

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

October 16, 2018

1. CALL TO ORDER

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Jason Hitch at 9:39 a.m., on October 16, 2018, at the offices of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on October 12, 2018, at 4:40 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 Hitch welcomed everyone to the October meeting of the Oklahoma Water Resources Board.

A. Roll Call. Chairman Hitch asked for the roll call of members.

Board Members Present

Jason Hitch, Chairman
Stephen Allen, Vice Chairman
Robert Stallings, Secretary
Charles Darby
Bob Drake
Ford Drummond
Robert L. Melton
Matt Muller

Board Members Absent

Jennifer Castillo

Staff Members Present

Julie Cunningham, Executive Director
Sara Gibson, 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

Tom Elkins, Cherokee Nation, Tahlequah, OK

Steve Mullins, RJH, Oklahoma City, OK

Greg Riley, City of Muskogee, OK

Lewis LeNaire, for Panhandle Eastern Pipeline Co., LP; Gable Gotwals, Oklahoma City, OK

Steven Hoffman, Oklahoma Department of Environmental Quality, Oklahoma City, OK

Eddie Phandour, Oklahoma Department of Environmental Quality, Oklahoma City, OK

Dean Couch, Gable Gotwals, Oklahoma City, OK

Charles Swinton, BancFirst, Oklahoma City, OK

Anthony Mackey, for Richard Grellner; Noble, OK

Kandice Taylor, Thlopthlocco Tribal Town, Okemah, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the September 18, 2018, Regular Meeting.

Chairman Hitch asked if there was a motion on the draft minutes of the September 18, 2018, meeting. Mr. Darby moved to approve the minutes of the September 18, 2018, meeting, and Mr. Muller seconded. There was no discussion.

Chairman Hitch called for the vote.

AYE: Drake, Darby, Drummond, Stallings, Muller, Hitch

NAY: None

ABSTAIN: Allen, Melton

ABSENT: Castillo

Prior to the Executive Director's report, Chairman Hitch announced the Special Consideration Agenda items (5.) would be moved so the Board would consider those items prior to the training under item 4., due to the parties in attendance.

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, stated to the members the Board's Rules Committee would be meeting directly following the Board meeting today. She updated the members on the drought conditions across the state noting that only 2.3% of the state is experiencing drought and is in the northeast area. State lakes are full and the Lugert Altus Reservoir is low, indicating water is being withdrawn for irrigation of the cotton crop. Regarding calendar items, Ms. Cunningham stated several staff attended the Arkansas-Oklahoma Arkansas River Compact Commission meeting on September 26-27, with discussions on the collaborative report regarding phosphorus and water quality of the Illinois River; phosphorus levels are slowly declining. On October 2-3, staff attended the Oka Institute Sustainability Conference in Ada at the East Central University Water Center discussing water quality, the water settlement between the State, Tribes, and Oklahoma City, including the provision that the parties will meet and discuss water planning and water management issues and how to collaborate in the region. Staff also toured the Tishomingo area with the US Fish and Wildlife Service that has a water right application discussing maintaining resources for the migratory birds and other species the area supports. Additionally, staff met with landowners along the Blue River that have formed a group and is working with consulting engineers to determine potential impact on mining operations and working with the mining companies to protect water levels.

Other events included the OWRB hosting the Interstate Council on Water Policy in Oklahoma City, October 9-11, at the Sheraton Downtown and also conducted a tour to Sulphur and the Chickasaw National Recreation Arbuckle Simpson area. The Enid Regional Development Authority held its

quarterly luncheon which Mr. Kent Wilkins attended and discussed SB 1294, Senator Pedersen's bill regarding maximum annual yield determinations. Ms. Cunningham and Mr. Bill Cauthron will be traveling to Tulsa to participate in the Environmental Federation of Oklahoma meeting that afternoon.

Ms. Cunningham reminded the members that on September 12th, Governor Fallin and the Cherokee Nation Principal Chief Baker announced the formation of the Coordinating Council on Poultry Growth to address poultry issues and expansion of growers in the northeast part of the State. The Council has conducted one meeting and the Planning and Management staff will be conducting well inspections in the area to identify issues with water wells and springs, the next meeting of the Coordinating Council is October 23. She stated the citizens are concerned about a number of issues, as well as water quality and groundwater levels; she said the OWRB is being as responsive as possible by looking at spacing and other measures to ensure protection of the water, but the main issue is with the Department of Agriculture. Water permitting is a private property right and the Board is required to process any permit application, most in the area are 10-20 acre-feet per year; oil and gas use average is 64 acre-feet for a two-mile lateral, or 500,000 barrel frack. Ms. Cunningham stated the Board has approved the maximum annual yield study of the Roubidoux Aquifer and staff and the USGS are speaking with the citizen group about what is anticipated.

