

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

March 16, 2021

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 March 16, 2021, 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 March 12, 2021, 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 welcomed everyone to the meeting and asked for the roll call of members who participated in the meeting via video or telephone conferencing.

Board Members Present and participated via Zoom Webinar

Robert L. Stallings, Jr., Chairman
Stephen Allen, Vice Chairman
Bob Drake, Secretary
Jennifer Castillo
Charles Darby
Thomas A. Gorman
Suzanne Landess
Robert L. Melton
Matt Muller

Board Members Absent

None

Staff Members Present and Participated via Zoom Webinar

Julie Cunningham, Executive Director
Sara Gibson, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Bill Cauthron, Chief, Water Quality Programs Division
Chris Neel, Assistant Chief, Planning and Management Division
Mary Schooley, Executive Secretary

Others Presenting via Zoom conferencing

Mark Walker, Crowe Dunlevy, Oklahoma City, OK
Lauren Barghols Hanna, Phillips Murrah, Oklahoma City, OK

B. Discussion, Amendments, and Vote to Approve Official Minutes of the February 16, 2021, Regular Meeting. Chairman Stallings stated members were provided the draft minutes of the February 16, 2021, meeting and asked if there were any discussion or amendments. There were no comments or questions. He stated he would entertain a motion to approve the February 16, 2021, regular meeting minutes.

Mr. Darby moved to approve the minutes of the February 16, 2021, Regular Meeting, and Ms. Castillo seconded. There was no discussion, and Chairman Stallings called for the vote.

AYE: Gorman, Drake, Muller, Castillo, Landess, Darby, Stallings

NAY: None

ABSTAIN: Allen, Melton

ABSENT: None

C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, welcomed everyone to the meeting and updated the members on the status of the agency in regard to the COVID-19 situation. On March 12, Governor Stitt extended the executive order declaring a state of emergency which will be in effect for 30 days after the expiration date. The Board will meet virtually as long as the state of emergency is in effect; 20% of the population has been vaccinated, and the state is increasing the distribution rollout.

Regarding calendar notes, Ms. Cunningham informed the members about the Agency Leaders meeting regarding input for the 2025 Oklahoma Comprehensive Water Plan kickoff meeting held February 24, the first-ever meeting held with agency directors with discussion focused on how water is related to their business and water needs for the future that affect their agency. Cabinet Secretaries Blayne Arthur, Agriculture; and Ken Wagner, Energy & Environment attended as well as directors of Commerce, Department of Wildlife, among other representatives were the Department of Mines, Department of Environmental Quality, the Grand River Dam Authority, Corporation Commission, Conservation Commission, Department of Tourism, Oklahoma Municipal Utilities Authority, Oklahoma Energy Resources Board, and Oklahoma Climate Survey. Major themes from the discussion included planning, emergency response, drought and flood funding, increasing infrastructure resiliency i.e., dam capacity, storm water management, and water and waste water; also, long-term local and regional planning efforts, development of non-traditional sources waters, i.e., Water for 2060 Act, produced water, water reuse, modernizing systems, and online applications.

A March 4th meeting with the Oklahoma Strategic Alliance added the Oklahoma Municipal League as a new partner. Other members are the Governor's Office, Office of the Secretary of Energy and Environment, the OWRB, the DEQ, and the ORWA. The OML and ORWA were key partners in the support of the Credit Enhancement legislation for the state question in 2012 securing \$300 million to further leverage loan dollars to address the \$82 billion water and wastewater needs identified in the 2012 Comprehensive Water Plan. On March 9, the OWRB Staff met with Senator Inhofe's office regarding the agency's funding priorities, Drinking Water Infrastructure Act, and reauthorization of the WRDA legislation, and dam safety program funding. She said there is a great relationship with the Senator's staff and she appreciated their reaching out to the OWRB regarding Congressional measure language. Regarding the State Legislature, March 11 is the deadline for measure to pass from their Chamber of origin, and she referred to the bill tracking document provided to the members. There will be a Congressional hearing by the Environment and Public Works Committee examining the challenges regarding drinking water and waste water infrastructure projects; Shelly Chard, Director of Water Quality at DEQ, will be presenting to the Committee.

