

**OKLAHOMA WATER RESOURCES BOARD  
OFFICIAL MINUTES**

**Regular Meeting**

**October 20, 2020**

**1. CALL TO ORDER**

The Regular Meeting of the Oklahoma Water Resources Board was called to order by Chairman Robert L. Stallings, Jr., at 9:30 a.m. on October 20, 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 October 15, 2020, at 3:00 p.m., at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, and provided on the agency's website.

A. Roll Call. Chairman Stallings called the meeting to order and stated this meeting is being conducted with social distancing and via Zoom Webinar. He asked for the roll call of members who participated in the meeting via video or telephone conferencing.

Board Members Present

Robert L. Stallings, Jr., Chairman  
Stephen Allen, Vice Chairman  
Bob Drake, Secretary (in at 9:52)  
Charles Darby  
Thomas A. Gorman  
Suzanne Landess  
Matt Muller

Board Members Absent

Jennifer Castillo  
Robert L. Melton

Staff Members Present and Participating via Zoom Webinar

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

The following persons attended the meeting

Geoffrey Tabor, Tomlin Energy, LLC, Norman, OK  
Debbie Leo, Miller Lake Retreat, LLC, Moyers, OK  
Larinda McClellan, Finley, OK  
Lauren Haygood, Owasso, OK  
Justin Jackson, Tuskahoma, OK  
Alan Rouchell, Clayton, OK

The following person participated via Zoom Webinar

Dan Tomlin, Tomlin Energy  
Bill Redman, Kiamichi River Legacy Alliance

B. Discussion, Amendments, and Vote to Approve Official Minutes of the September 15, 2020, Regular Meeting. Chairman Stallings asked if there were any comments, proposed amendments, or a motion to approve of the September 15, 2020, regular meeting minutes. There were no comments.

Mr. Darby moved to approve the minutes of the September 15, 2020, Regular Meeting, and Mr. Gorman seconded. There was no discussion. Chairman Stallings called for the vote.

AYE: Landess, Muller, Gorman, Darby, Stallings

NAY: None

ABSTAIN: Allen

ABSENT: Castillo, Melton, Drake

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, welcomed everyone to the meeting. She began her report noting it had been a busy month with the agency's participation in various conferences. She updated the members on the State's climate conditions, drought is creeping back in, but lakes are still full, and there are abnormally dry conditions for a large portion of the state. Regarding COVID-19, Governor Stitt has extended the executive order for all 77 counties through October, and it is anticipated the same for November. The next Board meeting will be held on November 10, 2020, at 1:30 p.m. and the December meeting will be held in the office on December 15, at 9:30 a.m.

Regarding calendar items, staff conducted interview with the City of Tulsa on adding flood to its water plan, and with the Nature Conservancy regarding its series of meetings with agencies, farmers, ranchers, and energy sector on a climate opinion mapping effort. Annual conferences held the week of September 20 in which staff participated included the Oklahoma Floodplain Managers Association and the Oka Institute's annual Sustainability Conference. The annual meeting of the Arkansas-Oklahoma Arkansas River Compact heard a positive report by the Environmental and Natural Resources Committee, the Engineering Committee, and former OWRB Board member Ed Fite reported on the partnership with the Walton Foundation and GRDA to construct a \$15 million dollar recreational whitewater project at Lake Frances Dam, and Commissioner Steven Baldrige of the SOEE reported on the Joint Principles group work.

Ms. Cunningham reported the OWRB Financial Assistance Program received an AAA bond rating citing sound financial structure and strong program management. She extended congratulations to the OWRB Financial Team. Staff submitted the agency's Strategic Plan to the Governor's Office which had been re-formatted to a statewide template for comparison between agencies, including 5-year/1-year goals, accomplishments, and challenges. The Water Quality Division held its 3<sup>rd</sup> virtual informal conference on proposed changes to the Oklahoma Water Quality Standards Total phosphorous criteria which will be presented to the Board at the December meeting. There has been great participation with good feedback from the public. She attended the ribbon cutting of the new Lake Eufaula Wetlands Park built to capture and treat stormwater and is an opportunity for educating the public; the OWRB provided partial funding through the Oklahoma Conservation Commission from the Clean Water State Revolving Fund "green reserves" and principal forgiveness, along with many other partners. The Interstate Council on Water Policy held its

annual meetings Oct. 13-14, as well as the Western States Water Council annual meetings. Ms. Cunningham invited Senator Inhofe's Policy Advisor Dan Hillenbrand to speak on a panel about collaboration with home state water agencies, and he spoke about the great relationship with the OWRB to comment on federal legislation affecting water issues and water policy.

Ms. Cunningham concluded her report, noting the proposed rulemaking for 2021 will be reviewed at the December Board meeting. And she updated the members on the reauthorization of the WRDA bill and the need to support water infrastructure, the President's initiative, "Modernization of Water Resources Management and Water Infrastructure," and EPA's initiative to retrain the nation's water resources workforce.

