

OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

April 16, 2019

1. CALL TO ORDER

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Jason Hitch at 9:34 a.m. on April 16, 2019, 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 April 12, 2019, at 4:15 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.

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

Johnny Ketcherson, WWCO Water District #2
Lewis LeNaire, Panhandle Eastern Pipeline, LP, Oklahoma City, OK
Steve Mullins, Grellner, Oklahoma City, OK
Carrie Vaughn, WWCO Rural Water District #2, Spencer
Robert Vaughan, P.E., Coalgate and Bromoide Public Works Authorities, McAlester, OK
Mary Chris Barth, Laverne Public Works Authority, Laverne, OK

Joe Wasso, Cashion, OK
Rick Grellner, Estack LLC, Oklahoma City, OK
David Colbert, Sardis Lake Water Authority, Nashoba, OK
Rick Schlegel, Cardinal Engineering/Town of Laverne, Woodward, OK
Tom Elkins, Cherokee Nation, Tahlequah, OK
Danny Grellner, Estack LLC, Spring, TX
Marla Peek, Oklahoma Farm Bureau, Oklahoma City, OK
Blaine Nice, Tran & Tran LLC, Oklahoma City, OK
Mike Mathis, Continental Resources, Oklahoma City, OK
Deanna Suddath, BancFirst, Oklahoma City, OK
Bodie Batchelor, Centennial Law, Oklahoma City, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the February 19, 2019, Regular Meeting. Chairman Hitch asked if there were any amendments or discussion of the draft February 19, 2019, minutes as distributed. There were no changes or discussion.

Mr. Stallings moved to approve the minutes of the February 19, 2019, meeting, and Mr. Muller seconded. There was no discussion. Chairman Hitch called for the vote.

AYE: Muller, Stallings, Drake

NAY: None

ABSTAIN: Darby, Drummond, Melton, Allen, Hitch

ABSENT: Castillo

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, stated she would present her report then present the resolution of appreciation to Chairman Hitch. She updated the members on the current status of drought across the state which she said is currently at 4% is in the southwest area which is usual and the forecast through June looks favorable. She reviewed calendar notes stating she met with the Secretary of Energy and Environment and agency directors and he discussed the Governor's initiative to better market the State of Oklahoma to meet the "top ten states" goal which he is developing a strategic plan to achieve. Emphasizing marketing, each agency will provide "quick win" accomplishments benefitting the public and the State by improving efficiencies, innovations, and modernization. The agencies will provide one-year and four-year goals that will be included into the framework. Secretary Wagner and EPA Acting Deputy Director discussed process improvement and the Lean 6 Sigma program. On March 5, Secretary Wagner came to the OWRB and met with staff, and staff invited him to attend meetings to better acquaint him with OWRB programs.

Ms. Cunningham spoke to the Western States Water Council at its March Arizona council meeting and Infrastructure Financing Workshop; on April 4 she attended meetings with Oklahoma's Congressional Delegation staff and members while attending the Interstate Council on Water Policy Washington, D.C., Roundtable and Infrastructure Forum; also sponsored by the WSWC and National Water Supply Alliance. The members of the Water Subcabinet -- all federal agencies states engage with -- met with the group: Department of Interior, National Oceanic and Atmospheric Administration, Department of Energy, Environmental Protection Agency, Corps of Engineers, and Department of Agriculture --all the Deputy Secretaries attended the panel for very productive discussions. Ms. Cunningham spoke on a panel about Oklahoma's Southwest Water Action Plan highlighting the cooperative approach of the many federal agencies involved. Ms. Cunningham noted meetings with Oklahoma's Congressional offices, particularly Congresswoman Horn; and, Congressman Lucas as ranking member of the House Science and Technology Committee and his measure HR 34-- Energy and Water Research Integration Act of 2019-- instructing the

Department of Energy to ensure consideration of water issues in its research, development, and demonstration programs, i.e., using less water for energy production.

Ms. Cunningham spoke to the Oklahoma Ag Leadership Class, the Attorney General of the Pawnee Nation interested in coordination and workshop with other tribes to share information on water management and infrastructure projects. On April 17 she will speak to the Oklahoma Rural Water Association, and Water Appreciation Day at the Capitol will be held.

Ms. Cunningham concluded her report noting the State Legislative activities -- particularly the Gross Production Tax bill, a measure to conduct a study on phase two of the Arbuckle Simpson Aquifer, Speaker McCall's bill regarding online notice requirements for water rights applications, groundwater irrigation district bill by Panhandle legislators as a framework for NRCS funding, and establishing instream flow groups for prioritizing studies. She noted the Congressional hearings held for water-related issues. The members asked about the sunset timeframe on the GPT bill (3 years), that the notice bill is in addition to the formal notice and an additional layer, and the formation of the groundwater irrigation district. Ms. Cunningham concluded her report.