Ms. Cunningham concluded her report. There were no questions by members.

D. Financial Update

1. Budget Report. Mr. Cleve Pierce presented the budget report which is for the time period ending in February 2021. He said the agency has spent 65% of the appropriated budget, leaving 35%; has spent 41% of the revolving fund leaving 59%; has spent 34% of federal dollars with 76% remaining, and overall,

the budget remaining stands at 56%, with 33% of the fiscal year remaining. He said last year at this time the agency had 47% of the budget remaining. The lack of spending due to COVID is beginning to show now, the pandemic did not affect the economy as much as thought, and the agency has been very cautious about not spending. Staff is confident the General Revenue will not be cut for this fiscal year; the agency will be spending on filling needed staff positions and IT initiatives.

Mr. Pierce concluded the report. There were no questions.

2. FINANCIAL ASSISTANCE DIVISION

Chairman Stallings stated the Board would consider the bond program item first.

G. Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds in an Aggregate Principal Amount not to Exceed \$250,000,000; at a Net Interest Cost not to Exceed Six Percent (6.0%); Providing for the Issuance of Said Bonds in One or More Series; Approving and Authorizing Execution of a Series 2021A Supplemental Bond Resolution and, if Deemed Advisable, an Additional Supplemental Bond Resolution for Each Additional Series; Waiving Competitive Bidding on the Bonds and Authorizing the sale Thereof by Negotiation and at a Discount Pursuant to the Terms of a Contract of Purchase Pertaining Thereto; Approving a Preliminary Official Statement with Respect to Said Bonds; Authorizing the Chairman or Vice Chairman to Deem Preliminary Official Statements for Additional Series of Bonds Final; Directing Deposit of Proceeds Derived from the Issuance of the Bonds in the State Treasury and Requesting the State Treasurer to Remit Such Proceeds to the Bond Trustee; Ratifying and Approving the Form of Promissory Note, Loan Agreement, and Note Purchase Agreement to be Executed by Borrowers in the State Loan Program; Authorizing Execution of Such Other and Further Instruments, Certificates and Documents as may be Required for the Issuance of the Bonds; Directing Payment of Costs of Issuance and Containing Other Provisions Relating to the Issuance of the Bonds. Recommended for Approval. Mr. Freeman stated that this item is for consideration of the resolution requesting approval of the issuance of up to \$250 million dollars in State Loan Program Revenue Bonds, also known as the FAP. In August 2020, the Board approved a resolution for the issuance of up to \$150 million dollars in FAP bonds, and since that time, the Board has closed five FAP bond issues totaling \$112,370,000.00 that funded loans for Broken Arrow, Oklahoma City, Heavener, Atoka, Choctaw, and Harrah. Mr. Freeman stated the five FAP loans on today's agenda will also be closed under the August issue; therefore, staff is recommending the additional authorization in anticipation of additional FAP loan requests. He said the resolution before the Board authorizes the issuance of FAP bonds in one or more series, provides for the approval of the Preliminary Official Statement, authorizes the Chairman or Vice Chairman to deem Preliminary Official Statements for additional series of bonds final, provides for the sale of the bonds to be on a negotiated basis, directs the loan proceeds to be deposited in the State Treasury, and then be remitted to BancFirst as the Board's Trustee, ratifies the form of promissory note, loan agreement and note purchasing agreement. In addition, the resolution authorizes the execution of other documents required for the issuance of the bonds and directs payment for the cost of issuance.

Staff recommended approval of the resolution. Mr. Freeman said Mr. Zack Robinson of BOK Financial Securities serves as senior underwriter for the FAP Loan Program, and Jacob Batchelor, Bond Counsel for the FAP Loan Program, are available for questions.