There were no questions.

#### D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Administrative Services Division Chief, addressed the members and stated the budget report is for the time period ending September 30, 2020. He said the agency has spent 24% of the appropriated budget, leaving 76%; has spent 13% of the revolving fund leaving 87%; and has spent 7% of federal dollars with 93% remaining. The overall budget remaining stands at 86%, and spending is at a lower pace than last year's 83% but still within the 2% variance.

Mr. Pierce concluded his report stating the Gross Production Tax collections received are about 1/3 of what is anticipated. In FY2017, the OWRB received \$2.1 million, and the high last year was around \$3 million, and he is optimistic the agency will receive what is expected.

There were no questions.

## 2. **FINANCIAL ASSISTANCE DIVISION**

A. Consideration of and Possible Action on a Proposed Order Approving Emergency Grant for Boynton Public Works Authority, Muskogee County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that Boynton purchases water from Haskell, that purchases water from Muskogee, and Muskogee has reduced the amount of chlorination in the water in order to reduce disinfecting by products. This resulted in the water not meeting the chlorination requirements of by the time the water reaches Boynton. To correct the problem, Boynton proposes to construct a chlorination station near Boynton's connection to Haskell's line. The total estimated cost of the project of \$100,000.00 will be funded with the \$85,000.00 grant requested of the Board and local funds of \$15,000.00. Staff recommended approval of the emergency grant request.

Mr. Freeman expressed Mayor Lynette Hutchison's appreciation for the grant for the chlorination station to provide safe water for their customers, and the Board's assistance is appreciated.

Chairman Stallings asked for comments or a motion for approval concerning the request for the emergency grant application. There were no questions.

Mr. Allen moved to approve the emergency grant to the Boynton Public Works Authority, and Ms. Landess seconded. Chairman Stallings called for the vote.

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

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for The Municipal Authority of the City of Bristow, Oklahoma, Creek County. Recommended for Approval. Mr. Freeman stated to the members this item is a \$9.1 million dollar loan request from The Municipal Authority of the City of Bristow, located in Creek County. The Authority is requesting the loan to install a solid state meter system and expand the existing wastewater treatment plant which includes

sequential batch reactors, ultraviolet disinfection, headworks, and a lab and control building. The loan will be funded through the Clean Water State Revolving Fund Loan Program, and Mr. Freeman noted provisions of the loan agreement. Bristow's debt coverage ratio stands at 4.26-times. Staff recommended approval of the loan application.

Mr. Freeman read a statement from the Authority expressing Bristow's appreciation for the Board's consideration of the loan, and recognizing the economic advantages of the Board's financing programs.

Chairman Stallings asked if Bristow currently had any other loans with the Board, and Mr. Freeman answered it does not. Chairman Stallings asked if there was any discussion or a motion to approve the loan application.

Mr. Darby moved to approve the CWSRF loan application to The Municipal Authority of the City of Bristow, and Mr. Gorman seconded.

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

C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Oklahoma City Water Utilities Trust, Oklahoma County. Mr. Freeman stated this item is a \$60 million dollar loan request from the Oklahoma City Water Utilities Trust. The loan funds are requested to go along with \$4.5 million reserve fund to refinance bonds issued in 2011 for numerous water and sewer projects throughout the City. Mr. Freeman said the loan will be funded through the State Loan Program Revenue Bond Loan Funding Program (FAP Loan Program), and he noted provisions of the loan agreement. He said that over the last ten years, Oklahoma City's water connections have increased by 15%, and the sewer connections have increased by 17%. Currently, the OCWUT has 16 outstanding loans with the Board, with a combined principal balance of approximately \$335.4 million dollars. It is estimated the City will save about \$18 million dollars with this transaction; the debt coverage ratio stands at approximately 2.38-times. The Board received an AAA rating from Standard & Poor's on the bond issue which will fund the loan. Staff recommended approval.

Mr. Freeman relayed a message from Mr. Chris Browning, Oklahoma City's Utilities Director, thanking the Board for the Board's consideration of the loan request which financing will provide bond refunding savings for the benefit of the Oklahoma City ratepayers. Oklahoma City values its longstanding relationship with the OWRB.

Chairman Stallings stated Oklahoma City is one of the Board's largest customers, and he asked for questions or comments. Mr. Allen asked if the bonds that are being refinanced are separate bonds, not a refinancing of existing loans, and Mr. Freeman stated that is correct. Mr. Muller asked the original payout of the 2011 loan; Mr. Freeman did not have the information at hand and will provide it later. Mr. Muller asked if the City was taking advantage of restructuring debt and low interest rate. Mr. Freeman said the City is taking advantage of the lower interest rate, and he said the team reviews what was originally financed.

There were no other questions, and Chairman Stallings asked for motion for approval. Mr. Drake moved to approve the FAP loan to the Oklahoma City Water Utilities Trust, and Mr. Allen seconded. Chairman Stallings called for the vote.

