a mark up on the bill is scheduled for Thursday this week, there are several differences in the two bills, and there will be a “Twitter Town Hall” this week. Mr. Sevenoaks asked if the OWRB has seen any funding from a WRDA bill, and Mr. Strong responded the OWRB received funding for the update of the Oklahoma Comprehensive Water Plan and Planning Assistance to the States funding. He discussed the change in funding such as eliminating and defining earmarks and the need to have specific funding.

Mr. Strong said the Water for 2060 Advisory Council met following the August Board meeting; the next meeting will likely be in November. The OWRB Finance Committee met on Monday and today's agenda items are a result of its work. The Budget Committee will meet following today's Board meeting as the agency budget request is due October 1.

The new Secretary of Energy and Environment started on September 3; he and Mr. Strong met on September 6, and they will be moving their offices downtown. Regarding recent meetings, Mr. Strong said mediation and technical meetings continue; he spoke to the Red River Valley Association; Mr. Smithee attended a Water Research Advisory Board meeting; and Mr. Smithee and Mr. Freeman participated in the Oklahoma Rural Water Association Fall meetings. The Arkansas Oklahoma Arkansas River Compact Commission will conduct its annual meeting on September 26 at Shangri-La; Commissioner Gary Sherrer resigned his position and Governor Fallin appointed Mr. Tyler Powell in that position; Steve Thompson, DEQ, is the third Oklahoma Commissioner.

Other meetings upcoming, Mr. Strong said he would be headed to Deadwood, South Dakota, for the Western States Water Council Quarterly meeting October 1-4; the Instream Flow Workgroup will meet October 7; and the Upper Washita Basin Aquifer Study public meeting with the Bureau of Reclamation will be held at the Caddo-Kiowa Technology Center, Ft. Cobb on October 10.

He mentioned long-time OWRB employee James Leewright will retire for the second time; he has done artwork on OWRB publications and lately the OCWP. Bill Secrest, former Board member and J.A. Wood, former OWRB Division Chief, passed away this past month.

Mr. Strong noted the Governor's Water Conference will be held October 22-23, 2013, at the Sheraton Hotel Midwest City Reed Conference Center – registration and the conference agenda are available on the agency website. (He reviewed the program details as confirmed to date.)

Mr. Strong announced the October Board meeting will be rescheduled to be held in conjunction with the Water Conference, on the afternoon of October 23, at the Reed Center.

Mr. Strong concluded his report.

D. Monthly Budget Report

Mr. Strong presented the budget report in Ms. Storck's absence. He noted the prepared and distributed report, stating there is 91% of the budget remaining with 83% of the fiscal year remaining. He said it is early in the fiscal year and the agency is expending the final dollars of the carryover funds, and staff will provide information to the members at the next meeting.

There were no questions, and Mr. Strong concluded the report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Tecumseh Utility Authority, Pottawatomie County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item is a \$4 million dollar loan request by the Tecumseh Utility Authority located in Pottawatomie County. The loan proceeds, along with \$318,400.00 CDBG funds and approximately \$106,421.31 in local funds, will be used to upgrade the existing water treatment plant and install approximately eight miles of water line to supply raw water from the West Watkins Reservoir. The loan will be funded by the Drinking Water State Revolving Fund Loan Program, and he noted provisions of the loan agreement. He said the population had increased by 6% over the last ten years, and the debt coverage ratio stands at approximately 1.74-times. Staff recommended approval.

Mayor Eddie Parker, City Manager Jimmy Spokes, City Clerk Cathy Condit, City Treasurer Mike Warwick, the City Attorney, and Financial Advisors were present in support of the loan application.

Mr. Sevenoaks said in the past there had been a controversy about allocation from West Watkins Reservoir, and he asked if that had been resolved. Mayor Parker stated he believed that has been resolved; the City of Shawnee has a new water line which is separated from their line.

There being no other questions, Ms. Lambert moved to approve the Drinking Water SRF loan to the Tecumseh Utility Authority, and Mr. Drake seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Frederick Public Works Authority, Tillman County. Recommended for Approval. Mr. Freeman stated this \$7,380,000.00 Clean Water State Revolving Fund Loan request is from the Frederick Public Works Authority located in Tillman County. The Authority is requesting the loan funds to go along with \$500,000.00 in local funds for waste water system improvements. The Authority will convert its east lagoons from a discharging system to a total retention system with land application, and in addition, will be converting industrial lagoons from a flow-through system to an aerated system. He said the loan will be funded through the Clean Water SRF loan program, and he noted provisions of the loan agreement. He said Frederick has been a good loan customer of the Board's, with one loan currently outstanding, and a debt coverage ratio of 3.5-times. Staff recommended approval of the loan application.

Mayor Eddie Whitworth, City Manager Robert Johnston, and their Financial Advisors were present in support of the loan request.

Mr. Sevenoaks asked about the debt coverage; Mr. Freeman said it is 3.5-times, and the Board's requirement is 1.25-times. Mr. Hitch asked when the Authority needed to be in compliance and if additional upgrades are anticipated. Mr. Johnston answered the Authority had 15 months to come into compliance, and population projections did not indicate further projects are needed.

There were no other questions, and Mr. Buchanan moved to approve the Clean Water SRF loan to the Frederick Public Works Authority, and Mr. Hitch seconded.

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

C. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman stated the Board's Finance Committee met to review proposals received for bond counsels and investment bankers for future debt issuance for the Board's Financial Assistance Program and State Revolving Fund Loan Programs. This item is for the selection of bond counsel for the State Revenue Bond Loan Program, also known as the FAP loan program. Request for Proposals were distributed to 24 bond counsel firms and received a response from the Centennial Law Group. Therefore, Mr. Freeman stated staff recommended approval of the selection of the Centennial Law Group as bond counsel for the FAP loan program.

Chairman Herrmann stated he would accept a motion, and Ms. Lambert, Chairman of the Board's Finance Committee, moved to approve the selection of the Centennial Law Group as the Board's bond counsel for the FAP Program. Ms. Feaver seconded the motion.

