

# OKLAHOMA WATER RESOURCES BOARD OFFICIAL MINUTES

January 21, 2020

## 1. CALL TO ORDER

The regular monthly meeting of the Oklahoma Water Resources Board was called to order by Chairman Robert L. Stallings, Jr., at 9:30 a.m. on January 21, 2020, in the second floor Board Room of the Oklahoma Water Resources Board located at 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 16, 2020, at 4:45 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 Stallings called the meeting to order and asked for persons wishing to speak at the public hearing to please sign in to do so.

Chairman Stallings asked for the roll call of members.

### Board Members Present

Robert L. Stallings, Jr., Chairman

Stephen Allen, Vice Chairman

Bob Drake, Secretary

Charles Darby

Jennifer Castillo

Suzanne Landess

Robert L. Melton

Matt Muller

### Board Members Absent

Ford Drummond

### 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

Robin Simmois, Martin Marietta, Dallas, TX

Jeff Everett, Oklahoma Gas & Electric, Oklahoma City, OK

Jered Davidson, Public Finance Law Group, Oklahoma City, OK

Newakis Weber, Chickasaw Nation, OK

Tracy Quan, Oklahoma State University School of Geology, Stillwater, OK  
Bud Ground, The Alliance/Environmental Federation of Oklahoma, Oklahoma City, OK  
Monty Lenington, Town of Roland, OK  
Eddie Rhandour, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Charlie Swinton, BancFirst, Oklahoma City, OK  
Candy Thompson, Oklahoma Department of Environmental Quality, Oklahoma City, OK  
Austin Norm, Bank of Oklahoma  
Chris Wolff, Municipal Finance Services, Inc., Roland, OK  
Bodie Bachelor, Centennial Law, Duncan, OK  
Shawnda Cox, Oklahomans for Responsible Water Policy, Antlers, OK  
Dean Couch, Gable Gotwals, Oklahoma City, OK  
Kandice Taylor, Thlopthlocco Tribal Town, Okemah, OK  
Shane Jemison, Chickasaw Nation, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the December 5, 2019, Regular Meeting. Chairman Stallings asked if there were any comments, proposed amendments, or approval of the December 5, 2019, regular meeting minutes.

Mr. Muller moved to approve the minutes of the December 5, 2019, meeting, and Ms. Castillo seconded. There was no discussion. Chairman Stallings called for the vote.

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

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, welcomed everyone in attendance and informed the members about the current drought conditions in the state. Regarding her calendar, she noted the agency held a brackish water meeting with the industry on December 10, 2019; there is a great working group identifying the state's brackish water resources and how to put those waters to use. There are rules proposed today to promote brackish water use instead of fresh water, and there are two contracts on the agenda to quantify and index those waters. She attended the Environmental Federation of Oklahoma Board meeting on December 11; the agency participated in the Natural Resources and Regulatory Services Appropriations Subcommittee Budget Hearing on December 1. The agency has a good relationship with co-chairmen Senator Jech and Representative Newton and have worked on legislation regarding Gross Production Tax extension, REAP grant funding for 2020, and many legislators are working on water issues and OWRB staff is assisting. Secretary of Energy and Environment conducted his regular meeting of SOEE Directors, and Governor Stitt hosted an all agency directors' summit on January 7, 2020 where he introduced Lt. Governor Pinnell's new state branding, expressed his desire to see a reduction in agency rules by 25%, and a speaker presented on IT digital transformation including artificial intelligence and 5G and expressed the state's desire to be on the cutting edge, engaged in such initiatives as public interacting data sharing platforms. Following, Secretary Maize met with the Directors and Agency CFOs with an assignment for reporting expenditures and cash flow. On January 17, Ms. Cunningham participated in an interview with the University of Oklahoma Education Department regarding careers in water management and conservation; the legislative request deadline was January 16 and she updated the members on the carryover measures; and said the interim study on flooding that will result in legislation by Representative Sims and Senator Radar, similar to the Texas State Flood Plan and Flood Resiliency Act. The update of the Oklahoma Comprehensive Water Plan will include a component on weather extreme, flash droughts, and flood mitigation planning. There are also three measures filed regarding REAP (Rural Economic Action Plan) funding.