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

### 3. SUMMARY DISPOSITION AGENDA ITEMS

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

A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda, and Action on Whether to Transfer Such Items. There were no requests to move items to the Special Consideration Agenda.

B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Action on Items Listed. Chairman Stallings asked if there were any comments concerning the items on the agenda; there were none.

Chairman Stallings stated he would entertain a motion for approval of the Summary Disposition items. Mr. Darby moved to approve the Summary Disposition Agenda, and Ms. Landess seconded. Chairman Stallings called for the vote.

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

The following items were approved:

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

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

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

2. DWSRF Principal Forgiveness Loan Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
a.	ORF-20-0017- DW	Geary Utilities Authority	Blaine	Time Extension

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

1. Amendment to Professional Services Agreement between Oklahoma Water Resources Board and Gold Systems, Inc. extending the Contract End Date and the Statement of Work End Date.

2. Professional Services Agreement between Freese and Nichols, Inc. and Oklahoma Water Resources Board providing engineering services in connection with OWRB's Oklahoma Comprehensive Water Plan.

3. Joint Funding Agreement between U.S. Geological Survey ("USGS") and Oklahoma Water Resources Board to provide funding for the Annual Mean Runoff Map for Oklahoma with the Oklahoma-Texas Water Science Center.

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

1. Dee Max & Kimmie Corbin, Custer County, #2014-518
2. Pam Chain, Kingfisher County, #2020-509
3. Noble Research Institute, LLC, Carter County, #2020-516

- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:  
 1. Town of Calera, Bryan County, #1974-328
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:  
 1. GCC Lender, LLC, Oklahoma County, #2020-515  
 2. Ryan Kimbrel, Texas County, #2020-525  
 3. Peter Loewen, Texas County, #2020-527
- 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. KOPKAT, LLC, Grady County, #2019-019  
 2. Vinyard, Inc., Jackson County, #2020-004
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:  
 1. Lacey & Diana Weger, Bryan County, #2020-003  
 2. C-4 Land & Cattle, LLC, Payne County, #2020-010  
 3. Yancey Joel & Sheila Gean Kinsch, Wagoner County, #2020-011
- L. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water:  
 1. Daryl & Kristy Dowd, Bryan County, #2019-032
- M. Consideration of and Possible Action on Dam and Reservoir Construction:  
 1. Lacey & Diana Weger (Weger Dam #1), Bryan County, #OK30579
- N. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:  
 1. New Licenses, Accompanying Operator Certificates and Activities:  
     a. Licensee: US Silica DPC-1000  
        Operator: Jason Quigley OP-2334  
 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:  
     a. Licensee: Grubbs, Hoskyn, Barton & Wyatt, Inc. DPC-0353  
        Operator: Druie Cannon OP-2335  
     b. Licensee: J & B Pump & Supply, LLC DPC-0587  
        Operator: Devin Story OP-2336  
     c. Licensee: Envirotech Engineering & Consulting, Inc. DPC-0283  
        Operator: Bryan Huckabay OP-2337
- O. Consideration of and Possible Action of Driller License no. DPC-0117 of King Water Well Drilling.
- P. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:  
 None
- Q. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:  
 None

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

A. No items. There were no questions or discussion regarding agency matters by the Board Members.

5. **SPECIAL CONSIDERATION**

A. Consideration of and Possible Action in the Matter on Application to Amend Regular Permit to Use Groundwater No. 1978-756, Willow Lake Owners Association, Garfield County:

1. Summary – Mr. Kent Wilkins, Chief, Planning and Management Division, stated to the members this is an application to amend a regular permit to use groundwater, #1978-756, in the name of Willow Lake Owners Association. The application was filed to amend the permit to drill an additional well, add an existing well, and withdraw an additional 156.4 acre-feet for a total of 205.7 acre-feet of groundwater per year for irrigation, recreation, fish and wildlife from an additional 312.8 acres of dedicated land in Garfield County. The land overlies the Enid Isolated Terrace Groundwater Basin, the maximum annual yield and equal proportionate share has been determine to 0.5 acre-feet per acre of land and spacing requirements are set at 660 feet. The applicant gave notice in the Enid News Eagle, and separate protests were received by the deadline and all were made parties to the hearing and provided proper notice. Prior to the hearing, six protestants filed written withdrawal of their protest irrigation. A hearing was conducted on August 28, 2020, at the Board’s Oklahoma City office, and appearing for the applicant was attorney John R. Ford of Enid, but none of the remaining protestants appeared at the hearing resulting in the application being presented uncontested. The hearing was opened, appearances were entered, two witnesses were sworn in, and the hearing was adjourned. Thereafter, a proposed order was prepared, served on parties and is presented to the Board for consideration at this meeting. Mr. Wilkins explained the applicant requested an exception in his notice to the 660-foot spacing set by the Board; the well in question is located in the yard of a resident who gave the applicant permission to locate the well on the homeowner’s property. He explained that a protest to the well spacing had been received by the neighbor of the landowner who granted permission for the applicant to locate the well on his property. The applicant spoke to the homeowner concerned the well would affect his well; however, he did not appear at the hearing to offer an objection or present evidence an exception should not be granted. The applicant testified the dimension of the land and the location of the homes in the Association precluded the Association from complying with the 660-foot requirement. Therefore, pursuant to 785:30-3-6(b), the applicant has shown compliance with the well spacing requirement would be unreasonable and a well spacing exception is warranted. The Board must determine the applicant owned the land or held a valid lease for withdrawing the groundwater, the land overlies a fresh groundwater basin- the Enid Isolated Terrace--that irrigation and recreation, fish and wildlife are beneficial uses, and waste by pollution or waste by depletion will not occur; if these requirements are met, the Board is required to issue the permit.