Mr. Sevenoaks asked if this firm is the same as has been serving as bond counsel and Ms. Lambert answered, yes. Mr. Drummond asked about the low number of responses, and Mr. Freeman stated this is the first time in his 23-year career the Board has only received one proposal from a service provider. He said that staff consulted the State Bond Advisor who said this has been a trend with state agencies.

There being no other questions, Chairman Herrmann called for vote.

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

D. Consideration of and Possible Action on Selection of Investment Banker(s) in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman stated this item is consideration of the resolution for selection of investment banker for the State Revenue Bond Loan Program. He said 36 Request for Proposals were distributed; four firms submitted proposals for Senior Manager, and one firm submitted a proposal for Co-Manager. Senior Manager proposals were received by Baird, BOSCO, Inc., J.P. Morgan, and Wells Fargo. The Co-Manager proposal was received from Wells Nelson & Associates. Proposals were reviewed by the OWRB staff and State Bond Advisor's Office based upon the firm's relevant experience, marketing capabilities, distribution capabilities, and quality of the proposed financing plan. Mr. Freeman stated that proposals were

reviewed by the Board's Finance Committee, and Ms. Lambert would make a recommendation on behalf of the Committee.

Ms. Lambert stated that in the matter of selection of underwriter for the Board's State Loan Program debt issuances, the Finance Committee recommends, and she would move, as follows: the Board select the underwriting firm of BOSC, Inc., to serve as Senior Managing Investment Banker to the Board, and the Board also select the underwriting firm of Wells Nelson & Associates to serve as Co-Managing underwriter to the Board. Mr. Drake seconded the motion.

Chairman Herrmann reminded the members this selection is for the Financial Assistance Loan Program. There being no questions, Chairman Herrmann called for the vote.

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

E. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of One or More Obligations to Provide Funding for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund Loan Programs. Recommended for Approval. Mr. Freeman stated staff requested proposals from 24 firms and received proposals from the firms of McCall Parkhurst & Horton, and Centennial Law Group. The proposals were reviewed based on bond issuance experience, new money and pooled revenue bond issue experience, revolving loan fund experience, the overall experience of the assigned attorneys, tax counsel availability, and fees. The proposals were reviewed by staff, the State Bond Advisor's Office, and the Board's Financial Advisors at First Southwest. Mr. Freeman stated Ms. Lambert would make the recommendation on behalf of the Board's Finance Committee.

Ms. Lambert stated that in the matter of selection of Bond Counsel for the Board's State Revolving Fund Revenue Bonds, the Finance Committee recommends and she so moved, that the Board select the firm McCall Parkhurst & Horton to serve as bond counsel to the Board. Mr. Drummond seconded the motion.

There were no questions by the Board, and Chairman Herrmann called for the vote.
AYE: Lambert, Hitch, Fite, Drummond, Sevenoaks, Drake, Buchanan, Feaver,
Herrmann
NAY: None
ABSTAIN: None
ABSENT: None

F. Consideration of and Possible Action on Selection of Investment Banker(s) in Connection with the Issuance of Obligations to Provide Funding for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund Loan Programs. Recommended for Approval. Mr. Freeman stated to the members that staff requested proposals from 36 firms; five firms submitted proposals for Senior Manager, and three firms submitted proposals for Co-Manager. He said proposals for Senior Manager were received from Wells Fargo, Ramirez & Company, Morgan Stanley, Bank of America Merrill Lynch, and J.P. Morgan. Proposals for Co-Manager were received by Baird, BOSC, Inc. and Wells Nelson & Associates. Mr. Freeman said the proposals were reviewed by staff, the State Bond Advisor's Office, and Financial Advisors at First Southwest based upon the firm's relative experience, marketing, distribution capabilities, and the quality of the proposed financing plan. Based upon the review, the firms of J.P. Morgan, Bank of America Merrill Lynch, and Morgan Stanley were requested to make presentations and

answer questions for the Board's Finance Committee the previous afternoon. Mr. Freeman stated Ms. Lambert will make a recommendation on behalf of the Committee.

Ms. Lambert first commented about the process of reviewing these three good companies. She said the Committee first decided it could not make a wrong choice; all three were excellent proposals in all of the categories mentioned by Mr. Freeman. She said that J.P. Morgan, as well as the other two institutions, offered suggestions for enhancing the Board's financing program going forward, and staff will take those considerations under advisement in the future as the market conditions prove favorable. She said that Morgan Stanley received the award for "most improved" as they have now included a comprehensive retail platform for their investment banking. The fees are all comparable, and the Committee felt it should not penalize for a good relationship over many years, past performance, and good service.

Ms. Lambert recommended that in the matter of selection of underwriters for the Board's State Revolving Fund Revenue Bond Debt Issuances, the Finance Committee recommends, and she so moved, that the Board select the underwriting firm of Bank of America Merrill Lynch to serve as Senior Managing Investment Banker to the Board, and she also moved that the Board select the underwriting firm of J.P. Morgan, Morgan Stanley, and BOSC, Inc. to serve as Co-Managing underwriters to the Board.

Ms. Lambert anticipated the members may ask if three co-managers are too many, however; she said that upon the advice of the State Bond Advisor Jim Joseph, Joe Freeman and Anne Burger-Enriken, all three said, "no" because with the amount of loans anticipated it will be a profitable business for all of them. She added she is pleased all the Board's bonds are Triple-A rated, and she would also say we have a Triple-A rated staff of Joe Freeman, Jennifer Wasinger, Kate Burum and Anne Burger-Enriken who have done a superlative job in putting together these numbers and to guide us through the process.

She repeated the motion that Merrill Lynch be the Senior Investment Advisor and the Co-Managers be J.P. Morgan, Morgan Stanley, and BOSC, Inc.

Mr. Buchanan seconded the motion.

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

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

NAY: None

ABSTAIN: Herrmann

ABSENT: None

Mr. Drake complimented Ms. Lambert as Chair of the Finance Committee for its presentation of the matters considered.