Ms. Cunningham updated the members about State Legislative activities. The Board's Rules Committee will meet following today, informal public meetings are being held regarding the Water Quality Standards, and staff has met with the Well Driller's Advisory Council on the well construction rules for marginal water. Federally, the WRDA Bill passed the House and Senate, the Farm Bill expired September 30, and the NFIP (Flood Plain Management) bill expires November 30.

Ms. Cunningham concluded the report announcing the Governor's Water Conference will be December 5-6. Staff is planning the December Board meeting to be held the afternoon of December 6 following the adjournment of the conference sessions, and the November meeting will be cancelled. There were no questions by members.

D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Administrative Services Division Chief, addressed the members and stated the budget report is for the time period ending September 2018. He said the agency spending is exactly as this time last year, staff has been watching the budget and the percentages are the same. He said for the time period the agency has spent 24% of the appropriated budget leaving 76%, spent 13% of the revolving fund leaving 87%, and spent 10% of the federal dollars leaving 90%. Overall, the total budget remaining is 85% compared to 84% last year.

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

2. **FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Drinking Water Funding Application for Muskogee Municipal Authority, Muskogee County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the member this item is a \$17,640,000.00 loan request from the Muskogee Municipal Authority. The Authority is requesting the loan to replace water lines throughout the city, relocate the chlorine dioxide injection point at the raw water treatment plant, install aeration at a storage tank, and install a mixing system at a storage tank. Mr. Freeman said the loan will be funded through the Drinking Water State Revolving Fund Loan Program, and he noted provisions of the loan agreement. Muskogee has been a good loan customer of the Board's and currently has five outstanding loans with a principal balance of \$21.4 million, and a debt coverage ratio that stands at 1.62-times. Staff recommended approval of the loan application.

Mr. Greg Riley, Public Works Director, was present representing the Muskogee Municipal Authority.

Chairman Hitch clarified the \$21 million plus the \$17 million will be a total of \$38 million, and Mr. Freeman stated that is correct.

Mr. Drummond asked the Authority's source of raw water and Mr. Riley responded it is Lake Fort Gibson. Mr. Muller asked if Muskogee anticipated any other major projects in the next decade requiring sizeable outlays, and Mr. Riley answered this will be a 30" water line and he did not anticipate any other projects.

There were no other questions.

Mr. Allen moved to approve the Drinking Water SRF loan to the Muskogee Municipal Authority, and Mr. Muller seconded. Chairman Hitch called for the vote.

AYE: Allen, Melton, Drake, Darby, Drummond, Stallings, Muller, Hitch

NAY: None

ABSTAIN: None

ABSENT: Castillo

B. Consideration of and Possible Action on a Proposed Resolution Consenting to Amendment of Lien Position Securing Loan for Stilwell Area Development Authority, Adair County. Recommended for Approval. Mr. Freeman explained that this agenda item is a request from the Stillwell Area Development Authority to amend its lien positions securing its three loans with the Board. He said the Authority is requesting the amendment to the lien position in order to be able to secure a \$1,484,000.00 loan from the USDA Rural Development for rehabilitation of its wastewater treatment plant. Stilwell has three outstanding loans with the Board: a 1996 FAP loan is secured with a parity senior lien on its water, sewer, and electric revenues, and a parity first mortgage on the water, sewer, and electric systems, and has a balance of \$347,000 and matures in August 2023; a 1999 CWSRF loan is secured with a subordinate lien on the water, sewer and electric revenues, and a second mortgage on its water, sewer and electric revenues, has a balance of \$410,000.00 and matures in February 2020; a 2002 FAP loan is secured with a parity senior lien on the water, sewer, and electric revenues and a parity first mortgage on its water, sewer and electric systems, has a balance of \$575,000.00 and matures in August 2021. Mr. Freeman stated the combined principal balance of all three loans and \$303,000.00 in reserve funds is \$1,028,000.00; all three will be paid in full by August 2023. The request is to release the OWRB lien on sewer revenues and 10% of electric revenues as well as the OWRB mortgage on the sewer system, and the result will be for all three OWRB loans to move to a parity senior lien on all water revenues and a parity senior lien on 90% of electric revenues, and a parity first mortgage on the water and electric systems. Mr. Freeman said this will allow for a clear definition of what secures the OWRB loans versus the Rural Development loans, and allows the OWRB to have a senior lien position with respect to the water and sewer revenues, and a parity first mortgage. It also allows Stilwell to be able to fund the rehabilitation of its sewer plant with a favorable Rural Development loan with 2% fixed interest and 40-year amortization while maintaining a 1.7-times debt coverage ratio on the OWRB loans. Staff recommended approval of the resolution.