Mr. Wilkins stated the hearing examiner found in the order the applicant has satisfied the necessary elements for obtaining an amendment to permit #1978-756. Therefore, the hearing examiner ordered that permit #1978-756 shall be approved and stated the application to amend is granted, and a permit shall be issued that authorizes one proposed groundwater well, authorizes the use of an existing well, and further ordered that all other terms and provisions set forth in the application that are not inconsistent with provisions of this order shall be incorporated into the permit. Staff recommended approval of the order as presented.

2. Discussion and presentation by parties. Mr. Wilkins stated the applicant is represented by Mr. John Ford; neither Mr. Ford or any protestants appeared on the Zoom webinar.

Chairman Stallings asked if there were questions by the Members. Mr. Muller asked the distance from the well that does not meet the spacing requirement to the well of the former protestant. Mr. Wilkins did not have that figure; however, he described the area and believed it was a block from the well. Mr. Muller asked

if that person would have any recourse if his well were to go dry. Ms. Sara Gibson, OWRB General Counsel, explained there would not be recourse through the Board, but he could pursue a nuisance action in District Court. Because he failed to pursue the protest in this case, he mostly waived his right to complain at a future date about the well location.

Neither Mr. Ford nor any other person spoke to the application.

3. Possible Executive Session; and 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized. The Board did not vote to enter Executive Session.

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

Chairman Stallings stated if there was no other discussion, he would entertain a motion for approval. Mr. Allen moved to approve application to amend regular groundwater permit #1978-756, and Mr. Darby seconded.

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

**B. Consideration of and Possible Action in the Matter on Application for Term Permit to Use Stream Water No. 2019-023, Tomlin Energy, LLC, Pushmataha County:**

1. Summary – Mr. Kent Wilkins stated to the members this item is for consideration of an application for a term permit, #2019-0023, in name of Tomlin Energy, to use streamwater until 2070 (approximately 50 years) for use in a closed-loop hydroelectric plant to be located in Pushmataha County. He said the applicant has requested to use 33,000 acre feet (a.f.) of run off stream water per year from water that overflows the banks of the river due to terrain and other excess flows. Tomlin intends to divert excess flows from the Kiamichi River at a point located in NE/4 of SW/4 of SE/4 of Section 23, Township 2N, range 20 EIM in Pushmataha County. After notice of the application was published in three newspapers in accordance with the Board’s rules, protests were filed with the Oklahoma Water Resources Board by: Peggy Simmons Hart Miller; Larinda McLellan; Donnie and Laconia Corbin; William Redman for the Louise A. Redman Revocable Trust and the Kiamichi River Legacy Alliance (KRLA); Lauren Haygood, Susan and Dale Trainer; Debbie Leo for Miller Lake Retreat, LLC; Barbara Walker for the Walker Family Trust; and, Gerry Caslow and Joann Rymel.

Mr. Wilkins explained the process for the prehearing conference, conference order, schedule for discovery and exhibits, as well as administrative hearing dates and notification to the parties (see “Procedural History” in the proposed order, pg 1). At the hearing, the applicant presented evidence and testimony about the hydroelectric plant including the formation of two lower reservoirs and a third reservoir at the top of the hill where the plant will be located. The lower reservoir includes an impoundment for approximately 30 acres which will collect runoff to be transferred to a lower lake of approximately 200 acres in size; the impoundment lake will hold approximately 1,800 acre feet of overflow water and the lower lake will hold approximately 28,000 acre feet of water that will be transferred to an upper lake that will hold approximately 10,000 acre-feet of water. The water will be drawn through a pipe to the lower lake generating electricity and reused repeatedly; it is proposed that after the initial 33,000 acre feet of runoff water is collected, only 3,000-5,000 acre-feet per year will be diverted to replace evaporative water loss and in the plant operation.

Mr. Wilkins said at the hearing the protestants testified that all water flowing down stream is appropriated to existing users and current pending applications are considered, but no testimony provided by any protestant expert that the collection of the applied-for amount of runoff water would cause interference to the downstream appropriate or domestic uses. Protestants did argue that because the lake would be open and collect water at all times and expressed concerns the use would result in interference with existing streamwater rights; that there is possible negative environmental ramifications of chemicals and debris introduced to the river through construction of the lower lakes.



