

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**August 15, 2017**

**1. CALL TO ORDER**

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman F. Ford Drummond at 9:30 a.m., on August 15, 2017, at the Oklahoma Water Resources Board office, 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 August 11, 2017, at 5:00 p.m. at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, and provided on the agency's website.

Chairman Drummond welcomed everyone to the regular meeting of the Oklahoma Water Resources Board. He asked for the roll call of members.

A.1. Roll Call

Board Members Present

Ford Drummond, Chairman  
Jason Hitch, Vice Chairman  
Stephen Allen, Secretary  
Tom Buchanan  
Charles Darby  
Bob Drake  
Linda Lambert  
Robert L. Melton

Board Members Absent

Robert Stallings

Staff Members Present

Julie Cunningham, Executive Director  
Robert Singletary, General Counsel  
Cleve Pierce, Chief, Administrative Services Division  
Joe Freeman, Chief, Financial Assistance Division  
Kent Wilkins, Chief, Planning and Management Division  
Bill Cauthron, Chief, Water Quality Programs Division  
Mary Schooley, Executive Secretary

Others Present

Francis Weedon, Frontier Logging, Oklahoma City, OK  
Patrick Lovell, McCurtain Municipal Authority, McCurtain, OK

Steven M. Harris, Vici Public Works Authority, Tulsa, OK  
Patty Thompson, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Rick Schlegel, Cardinal Engineering, Pawnee County Rural Water District #5  
Johnny Wagner, Pawnee County Rural Water District #5, Pawnee, OK  
Mark Miller, Town of Vici, OK  
Robert Getchell, John and Sarah Jarrett, Tulsa, OK  
Jeff Everett, OGE Energy Corp, Oklahoma City, OK  
Rick Lang, Wagoner County Rural Water District #4  
Bill Giles, Wagoner County Rural Water District #4  
Brittnee Preston, OWRB, Ashburn, VA  
Bill Millis, City of Stillwater, OK  
Anne Burger Entrekin, FirstSouthwest, Dallas, TX  
Bud Ground, Environmental Federation of Oklahoma, Oklahoma City, OK  
Tyler Tilley, eCapitol  
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK  
Sue Ann Nicely, Oklahoma Municipal League, Oklahoma City, OK  
Chris Gander, BOKES  
Curt Roggow, Roggow Consulting, Hillsdale, OK  
Chris Chandler, ORWP, Broken Bow, OK  
Joe Siawo, BOKFS  
Randy and Becky Castor, Vici, OK  
Carlos E. Johnson, BKA, LLP  
Bodie Bachelor, Centennial Law

B. Discussion, Amendments, and Vote to Approve Official Minutes of the June 20, 2017, Regular Meeting.

Chairman Drummond asked if there were any corrections to the minutes of the June 20, 2017, regular meeting. There were no changes, and Mr. Buchanan moved to approve the minutes, and Mr. Hitch seconded.

Chairman Drummond called for the vote.

AYE: Drake, Melton, Darby, Buchanan, Allen, Hitch, Drummond

NAY: None

ABSTAIN: Lambert

ABSENT: Stallings

C. Executive Director's Report

Ms. Julie Cunningham, OWRB Executive Director, welcomed the members following the month break with no meeting in July, and began her report with the drought and rain report. She updated the members on the recent rainfall events and other current drought and weather information published in the August 13 U.S. Drought Monitor, noting the number of citizens affected by drought has dropped from 100,000 to 839,000; no areas of the state are experiencing exceptional drought, although 3.4% of the state is still in severe drought in the north central and west central areas. The State's lakes are in great shape, although Lugert-Altus is down about 10 feet, but Mr. Buchanan stated cotton is being irrigated. The National Drought Outlook for October looks favorable.

This past month, Ms. Cunningham stated she had spoken to the Environmental Federation of Oklahoma meeting, and met with Mr. Mike Fina, new director of the Oklahoma Municipal League and the Financial Assistance Division will be hosting session at the upcoming OML conference. She attended the Waterways Advisory Board along with Secretary of Transportation Thompson, and said

navigation interests will be represented at the Governor's Water Conference. She met with Mr. Kenneth Wagner, Advisor to Administrator EPA Secretary Scott Pruitt for Regional and Administrative Affairs; both are traveling the state with the ECOs group visiting about the 401 permitting rules, and WOTUS rules, on which Brittnee Preston will provide an update during this meeting.