Chairman Stallings stated the item is for issuing \$250 million dollars in bonds, and asked if there were questions. There were no questions by members, and Chairman Stallings stated he would entertain a motion.

Mr. Melton moved to approve the resolution approving the issuance of FAP Loan Program bonds, and Mr. Darby seconded. Chairman Stallings called for the vote.

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

A. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Wellston Public Works Authority, Lincoln County. Recommended for Approval. Mr. Freeman said this item is a \$2,695,000.00 loan request from the Wellston Public Works Authority located in Lincoln County. The Authority has requested the loan for a new lift station and water and sewer line replacement. In addition, the proceeds will refinance two Rural Development loans which were for water and sewer system improvements, as well as a bank loan for water improvements. Mr. Freeman noted the loan provisions for the FAP loan agreement, and said the Authority's water and sewer connections have increased by approximately 14% over the past ten years; the debt coverage ratio stands at approximately 2.17 -times. Staff recommended approval of the loan request.

Chairman Stallings said there is a request from the Wellston PWA for infrastructure improvements, and he would entertain a motion.

Mr. Drake moved to approve the FAP funding to the Wellston PWA, and Mr. Allen seconded. Chairman Stallings called for the vote.

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

B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Hartshorne Public Works Authority, Pittsburg County. Recommended for Approval. Mr. Freeman said this item is a \$2,775,000.00 loan request from the Hartshorne Public Works Authority located in Pittsburg County. The PWA is requesting the loan to refinance two Rural Development Loans for rehabilitating its water treatment plant, two new lift stations, and to replace a portion of the collection system. The loan will be funded through the FAP State Revenue Bond Loan Program, and he noted provisions of the loan agreement. By refinancing the loan, the Authority will save approximately \$465,000.00; the debt coverage ratio stands at approximately 1.93-times. Staff recommended approval of the loan request.

Mr. Freeman relayed Hartshorne comments to the Board from the Chairman of the PWA and Mayor of Hartshorne expressing gratitude to the Board for consideration of refinancing through the Financial Assistance Program. The economical savings through the program will allow Hartshorne to continue the work toward the long term goals of the city.

Chairman Stallings stated the request is a refinancing for the City of Hartshorne, and he would entertain a motion.

Mr. Allen moved approval of the FAP loan request to the Hartshorne Public Works Authority, and Ms. Castillo seconded.

Mr. Muller asked about the 30-year refinance and the age of the original project, as well as a refinance item on the agenda, and whether the loan would be extended beyond the life of the project. Mr. Freeman responded staff does look at the useful life of the project when considering applications, both under the SRF and FAP programs.

There were no other questions, and Chairman Stallings called for the vote.

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

C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Rural Water, Sewer, Gas and Solid Waste Management District No. 4, Wagoner County. Recommended for Approval. Mr. Freeman stated to the members that this \$3,550,000.00 loan request by the Wagoner County Rural Water, Sewer, Gas and Solid Waste Management District No. 4 is to refinance a portion of the District's indebtedness which was for construction of an 8 mgd water

treatment plant. He said the original financing was through Rural Development and refinanced with a bank loan. The loan will be funded through the FAP State Bond Loan Program and Mr. Freeman noted provisions of the loan agreement. He stated the District has been a long-time loan customer of the Board's and currently has three outstanding loans with a total principal balance of approximately \$8.3 million dollars. The District's water connections have increased approximately 20% over the last ten years and its debt coverage ratio stands at approximately 2.07-times. It is estimated the District will be saving \$615,000.00 by refinancing the debt with the Board. Staff recommended approval of the refinance request.

Chairman Stallings stated there is a refinancing request by the Wagoner County District, and he asked if there were questions. There were none, and he stated he would entertain a motion.

