

**OKLAHOMA WATER RESOURCES BOARD
OFFICIAL MINUTES**

February 18, 2014

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 February 18, 2014, in the Second Floor Board Meeting room at 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 February 13, 2014, at 3:00 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, and provided on the agency's website.

Chairman Herrmann welcomed everyone to the meeting, and asked for the roll call of members.

A. Roll Call

Board Members Present

Rudy Herrmann, Chairman
Bob Drake
Ford Drummond
Marilyn Feaver
Ed Fite
Richard Sevenoaks

Board Members Absent

Tom Buchanan, Vice Chairman
Linda Lambert, Secretary
Jason Hitch

Staff Members Present

J.D. Strong, Executive Director
Jerry Barnett, General Counsel
Amanda Storck, Chief, Administrative Services Division
Joe Freeman, Chief, Financial Assistance Division
Julie Cunningham, Chief, Planning and Management Division
Derek Smithee, Chief, Water Quality Programs Division
Lauren Sturgeon, Director of External Affairs
Mary Schooley, Executive Secretary

Others Present

Charles Morrow, Roff, OK
John Grundmann, Oklahoma Farm Bureau
Gene Overturf, Stonewall, OK
John Sparks, Sulphur, OK
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
LeeAnna Covington, Oklahoma Farm Bureau, Oklahoma City, OK
Larry Heard, Roff, OK
Jerry Lamb, Roff, OK
Paul Morrison, Roff, OK
Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK
William Rapier, Ashby Investments, L.L.C., Plano, TX
Amy Ford, Citizens for the Protection of Arbuckle Simpson Aquifer, Durant, OK
R. Doughty, Oklahomans for Responsible Water Policy
Josh McClintock, Citizens for the Protection of the Arbuckle Simpson Aquifer, Edmond, OK
Randy Bryant, Ada, OK
Robert Shelton, City of Tulsa, OK
Mark Helms, Dolese, Oklahoma City, OK
Cole Perryman, OWRB, Oklahoma City, OK
Brian Woodard, Oklahoma Independent Petroleum Association, Oklahoma City, OK
Luke Martin, Ada, OK
Michael Taylor, Department of Environmental Quality, Oklahoma City, OK
Chris Phillips, Chickasaw Nation
Krystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer
Rogert Kite, Sulphur, OK
Ernestine Kite, Sulphur, OK
Eric Perkins; Norma Perkins, Skiatook, OK
Johnny Parker, Martin Marrietta, Mill Creek, OK
Len Merchant, Skiatook OK
D. Craig Shew, City of Ada, OK
C.C. Buxton, Ada, OK
Kelly Hurt, Allen, OK
Chad Wartchow, Fitzhugh, OK
Joey Morrow, Roff, OK
Alan Woodcock, NPS-USFWS, Tulsa, OK
Charles Roos, Roff, OK
Chuck Roberts, Fitzhugh, OK
Maria Manle, Governor's Office, Oklahoma City, OK
Ryan Hall
Dean Couch, Oklahoma City, OK
Lisa Impson, Chickasaw Nation
Bodie Bachelor, Centennial Law, Durant, OK

Chairman Herrmann stated the Board's elected Secretary (Ms. Lambert) is not present today, and he asked Mr. Ed Fite to act as Assistant Secretary.

B. APPROVAL OF MINUTES

Chairman Herrmann said the draft minutes of the January 21, 2014, Regular Meeting had been distributed.

Mr. Fite moved to approve the minutes of the January 21, 2014, meeting and Mr. Drummond seconded. There were no questions or changes to the draft minutes.

Chairman Herrmann called for the vote.

AYE: Drake, Sevenoaks, Fite, Drummond, Herrmann

NAY: None

ABSTAIN: Feaver

ABSENT: Hitch, Buchanan, Lambert

C. EXECUTIVE DIRECTOR'S REPORT

Mr. J.D. Strong, Executive Director, stated to the members that the Legislature is in session, and he asked Ms. Lauren Sturgeon to present the agency's legislative report. Ms. Sturgeon said the third week of the Legislative session has started, and she referred to the written report in the members' material. She said that the upcoming legislative deadlines are included, along with the committee deadlines, and a listing of the bills the agency is following. Ms. Sturgeon noted that measures from 2013 and 2014 are listed; most bills referred to last month are in the form of shell bills which staff is tracking for any substantive legislative text. Regarding the State agenda, she spoke particularly regarding the Drought Proof Communities Act of 2014 (SB 1430), and regarding the Federal activities, the NIDIS (National Integrated Drought Information System) Program contained in the Reauthorization Act of 2013/2014 is that now headed to the Senate; the Farm Bill of 2014 was signed by the President earlier this month and is critical to rural development loan and grant programs. Staff is continuing to watch Waters of the U.S. Rulemaking; and momentum has decreased on the WRDA/WRRDA reauthorization process and hopefully this will be finished by the end of the year. Ms. Sturgeon concluded her report stating the President signed the debt ceiling bill a few days ago which will keep the government open until March 2015. Mr. Herrmann asked the issues surrounding the Water of the US matter and Ms. Sturgeon answered there is concern of expanding the jurisdiction of the Clean Water Act. Mr. Strong explained the activity over the past years about rulemaking and guidance and that states have not been able to review it. Mr. Drake asked and Mr. Strong answered that it concerns what is and is not navigable waters of the U.S., and which might include farm ponds. Ms. Sturgeon directed the Board's attention to the new publication designed to summarize agency activities for legislators and other public information venues; the document is available on the website.