Ms. Cunningham concluded her report stating the agency conducted an informal public meeting on the proposed rules which will be presented later in the meeting today. There were no questions or discussion by Board 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 2019. He said for the time period, the agency has spent 42% of the appropriated budget, leaving 58%; has spent 34% of the revolving budget leaving 66%; and has spent 32% of federal dollars leaving 68%. The overall budget remaining stands at 64% with 50% of the fiscal year remaining. He said the spending T about 4% over because of equipment and other purchases that the agency did not incur last year.

Mr. Pierce said Secretary Maize has requested quarterly reports from the agencies that identify line item budget spending categories of \$10,000.00 that are 10% over or under the actual expenditure amount and asking how the agency will mitigate the overage or use the difference of the lower amount. Mr. Pierce and Ms. Cunningham described how the budget year typically works in regard to budgeting and actually spending, that allocated money is divided into 12ths and the agency holds off spending until there is cash. Looking at the budget in quarters there is more volume in the spring and summer because of field work, and travel will come up at the end of the fiscal year. The exercise of reporting is good to look at budgeting, and to have a formalized way to track spending.

Mr. Pierce concluded his report, and 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 Roland Utility Authority, Sequoyah County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members this item is a \$2,359,000.00 loan request by the Roland Utility Authority located in Sequoyah County. He said the Utility Authority is requesting the loan to refinance indebtedness for constructing a water treatment plant. He said the loan will be funded through the Drinking Water State Revolving Loan fund, and he noted provisions of the loan agreement. Roland currently has two loans with the Board with a principal balance of approximately \$4.6 million; by refinancing the debt for the water treatment plant, Roland will save approximately \$250,000.00. Roland's debt coverage ratio stands at 1.41-times. Staff recommended approval of the loan request.

Representing the Roland Utility Authority was Mr. Monty Lenington, Town Administrator, who thanked the members stating the refinancing will allow Roland to save money and have more freedom to finance other infrastructure improvements in the future. Mr. Muller asked if the refinancing will stretch out the term to restructure the payment length, or reduce the interest costs, and Mr. Lenington answered the Utility is taking advantage of the reduced interest.

Mr. Darby moved to approve the Drinking Water SRF funding request to the Roland Utility Authority, and Mr. Drake seconded. There was no discussion, and Chairman Stallings called for the vote.

AYE: Castillo, Landess, Drake, Allen, Melton, Darby, Muller, Stallings  
NAY: None  
ABSTAIN: None  
ABSENT: 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. There were no questions and no discussion regarding the items on the Summary Disposition Agenda. Chairman Stallings stated he would entertain a motion to approve the agenda.

Mr. Allen moved to approve the Summary Disposition Agenda, and Mr. Darby seconded. Chairman Stallings called for the vote.

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

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>
ACOG				
a.	FAP-20-0011-R	Cement Public Works Authority	Caddo	\$99,999.00
COEDD				
b.	FAP-18-0031-R	Weleetka Public Works Authority	Okfuskee	99,999.00
INCOG				
c.	FAP-20-0007-R	Sperry Utility Service Authority	Tulsa	63,150.00
KEDDO				
d.	FAP-20-0009-R	McCurtain Municipal Authority	Haskell	99,999.00
NODA				
e.	FAP-20-0018-R	Goltry Public Works Authority	Alfalfa	99,999.00
OEDA				
f.	FAP-20-0004-R	Texhoma Public Works Authority	Texas	99,999.00
SWODA				
g.	FAP-19-0018-R	Roosevelt Public Works Authority	Kiowa	79,999.00