Water Quality Standards and Legal staff have been meeting with the Department of Environmental Quality to progress the ASR (Aquifer Storage and Recovery) and IPR (Indirect Potable Reuse) rules which DEQ will be promulgating this fall. Ms. Cunningham attended the Tri-State Corps of Engineers Water Supply annual meeting attended by the states of Oklahoma, Texas and Kansas and the COE Tulsa District and the Fort Worth District to receive updates from the COE and discuss the states' priority areas. The majority of the COE reservoirs are located in these states giving the states some priority in shaping COE policy in reservoir management. With the elimination of earmarks replaced by "funding pots," funding is being focused on flood-risk management, navigation and eco-system restoration rather than public water supply projects and new starts. The states are working to get the water supply infrastructure on the COE radar while also focusing on sedimentation issues on current reservoirs.

Upcoming events include the Oklahoma City stream water permit hearing scheduled for the week of August 21-the prehearing was held June 28. The 38<sup>th</sup> Annual Governor's Water Conference and Research Symposium will be held October 31-November 1 at the Embassy Suites Hotel and Conference Center in Norman. Ms. Cunningham stated the theme is, "Liquid Assets: The Value of Water Investment in Oklahoma." Speakers are invited representing all water use sectors to present the value of infrastructure investments in irrigation, municipal, industrial, energy, etc. The keynote speaker is Mr. Seth Siegel, author of "Let There Be Water" discussing solutions for a water-starved world, and there will also be recognition of the OWRB's 60<sup>th</sup> Anniversary and Dr. Bob Blackburn of the Oklahoma Historical Society will present the journey of water development in Oklahoma. There will be recognition of former directors and employees, Water Pioneers, and Ms. Cunningham announced the new award program recommended by the Water for 2060 Advisory Council to recognize water conservation projects; criteria is on the website for awards in public water supply, energy and crop irrigation/agriculture production conservation and efficiency practices.

Chairman Drummond added he and staff is considering moving the November meeting to November 1, which is the second day of the water conference, otherwise it is currently scheduled for the week of Thanksgiving. He also noted that the October meeting may be adjusted to meet the scheduling requirements and may be held the first or second week of October; there is no date yet.

Ms. Cunningham noted the situation regarding the State Legislature and budget and the cigarette tax which Mr. Pierce will address under the Financial Update. She asked Ms. Brittnee Preston to update the members on the status of Congressional activities.

Ms. Preston began her remarks regarding the water supply rulemaking stating it is unclear which way the COE will go and the deadline for comments is Friday, August 18. The focus was on federalism concerns in the water supply definition of the COE which effect natural flow, and how the COE interprets storage and how that is permitted by states. It is hoped dialog will continue, or the rule will be pulled back. There are concerns about dealing with water flowing into and out of the state, particularly regarding Lake Texoma, it should be a state authority rather than a federal authority. Ms. Cunningham and the members discussed the proposed rules and the impact to the management of the state reservoirs and jurisdiction lines. The OWRB, ODEQ, Conservation Commission, Department of Transportation, Department of Agriculture along with the Secretary of Energy and Environment, and the Western States, and others shared the position that the COE owns the bowl but the state authorizes the use of the water, and that the states should be consulted before releasing the rules. Ms. Preston noted the National Water Supply Alliance has also been working directly with the COE; this is a new group and Oklahoma is now a member.

Ms. Preston reviewed her report regarding Congressional activity passing drought-related bills, a 4-bill “minibus” appropriations bill including the energy and water appropriations bill which she highlighted, including authorizing the EPA and COE to withdraw the Water of the US Rule (WOTUS), which has not passed the Congress or been by the President. She updated the members on the committee activities and appropriations bills, as well as House and Senate actions on budget measures, including funding status for EPA and Clean Water SRF programs, COE, and Bureau of Reclamation. She informed the members that the WOTUS rule has been pulled back due to comments from the states, and Mr. Singletary and Ms. Cunningham commented the states wanted to be able to make determinations regarding wetlands, agency jurisdiction (EPA or COE), states’ rights in making determinations, issues directly related to Justice Scalia’s opinion. The status quo is in place until new rules are promulgated, the timeline to propose new rules should be announced by Administrator Pruitt at the beginning of 2018. Mr. Buchanan commented about the proposal of new rules as the current rules are working in Oklahoma. Ms. Preston concluded her remarks about anticipated Congressional schedule for the fall, and Chairman Drummond asked Ms. Preston to share her background.

There were no other questions or comments from members, and Ms. Cunningham concluded her report.