Mr. Strong continued his report stating there were meetings set on Monday, February 17, to brief the Governor and legislators with the U.S. Corps of Engineers regarding drought impact on Corps reservoirs in southeast Oklahoma; however, that will be rescheduled. He has a meeting with Rep. Martin to talk about water reuse opportunities in Norman with DEQ, and later a meeting with the City of Clinton; there is much interest in determining how these type of projects can be approved so that people can use more recycled water and less fresh water—a Water for 2060 priority. Mediation continues in the Chickasaw/Choctaw lawsuit and there may be time on the agenda for an executive session and update, although the Attorney General's staff is in court, and regarding the Arbuckle Simpson litigation that has been filed, there is a change of venue hearing on February 20 in Oklahoma County on the motion to move the case to Pontotoc

County. A press conference was held at the Governor's Office on January 24 for the discussion of drought and its affect on lake levels at Lake Texoma as inflow has dropped to zero the past months. It is not as impacted as Waurika, Lugert Altus, Canton and those reservoirs, but the lake is 7-8 feet below the conservation pool. He said misinformation is that the water supply (uses) is the cause; when it is hydropower use that has the capability to draw down the lake in three days what all the water supply take out in a year, based on storage purchased in the reservoir. One of the issues the Governor was briefed on and talked to legislators about is that the hydropower releases have been curtailed significantly over the past year, some of the lowest levels since the lake was built in 1944, and the inflows are at the lowest levels since the lake was built, including during the drought of the 1950s. Mr. Strong reminded everyone that the Lake Texoma watershed is in year four of extreme drought.

Mr. Strong continued his report noting the meetings held recently, presentations he had made, and upcoming meetings including, Eastern Oklahoma State University Water Panel, January 29; Scenic Rivers Joint Study Committee, February 5; Emergency Drought Commission, February 13; Israeli Delegation, February 14; Oklahoma Municipal League Water Summit, February 21; Carollo Water Summit, February 25; Lake of the Arbuckle Pipeline meeting, February 26; Pork Council, February 28; Canadian River Commission, March 4; and the Water for 2060 Council will meet following the Board meeting today.

Mr. Strong concluded his report reminding the Chairman and Mr. Fite to sign bond documents following the meeting. The next OWRB meeting is scheduled for Tuesday, March 18, at 9:30 a.m. in Oklahoma City; and the Board's Audit Committee will meet following.

D. Monthly Budget Report

Ms. Amanda Storck, Chief, Administrative Services Division, stated to the members that the monthly report for January 2014 which showed the agency has 65% of funding remaining, and 42% of the fiscal year remaining. She updated the members on the corrections to the previous payroll and phase 2 issues and carryover budgeting.

Mr. Drummond asked about the 5% budget reduction proposed by the Governor, and Ms. Storck stated that staff had prepared scenarios for the Governor's budget, and the House and Senate Budget Hearings for a 3% and 5%. The reduction equates to a REAP grant reduction for Financial Assistance, less temporary employees and reduced sampling sites for Water Quality monitoring, and less technical studies for Planning and Management; Administration expenses are fixed.

Ms. Storck concluded her report.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Tulsa Metropolitan Utility Authority, Tulsa county. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this first item is a \$2,910,000.00 loan request by the Tulsa Metropolitan Utility Authority. Tulsa is requesting the loan for engineering to replace large spaced bar screens with mechanical fine screens and variable frequency drives at the Apache Lift Station; construction to replace Dissolved Air Flotation equipment at the Northside plant; and construction of storage facility Northside WWTP. Mr. Freeman noted provisions of the loan agreement, and stated that Tulsa has been an excellent loan customer of the Board's since 1990, and currently has 25 loans

outstanding for a principal balance of \$216 million dollars. Tulsa's debt coverage ratio stands at approximately 1.35-times. Staff recommended approval of the loan application.

Mr. Bob Shelton, Senior Engineer, was present representing Tulsa and in support of the request.

There were no questions by Board members, and Chairman Herrmann stated he would entertain a motion.

Mr. Drummond moved to approve the Clean Water SRF loan to the Tulsa Metropolitan Utility Authority, and Mr. Drake seconded.

