

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

January 15, 2019

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Jason Hitch at 9:37 a.m. at the offices of the Oklahoma Water Resources Board, 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, 73118. 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 January 11, 2019, at 3:30 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 January meeting of the Oklahoma Water Resources Board. He asked everyone to sign in at the door, particularly those persons who wished to speak during the public hearing on the rules. He asked that participants consider limiting comments so as not to be repetitious, and to save time, he asked members of the same group that are present to choose a spokesperson.

1.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
Jennifer Castillo
Charles Darby
Bob Drake
Matt Muller

Board Members Absent

Ford Drummond
Robert L. Melton

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

Lial Tischler, Valero, Round Rock, TX
Bob Jackman, Tulsa, OK
Bret Weingart, Oklahoma City Water Utilities Trust, Oklahoma City, OK

Billy Little, Oklahoma City Water Utilities Trust, Oklahoma City, OK
Sam Samandi, Oklahoma City Water Utilities Trust, Oklahoma City, OK
Nathan Madenwald, Oklahoma City Water Utilities Trust, Oklahoma City, OK
Phyllis Klugas, Newcastle, OK
Sherrie McNall, Newcastle, OK
Tom Elkins, Cherokee Nation, Tahlequah, OK
Larry Mitchell, City of Guymon, OK
Bryant Pollack, Phillips 66, Tulsa, OK
Kent Fletcher, Western Farmers Electric Cooperative, Oklahoma City, OK
James Jackson, Muscogee Creek Nation, Okmulgee, OK
Steven Hoffman, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Carly Cordell, Office of the Secretary of Energy and Environment, Oklahoma City, OK
Season Crabtree, Guernsey, Oklahoma City, OK
Jim Bonsall, Covia Corporation, Roff, OK
Kris Patton, Chickasaw Nation, Ada, OK
John Moody, Connerville, OK
Richard Fox, Hilltop Securities, Dallas, TX
Katherine Trent, Norman, OK
Lynda Williamson, Office of the Secretary of Energy and Environment, Oklahoma City, OK
J. Paul Davis, Oklahoma Department of Environmental Quality, Oklahoma City, OK
JR Welch, Oklahoma Rural Water Association, Oklahoma City, OK
Clifton Adrock, The Frontier, Tulsa, OK
Pam Leader, Norman, OK
Randy Soloman, AEP/PSO, Dallas, TX
Rob Reash, AEP, Columbus, OH
Ed Brocksmith, Save The Illinois River, Tahlequah, OK
Ronnie Aldridge, Oklahoma Department of Corrections, Oklahoma City, OK
Anthony Mackey, M&M Natural Resource Management, Covia; Noble, OK
Bill Shewey, City of Enid, OK
Eddie Phandour, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Kevan Reardon, Koch Fertilizer, Oklahoma City, OK
Phil Gray, Sierra Club, Tulsa, OK
Barbara Vanhanken, Sierra Club, Tulsa, OK
Dean Couch, Gable Gotwal, Oklahoma City, OK
Jim Rodriguez, Oklahoma Aggregates Association, Oklahoma City, OK
Adrienne Gautier, Norman, Oklahoma
Bud Ground, Environmental Federation of Oklahoma, Norman, OK
Greg Elliott, Valero Refinery CO-OK, Ardmore, OK
Norma Boren, Save the Illinois River, Tahlequah, OK
Tyler Tilley, eCapitol, Oklahoma City, OK
J. Seiger, Oklahoma Department of Agriculture, Food & Forestry, Oklahoma City, OK
Steven Christofferson, Yukon, OK
Brett Sands, Muscogee Creek Nation
Karen Chapman, Norman, OK
Karin Teuffer, Guernsey, Oklahoma City, OK
Ken Senour, Guernsey, Oklahoma City, OK
Mark Derichsweiler, Sierra Club, Oklahoma City, OK
Kathy Martin, Del City Citizens, Norman, OK
Jimmy Seago, Oklahoma Rural Water Association, Oklahoma City, OK

Ashley McCray, No Plains Pipeline, Norman, OK
Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK
Dylan Goforth, Tulsa, OK
Christian Keenan, Oklahoma City, OK
Lee Dooley, Oklahoma Department of Environmental Quality, Oklahoma City, OK
Karia Spinner, Oklahoma City, OK
Dan Dvoretz, Oklahoma Conservation Commission, Oklahoma City, OK
Bodie Bachelor, Centennial Law Group, Durant, OK
Dale Mills, SFN, Oklahoma City, OK
Alexia White, Fay, OK
Geoff Canti, Omega Sands, Norman, OK
Kandice Taylor, Thlopthlocco Tribal Town, Okemah, OK
Kassie McClung, The Frontier, Tulsa, OK
Paul Moore, Tulsa, OK
Shaun Howard, Citizen Potawatomie, Shawnee, OK
Ron Suttles, Conservation Coalition of Oklahoma, Oklahoma City, OK

Signed to Comment at Rules Hearing

Lial Tischler, Valero
Bud Ground, EFO
Rob Reash, AEP
Ed Brocksmith, STIR, Inc.
Anthony Mackey, MMNRM LLC
Steven Christofferson, self
Mark Derichsweiler, Sierra Club
Kathy Martin, citizen
Mary Francis, citizen
Katherine Treat, citizen
Ashley McCray, citizen
Kevan Reardon, Koch Fertilizer
Ron Suttles, Conservation Coalition of Oklahoma

B. Discussion, Amendments, and Vote to Approve Official Minutes of the December 6, 2018, Regular Meeting. The Board considered approval on the minutes following the Executive Director's report. Chairman Hitch asked if there was a motion on the draft minutes of the December 6, 2018, meeting. Mr. Stallings moved to approve the minutes of the December 6, 2018, meeting, and Mr. Darby seconded. There was no discussion. Chairman Hitch called for the vote.

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

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, updated the members on the current drought conditions and lake levels across the state; commented on the success of the recently-held Governor's Water Conference; and, announced the agency received the Top Workplace Award by the Oklahoman for the 6th year running. The award recognizes Oklahoma's best employers based upon employee opinions and the OWRB is the only state agency that has accomplished this recognition. On December 10, the Oklahoma-Chickasaw Tribal Settlement

Agreement parties met following the Tribal agreement to meet and discuss water planning efforts to update the state water plan anticipating federal funding sources and opportunities for coordination for efficiencies and effective water planning and designation of appropriate staff level line of communication. Ms. Cunningham participated in a workshop with ODEQ for new legislators' orientation to the agencies' programs and provided an agency update to the Oklahoma Groundwater Association annual meeting. She met with Governor Stitt's Secretary of Energy and Environment Ken Wagner and anticipated a good working relationship and discussion of water as a component of infrastructure.

Regarding the meeting agenda for today, Ms. Cunningham noted that as part of the formal rulemaking process, the Board will conduct a hearing today, is scheduled to vote next month, and if approved the rules will then go to the Governor and Legislature for approval and will become effective in the Fall. She noted in particular item 3.D.2. regarding a contract with the Oklahoma Department of Mines to clarify responsibilities of each agency to ensure compliance with pit mining operations regarding water management and accounting of water use under Senate Bill 597 and OWRB rules. She said the ODM will fund part of the OWRB staff to conduct an inspection at least once per year of each mining site and coordinate with the ODM to be as transparent as possible. Reports are available on the OWRB website.