G. Consideration of and Possible Action on Proposed Resolution Agreeing to the Subordination of Outstanding Obligations of the Stillwater Utilities Authority Owing to the Oklahoma Water Resources Board to New Obligations to be Issued by Said Authority for the Purpose of Financing the Construction of a New Public Power Plant within the City of Stillwater, Oklahoma. Recommended for Approval. Mr. Freeman stated that this item is a request by the Stillwater Utilities Authority for Board approval of a subordinate lien position with regard to the OWRB's loans to Stillwater. He explained that Stillwater currently has five outstanding loans with the Board with a total outstanding principal balance of approximately \$19.5 million dollars. He said that at the time these loans were made to Stillwater, the Board's lien position was a subordinate lien on its water, sewer and electric system revenues, plus a one-percent sales tax. He said senior lien was in favor of the Authority's electric system revenue bonds; but subsequent to the Board's loans being closed, Stillwater paid off the electric system bonds. Stillwater is currently in the process of issuing \$70 million in bonds for the construction of a new public

power plant. By agreeing to the Board’s historical lien position, the Authority will be able to issue the power plant bonds at a more favorable interest rate which will be a positive benefit to Stillwater’s cash flow and ultimately enhance its debt coverage ratio. With the issuance of the new bonds, Stillwater will maintain a debt coverage ratio of approximately 2.95-times. Staff recommended approval of the resolution.

Mr. Dan Blankenship, Utilities Director, and Marcy Lamb, city clerk, were present in support of the request.

Mr. Hitch asked about whether the debt coverage ratio will be lowered, and Mr. Freeman said when the \$70 million is issued, the debt coverage will be lowered, but it is still a strong, nearly 3-times.

Mr. Blankenship explained Stillwater’s ability to own and operate one of the few municipal electric generation plants, and its proposal to build an additional plant for an additional 64-megawatts of general capacity. This provides a great financial benefit as well as electrical reliability for the citizens of Stillwater. The plant is a natural gas plant.

Chairman Herrmann and Mr. Freeman discussed this action will take the Board back to its original subordinated position (to junior lien position); the same as where the Board had always been—junior on the Boomer plant rehabilitation loan until that was paid off becoming senior, and now returning to a junior lien position. Mr. Freeman added it will help Stillwater be able to sell the bond issue. Mr. Sevenoaks asked if there was a down side, and Mr. Freeman answered that in the event Stillwater defaulted on its loans, the Board would be in a second lien position rather than a first but historically, if that occurred it would be shocking.

There being no other questions, Chairman Herrmann stated he would accept a motion.

Mr. Drummond moved to approve the resolution agreeing to subordination of outstanding obligations, and Mr. Buchanan seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

H. Report on Series 2013A and 2013B Drinking Water State Revolving Fund Bond Issues.

Mr. Freeman updated the Board on matters such as the loan pre-closings that will be conducted this week. He said the Finance Committee – in reviewing proposals for underwriters and bond counsel – reviewed the capacity of the Drinking Water and Clean Water SRF loan programs over the next fiscal year. Information provided including debt issuances, repayments, cash on hand, Capitalization grants, and State matching funds showed that the Board will have the ability to cash flow all the loans that come to the Board over the next year for Drinking Water and Clean Water; he anticipated additional pressures in outgoing years.

Mr. Freeman and Ms. Anne Burger Entriken distributed and reviewed with the members a report on market conditions and results of the new money transaction, and refunding transaction. Mr. Freeman and Ms. Burger Entriken explained the report information containing charts illustrating the 5-year (2008-2013) history of the “Bond Buyers” Index of 20 municipal bonds as well as the historical rates since January 1, 1981; charts illustrating the 5-year (2008-2013) credit interest rate spread to AAA MMD and 20-year yield comparisons; summaries of the \$41,410,000 State Revolving Fund Revenue Bond Series 2013 A (Drinking Water) statistics, and the \$35,505,000 State Revolving Fund Revenue Refunding bonds, Taxable Series 2013 B, including borrower consideration and bond issue statistics. Summarizing, the report stated that despite the rise in interest rates and continued interest rate environment volatility, the OWRB was able to lock in a True Interest Rate Cost of 3.673% for the 2013 A Bonds with a final

maturity in 2043; the savings on the Taxable Series 2013B Bonds resulted in more savings than previously projected; and the 30% savings allocated to the OWRB borrowers result in significantly more than the targeted 3.00% net present value savings.

The Board members asked about the federal intent on the QE3 to start a 10% reduction beginning in October and effect on interest rates; the fee structure on the refinance (total cost of issuance); and the ability to lower the total par amount to the Board going forward (on the refinance) because of a closely coordinated effort by staff and the borrowers' ability to prepay.

Chairman Herrmann thanked Mr. Freeman and Ms. Burger Enriken for their leadership and bringing the Board through the refinancing. Mr. Drake complimented staff and the finance team for the work achieved in the unstable interest rate market.

3. SUMMARY DISPOSITION AGENDA ITEMS

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

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

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

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items and Approval of Items listed.

Chairman Herrmann asked if there are amendments to the Summary Disposition Agenda. There were no changes to the Summary Disposition Agenda, and no questions by the members. Chairman Herrmann said he would entertain a motion regarding the Summary Disposition Agenda.

Ms. Lambert moved to approve the Summary Disposition agenda, and Mr. Sevenoaks seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

The following items were approved:

C. Consideration of and Possible Action on 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:

1. Agreement Amendment with Office of the Secretary of the Environment for the Clean Water Act FY 2012-13 § 106 Water Pollution Control Program – Monitoring, CA# I- 00F53301.