#### D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Administrative Services Division Chief, addressed the members and stated the budget report regards financial information for the first month of the fiscal year and the agency has spent 8% of appropriated money, 4% of revolving funds, and 4% of federal dollars; there is 95% of budget remaining, 92% of the fiscal year remaining and last year the agency was at the same place. Mr. Pierce stated this time of year the agency is just getting through the first payroll and not making large purchases. Staff submitted the FY18 budget which was approved by OMES for \$16.4 million having been reduced last year by \$27, 459.41 due to a revenue failure calculation that failed to happen; that amount has been given back this year and will be entered into the budget. The divisions affected are Administrative Services \$9,600, Water Quality \$15,900, and Planning and Management \$1,900 which is exactly what had been removed from the budget and has now been restored. He said the agency appropriations were reduced by 4.4% from last year, \$242,000 which had been budgeted for FY18. As a result of the cigarette tax being struck down by the Oklahoma Supreme Court, there will need to be a Special Session to deal with the revenue shortfall. Regardless, the agency is discussing spending and payroll savings each month and being cautious. Staff is also watching federal reductions, and looking for money, and other avenues to fund programs.

Ms. Cunningham noted that is the standard operation for the agency; the focus is implementation of the Water Plan, statutorily required programs, matching federal dollars, and setting goals to get the job done. She noted the contracts package regarding grants for projects with other state and federal agencies. Ms. Lambert asked about potential reductions to the Clean Water Programs and the effect to the OWRB financing programs. Mr. Freeman and Ms. Preston answered at this time since it is only in the House, they are not worried. Chairman Drummond expressed appreciation for the agency being flexible and creative in supporting agency functions.

There were no questions by the members, and Mr. Pierce concluded his report.

## 2. **FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Rural Water District No. 5, Pawnee County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$100,000.00 Emergency Grant

request by the Pawnee County Rural Water District #5. The District's source of water is from the Town of Ralston and the water line connecting the Town of the District has become blocked and collapsed. In order to correct the problem, the District will be laying a 2,600 ft, 4-inch water line to go around the collapsed line, and proceeds will also be utilized to fund engineering to determine the feasibility of connecting the Town to Pawnee Rural Water District #3 as a permanent solution. He said the estimated total project cost is \$130,000.00, and will be funded with the OWRB grant of \$100,000.00, a \$10,000.00 Oklahoma Emergency Management grant, and the 15% match of \$20,000.00 will be in-kind labor. Staff recommended approval of the emergency grant request.

Representing Pawnee County RWD #5 was Mr. Johnny Wagner, Board Member; and representatives from the Cardinal Engineering firm. Mr. Wagner thanked the Board for its assistance as well as DEQ and other agencies, and described the difficult water situation experienced by the District. He said they looked forward to restoring the quality of life to the citizens.

Chairman Drummond asked how long it will take to complete the project, and Mr. Wagner answered about 30 days. Mr. Hitch asked about the temporary time frame, and whether the line will be above ground. Mr. Wagner responded this temporary line will be in place until a permanent fix expected in 2020, and will be a buried line.

Ms. Lambert moved to approve the Emergency Grant to the Pawnee County Rural Water District #5, and Mr. Drake seconded. There were no other questions or comments, and Chairman Drummond called for the vote.

AYE: Drake, Melton, Lambert, Darby, Buchanan, Allen, Hitch, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Stallings

Mr. Freeman commented about the conversation between he and DEQ's Patty Thompson that resulted in the requested emergency grant to help the people of Pawnee County.

**B. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for McCurtain Municipal Authority, Haskell County. Recommended for Approval.** Mr. Freeman stated this item is a \$71,323.50 Emergency Grant request by the McCurtain Municipal Authority in Haskell County. He said the Authority purchases water from the Poteau Valley Improvement Authority; however, the water is not meeting the requirements for the public's health and safety. In order to correct the problem, the Town proposes to install an aeration pump at the tower, and install automatic flushing hydrants. It is estimated the project will cost approximately \$83,910.00 and will be funded with the emergency grant requested of the OWRB, along with \$12,586.50 in local funds. Staff recommended approval of the emergency grant request.

Representing McCurtain MA was Mayor Patrick Lovell who expressed to the members his appreciation for the Board's program making funds available to communities in tough situations. He said the aeration system will be able to put the system within DEQ standards, and he thanked the Board for its consideration.

Mr. Allen moved to approve the Emergency Grant to the McCurtain Municipal Authority, and Mr. Buchanan seconded. Chairman Drummond called for the vote.

AYE: Drake, Melton, Lambert, Darby, Buchanan, Allen, Hitch, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Stallings

C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Rural Water, Sewer, Gas and Solid Waste Management District No.4, Wagoner County. Recommended for Approval. Mr. Freeman stated to the members that the first loan request for the Board's consideration is a \$5,745,000.00 loan by the Wagoner County Rural Water, Sewer, Gas & Solid Waste Management District #4 to lay approximately four miles of 16-inch water distribution lines, 1.5 miles of 12-inch water line, and 6.25 miles of 6-inch water line. He said the loan will be funded through the State Revenue Bond Loan Program known as the FAP program. Mr. Freeman noted provisions of the loan agreement, and said in the last 10 years the District's water connections have increased over 30%. He stated the District has been a long-time, good customer of the Board's and currently has two outstanding loans with the Board totaling \$4.9 million; its debt coverage ratio stands at approximately 1.67-times. Staff recommended approval of the FAP loan request.