- D. Consideration of and Possible Action on the Contracts and Agreements:
1. Contract between OWRB and Oklahoma Floodplain Managers Association, Inc., to publish informational materials to educate the public, floodplain managers and administrators on flood hazards and the reduction of these hazards.
  2. Sponsored Research Agreement between OWRB and the University of Oklahoma for database compilation and geospatial analysis of produced water quality in Oklahoma.
  3. Sponsored Research Agreement between OWRB and Oklahoma State University for chemical characterization of produced water using nuclear magnetic resonance (NMR) analysis to identify compound classes.
  4. Facility Usage Agreement between OWRB and Francis Tuttle Technology Center to reserve meeting space for Dam Safety Training on April 14-15, 2020.
  5. Professional Engineering Services Agreement between OWRB and Lynker Technologies to revise the North Canadian River System model developed by Lynker, using CRAM modeling system to include additional demands and return flows in six basins.
- E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
1. Richard & Ronda Haggard, Major County, #2015-544
  2. H & H Equipment & Sales, LLC, Kingfisher County, #2017-503
  3. Charles & Janice Emmerich, Kingfisher County, #2018-576
  4. Border Sands, LLC, Jefferson County, #2018-587
- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
1. Ming Dat Ngo and Trang Thi Diem Truong, Delaware County, #2018-584
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. Martin Family Farm, LLC, Texas County, #2019-541
  2. Payton Sherman and Donna Sherman Revocable Trust dated March 28, 2003, Tillman County, #2019-547
- 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 Right to Use Groundwater:  
None
- J. Consideration of and Possible Action on Applications to for Term Permits to Use Stream Water:
1. Wildhorse Water, LLC, Garvin County, #2019-045
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
1. Dale & Deah Miller, Canadian County, #2019-044
- L. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water:
1. S & C Holdings, LLC, Bryan County, #1984-067B
- M. Consideration of and Possible Action on Dam and Reservoir Construction:  
None

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

1. New Licenses, Accompanying Operator Certificates and Activities:

- |   |          |
|---|----------|
| a. Licensee: Wyoming Casing Service, Inc.                                       | DPC-0922 |
| Operator: Keven Randol  | OP-2066  |
| b. Licensee: All Out Pump Service and Drilling                                  | DPC-1025 |
| Operator: William Bischoff  | OP-2299  |
| 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses |          |
| a. Licensee: Squires Drilling, Inc.   | DPC-0183 |
| Operator: Scotty Vanderwork   | OP-0479  |
| b. Licensee: Able Environmental Drilling  | DPC-0746 |
| Operator: Eric Haley  | OP-1698  |
| c. Licensee: Yorks Pump Service, Inc.   | DPC-0428 |
| Operator: Buck Scrivner   | OP-1954  |
| d. Licensee: Yorks Pump Service, Inc.   | DPC-0428 |
| Operator: Alvis York, Jr.   | OP-1955  |
| e. Licensee: City of Elk City   | DPC-9010 |
| Operator: Colter Sanders  | OP-2305  |

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

None

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

1. Marci A. Hyde, Town of Burlington, #FPA-820
2. Michael A. Jones, City of Cherokee, #FPA-821
3. Jerry L. Abbott, Jackson County, #FPA-822
4. Jerome L. McCalvin, City of Marlow, #FPA-823
5. Brian K. Henry, City of Perry, #FPA-824
6. Missy M. Richardson, Rogers County, #FPA-825

**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 2020.

Chairman Stallings read the following statement, opening the public hearing on the proposed amendments and permanent rules proposed for adoption at 10:00 a.m. :

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 specified below.

This year, the comment period for Chapters 5, 25, 30, and 35 has been open since December 2, 2019, in excess of the 30 days required by the Oklahoma Administrative Procedures Act, and will expire at the conclusion of the meeting today.

Other than this public hearing, no action will be taken by the Board on the proposed rules at today's meeting. The proposed amended rules are expected to be scheduled for consideration and possible adoption or any other action by the Board at its February 18, 2020, meeting.

The OWRB staff will present the new and amended rules as they appear on the agenda. Following staff presentation, Board members will be able to ask questions. Then, the public will be allowed time to present oral and written comments.