2. Contract for Professional Services with HISINC, LLC to assist the Board in implementing the Board's NFIP and other floodplain management responsibilities.
 3. Agreement with Office of the Secretary of the Environment for the Clean Water Act FY 2013 §604(b) Water Quality Management Planning Program, CA# C6-40000051.
 4. Intergovernmental Agreement with The Board of Regents of the University of Oklahoma, University Outreach/College of Continuing Education's Forum & Conference Services for the Board's use of OCCE's facilities for workshops and courses on floodplain management for floodplain administrators in Oklahoma.
 5. Contract with Oklahoma Floodplain Managers Association Inc. to provide training classes to floodplain administrators and develop, print and distribute calendars and educational brochures.
 6. Contract with BrightSight Group LLC for services of Steve Solomon to speak at 2013 Oklahoma Governor's Water Conference.
 7. Intergovernmental Agreement with Oklahoma State University, Water Resources Center to hold the 2013 Oklahoma Governor's Water Conference and Water Research Symposium.
 8. Amendment to Joint Funding Agreement with U.S. Geological Survey for the project titled "Update for the Hydrological Surveys and Groundwater Flow Models of the Beaver-North Canadian River Alluvial Aquifer."
 9. Grant Contract with The Kerr Foundation, Inc. in support of the 2013 Annual Governor's Water Conference and Research Symposium.
- E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
1. Town of Arapaho, Custer County, #2013-520
 2. Garvin County Rural Water District No. 2, Garvin County, #2013-555
 3. The William Donald Bennett and Linda G. Bennett Trusts, Caddo & Washita Counties, #2013-558
 4. Haines Land & Cattle, L.P., Cleveland County, #2013-581
 5. Disposal Solutions Partners, L.L.C., Okfuskee County, #2013-585
 6. John D. & Pauline M. Loftis, Payne County, #2013-588
 7. Samuel Jay Defoor, Harmon County, #2013-595
 8. Grady County RWS&SWM No. 7, Grady County, #2013-599
 9. Arthur & Mary Howe, Grady County, #2013-603.
- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
1. Daryl W. & Jeanine M. Scales, Caddo County, #1979-591B.
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. James & Son Farms, Texas County, #2013-593
 2. James & Son Farms, Texas County, #2013-594
 3. Bar-B Ranch, Beaver County, #2013-606
- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
1. Alan J. & Connie Clemans, Texas County, #1981-706
 2. JBS Five Rivers Cattle Feeding, L.L.C., Cimarron County, #1991-594
 3. Alan J. & Connie Clemans, Texas County, #1998-504

- 4. Alan J. & Connie Clemans, Texas County, #2000-502
- I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:
 - 1. Alan J. & Connie Clemans, Texas County, #1971-172
- J. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:
 - 1. Alan Parrish, Marshall County, #2012-054
- K. Consideration of and Possible Action on Applications for Seasonal Permits to Use Stream Water:
 - 1. Paul D. Glass, McCurtain County, #2013-023
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
 - 1. City of Ada, Pontotoc County, #OK11028
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
 - 1. New Licenses and Operator Certificates
 - a. Licensee: Eagle Well Drilling & Pump Service DPC-0899
 - 1. Operator: Raymond M. Ward OP-2003
 - b. Licensee: L & W Drilling DPC-0901
 - 1. Operator: Merle Boyd Steele OP-2004
 - 2. Operator: Anthony Shawn Lunsford OP-2005
 - c. Licensee: Robert N. Yost DPC-0903
 - 1. Operator: Robert N. Yost OP-2006
 - 2. New Operators to Existing Permits
 - a. Licensee: Professional Service Industries, Inc. DPC-0772
 - 1. Operator: Stephen D. Atkins OP-2001
 - b. Licensee: Shady Nook Pump and Supply DPC-0261
 - 1. Operator: Roland L. Cherry OP-2007
 - c. Licensee: Layne Christensen DPC-0123
 - 1. Operator: Dennis J. Ikner OP-2002
 - d. Licensee: Pump & Supply, L.L.C. DPC-0337
 - 1. Operator: Justin A. Depee OP-2009
- N. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Oklahoma Department of Transportation, Coal County, #FP-13-11
 - 2. Oklahoma Department of Transportation, Garvin County, #FP-13-13
 - 3. Oklahoma Department of Transportation, Garvin County, #FP-13-14
 - 4. Oklahoma Department of Transportation, Ottawa County, #FP-13-17
 - 5. Oklahoma Department of Transportation, LeFlore County, #FP-13-20
 - 6. Oklahoma Department of Transportation, LeFlore County, #FP-13-21
 - 7. Oklahoma Department of Transportation, Tulsa County, #FP-13-25

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

- A. No items. There were no questions or items of discussion by the members.

5. SPECIAL CONSIDERATION

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

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

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Temporary Groundwater Permit No. 2011-553, City of Enid, Major County, Recommended for Approval:

1. Summary – Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that this item is an application for a temporary permit to use groundwater by the City of Enid in Major County, requesting to use 640 acre-feet of groundwater for municipal water supply from two existing wells. The record showed the applicant has met the four points of law, and staff is recommending approval.

Ms. Cunningham stated the application was protested by the current surface owners of the land (320 acres) dedicated to the permit application on issues concerning the validity of Enid's lease to take groundwater, the lawfulness of Enid's past use of groundwater, and whether the proposed use would negatively impact their own right to use water. First, the protestant asserts the two water right conveyances dated 1952 are no longer valid and that Enid has no right to the water. However, the hearing examiner determined the applicant does have two valid leases and the right to the dedicated land. In conclusion of law no. 5, the hearing examiner concluded the leases also provide the landowner an un-quantified right to use groundwater for irrigation and other purposes; the application can be approved subject to the right of the landowner to use groundwater for irrigation (a clause in the lease provides the ability of the landowner to use water).

Mr. Sevenoaks asked who wrote a lease without an end date, and Mr. Strong interjected this lease is subject to a case currently pending in District Court, so the issue of whether the lease is valid will be decided by that court. Staff recommendation is that the permit be conditioned on the validity of the lease that will be decided by District Court. Chairman Herrmann stated that is not the Board's decision and Mr. Hitch asked why the Board would approve a permit when the right of access is not yet known. Mr. Strong answered that is the Board's prerogative, and the hearing examiner reviewed it and the evidence brought by the parties and determined that on its face it appeared the applicant has had the right since 1952 and was never extinguished. It is a temporary permit and subject to that being upheld in District Court; and if it's not, the permit goes away. The Board's review is that it is valid, just as other similar conveyances have been upheld by the Board previously to grant permits, including to the City of Enid.