AYE: Feaver, Drake, Fite, Drummond, Herrmann

NAY: None

ABSTAIN: Sevenoaks

ABSENT: Hitch, Buchanan, Lambert

B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Tulsa Metropolitan Utility Authority, Tulsa County. Recommended for Approval. Mr. Freeman stated this is an additional loan request by the Tulsa Metropolitan Utility Authority for \$10,600,000.00. Tulsa is requesting the loan for engineering for expansion of the Haikey Creek flow equalization basin, and expand the plant's HC Wastewater Treatment Plant effluent water pumping station. He said the loan proceeds will be used for engineering to raise the elevation of the Apache lift station access road, construction of rip rap on sludge lagoon dike at the Northside WWTP, and will also be used for overflow mitigation and provide sewer to unsewered areas of Tulsa. Mr. Freeman stated the loan will be funded through the State Loan Program Revenue Bond Loan funding, and he noted provisions of the loan agreement. Tulsa's debt coverage ratio is 1.35-times. Staff recommended approval.

Mr. Bob Shelton, Senior Engineer was present in support of the loan application.

There were no questions by Board members, and Chairman Herrmann said he would entertain a motion.

Mr. Drummond moved to approve the FAP loan to the Tulsa Metropolitan Utility Authority, and Mr. Drake seconded.

AYE: Feaver, Drake, Drummond, Fite, Herrmann

NAY: None

ABSTAIN: Sevenoaks

ABSENT: Hitch, Buchanan, Lambert

3. SUMMARY DISPOSITION AGENDA ITEMS

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

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

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 amendments to the Summary Disposition Agenda, and no other questions by the members. Chairman Herrmann called for a motion.

Mr. Drummond moved to approve the Summary Disposition agenda, and Ms. Feaver seconded. Chairman Herrmann called for the vote.

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

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>Recommended</u>
	COEDD				
a.	FAP-11-0014-R		Rural Water District #5	Seminole	\$99,999.00

D. Consideration of and Possible Action on Contracts and Agreements:

1. Amendment Agreement with Meshek & Associates, PLC for Extension of Time, Additions to Scope of Work, and Additional Compensation for Professional Engineering Services in connection with Cooperating Technical Partnership Program Assistance for Creation and Maintenance of Flood Hazard Data.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:

1. Rodman Petroleum Corp., Logan County, #2012-569

F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:

1. Chad Blevins Revocable Trust, Beckham County, #1981-670

G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:

1. Tyler McReynolds, Beaver County, #2013-597

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:

None

I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:

None

- J. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water: None
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water: None
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
 - 1. John Wesley and Leann Hart, Love County, #OK30467
 - 2. Continental Resources, Inc., Grady County, #OK30470
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
 - 1. New Operators to Existing Licenses:
 - a. Licensee: Crescent Services DPC-0839
 - 1. Operator: Clint Tyler OP-1867
 - 2. Operator: Jerry Shipley OP-2023
 - 3. Operator: Brandon Smith OP-2024
 - 4. Operator: Richard Pope OP-2025
 - b. Licensee: R & J Water Well DPC-0863
 - 1. Operator: Ryan Curbow OP-2026
 - c. Licensee: Bobby Faulks Well Service DPC-0636
 - 1. Operator: Carson Faulks OP-2029
- 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, Cleveland County, #FP-13-35
 - 2. Northeastern Oklahoma A & M College, Ottawa County, #FP-14-09

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

This public hearing is an opportunity for interested persons to present oral or written argument, data, and views on the amendments of rules of the Board which are being proposed in the Chapters of Title 785 of the Oklahoma Administrative Code specified below.

Other than this public hearing, no action will be taken by the Board on the proposed rules at the February 18, 2014 meeting. The proposed amendments of the rules are expected to be scheduled for consideration and possible adoption or other action by the Board at its March 18, 2014, meeting.

Chairman Herrmann stated this item is for the public hearing on the proposed amendments to the rules which were presented to the Board at the January meeting. He said a few years ago the law changed, and now the public hearings are held before the Board; however, no action will be taken. Staff will summarize the proposed rule amendments, and will hear public comment; comments that have been received through the comment period (end of the day today—Feb. 18, 2014), will be provided to the members in advance of the March meeting.

****Should read: “PUBLIC HEARING ON PROPOSED AMENDMENTS OF PERMANENT RULES OF THE BOARD”**

Members will hear public comments today and have an opportunity to ask questions, then review all comments before action is taken on the proposed amendments at the March meeting.

A. Proposed Amendments of Rules in Chapter 30 – Taking and Use of Groundwater

1. Summary of proposed amendments of rules - Ms. Julie Cunningham, Chief, Planning and Management Division, stated to the members that the proposed amendments for Chapter 30 would add language relating to the implementation of the Arbuckle Simpson Aquifer Maximum Annual Yield (MAY) as discussed specifically in the order. During the hearing process on the MAY, the hearing examiner requested the comments be part of the hearing, and there were comments directing the Board to promulgate rules that would go through the rule making process in the final determination of the MAY.

Subchapter 3. Permit Application Requirements and Processing, 785:30-3-6. Well spacing [AMENDED]; and Subchapter 9, Maximum Annual Yield Determinations, (785:30-9-6) Issuance of regular permit to temporary permit holder [AMENDED].