Mr. Alan Brooks, Stilwell Bond Counsel, was present in support of the request.

Mr. Melton asked Mr. Freeman to explain a parity lien. Mr. Freeman responded the Board will be on parity with itself, and by releasing the sewer revenues, allows the Board to have control of something that can be turned off if needed. He added that by releasing 10% of the electric revenues, Stilwell is able to meet the debt coverage ratio on the Rural Development loan; the action is good for both parties but the Board will have the better assets. Mr. Drummond asked if the debt coverage would change; Mr. Freeman answered the debt coverage including the sewer is 1.69, and without it, it comes to 1.7 and improves the Board's position. Mr. Stallings asked if the Board had done this before. Mr. Freeman stated it is different, but as long as the Authority meets the 1.25 debt coverage is met, Stilwell

could get another loan, except we'd be sharing all this revenue, so it becomes complicated. With this action it becomes clearer and the Board is in a senior position on the two revenue sources.

Mr. Drummond moved to approve the resolution consenting to amendment of lien position, and Mr. Allen seconded. There were no further questions or discussion and Chairman Hitch called for the vote.

AYE: Allen, Melton, Drake, Darby, Drummond, Stallings, Muller, Hitch
NAY: None
ABSTAIN: None
ABSENT: Castillo

3. SUMMARY DISPOSITION AGENDA ITEMS

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

A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items. Chairman Hitch asked if there were requests to make changes to the agenda.

Mr. Lewis LeNaire, representing Panhandle Eastern Pipeline, (PEPL) approached the Board and referred to item 3.K.2., application by RJG Holdings for dam construction, which PEPL had submitted a letter of objection and relates to the item 5.B. regarding a streamwater permit which is the water that would be stored in the pond subject of the application. He said PEPL's concerns substantially overlap, and he requested the Board entertain its objections to the dam application as well. Chairman Hitch stated the matter would be moved to item 5.C., Special Consideration Agenda.

There were no other requests to move items to the Special Consideration Agenda.

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

Chairman Hitch asked if are there any actions or comments regarding the items on the Summary Disposition Agenda. There were none.

Mr. Stallings moved to approve the Summary Disposition Agenda with item 3.K.2., RJG Holdings, #OK30552 removed, and Mr. Drummond seconded. Chairman Hitch called for the vote.

AYE: Allen, Melton, Drake, Darby, Drummond, Stallings, Muller, Hitch
NAY: None
ABSTAIN: None
ABSENT: Castillo

The following items were approved:

C. Consideration of and Possible Action on Financial Assistance Division Items:

1. Rural Economic Action Plan (REAP) Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
None				

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

1. Interagency Agreement between OWRB and the Office of the Secretary of Energy and Environment (OSEE) to update the National Wetland Inventory (NWI) maps and incorporate current data sets for the State of Oklahoma and Risk Stressor Assessment.
2. Agreement Amendment between OWRB and the Office of the Secretary of Energy and Environment (OSEE) to extend the budget and project period.
3. Agreement between OWRB and Board of Regents of the University of Oklahoma to support the water and wastewater system infrastructure in Oklahoma by website hosting, providing maintenance and backup services to the GIS web viewer.
4. Agreement between OWRB and Oklahoma Copier Solutions for printing and copying services for the agency.
5. Agreement between OWRB and Board of Regents of the University of Oklahoma to support infrastructure in Oklahoma by developing a customized data model with GIS web viewer, enhancing the web viewer functionality and developing new tools.
6. Intergovernmental Agreement with Oklahoma State University – Oklahoma Water Resources Center to conduct a joint conference and symposium at the 2018 Oklahoma Governor’s Water Conference presented before government officials and citizens.
7. Professional Engineering Services Agreement between OWRB and Freese and Nichols, Inc. for assistance in implementing the FEMA CTP Program in Oklahoma to create and maintain accurate flood hazard data for OWRB.
8. Intergovernmental Agreement Amendment to increase funding for the Water Supplemental Monitoring Program under the Clean Water Act.
9. Contract Agreement to provide one keynote speaker during lunch at the 2018 Oklahoma Governor's Water Conference & Symposium.
10. Resolution Authorizing Chairman to sign Agreement and Contract for a keynote speaker for the 2018 Governor's Water Conference & Symposium.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
None