Resolution of Appreciation for Chairman Jason Hitch

Ms. Cunningham read the Resolution of Appreciation to Mr. Hitch for his service on the Board, and a group photo was taken. Mr. Hitch expressed his appreciation for the opportunity to serve the state regarding topics dear to his heart having grown up in the Panhandle. (See resolution attached.)

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 March 2019. He said for the time period the agency has spent 72% of the appropriated budget leaving 28%, has spent 46% of the revolving funds leaving 54% of budgeted funds, and has spent 39% of the federal dollars leaving 60%. Overall, 49% of the total budget remains with 25% of the year remaining compared to last year at this time when the agency had 46% of the budget remaining. Some budgeted funding in the financial assistance area has not yet been spent.

Staff is working on the 2020 budget, and his staff are looking at anticipated cash balances at the year's end. He noted OMES IT staff is available following the meeting to assist members with their email accounts and Office 365 operation.

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 Emergency Grant for Sardis Lake Water Authority, Pushmataha County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that this item is a \$45,000.00 emergency grant request from the Sardis Lake Water Authority. He said the Authority is a provider of water in Pushmataha, Latimer, and Pittsburg Counties. The Authority is experiencing problems with plastic retention nozzles at the water treatment plant because the force of the backwash is causing the retention rings to break. He said the proposed project is to replace the existing nozzles with stainless steel nozzles and install new filter media. It is estimated the project will cost \$65,000.00, which will be funded with the \$45,000 OWRB grant and \$20,000 in local funds. Staff recommended approval.

Mr. David Colbert, Chairman, was present in support of the emergency grant application who expressed the Authority's appreciation for the Board's consideration of the request.

Mr. Muller asked how old the system is and Mr. Colbert said it had been there for some time and had seen a lot of use. Mr. Hitch asked the life remaining on the system infrastructure after replacing the nozzles,

and Mr. Colbert said the media had been replaced also. The members asked how many districts are supplied by the system, and Mr. Colbert answered there are five districts, and approximately 400 meters.

Chairman Hitch asked if there were additional questions; there were none. Mr. Drummond moved to approve the emergency grant to the Sardis Lake Water Authority, and Mr. Darby seconded. There was no other discussion, and Chairman Hitch called for the vote.

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

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Coalgate Public Works Authority, Coal County. Recommended for Approval. Mr. Freeman stated this item is a \$400,000.00 loan request by the Coalgate Public Works Authority to replace the lift station at the wastewater lagoon, replace the force main connecting the lift station to the splitter box, and lay 3,000 feet of sewer line, and replace 12 manholes. Mr. Freeman stated the loan will be funded through the Clean Water State Revolving Loan Fund, and he noted provisions of the loan agreement. Coalgate has one loan outstanding with the Board with a balance of \$2,075,000 and a debt coverage ratio of 3.5-times. Staff recommended approval of the loan request.

Mr. Robert Vaughan, project engineer, was present in support of the loan application and he expressed the city's appreciation for the Board's consideration of the project funding. He noted Coalgate is under consent order of the Department of Environmental Quality.

Chairman Hitch asked if there were questions by members; there were none. Mr. Stallings moved to approve the Clean Water SRF loan to the Coalgate Public Works Authority, and Mr. Allen seconded. Chairman Hitch called for the vote.

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

C. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Laverne Public Works Authority, Harper County. Recommended for Approval. Mr. Freeman stated to the members that this item is a \$1,530,000.00 loan request by the Laverne Public Works Authority located in Harper County. He said the loan is requested for the extensive rehabilitation of the PWA's three wastewater lagoons cells and an irrigation pumping facility. He said the loan will be funded through the Clean Water SRF loan fund, and he noted provisions of the loan agreement. Mr. Freeman stated Laverne has one loan with the Board with an approximate balance of \$2.7 million dollars. Laverne's debt coverage ratio stands at 1.75-times. Staff recommended approval of the loan request.

Representing Laverne was Ms. Mary Chris Barth, Town Superintendent, who spoke to the members about moving the town forward through completing this project and resolving the consent order. Chairman Hitch asked about the liner and irrigation system, and Ms. Barth answered there is a liner and an irrigation system; separate grant funding will replace the lift as well as the landowner installing a new center pivot. The project engineer stated the older liner was synthetic that cracked causing a permeability issue, and the new liner of 60 ml will be installed on all three lagoons which will have a life of 30 years.

Mr. Drake moved to approve the Clean Water SRF loan to the Laverne Public Works Authority, and Mr. Stallings seconded. There was no other discussion, and Chairman Hitch called for the vote.

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

D. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Shawnee Municipal Authority, Pottawatomie County. Recommended for Approval.