1. a. Summary of Proposed Amendments to Chapter 5 – Fees – Mr. Kent Wilkins, Chief, Planning and Management Division, stated to the members that the rules changes this year regard the Planning and Management Division, and there are no changes to the chapters for Water Quality and Financial Assistance Divisions. Changes are proposed for Chapter 5 fees, Chapter 25 dams and reservoirs, Chapter 30 groundwater, and Chapter 35 well driller licensing. The Notice of Rulemaking Intent and Rule Impact Statement and draft rules were prepared and online by December 2, 2019; staff also conducted an informal rules meeting on January 9, 2020. Additionally, approximately 1,000 stakeholder notices were distributed and approximately 30 attended the public hearing and staff received good comments.

Mr. Wilkins summarized the proposed changes to Chapter 5 including the fee for administration of annual water right for stream water from \$50 to \$75; adding a \$250 fee for applications that overlie the Arbuckle Simpson sole source groundwater basin; updating the fee for well drillers; remove the fee for certifying flow measurement; and adds a new section regarding fees for document review for paperwork related to water trapped in a producing mine.

Subchapter 1. General Provisions

- 785:5-1-6. Stream water permit application and administration fees [AMENDED]
- 785:5-1-10. Groundwater application and administration fees [AMENDED]
- 785:5-1-11. Well driller and pump installer licensing fees [AMENDED]
- 785:5-1-16. Fees required in other matters [AMENDED]
- 785:5-1-21. Documentation Reviews Related Water Trapped in Producing Mines [NEW]

Mr. Wilkins reviewed the increase in the annual maintenance fee that has not been increased for 10 years and is only for streamwater (785:5-1-6), increased to \$75 and is used for IT costs associated with the data base for streamwater permits, cancellation and reductions, backlog of pending applications, and revising water use reporting. He said there is a number of streamwater permits that will not be increased to the maximum amount as no one permit holder will pay more than \$500 per year. Applications overlying the Arbuckle Simpson Aquifer will require an additional \$250 (785:5-1-10) as it requires compliance with Senate Bill 288 regarding springs and streams, buffer zones, and certain distances required additional information and review by staff requiring a significant amount of effort over permits in other parts of the state. Increased fees for well drillers and pump installers program (785:5-1-11) were proposed to the Well Driller's Advisory Council and have not been increased since 2010; current fees only cover approximately 50% of actual expenses of staff with the remaining covered by general revenue. The Council recommended the fee increases shown, covering approximately 75-80% of actual expenses of the program. The out-of-state fee for the Indemnity Fund was increased and in line with surrounding states. Additionally, an income fee waiver has been added as a result of legislation last year for those who qualify for the low income program. Mr. Wilkins stated that these fees compared to other states' in-state cost on an annual basis -- the OWRB program is a two-year license and the out-of-state increase is for covering complexities of compliance issues located out of state. He referred to PowerPoint slides indicating the various fee changes proposed under 785:5-1-11(a)-(q), and comparison to other states. The fee for certifying a measurement of the flow in any stream is removed (785:5-1-16), and the final change regards reviewing monitoring plans and quarterly and annual report for mining operations overlying a sensitive sole source basin which requires a significant effort (785:5-1-21). This review has been required for several years which the agency has not received funding. The proposed fee regards the request for a de minimis determination which requires considerable review of documentation, field inspections, etc. and staff time required, so the application fee is proposed at \$2,000, which is to be renewed annually at \$250; he said four requests had been received in the past few years. The other two related fees regard a fee of \$500 to review annual mine reports of twelve

mines, and \$3,000 to review augmentation and management plans submitted for new mines based on the hours of staff time required. Currently, there is a moratorium on new mines and staff does not expect to see new management plans for some time as it is eleven years before the end of the moratorium. Staff felt the fee should be in place when that will occur.

b. Questions and Discussion by Board Members. Ms. Castillo asked regarding 785:5-1-21(a) since the fee is to make up for funding that hasn't been provided, will the proposed fee be adequate to cover the costs of review. Mr. Wilkins answered it is unknown as some plans will be simple and some complicated. Ms. Castillo said the idea is that the less complicated will balance out with the more complicated, and Mr. Wilkins answered, yes.