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

1. Verlin & Darla Marrow, Caddo County, #1979-700B
2. Enid Municipal Authority, Major County, #1982-966
3. Ryan C. & Amy L. Duininck, Love County, #2001-502

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

1. - C – Farms, LLC, Blaine County, #2016-568
2. Marsha Barnes Living Trust, Texas County, #2018-543

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

1. Johnston County RWD No. 3, Johnston County, #1976-775
2. Hanke Properties, LLC, Texas County, #1977-604
3. Bandy & Amy Silk, Beckham County, #1998-550

4. Johnny R. & Dana McElroy and Braden T. & Lisa V. McElroy, Tillman County, #2004-578

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 Regular Permits to Use Surface Water:

1. Steve Burris, Lincoln County, #2017-071
2. Stan Sheffield, Muskogee County, #2018-027
3. Cornelia Boozman Brewer and Catherine A. Boozman, LeFlore County, #2018-031
4. James C. Buchanan III Trust u/t/a 8/13/1996, Muskogee County, #2018-039

K. Consideration of and Possible Action on Dam and Reservoir Construction:

1. Repp Family, Washita County, #OK30554
2. *RJG Holdings, LLC, Kingfisher County, #OK30552 item moved to 5.C.*

L. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
None
2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses
 - a. Licensee: Midwest Engineering & Testing Corp DPC-653
Operator: Muhammad Al-Hussoon OP-1630
 - b. Licensee: Cascade Drilling, LP DPC-0983
Operator: Charles Anthony Coffindaffer OP-2261

M. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

None

N. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:

1. James E. Shelton, Blaine County, #FPA-761
2. Larry (Rick) D. Marzett, Town of Boley, #FPA-762
3. Kimberly D. Wann, LeFlore County, #FPA-763
4. Jacquelyn F. Porter, City of Tuttle, #FPA-764

Chairman Hitch announced the Board would consider the items under the Special Consideration Agenda prior to the Well Driller Program presentation.

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on Amended Storage Contract Transfer Agreement Among City of Oklahoma City, Oklahoma City Water Utilities Trust, and State of Oklahoma Water Resources Board pursuant to the State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma City Water Settlement.

1. Summary – Ms. Sara Gibson, OWRB General Counsel stated to the members that this item is part of the Settlement Agreement between the Chickasaw Nation, Choctaw Nation, and City of Oklahoma City, a draft of this agreement with Exhibit 4 of the Settlement Agreement that this Board approved. There were a few changes made between the draft agreement and the present agreement as a

result of the federal legislation that regards federal budgeting and future use payments that do not affect the Board but concerns when Oklahoma City will begin to take the water.

2. Discussion and presentation by parties. There were no presentations or discussions by the parties.

Mr. Drummond asked if all parties are in agreement with the revised agreement, and Ms. Gibson said, yes, and it will go to Oklahoma City next week for approval and then to the Corps of Engineers. She added the Tribal representatives will not sign off; this is only between the City, the OWRB, and the Corps. Mr. Darby stated it is a reduction in the amount of water taken, and Ms. Gibson responded, yes, as a part of the permit. She added we are still transferring all of the storage to Oklahoma City and is noted in the contract the set aside for local uses and the existing permits on the lake. Any party wanting to use water from Sardis will still have to come to the Board for permit approval; the storage approval will come from Oklahoma City because it has the storage and the water right. This is the same as with any Corps of Engineers' lake.

3. Vote on whether to approve the Proposed Amended Storage Contract as presented or as may be amended, or vote on any other action or decision relating to the Storage Contract in the State of Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of Oklahoma City Water Settlement.

There were no other discussion, and Mr. Drummond moved to approve the amended storage transfer agreement contract. Mr. Allen seconded. Chairman Hitch called for the vote.

AYE: Allen, Melton, Drake, Darby, Drummond, Stallings, Muller, Hitch

NAY: None

ABSTAIN: None

ABSENT: Castillo

B. Consideration of and Possible Action on Motion to Reconsider Regular Permit to Use Stream Water No. 2018-002, RJG Holdings, LLC, Kingfisher County:

1. Summary – Mr. Kent Wilkins stated to the members this item is for the consideration of a motion to reopen and reconsider regular permit to use stream water #2018-002. He said the petition was filed by Panhandle Eastern Pipeline (PEPL) on September 28, 2018. The application was approved at the September 18, 2018, Board meeting under Summary Disposition; there was no protest received, and no hearing conducted. In response to the motion, the attorney for the applicant filed a motion requesting that the motion for reconsideration be denied. Representing the PEPL is Lewis LeNaire and Dean Couch, and Mr. Steve Mullins is representing the applicant.