Ms. Cunningham stated that the House and Senate Appropriations Subcommittee hearing is scheduled for January 24, budget information has been submitted to the fiscal analyst describing the agency programs, strategic objectives, budget, funding sources and use, and legislative needs. This year, the OWRB is requesting an extension to the Gross Production Tax -- \$2.6 million per year pays for water planning activities including director of water planning position, as well as technical studies for the maximum annual yield determinations, staff geologists, and contracts with USGS and others. This week is the deadline for bill filing and the session will convene on February 4. Ms. Cunningham referred to the Congressional report provided; the agency has not experienced issues regarding the federal shutdown at this time but could affect the development of scopes of work with the USGS and there could be delays in SRF projects that require a federal review.

Ms. Cunningham concluded her report. 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 December 2018. He said for the time period the agency has spent 47% of the appropriated budget leaving 53%, has spent 27% of the revolving funds leaving 73% of budgeted funds, and has spent 24% of the federal dollars leaving 76%. Overall, 69% of the total budget remains with 50% of the year remaining compared to last year at this time when the agency had 65% of the budget remaining. He said agency spending has been decreased although he looked for that to change but overall the agency is in good shape. Regarding federal funding, Mr. Pierce said that has not been a significant slowdown as most activities are reimbursement programs and he did not anticipate a problem.

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 Oklahoma City Water Utilities Trust, Oklahoma County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this item is for the consideration of a \$20,000,000.00 Drinking Water State Revolving Fund loan request by the Oklahoma City Water Utilities Trust (OCWUT). The Trust is requesting the loan to go along with approximately \$5.7 million in local funds for booster pump state upgrades, water transmission line installation to connect City's Hefner and Draper service areas, and to replace water transmission lines. Mr. Freeman noted provisions of the loan agreement, stating Oklahoma City has been a loan customer of the Board's for approximately ten years and has 11 outstanding loans which have a combined principal balance of \$197.4 million. Mr. Freeman said the Trust's water and

sewer connections have increased by approximately 16% over the past ten years and the debt coverage ratio stands at approximately 2.5-times. Staff recommended approval of the loan request.

Representing Oklahoma City was OCWUT Assistant Director Bret Weingart, Financial Operations Manager Billy Little, Engineering Manager Sam Samandi, and Mr. Nathan Madenwald.

Mr. Stephen Allen asked if the debt coverage ratio of 2.5-times contemplated approval of the next item, and Mr. Freeman answered, yes.

Mr. Allen moved to approve the Drinking Water SRF funding to the Oklahoma City Water Utilities Trust, and Mr. Drake seconded. There were no questions or discussion. Chairman Hitch called for the vote.

AYE: Drake, Allen, Muller, Castillo, Stallings, Darby, Hitch

NAY: None

ABSTAIN: None

ABSENT: Drummond, Melton

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Oklahoma City Water Utilities Trust, Oklahoma County. Recommended for Approval. Mr. Freeman stated this item is a \$34,150,000.00 Clean Water State Revolving Fund loan request from the Oklahoma City Water Utilities Trust. The loan is being requested to rehabilitate and upgrade the Deer Creek Wastewater Treatment Plant, replace and rehabilitate various sewer lines, construct a relief interceptor, and rehabilitate lift stations. Mr. Freeman noted provisions of the loan agreement; the debt coverage ratio stands at approximately 2.5-times. Staff recommended approval.

Representing Oklahoma City was OCWUT Assistant Director Bret Weingart, Financial Operations Manager Billy Little, Engineering Manager Sam Samandi, and Mr. Nathan Madenwald.

Mr. Muller commented about the cost of long range projects of Oklahoma City and considering other large metro areas asked if staff projected needs and is the OWRB able to provide funding for this type of loan volume. Mr. Freeman responded that in the Water for 2060 Plan, the Financial Assistance goal is to be able to meet 60% of the State's needs for financing water and wastewater projects. He said the DWSRF (DEQ) and CWSRF (OWRB) maintain a 5-year priority list and staff work with financial advisors in developing cash flow numbers and determining capacity. Oklahoma City mentioned \$1.5 billion in need; however, the OWRB will not be able to meet that need and it will need to go to the private bond market. The OWRB goal has always been in regard to the DWSRF to meet all needs of the rest of the state, and the \$20 million is all the OWRB can assist with this year. In discussions, it has been determined the Board can assist with approximately \$50 million in CWSRF so there is remaining capacity there. Ms. Cunningham asked Mr. Freeman about the State Question impact on the Financial Assistance Program, and Mr. Freeman responded that under SQ 764, the FAP loan program has been able to go to the bond market since 2016 to provide \$200 million in demand; there are more loans outstanding under the 2016 resolution now compared to the 1986 resolution. The goal is to issue up to \$3 billion under that program as long as the State maintains its rating. Those bonds could be utilized using the Water Infrastructure Credit Enhancement Reserve Funds up to \$300 million and that would depend upon the State's rating. Staff's goal is to not utilize those funds.

There were no further questions, and Chairman Hitch stated he would entertain a motion.

Mr. Allen moved to approve the CWSRF funding to the Oklahoma City Water Utilities Trust, and Ms. Castillo seconded.

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

AYE: Drake, Allen, Muller, Castillo, Stallings, Darby, Hitch

NAY: None

ABSTAIN: None

ABSENT: Drummond, Melton

C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Enid Municipal Authority, Garfield County. Recommended for Approval. Mr. Freeman said this item is a \$52,700,000.00 loan request from the Enid Municipal Authority. The EMA is requesting the loan to further the funding of the \$315 million Kaw Lake Water Project. Mr. Freeman explained that proceeds are available for funding a portion of or all of the water intake structure at Kaw Lake, the water treatment plant construction, water transmission line work, and booster pump stations. The loan will be funded through the State Loan Revenue Bond Loan Program, and Mr. Freeman noted provisions of the loan agreement. Enid MA currently has eight outstanding loans with a combined principal balance of \$87.4 million; the debt coverage ratio stands at 3.34-times. Staff recommended approval.

Representing the Enid Municipal Authority was Mayor Bill Shewey, City Manager Jerald Gilbert, Chief Financial Officer Erin Crawford, and Director of Engineering Services Chris Gdanski.

Chairman Hitch asked Mr. Freeman to explain the scope of the project. Mr. Freeman said Enid will be building the intake structure at Kaw Lake which includes 70 miles of transmission line, requiring booster pump stations and a 10.5 mgd treatment plant will be built at Enid--currently Enid utilizes groundwater. This is a very expensive project due to the installation of a massive water line but the overall concept of the project is not complicated. Financially, Mr. Freeman stated the OWRB has funded three loans: an FAP loan of \$13.9 million for engineering and environmental review, an FAP loan of \$42.9 million for engineering, right-of-way acquisition, and water storage rights, and a DWSRF loan of \$20 million for engineering program management of Phases 3 and 4 of the project; the \$52 million will be used to start funding portions of the project. Mr. Freeman explained that Enid had initially attempted to obtain funding through EPA's WIFIA program but it would not be known if it is obtainable for at least a year or more and anticipating future interest rates decided to go with the FAP Loan Program. Regarding long-range planning, Mr. Freeman said looking at capacity numbers the OWRB could fund the full \$200 million from the DWSRF in one loan. Ms. Cunningham asked and Mr. Freeman answered the project is being entirely funded through the OWRB

Chairman Hitch invited Mayor Shewey to address the members. The Mayor stated the project is now in the third of four phases, water is and will always be a number one priority, the City of Enid--the hub of northwest Oklahoma--will be taxed for the next 30 years to bring water to the City and to provide water to other cities in the northwest quadrant of the State. He said Enid has been working on the project for about five years, and is very aware of the cost. Mr. Gilbert spoke to the Board members stating they were very concerned about interest rates and conducted a thorough analysis and believed this is the best option moving forward; he thanked the Board for its consideration. He added WIFIA is a lengthy process and required a lot of fees and they appreciated the OWRB helping communities across the state to improve infrastructure. He offered to make a special presentation to the Board. Chairman Hitch stated he thought it was an amazing project with lots of steps and looked forward to seeing it completed. Mr. Gilbert stated the City would be back before the Board this year and then begin construction sometime next year; the project is on track and will take about two years with completion by the end of 2022.