Mr. Allen commented that well driller fees do not cover costs, and asked if that is comparable with other states? Mr. Wilkins answered that staff does not know that, the Advisory Council was not in favor of covering 100% of costs but was in full support of covering 75-80%. He said other states may have other fees that may assist in covering their costs.

Mr. Muller asked in regard to the fee under 785:5-1-10(d), what is the rationale for not raising the \$500 cap. He said it seemed that the advantage would be to those with larger resources that are capped out and those with only 1 or 2 permits bear the burden of increased costs to operate the system; those that reach a certain threshold are able to "skate" on other's benefit. Mr. Wilkins responded there are not many that would reach the \$500 cap, that has been in place for a while and is not being changed and staff could review that. Ms. Cunningham asked if legal costs are included, as many issues are very complicated and requires a lot of time to process. Mr. Wilkins answered legal costs are not included but is based upon the number of hours required for staff evaluation.

There were no other questions by Board members.

c. Public Comment. There were no comments by members of the public.

## 2 .a. Summary of Proposed Amendments to Chapter 25 – Dams and Reservoirs

Mr. Wilkins introduced Mr. Zach Hollandsworth, staff dam safety engineer, who spoke to the proposed amendments to Chapter 25.

### Subchapter 1. General Provisions

785:25-1-3. Violations and penalties [AMENDED]

### Subchapter 3. Responsibility, Classification and Design Standards

785:25-3-2. Owner's responsibility [AMENDED]

785:25-3-6. Minimum spillways performance standards [AMENDED]

### Subchapter 5. Applications and Approval of Construction

785:25-5-4. Additional report information [AMENDED]

### Subchapter 7. Post Approval Actions

785:25-7-7. Emergency action plans [AMENDED]

### Subchapter 9. Actions after Construction

785:25-9-1. Inspections of dams [AMENDED]

785:25-9-3. Correction of deficiencies (not creating imminent peril) [AMENDED]

785:25-9-5. Correction of deficiencies creating imminent peril [AMENDED]

Appendix A. Jurisdiction of Board by Size and Hazard Classification [REVOKED]

Appendix A. Jurisdiction of Board by Size and Hazard Classification [NEW]

Appendix B. Minimum Spillway Performance Standards [NEW]

Mr. Hollandsworth summarized the changes in order of impact, noting the main change is the proposed amendments that regard replacing hydrometeorological report 51 (HRM51). A study has been conducted with other states in the region which is used to update the rules for dam design. Rule 785:25-7-7



regards updating references for Emergency Action Plans, and because of formatting, moved the minimum performance standards table to the appendix, but there are not changes. Ms. Gibson added that was a requirement by the Secretary of State's Office to put the rules that have tables within the text, to put the data into sentences or move to an appendix. Mr. Hollandsworth continued, stating 785:25-9-1 regarded clarifying language for the inspection of dams, and created a new subsection (e) for minimum standards and reporting for clarification, moving the section to a more appropriate subsection, and including four parts of existing guidelines to create consistency in formatting inspection reports while the rules are "open" for amendments. He said the updates replace the 1978 National Weather Service report and updates the probable maps, identifies three different storm types separately that have an impact by lowering the impact. He explained Arkansas-Louisiana-Mississippi have already contracted with Applied Weather Association --who has contracted with many other states across the nation --and the OWRB is able to join with the regional states at a reduced rate. The actual rule 785:25-3-6 (c) changes the HMR 51 to a simple definition of probable maximum flood while the method is the same. Also, more refined data calculations, and instructs the new study is to be used. He illustrated with PowerPoint slides showing precipitation depths that are used for the design of spillway and dams in Oklahoma and the entire nation, which he discussed. There were also grammatical corrections proposed.

Ms. Cunningham commented and Mr. Hollandsworth explained that the percentage of the precipitation depth is used for design of a dam and spillway, small is 25%, and high is 50%. Staff anticipated reduced costs in engineering over design and more accurate data is beneficial to dam owners.

Chairman Stallings noted there was no text in the proposal about moving the appendix and that there should be text that the minimum standards are in Appendix B. Ms. Gibson noted that would be corrected.