Mr. Freeman said this item is a \$5,745,000.00 Clean Water SRF loan request by the Shawnee Municipal Authority. He said the Authority is requesting the loan for a city-wide replacement of water meters. An automated meter reading system will be installed consisting of approximately 13,000 water meters, along with meter interface units, antennas and towers. He said the loan will be funded through the CWSRF, and he noted provisions of the loan agreement. Shawnee currently has two outstanding loans with the Board, for a combined principal balance of \$5.8 million; the debt coverage ratio stands at approximately 1.45-times. Staff recommended approval of the loan application.

Mr. Chance Allison, Shawnee PWA Finance Director and Assistant City Manager, was present in support of the loan request. Mr. Drummond asked the savings that will be realized by installing the system, and Mr. Allison responded there would be personnel savings as well as efficiency in water delivery, real time information to the consumer, and leak detection.

Mr. Drummond moved to approve the Clean Water SRF loan to the Shawnee Municipal Authority, and Mr. Melton seconded.

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

E. Consideration of and Possible Action on a Proposed Resolution Expressing Official Intent to Reimburse Costs of Loans for Drinking Water State Revolving Funds Projects. Recommended for Approval.

Mr. Freeman stated this item is a reimbursement resolution for the Drinking Water State Revolving Fund Loan Program. He explained that since passage of the Federal Tax Act of 2005, the Board has adjusted from doing blind pool SRF bond issues to an issuance model that allows for the reimbursement to the Board for loans that have been funded or are in the process of being funded from nonbond issuance proceeds. This method allows the Board to stay in compliance regarding IRS spenddown rules. He explained under Treasury regulations the Board must declare reimbursement intentions in a form such as the proposed resolution. He referred to exhibit A of the resolution packet listing the project and estimated reimbursement amount which are loans that have been closed or are waiting on the SRF priority list to be approved by the Board. As noted in the resolution, the total amount of identified eligible projects of \$512,043,900.00. Staff recommended approval of the resolution.

Mr. Melton asked for further clarification. Mr. Freeman explained the history of the previous blind pool bond issues by the Board and the changes in the tax act that required spenddown in one year to be 30%; and 95% within three years. The reimbursement method allows the Board to use cash on hand -- EPA Capitalization grant dollars, cash from loan repayments from borrowers and outstanding bond proceeds. Currently, the Board has approximately \$314 million in DWSRF loans closed that are still drawing, and have drawn to about \$139 million, leaving \$175 in drawdown on loans the Board must provide to borrowers, and at this time, the Board has just less than \$60 million on hand. He said the Board will do an \$80 bond issue later this year, needing to spenddown 30% and when the bond issues closes the Board will be in compliance by reimbursing itself for the cash that has already been drawn down. Mr. Drummond and Mr. Freeman talked about the interest rate and capacity levels.

There being no other questions, Mr. Allen moved to approve the resolution expressing intent to reimburse costs, and Mr. Drummond seconded. Chairman Hitch called for the vote.

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

F. Consideration of and Possible Action on Selection of Bond Counsel in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman stated this resolution is for selection of the Bond Counsel for the State Loan Program (FAP). He said the under Bond Oversight Council guidelines, a one-year time frame is allowed for bond issue service providers, which expired the first of this month. Mr. Freeman said bond counsel requests for proposals were distributed to 29 firms, and staff received proposals from Nixon Peabody, Locke Lord, and the Centennial Law Group. Proposals were reviewed based upon new money, revenue bond experience, Oklahoma and local bond experience, experience of the assigned attorneys and proposed fees. The proposals were reviewed with the State Bond Advisor and the Board's Finance Committee composed of Mr. Allen, Mr. Stallings and Mr. Melton. Mr. Freeman stated staff recommended the selection of Centennial Law Group as bond counsel for the FAP loan program.

There were no questions. Mr. Stallings moved to approve Centennial Law Group as the bond counsel for the FAP loan program, and Mr. Darby seconded. There was no discussion, and Chairman Hitch called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Castillo

G. Consideration of and Possible Action on a Proposed Resolution Selecting a Disclosure Counsel to the Board in Connection with the Board's Financing Programs. Recommended for Approval. Mr. Freeman stated to the members that this item is a resolution for the selection of disclosure counsel for the FAP, CWSRF and DWSRF loan programs. He explained staff recommended the Board retain disclosure counsel given the Securities and Exchange Commission's heightened focus on the municipal bond sector. The disclosure counsel can provide advice directly to staff regarding security law issues. Having a disclosure counsel with security client privilege and a fiduciary relationship with the Board can focus on disclosure from the vantage point of the Board and help to protect the Board. In addition, they can facilitate consistency in the Board's disclosure on bond issue to bond issue. Mr. Freeman said requests were distributed to 29 firms, and staff received eight responses. The proposals were reviewed based upon experience, experience of assigned personnel, transaction experience, and fees. The proposals were reviewed with the Board's financial advisor, Anne Burger-Enriken at Hilltop Securities, with the State Bond Advisor, and the Board's Finance Committee. Therefore, staff recommended the selection of Gilmore and Bell as the Board's Disclosure Counsel.