Mr. Melton moved to approve the FAP loan to the Wagoner County Rural Water, Sewer, Gas, and Solid Waste Management District. Mr. Darby seconded. Chairman Stallings called for the vote.

AYE: Gorman, Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: None

D. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Cleveland Municipal Authority, Pawnee County. Recommended for Approval. Mr. Freeman stated this loan request by the Cleveland Municipal Authority located in Cleveland County is in the amount of \$3,725,000.00 to supplement funds from an \$8,565,000.00 loan obtained from the Board in June 2018. The original loan and the supplemental loan are for a water treatment plant, water storage tank, waste water lift station, an office, chemical storage, and a lab building. In addition, loan proceeds will be used for the installation of an AMR meter system and backup generator. Since the loan closed, the Authority has been proceeding with work on the AMR project and engineering on the treatment plant. The Authority's original plan was to rehabilitate and utilize portions of the water plant; however, after additional study, it was determined to be in the Authority's best interest to build a completely new water treatment facility ultimately resulting in an easier to operate facility with lower operations and maintenance costs. Mr. Freeman stated the loan would be funded through the FAP State Bond Revenue Loan Program, and he noted provisions of the loan agreement. The Authority's debt coverage ratio stands at 1.59-times. Staff recommended approval of the loan request.

Chairman Stallings stated the Cleveland MA has requested \$3.7 million to continue to upgrade its water system, and he asked for questions. There were none, he entertained a motion.

Mr. Drake moved to approve the FAP funding to the Cleveland MA, and Ms. Landess seconded. Chairman Stallings called for the vote.

AYE: Gorman, Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: None

E. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for McLoud Public Works Authority, Pottawatomie County. Recommended for Approval. Mr. Freeman stated this item is a \$6,475,000.00 loan request from McLoud Public Works Authority located in Pottawatomie County. He said the PWA is requesting the loan for wastewater treatment system improvements which includes installation of new headworks, two new lift stations, and new sewer lines. The loan will be funded through the FAP State Revenue Bond Loan Program and he noted provisions of the loan agreement. The PWA water and sewer connections have increased by approximately 5% over the past ten years, and its debt coverage ratio stands at 1.75-times. Staff recommended approval.

Mr. Freeman read a statement from Mr. Buck Day, Manager for the PWA, expressing the Authority's and Citizen's appreciation to the OWRB Staff for assisting and providing low interest rate financing to make various improvements to the water system. The Authority has used the OWRB's SRF loan program in the

past allowing improvements to the system at competitive rates and terms. They are pleased to come to the Board for this project.

Chairman Stallings said this application is from the McCloud PWA for \$6.4 million for wastewater upgrades, and he asked for questions. There were no questions and he entertained a motion.

Mr. Allen moved to approve the loan request to the McCloud PWA, and Ms. Castillo seconded.

AYE: Gorman, Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: None

F. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Shawnee Municipal Authority, Pottawatomie County. Recommended for Approval. Mr. Freeman said at last December's Board meeting, the Shawnee Municipal Authority was approved for a \$12 million loan to be used in conjunction with a previously approved loan. The combined funds are for the construction of a new north side sequential batch reactor wastewater treatment plant, and a south side lift station. He explained a \$1.5 million increase in the \$12 million loan is being recommended for a non-point source wetlands project which will act as a sedimentation basin to prevent sediment loading to Wes Watkins Reservoir. Mr. Freeman stated the loan will be funded through the Clean Water SRF loan program, and he noted provisions of the loan agreement. Shawnee currently has four loans outstanding with the Board with a combined balance of \$9.5 million dollars and the debt coverage ratio stands at 1.9-times. Staff recommended approval.

Chairman Stallings asked if there were questions about the upgrading the loan for the non-point source project. Mr. Melton asked the total loan amount; Mr. Freeman answered the increase will take the loan to \$13.5 million which will be used in conjunction with a \$37.9 million dollar loan originally obtained. He explained the original project was to rehabilitate both the north side and south side water treatment plants but after further evaluation, the Authority realized operations costs for two plants would be higher than building one plant and a lift station, thereby realizing operation and maintenance savings.