Ms. Cunningham stated the other issue was prior use of water by Enid, and the hearing examiner recognized there had been use of water; however, the Board has held in other cases that incidences of past waste does not support a finding of waste in the future; waste meaning use of water without a permit. The City is trying to get permitted and that was not considered by the

hearing examiner a reason to be fatal to the application. Ms. Cunningham said there is the condition placed on the permit that the applicant's use of water under the permit shall be conditioned to be subject to the terms and conditions of the pertinent leases upon which the permit is based, including specifically the right of the lessor to drill wells and take water for irrigation or other purposes, that the permit shall be co-terminous with the leases.

Mr. Hitch asked, when the lessor wants to take water for irrigation is that permitted ahead of time. Ms. Cunningham and Mr. Strong answered that the lessor's request would go through the permitting process and the City of Enid's permitted amount would be reduced so as not to exceed the two acre-feet per acre authorized in that unstudied basin. They do not have a permit currently for irrigation. Mr. Buchanan asked how long Enid has been out of compliance; and Mr. Jerry Barnett answered the order discussed the evidence and the hearing examiner was comfortable concluding the period from 1979 to 1986; other than that is arguable.

Mr. Jerry Barnett added that staff had distributed to members an "exception document" that was filed with the Board by Friday afternoon in time to be distributed with other materials on Friday. He said it is timely in accordance with the Board's rules and the Administrative Procedures Act provisions that allow parties to file exceptions to orders with which they do not agree.

2. Discussion and presentation by parties. Mr. Michael Bigheart, counsel for the protestant stated he filed an exceptions and asked if that had been distributed. Mr. Jerry Barnett responded he had not seen that document. Mr. Jim Barnett, counsel for the applicant, stated he had received a copy, and it had been filed timely.

Mr. Jim Barnett introduced City of Enid officials that were present, City Manager Joan Riley and City Attorney Andrea Chisholm. He said they were in general agreement with the proposed order, but had filed the exceptions as they believed that was a matter to be decided by District Court. He asked to reserve his time to respond to Mr. Bigheart's concerns.

Mr. Sevenoaks asked and Mr. Barnett clarified the exception was filed because they did not want the record to reflect they agreed that condition was appropriate or that the Board at this point in time should be determining the nature and scope on the Rasar's (protestant) claim, and is appropriate to consider when they file their own application. Mr. Hitch asked how the City of Enid drilled unpermitted wells since the 1960s, and Mr. Barnett responded an application had been filed in 1952 and Enid operated on the belief it did have a permit, based upon a reasonable assumption. The City is currently operating under a 90-day provisional temporary permit on this property.

Mr. Michael Bigheart, attorney for the protestant, addressed the members and said on Friday afternoon he emailed an exception to the Board (offices) and counsel, and Mr. Jerry Barnett stated the Board could accept the document today. Mr. Jim Barnett stated he had no objection. Mr. Bigheart explained he is representing Jean Rasar, landowner of the south half of the south half of Section 15, and said that well no. 33 is on his client's property. He said he is comfortable with the findings in the order, but, believed that issuing the permit based upon those findings would be error. He said the permit should be denied, or at a minimum, modified to be consistent with the testimony and evidence at the hearing. He addressed several issues: he said the order is appropriate as it reflects the landowner's right to use water, but he disagreed with the exception (condition) in the order because the lease does not give Enid the exclusive right to use water and that should be a basis for denying the permit if the lease is valid. He said the proposed permit gives Enid the right to take the full allocation (two acre-feet per acre) and the protestant does not believe Enid has the exclusive right to take that water, as the lease has limiting language. Mr. Hitch asked and Mr. Bigheart responded, his clients are not currently using water.

Mr. Bigheart argued that while the Board may not be the arbiter of personal property rights, it doesn't prohibit the OWRB from granting a permit consistent with the language in the legal instrument and anything more than what is contained in the legal instrument is a takings issue. He said the order is stated correctly, but he suggested some corrections. Chairman Herrmann asked whether he supported the order or not, and Mr. Bigheart stated he did not believe the permit should be granted, but if it is, then the order is stated correctly. His argument concerned whether there was an exclusive right by Enid to the water, and that should be determined by the District Court in determining the validity of the lease; that should not be determined by the OWRB. He said the OWRB determines if there is a valid right to produce water, and he believed there is a valid right to produce water if the lease is valid. He suggested in finding of fact no. 5 the words "are valid;" should be struck. Mr. Jerry Barnett responded the hearing examiner believes the language in the order is correct, and he would not recommend the change.

Ms. Lambert asked and Mr. Jerry Barnett said this is a threshold issue, whether the applicant owns or has a valid lease to the land dedicated to a groundwater permit, and if the Board finds Enid does not have a valid lease, the permit must be denied; the order should be re-written to deny. Mr. Barnett explained the statutes which say the applicant must own or have a valid lease to the dedicated land, but the Board does not determine title (i.e., Paddyaker case)—that is for the District Court to decide—however, because the statute makes the Board make a finding on ownership or lease, we have taken the interpretation that is a question of limited authority to determine for the limited purpose of granting a groundwater permit application: Is the agency satisfied the applicant owns, or if does not own, have a valid lease. Ms. Lambert stated that the permit is temporary (one year subject to revalidation or until converted to a regular permit) and the Board could issue the temporary permit until the District Court determined whether the lease is valid and the Board could revisit. Mr. Jerry Barnett stated that is what staff has recommended; the recommended condition is worded if the District Court takes a different view, it will work out.