Ms. Cunningham stated there are two sections, one regarding well spacing to protect spring and stream flows when considering approval of new or proposed wells, and the time period for reasonable implementation of the order as it relates to an existing valid temporary groundwater permit that will be replaced by a regular groundwater permit. There were no questions by members or further comment by staff.

Chairman Herrmann, in an effort to manage time and yet be fair without duplicating comments, observed the large number of persons in attendance, and asked for a five-minute break and allow those who wished to speak to the Board in regard to the proposed rules to organize and have a spokesperson. Mr. Jim Rodriguez, Oklahoma Aggregate Association, and Ms. Marla Peek, Oklahoma Farm Bureau, objected to the suggested format and asked that all persons attending who wished to speak to the proposed rules be allowed to do so.

Chairman Herrmann agreed, stated there would not be a break, and no time limit but he asked those persons who speak to the Board to be succinct in their comments.

2. Comments on the proposed amendments rules by interested persons.

Jim Rodriguez, Oklahoma Aggregates Association – Mr. Rodriguez submitted written comments and noted two company representatives present today – Johnny Parker, and Mark Helm whom he introduced. The OKAA is opposed to the proposed well spacing requirements and proposed phase-in period for the implementation of the Arbuckle-Simpson Aquifer Maximum Annual Yield.

Johnny Parker, Production Manager, Martin Marietta Materials, stated his concerns about well spacing requirements and uncertainty to future planning; concerns about investment in current water rights and need to obtain additional rights, that well spacing is 8-times greater than the current spacing of 1320 and is arbitrary and not based on demonstrable science. He said it is a taking of private property right and transfers water to downstream users without just compensation, and requires the landowner to conduct a study to prove what is already known by the MAY, placing an unfair burden on the property owner. The industry is concerned there will be future efforts to apply the regulations to the mine pits resulting in an unjust evaluation of reserves. The OKAA supports reasonable regulation of the groundwater to protect the aquifer but this regulation goes beyond what is reasonable.

Mr. Sevenoaks asked if the operators would be able to purchase additional land, and Mr. Parker answered that is correct.

Mark Helm, President of Dolese Brothers Company –Mr. Helm said the Dolese company has two operations over the aquifer; one active, one reserve that is inactive but permitted. He stated Dolese has always been supportive of regulations protective of the environment and communities around it that may be impacted, but expressed concerns about being able to continue to supply a product that is needed by Oklahoma communities. The ASA/EPS have reduced groundwater rights to 10%; Dolese has been involved in rules, spent time and money reporting water use, and anticipated the EPS so the company would know the amount of water permitted based upon number of acres over the basin, but now with the new rules that may not be true – and may effectively force landowners to spend money on water rights. He asked the Board to delay the rule until the known affect of the EPS reduction. Regarding the phase-in period, he noted previous rules effecting mining operations and asked that new regulations be on a level playing field.

Mr. Drummond asked if existing wells were impacted. Mr. Helm answered, no- wells are currently permitted but looking at future and potential wells, and now required to do a hydrologic study to prove no impact, while also staying below the EPS. Chairman Herrmann asked about the effect of a setback between 1320 and two miles; Mr. Helms was unable to answer, but that their operations are very long term. Mr. Strong noted the rule would only apply to new wells.

Krystina Phillips, Citizens for the Protection of the Arbuckle Simpson Aquifer – Ms. Phillips referred to distributed documents regarding proposed new well spacing – (1) comments, and (2) information to explain the organization’s proposed rules. She provided an overview of the legal arena and the practical arena, what SB 288 required of the Board, and stated CPASA’s three main goals: for the rules to be implementable, reasonably protective of the streams and springs, and to allow all water users over the aquifer to sustainably develop the water resource. CPASA’s proposed rules do not prohibit a well in any area over the aquifer, all springs (in the USGS listing) are protected by a ½ mile setback, or show a less than 25% impact; all springs with a flow rate of 500 gpm have a 2-tier approach with two ways to get a permit if between ½ mile to 2 miles, which she explained, both based upon obtaining a permit based upon number of acre feet appropriated and if there is less than 25% impact.

Mr. Drummond asked what methodology would be used and Ms. Phillips answered MODFLOW (as used for MAY), but applicants may use other methods. If seeking variance, an individual proceeding would be required under the OWRB existing rules. CPASA has been working with water suppliers i.e., City of Ada, and requested delay until March 4, in order to continue due diligence.

Chairman Herrmann stated there are other users, but Ms. Phillips said there are 10 entities or more, but Ada is the largest. CPASA recognizes the users have invested large amounts of money and supports the implementation period proposed, but requests three additional criteria: (1) must be using more than the .2 acre-feet per year (2) request for time requires a plan, and (3) if permit remains temporary, continue revalidation.