Mr. Drummond asked if the Board had employed a disclosure counsel in the past. Mr. Freeman answered it had not, that staff is spending so much more time making sure the Board is in compliance, as well as the preliminary official statements are currently being prepared by the Board's bond underwriters. This function will move to the disclosure counsel, and will represent the Board, not the underwriter in a transaction. It will be an additional cost, which will be \$17,500 per issuance.

Mr. Drake moved to approve the resolution selecting Gilmore and Bell as the Board's Disclosure Counsel, and Mr. Stallings seconded. There was no discussion, and Chairman Hitch called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Castillo

H. Consideration of and Possible Action on Selection of Investment Banker(s) in Connection with the Issuance of One or More Obligations to Provide Funding for the State Loan Program. Recommended for Approval. Mr. Freeman stated this item is the resolution for the selection of investment bankers for the FAP loan program. He said 36 requests for proposals were distributed and staff received responses from UBS, Stifel, Stephens, BOK Financial Securities, and from Wells Nelson for co-manager only. The proposals

were reviewed based on each firms' relative bond experience, the assigned personnel's relevant experience, marketing capabilities, distribution capabilities, and the quality of their proposal as well as fees. As with the other service providers, the proposals were reviewed with the State Bond Advisor, and the Board's Finance Committee. Therefore, staff recommended: (1) the selection of BOK Financial Securities as Senior Manager for the FAP loan program, and (2) the selection of Stifel for FAP obligations of more than \$10 million dollars as co-manager.

Mr. Stallings moved to approve BOK Financial Securities and Stifel as investment bankers, and Mr. Allen seconded. There was no discussion, and Chairman Hitch called for the vote.

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

Mr. Freeman announced the Board's Audit Committee will conduct its annual meeting immediately following the Board meeting today--Mr. Darby, Mr. Hitch and Mr. Drummond.

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 asked if there were no requests to withdraw items; there were none. He stated he would entertain a motion.

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

AYE: Darby, Drummond, Muller, Stallings, Drake, Melton, Allen, 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>
SODA				
a.	FAP-18-0021-R	Bromide Public Works Authority	Johnston	Change of Scope

- D. Consideration of and Possible Action on Contracts and Agreements:
1. Contract for Legal Services between the Oklahoma Office of Attorney General and OWRB providing an attorney to act as Hearing Examiner (Lyn Martin-Diehl)
 2. Contract for Legal Services between the Oklahoma Office of Attorney General and OWRB providing an attorney to act as Hearing Examiner (Joe Ashbaker)
 3. Intergovernmental Agreement between the City of Oklahoma City and OWRB to provide engineering services to OKC for Lightning Creek Study
- E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
1. Linda Dobbins, Custer County, #2014-512
 2. Rex Sparkman, McClain County, #2018-525
 3. New Sunrise Farms, LLC, Adair County, #2018-570
 4. Superior Silica Sand, LLC, Kingfisher County, #2018-574
 5. Tran and Tran, LLC, Delaware County, #2018-590
 6. Kathy I. Coons, Dewey County, #2018-602
 7. Ross K. Pickens, Custer County, #2018-613
 8. Tori Michelle Baker, Dewey County, #2018-617
 9. Danielle Nichole Stone, Ottawa County, #2018-621
 10. Trung Nguyen and Fam Saepfan, Delaware County, #2019-504
- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
1. Deer Creek Water Corporation, Oklahoma County, #1981-879
 2. Donald L. & Melodee A. Ellsworth, Stephens County, #2001-507
 3. Andrew Wallace Sproul, Jr. & Paula Rae Sproul, Major County, #2014-521
 4. United Ag, LLC, Harmon County, #2018-516
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. Southern Oklahoma Water Corporation, Love County, #2018-604
 2. Corey Barnes and Greg Barnes, Texas County, #2018-607
 3. Donald L. Graber, Texas County, #2018-615
 4. DML Farms, LLC, Rogers Mills County, #2019-501
- H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Groundwater:
1. Woodward County Rural Water District No. 2, Woodward County, #1974-010
 2. Mission Funding, LLC, Major County, #1976-808
 3. Dale & Velma Hughes Living Trust, Custer County, #1985-592
- I. Consideration of and Possible Action on Applications to Amend Prior Rights to Use Groundwater:
1. United Ag, LLC, Harmon County, #1966-547
 2. Deer Creek Water Corporation, Oklahoma County, #1971-530
- J. Consideration of and Possible Action on Applications for Regular Permits to Use Surface Water:
1. Daniel Bryan & Cianne R. Williams, Muskogee County, #2018-038
- K. Consideration of and Possible Action on Applications for Term Permits to Use Surface Water:
1. Charles E. Roberts & Connie Kay Roberts Revocable Trust, Dewey County, #2018-018
 2. Kast Trust Farms, Washita County, #2018-083
 3. Bluefin Water Solutions, LLC, McClain County, #2018-085
 4. Rex Sparkman, McClain County, #2018-094
- L. Consideration of and Possible Action on Dam and Reservoir Construction:
1. RD Land & Materials, LLC (E Winter Creek), Grady County, OK30565