Mr. Wilkins explained that Oklahoma Streamwater statute requires the Board determine the following issues: if there is unappropriated water in the amount applied for, if the applicant has a present or future need for the water and intends to put the water to beneficial use, and the proposed use does not interfere domestic or existing appropriative uses. If the evidence is sufficient to determine these questions, then the Board must approve the permit for the appropriation of water. Furthermore, Oklahoma statute permits the Water Board to issue term permits even if there is no water available for appropriation.

Therefore, Mr. Wilkins said the hearing examiner found-- and he read the order--that application #2019-0023 in the name of Tomlin Energy shall be approved, subject to the conditions stated and otherwise imposed by law, and authorized the diversion of an initial total of 33,000 acre feet of run-off stream water from a diversion point on the Kiamichi River, and subsequently, 5,000 acre feet per year of runoff may be diverted in all subsequent years until the end of the term of the permit, which is 2070. Furthermore, the permit holder shall not divert water, it is to be derived through natural run-off and/or overflow from the river, through use of a pond system as delineated in the exhibits of the hearing, and the holder will inform the Board when the 33,000 acre feet is accomplished. Staff recommended approval of the application as presented.

Representing the applicant is Mr. Geoffrey Tabor and Mr. Dan Tomlin. Representing the protestants is Mr. Cody McPherson, Ms. Larinda McLellan, Mr. Kevin Kemper, Ms. Debbie Leo (Miller Lake Retreat), and Ms. Lauren Haygood.

Chairman Stallings invited questions by Board members of staff.

Mr. Darby asked if the use is considered consumptive use, is out of basin use allowed, and how is overflow determined. Mr. Wilkins responded it is consumptive use when taken from stream water (out of the system) but is intended for reuse, the water will remain in the basin but out of stream and considered a consumptive use, and the overflow is when there is a high flow or a flood event that water will flow overbank into the first reservoir adjacent to the river, then to the lower, larger reservoir which will be pumped to the higher reservoir and back again. There is no pump or intake structure in the river and while unusual circumstances, overflow may be determined by what the reservoirs can store and water would be transferred from the lower, smaller reservoir to the larger reservoir, which pumped amount could be reported to the Board. Mr. Darby asked if there was a similar system anywhere else in the state, and Mr. Wilkins answered he was not aware of one that did not have a pump or intake structure in the stream. Mr. Muller asked where the gages are located on the river, and if a rain event is absorbed into the midsection of the river and flattened out that people are unaware of. Mr. Wilkins replied it would depend upon the rain event, where and how much as it is wider in the stream bed, and would flatten as it travels; the upper reaches could become more flooded; and, he didn't know the mileage on the location of the gage. Chairman Stallings noted the engineering report stated the closest gaging station is 10 miles from the point of diversion.

Mr. Allen clarified there will not be equipment installed to withdraw water from river, but proposed to create retention ponds that will collect water that may have run into the Kiamichi River but for the retention ponds being built, and may be pursuing the permit in an abundance of caution because they are not actually diverting water from the stream itself. Mr. Wilkins responded that is correct, there is no pump or diversion, water is only collected during a high flow event. Mr. Darby asked how the initial 33,000 a.f. is collected, and will a weir be built. Mr. Wilkins stated the intent is to capture enough over flow water in the smaller reservoir adjacent to the river which is then transferred to the larger lake holding the larger amount of water, he did not know how many flood events it would take to collect that amount. The applicant will need to address the question regarding a weir.

Mr. Wilkins, Mr. Darby and Mr. Muller discussed the operation of the three reservoirs, i.e., the location of each of the three reservoirs, how many acre feet is the service area that will flow directly into the Kiamichi and into the three reservoirs, and whether the permit is required to have a dam safety permit. They discussed the upper reservoir will not collect water from the river, a scenario of what is required if Tomlin Energy were to build three reservoirs and fill them with a stream water permit (permits for construction of the reservoirs and use of the streamwater), the collection of water without a pump is unusual, and whether construction plans are available that showed a diversion (only maps and schematic designs were provided

regarding the reservoirs and turbines) and that there is no dam safety applications at this time. Chairman Stallings noted all design information is in the packet, and Mr. Darby asked if Tomlin owns the property and would that affect the permit. Mr. Wilkins said there may be contracts in the works, Tomlin would need to address that, but it does not affect the permit but for use of the water. Ms. Gibson added that before taking water, the applicant will need to file a "notice of completion of works" demonstrating they have sufficient access to the water, and if a dam safety application is required, it must show if the land is owned or leased; the applicant will need to meet federal requirements. Mr. Muller and Mr. Wilkins discussed the large, complicated project and what happens if the project fails at some point as regards permits subject to reduction or cancellation and inspection of the remaining structures. Mr. Darby asked if there is any limitation when or how long the applicant can collect the overflow, and Ms. Gibson responded when the applicant has captured 33,000 it is to notify the Board and will then be limited to the 5,000 acre feet annually subject to the term, and subject to reduction or cancellation if not used (see paragraph 24 of the order). There were no other questions.

