

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

January 18, 2022

1. CALL TO ORDER

The Regular Meeting of the Oklahoma Water Resources Board was called to order by Chairman Matt Muller, at 9:30 a.m. on January 18, 2022, in the second floor Board Room of the Oklahoma Water Resources Board located at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma, 73118. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on January 14, 2022, at 8:30 a.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 Matt Muller welcomed everyone to the meeting and asked for the roll call of members.

Board Members Present

Matt Muller, Chairman
Charles Darby, Vice Chairman
Jennifer Castillo, Secretary
Ron Justice
Suzanne Landess
Robert L. Melton
Thomas A. Gorman
Bob Latham
Robert L. Stallings, Jr.

Staff Members Present

Sara Gibson, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Bill Cauthron, Chief, Water Quality Programs Division
Chris Neel, Chief, Planning and Management Division
Cleve Pierce, Chief, Administrative Services Division
Stephany Lively, Executive Secretary

Others Attending

Jeff Everett, OG&E
Jerin Presley, Oklahoma Medical Marijuana Authority
Marla Peek, Oklahoma Farm Bureau

B. Discussion, Amendments, and Vote to Approve Official Minutes of the December 21, 2021 Regular Meeting. Chairman Matt Muller stated members were provided the draft minutes of the December 21, 2021, meeting and asked the Board's pleasure regarding the minutes. There were no comments or amendments.

Mr. Melton moved to approve the minutes of the December 21, 2021, Regular Meeting, and Ms. Castillo seconded. Chairman Muller called for the vote.

AYE: Landess, Justice, Gorman, Castillo, Melton, Darby, Muller

NAY:

ABSTAIN: Stallings, Latham

ABSENT:

C. Financial Update

1. Budget Report. Mr. Cleve Pierce presented the budget report for the period ending December 31, 2021. He said for the period, the agency has spent 29% of the appropriated budget, leaving 71%; has spent 29% of the revolving budget leaving 71%; and has spent 16% of federal dollars with 84% remaining. Overall, the total budget remaining is 73% with 50% of the fiscal year remaining. He stated these are larger percentages than last year's percentages.

Mr. Pierce concluded his report and Mr. Muller asked if anyone had any questions. There were none.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Guthrie Public Works, Logan County. Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the members that the first item is a \$4.1 million dollar loan request from the Guthrie Public Works Authority. He advised in December 2020 the Board approved \$16 million in loan funds for the construction of a new energy efficient sequential batch reactor wastewater treatment plant, a lift station, retro fit of a flow equalization basin, sludge management facilities, an ultra violet disinfection system, and a lab building. Mr. Freeman stated Guthrie intended to utilize around \$4 million of local funds to go along with the original funding for the project. Subsequent to this, they determined to utilize the local funds for other projects and request the additional loan funds for the wastewater project.

Mr. Freeman stated the loan will be funded through the clean water SRF loan program, noted the provisions of the loan agreement, and said the debt coverage ration stands at 2.02 times. Staff recommended approval of the loan request.

Mr. Freeman provided the following from Guthrie Mayor, Steve Gentling, "The city of Guthrie would like to express appreciation for your consideration of the loan application. The city recognizes the significant advantages of the Board's financing programs."

There were no questions and Chairman Muller asked the Board its pleasure. Mr. Darby moved to approve the loan, and Mr. Stallings seconded. There were no further questions or discussions and Mr. Muller called for the vote.

AYE: Landess, Stallings, Justice, Latham, Gorman, Castillo, Melton, Darby, Muller
NAY: None
ABSTAIN: None
ABSENT: None

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 transfer 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 Muller asked if there were changes to the Summary Disposition Agenda. There were none; he asked the Board's pleasure regarding the Summary Disposition Agenda items.

Ms. Castillo moved to approve the Summary Disposition Agenda items, and Mr. Darby seconded. Chairman Muller called for the vote

AYE: Landess, Stallings, Justice, Latham, Gorman, Castillo, Melton, Darby, Muller
 NAY: None
 ABSTAIN: None
 ABSENT: None

The following items were approved:

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

1. Rural Economic Action Plan (REAP) Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
EODD				
a.	FAP-22-0001-R	Porum Public Works Authority	Muskogee	\$99,999.00
GGEDA				
b.	FAP-22-0066-R	Locust Grove Public Works Authority	Mayes	99,999.00
KEDDO				
c.	FAP-22-0067-R	Wright City Public Works Authority	McCurtain	99,000.00
NODA				
d.	FAP-22-0009-R	Kaw City Municipal Authority	Kay	99,999.00
OEDA				
e.	FAP-22-0006-R	Tyrone Public Works Authority	Texas	31,000.00
OEDA				
f.	FAP-22-0076-R	Taloga Public Works Authority	Dewey	25,900.00
SODA				
g.	FAP-22-0051-R	Caddo Public Works Authority	Bryan	50,000.00

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

1. Interagency Agreement Amendment between OWRB and Office of the Secretary of Energy & Environment extending the performance period for the Clean Water Act FY 2019 §604(b) Water Management Planning Program Grant.
2. Amendment to Sponsored Research Agreement between OWRB and the University of Oklahoma to extend the period of performance for Database Compilation and GeoSpatial Analysis of Produced Water Quality in Oklahoma.
3. Sponsored Research Agreement Amendment with Oklahoma State University providing a no-cost time extension for Chemical Characterization of Produced Water Using Nuclear Magnetic Resonance (NMR) Analysis to Identify Compound Classes.
4. Professional Engineering Services Agreement between OWRB and Lynker Technologies to make modifications and run modeling scenarios in support of the Upper Red River Basin

Study, using the North Fork of the Red River model developed by Lynker within the CRAM modeling system.