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

1. New Licenses, Accompanying Operator Certificates and Activities:

- a. Licensee: Red River Drilling DPC-1007
Operator: Ryan Curbow OP-2274
- b. Licensee: 4G Water Well Service DPC-1009
Operator: Scottie Schilling OP-2275
- c. Licensee: Rogers Water Well Service DPC-1011
Operator: Roger Magana OP-2276

2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses

- a. Licensee: Summers Well Drilling DPC-0568
Operator: Benjamin Summers OP-2277
- b. Licensee: Davis Water Well Service DPC-0197
Operator: Hunter Jones OP-2278
- c. Licensee: Mesa Products DPC-0931
Operator: James White OP-2279
Operator: Johnny Green OP-2280

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, Garvin County, #FP-18-25
- 2. Oklahoma Department of Transportation, Beckham County, FP-18-28
- 3. Oklahoma Department of Transportation, Pawnee County, FP-18-29
- 4. Oklahoma Department of Transportation, Cotton County, FP-18-32
- 5. Oklahoma Department of Transportation, Cotton County, FP-18-33
- 6. Oklahoma Turnpike Authority, Cotton County, FP-19-06

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

- 1. Marilyn K. Bentley, Town of Bessie, FPA-781
- 2. Kandis D. Gollihare, Harmon County, FPA-782
- 3. Jimmy R. Joslin, City of Hobart, FPA-783
- 4. Tawanna R. Cathey, Pittsburg County, FPA-784
- 5. Zachery P. Henson, City of Stillwater, FPA-785

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

There were no items for the Board's discussion.

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action on Proposed Findings of Fact, Conclusions of Law and Board Order on Application to Amend Temporary Permit to Use Groundwater No. 2011-547, Jim and Judy Grellner, Kingfisher County:

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, stated to the members that this matter is an application to amend temporary permit to use groundwater under permit no. 2011-547 originally under the name of Jim and Judy Grellner, currently the applicant is under Estack LLC, located in Kingfisher County. A revised proposed order is in the meeting packet reflecting corrections made to the legal description, and the removal of a condition.

Mr. Wilkins provided background on the application explaining that following submittal and revisions, the application was noticed to use 800 acre-feet of groundwater (reduced from 960 acres), adding 400 acres

to the dedicated lands (reduced from 480 acres), and adding 10 wells (reduced from 29 wells) for the purposes of irrigation and oil and gas use. The original permit was issued for 320 acre-feet of groundwater per year for irrigation use under the name of Jim and Judy Grellner. Mr. Wilkins stated the land dedicated overlies the Salt Plains formation -- a fresh, unstudied groundwater basin -- and there is no maximum annual yield determination or default equal proportionate share, therefore two acre-feet of water per acre of land is authorized per year. Proper notice was published in the Kingfisher Times & Free Press, and the application was timely protested by multiple persons and a prehearing conference was held on February 16, 2018. The hearing examiner set the hearing for October 1, 2018, when applicant Richard Grellner and attorney Steve Mullins appeared and announced a settlement and compromise agreement had been reached with some of the protestants and asked that the agreement be recommended to the Board. No other individuals appeared at that time, and were deemed not a party; however, Panhandle Eastern Pipeline (PEPL) appeared through counsel Lewis LeNaire and Dale Cottingham, to oppose the application. Therefore, the hearing examiner determined the applicant and PEPL were the only parties to the proceeding after October 1, 2018. At the hearing, the applicant testified the groundwater would be used for irrigation of 400 acres for growing wheat, hay, alfalfa, and other crops, and also proposed to use groundwater for oil and gas purposes and stored in various holding ponds on or adjacent to the dedicated property. According to the testimony from the protestants, PEPL owns and operates a high pressure federally-regulated pipeline traversing the adjacent property that could be inundated by the storage of the groundwater, but the pipeline was not designed to have water impounded in or near the easement. The hearing examiner found that Estack had satisfied the necessary elements for obtaining an amendment to permit 2011-547, and the record showed the applicant has a valid to the dedicated land, land overlies the Salt Plains formation, irrigation and oil and gas are beneficial uses, and waste would not occur, and therefore decreed the application in the name of Estack LLC be approved. Mr. Wilkins stated an exception has been filed by the applicant regarding the order, and he asked the Chairman to allow the protestant to present their exceptions.