Representing the District were Mr. Arnold Kunze, District Chairman; Mr. Bill Lange, District System Manager; Mr. Bill Giles, District Business Manager; and, Mr. Duane Rice, legal counsel. Mr. Giles spoke to the members.

There were no questions or comments, and Ms. Lambert moved to approve the \$5.7 million FAP loan to the Wagoner County RWSG&SWM District #4. Mr. Darby seconded.

AYE: Drake, Melton, Lambert, Darby, Buchanan, Allen, Hitch, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Stallings

D. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Stillwater Utilities Authority, Payne County. Recommended for Approval. Mr. Freeman stated this item is a \$12.6 million loan request by the Stillwater Utilities Authority. He said the Authority is requesting the loan to lay approximately 27,500 of 18-inch water line, construct a booster pump station, and move facilities that are no longer in use. He said the loan will be funded through the State Revolving Fund Loan Program, and he noted provisions of the loan agreement. Over the last ten years the water and sewer connections have increased over 13%. Stillwater has been a long time loan customer of the Board's, and currently has six loans with a combined principal balance of \$25.8 million; the strong debt coverage ratio is 4.6-times. Staff recommended approval of the Drinking Water SRF loan request.

Representing the Stillwater Utilities Authority was Mr. Bill Millis, Water Resources Director, who thanked the Board for its support of the funding that will make a difference to the ratepayer, and also thanked OWRB and DEQ staff. He updated the members on the SUA construction projects funded by the Board and is part of the City's Water for 2040 program. Chairman Drummond asked if the City is constructing the Kaw pipeline, and Mr. Willis answered that is on hold as evaluations showed it is not as urgent as once thought. This is a separate program to improve the distribution system for the southwest part of Stillwater.

Mr. Allen moved to approve the Drinking Water SRF loan to the Stillwater Utilities Authority, and Ms. Lambert seconded.

AYE: Drake, Melton, Lambert, Darby, Buchanan, Allen, Hitch, Drummond  
NAY: None  
ABSTAIN: None  
ABSENT: Stallings

**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 Summary Disposition Agenda.

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

Chairman Drummond asked if there were actions regarding items on the Summary Disposition Agenda. Mr. Wilkins asked that item 3.G.1., permit number #2011-647 in the name of Technisand, Inc., Pontotoc County, be withdrawn from the Board’s consideration due to notice issues. Mr. Buchanan stated there appeared to be fewer items on the agenda, and Chairman Drummond said several items had been removed from the draft agenda.

There were no other changes, and Chairman Drummond asked for a motion to approve the Summary Disposition Agenda.

Mr. Drake moved to approve the Summary Disposition Agenda, and Mr. Buchanan seconded. Chairman Drummond called for the vote.

- AYE: Drake, Melton, Lambert, Darby, Buchanan, Allen, Hitch, Drummond
- NAY: None
- ABSTAIN: None
- ABSENT: Stallings

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>
COEDD				
a.	FAP-17-0026-R	Kendrick Municipal Authority	Lincoln	\$93,500.00
GGEDA				
b.	FAP-17-0049-R	Delaware Public Works Authority	Nowata	74,600.00
INCOG				
c.	FAP-17-0038-R	Rural Water, Sewer and Solid Waste Management District #3	Osage	44,200.00

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

1. Memorandum Agreement with Central Oklahoma Master Conservancy District for water monitoring and data collection.

2. Memorandum Agreement with USGS and Grand River Dam Authority for water monitoring and data collection.
3. Professional Engineering Services Agreement between OWRB and Lynker Technologies, LLC to complete stream water allocation model for the North Fork of the Red River.
4. Project Agreement between OWRB and Oklahoma Tourism and Recreation Department to provide funding for engineering analysis of dam repairs at Robbers Cave and Clayton State Parks.
5. Interagency Agreement between OWRB and the Department of Environmental Quality to collect water quality data to assist in TMDL development in Lake Arcadia and its watersheds.
6. Interagency Agreement between OWRB and the Department of Environmental Quality to perform bathymetric surveys to determine lake oxygen water quality standards.
7. Professional Services Agreement with First Southwest, a Division of Hilltop Securities, Inc., for financial advisor services related to the Board's financial assistance programs.
8. Contract between OWRB and Department of Public Safety related to building security.
9. Interagency Agreement between OWRB and Oklahoma Department of Agriculture, Food, and Forestry ("ODAFF") for the collection of water samples from monitored wells at licensed managed feeding operations.
10. Joint Funding Agreement between OWRB United States Geological Survey ("USGS") for the North Fork of the Red River hydrologic investigation to increase USGS contribution through September 30, 2017.
11. Non-Assistance Cooperative Agreement between OWRB and U.S. Department of Agriculture, Agricultural Research Service to monitor and evaluate water resources in the upper Washita River Basin and the Fort Cobb Reservoir.