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

c. Public Comment. There were no comments by members of the public.

3. a. Summary of Proposed Amendments to Chapter 30 – Taking and Use of Groundwater - Mr. Wilkins introduced Mr. Chris Neel, Assistant Chief, Planning and Management Division, who reviewed the proposed amendments to Chapter 30.

Subchapter 3. Permit Application Requirements and Processing

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

Subchapter 5. Groundwater Permits

785:30-5-5. Contents of permits [AMENDED]

785:30-5-7. Cancellation or suspension of permits [AMENDED]

785:30-5-9. Annual reports of water use [AMENDED]

785:30-5-10. Marginal water permits [NEW]

Appendix D. Identified Springs that Emanate From a Sensitive Sole Source Groundwater Basin [REVOKED]

Appendix D. Identified Springs that Emanate From a Sensitive Sole Source Groundwater Basin [NEW]

Mr. Neel stated the bulk of the changes to Chapter 30 deal with instituting a framework to take marginal quality water. In 2018, HB 3405 added the term "marginal water" to the term "groundwater" and later defined marginal water to be water between 5,000 and 10,000 ppm total dissolved solids. In 2019, SB 998 removed the word, "fresh" to mean any kind of groundwater, so now the statutes deal with fresh or marginal quality water requiring Chapter 30 to include the framework to issue permits for marginal quality water. Mr. Neel reviewed all the proposed changes to Chapter 30: 785:30-3-1 corrects reference to a form in Appendix A which was removed in 2019, and removes language limiting an applicant to three wells for each 100 acre-feet of groundwater that will be withdrawn. Chapter 30-5-5 adds the term, "marginal water"

regarding permits, 785:30-5-7 adds "marginal water" in part and part (c) regarding cancellation of or suspension of permits. In 785:30-5-9 adds "marginal water" to requirements of annual water use reporting and requires water quality permits to submit meter logs. Changes to 785:30-5-10 (a)-(h)(i) regards information that would be required for marginal quality water permit; refers to well construction rules in Chapter 35; and requires metering information to assist with the management of the resource at this time with the thought that over time if that isn't needed it can be revisited. Mr. Neel explained staff considers life of a basin in permitting, but not for a marginal quality water, nor boundaries so that the resource will to be used and staff is comfortable-- with sufficient evidence--that the applicant can take the full volume of water and, part (d) allows for the full volume of water to be applied for, with no annual allocation. If sufficient information is not available, sections (e) and (f) allow for dedicated lands to be permitted a minimum of two acre-feet, and there are requirements for providing sampling information.

Mr. Neel explained that Appendix D, regarding springs, has been updated with information from the USGS database, and in reviewing comparisons found corrections that needed to be made.

b. Questions and Discussion by Board Members. Mr. Allen asked if the testing for TDS for PPM is done by the permit holder and is that audited or verified. Mr. Neel answered yes, and staff relies on the self-reporting. Ms. Gibson clarified that the rule requires that a certified lab be used and follow proper sampling procedures. Mr. Muller asked if someone is submitting false information, can the OWRB pull the sample. Mr. Wilkins said if staff were to become aware of such a situation that would be investigated and seek voluntary compliance or file a complaint; there are ways to achieve compliance. Mr. Neel said the rules provide for suspension of a permit.

There were no other questions by Board members.

c. Public Comment. Mr. Bud Ground, representing The Petroleum Alliance of Oklahoma and the Environmental Federation of Oklahoma, described the membership and purpose of the organizations he represented. He stated to the Board members there is industry that can use marginal water which before two years ago was not allowed by law to be used. These groups have been involved in every step with legislation and rulemaking and he spoke to the use of marginal or brackish water rather than fresh water. He said he had submitted comments regarding 785:30-5-10, (c) regarding calibrated meters which is not unusual for the industry, but it is interested in incentives to use marginal water because the wells will cost more and the water is harder to get. He requested that an annual report not be required but that records be kept by the company for the life of the permit which is common with other agencies they work with in Oklahoma. And in sections (d) and (e) regarding the marginal water permit providing "sufficient evidence," they would like more clarification and suggested using the words, "hydrologic information" be used.