Discussion w/members about new information, implementation, written comments, and how numbers were determined which the CPASA believed reasonable, provides certainty, and would be easier on OWRB staff. Mr. Strong asked about the methodology CPASA used, and Ms. Philips answered they used MODFLOW as well as another method which also considers recharge. She clarified the language regarding the ½ mile set back from streams listed in the

USGS document which was attached to their comments; she further clarified the proposed rules proposed by CPASA regarding the tiers and well spacing.

Mr. Drummond asked how easy it is to apply for 25% -- plug into a model and get answer or required an applicant to spend time and money. Mr. Strong answered that would depend upon the evidence at hearing; it could be easy as reviewing numbers, but if no impact is not demonstrated, the applicant may have to develop their own. Ms. Phillips said they looked at high capacity wells, current wells won't be affected, but would only be about five wells that pump over 500 gpm.

D. Craig Shew, City of Ada – Representing Ada which is the largest user of the ASA, and relies on Byrds Mills Springs, Mr. Shew said the ASA serves as Ada's exclusive source of water supply as well as serving several RWDs for a total of about 30,000 residents. He said that well spacing is a critical element in managing the ASA in addition to the MAY and EPS; serves to protect the integrity of the streams and springs and existing well fields, and protecting the sustainability of the aquifer. Well spacing will be important to Ada adding a 4th well to meet DEQ requirements, and are working with CPASA to respond to the proposed rules, and he asked for additional time to March 4 get together and finalize their proposed request.

Dave Robertson, landowner –Representing Murray County RWD #1, serving 6-7,000 rural residents in Murray County and areas of Pontotoc and Garvin Counties. Mr. Robertson said water is important to all interests, mining, private, and recreation, but we need to set priorities. He distributed materials (same as at hearing) and reviewed the comments which concerned that SB 288 doesn't mention 25% reduction in stream flow and unfairly and unwisely set the springs and streams flow to protect the aquifer, but didn't consider people. He talked about how the situation began and that CPASA worked to protect the aquifer from northwest Oklahoma, and he talked about a permit by the RWD that was protested by several entities. Mr. Robertson said the regulations could cost about \$1 million to obtain water rights to support their system, and locating any new wells will also result in a financial impact.

Mr. Sevenoaks said the Board understands what he is saying and there are many interests similarly that have a limited amount of water; drought is occurring, and everyone will have to make compromises and water is going to cost more. Chairman Herrmann added the OWRB is bound to implement law, and Mr. Robertson asked the Board to not be so restrictive as to cost the District more money.

Alan Woodcock, US Fish & Wildlife Service and National Park Service - Mr. Woodcock said that written comments were provided Friday. They believed the current well setback will have an impact on Parks' streams and springs at a reduction of more than 25% to the area around Park, the Refuge, and the Fishery. He asked the rule be amended that the setback be 5 miles in those areas.

Roger Kite, landowner – Mr. Kite said he has been communicating with Murray RWD #1 about buy water. He said 3000 gallons of water cost \$12.

Bill Clark, rancher/landowner – Mr. Clark said he is why we are here and he explained when he purchased land he wanted to sell water to Canadian County. He said CPASA formed and had a great campaign that the "ranchers are stealing water," which resulted in the study, the MAY, and the ultimate 10% reduction. Chairman Herrmann asked and he answered he supported the MAY, but is a preacher for fairness, and did not support granting special

circumstances allowing time to continue to use water while landowners are denied that opportunity; everyone should implement the EPS immediately, he did not support the phase-in implementation.

C.C. Buxton, landowner – Mr. Buxton resides in Ada, is a landowner over aquifer, and submitted a letter and provided the history of his family in the area. He said he wants to see Ada in a better place and had met with the City and other landowners to lease water rights but the MAY had not been determined then. He read excerpts from the letter, and stated he did not support special consideration of delayed implementation as it would be inconsistent with the Board's policy.

Mr. Drake stated the landowners want a faster phase-in, and Mr. Drummond asked if the proposal there is an immediate option to extend up to five years. Mr. Strong answered they are asking the rules ponder what the Board has done historically regarding the issuing of regular permits, and that is implementation be as soon as is practical after the MAY and EPS has been determined. What is proposed is that if implementation is less than five year it can be worked out with staff, and if it will be more than five years, there will be a public hearing. Chairman Herrmann commented that would be a high hurdle as opposed to a low hurdle.

Mr. Fite stated that he voted against a proposal because it was a temporary permit that had existed since the 1980s, and how would those be dealt with. Mr. Strong stated all the permits are temporary which will be converted as soon as practical but there is a proposal on the table that provides further time, remaining at the 2.0 acre-foot per acre.

William Rapier, Ashby Investments – Professional certified geologist and landowner/cattleman, and represent Ashby Investments, LLC. Mr. Rapier informed the Board he has 2500 acres over the aquifer and there is 7 miles of Mill Creek and one intermittent stream on his property; he has a pending permit at the Department of Mines; the setback takes out 22 miles of his property which is north of Ravia and does not impact the other streams originally meant to be protected, yet all the rules affect him. He talked about geology and that he doesn't agree with the spacing issues, or that SB 288 was to prevent landowners from using water. He is opposed to the suggested 5 mile setback by USFWS; rules will impact significantly and become more restrictive, and he asked the Board to protect all landowners.