2. Discussion and presentation by parties. Chairman Stallings identified Mr. Tabor representing the applicant; Mr. McPherson (Ms. McLellan stated Mr. Kemper was unable to attend and Mr. McPherson would represent the protestants), and Ms. Debbie Leo will speak for Miller Lake Retreat. He stated each would have fifteen minutes to speak, and Mr. Tabor and Mr. Tomlin would share the fifteen minutes. He invited Mr. Tabor to address the Board.

Mr. Geoffrey Tabor addressed the members and spoke on behalf of the applicant, Tomlin Energy LLC, Dan Tomlin, Jr., the principal is present on Zoom and available for questions. He said Mr. Wilkins did a great job summarizing the application and the hearing, and the hearing examiner recommended granting the permit. A significant part of the hearing was spent clarifying the applicant is not seeking 33,000 acre-feet of water per year, but an initial fill of up to 33,000 a.f. to get the plant operational, and after the initial fill and consideration of evaporation, an amount of 3,000-5,000 would be needed annually. He said notice was properly given, and an unique notice issue has arisen which he will address. The Board's stream water rules and statute allow term permits when there may not be water available for appropriation. He said three witnesses were called for testimony--Dan Tomlin to discuss the plan operation, and Jason Tutkowski of the OWRB who performed calculations as standard practice of the Board who found there was water available at the diversion point, at a downstream location--Hugo Lake. But, a negative value was found near the Oklahoma-Texas border at the bottom of the stream system regarding four massive applications solely for suburbs in Dallas and Fort Worth are taken into account. Those applications which have been sitting "stale" for 13 years and accounted for the negative value, which he knows must be taken into account, and he wanted to note that for the hearing and the Board. However, if even there is a negative value in the stream, Board rules for term permits still allow the granting of a streamwater permit if all of the other elements are met. Regarding availability, this case is unique as it deals with overflow from the banks of the Kiamichi to be captured in a series of ponds; no dams will be placed in the river, no pumps or type of diversionary structure. Mr. Tabor described how the plant is designed to work and the movement of captured water pumped up and then back between ponds generating power. He said Dr. Blaine Reely, P.E., whose report is provided in the meeting packet, reviewed Mr. Tutkowski's calculations on the overflow issue and found there would be significant flooding events, reviewed the nearby gage and distance to the proposed diversion point, and testified raw water would be available based on historic trends. Based on Dr. Reely's report and Mr. Tutkowski's calculation on availability, and taking into account domestic uses and prior appropriative uses, the hearing examiner found there was water available for the applicant's specific use and there would be no interference. He spoke to the present and future need for the water and regarding beneficial use said this is a significant opportunity for Pushmataha County. They are excited to bring permanent jobs to southeast Oklahoma; there are many good people in Pushmataha County, and this will bring a power project to this part of the state they have not had before for potential tax revenue, schools; a billion-dollar project that if allowed, will be around for a long time.

Mr. Tabor closed on the issue of a motion filed by the protestants alerting the Board of the Supreme Court notice issue regarding publication in local newspapers. He said they gave notice under the statute at

the time and complied with the rules with no reason to know what might happen in the future. The Supreme Court decision has not been finalized; no mandate issued and he did not believe there would a retroactive effect on this application. However, Tomlin recommended and he asked that the Board issue notice to all affected landowners or potential protestants along the Kiamichi near the proposed plant in accordance with the new Supreme Court decision. He believed it in everyone's best interest to issue notice under the new standards, anyone that might want an opportunity to have a say can do so, they will deal with any additional protesting parties; reconvene a hearing, hear new evidence, etc., and stamp out the issue and it won't have to be litigated on appeal, and would prevent arguing in the Supreme Court. It is a unique issue, and is peculiar timing but in the abundance of caution he would ask the Board to comply with the request.