Mr. Muller moved to approve the increase in funding to the Shawnee MA, and Ms. Castillo seconded. Chairman Stallings called for the vote.

AYE: Gorman, Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: None

Mr. Freeman stated staff would schedule a time on a future agenda to present to the Board these types of forward-thinking projects.

Mr. Gorman departed the meeting at 10:00 a.m.

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 being no questions or discussion, Chairman Stallings stated he would entertain a motion for approval of the Summary Disposition items.

Mr. Darby moved to approve the Summary Disposition Agenda items, and Mr. Allen seconded.

Chairman Stallings called for the vote.

AYE: Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

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>
NODA				
a.	FAP-21-0002-R	Billings Public Works Authority	Noble	\$79,999.00
SWODA				
b.	FAP-21-0030-R	Gotebo Public Works Authority	Kiowa	99,250.00

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

1. No-Cost Amendment Agreement between OWRB and Office of the Secretary of Energy & Environment extending the budget/project period for the Clean Water Act
OK FY18 604(b) Water Management Planning Program Grant.

2. No-Cost Amendment Agreement between OWRB and Office of the Secretary of Energy & Environment extending the budget/project period for supplemental appropriations for Disaster Relief.

3. Intergovernmental Agreement between OWRB and Central Oklahoma Master Conservancy District to provide services including routine water quality monitoring for Lake Thunderbird.

4. Agreement between OWRB and the Oklahoma Ground Water Association (OGWA) to provide continuing education services for well drillers and pump installers.

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

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

1. Noble Research Institute, LLC, Carter County, #2004-551

2. Price Farms, LLC, Beckham County, #2011-673

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

None

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:
 - 1. Price Farms, LLC, Beckham County, #1953-104A
- J. Consideration of and Possible Action on Applications for Term Permits to Use Stream Water:
 - 1. David Sewell, Washita County, #2020-016
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
 - 1. Casey Kinchen, Grant County, #2020-018
- L. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water: None
- 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: Earls Well Service DPC-1033
 - Operator: Dustin Hatcher OP-2352
 - b. Licensee: Citation Drilling and Boring DPC-1035
 - Operator: Darrell Denton OP-2354
 - 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses
 - a. Licensee: Authentic Drilling DPC-0967
 - Operator: John Tegtmeier OP-2353
 - b. Licensee: Associated Environmental Drilling DPC-0269
 - Operator: Ben Book OP-2355
- O. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 - 1. Oklahoma Department of Transportation, Creek County, #FP-2021-01
 - 2. Oklahoma Department of Transportation, Kingfisher County, #FP-2021-02
 - 3. Oklahoma Department of Transportation, Cherokee County, #FP-2021-04
- P. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
 - 1. Frank Schaaf, City of Wilson, #FPA-003

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

A. Rules Amendments recommended for adoption in Chapter 45 – Oklahoma's Water Quality Standards

Mr. Bill Cauthron, Chief, Water Quality Programs Division, utilizing slides, presented the Chapter 45 and Chapter 46 proposed rules changes. He reviewed the proposed language presented at the February meeting by staff, stating the Chapter 45 proposed rules are the actual criterion for the Oklahoma Water Quality Standards and is where the change is for the total phosphorous criterion that relates to the Illinois River, Barren Fork, and Flint Creek. Chapter 46 changes relate to assessing support of the criterion. A water quality criterion has three components, and no changes are proposed for the magnitude, or 0.037, but there are proposed changes to the duration component to get away from a 30-day geometric mean to a rolling six-month average, and changes to the frequency.