Chuck Roberts, landowner – Mr. Roberts referred to an earlier issue by the Board which allowed a ten year implementation and he suggested that is not what is needed in this situation as, for example, in the ten years the necessary water rights might still not have been acquired. He said he is opposed to any special circumstances being allowed. He asked whose water is being pumped if someone is allowed to pump more than 2.4 inches as there is no water to give for special circumstances. He suggested that special circumstances would be in violation of 288, and he argued over considering historical use as the moratorium kept landowners from using their own water, the drought situation is causing more use, and he quoted Ms. Lambert regarding unintended consequences and said there are 48 permits and the rules will cause there to be 48 hearings. He said special circumstances creates disadvantage, there is no definition of good cause, and it doesn't go with SB 288, everyone should share in the sacrifice, and he asked that "special circumstance" be eliminated from the proposed rules and that implementation be fair.

Joe Bob Pruitt, landowner – Mr. Pruitt asked the Board to be fair and eliminate special circumstances. He said lifting the moratorium will spur economic development; the MAY and EPS has been set, and should be applied to temporary permits and go forward. He said many

streams had been covered by flood control dams so there are other factors to consider; landowners are willing to accept the 2.4 acre-foot but want it applied fairly.

Larry Heard, landowner – Mr. Heard said he has waited ten years to apply for water rights, now the MAY and EPS have reduced rights by 90% and he will have to acquire 10-times more than needed before. That applies to everyone, except Ada wants special treatment, but also advocated for the law. He said the EPS means we all get the same, and he accepts the study, but giving others additional time is not equal treatment, and others will be given more than their equal proportionate share. He asked the Board to be fair and not to allow special circumstances.

Paul Morrison, rancher/farmer – Mr. Morrison and his family live over ASA and he is a small rancher/farmer. All ranchers are good stewards and manage water, and he asked for the Board to stand up for agriculture people as it affects the rural areas. Mr. Morrison said he can live with the 2.4, but did not support special circumstances.

Brian Woodard, Oklahoma Independent Petroleum Association – Mr. Woodard said others before him had spoken about the history of the area and the MAY, he said its amazing how much private water rights had been taken off the table. He represents an industry of water users; the rule carries out SB 288, but the OWRB does not make determination of “sensitive sole source” aquifer, so it should be stated in the rule it is for the Arbuckle Simpson, therefore, the rule impact statement is inadequate. He did not believe the landowners should have the burden of proof, and he was concerned about the farmers and asked the rule be tailored for the ASA.

Mr. Drummond asked the definition of “sensitive sole source aquifer” and Mr. Strong answered it is EPA designated, the only one in Oklahoma is the ASA, SB288 applies to sensitive sole source aquifers and the rule is developed to implement the law.

James R. Barnett, Arbuckle Simpson Aquifer Protection Federation of Oklahoma, Inc. Mr. Barnett said the Federation represents ranchers/landowners. He commented on the well spacing issue saying his experience on protested permits regarding well spacing was whether 1320 ft is too excessive and the Board reduce that for alluviums to 660 as being adequate to the cone of influence; the suggested spacing by miles is not what the Board has done over the years. As regards the phase-in or special circumstances-- he had submitted a brief at the hearing and asked that it be part of the record – he said it was inappropriate to proceed with rulemaking until a court decision has been issued. He said if the MAY figure is a number that is important and accurate, if special circumstances are allowed it will break the number. He provided the math on the number of permits times the EPS and pending permits so the Board will be in the “hole” before ever issuing special circumstances. He asked the Board to be straight forward and quantify what the landowner has as quantified in the EPS and for Ada or anyone else to get more takes from someone else, which is not fair and not appropriate.

Joey Morrow, landowner – Stated his opposition to the special circumstances, and he provided several letters from other landowners.

LeeAnna Covington, Director of Oklahoma Farm Bureau Legal Foundation – Ms. Covington submitted a letter of comments on behalf of the Foundation. She supported comments by landowners opposed to the proposed phase in because it eliminates a market for their water rights and any procedural change should be directed to the best interest of all Oklahomans. The letter contains a comment on the well spacing.

Chad Wartchow, Landowner – Mr. Wartchow said giving his water to someone else takes food from his family, and everyone else here that owns land, and he didn't believe it to be fair.

Chris Phillips, Chickasaw Nation – Mr. Phillips said he has supported the overall goals of SB 288 and work closely with CPASA and municipalities and spoken with landowners, and he asked the Board to leave the record open for an additional two weeks as they are close to consensus and need extra time to present to the Council and come to the Board with a consensus document.

Chairman Herrmann asked if that document included the Farm Bureau and farmers and ranchers or a subset, and Mr. Phillips said it would be a subset of CPASA and municipalities. Chairman Herrmann commented whether the group would make recommendations for everyone, and Mr. Phillips said he only asked the record be left open and other comments could be made.