Mr. Allen asked the population/water customer trend of Enid, and Mayor Shewey answered currently there are 52,790 customers.

There were no other questions.

Mr. Drake moved to approve the FAP loan to the Enid Municipal Authority, and Mr. Allen seconded.

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

AYE: Drake, Allen, Muller, Castillo, Darby, Hitch

NAY: None

ABSTAIN: Stallings

ABSENT: Drummond, Melton

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 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 noted the contract with the Oklahoma Department of Mines, and asked if there were requests to make changes to the agenda. There were no requests, and Chairman Hitch entertained a motion.

Mr. Stallings moved to approve the Summary Disposition Agenda, and Mr. Darby seconded. There was no discussion, and Chairman Hitch called for the vote.

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

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>
ASCOG				
a.	FAP-17-0014-R	Town of Chattanooga	Comanche	\$99,550.00
INCOG				
b.	FAP-19-0047-R	Shidler Public Works Authority	Osage	59,500.00
KEDDO				
c.	FAP-10-0011-R	Cameron Public Works Authority	LeFlore	79,999.00

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

1. Professional Services Agreement with Hilltop Securities, Inc. for financial advisor services related to the Board's financial assistance programs.

2. Memorandum of Understanding ("MOU") between the Oklahoma Department of Mines ("ODM") and OWRB for the purpose of clarifying the responsibilities of each agency related to Senate Bill 597 (2011) and improving coordination of the implementation of those responsibilities.

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

1. Robert W. Jech, Jr. & Daphne L. Jech, Kingfisher County, #2018-518
2. Herbert Carlin Blood, Caddo County, #2018-538
3. David & Marcy Bailey, Custer County, #2018-542

4. James G. O'Neill, John P. O'Neill and Mary Anne Kessler, Osage County, #2018-556
 5. Pam Chain, Kingfisher County, #2018-560
 6. Karl & Karla Mueggenborg, Kingfisher County, #2018-562
 7. New Moon Farm, LLC, Adair County, #2018-575
 8. Tong & Mimi Nguyen, Delaware County, #2018-577
 9. Eddie Royalty, Blaine County, #2018-583
 10. Jech Family Trust, Kingfisher County, #2018-593
- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
1. Andrew Wallace Sproul, Jr. & Paul Rae Sproul, Major County, #1977-602
 2. Andrew Wallace & Jennifer Malini Sproul, Major County, #2014-528
 3. Mark Anthony & Dana Kay Thrower, Garfield County, #2014-548
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. Comanche Exploration Co., LLC, Major County, #2018-565
 2. Randall & Sue Ann Lewis, Tillman County, #2018-580
- 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:
1. Andrew Wallace Sproul, Jr. & Paula Rae Sproul, Major County, #1965-501
 2. Rendel Nightingale, Major County, #1972-321
- J. Consideration of and Possible Action on Applications for Regular Permits to Use Surface Water:
1. William S. Howard, Pushmataha County, #2007-014
 2. Lacey Weger and Jacob Shires, Bryan County, #2018-010
 3. Omega Sands, L.L.C., Dewey County, #2018-047
- K. Consideration of and Possible Action on Applications for Term Permits to Use Surface Water:
1. Newfield Exploration, Mid-Continent, Inc., Garvin County, #2018-046
 2. AKAM Gossen Revocable Living Trust, Washita County, #2018-058
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
1. Claremore Lake (City of Claremore), Rogers County, #OK02341
 2. NW Oklahoma City Sludge Lagoon No. 1 (Oklahoma City Water Utilities Trust), Oklahoma County, #OK11051
 3. CGE Cattle Pond 1 (CGE Cattle Co., LLC), Cotton County, #OK30519
- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Geotechnical Drilling, LLC DPC-1003
Operator: Benjamin Harmening OP-2266
 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses
 - a. Licensee: Associated Environment Industries DPC-0269
Operator: Matthew Strasser OP-2263
Operator: Jonathan Neff OP-2264
 - b. Licensee: Two Eight Drilling, Inc. DPC-0215
Operator: Craig Girdner OP-2265

- 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, McClain County, #FP-18-11
 2. Oklahoma Department of Transportation, Comanche County, #FP-18-13
 3. Oklahoma Department of Transportation, Grady County, #FP-18-15
 4. Oklahoma Department of Transportation, Cotton County, #FP-18-17
 5. Oklahoma Department of Transportation, Garvin County, #FP-18-19
 6. Oklahoma Department of Transportation, Cotton County, #FP-18-20
 7. Oklahoma Department of Transportation, Cotton County, #FP-18-21
 8. Oklahoma Department of Transportation, Cotton County, #FP-18-22
 9. Oklahoma Department of Transportation, Tulsa County, #FP-18-49
 10. Oklahoma Department of Transportation, Tulsa County, #FP-18-50
- O. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
1. Roger Holley, City of Atoka, FPA-774
 2. Mark S. Whinnery, City of Drumright, FPA-775
 3. Paul T. Martin, City of Elmore City, FPA-776
 4. Cody R. Murray, Kingfisher County, FPA-777
 5. David C. Kennedy, Town of Verden, FPA-778

4. PUBLIC HEARING ON PROPOSED NEW AND AMENDED PERMANENT RULES OF THE BOARD

A. Staff Presentations and Public Comment on Amendments to Permanent Rules Proposed for Adoption During 2019.

Chairman Hitch opened the Public Hearing on the OWRB Proposed New and Amended Permanent Rules of the Board at 10:10 a.m. on January 15, 2019, by reading the following statement:

This public hearing is an opportunity for interested persons to present oral or written argument, data, and views on the new and amended rules of the Board which are being proposed for Title 785 of the Oklahoma Administrative Code as specified on the agenda. This year the comment period for Chapters 5, 30, 35, and 50 have been opened since December 3, 2018, in excess of the thirty days as required by the OAPA, and will expire at the conclusion of the meeting today. The comment period for Chapters 45 and 46 opened on December 3, 2018, and will remain open through 5:00 p.m. on January 17, 2019, to comply with the EPA requirements.

Other than this public hearing, no action will be taken by the Board on the proposed rules at today's meeting. The comment period for proposed amended rules is expected to be scheduled for consideration and possible adoption or any other action by the Board at its February 19, 2019 meeting.

Chairman Hitch stated staff will present the proposed rules as they appear on the agenda, Board Members will be allowed to ask questions following the staff presentation, and then the public will be allowed to present oral and written comments. He asked that in the consideration of time for persons wishing to comment who are with a group and have similar sentiments to voice to please choose a spokesperson to avoid repetition.