Chairman Hitch allowed each party ten minutes to address the Board.

2. Discussion and presentation by parties. Mr. LeNaire, representing Panhandle Eastern Pipeline, addressed the members and explained the PEPL operates a high pressure interstate natural gas transmission line that runs through Kingfisher County. The streamwater application at issue is located in the same quarter section in Kingfisher County and is from the farm ponds subject of the dam and reservoir application. The PEPL has concerns of storage of water on the pipeline easement and the pipeline itself. An affiliate of the applicant, Estack, LLC, has applied for groundwater some of which will be stored in these ponds. There is an evidentiary hearing set for November 1 which PEP has formally protested and will be presenting evidence. Mr. LeNaire referred to the motion regarding the reconsideration of the streamwater permit and stated the company's concerns including a misrepresentation by Mr. Grellner in a deposition about whether the streamwater application had been set for a hearing, having learned he attended the Board meeting the following day in which the matter was on the agenda. Mr. Grellner has responded he only learned later in the day and they have no evidence to contest his statement. He said he had given the applicant's attorney an opportunity to make an explanation which they did not receive before filing the motion. He said the real issue concerns a

due process issue which goes directly to why the company did not protest and believes it is an insufficient notice situation. He said the Board's rules were followed regarding notice in the application; however, this is a situation where PEPL and the applicant have been dealing with each other since October 2016 and the applicant is aware of PEPL's concerns. The PEPL's motion cited a Oklahoma Corporation Commission case with similar circumstances regarding a spacing application where a landowner was not aware of an application that went to notice and after the hearing the landowner filed a motion to vacate, the OCC said rules were followed and there is no recourse, and the Supreme Court ruled the publication alone is insufficient. Mr. LeNaire read from the Cravens case statements that an administrative agency cannot deprive nor can a statute empower it to deprive a person of their constitutionally protected rights without notice and a hearing, and an administrative rule may not take away or infringe on rights provided by the constitution. He continued to read from the case several statements and an additional case that supported his argument that the Court requires due diligence in giving notice of a proceeding to persons whose rights could be affected. He said that when the names and addresses of persons that could be affected are known, publication alone is not sufficient to satisfy diligence of due process under the federal or Oklahoma constitutions. Mr. LeNaire said the applicant knew of their concerns, he didn't catch the publication notice and therefore did not file a timely protest according to what the publication said was the deadline. He said that after they found out it was approved on Summary Disposition, they filed the protest and motion to reopen, asking that it be remanded to a hearing examiner to have an opportunity to put on the same evidence as they will present November 1 for the groundwater application. He said they are not asking for denial but want conditions on the permit, and if this application is not reopened and there are conditions on the groundwater permit, the Board may have inconsistencies in determinations. The request is to reopen and have an opportunity to present evidence as will be presented in the groundwater application.

Mr. Muller asked if Mr. LeNaire believed the notice rules the Board has in place are wrong and should be changed. Mr. LeNaire responded not necessarily, it is not in all publications that the notice is insufficient. The Cravens decision regarded it is the duty of the applicant to make sure the interested parties get a direct notice. He said he is not taking the position the Board's rules should be different, but in this case the applicant should have provided direct notice for the proceedings to be constitutionally sufficient. Mr. Stallings said there are many state agencies that have notice requirements and he asked if Mr. LeNaire is suggesting they are all bad. Mr. LeNaire responded it is a case-by-case determination. Mr. Stallings asked if the Cravens opinion is saying there should be individual notice to all the people by the Corporation Commission, and Mr. LeNaire said the Corporation Commission did change its rules as a result of these opinions in the 1980's (he cited another case) and is not the first time these issues have been decided by the Courts. This is a case-by-case inquiry and there are circumstances where publication rules alone do not satisfy the requirement of due process if there are parties that are adversely affected. Mr. Muller said there had been ongoing communications with the applicant and asked why Mr. LeNaire relied on the applicant notification when the OWRB has notification he is aware of--why did he not catch the publication notice and why is the onus on the applicant or the Board. Mr. LeNaire argued the requirements of due process place that obligation on the applicant, if he were to sue someone it would be his obligation to make sure the other party received all the filings. He said the applicant has had many filings and it would be a significant task for the PEPL to catch everything that might affect its rights. Mr. Drake asked the paper where the notice appeared, and Mr. LeNaire answered he did not know, but would have been county-wide papers in Kingfisher County and not anything PEPL would normally monitor. Mr. Drummond asked if PEPL had property rights other than the right of way and Mr. LeNaire answered only the pipeline right of way, not water rights. Chairman Hitch asked about statements in the objection (#4) that oil and gas is not a beneficial use and may be waste by pollution, and Mr. LeNaire responded that is not what PEPL believes, but that there is concern for the potential for inundation of the pipeline trench from water from the impoundments and if that resulted in a breach and potentially accumulated liquids could leak into