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

1. Steven V. & Connie S. Redgate, Jackson County, #2016-546
2. Christopher Edward & Tara Lynn Thomas, Major County, #2016-558
3. Flaming Investment Co., Alfalfa County, #2017-512
4. Womack Farms, L.L.C., Jackson County, #2017-519
5. Vonda Graf Living Trust, Washita County, #2017-524
6. Mark Graf Living Trust, Washita County, #2017-525
7. Mark Graf Living Trust, Washita County, #2017-526
8. Rudy & Teresa Simic, Garfield County, #2017-532

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

1. Mike & Loretta Propps, Blaine County, #1979-571B
2. Greens Box – West, L.L.C., Oklahoma County, #1986-502

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

1. *Technisand, Inc., Pontotoc County, #2011-647 Item withdrawn*
2. Troy D. Baker, Cimarron County, #2013-600
3. Tim A. & Kathleen Davis, Custer County, #2016-581
4. Elray & Jo Coyle, Love County, #2017-528



- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
1. Edward T. Davis IV, Stacey D. Davis, Edward T. Davis V, and Ryley E. Davis, Beckham County, #1978-598B
- I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:
1. Justin & Debra Choate, Kingfisher County, #1972-399
- J. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
1. Billy and Jason Petty, Blaine County, #2016-010
  2. Virginia A. Petty, Blaine County, #2016-012
  3. Kathryn S. Biggers, Washita County, #2017-012
  4. Monte J. Matli, Blaine County, #2017-017
- K. Consideration of and Possible Action on Applications to Amend Permits to Use Stream Water:
- None
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
1. City of Chickasha, Caddo County, #OK02562
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
1. New Licenses and Operators:
    - a. Licensee: Seneca Companies, Inc. DPC-0987
      1. Operator: Douglas Wilson OP-2018
    - b. Licensee: Lone Wolf Drilling DPC-0989
      1. Operator: Brandon Jessen OP-2206
    - c. Licensee: Coldwater Well Service DPC-0991
      1. Operator: Brice Mansell OP-2207
  2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
    - a. Licensee: Allen Water Well Drilling Co., Inc. DPC-0003
      1. Operator: Garrett Wheeler OP-2202
    - b. Licensee: Mohawk Drilling, Inc. DPC-0563
      1. Operator: Timothy Swyden OP-2203
    - c. Licensee: Just Geo Loops, Inc. DPC-0963
      1. Operator: Marc Spatz OP-2204
- 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, Tulsa County, #FP-17-22
  2. Oklahoma Department of Transportation, Osage County, #FP-17-23
  3. Oklahoma Department of Transportation, Osage County, #FP-17-24
  4. Oklahoma Department of Transportation, Payne County, #FP-17-25
  5. Oklahoma Department of Transportation, Payne County, #FP-17-26
  6. Oklahoma Department of Transportation, Tulsa County, #FP-17-27
  7. Oklahoma Department of Transportation, Logan County, #FP-17-28
  8. Oklahoma Department of Transportation, Osage County, #FP-17-29
  9. Oklahoma Department of Transportation, Osage County, #FP-17-30
  10. Oklahoma Department of Transportation, Creek County, #FP-17-31
- O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
1. Edward "Lee" Raiburn, Town of Caddo, FPA-721
  2. Linda A. Loper, Choctaw County, FPA-722
  3. Jason T. Bryant, Town of Ravia, FPA-723

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

A. No items. There were no items of discussion for the Board's consideration.

#### **5. SPECIAL CONSIDERATION**

A. Consideration of and Possible Action on Resolution for Easement Release, John T. Jarrett and Sara F. Jarrett, Tulsa County:

1. Summary – Mr. Kent Wilkins asked that this item be withdrawn from consideration due to notice requirements.

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

3. Vote on whether to approve or as may be amended, or vote on any other action or decision relating to the resolution. There was no action by the Board.

B. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Regular Permit to Use Groundwater No. 2004-532, Vici Public Works Authority, Dewey and Woodward Counties:

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, stated to the members that this item came before the Board in February, and is an application to amend a regular permit to use groundwater, permit no., 2004-532 in the name of Vici Public Works Authority in Dewey and Woodward Counties. He provided background that Vici PWA has an existing permit issued in 2004, with one well location and allocation of 615 acre-feet (a.f.) of groundwater; the land dedicated to the permit overlies the Ogallala Northwest Region aquifer, and there is a well spacing of 1,320 is in effect, and the basin has an Equal Proportionate Share (EPS) of 1.4 a.f. of water per acre of land dedicated on an annual basis. On May 6, 2015, Vici PWA filed an application to amend to add two wells to the existing groundwater permit. Randy and Becky Castor filed a timely protest and a hearing was held June 23, 2016. A proposed order denying the application to amend was proposed and approved (denying the permit) by the Board at its February 2017 meeting.

On March 16, 2017, Vici PWA refilled the application to amend groundwater right 2004-532 adding two wells (known as the Borden #2 and Borden #3); proper notice was published, a timely protest by Randy and Becky Castor was received again protesting the proposed wells had been drilled within the 1,320 ft spacing requirement from the Castor's domestic well, and a hearing was held July 25, 2017; a proposed order was prepared for the Board's consideration today. Mr. Wilkins stated that at the hearing, the applicant offered evidence in support of a spacing exception request and according to testimony at the hearing, Vici PWA hired a licensed well driller to test for additional sources of water on the Borden property. According to additional testimony, the test hole locations failed to produce sufficient water to meet the water use needs of Vici PWA. The applicant believes the locations chosen were the ones most likely to produce sufficient water, and the protestant at the hearing asserted the additional wells did not meet spacing requirements and questioned how the well locations were chosen as a large portion of the Borden land was not selected for a test site.

Mr. Wilkins stated the hearing examiner, in the proposed order before the Board today, acknowledged that the applicant has presented substantial competent evidence to the Board and the Board has determined the amount of groundwater available in the locations that would meet spacing requirements is insufficient for the purpose to be authorized. Therefore, based on the findings of fact,

conclusions of law, Vici PWA has satisfied the necessary elements for approval of a location exception. Furthermore, the record showed the applicant has a valid right to the dedicated land, the land overlies a fresh groundwater basin, public water supply is a beneficial use, and future waste will not occur by waste by pollution or waste by depletion, and the record showed the applicant has satisfied the elements for approval of a location exception. Staff recommended approval of the proposed findings of fact, conclusions of law, and Board order effectively approving the application to amend a permit by adding the two wells.

Representing the Applicant is Steve Harris and Mark Miller, and representing the Protestants is Randy and Becky Castor. Chairman Drummond stated the Applicant and Protestant will be allowed five minutes to address the Board. He asked if the Board members had questions.

Mr. Melton asked the location distance of the well, and Mr. Wilkins said the closest well is approximately 700 feet and 900 feet; well spacing is 1,320 feet. Mr. Hitch asked how the applicant received a REAP grant to drill illegal wells, and Mr. Wilkins answered the grant was not an OWRB REAP grant, when grant requests are reviewed there is a team of funding agencies; however, the OWRB does not have control. Mr. Buchanan asked the agency procedure for drilling a test hole and if notification is required, and Mr. Wilkins responded there is an opportunity without notification to the Board to drill test holes and pump test if there is sufficient yield – there is no need to complete a well if there is no production. He added those wells would be plugged, and then an application submitted. Mr. Hitch asked if these two wells are completed, and Mr. Wilkins said these are constructed wells, which is not typical, but they have not been used according to the information staff has.

There were no other questions by the Board members.

2. Discussion and presentation by parties. Chairman Drummond invited Mr. Steve Harris to address the Board representing the Applicant. Mr. Harris stated Vici went to extraordinary lengths to try to obtain water outside the 1,320 spacing requirement by contracting with a driller who drilled 10 wells, half to the east of the existing well and more than 1,320 but not finding suitable water, and another five test holes south. He emphasized Borden #2 and Borden #3 wells, under the Board's rules, are test holes according to the length of time a well is pumped and still meets the test hole criteria, and that a permit is not required to explore for water. He said the initial test on Borden #2 showed high nitrates and would not be sufficient on its own; in 2014 (or 2015) Borden #3 was drilled again as a test hole. He said Vici's plan is to use Borden #1 and have a backup system using Borden #2 and #3 blended which meets the DEQ criteria. Additionally, he said an issue at the hearing is the operation of Borden #2 and #3 is beneficial to the Castors because currently all water is taken from Borden #1 and the Castor well and are from the same zone. He said Borden #2 has high nitrates and #3 does not, so these wells are from different zones and less water will be taken as an impact to the Castors and the overall production using #1 or using #2 and #2 will not increase the consumption of water, and Vici takes a small fraction of its permitted water. Regarding the issue of whether the drilling of #2 and #3 is a violation of the Board's rules, and he said in a follow up letter he wrote there is no requirement for a permit to drill test holes, but only when production goes above the threshold established. He said #2 and #3 have never been produced and were lawfully drilled as test holes; the required reports on the wells have been properly filed with the Board. Mr. Harris urged the Board to approve the hearing examiner's recommended order allowing Vici to produce from wells #2 and #3.