Questions by the Board members included Mr. Darby asking about Tomlin's ownership of the property and the time frame to collect the initial 33,000 a.f., and Mr. Tabor's response the property is under contract, the owners understand the time required going through the process and it involves a lot of acreage. Referencing Dr. Reely's report, he said it would depend on rainfall and flooding activity in a given year on collecting the water. Mr. Allen commented the Supreme Court, as of this morning, has not issued an opinion and it would not be prudent for the Board to rely upon in making a decision, and unlike the Purcell decision where the protestants did not have an opportunity to attend a hearing, and in this case there was opportunity. Mr. Tabor responded there were quite a few protestants and notice was given in three newspapers and that would be his argument if litigated. Mr. Muller asked how far from the river the 1,800 acre-foot impoundment is located and Mr. Tomlin responded 200 yards, the top of the impoundment and the top of the river is about the same so that overflow from the river would go into the impoundment area. He explained the operation and how they determined the amount of water needed. Mr. Tomlin said they wanted to be sure not to impact the river and there are no pipes, etc., the water would overflow into the lower reservoir and pumped into the lower lake and a gage in the lower reservoir would tell them how much water is taken into the lower lake. The project cost is \$1.5 billion; they determined the operation of the plant on 8,000-10,000 a.f. and could operate the plant for five years in the event of drought with the request for the initial 28,000 a.f., and 5,000 a.f. and they can still operate the plant without touching the river and only using rain and overflow. They estimate 2,000 a.f. in evaporation, and expecting groundwater and rain would only withdraw as much as is needed. He said that if it doesn't rain and doesn't flood they won't be taking any water, so it could be one year, or 3-4 years filling initially and still operate the plant, and then up to 5,000 a.f. or zero the other years. Mr. Muller and Mr. Tomlin discussed the impoundments, that there is no dam but the area will be created by digging down to the same level, the top of the reservoir is at ground level and the same level as the river bank. Regarding concerns about erosion, Mr. Tomlin stated there would be riprap and the water coming in over the length of the impoundment area about 500-1,000 feet long and overflow from the two lakes will go back into the river over rocks or pavement. Mr. Allen and Mr. Tomlin discussed the environmental concerns and the federal process involving NEPA, Tribal, EPA, and FERC reviews, (1-2 years each), and that the OWRB is not the sole protector of all the environmental issues in this matter, there are a number of regulatory agencies. Mr. Allen also discussed that the court decision is not prescriptive about how to notice; however, the Board instructs applicants to give notice at their expense, so is Tomlin asking the Board to take on additional burden. Mr. Tabor responded Tomlin will make the notice as it initially did under the statute. Mr. Darby asked about water quality monitoring of the impoundments and Mr. Tomlin said he doesn't know the answer, that if there is a need it would certainly be done, and would probably done through the application that goes through FERC. He also addressed the concern about chemicals, there will not be chemicals added to the water.

There were no other questions by the Board, and Chairman Stallings instructed the presentation by protestants, allowing 15 minutes for Mr. McPherson on behalf of Mr. Kemper's clients and Mr. Redman; Ms. Haygood; and Ms. Leo. Ms. Haygood stated there are questions by others on Zoom and she asked if they could speak or how that would be addressed. Ms. Gibson responded that the only protestants that are able to speak to this matter are those who participated in the hearing, and they may speak either through Zoom or in person. There is no general public participation to answer questions on Zoom.

Mr. McPherson addressed the members stating the applicant is asking the Board to take unprecedented action on a term permit when it is undisputed there is no available water upstream of the diversion point. He spoke of Mr. Tutkowski's testimony of the Board having issued a term permit when there is no available water. He said the Board's rules state, unless otherwise determined, water for hydropower is to be taken from a reservoir, and this is an application for stream water. He said the process has been a waste of time and the application should be denied on that basis. He said the impoundment lake will never be closed to receive water from the Kiamichi River and data presented by the applicant regarding flood event of the river, 5 of the 6 years the permit maximum will be met by May of that year which would mean they would fill and deplete the impoundment lake more than 15 times to reach the 33,000 a.f. He said with no means to prevent the impoundment lake from receiving overflow water the rest of the year, the permit limit would be exceeded, disputing being able to show a present or future need for the amount of water they will take. Regarding the notice issue, Mr. McPherson stated the Supreme Court issued a cataclysmic ruling with regard to the Board's notice rules and that they are unconstitutional insofar as stream water rules apply. He argued that in response to Mr. Allen's comments the protestants have had their day in court on this issue does not mean the permit will be valid if issued. And, referencing the ruling in the Purcell case, he believed the Supreme Court will find if this permit is issued and taken for appeal the matter will be back before the Board and Tomlin will be required to issue notice to all affected landowners along the Kiamichi River. The right to use streamwater is a vested right of the landowner, and the right to due process and notice and the Supreme Court says notice in a local newspaper is insufficient notice, and the Board will have to develop new rules for landowners downstream of the diversion point. He argued flood water and traditional flow are used to calculate availability, and whether use will impede or reduce water for downstream users. He said the Board's testimony is the downstream users will be reduced if the permit is issued and he argued the only instance the Board can issue a term permit if there is no impact downstream. He concluded stating the application should be denied and at a minimum, the proceeding should be stayed until the notice rules are complied with.

Chairman Stallings confirmed Mr. Kemper is not in the meeting, and Mr. McPherson stated that is correct. Chairman Stallings asked Ms. Debbie Leo to address the Board on behalf of the Miller Lake Retreat.