the groundwater and potentially be waste by pollution. He explained the statement of beneficial use is that water will be put to lawful purpose, and putting water in ponds that infringe on their easement rights is not a lawful purpose. Chairman Hitch asked then they believe if the pond leaks that constitutes a non-beneficial use and Mr. LeNaire agreed.

The members asked about the distance from the boundary of the pipeline to the water line edge at fill capacity of the pond, if the pipeline is located under a body of water that existed when the pipeline was built, and that the pipeline was installed when the stream existed so PEPL knew there could an impact to groundwater. Mr. LeNaire answered the toe of the dam of the western-most pond is 90 feet from the pipeline, the pipeline was laid in 1970s and protections were not taken if a body of water were located above it, and that PEPL did not believe there would be an effect on the groundwater from the stream and that will be evidence at the November 1 hearing. There were no other questions for Mr. LeNaire.

Mr. Steve Mullins, representing the applicant, RJG Holdings and Estack, LLC, addressed the members and explained the situation noting Mr. LeNaire is not objecting to the permit, all permit requirements have been met, but they are afraid that at some time in the future there could be a problem and so is wanting to put some kind of limitation on the permit. He said Mr. LeNaire is not saying the notice was not given properly pursuant to the rules; the OWRB rules are consistent with the Cravens case, and he explained the case that two types of notice are required—to those that will be directly impacted and those with water rights that are within a certain distance, and those that have property rights that could be affected by water rights, and the duty is on the landowner (the applicant) to notify, which was done in this case. Mr. Mullins said Mr. LeNaire is contending that in the OWRB rules all persons interested in any water project should be individually noticed which is not the law and is in all state agencies because it is correct, but that Mr. LeNaire is wanting to elevate, under the OWRB rules, easement holders to those of water rights holders which he believed is an improper application of law; he said notice was properly given in this case. Mr. Mullins argued Mr. LeNaire's grounds for opening the case, first that he was lied to by Mr. Grellner which does not stand, and secondly that the notice is improper and the OWRB rules should be changed and this is not the forum to do that, but he did not believe the rules were in error. He said the protest is inundation and in response to the members' questions he said the pipeline was placed three feet below the four foot deep intermittent stream bed and two or three times a year inundated the pipeline, but the construction project has built berms and has drilled three wells to keep water away from the area so there is no inundation. He said there is no indication before the Board there is anything wrong with granting the streamwater permit and no issue to go back and reconsider. He said it would be irresponsible to go back and say all the publications would be changed, all publications ignored, that a party that has filed no protest and there is no evidence before the Board there is any problem, can come back at the 11th hour and say let's undo everything, which is the wrong direction and the motion to reconsider should be denied.

Mr. Drummond asked, if the stream water permit stands and the applicant is applying for a groundwater permit, if there are special conditions, how would they handle one permit with conditions and one without. Mr. Mullins answered the condition which he said would be to monitor the water table level, would be applied and would not be inconsistent. Mr. Stallings asked him to explain the condition and Mr. Mullins said there have been protests by landowners about water use and he has agreed to self-meter their water use, which is not required by the Board, so people understand they will not be over using water. They will install a monitoring well to know when the dam leaks – which there is no evidence; but this is the only thing that is at issue in the groundwater permit hearing. Mr. Mullins added there are three pipelines that run across the property in the same place and the other two are satisfied with the solutions, and this pipeline is the only one concerned because of the age of its pipeline which they have a right to be concerned about the integrity of the pipeline, but the water right application has nothing to do with the integrity of the pipeline. Mr. Muller asked and Mr. Mullins

answered one of the pipelines crosses the others that runs parallel, and all carry natural gas. There were no further questions for Mr. Mullins.

Mr. Drummond asked Mr. Wilkins if it is the Board's requirement to give notice for rights-of-way. Mr. Wilkins answered staff believed proper notice was given and the points of law were met, and recommended approval to the Board.