1. a. Summary of Proposed Amendments to Chapter 5 – Fees
 - Subchapter 1. General Provisions
 - 785:5-1-9. Dam safety and inspection fees [AMENDED]
 - 785:5-1-11. Well driller and pump installer licensing fees [AMENDED]
 - 785:5-1-14. Stream Water and Groundwater petition fees [AMENDED]

Mr. Kent Wilkins, Chief, Planning and Management Division, addressed the members and presented three proposed changes to Chapter 5 regarding fees:

(1) an increase from \$200 to \$500 for the application fee for dam construction project costs of \$99,999 or less based on actual time required to evaluate the application; an increase from \$3,000 to \$5,000 (not to exceed) for application fee for dam construction project costs of \$100,000 or greater, calculated at 25% of the construction costs;

(2) a new fee for Well Driller and Pump Installer Licensing of \$500 to file an intent to drill for marginal water well construction; and

(3) a graduated fee to amend a groundwater permit based on the amount of additional water requested: 1-320 acre-feet = \$200, 321-640 acre-feet = \$350, 641-1,500 acre-feet = \$450, more than 1,500 acre-feet \$450 plus additional \$150 per increment of 500 acre-feet, not to exceed \$4,000; and for all other petitions to amend a permit or water right for which notice must be given = \$200. The proposed fees are the same as the current initial application fees.

b. Questions and Discussion by Board Members. Mr. Muller asked and Mr. Wilkins explained that i.e., an applicant will apply for an amendment to add 5,000 acre-feet of water to an existing permit and staff will work with them in the office perhaps for weeks to make certain the paperwork in order to assist the applicant, for the current \$150 fee. Chairman Hitch asked about neighboring states, and Mr. Wilkins said last year staff surveyed six neighboring states as well as calculating the time and effort required by OWRB permitting staff which is at a 70% level of funding. Ms. Cunningham added the calculation does not include any legal staff time that might be required when there is a protest and hearing conducted.

There were no other questions by Members.

c. Public Comment. Chairman Hitch invited Ms. Mary Francis to address the Board

Ms. Francis, Norman, Oklahoma, asked if the fees go to the State or to offset the OWRB budget, and Mr. Wilkins explained that 30% of the agency budget is covered by fees and do not go to the state general revenue fund. Ms. Francis said she found it abhorrent the agency must depend on fees when the taxpayers should be funding this work, that fees should reflect the amount of work required and citizens should step up as well.

Chairman Hitch commented he pays many fees for services, but some of the cost of the public process should be borne by the public.

There were no other comments by the public on Chapter 5.

Mr. Muller asked about the Legislature and Governor's authority to change the rules once approved by the Board. Ms. Sara Gibson, OWRB General Counsel, explained the process whereby the Legislature will approve or deny the rules, and the Governor will issue a declaration affirmatively approving the rules.

2. a. Summary of Proposed Amendments to Chapter 30 – Taking and Use of Groundwater -

Subchapter 1. General Provisions

785:30-1-2. Definitions [AMENDED]

Subchapter 3. Permit Application Requirements and Processing

785:30-3-1. General application requirements [AMENDED]

785:30-3-5.1. Prohibition to issuance or amendment of permit and waiver [REVOKED]

785:30-3-6. Well spacing [AMENDED]

Subchapter 7. Amendments to Groundwater Rights

785:30-7-4. Adding or replacing a well for the purpose of exercising prior rights or existing permits [AMENDED]

Appendix A. Application for a Permit to Use Groundwater [REVOKED]

Mr. Wilkins addressed the Board and explained the proposed Chapter 30 rules regarding marginal quality water in response to House Bill 3405 and Senate Bill 1294 relating to statewide well spacing. He said the proposed rules will add definitions and change out-of-date rules as well as clean up inconsistencies in the rules:

785:30-1-2 “Marginal Water” is water that has at least 5,000 and less than 10,000 ppm TDS;

785:30-3-1 is amended removing the application from the appendix (to allow the form to be revised)

785:30-3-5.1 is revoked in regard to statutory language in 2011 regarding swine feeding operations amending the Board’s authority (the chapter has not been open for amendment following the statute change);

785:30-3-6.(a) is amended regarding well spacing; and 6.(b) 1-2 amended regarding location exceptions, both of which will be effective statewide in regard to new wells and existing wells. Mr. Wilkins noted a clerical error in the proposed rule -- “minor basin” should state, “temporary basin” regarding well spacing. Other changes to the rules include 6.(c) A-B. regarding well spacing within a sensitive sole source groundwater basin and recognizes the USGS National Water Information System database regarding the updated spring inventory over the Arbuckle Simpson Aquifer in reviewing buffer zone requirements; and

785:30-7-4.(a)(2) amended regarding adding or replacing a well for the purpose of exercising prior rights or existing permits – allowing wells to be added to land dedicated to an existing permit when taking and using groundwater from the same groundwater basin, allowing more flexibility in the Arbuckle Simpson.

b. Questions and Discussion by Board Members. Mr. Muller asked and Mr. Wilkins responded the USGS has spent two years updating the table and it is now much more reliable and more accurate. Ms. Cunningham added that at the time the rules for well spacing with a buffer zone were promulgated it was known that it was not a complete inventory but was the best available data, and working with CPASA and others all agree this official published list is now the best list available.

There were no other questions by Members.

c. Public Comment. Chairman Hitch stated there are three persons to comment and he asked each person to adhere to a five minute time limit, to announce their name and who they are representing.

Anthony Mackey, Natural Resources Management LLC, Noble, Oklahoma, stated to the members his comments regarded the clerical errors of the statement, “after October 1, 2019,” (785-30-3) in language being removed regarding well spacing is not in the current language; the changes including language regarding minor basins as written only apply to minor basins not all basins which Mr. Wilkins mentioned; and the mention of a hearing regarding permits over a major basin should be a minor basin. The proposed change that is not clerical he is concerned about overrides intent in regard to location exceptions explaining 785:30-3(b)(C) when a well is drilled and put to use prior to the determination of a maximum annual yield (MAY) for the basin could allow for an exception to well spacing because there is no MAY. He suggested a language change about well spacing where there is no MAY. Mr. Mackey provided written comments.

Kathy Martin, private citizen, Norman, Oklahoma, commented about the actual application regarding permits for marginal water and asked if the same form for a regular groundwater permit would be used. Mr. Wilkins responded a separate form for a permit to drill and construction for marginal water will be developed. The groundwater use form may stay the same. Ms. Martin asked if the applicant will have to indicate whether the permit is for fresh water or marginal water. Mr. Wilkins stated the form will be modified to accommodate the use of marginal water.

Chairman Hitch stated this time is allowed for comment and clarifying questions regarding the rule language, but any in depth questions about why the change is being made is not part of the comment period.

Mary Francis, Norman, Oklahoma, commented about 30-3-6 regarding well spacing and no prior buffer zone when adding or replacing a well and she supported adding a buffer zone, and the statewide effort for

consistency. Regarding 30-7-4, she asked if there would be a new fee for adding a new well, and Mr. Wilkins clarified there is an existing fee and for publishing notice, and this amendment is to be consistent with the existing application for this type of application.

Bob Jackman, Tulsa, Oklahoma, also addressed the members explaining he has experience in the oil and gas business and as a consultant he appreciated the well spacing rules and the use of the updated USGS data. He said the Board is a steward of water and he urged the Board to consider appealing to the state and federal government to accelerate funding the USGS to study how much water there actually is as staff is working with limited information.

There were no other comments by the public regarding Chapter 30.