2. Discussion and presentation by parties. Chairman Hitch invited the representative of Estack, Mr. Steve Mullins, to address the Board. Mr. Mullins stated to the members he represents Estack, a group of the Grellner family that is operated as a family farm. He asked the Board to consider their exceptions and change the proposed order as a policy matter, approving the order as written but striking paragraph 42(b) which is an additional restriction on the water right. Mr. Mullins used video slides to illustrate the original home place, original permit boundaries in place for irrigation purposes, the additional land added under the amendment application, and the CLO land area (land owned by the Commissioners of the Land Office purchased by the Estack). He noted the five ponds on the home place dedicated to the storage of groundwater for use and land where the wells will be located, and the water distribution system contained within the home place and monitored under the settlement agreement. He noted the CLO land is not a subject of the permit application, but illustrates the easement of the protestant PEPL, and because this is not in the permit area the Board is extending its practices as the contested issue is because of the perceived risk to the pipeline and request the Board place a condition on the permit that will allow PEPL to install three monitoring wells within its own easement area at its own expense to monitor soil saturation and subsurface flows in the pipeline resulting from applicant's holding ponds (paragraph 16 of the proposed order). He said this protest that was filed seven months after the protest deadline, and there were three theories of the case regarding impact to PEPL: (1) Estack would drill wells on their property, but no wells were drilled outside the home property; (2) water from storage ponds would inundate the property where the PEPL line is located, but it was shown at the hearing none of the water from the home place would escape and inundate the pipeline; and (3) the third theory for the need to install monitoring wells. He reiterated the area of the application as depicted in the photo where the water is stored and contained, and he contended if there was historic flooding, the water from the ponds would flow across the dams and flow north to the Canadian River away from the PEPL pipeline, with one exception of a few gallons of water from pond #3 that will mix with other flowing water in a terrace system which could perhaps go to the spillway of pond #6. He said the Board is basing its jurisdiction in the proposed order on a few gallons of water escaping pond #3 during a historic flood event which he stated is a poor policy decision to: trace groundwater as it escapes property,

that the seepage will take 60 years to get to the pipeline which then constitutes unlawful use -- the water will flow upstream for 60 years and the harm occurs when the ground is repeatedly saturated and dried for longer than 60 years eventually creating a void of 100th of an inch (which he explained) -- and the assumption no maintenance will occur on the pipeline which could remedy the problem that may exist 60 years in the future. He believed maintenance would take place as required and as it already has occurred. Mr. Mullins contended that all of these conditions would have to occur in order to justify paragraph 42(b) and have an illegal use or a harmful impact to the water table. He argued the Board's order is an extraordinary remedy -- allowing three monitoring wells to see if the condition would ever occur -- which will change the actual easement rights of the parties by allowing access by PEPL which is bad policy, and regarding paragraph 15 that movement in the pipeline may result in an explosion potentially causing pollution of fresh groundwater which has never occurred in the industry, and he spoke to the studies conducted by the industry regarding explosions. Mr. Mullins spoke to the impact of the condition to the Board which would be the measurement of unidentified water causing the matter to come back to the Board for a remedy, the precedence of the case is massive allowing the Board to tract groundwater for over 50 years, and the Board will change the actual property rights on land that is not subject to the application. He asked the Board to make a change to the hearing examiner's order and strike paragraph 42(b) before approving the order.

Mr. Muller asked the difference in the elevation of impoundment #6 and the pipeline and Mr. Mullins answered the pond is 10 feet, and the pipeline is installed at bedrock. Mr. Drummond asked the impact of three monitoring wells, and Mr. Mullins stated the impact is to the rights of the owners and creating a dispute. Mr. Drummond asked about the settlement agreement and Mr. Mullins explained the agreement (part of 42(a)) regards the neighbors reducing the amount of land sought for the permit, to reduce the number of wells to withdraw water at a lower rate, and to meter the water and reduce use of water during drought periods. The PEPL did not participate in the settlement agreement. Mr. Drummond asked the use of ponds #6 and #7, and Mr. Mullins said they are agriculture ponds filled by runoff water; all the groundwater on the application goes to the five ponds and he described the terracing as shown in the photo that were built to avoid a pooling problem. Mr. Stallings asked about the monitoring wells and the concern by Estack, and Mr. Mullins explained the family does care about monitoring for a problem, but allowing the wells changes the easement rights-of-way of the property owners and how the surface of the property cannot be used because it would be used for monitoring wells and no other purpose. He responded to questions by members regarding the wells and the easement right of way agreement, which has been a state easement agreement for 45 years.