Mr. Bigheart also commented about another reference to "valid lease" on page 7, and he was concerned about the production of water without a permit being waste, and that early in the hearing the hearing examiner made a finding the committed waste with respect to well no. 33, and that finding should be in the order, and he suggested language be added in the conclusions of law no. 8. under item A.10 in the last sentence. And, lastly he suggested that in findings of fact no. 13 regarding the applicant's desire to get permitted in compliance with law, that that sentence be removed because there was no evidence the situation was being remedied and the Board had communication with the City since 2006 on 13 wells. He also thought the order was in error regarding Enid having filed an application in June rather than in April 2011.

Mr. Jerry Barnett responded that sentence is included for context; many municipalities use water without permits and come in after having used water without a permit and seek a permit to get into compliance. He said that sentence is typically used in other cases, it is up to the Board to delete it, staff believed it is fine. Regarding the filing of the application, staff confirmed the order is correct the application was filed in April, June was the date of the 90-day PT. Mr. Strong added that the order was prepared by the hearing examiner based upon the evidence presented before her, and the Board may extract any part but should be in command of the facts before making that decision.

Chairman Herrmann asked Mr. Jerry Barnett if he had any further comment to Mr. Bigheart's concerns. Mr. Barnett stated that Mr. Bigheart is opposing certain provisions of the order and the granting of the permit to the City of Enid. Staff believes the proposed order is correct and recommended it. He said it is the Board's prerogative as the final decision maker to determine what the facts are, how to interpret the law, and what the order should be; the hearing

examiner makes recommendations. Mr. Bigheart urged the Board not to issue the permit and be rewarded for 25 years of bad behavior, and he believed that granting the permit undermines the authority of the Board and sets a precedence there are no consequences for unlawfully producing water.

Chairman Herrmann invited Mr. Jim Barnett to make responding comments. Mr. Barnett stated there is no requirement in the law or the Board's rules the lease be exclusive and that is not an issue in this case. Mr. Sevenoaks asked and Mr. Barnett responded the protestants can ask for a permit and there is no spacing, and there are unpermitted wells by the City of Enid which he has been hired to help correct. The hearing examiner heard the evidence and correctly concluded this is a well-intentioned effort by the City of Enid to bring all its wells into compliance. There have been other applications that have not been protested, and there will be others coming to the Board. He explained these wells are a part of a total package to bring them into compliance; the City did everything appropriate under the laws of 1952 and in 1979 the OWRB conducted prior rights orders and this particular well was inactive which is possibly why the Board did not recognize it, and so carried in the records with a number but the City did not receive a water use report. He said there had been a communication breakdown between the Board and Enid. The hearing examiner heard that, and determined the City is doing the right thing now.

Mr. Hitch asked if the protestant makes an application for irrigation purposes, will Enid's permit amount be decreased to allow for their use, and Mr. Strong said that is a possible action the Board could take. Mr. Jerry Barnett said if the landowner were to seek a permit later i.e., irrigation, that application would go through the same process, which he explained, and during that process it would be determined what the reduction would be; that is unknown until there is an application by the landowner. Mr. Buchanan asked about a possible scenario when the applicant might apply for to irrigate 320 acres, and Mr. Barnett responded he did not want to pre-judge, but he explained academically it is his interpretation based upon the language of the lease nothing shall effect the landowner's right, and he read from the lease, and said in his view it reserves all of that water to the landowner when and if they seek it, and subject to Enid contesting. He said the Board is dealing with this lease as it is written --it is an unusual lease wherein it allows both parties to get water, although it is common a lease will reserve the right for domestic use--but Enid has many leases like this which have been used for the basis of its permits. It was his experience the Board had not dealt with a lease and dispute where it is protested and litigated. Mr. Drake said the City of Enid is saying it is a valid conveyance (lease); then if the landowners so desired, they could sell water to a municipality, or any other (use) because the lease states "for any other purpose." Mr. Strong said it would be difficult to render a decision without an actual filing. Chairman Herrmann said the discussion is hypothetical, and not what is before the Board right now, and asked Mr. Jim Barnett if he had other comments.

Mr. Jim Barnett responded that is why the extent and scope of the Rasar's claim is premature right now. Regarding the waste issue raised by Mr. Bigheart, if statutory waste—the actual use of water without a permit—becomes the basis for denying the permit, that will create a new paradigm for the Water Board. The main thing that staff does when someone is operating without a permit is to insist they get legal by getting a permit; to deny a permit because water has been used without a permit is to put all users in an untenable situation.

Mr. Bigheart did not have any further comment, and he thanked the Board's legal staff.

Chairman Herrmann stated the Board does not have punitive authority relative to the issue raised, and the Board must follow statute. He asked Ms. Cunningham to restate staff's recommendation. Ms Cunningham stated the record showed the application passed the test set out by law, and staff recommended approval of the findings of fact, conclusions of law and Board order with the condition.

3. Possible Executive Session; and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter executive session.

5. 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.

Ms. Lambert moved to approve the proposed findings of fact, conclusions of law and Board order, and Mr. Sevenoaks seconded.

Chairman Herrmann asked if there were any other questions. Ms. Lambert stated she moved on two items: it is a temporary permit, and that the Court will decide on the validity of the lease, and until such time she moved approval. There were no other questions by Board members, and Chairman Herrmann called for the vote.

AYE: Lambert, Fite, Drummond, Sevenoaks, Drake, Herrmann

NAY: Hitch, Buchanan, Feaver

ABSTAIN: None

ABSENT: None

Chairman Herrmann announced the proposed order by staff is approved.

Mr. Buchanan said he felt as if he was in an untenable situation by condoning the use of water without abiding by state law. Mr. Jerry Barnett stated this has been an issue throughout his career; staff wants to give credit to protestants objecting on this basis, but Mr. Herrmann is correct there is not punitive basis in the statutes. He said the Board may want to consider addressing the matter in a policy statement such as rulemaking. The members and staff made comments that “incidence of past waste” is in the rules but what consequence to give it is open, and Chairman Herrmann said it would be an appropriate matter for the Water Policy and Rules Ad Hoc Committee to review.