3. a. Summary of Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing
 - Subchapter 1. General Provisions
 - 785:35-1-2. Definitions [AMENDED]
 - 785:35-1-5. Indemnity Fund [AMENDED]
 - 785:35-1-6. Well Drillers and Pump Installers Advisory Council [AMENDED]
 - Subchapter 3. Licensing and Certifications
 - 785:35-3-1. Licensing procedures [AMENDED]
 - 785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
 - Subchapter 7. Minimum Standards for Construction of Wells
 - 785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
 - 785:35-7-1.1. Minimum standards for construction of heat exchange wells [AMENDED]
 - 785:35-7-3. Minimum standards for construction of marginal water wells [AMENDED]
 - 785:35-7-4. Variances to minimum standards for construction of wells [NEW]
 - Subchapter 11. Plugging and capping Requirements for Wells and Test Holes
 - 785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes [AMENDED]

Mr. Wilkins stated the majority of changes to this chapter regard marginal quality water, and heat exchange wells. Staff met with the Well Drillers and Pump Installers Advisory Council to discuss the proposed standards on heat exchange wells and marginal water construction standards and have made the final recommendations to changes to Chapter 35:

785:35-1-2, 35-1-5 and 35-1-6 adds new definitions, changes the amount in the indemnity fund to be expended to correct a problem well, and simplifies terms of service for appointments to the Advisory Council;

785:35-3-1, 35-3-2, and 35-7-3 will create a new activity for well drillers, category 5 for marginal water well drillers and will establish a specific examination, requires specific education for marginal water well drillers, and establishes construction standards for those marginal quality wells to ensure fresh water is protected;

785:35-7-1(f.) regards disinfection standards for drilling water of .5 milligrams/liter of chlorine; and

785:35-7-1.1 and 35-11-1 propose new updates to the heat exchange/thermal well system

Mr. Wilkins stated the heat exchange rules have not been updated for 15 years and reflect new technology and techniques which were presented by the International Ground Source Heat Pump Association of Stillwater that brought in cement companies. The Well Drillers Advisory Council developed the up-to-date standards, and added a section regarding plugging of those wells.

b. Questions and Discussion by Board Members. Mr. Muller asked the rationale for lowering the amount in the indemnity fund and Mr. Wilkins responded the change reflects the current statutory language when legislation was passed eight years ago that gave the OWRB more authority on unlicensed drillers. The Senate Committee may have misunderstood that the amount was what the Board charged. The amount is what is allowed to be expended when correcting a well; the final bill language reduced the amount, but the rules had not been changed to reflect the statutory language. The proposed rules will now reflect that change. Mr. Muller asked if that will be an adequate amount, and Mr. Wilkins stated it could be difficult; the statute may need to be reviewed.

There were no other questions by Members.

c. Public Comment. Chairman Hitch invited those persons who signed in to speak to the proposed changes to Chapter 35.

Bud Ground, President, Environmental Federation of Oklahoma, Oklahoma City, Oklahoma, stated he will also submit written comments. He said he had met with staff and the water well drillers. Many EFO member companies have used marginal water for decades but have been limited by not using groundwater. The EFO assisted with the legislation and support the rules about the use of marginal quality water. The EFO suggests a change 785:35-7-3 regarding construction standards of the wells and the requirement that *all wells* have a cement bond log which he said is not possible on all wells depending upon the casing. He requested that be changed, and while there is a bond log submitted to the Board, he asked that it be changed from *all wells*.

Kathy Martin, Norman, Oklahoma, commented regarding 785:35-7-3(a)1 and questioned the Board's domestic use variance at 5,000 ppm as that would not be drinkable or for watering lawns. She also spoke to 35-7-3(b)2 related to annular seals, "...50 feet below the bottom of the fresh water zone to be developed," and she suggested different wording to include the "lowest fresh water zone" as there could be more than one fresh water zone. Secondly, she did not understand staff's intent regarding "to be developed" in reference to marginal water.

Mary Francis, Norman, Oklahoma, signed in but did not provide comments on Chapter 35 proposed rules changes.

There were no other comments by the public regarding Chapter 35.

4. a. Summary of Proposed Amendments to Chapter 45 – Oklahoma's Water Quality Standards.

Subchapter 1. General Provisions

785:45-1-2. Definitions [AMENDED]

Subchapter 5. Surface Water Quality Standards

Part 1. General Provisions

785:45-5-4. Applicability of narrative and numerical criteria [AMENDED]

785:45-5-5. Water Quality Standards variance [NEW]

785:45-5-6. Compliance schedules [NEW]

785:45-5-7. Site-specific criteria [NEW]

Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]

Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]

Mr. Bill Cauthron, Chief, Water Quality Programs Division, introduced Mr. Monty Porter and Ms. Rebecca Veiga who presented to the members the Triennial Review of the Water Quality Standards and the

proposed new and amended rules this year. Mr. Cauthron said the OWRB staff generally brings revisions each year based on stakeholder input, and he explained the three-step process required by the Clean Water Act. Staff reviews the standard and considers new scientific information and issues, and whether the standard is implementable; looks to EPA recommendations and seeks stakeholder input; then modify/adopt Water Quality Standards as appropriate. Staff conducts technical and regulatory work to develop proposed actions and through stakeholder participation, this year conducted three public meetings, 12 small group/individual meetings, numerous phone calls and email notices followed by the formal notice of rulemaking sending out 845 postcards.

Mr. Cauthron reviewed the changes proposed for Chapter 45:

785:45-1-2 revising the definition of “variance”

785:45-5-4 amending numerical criteria

785:45-5-5 modifies WQS variance

785:45-5-6 compliance schedules

785:45-5-7 site specific criteria

Appendix G. Numerical Criteria to Protect Beneficial Uses – modifying selenium aquatic life criterion

Appendix H revision – nonsubstantive changes

Mr. Cauthron stated there are also changes proposed for Chapter 46 regarding the selenium criterion implementation, and Use Support Assessment Protocol (USAP) which Mr. Porter will address. (See Powerpoint presentation at <http://www.owrb.ok.gov/meetings/index.php>.)

Mr. Porter addressed the members and said some discussion will concern Chapter 46, but there will be further presentation by staff for that chapter at that time. He explained that as part of the Triennial revision staff is proposing changes to the selenium aquatic life criterion which is a naturally occurring mineral that enters surface water via weathering and geologic strata, and can also enter the environment through anthropogenic processes including surface mining, irrigated agriculture, some industrial processes, and both industrial and municipal point source discharge. It is also a nutrient necessary for plant and animal life; however, selenium bioaccumulation through the food chain becomes toxic at higher amounts. Mr. Porter explained the results of the toxic effects of selenium to aquatic life and provided a background on selenium criteria and the history about how it has been developed in Oklahoma. Today, staff is recommending one new criterion which is both fish tissue based and water based, and will be expressed as three elements and two media, and three criterion expressions. Mr. Porter stated he would discuss implementation under proposals for Chapter 46; however, he mentioned the exclusion of certain water bodies based upon the naturally occurring selenium found in southwest Oklahoma and the current standard will remain. He noted the item in the rules proposals regarding "compliance schedules" is not new, but has been relocated within the chapter under variances, current compliance schedules, and site specific criteria. Regarding site specific criteria, Mr. Porter said this modified criteria have long been a part of Oklahoma's WQS and were developed to protect particular beneficial uses by addressing circumstances. He said they are not a tool for creating patchwork beneficial uses across the state but are to address individual site conditions. This revision is to provide clarity and increase accessibility to the developing site specific criteria across parameters.