Mr. Lewis LeNaire and Mr. Dale Cottingham represented PEPL. Mr. LeNaire approached the members and presented a response to the applicant's exceptions. He did not file exceptions, and is satisfied with the order as written with the condition allowing the placement of monitoring wells. He responded to questions by the members to Mr. Mullins saying that there were extensive negotiations with the landowners and PEPL always intended to work with the landowner to place the wells at mutually agreeable locations and he believed that could be worked through without the Board's involvement. He responded to Mr. Mullins comments the protest was seven months untimely, but was allowed by the hearing examiner due to the large number of attendees at the prehearing scheduling conference--anyone who attended was allowed an additional deadline to file a protest and their protest was timely within that deadline, as well as being recognized by the hearing examiner. He addressed the matter of the "shifting theories" saying there was no discovery cutoff date in the schedule order and an engineering expert testified regarding the migration of water theory and there was no effort by the applicant to question their expert. Additionally, he felt it was inappropriate to raise the issue in the exceptions but not before the hearing examiner and should not be litigated here today. Regarding the Board's jurisdiction, Mr. LeNaire said he did not recall an amount of water that would traverse southwest over the pipeline being mentioned in the exceptions or evidence about specific quantities of water before the hearing examiner. He referred to paragraph 26 of the proposed order stating the Board's responsibility that the withdrawal, transport, storage and efficient use of groundwater comply with state law, and that Mr. Mullins stated groundwater would be stored in the pond closest to the pipeline and the hearing examiner felt it was within the Board's jurisdiction. He addressed Mr. Mullins comments regarding the 60 year time frame before water migrates to the pipeline, stating the expert's

testimony is incomplete because prior to that testimony Mr. Mullins had asked the witness to make assumptions based on his expert's testimony, but there is no evidence of a cutoff trench under the western dam. The plans and specifications for the dam show a trench on the eastern side; it is essentially hearsay from the engineer expert from the contractor there is a cutoff trench on the western dam, and the hearing examiner appropriately discounted the testimony as there was no opportunity to cross examine the contractor. Additionally, the testimony regarding soil permeability was not conclusive as there is no geotechnical evidence from borings and the hearing examiner recognized potential migration, and any water in the trench violates PEPL's easement rights that guarantee there is no encroachment by the landowner on PEPL's access for operation and maintenance of the pipeline. If water is coming into the trench by a condition the landowner has created, it is impairment to PEPL that wasn't there without the inundation issue being present, and that was recognition by the hearing examiner as violation of PEPL's easement rights. Mr. LeNaire said he did not ask for a denial of the application but a simple condition--three monitoring wells which he will work with the landowner to locate, and then it will be known if water is seeping. He is not asking the Board to monitor levels of water, but is for the company to observe what is happening, and the exception's suggestion PEPL file a monitoring report would be more onerous to the Board than proposed by the hearing examiner. If it is determined there is seepage, PEPL can take appropriate action and if there is encroachment, can go to District Court and would not have to come back before the Board, or just work out privately with the landowner. Granting the condition does not require anything from the Board.

Mr. Drummond asked which pond might seep, and Mr. LeNaire said pond #6, closest to the pipeline. Mr. LeNaire closed his comments stating he did not believe the rights of the parties would be altered by the condition; it does not change property rights, no filing with the Kingfisher County Court Clerk that creates a new property right for PEPL, and there was no evidence at the hearing there would be a serious impediment to the property as a result and there is no evidence in the record that there will be great burden. Mr. LeNaire believed it a completely appropriate condition, asked the Board to approve the proposed order in the form by the hearing examiner.

Chairman Hitch asked if Mr. LeNaire did not believe building a surface structure modified the easement, but it could be done now. Mr. LeNaire responded they do not, and that is why they asked for the condition. Mr. Hitch asked why he said it was not a modification, and Mr. LeNaire answered that the Board using its authority as a condition on a permit changes a property rights by virtue of granting an easement. Mr. Hitch asked again whether PEPL believes it has the right now, and Mr. LeNaire replied he is making a distinction between what the Board can do in terms of putting a condition on the applicant's permit versus a negotiated amended easement. Here they have applied to the Board for groundwater rights that are going to be stored near their easement and he is asking a condition of the permit to allow PEPL to place monitoring wells to guarantee protection to the pipeline. Mr. Hitch asked how the difference between surface water and groundwater and other encroaching water would be separated. Mr. LeNaire said it was thought that could be determined through the placement of the groundwater wells, which he explained. Mr. Hitch asked if the pipeline was designed to cross a river, and Mr. LeNaire answered there was testimony it is an intermittent stream, which he described and responded PEPL would have constructed the pipeline differently if conditions were now as when originally constructed.

Mr. Muller asked if Mr. LeNaire had been to the property, and he answered he had not. Mr. Muller stated it would be difficult to assess whether there is a cutoff trench, and he understood the company protecting the integrity of the pipeline but why it hadn't taken a soil sample to determine permeability. Mr. LeNaire said that depended upon the negotiations with the landowner and they had hoped for an agreement to take samples, but he learned they took samples which he does not have the result and it wasn't presented at the hearing due a schedule that would have allowed it.