3. Vote on whether to approve Motion to Reconsider, or vote on any other action or decision relating to application.

Mr. Drake moved to deny the motion to reconsider stream water permit 2018-002. Mr. Darby seconded. There was no further discussion, and Chairman Hitch called for the vote.

AYE: Melton, Drake, Darby, Drummond, Stallings, Muller, Hitch

NAY: None

ABSTAIN: Allen

ABSENT: Castillo

C. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. Chairman Hitch stated Summary Disposition Agenda item K.2., RJG Holdings, #OK30552 was transferred. The Chairman invited Mr. LeNaire to address the Board.

Mr. Lewis LeNaire, representing Panhandle Eastern Pipeline, addressed the members and stated the item requested be moved to the Special Consideration Agenda is an application by RJG Holdings for a dam and reservoir permit for farm ponds in the same section of Kingfisher County. He explained the basis for the request is that they would like the Board to hold over consideration until he has an opportunity to put on evidence at the hearing scheduled for November 1. He said he believed if the hearing examiner listens to their evidence and believes a condition should be placed on the permit as a result -- adding, the monitoring well is one condition discussed with the applicant and may not be the only request -- and if the hearing examiner recommends the conditions be applied to the groundwater permit it will bear on the Board's consideration of the dam and reservoir application as well. He said staff may have recommendations to the Board based on the evidence at the hearing on November 1. Mr. LeNaire requested the Board holdover consideration of the dam and reservoir application until the hearing examiner makes its recommendation based on the November 1 hearing.

Mr. Stallings asked if PEPL was worried about the pipeline. Mr. LeNaire answered they are not and disputed the suggestion there is a condition of the pipeline they are concerned about, that is not their motivation. He said they are prepared to put on testimony at the hearing from PEPL's staff the pipeline is in excellent condition; there are no immediate concerns about the integrity of the line. Mr. Hitch asked if it was a continuous well pipeline, and Mr. LeNaire answered he did not know the answer as he doesn't have the knowledge of the construction of the line. There were no other questions of Mr. LeNaire by the Board members.

Mr. Mullins, representing RJG Holdings, urged the members to approve the dam safety permit which he explained is a dam at the north end of the construction project that is a series of five ponds that go from the southwest to the northeast and the water flows to the north toward the river. He said at the north end of the property a dam has been constructed which is subject of the issue before the Board; it has a spillway and meets all the requirements and if there were any failure the water would flow north and away from the pipeline mentioned. The dam is located 1,000 feet from the pipeline. The consideration for the Board is whether the dam is safe; it has been inspected by their engineers and specifications provided to the OWRB whose Dam Safety Section has approved the modifications to the plans and the construction and there is no suggestion the dam is not safe and a permit should not be issued, and there is no protest on the dam. Mr. Mullins explained the application came to the Board last May and PEPL saw two drawings had been filed with the Board which he explained the difference in numbers and that PEPL had filed a letter with the Board requesting more time. All parties met in May and a 3rd drawing was promised rectifying the other two. He said discussions continued between May

and September and PEPL did not file any objections, the matter was on the September agenda and tabled, to be fair, to this meeting to hear concerns. He said there are no concerns but that when the groundwater permit is heard, PEPL will ask for conditions on the groundwater permit and has nothing to do with the dam, and he believed the dam permit should be approved. There were no questions by the Board.

Mr. Kent Wilkins stated he spoke with both OWRB professional dam safety engineers and it is their professional opinion all dam safety requirements have been met in this application.

Chairman Hitch asked if there were other questions or a motion.

Mr. Drummond moved to approve dam and reservoir construction application OK30552, and Mr. Darby seconded.

There was no other discussion, and Chairman Hitch called for the vote.