Ms. Viega spoke to the members about the proposals regarding WQS variance. She explained that a variance can be described as a temporary water quality standard, the term variance is used because of federal regulations but variance and temporary are synonyms for the same concept. It is a tool that guides progress toward a change in beneficial use and a criteria that is not currently being attained, is time-limited, serves as the enforceable water quality standard for a particular pollutant or water body, and must reflect the highest attainable condition, and also requires review and approval by the U.S. Environmental Protection Agency. She explained how a variance works-- a tool for wastewater permitting that is not meeting the standard, but which is attainable in the future; and, provides a structured regulatory pathway to improve water quality over time without losing sight of the waterbody's underlying beneficial use and the long-term water quality goal for the waterbody. A variance is not a free pass to dischargers and is not applicable in all situations, involved several technical regulatory requirements including a public participation process, approval by the OWRB Board, and

subsequent approval by the USEPA. The waterbody's uses that are currently being obtained must remain protected, and variances are not allowed to lower water quality conditions and must reflect the highest attainable water quality condition short of meeting the original standard; it does not exempt technology based treatment requirement and is temporary with review and evaluation at least every five years. Ms. Viega emphasized variances are only used in situations where it will provide a pathway to improved water quality and where other implementation tools are not workable; is intended to restore the long-term water quality and beneficial uses but not the long-term goal for the waterbody. The current structure of the variance in the Water Quality Standards is completely ineffective so much so that it has never been used in Oklahoma because it is limited to toxic criteria, not allowed to exceed three years, and no renewal is allowed. In 2015, the USEPA made revisions and improvements to the federal regulations including changes to the variance provisions nationwide. Ms. Viega stated the proposed action today would align Oklahoma's Water Quality Standards regulations with the federal regulations and will allow the variance procedures to be an effective tool for improving water quality in Oklahoma. The proposal does not create a variance for any pollutant or any specific waterbody; it only creates the opportunity to develop an effective variance procedure. Ms. Viega presented information in the Powerpoint presentation that described work that is in progress regarding human health criteria but which is not part of the 2019 rulemaking. She explained it has been 28 years since the last comprehensive review of the criteria that concerns protection of public and private drinking water beneficial use and fish consumption beneficial use. Science has evolved and improved over time and staff has evaluated 71 chemicals determining 38 to be considered relevant to Oklahoma. Additional stakeholder participation is needed before proposing modifications to the criteria now slated for 2020 and she noted the work that will be done throughout 2019 and has been supported by the stakeholder community.

Mr. Cauthron provided an overview of the comments that have been received and include: concern that lowering the selenium criteria will affect dischargers, a fish tissue special study will be difficult to implement, and revision to the WQS variance provision will reduce water quality protection and allow pollution. Staff has responded that the selenium criteria revision will effect 23 dischargers and the study is needed to determine if revision is necessary and provides regulatory flexibility; this is the first time that the criterion is included in OPDES permitting and staff will be working with sister agencies in development and review of the studies; a WQS variance does not reduce water protection or allow pollution but is a tool to guide and direct incremental improvements in water quality over time in situations where a waterbody's beneficial uses are not currently being met but is attainable in the future. Mr. Cauthron concluded the presentation emphasizing the proposed rules set a framework, but do not apply to a variance to a waterbody in the State of Oklahoma.

b. Questions by Board Members. Mr. Stallings asked the process to develop a variance and Mr. Cauthron touched on highpoints of the process explaining a variance is designed where the technology is not available to meet the criteria and allows incremental improvements to water quality until the technology does allow it to be met; it is based on economics as there has to be a widespread adverse impact to the economy to obtain a variance. Mr. Stallings asked how long the process would take. Mr. Cauthron and Mr. Porter explained why it would take at least three to five years to upgrade a system and show improvements, and for technical staff evaluation and the rule making process to include approval by the Board and EPA. It is not a short process and requires review every five years. Mr. Allen asked if the process is similar to other states. Mr. Cauthron answered a number of states are implementing variances; states are going to follow the EPA 2015 guidance. Staff responded to an audience question about following federal regulations and that state regulations can be more restrictive but not less restrictive. Staff will provide the presentation on the website, and other information is available on the website.

There were no other questions by Members.

c. Public Comment. Chairman Hitch invited those who signed in to speak to the proposals regarding Chapter 45.

(Written comments and staff response to comments will be provided in the "Response to Comments" document which is provided in the OWRB rulemaking file and on the OWRB website at <http://www.owrb.ok.gov/rules/index.php>.)

Chairman Hitch allowed comments regarding both Chapters 45 and 46.

Lyle Tischler, Valero; Texas, spoke to both Chapter 45 and Chapter 46 regarding the selenium Water Quality Standard and that the criterion based on reproduction is measured by concentration in fish tissue to determine toxic potential based on the water column but the rule should specifically state the fish tissue standard as the primary standard; and that Appendix G relating to the use of selenium data for effluent regarded reasonable potential to exceed the water quality standard. Regarding Chapter 46, implementation procedures should make it clear the principal standard is the fish tissue and the water column should only be applied in the absence of sufficient fish tissue; he also supports that no TMDL will be conducted without adequate fish tissue data.

Bud Ground, Environmental Federation of Oklahoma, Oklahoma City, Oklahoma, commented about Chapter 45 saying the EFO membership includes the largest industrial water users in Oklahoma. He said OWRB staff has been great to work with during this process. His comments concerned the proposal for site specific criterion that are now more accessible and a more effective tool. Regarding the variance, Mr. Ground said that while it has never been used, it is extremely important for the Board to get the standards correct--too stringent and no technology equals noncompliance and the only way to comply would be a variance which they do not want to do.

Rob Reash, American Electric Power of Ohio, commented regarding Chapter 45 on behalf of Public Service Company of Oklahoma (PSO) and spoke to the site specific criteria and supports the phrase, "can be developed by various scientific approaches...." providing flexibility. Regarding the WQS variance, he recommended a variance can be approved for multiple permit cycles as development of technology takes time.

Ed Brocksmith, Save the Illinois River of Tahlequah, Oklahoma, provided a history of the STIR stating it is an advocate for Oklahoma's Scenic Rivers and Tenkiller Lake and has supported the OWRB in the .037 phosphorous limit. He expressed concern regarding the variance language as it might relate to the memorandum of agreement with Arkansas to enforce the phosphorous limit on poultry operations in Oklahoma, and alleged it could represent a possible violation of Oklahoma's Scenic Rivers. He said he spoke with staff extensively, but OSRC and Tenkiller should have the highest quality protection possible, and he asked the Board to reject the rule allowing a variance to the water quality regulations as the standards should not be weakened for any reason. He contended the OWRB phosphorous rule is not being enforced, a TMDL should be developed by DEQ, and he asked the Board to request an Attorney General's opinion on whether the proposal is a violation of the Oklahoma Scenic Rivers Act.

Mark Derichsweiler, Vice Chairman of the Oklahoma Chapter of the Sierra Club, Oklahoma City, Oklahoma, stated water and water quality issues are a top priority of the Sierra Club's members through its long history and he recognized members in attendance. He expressed opposition to the proposed rules of 785:45:5-5 regarding the variance because of four factors: variances should not be allowed in scenic rivers, open-ended nature of the variance duration, no mechanism to ensure eventual compliance, and the variances should not be available for human health criteria. He urged rejection of the rule because it is driven by large poultry corporations, Arkansas has continued opposition to the phosphorous standard leading to three agreements between the states, and allowing variances will not get closer to meeting the standard. He said there are current rules about downgrading existing designated uses, that the variance would provide for less stringent criteria for scenic rivers and should make it clear the variance is prohibited for scenic rivers, that the variance should be

limited and there is no plan required to reach the standard so an enforceable compliance schedule should be included. He also said it is wrong to apply a variance to human health criteria and that should be prohibited. He expressed appreciation to the OWRB staff for its effort, open and transparent process, and availability to discuss the proposals.