B. Consideration of and Possible Action on Application to Amend Temporary Groundwater Permit No. 1984-646C, Roos Ranch, Inc., Pontotoc County, Recommended for Approval

1. Summary – Ms. Julie Cunningham explained this application is to amend a temporary groundwater permit by Roos Ranch, Inc. in Pontotoc County, overlying the Arbuckle Simpson Aquifer. The applicant requested to amend its 1984 groundwater right by changing the use of 6,000 acre-feet of water for municipal use to mining use; and changing 200 acre-feet from industrial use to oil and gas production. She said that no additional water had been requested, no additional wells, or no movement of wells or well locations are being requested -- simply a change in the use of the water that is already approved under this permit to the two different uses.

Ms. Cunningham stated that in this case, there were no protests received in this application during the prescribed protest period and consequently no hearing was held, and no proposed order for the Board’s consideration today. She said that staff had received two letters of concern from entities requesting that the item be placed on Special Consideration to be heard. There was an apparent oversight as they admitted they did not see the notice published in the paper. This matter was published at the same time as another application from the same company in a different county. Both requests ask that the Board postpone approving the permit until the Maximum Annual Yield for the Arbuckle Simpson Aquifer has been set. Ms. Cunningham stated that staff has evaluated the application in accordance with the pertinent provisions of the Board’s rules and statutes regarding change of use of water for a permit for existing water right;

Mining use and oil and gas use are beneficial uses, and that waste will not occur due to the change of use. She said that since the permit authorizes the withdrawal of water from the Arbuckle Simpson basin, the provisions of Senate Bill 288 governing the use of groundwater from a sensitive sole source basin apply. As with other existing permits in the area, this existing temporary groundwater permit is subject to annual revalidation, and will be subject to the equal proportionate share limitations which are proposed for approval on the final order of the Arbuckle Simpson Maximum Annual Yield. Ms. Cunningham said this action is only a change of use, not a request for additional water, staff concluded the application meets the requirements for change of use, and recommends approval.

Chairman Herrmann added for clarification that the application is subject to rules regarding mining use that were recently implemented, and Ms. Cunningham answered that it is. Chairman Herrmann reiterated that staff recommended approval of the change of use, that this situation is unusual, and he invited the applicant to address the Board, and will then allow the protestants to make remarks. Mr. Strong reminded the members there was not a true protestant; the application did not go through the process.

2. Discussion and presentation by applicant. Mr. Jim Barnett, representing the applicant, stated to the members Mr. Charlie Roos was present today, and this is an extraordinary event as in his experience he is not aware of a situation where someone came to the Board and asked for “overs” when they failed to file a protest and go through the hearing process. He said the Board’s rules are very clear and the Board should reject the attempt for three reasons: Board rules make it abundantly clear the matter should be treated as a summary disposition item and no new evidence should be presented to the Board and Ms. Phillips’ letter is all new testimony and all new evidence; as a practical matter when something has failed to go through the hearing process, complaints to the Board about staff’s recommendation should not be allowed where someone can show up and request it be done over as this sets an incredible precedence and people will come to the Board meetings on a regular basis requesting a hearing; and, it is fundamentally unfair to his client who did everything required in the right way and is entitled the Board following its regular procedure to approve the application today. Mr. Barnett added Mr. Roos has had this permit for a long time, has not be able to make use of his water but is hopeful to do so if the Board approves the application. He asked that the Board not entertain the matter whatsoever. He stated he agreed wholeheartedly with staff recommendation and he hoped the Board would approve it.

Ms. Lambert asked, based on Mr. Jim Barnett’s comments, what precedence this might set, and if there is a reason the Board should hear the matter even though they missed the hearing process and did not file a protest. Mr. Jerry Barnett, OWRB General Counsel, responded this item was to be treated as an item on the Summary Disposition Agenda because it did not receive any protests, and no protests have been timely filed. The Board agenda carves out an opportunity for requests regarding items on the Summary Disposition be put on the Special Consideration Agenda to allow more comment. He said it is true there are no parties in this case other than the applicant, which is why there is no proposed hearing and no proposed order before the Board (as in the Enid case); those who wish to address the Board in opposition to this case are not protestants, or parties entitled to participate and be heard. He said it is the Board’s prerogative to allow them to be heard as a matter of Special Consideration rather than Summary Disposition. He added the Board cannot hear new evidence, and must hear remarks in the nature of comments if it chooses to hear. Chairman Herrmann read the statement in the agenda about requesting items on the Summary Disposition being transferred to Special Consideration. The matter came through the Summary Disposition process; it had been placed on a draft meeting agenda, and written requests were received to move the matter to Special Consideration. Staff felt the Board would want extra deliberation on the matter whether or not it accepted public

comment. Mr. Strong reminded the members it may hear public comment, but cannot consider any new evidence. Chairman Herrmann invited those persons to the podium who wished to express concerns, indicating they are allowed five minutes, and reminded them not to present new evidence, as that would be considered out of order.

1. Ms. Jennifer Bass, commented on behalf of the Chickasaw National Recreation Area. She stated the National Park Service is concerned about the recommendation made by OWRB staff on this permit believing the decision is premature and should be postponed until the final determination of the Maximum Annual Yield (MAY) has been issued. Concerns regarded the amount of water being sought for mining, the method used to evaluate the potential springs which has not received public comment and is not believed to be protective of the springs and streams that flow less than 1,000 gpm. She stated it is correct the public notice was missed because of the county boundary that runs through the Roos property--the application is located in Pontotoc County and the park is located in Murray County; had it been seen they very possibly would have protested. She requested the Board postpone a decision until after the MAY has been determined.

Mr. Strong asked if she is a protestant in the Murray County application, and she answered, yes.

2. Ms. Kristina Phillips, representing Citizens for the Protection of the Arbuckle Simpson Aquifer, stated her appreciation for the opportunity to address the Board. She said she agree with the National Park Service that the appropriate action for the Board would be to table this item until either the MAY is determined or until Roos Ranch, or Roos Ranch Resources, finally acts on its mining permit application which is pending before the Department of Mines since July/August 2011, indicating there is no rush and no use of the permit since 1985, and so no negative impact. She asked the Board to table consideration until something develops and it is appropriate to act on it.