AYE: Melton, Drake, Darby, Drummond, Stallings, Muller, Hitch

NAY: None

ABSTAIN: Allen

ABSENT: Castillo

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

A. Presentation and Discussion on Board Education Series Topic, "Well Driller and Pump Installer Licensure Program." Mr. Kent Wilkins, Chief, Planning and Management Division, addressed the members and provided a history of the OWRB Well Driller's Program noting he had begun with the OWRB in 1990 in the McAlester Branch Office inspecting wells, and became program coordinator in 2004. He introduced the current Program Administrator Charles O'Malley and Jon Phillips, Assistant. The program began in 1972 for construction standards of commercial wells, in 1982 licensing requirements for well driller contractors were added, and in 1992 construction standards for monitoring wells and geotechnical borings added, and pump installers were soon added as wells are a conduit for pollution to groundwater if not constructed or capped properly. The Well Driller Indemnity Fund was created as well as the Well Driller Advisory Council and the Groundwater Association was rejuvenated. The purpose of the program is to ensure proper construction of wells and protect groundwater resources and provide a safe drinking water supply through managing licensure, preparing examinations, conducting inspections to ensure drilling of safe wells, and managing the indemnity fund. The Advisory Council is comprised of one representative from each Congressional District and the OWRB Executive Director, and are multi-experienced operators that provide invaluable assistance to the Board and reviews applications before coming to the Board as well as making recommendations for new rules and review expenditures from the Indemnity Fund. The Indemnity Fund was created from the license fees, maintained at \$50,000 and is used to correct action to prevent pollution, conduct inspections and enforcement, and education; prior to the fund the drillers provided a bond. Mr. Wilkins noted legislative changes through HB 3405 regarding construction permits for marginal wells giving the Board authority over marginal quality water containing 5,000 ppm to 10,000 ppm and staff is proposing rule changes; prior to that the agency only had authority for water 0-5,000 ppm. Mr. Wilkins explained the proposed rules following a stakeholders meeting including standards for the casing and ceiling, containment for the drill cuttings and fluid generated as it involved water from 5-20,000 ppm TDS requiring a containment and waste management plan. Other proposed rules regard a cement bond log to identify salt water zones, updated heat exchange rules including an exploratory bore hole to identify the type of grouting required and allowing cuttings and gravel pack as well as bentonite grout. The new types of geothermal wells that can be installed are being considered as well as addressing horizontal closed loops and certain conditions about whether they are in the water table.

Mr. Drummond asked if the new rules will address the problems as experienced at the Pawhuska School, and Mr. Wilkins answered yes, particularly regarding the exploratory bore hole. Mr. Wilkins reviewed the recent situation at the school where the driller identified natural gas but did not take any special precaution regarding the use of cement; drillers have also drilled into saltwater without taking special measures.

Mr. Wilkins concluded his remarks updating the members on the new activities with the Oklahoma Groundwater Association conducting education classes.

Mr. Charles O'Malley spoke to the members and described the administrative responsibilities about the driller licensing and operator certificates, minimum construction standards, enforcement, and inspection aspects of the program. He said the requirements are found in Chapter 35 of the Board's Rules and Regulations, and he reviewed the categories regarding minimum construction standards, enforcement, and minimum requirements for license application and certifications which are renewed every two years: Category 1: commercial drilling or plugging of groundwater wells including test drilling for groundwater, and commercial drilling or plugging of fresh water observation wells; Category 2: commercial drilling or plugging of monitoring wells and site assessment wells, and drilling or plugging of geotechnical borings; Category 3: commercial installation of water well pumps; and Category 4: commercial drilling or plugging of wells utilized for heat exchange purposes including but not limited to the following: (i) heat exchange wells; and (ii) geothermal wells.

Mr. O'Malley explained the requirements of the minimum construction standards, i.e., size, surface seal, cement grout, borehole diameters, 50-foot distance requirements for septic systems, minimum casing height, minimum distance, and surface seals, the use of pitless adapter installation below the frost line, properly capped wells, and the proper materials for plugging abandoned wells. He said that drillers are required to provide completion reports or well logs which provide data about the geologic formation and is also uploaded to the OWRB website.

The members asked questions about pits for waste lagoons for CAFOs and distance from edge of the pit to the wellhead, average cost of plugging a well depending upon the circumstances, location and condition. Staff and members also discussed, how often unplugged wells are found and how staff responds with fines, the possibility of implementing "intent to drill" notices, issues with out-of-state unlicensed drillers, the improved online system of filing completion reports, finding and plugging wells and seeking reimbursement to the Indemnity Fund, and cost share with other agencies. (Well Driller Program information can be found on the OWRB website at: www.owrb.ok.gov/welldrilling).

Mr. Drummond stated protecting the groundwater through this program is extremely important as once the groundwater is contaminated, it is no longer useful. Mr. Wilkins thanked the staff. Chairman Hitch thanked Mr. Wilkins and Mr. O'Malley for their presentation.

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 Hitch adjourned the meeting of the Oklahoma Water Resources Board at 11:17 a.m. on October 16, 2018.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
Jason Hitch, Chairman

_____/s/_____
Stephen B. Allen, Vice Chairman

Charles Darby

_____/s/_____
Bob Drake

Robert L. Melton, Sr.

_____/s/_____
F. Ford Drummond

_____/s/_____
Jennifer Castillo

_____/s/_____
Matt Muller

ATTEST:

_____/s/_____
Robert L. Stallings, Jr., Secretary

(SEAL)