Mary Francis, Norman, Oklahoma, stated her appreciation to the Board for conducting the hearing and for their service. There should be a definition of stakeholders who are the citizens affected by the Board's rules and enforcement, health of children, and animals drink water, too. She recognized the Board members have a difficult job. Ms. Francis said the current limits had not been met and it was not time to talk about variances; she expressed concerned also about fish kills and the ultimate stakeholder which are children.

Ron Suttles, Board Chair, Conservation Coalition of Oklahoma, Oklahoma City, Oklahoma, said the coalition is a gathering place for organizations and businesses who want to explore their interest in conservation, the outdoors, and natural resource projects. He expressed concern about the proposals in place regarding the water quality standard variances which are viewed as devastating to the state's effort to restore water quality integrity to Oklahoma's highest water quality resources. The concept of a variance or less stringent standard that would be substituted for the existing standard is a mechanism for allowing polluters to continue polluting the community. Variance is another term for significant delay, and possibly a basis for abandoning or curtailing actions to control pollution sources. There is also a concern for scenic rivers violation of protection of such water. The CCO will submit comments, and supports the existing state water quality standard for phosphorous and action to control pollution sources to comply with that standard. A variance in this instance would ensure the long term continuation of phosphorous pollution and its likely inconsistent protection for Oklahoma's scenic rivers. He said he had spent time while working for the Oklahoma Department of Wildlife Conservation participating in the standards revision process and the OWRB has a track record of consideration of public concern, and a commitment to adhere to the law and render decisions that protect our waters, which he appreciated. He strongly encouraged public participation.

Bob Jackman, Tulsa, Oklahoma, stated to the members he had worked with legislators who were successful in obtaining funding for the Red River Basin Study, and he participated in the public participation portion of the OCWP process where he stressed science in the backbone of water management. He said a variance is a loophole to allow Arkansas to continue to dump trash into the Illinois River, and selenium is cherry-picking the problem -- there are other solutions i.e., mercury, lead and cadmium. He advocated funding for the Board to conduct accelerated studies and benchmarking of the State's aquifers.

Chairman Hitch said there were no other persons to speak; however, Ms. Castillo stated there were persons on the list who had not spoken. After clarification, Chairman Hitch invited Ms. Trent and Ms. McCray to speak.

Katherine Trent, Sierra Club Water Chair, Tulsa, Oklahoma, stated she is a study of public policy and was disturbed by the lack of environmental quality in our State. She participated in 2018 public participation meetings, there was no mention of the variances, the agreement between the states was created so men behave as angels, and the Board is representative of the public trust. The most critical beneficial use is the sustenance of human life and she said the public trust doctrine is the foundation of our legal system and has the ability to tell polluters they do not have the right to pollute our water.

Ashley Nicole McCray, Citizen, Member of the Absentee Shawnee Tribe, Norman, Oklahoma, spoke to the members that she is representing Lifewave LLC a nationwide indigenous-lead organization that seeks to create solutions to climate change and protect water. She agreed with statements made today and reiterated her support that the Board be an advocate for the protection of the State's waters and environment, to prioritize

people over industry; those speaking in favor of the proposal are from industry, it's important to follow Oklahoma Law, exclude the scenic rivers from any variance, stakeholders should come to the table and there should be consideration of state and tribal relationship, and agencies should be stewards of the state. Ms. McCray stated her opposition to the proposals today.

There were no other comments by the public regarding Chapter 45.

5. a. Summary of Proposed Amendments to Chapter 46 – Implementation of Oklahoma's Water Quality Standards

Subchapter 5. Implementation of Numerical Criteria to Protect Fish and Wildlife from Toxicity Due to Conservative Substances

785:46-5-10. Implementation of multimedia criteria for bioaccumulative pollutants in permits [NEW]

Subchapter 14. Implementation of Fish Tissue Criterion Element and Fish Tissue Monitoring to Protect the Fish and Wildlife Beneficial Use [NEW]

785:46-14-1. Applicability and scope [NEW]

785:46-14-2. Definitions (Reserved)

785:46-14-3. Composite fish tissue sample minimum requirements [NEW]

785:46-14-4. Fish tissue special studies for NPDES Permits [NEW]

785:46-14-5. Fish Tissue Studies for Monitoring and Assessment [NEW]

Subchapter 15. Use Support Assessment Protocols

785:46-15-3. Data requirements [AMENDED]

785:46-15-4. Default protocols [AMENDED]

785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]

785:46-15-14. Assessment of Aesthetics support [AMENDED]

Mr. Cauthron and Mr. Porter presented the proposed changes to Chapter 46 regarding implementation of selenium criterion implementation and Use Support Assessment Protocol (USAP). Mr. Porter explained the process to implement the selenium criterion contained in Chapter 46, and that implementation rules need to be developed for the wastewater permit process as well as the determination of beneficial use; therefore, a new section to subchapter 5 has been proposed and defines limitations and numerical criteria to protect fish and wildlife. The new section provides rules for the implementation of multimedia criteria for bioaccumulating pollutants as they relate to the fish and wildlife propagation, and only has application to selenium. The new rules establish the reasonable potential, and a permanent limit also based on water chemistry, but when reasonable potential is met, fish tissue criterion may be utilized to confirmed for permit limits. Fish tissue criterion takes primacy over water when determining impairment and the rules language also provides the required effluent for fish tissue monitoring if reasonable potential is established, and also provides for circumstances where monitoring requirements may be terminated, depending upon time frame and permit limits. Technical guidance is in development to address the issues. Beneficial Use Support Termination is outlined in proposed provisions of subchapter 15 and provide for the minimum samples required, a scope and requirement for fish tissue studies are in subchapter 14, guidance has been provided that water and fish tissue data can be used independently, and impairment can be based on water column data only but fish tissue data is required for a TMDL.

Mr. Porter also addressed USAP clarifications and revisions for uniformity in conducting assessment processes with state agencies and Tribal partners; however, the changes make no substantial modifications. He said the clarifications that are being made are (1) minimum number of samples required for flowing waters, (2) minimum samples required to calculate measures of central tendency (e.g. means or medians), (3) clarify use of data mean in nutrient threatened protocol, and (4) address newly proposed selenium criterion.

b. Questions and Discussion by Board Members. There were no questions by Members.

c. Public Comment. Chairman Hitch invited those who signed in to speak to the proposed changes to Chapter 46.

Lial Tischler, Valero; Texas, provided had comments regarding Chapter 46 while speaking to the proposed changes to Chapter 45.

Bud Ground, Environmental Federation of Oklahoma, Oklahoma City, Oklahoma, stated EFO agrees to the use of fish tissue as the best available science and supports the regulatory mechanism for establishment of reasonable potential and the water quality data from effluent; however, there are concerns regarding: (1) lack of available guidance document, (2) compliance and enforcement, (3) tissue for assessing noncompliance, (4) exclusion criteria being too broad and groundwater can also be an issue, (5) fish migration could lead to unintended consequences; and (6) use of the water column and rolling annual average.

Rob Reash, Public Service Company of Oklahoma, Ohio, commended the Board for selecting the best media to predict and prevent adverse effects to the fish regarding selenium exposure, it is consistent with USEPA and there is universal agreement that fish tissue is the most applicable media. His chief concern regarded the proposal to adopt flowing water criteria, it is important to understand how the two criteria were developed and based upon a lake study (which he explained). He disagreed with the 3.1 per liter standard and said EPA has received criticism for its approach. Mr. Reash recommended the Board retain the 5 mg/l criteria applied to all water bodies as there are other states that have obtained approval to retain that criteria. Written comments provided speak to various selenium treatment technologies and he encouraged the Board to evaluate what facilities would be required to reduce final discharge levels of selenium and what the cost would be. He also urged the agency to define "bioaccumulative criteria."