Mr. Jim Barnett responded to the comments saying one point critical to the Board understanding that Mr. Roos's permit is like any other in the Arbuckle Simpson, it will be rolled back to whatever MAY the Board eventually approves. He responded to the comments about the method used, which is what was proposed by the Board but held up (as mentioned in the packet), and lastly, he observed it is ironic to complain about his client not having put his water to use.

3. Possible Executive Session; and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter executive session.

5. Vote on whether to approve the application as recommended, or vote on any other action or decision relating to the application.

Mr. Bob Drake stated this is a unique area, he appreciated staff's work, and hoped that the Board would allow the opportunity to vote on the usage of the water, and there didn't appear to be a hurry. Mr. Drake then move that the Board table consideration until such time that the Board has an opportunity to act [the Maximum Annual Yield; clarified by Ms. Lambert]. Mr. Sevenoaks seconded the motion.

Mr. Jerry Barnett asked for clarification by the Board on the motion in regard to parliamentary procedure, which he said tabling usually means to wait for thirty days and taken up at the next meeting. He said it was his sense Mr. Drake did not want to table, but rather postpone until the Board considered the MAY is done.

Mr. Drake rephrased his motion: He moved to postpone this decision (on application #1984-646C) until after the Maximum Annual Yield (for the Arbuckle Simpson Groundwater Basin) has been determined by the Board. Mr. Sevenoaks seconded the motion.

Chairman Herrmann asked for comments by Mr. Jerry Barnett regarding the Board's duty to follow statute and the Administrative Procedures. Mr. Barnett responded that it is within the

Board's prerogative to choose to do that. He said staff believed all the elements were in place and there was no need to hold it up any longer and was timely to be presented to the Board for consideration; but, what action to take is the Board's decision.

Chairman Herrmann stated there is a motion made and seconded to postpone until the Maximum Annual Yield determination is made by the Board. He asked for discussion.

Ms. Lambert stated for clarification (of the implication of this motion) that if the Board approves staff recommendation, when the MAY is determined, this permit amount will be rolled back to whatever the percentage is, so this is for the use of water until the MAY is determined and then will be recalculated. Mr. Jerry Barnett responded that is correct, but reminded the members this permittee already has this permit for the facts and figures presented in the materials. He said this application that is before the Board now is to change the uses for new uses. He said if the motion passes, this new application would be postponed until after the MAY, and it would then need to be taken up. Meanwhile, the underlying existing permit itself would also be subject to the result of the MAY once that becomes final. Upon question by Ms. Lambert, Mr. Jerry Barnett added that the current permit allows certain things that have not been exercised, and the application is to tweak the existing permit to allow new uses. The existing permit is still in place and will not be changed by action today.

Mr. Sevenoaks stated that we have been to the Senate, the House, the Supreme Court, and the Board has taken field trips, and still the policy has not be brought to the Board, and he asked when the MAY question come to the Board. He said he did not want to take any action on anything until the Board gets the opportunity to review the main issue. Mr. Strong stated staff is waiting on the final order from the hearing examiner, and Chairman Herrmann stated the expectation is the matter will be presented at the October Board meeting. Mr. Drake said he appreciated staff's work and he understood what the Board is voting on, and his concern is no one really knows what is going on there, and he'd like to see it postponed until after it (MAY) is either approved or disapproved by a vote of the Board. He called the question.

Ms. Lambert asked for a review of the question, which is to postpone until the MAY is determined; Mr. Drake concurred. Mr. Sevenoaks asked and Mr. Jerry Barnett responded that is a fair motion.

Chairman Herrmann called for the vote on the motion.

AYE: Lambert, Fite, Drummond, Sevenoaks, Drake, Buchanan, Feaver

NAY: Hitch, Herrmann

ABSTAIN: None

ABSENT: None

Chairman Herrmann stated the matter is postponed until the MAY is complete.

C. Items transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition Agenda to the Special Consideration Agenda for the Board's consideration.

6. PROPOSED EXECUTIVE SESSION

Chairman Herrmann

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.

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., and Oklahoma Water Resources Board v. United States on behalf of the Choctaw Nation et al.

Chairman Herrmann stated there is a proposed Executive Session, and asked Mr. Barnett if he had a statement.

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 Jerry Barnett stated he advised that disclosure of discussion of the litigation that is described on the agenda, will seriously impair the ability of the Board and State to conduct that litigation in the public interest.

A. 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.

Chairman Herrmann stated he would accept a motion to enter Executive Session for that purpose.

Mr. Buchanan moved that the Board enter Executive Session, and Ms. Feaver seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Hitch (exited the room from 11:44 a.m.-11:46 a.m.)

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

Chairman Herrmann asked Executive Secretary Mary Schooley to keep written minutes.

C. Executive Session, if authorized.

The Board authorized the Executive Session at 11:45 a.m. on Tuesday, September 17, 2013. Members took a brief break and entered the Executive Session at 11:49 a.m.

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

The doors were opened to the public, and Mr. Drake moved the Board return to open meeting. Mr. Herrmann seconded.

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

NAY: None

ABSTAIN: None

ABSENT: None

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

There were no matters for discussion or action as a result of the Executive Session.

8. NEW BUSINESS

Chairman Herrmann

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.

9. ADJOURNMENT

Chairman Herrmann

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 12:11 p.m. on Tuesday, September 17, 2013, until the Board meets again in conjunction with the Governor’s Water Conference on the afternoon of October 23, 2013.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Rudolf J. Herrmann, Chairman

_____/s/_____
Tom Buchanan, Vice Chairman

_____/s/_____
Edward H. Fite

_____/Absent_____
F. Ford Drummond

_____/s/_____
Marilyn Feaver

_____/s/_____
Richard Sevenoaks

_____/s/_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

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