Mr. Drummond asked Mr. Wilkins if pond #6 would be used for storage; he did not know. Mr. LeNaire referred to paragraph 12 of the proposed order, "...the application also proposes to use 800 acre-feet of groundwater for oil and gas purposes.....the applicant would store withdrawn groundwater in various holding ponds located on or adjacent....one or more holding ponds are located in the NE/4 Section 36, Township 16 North Range 6 West Kingfisher County (CLO property)." He said Mr. Mullins said the CLO

property was not lands dedicated to the application for groundwater rights, but is an area where water subject to the application will be stored. Mr. Mullins said it would not be stored there but during high rains could come from the other ponds; pond #6 is not an applicant storage pond.

The members continued discussions with questions about a timeline for monitoring, the pipeline's concern when saturation may occur or has occurred, if it could be determined if it was saturated previously, if and how an historical baseline could be established, how would inundation be handled, whether the pipeline is coated according to regulations, and if there is damage who would pay the costs, etc.

Mr. Drake stated that there may be confusion and the Board has an opportunity for a possible executive session.

3. Possible Executive Session. As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act”.

(a) Vote on whether to hold Executive Session. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.

Mr. Drake moved that the Board enter Executive Session, and Mr. Stallings seconded. There was no discussion, and Chairman Hitch called for the vote.

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

NAY: None

ABSTAIN: None

ABSENT: Castillo

(b) Designation of person to keep written minutes of Executive Session, if authorized. Executive Secretary Mary Schooley was designated to keep written minutes.

(c) Executive Session, if authorized.

The Board entered Executive Session at 11:17 a.m.

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

Upon motion by Mr. Allen and second to the motion by Mr. Darby, the Board returned to Regular Session at 11:40 a.m.

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

NAY: None

ABSTAIN: None

ABSENT: Castillo

5. Vote on whether to approve the Proposed Order as presented or as may be amended, or vote on any other action or decision relating to the Proposed Order.

Returning to Regular Session, Mr. Drummond stated he wished the parties had been able to come to an agreement as with the other landowners and he did not believe having three monitoring wells would be a burden, but he was troubled this would set a precedence in extending jurisdiction for a groundwater permit to adjacent land that is not part of the permit.

Therefore, Mr. Drummond moved to strike condition 42(b) from the proposed order. Mr. Drake seconded.

Mr. Muller stated he believed monitoring wells should be in place but the Board is not the proper authority to authorize those wells. He stated his support for the motion.

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

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

NAY: Stallings

ABSTAIN: Allen
ABSENT: Castillo

- 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. There were no other new business items for the Board's consideration.

Chairman Hitch reminded everyone Water Day at the Capitol on April 17, and the next regular meeting will be held on May 21, 2019.

7. ADJOURNMENT

There being no further business, Chairman Hitch adjourned the meeting of the Oklahoma Water Resources Board at 11:43 a.m. on April 16, 2019.

OKLAHOMA WATER RESOURCES BOARD

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

_____/s/_____
Charles Darby

_____/s/_____
Bob Drake

_____Absent_____
F. Ford Drummond

_____Absent_____
Robert L. Melton, Sr.

_____Absent_____
Jennifer Castillo

_____/s/_____
Matt Muller

_____/s/_____
Suzanne V. Landess

ATTEST:

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

(SEAL)

In Appreciation
Jason Hitch

FOR seven years of dedicated service to the Oklahoma Water Resources Board, representing soil conservation water use interests, and for serving as Chairman, Vice Chairman, and Secretary;

FOR serving as member of the Water Policy/Rules, Drought, and Audit Committees;

FOR supporting milestone legal decisions before the Board and implementation of the 2012 Oklahoma Comprehensive Water Plan;

FOR supporting the OWRB's \$4.3 billion dollar financial assistance programs for rural and urban communities in all 77 Oklahoma counties;

FOR your knowledge and expertise regarding OWRB programs, including water rights administration, well driller licensing, dam safety, floodplain management, and water quality;

FOR your business acumen, prudent advice, and counsel regarding administrative matters;

FOR promoting the utilization of Oklahoma's water resources to benefit the economic, social, and environmental welfare of Oklahoma citizens;

FOR your willingness to listen to citizens and ensure due process in all matters of deliberation before the Board;

FOR unwavering fairness and courtesy in dealing with your colleagues and staff;

AND FOR traveling a total of 31,624 miles, whether by car or by plane, in the heat or the rain, to serve the citizens of the Great State of Oklahoma!

NOW, THEREFORE, BE IT RESOLVED that the members and staff of the Oklahoma Water Resources Board express their sincere appreciation for the immeasurable contributions made throughout your term of devoted service to the Board and citizens of Oklahoma.

Presented April 16, 2019

Julie Cunningham, OWRB Executive Director