Mr. Allen asked if "as determined by the Board" should be changed, and Mr. Ground said, no; that term indicates water has already been taken and can be used for another purpose.

Mr. Ground also commented regarding (e) and (f) that as another form of incentive, to consider raising the amount to 4 acre-feet per acre because the industry wants a lot of water in virtual time, and it could be months before taking water again. It is already allowed the marginal water that is there can be taken. He concluded his comments.

Ms. Castillo asked in 785:30-5-10(d) and (e) regarding sufficient evidence, is it within the realm of possibility that sufficient evidence could be something other than "hydrological information" and could it be, "sufficient evidence not limited to hydrological information, as determined by the Board." Mr. Ground said he is not a geologist or hydrologist, but it is their opinion there is a lot of information available, and if not, they will drill test wells. Mr. Allen said it looked as if they are concerned about what can be requested and Ms. Castillo is concerned about what could be required and that could be more permissive language -- would the standard be satisfied by "hydrologic information." Mr. Ground said he is not an attorney, but that may be a good point. Ms. Cunningham responded that discussion at the informal hearing is that oil and gas can use the water and will have to pay for it and wants to be assured in pricing it out what is cost effective. Mr. Ground said it could also regard the water industry, not just oil and gas industry.

Mr. Drake asked if staff had any problems with Mr. Ground's proposals, and Mr. Wilkins said those are good suggestions.

There were no other comments.

a. Summary of Proposed Amendments to Chapter 35 – Well Driller and Pump Installer Licensing – Mr. Wilkins introduced Mr. Charles O'Malley who presented the proposed changes to Chapter 35.

Subchapter 3. Licensing and Certifications

785:35-3-1.2. Military service occupation, education and credentialing [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. O'Malley stated to the members that there are two proposed changes – the first, regarding 785:35-3-1.2 in response to SB 670 that required agencies granting occupational licensing must promulgate rules allowing military personnel who meet the eligibility standard, and their spouses, to receive expedited, reciprocal occupational licenses. This includes members that are licensed in another state, have received transfer orders, and honorary discharge, and allows them to submit an application in advance to expedite starting business. The legislation requires issuing the license in 30 days, and the OWRB added the requirement the driller sign a statement of understanding the rules and regulations. This also applies to work on military bases where no license is required. Also added is a stipulation the Board could waive fees for the reciprocal license for the first license period; all criteria and qualifications need to be met; and is not an automatic license as the examination is still required as well as consideration from the Board.

The second rule change proposal in 785:35-11-1 regards plugging and capping requirements. Currently, the top 20 feet below land surface shall be removed in the process of plugging the well, which is expensive and overkill. The proposed change is if the well already meets standards at the surface or surface seals, annular seals, and casing materials are adequate and removal is not necessary. New language states that if the well does not meet standards, the casing shall be removed 20 feet below the land surface. Staff believes the change would reduce variances requested when drillers encounter these instances.

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

c. Public Comment. Mr. Andy Barrett, Whitetail Services commented about (Chapter 5) fee increases for well drillers. He said the fee should be simplified and one fee should cover all activities. He thought the out-of-state fee was high, which he does not pay in other states. He added the plugging rules for marginal wells are standard with other states.

Mr. Wilkins stated Mr. Barrett's comments regards Chapter 5 fee increases but also structure of the fee system which staff is looking at ways to simplify or consolidate the structure and certifications. He said the Department of Labor had recommended streamlining the structure and staff is reviewing.

There were no other comments by the public regarding the proposed new and amended permanent rules of the Board. The public hearing concluded at 11:05 a.m.

The OWRB staff PowerPoint presentation is available on the OWRB website at <http://www.owrb.ok.gov/meetings/index.php>.

## 5. SPECIAL CONSIDERATION

A No items. There were no Special Consideration items for the Board's consideration.