John Sparks, landowner – Mr. Sparks said that at the hearing people spoke of the hardship that would occur, and he said he would have a hardship just as the city would because he has bills that need to be paid, etc. He asked the Board to be fair – don't give water away.

Charles Roos, rancher/landowner – Mr. Roos said there is no definition of special circumstances and asked what constitutes need and how can it be granted if you don't know what it entails. He said he is opposed to the phase-in, also referred to as special circumstances, or exemption to the MAY and EPS, limited to temporary permit holders, and discriminates against people subject to the moratorium. He said SB 288 indicated streams and springs would not be impacted, which should not be a surprise to municipalities or water districts as the OWRB had done a good job informing the public.

Chairman Herrmann asked about comments regarding well spacing, and Mr. Roos said it only affects new wells, but replacement wells needed to be addressed.

Charles Morrow, farmer/rancher – Mr. Morrow's land overlies the recharge area of the aquifer for Byrds Mill Springs and he objects to special circumstances, which in his area only concerned the City of Ada. He said over the years Ada had sold millions of dollars worth of water from the basin; the City was aware of what was going to happen and has had 10 years to prepare. He talked about the sale of water and that it isn't treated like oil leases. Mr. Morrow said he is already living in the "red zone," and water rights should have value but he was concerned about being "blocked in" from leasing his water. He said the OWRB makes and enforces rules, if our water is in danger we need to be doing something about conservation. Mr. Morrow said he had not heard anyone speak of Oklahoma Statutes Title 60 Chapter 2 Section 60 (a), which he read, that regards the owner of land owns water standing thereon and flowing there under...but not forming the definite stream, and he asked the Board to consider allowing someone to drill in a recharge area and pump to another area.

Kelly Hurt, Arbuckle Simpson Landowners Group – Mr. Hurt provided a letter of comments, and stated the group has 20,000 acres of water they are trying to lease to anyone, and have been waiting until the EPS was set, but now allowing additional time causes concern. He talked about the group's proposal to sell water at a fair price; he asked for fairness, it is time for temporary permits to become regular permits and to move forward. To allow special circumstance allows an unfair advantage to those who already sell water and avoid the cost of doing business, he said.

Mr. Sevenoaks asked how the group calculated the numbers, and Mr. Hurt said it was a consensus among the group.

There were no other persons who wished to speak to the Board. However, Mr. Craig Shew indicated he would like to make additional comments, and Chairman Herrmann allowed him to speak. Mr. Shew stated that after the MAY hearing he had submitted a brief, and he asked Mr. Jerry Barnett to have that in the record. It regarded the implementation period or special circumstances. He responded to comments about the City's estimated costs of water whether leasing or purchasing land for the next 50 years.

Chairman Herrmann stated the Board could not get into pricing of water, the Board sets the rules; Mr. Shew re-emphasized he supported additional time to implement what the Board has approved as a MAY.

Kelly Hurt asked to respond; however, Chairman Herrmann stated he could not allow rebuttal, and everyone has had an opportunity to speak, and there are other rules to consider.

B. Summary of Proposed Amendments to Chapter 50 – Financial Assistance –

1. Mr. Freeman said he had reviewed the proposed changes to Chapter 50 at the January meeting, he had nothing to add, and staff had not received any comments regarding the proposed rule amendments to Chapter 50. There were no questions by Board members.

2. Comments on the proposed amendments rules by interested persons.

There were no comments by the public.

Chairman Herrmann asked Mr. Strong to comment about the rulemaking process going forward. Mr. Strong reviewed the process to this point, and stated staff will provide the members with all written comments received by the close of the comment period (end of the day today), staff will review and determine if there are further proposed amendments and provide that to the members in the Epacket when that is prepared 1-1/2 weeks prior to the Board meeting. The members may propose changes, those will not go back to public hearing unless there are significant changes that fall outside of the notice to public. The Administrative Procedures Act anticipates public comment will be heard and possibly have some impact on the rulemaking process and cannot go back through notice and hearing each time, and Counsel will determine whether any significant changes might occur beyond what people were given reasonable notice. Staff will highlight any proposed changes and distribute to the members.

Regarding the request to extend the comment period, Mr. Strong said that the Board will be considering the rules at the last opportunity in the rulemaking cycle before submitting to the Legislature for review, and also to meet the typical schedule of providing the Board a week and a half notice of what it will be asked to vote on, and that is March 7; extending to March 4 places a burden on staff. Mr. Sevenoaks asked and Mr. Strong answered a Board member may propose a change the day of the meeting, and the Counsel will determine if it is significant.