Mr. Hitch asked if wells #2 and #3 have not had concrete tops poured to indicate completion. Mr. Harris asked Mr. Miller, Vici Water Supervisor, to address the question of the level of completeness as to whether the wells had been cemented in place. Mr. Miller stated Borden #2 was drilled in 2002 and has a concrete floor and wall, but no roof, windows, or door jam; #3 has a pipe coming out of the ground with a casing. Mr. Harris explained regarding the surface on #3 there is no above ground improvement, and #2 has a partially completed blockhouse; he said the wells lose their test hole status when production is continuous pumping over 24 hrs or 72 hrs over 5 days. He

submitted these are lawful test holes and to satisfy the Board requirements an additional 10 test holes were drilled outside the 1,320 spacing requirement and inadequate sources of water could not be located either to the east or the south of the existing wells.

Mr. Allen stated, staying with the evidence at the hearing, the 10 holes drilled presumably outside the 1,320, in paragraph 17 states Mr. Miller believes the locations were the most likely to produce sufficient water and he asked Mr. Miller's basis for that determination, was it his experience, or geologic studies; how was that done. Mr. Miller said it is his understanding the formation is "fingers." He explained Borden #2 was drilled in 2002 and the understanding was that would be their well until samples were denied by DEQ because of the high nitrate level, and that well was abandoned. He said they drilled the well now called Borden #1 which is completed and will furnish 350 gpm; Borden #2 is in a completely separate vein than #1 and #3, which can be proved because of the nitrate levels in the wells. He said they drilled south, east and north, but did not find a significant amount of water to drill and he detailed the level of nitrates and location of the wells, the history of exploration of water and wells in the area, including the current landowner's windmills and who also needs water. Mr. Allen clarified then the 10 wells were drilled based upon the best information at the time but proved to be dry, and based on the evidence the existing landowner and his windmills not producing, and Mr. Miller answered that is correct, and he described other test wells in the area that also had nitrates or insufficient water. He said the landowners around and Mr. Borden said they had a good vein of water, and added that Borden #1 and Borden #2 will not produce over 300 gallons per minute. Vici needs a backup system and has been reprimanded by DEQ for having only one well, and these are backup wells that will be put into rotation.

Ms. Lambert asked about the small percentage of water Mr. Harris mentioned. Mr. Miller responded that would be less than 10%; they are using 65 million gallons of water per year, they are allowed 702 acre-feet of water but are not using that amount.

Chairman Drummond invited the Protestant to address the Board reminding there will be five minutes allowed. Mr. Randy Castor told the members he had been before the Board previously, and stated it is with great concern he comes today and he thanked the Board members for their concern about water resources and service to the State. He provided a history of the 10 test wells drilled in January 2016, and Borden well #2 was drilled in 2002 and #3 was drilled in October 2014; the ten wells were drilled after he protested and was manufactured evidence, and said Borden well #2 has a partially finished well house and was not intended to be a test well. He said he was before the Board in February 2017 and is back asking for relief for his residential well. The last well drilled in 2014 is 660 feet away from his residential well, 100 feet closer than any other well. He said Vici re-filed the amendment in March 2017 but nothing has changed; the same evidence was available during the first hearing that five of the test wells are not on the Borden property, and there is approximately 325 acres that where no one has looked for water. Mr. Castor concluded asking the Board to consider the facts; he is not being unreasonable and wants the rule of 1,320 feet set for by the state to be followed.

Mr. Hitch asked if Mr. Castor had an impact as yet, and he answered he is still pumping water from his residential well, although after Borden #1 went into production, his pump was pulled up in his well due to pumping sand. He said he did not know what would happen if wells #2 and #3 are allowed to go online, but he needs water and would like to have the safety that is within the boundary. Ms. Lambert asked Mr. Castor if there had been any consideration if something happened and the Castor's well is impacted in any way, if there is an agreement of what would happen. Mr. Castor responded he had been given a water tap across the road with a meter on his property when the first well was drilled, but it is not free water. He said he did not protest the first well as he was told it was a mistake, but now there are more wells.