Ms. Leo addressed her concern about chemicals on the river and that the river is the only water supply for Pushmataha County and is finite. She argued the term "diversion" has been used by Mr. Tomlin as to "pull out water" and that should be defined. She asked the permit be denied because the three ponds for the closed loop system will have a chemical cocktail of conditioning agents for metal components and she asked to present a listing -- which General Counsel Gibson asked if that had been presented at the hearing. Ms. Leo stated she spoke about it but it was not presented; Ms. Gibson allowed her to speak to the matter but not present a list of chemicals. She contended the 99% of the chemicals on the list are considered hazardous. Ms. Leo also addressed concerns of clay lining of the ponds being inadequate, that the applicant has not met all requirements of the law, that overflow water re-entering the river would allow a mix with the pond water adding toxins to the watershed that are unsafe for the environment and fish. She said a closed-loop system protects the project and keeps containment of chemical treatment to prevent corrosion and scaling, and protection of the environment is required by the permitting of the OWRB. She said Mr. Tomlin disputed using chemicals, and she appealed to the Board to ask questions, she was concerned there would be no way to monitor overflow water, and she asked the Board to deny the permit application.

Mr. Bill Redman, representing the Kiamichi River Legacy Alliance and Louise RedmanTrust, asked to speak. Ms. Gibson asked if Mr. Redman was Mr. McPherson's client; he is. Chairman Stallings said he had asked they divide their time; however, he allowed an additional two minutes. Mr. Redman stated there is no similar project in the state, Mr. Tomlin does not own the land, these are not engineering designs, there is no dam safety permit, and he was concerned what would happen if the company dissolves. He contended the upper lake is not in the Kiamichi watershed but in the Little River watershed, and he was also concerned about the clay lining of the ponds and leaching of bentonite, and the use of chemicals that are not monitored. Chairman Stallings stated Mr. Redman's time had expired. Mr. Redman noted the order states

"groundwater" rather than "streamwater" and asked the permit be denied due to inconsistencies in the application.

Chairman Stallings allowed Ms. Haygood two minutes who addressed the members regarding Exhibit 3, hydroelectric generators in the US and Tomlin Energy is located in Texas and should build there; Exhibit 1 regarding groundwater well depth and the hydroelectric holding pond would be in direct conflict of the groundwater recharge. She discussed the location of gages for Sardis and Tuskahoma lakes and that Tomlin Energy's modeling is inaccurate, and that the people of the area make their livelihood from the runoff of the river and there will be a negative impact to the area and she asked the Board not to grant the permit.

There were no other comments by protestants.

Chairman Stallings stated the Board should vote, or enter executive session, and he asked the pleasure of the Board. Mr. Muller stated there is much discussion to be done which he suggested be done in open session. There were no other comments.

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.

Chairman Stallings commented he felt the discussion in Executive Session might be a better venue, and he moved the Board enter Executive Session. Mr. Allen seconded the motion.

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

Mr. Perryman, webinar administrator, announced he would place the Zoom webinar on hold. Mr. Muller asked and Ms. Gibson stated the Board will take a recess while the Board members refer to an email provided to them that contains a conference call number and instructions for the Executive Session; members will join the conference at 11:45 a.m.

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

(c) Executive Session, if authorized.

The members entered Executive Session at 11:50 a.m.

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

Upon resuming the Zoom webinar at 12:40 p.m., Mr. Darby moved the Board return to open session, and Mr. Drake seconded. Chairman Stallings called for the vote.

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

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

Chairman Stallings asked if there were any comments by the Board, or he would entertain a motion.

Mr. Allen moved to approve the permit as presented, and Ms. Landess seconded. Ms. Gibson asked the motion be amended to include the change to the heading of the order from use of "groundwater" to use of "streamwater." Mr. Allen asked Ms. Gibson to state the revision. Ms. Gibson stated the amendment would

revise the heading of the matter from permit to use groundwater to permit to use streamwater. Mr. Allen proposed to approve the permit as revised by Ms. Gibson, and Ms. Landess seconded the revision.

Chairman Stallings called for the vote.

AYE: Allen, Landess, Muller, Gorman, Drake, Stallings

NAY: Darby

ABSTAIN: None

ABSENT: Castillo, Melton

Chairman Stallings announced the motion is approved, and the permit for Tomlin Energy is approved.

C. Consideration of and Possible Action on Items Transferred from Summary Disposition Agenda, if any. There were no items transferred from the Summary Disposition for the Board's consideration.

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

**7. ADJOURNMENT**

There being no further business, Chairman Stallings adjourned the regular meeting of the Oklahoma Water Resources Board at 12:40 p.m. on October 20, 2020

**OKLAHOMA WATER RESOURCES BOARD**

\_\_\_\_\_(signature stamp)\_\_\_\_\_  
Robert L. Stallings, Jr., Chairman

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

\_\_\_\_\_  
Charles Darby

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

\_\_\_\_\_  
Jennifer Castillo

\_\_\_\_\_  
Suzanne V. Landess

\_\_\_\_\_  
Matt Muller

\_\_\_\_\_  
Thomas A. Gorman

**ATTEST:**

\_\_\_\_\_(signature stamp)\_\_\_\_\_  
Bob Drake, Secretary  
(SEAL)

Members voted to approve the October 20, 2020, meeting minutes at the November 10, 2020, Board meeting which was held via videoconference and were not present to sign the document.