1. Summary – Mr. Cauthron reviewed the current language and strikeout language (paragraph 2, Chapter 45, subchapter 5) regarding the proposed new additions for the Illinois River, Barren Fork, and Flint Creek which is only clean-up language to apply to the other scenic rivers. Paragraph 3 contains new language for total phosphorous for Illinois River, Barren Fork, and Flint Creek getting away from the

geometric mean and moving to a 6-month rolling average not to be exceeded more than once in a one-year period and not more than three times in a five-year period. He also reviewed the cleanup language no longer needed as the new language will apply. He showed a slide how the new rules will look if approved.

Mr. Cauthron stated a great deal of public comment was received, but staff did not hear any real concerns with the language proposed for Chapter 45, and have not heard concerns from the stakeholder outreach as part of the rule making process. He said staff recommended approval of the proposed changes to Chapter 45. Mr. Cauthron concluded his presentation, and entertained questions.

Subchapter 5. Surface Water Quality Standards

785:45-5-19. Aesthetics [AMENDED]

785:45-5-25. Implementation Policies for the Antidegradation Policy Statement
[AMENDED]

2. Questions and discussion by Board Members. There were no questions and no discussion by Board members regarding the proposed changes to Chapter 45.

3. Vote on whether to approve recommended amendments as presented or as may be revised after discussions. Chairman Stallings stated he would entertain a motion regarding the proposed changes to Title 785, Chapter 45. Mr. Darby moved to approve the proposed changes, and Ms. Castillo seconded. Chairman Stallings called for the vote.

AYE: Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

B. Rules Amendments recommended for adoption in Chapter 46 – Implementation of Oklahoma's Water Quality Standards

1. Summary – Mr. Bill Cauthron said the majority of comments received regarded the proposed changes to Chapter 46 for assessing a beneficial use, and he illustrated the cleanup language by a video slide. The actual content and substance of the rule changing the aspects identified is clean up language and only applies to the Mountain Fork, Lee Creek, and Little Lee Creek, instead of all scenic rivers. He illustrated the new language proposed for the Illinois River, Barren Fork, and Flint Creek establishing a rolling six-month arithmetic mean assessing the support for the criterion in Chapter 45. The assessment includes six consecutive months; includes four values from four of the months to avoid issues or sampling bias but using all data if collected for all the months. A minimum number of means is required, which Mr. Cauthron explained for the one-year period (item c.) and the five-year period (item d.) allowing for stopping analysis when there is enough information to determine use support, if the data is known not to support the assessment. He also reviewed language for support tests for the one-year and five-year rolling average to support the 0.037. The new language outlines how to go about doing the analysis and assessing the information available to determine use support for the aesthetics beneficial use.

Mr. Cauthron also mentioned staff received a great deal of comments that regarded "critical condition" language which at this time staff is not moving forward with that proposal and it is not included in the presentation to the Board today. Staff will continue to work with stakeholders to come to a consensus on critical condition language.

Mr. Cauthron concluded his presentation, and entertained questions.

Subchapter 15. Use Support Assessment Protocols

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

2. Questions and discussion by Board Members. Mr. Melton asked what the concerns were received in the comments. Mr. Cauthron responded by showing the proposed language and explaining the majority of the comments regarded the "55% or greater" statement. Mr. Allen asked if consensus can be reached among the stakeholders, would the critical condition language be proposed next year. Mr. Cauthron answered, yes,

he anticipated next year, and at some point critical condition will need to be addressed. The definition provided in the joint study committee final report is broad and open to interpretation. Chairman Stallings said the critical condition percentage is a big deal -- the higher the number, the more phosphorous to the stream. He said the OWRB will continue to work with Arkansas and the stakeholders along the Illinois River that are concerned, as is the OWRB. Mr. Cauthron added there are stakeholders on both sides of that issue.

3. Vote on whether to approve recommended amendments as presented or as may be revised after discussions. If there were no other questions, Chairman Stallings stated he would entertain a motion. There were no further questions.

Mr. Allen moved to approve the proposed changes to Chapter 46, and Ms. Castillo seconded. Chairman Stallings called for the vote.