There were no other questions by the members to Mr. Castor. Chairman Drummond stated staff is recommending approval of the amended permit to allow two additional wells, and it is not

unusual for the Board to authorize exceptions to well spacing based on evidence. He asked if there is other discussion.

Mr. Hitch asked how often there are test wells for 14-15 years. Mr. Wilkins responded there is no time limit as long as the well is constructed properly and do not allow pollution to occur. Once a well is truly abandoned, it is required to be plugged. Mr. Melton asked if the tap would meet their needs if the Castor well goes dry, and Mr. Castor answered he would have to pay but they do not want chlorinated water; it isn't known if he would lose water, they may also. Mr. Buchanan asked the definition of an abandoned well, and Mr. Wilkins responded an abandoned well is one where there is no longer a use and no foreseeable use in the future. There are two options when a well is taken out of service, if there is no future use it shall be plugged and abandoned, and if there is a potential future use that well can be temporarily capped. Mr. Buchanan said it is not like surface water and the rule to use or lose in seven years does not apply, and Mr. Wilkins confirmed that is correct. Ms. Lambert asked about waste by depletion.

General Counsel Rob Singletary responded to Mr. Hitch there are long term sampling wells and Mr. Hitch said he has drilled numerous wells and usually within 72 hours it is known whether it is usable. Mr. Wilkins said there have been communities in the past that have not made a decision which wells it will use, complete and permit, and this is an extreme case but there is no deadline as long as the test well is constructed in a safe manner not to cause pollution. Mr. Singletary then addressed Ms. Lambert's question referring to paragraph 25 of the proposed order and said the hearing examiner did find waste by depletion has occurred; however, it is not anticipated it will occur in the future. In the past, the Board has issued permits for wells that have been drilled in the advance of receiving a permit; waste by depletion is withdrawing water without a permit. Ms. Lambert asked if staff's recommendation in the permit is that waste by depletion has occurred in the past but don't know that it will in the future. Mr. Singletary answered that is correct, that is the finding of the hearing examiner based on the evidence that was presented. She said there is the letter of the law and the spirit of the law, but is there a way within this permit there can be a condition if there has been waste by depletion, that there can be a contingency if that does happen. Chairman Drummond stated the permit will cure waste by depletion and is the purpose of the application since it was considered waste because there was no permit. Mr. Singletary said Chairman Drummond is correct, there is an opportunity for the Board to revoke a permit if there is waste by depletion occurring, and that the intent of the permit would be to rectify this specific instance of past waste by depletion; future waste by depletion can be revisited by the Board. Ms. Cunningham added that is a standard condition. Mr. Wilkins said it was directed at completion of the well without having a permitted location in place, and the hearing examiner ruled it did not appear future waste by depletion would occur based upon approval of the well locations.

Chairman Drummond asked if the Board members had any other questions, comments or discussion. There were no other questions or comments.

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.

Chairman Drummond said he would entertain a motion. Mr. Drake stated that after listening to the discussion and being uncomfortable with the decision he will make but with the idea that if there is waste by depletion there will be another look at this, he moved to approve the application. Ms. Lambert seconded the motion. Chairman Drummond called for the vote.

AYE: Drake, Melton, Lambert, Drummond

NAY: Darby, Buchanan, Allen, Hitch  
ABSTAIN: None  
ABSENT: Stallings

Mr. Allen stated during the vote he did not think there was substantial and competent evidence that groundwater was not available at other locations.

The vote was four ayes-to-four nays, and it was determined the motion does not carry in a tie vote. The members commented about a community that needs water, and revisiting the issue in the future.

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.

## 6. NEW BUSINESS

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

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

## 7. ADJOURNMENT

There being no further business, Chairman Drummond adjourned the meeting of the Oklahoma Water Resources Board at 11:00 a.m. on August 15, 2017.

## OKLAHOMA WATER RESOURCES BOARD

\_\_\_\_\_/s/\_\_\_\_\_  
F. Ford Drummond, Chairman

\_\_\_\_\_/Absent\_\_\_\_\_  
Jason Hitch, Vice Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Linda P. Lambert

\_\_\_\_\_/s/\_\_\_\_\_  
Tom Buchanan

\_\_\_\_\_/s/\_\_\_\_\_  
Charles Darby

\_\_\_\_\_/s/\_\_\_\_\_  
Bob Drake

\_\_\_\_\_/s/\_\_\_\_\_  
Robert L. Melton, Sr.

\_\_\_\_\_/s/\_\_\_\_\_  
Robert Stallings

*ATTEST:*

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen B. Allen, Secretary (SEAL)