Phyllis Klugas, Newcastle, Oklahoma, stated she lived on a tributary to the Canadian River which has been heavily contaminated by multiple horizontal wells in the area. She understands basic science and believed fish tissue is a late indicator before reaching humans or animals, and did not replace water samples. Secondly, Ms. Klugas spoke to Chapter 35 rules regarding minimum construction of marginal water wells. Newcastle is a very active area; the workers in the area do not speak English and do not pay attention to regulations because they are not provided the tools or adequate instruction. She asked the Board not to strike language regarding minimum standards for the wells.

Mary Francis, Norman, Oklahoma, said the fish tissue standard regarding selenium is minimal, there are thousands of new chemicals (staff referred to 38) and many are toxic and carcinogenic. Our water is our life and she urged the Board to deny the variance proposal.

Kevan Reardon, Koch Fertilizer of Enid, Oklahoma, stated that KFE supports the proposed OAC 785:46-5-10 language as it provides an evidence-based approach that allows dischargers to determine the appropriate applicability of water quality based effluent and bioaccumulating pollutants. In addition, KFE supports the evidentiary primacy mechanism established in OAC 785:46-15-5 as the mechanism allows for the assessment of the direct impact of bioaccumulating fluids.

There were no other comments by the public on the proposals to Chapter 46.

6. a. Summary of Proposed Amendments to Chapter 50 – Financial Assistance
Subchapter 1. General Provisions
785:50-1-4. Application of rules [AMENDED]

Subchapter 5. Applications for Financial Assistance

785:50-5-1. Application form and required information [AMENDED]

Subchapter 6. Water and Sewer Program Emergency Grants Requirements and Procedures

785:50-6-1. Approval criteria [AMENDED]

785:50-6-3. Emergency grant priority point system [AMENDED]

Subchapter 7. Water and Sewer Program (State Loan Program Revenue Bond) Requirements and Procedures

785:50-7-2. Approval criteria [AMENDED]

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-3. Application review and disposition [AMENDED]

785:50-8-5. REAP grant priority point system [AMENDED]

Subchapter 9. Clean Water State Revolving Fund Regulations

Part 3. General Program Requirements

785:50-9-23. Clean Water SRF Project Priority System [AMENDED]

Part 7. SRF Environmental Review Process

785:50-9-60. Requirement of environmental review [AMENDED]

Mr. Joe Freeman, Chief, Financial Assistance Division, presented the proposed rules and amendments to rules regarding Chapter 50. He explained the proposed revisions: (1) waiving rules in an emergency to assist communities in a timelier manner, (2) better definition of resolutions regarding community utility authorities and rural water districts, (3) reducing the number of categories or emergency grant from three to two, (4) gives credit points to entities that have developed a sustainability plan, (5) CWSRF continued use management plan reference to include the US Census or American Community Survey to determine a tie on points if needed by defining population, and (6) allows preparation of environmental documents other than the entity that is applying as OWRB staff can provide that for smaller entities.

Mr. Freeman stated the proposals have been reviewed by service providers and various entities and he had not received any comments.

b. Questions and Discussion by Board Members. There were no questions by Members.

c. Public Comment. Chairman Hitch invited Ms. Francis, who signed in, to speak to Chapter 50 proposals.

Mary Francis, Norman, provided comments that did not regard the Financial Assistance Program. She suggested the agenda provide links to areas that are under consideration by the Board (list of chemicals). She stated her appreciation to the OWRB for the work that it does; the OWRB had been a lifesaver many times, and she asked the Board to consider requiring a TMDL for waterbodies.

There were no other comments by the public on proposals to Chapter 50.

There were no further comments or questions by the Members regarding the proposed new rules and amendments to rules. Chairman Hitch concluded the Public Hearing on proposed new and amended permanent rules of the Board at 12:50 p.m. He thanked everyone for attending and those who participated by providing comments. He reminded the written comments needed to be provided before the deadline previously noted.

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on the Pit Water Management Plan for the Non-Exempt Mine in the name of Covia Holdings Corporation (Hatch Site), Pontotoc County:

1. Summary - Mr. Kent Wilkins explained to the Board that this matter concerns a pit water management plan for a non-exempt mine by Covia Holdings Corporation at the Hatch Site located in Pontotoc County. He explained this pit water management plan is the first management plan submitted to the Board for a non-exempt mine overlying a sensitive basin, in this case, the Arbuckle Simpson Aquifer. Staff requested the matter be placed on Special Consideration so that the matter could be more fully explained to the Board today. He said that Chapter 30 groundwater rules, 30-15-1, established rules for the taking, using, and disposal of water trapped in a producing mine overlying a sensitive basin. Covia's Hatch site is considered a new mine by the Oklahoma Department of Mines, and the operation potentially will take, use, or dispose of more than five acre-feet of water. The use requires the operation to meet the Board's requirements for non-exempt mines which includes: development of a management plan that meets requirements of section 30-15-6, make quarterly and annual reports as required, and make application to and obtain a groundwater use permit from the Board prior to taking and using the pit water. The regulations require the management plan to be approved by the Board prior to the use of any water. Covia Holdings' personnel met in consultation with Board staff and subsequently submitted to the Board this pit water management plan regarding a nonexempt mine overlying a sensitive basin. He said that Covia has also submitted an application for a groundwater permit that is currently being processed. Mr. Wilkins stated that based on the review and evaluation by staff of the technical section and permitting section, the submitted plan meets all requirements and satisfies the elements found in 30-15-6 as required. Therefore, staff recommends approval of the pit water management plan as submitted.

2. Discussion and questions by Board. Mr. Muller asked about the discharge permit and Mr. Wilkins answered discharge regulations are under the Department of Environmental Quality; there are certain augmentation and flow requirements that must be met, but the OWRB has no authority over the discharge permit.

3. Vote on whether to approve or as may be amended, or vote on any other action or decision related to the plan. There were no other questions by the Board, and Chairman Hitch entertained a motion.

Mr. Stallings moved to approve the pit water management plan for Covia Holdings Corporation, Hatch Site, and Mr. Allen seconded.

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

B. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. There were no matters 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.

Mr. Stallings stated he lives has not seen the Illinois River and asked that staff update the Board on the Memorandum of Understanding with Arkansas, how it impacts the river, and what agency guards the river and how is that done. Chairman Hitch repeated the request for the audience's information. He added the OWRB sets criteria but is not the regulatory agency. Chairman Hitch suggested staff schedule discussion of the Illinois River for a future Board Education Series presentation.

7. ADJOURNMENT

There being no further business, Chairman Hitch adjourned the meeting of the Oklahoma Water Resources Board at 12:58 p.m. on January 15, 2019.

OKLAHOMA WATER RESOURCES BOARD

_____/Absent_____
Jason Hitch, Chairman

_____/Absent_____
Stephen B. Allen, Vice Chairman

_____/Absent_____
Charles Darby

_____/s/_____
Bob Drake

_____/s/_____
Robert L. Melton, Sr.

_____/Absent_____
F. Ford Drummond

_____/s/_____
Jennifer Castillo

_____/s/_____
Matt Muller

ATTEST:

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

(SEAL)