AYE: Drake, Muller, Castillo, Allen, Landess, Darby, Melton, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

5. SPECIAL CONSIDERATION

A. Consideration of and Possible Action in the Matter on Application for Regular Permit to Use Groundwater No. 2018-581, Benjamin Lee Bison, LLC, Beckham County:

1. Summary – Mr. Chris Neel, Assistant Chief, Planning and Management Division, stated to the members that this item is for the consideration of an application for a regular permit to use groundwater, #2018-581 in the name of Benjamin Lee Bison, LLC, Beckham County. The Applicant has requested to withdraw 400 acre-feet per year for irrigation and agriculture utilizing three wells in Beckham County. The groundwater will be withdrawn from the North Fork of the Red River Groundwater Basin for which the maximum annual yield and equal proportionate share has been determined and each landowner is therefore entitled to one acre-foot per acre. The Applicant submitted a well exception to the 660 foot well spacing requirement for one of the wells. The Applicant will use the water to irrigate 330 acres of Bermuda grass on dedicated lands for the purpose of selling bison and required a combined pumping rate of 1,500 gallons per minute (gpm). The Applicant hired a licensed well driller to determine the most suitable location to achieve the required combined pumping rate and chose the three highest producing wells from seven test wells on the property. According to OWRB records, all test wells were drilled to a depth of 155 feet below the land surface. Mr. Neel stated the record showed the Applicant has met the four points of groundwater law: provided evidence of a ownership documentation and executed lease and testimony to 400 acres of dedicated land, the land overlies a fresh groundwater basin, irrigation and agriculture is a beneficial use, and waste will not occur: No evidence was produced by either party regarding waste by pollution, and based on the findings of fact no waste by pollution will occur, and no evidence that waste by depletion would occur by use of this permit. In the matter of the well spacing exception, applicant must show that completing a new well that would satisfy the spacing requirement (785:30-6(a)) would be inequitable or unreasonable. The Applicant failed to present substantial, competent evidence that the amount of groundwater available in locations that would meet the spacing requirement is insufficient.

Mr. Neel stated the Protestant is only protesting well number one, approximately 150 feet to his well and subject to the well spacing requirement. The Protestant is concerned if applicant is granted use of well number one, his water level will drop and could increase operating costs. The Applicant's well driller testified the aquifer is thinner on the south side of the Applicant's property and that the well, as drilled, provided the best results to withdraw the amount of water requested. However, the Protestant's consultant testified that in addition to wells number two and three, the test holes further than 660 feet on the Applicant's property would provide the requested amount. No additional evidence was supplied by applicant to show an inequitable cost would incur if the well exception was not granted. In addition, there was no further

evidence the two wells outside the spacing requirements could not run for longer periods of time or pump more than one time per week to satisfy the amount of water needed by the Applicant. The hearing examiner determined the Applicant has met the requirements of the Oklahoma Groundwater Law and that the permit should be issued; however, the hearing examiner denied the request for a well spacing requirement. Staff recommended approval of the Findings of Fact, Conclusions of Law, and Board Order including denying the well spacing exception.

Mr. Neel stated representing the protestant is Mr. Mark Walker of Crow Dunlevy. Ms. Lauren Barghols Hanna, Phillips Murrah, represented the Applicant. Prior to presentation by the parties, Chairman Stallings asked if there were questions by the Board Members. Mr. Allen asked for clarification that the Applicant's water needs can be met by changing the operations of wells two and three without having to drill another well in a different location, and Mr. Neel responded that is correct.

2. Discussion and presentation by parties. Chairman Stallings invited Ms. Hanna to speak for the Applicant (Mr. Puckett) followed by Mr. Walker for the Protestant (Mr. Thompson). He asked each presentation to be within five minutes.