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Regular Groundwater Permit No. 2011-634, Cecil & Teresa Carel Trustees of the Carel Living Trust, Canadian County, Recommended for Approval,

1. Summary – Ms. Julie Cunningham stated the parties regarding this case are not in attendance. She explained this is an application for a regular groundwater permit to use 160 acre-feet of groundwater per year for commercial sale for municipal or rural water use. The applicant has dedicated 160 acres of land, and the four points of water law have been met. Protestants were concerned the withdrawal of water would deplete their domestic wells; however, the evidence at the hearing did show the spacing requirement has been met. Therefore, the record showed the applicant passed the test as set out in Oklahoma groundwater law, and is entitled to the equal proportionate share. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

2. Discussion and presentation by parties. There was no presentation by parties.

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.

There were no questions by members, and Chairman Herrmann asked for a motion.

Mr. Sevenoaks moved to approve regular groundwater permit #2011-634, and Mr. Drummond seconded.

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

NAY: None

ABSTAIN: None

ABSENT: Hitch, Buchanan, Lambert

B. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application for Regular Stream Water Permit No. 2012-035, Charles W. Sisler, Osage County, Recommended for Approval:

1. Summary – Ms. Julie Cunningham stated the applicant is not represented today, but the protestants are in attendance. She explained this item is an application for a regular permit to use 96 acre-feet of stream water per year from one point of diversion point from the East Prong of Quapah Creek located in Osage County to irrigate 35 acres of pasture and grassland, and other crops. The record shows there is unappropriated water available, and the application has met the five points of stream water law: unappropriated water availability shows 3,878 a.f. is available and the request is for 96 a.f.; present of future need has been established, crop irrigation is a beneficial use, use is proposed to be used within the stream system of origin, and there will not be interference with domestic or existing appropriate uses. She noted the water availability calculations were made considering all existing water rights and domestic use in the area. The applicant said he would need to store water, but would not impound it in a way that would prevent the water from flowing to downstream users and that is on record with a certified statement of compliance, and the construction plans also support the statement.

Ms. Cunningham stated the protestant's concerns are that the proposed diversion will diminish the flow of the stream that is used for watering cattle. In order to assure there will be no interference the hearing examiner included in the proposed order a permit condition explicitly prohibiting the interference of domestic and appropriative uses, and if such interference is proven the permit may be modified, suspended, or revoked in order to abate and prevent such interference. Ms. Cunningham stated the applicant has passed the test set out in stream water law, and staff recommended approval of the proposed findings of fact, conclusions of law, and Board order.

2. Discussion and presentation by parties. Mr. Eric Perkins approached the members and said the property sold two years ago and previously there had not been any trouble upstream. He was concerned allowing the diversion would hurt his property, and he was concerned about watering the cattle.

Chairman Herrmann and Mr. Strong explained that Mr. Perkins has a senior appropriative right over this application—the irrigation permit is junior to the senior right—a statutory right-- to water cattle. As a separate matter, whether construction on the stream requires a 404 permit is a federal matter and does not come before the Board. Mr. Drummond stated Mr. Perkins has a prior statutory right and an explicit provision in the permit it will not interfere with domestic use and enforcement would require a phone call to, and investigation by, OWRB staff, if there is interference Mr. Sisler will have to cease use of the water. Mr. Strong added that if there are others who did not receive notice but can show his use of the water has caused interference to downstream domestic uses, they have a statutory right that supersedes this permitted right, and anyone can contact the Board. Mr. Drake expressed concern about a quick response in summer months, and Mr. Strong said having the condition in the permit allows staff to act right away.

Mr. Perkins asked about destroying the dam and there was discussion by staff and members the construction would require flow through the dam to the stream to the downstream users, that the applicant indicated he would comply with all applicable requirements of the NRCS, and to that extent the Board may have an opportunity to review depending upon the size.

Mr. Len Merchant, downstream landowner, described the land and stream and spoke to the members about this concern over the application, construction and location of the dam, and available water in the creek. He was particularly concerned about the flow during the summer months of July and August and recent low water levels in the area. Mr. Strong assured Mr. Merchant an irrigation permit is required, and the Board has enforcement right for any interference downstream, and has the ability to modify, suspend or revoke the permit as appropriate in order to prevent interference.

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

There were no other questions by Board members, and Chairman Herrmann stated he would accept a motion.

Mr. Drummond stated he is a rancher in Osage County and understood the protestant's concerns. He moved to approve regular stream water permit #2012-035 with the condition they are protected for domestic and existing appropriative water uses as provided. Mr. Fite seconded the motion.

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

NAY: None

ABSTAIN: None

ABSENT: Hitch, Buchanan, Lambert

C. Consideration of and Possible Action on 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.

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.

Chairman Herrmann stated in the interest of time, the Board would not consider an Executive Session.

- 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.

The Board did not vote to enter Executive Session.

- B. Designation of person to keep written minutes of Executive Session, if authorized.
No person was designated.
- C. Executive Session, if authorized.
There was no Executive Session.

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

7. 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.

8. ADJOURNMENT

Chairman Herrmann

There being no further business, Chairman Herrmann adjourned the meeting of the Oklahoma Water Resources Board at 12:37 p.m. on Tuesday, February 18, 2014.

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

_____/Absent_____
Bob Drake

_____/s/_____
Jason W. Hitch

ATTEST:

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