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

**Chairman Stallings**

### A. Presentation and Discussion on Board Education Series - Update on Produced Water Initiatives.

Mr. Owen Mills, OWRB Director of Water Planning, stated the presentation today relates to the two contracts on the Board agenda today that regards produced water. Mr. Mills provided the history of the formation of the Water for 2060 Produced Water Working Group (PWWG) formed by Governor Mary Fallin following the large number of earthquakes that occurred in Oklahoma between 2013 and 2015. Governor Fallin, and Secretary of Energy and Environment Michael Teague, formed the fact-finding work group to look at ways that water produced in oil and natural gas operations may be recycled or reused instead of being injected into underground disposal wells. The non-regulatory Water for 2060 Produced Water Working Group of 17 members has been charged with identifying regulatory, technical, and economic barriers to produced water reuse as well as looking at opportunities and challenges associated with treating produced water for beneficial uses, such as industrial use, or crop irrigation. The Water for 2060 Advisory Council's recommendations for the energy and industry sector include promoting the industrial use of marginal quality waters, such as produced water, and increasing opportunities for energy and industry water users to share information and supplies.

Mr. Mills described the membership of the working group, regulatory and legal challenges such as commercial treatment, discharge barriers and timing, ownership and taking issues, right-of-way and landowner negotiations, and cooperative water/infrastructure liability. A 2017 hi-level study financed through a Department of Energy grant assessed options on reuse, such as desalinization, evaporation, treatment and transfer of brine, and costs associated with each treatment method; reuse costs less than sourcing and disposal, and new transfer lines could make oil and gas re-use grow. The US Bureau of Reclamation funded Phase 2 of the study regarding a transfer pipeline of cleaned brine and evaporation technologies as transportation costs are prohibitive. This year, Phase 3 of the study will include work by Oklahoma State University, Tracy Quan, and Dr. Murray through the University of Oklahoma. There are many "unknown unknowns" in the discharge water and Dr. Quan will characterize inorganics, sources and concentration, identify organics, standardize analytical methodologies, establish detection limits, quantification techniques and resolution limits. Dr. Murray will create a GIS spatial database of produced water which will have many applications. Next steps will include further refinements of lab testing, identification of industrial reuse potential, crop irrigation, instream effects and others. Next year will see the mapping of brackish groundwater. A workshop was held in December and comments regarded produced water as a part of the update of the water plan, and review of the Texas Brackish Resources Characterization System that houses all information regarding logs and data in one place.

Chairman Stallings commented there has been a lot of activity regarding produced water, some success, some not; but seems to be moving to the intermediate step with water companies getting involved in brackish water bringing it to another level; operating companies are getting out and letting midstream companies get involved. Mr. Mills noted the benefits of creating a network. Mr. Drake asked if the Department of Environmental Quality and Oklahoma Corporation Commission are part of the study. Mr. Mills stated those agencies are involved providing data, not funding and are interested in establishing the water map. Ms. Cunningham said this effort is an extension of the Water for 2060 Act and exploring and developing use of other types of water. Everyone recognizes this involves looking at long term solutions, establishing infrastructure in the statutes and rules and building those frameworks so when it becomes feasible the discharge water and NPDES structure is in place. All the agencies are providing great

participation and the private companies can steer where we need to go--we have learned that treatment and transportation are the "deal killers" for these companies.

Mr. Mills concluded the presentation. The PowerPoint presentation is available on the OWRB website at <http://www.owrb.ok.gov/meetings/index.php>.

**7. 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 New Business items for the Board's consideration.

**8. ADJOURNMENT**

There being no further business, Chairman Stallings adjourned the meeting of the Oklahoma Water Resources Board at 11:28 a.m. on January 21, 2020.

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_/s/\_\_\_\_\_  
Robert L. Stallings, Jr., Chairman

\_\_\_\_\_/Absent\_\_\_\_\_  
Stephen B. Allen, Vice Chairman

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

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Jennifer Castillo

\_\_\_\_\_/s/\_\_\_\_\_  
Matt Muller

\_\_\_\_\_/s/\_\_\_\_\_  
Suzanne V. Landess

**ATTEST:**

\_\_\_\_\_/s/\_\_\_\_\_  
Bob Drake, Secretary

(SEAL)