Ms. Hanna addressed the Board and stated the Applicant relied on the well driller to provide the three locations to meet the 1,500 gpm minimum to provide for the herd of bison that is on the property. He was unaware the one well would be on the boundary and unaware of the Board's rules, and located the well where the best water is located. The hearing examiner heard testimony about the vein of water in the northeast part of the property. Mr. Puckett did not deny it is possible to obtain water from the other locations, but these three locations are the best to obtain the 1,500 gpm. Mr. Puckett relied on the well driller's expertise and he shouldn't be penalized by having to move well number one to a different location as the cost is significant. She added there is no conscious waste by pollution or depletion and wells number two and three should be granted, and well number one should also be approved given the circumstances.

Mr. Walker addressed the Board members stating that under the Board's location exception rules, the applicant bears the burden of proof to demonstrate all the evidence of the location exception, including that water of a sufficient volume could not be obtained at the legal spacing location, and this is where the Applicant failed. The test holes drilled demonstrated multiple locations that the Applicant could have drilled to obtain more than sufficient water for his needs, which the Applicant knew before drilling the wells. He said by the time the Applicant drilled the wells, his client had already drilled his well; that well was there and the Applicant knew about it. He contended the Applicant had been told prior to drilling well number one that a location exception should be obtained; there is plenty of water in legal locations but he chose the drill the well 150 feet from his client. He said the spacing at 660 feet and the adverse effect has been demonstrated, and the additional cost by the Applicant should not be taken into account. He said he presented evidence at the hearing the Applicant had produced well number one without a permit haven been told by the Board, and the Board should look at the prior conduct in deciding whether to grant the permit. He stated he showed videos of the applicant producing the well without a permit and the Applicant responded he was using a computer and didn't know were turning on the well, but it was disabled as of October 3, 2020. Mr. Walker stated he presented evidence they had produced the well on multiple occasions after October 3rd after they said it had been disabled. He stated he thought the record does show waste and the permit should not be granted as to wells two and three. Then he added that two weeks ago the Applicant turned the well back on. However, Ms. Hanna objected that is new evidence which the rules state cannot be brought before the Board. Chairman Stallings stated that new testimony is not admissible. Mr. Walker persisted the well was used for irrigation when the Applicant knew it was not permitted and he offered a video, that it has been observed, and the evidence has shown a blatant disregard for the rules. He requested the Board deny the permit in its entirety. Ms. Sara Gibson, OWRB General Counsel, stated that any evidence by Mr. Walker of post hearing activity is not included in the record before the Board and cannot be considered as part of the decision-making process.

Chairman Stallings asked if there were any questions by the Board. Mr. Allen asked Mr. Walker for clarification who provided the notice for an exception on well number one for the 660 feet. Mr. Walker responded it was an email from the OWRB to the Applicant the well was not at a legal location, and would

have to get an exception if he proceeded. Ms. Hanna stated the record showed the email was sent two days before the well was completed, and there was evidence presented the well was started prior to the email being sent.

Chairman Stallings asked if there were other questions; there were no questions. He said the Board could enter executive session, or consider a vote at this time, and he would entertain a motion for either. Mr. Drake state he preferred to consider the matter now. Chairman Stallings stated a motion to approve the permit is required.

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.

Mr. Muller moved to concur with the hearing examiner and approve the order as presented. Mr. Darby seconded the motion. Chairman Stallings called for the vote.

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

B. Consideration of and Possible Action on Items Transferred from the 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 or any revised agenda.

There were no New Business items for the Board's consideration. Chairman Stallings stated the next meeting will be held April 20, 2021.

7. ADJOURNMENT

There being no further business, Chairman Stallings adjourned the Regular Meeting of the Oklahoma Water Resources Board at 10:45 a.m. on March 16, 2021.

OKLAHOMA WATER RESOURCES BOARD

_____/s/_____
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 March 16, 2021, meeting minutes at the April 20, 2021, Board meeting which was held via videoconference and were not present to sign the document.