5. Ratification agreement between OWRB and DATABANK, IMX, LLC for payment of services.

- E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
 1. Braden and Raegan Cunningham, Harmon County, #2021-539

- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
 1. Troy and Rebecca Lynn Lotspeich Revocable Living Trusts, Beaver County, #1974-248

- 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:
 1. Black Pearl Properties LLC, Love County, #1976-733
 2. Bandy and Amy Silk, Beckham County, #1996-529

- 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:

None

- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
 1. K3 Holdings LLC, Washington County, #2021-007
 2. 737 LLC, Okmulgee County, #2021-009

- L. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water:

None

- M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:
 1. New Licenses, Accompanying Operator Certificates and Activities:

None
 2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
 - a. Licensee: Geotechnical Drilling LLC DPC-1003
Operator: Arvel Williams OP-1551

- N. Consideration of and Possible Action on Dam and Reservoir Construction:

None.

- O. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:
 1. Magellan Pipeline Company LP, Lincoln County, #FP-2021-16

- P. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:
None.

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

Chairman Muller

- A. Staff Presentations and Public Comment on Amendments to Permanent Rules Proposed for Adoption During 2022.

This public hearing was an opportunity for interested persons to present oral or written argument, data, and views on the new and amended rules of the Board which are being proposed for Title 785 of the Oklahoma Administrative Code specified below.

Other than this public hearing, no action was taken by the Board on the proposed rules at the January 18, 2022 meeting. The comment period for proposed amendments to chapters 5 and 35 expired at the conclusion of the day, January 18, 2022. The proposed amended rules are expected to be scheduled for consideration and possible adoption or any other action by the Board at its February 15, 2022 meeting.

Chairman Muller began the hearing advising the Board that this public hearing was an opportunity for interested persons to present oral or written argument, data, and views on the new and amended rules of the Board which are being proposed for Title 785 of the Oklahoma Administrative Code.

Mr. Muller stated the comment period for Chapters 5 and 35 had been open since December 15, 2021, in compliance with the 30 days required by the Oklahoma Administrative Procedures Act, and he stated it will expire at the end of the day.

He finished saying, other than this public hearing, no action will be taken by the Board on the proposed rules at the meeting today. He said the proposed amended rules are expected to be scheduled for consideration and possible adoption or any other action by the Board at its February 15, 2022 meeting. He then welcomed Division Chief, Chris Neel to present the proposed rules.

1. a. Summary of Proposed Amendments to Chapter 5 – Fees

Chris Neel

Subchapter 1. General Provisions

785:5-1-6. Stream water permit application and administration fees [AMENDED]

785:5-1-10. Groundwater application and administration fees [AMENDED]

785:5-1-11. Well driller and pump installer licensing fees [AMENDED]

785:5-1-14. Stream Water and Groundwater petition fees [AMENDED]

Division Chief, Chris Neel began his presentation saying that due to rising personnel costs, rising IT costs, appropriation cuts, and loss of revenue from provisional temporary permits, staff recommends an increase in Chapter 5 fees. Additionally, he stated water rights applications are becoming increasingly difficult to process occasionally requiring the agency to hire outside counsel from the attorney general's office. He also said staff has been reviewing an increase in fees for a year. Mr. Neel advised the Board of the staff's process when looking at a fee increase stating the OWRB staff members have been researching fees in other states and comparing them to Oklahoma's current Chapter 5 fees as well as examining agency costs to process water rights applications. Mr. Neel concluded his presentation by asking if the Board members had any questions.

b. Questions and Discussions by Board Members

Mr. Castillo, Board Secretary, asked Mr. Neel the last time the Chapter 5 fees were addressed and he responded saying fees were last updated in 2018. He said at that time fees were minimally increased. Ms. Castillo asked if staff members felt that this increase in fees would cover their costs, or get them close to, and Mr. Neel responded saying yes, it will bring the staff closer to be able to cover costs.

Mr. Stallings had a question regarding contested hearings asking why there wasn't an additional fee in connection with these hearings. Mr. Neel said that has not been discussed. Mr. Melton had the suggestion that the individual who lost the hearing should be responsible for the costs. Mr. Neel referred to OWRB General Counsel, Sara Gibson who stated there are some systems where costs are divided and spread amongst the parties. Ms. Castillo added, the Oklahoma Corporation Commission has a process for highly contested matters allowing them to assess costs at the conclusion of a case to consider. She suggested this could be a process for the especially time consuming contested hearings. Mr. Stallings said he thinks this is a great model to follow and suggested the Board consider this. Ms. Castillo advised Mr. Neel she would be available to discuss further at a later date.

Mr. Latham asked if these proposed fees would require legislative approval and Ms. Gibson answered that fees will require legislative approval but there is a new committee process this year but typically majority of proposed rules rolled into an omnibus bill that will be looked at as a whole at the end of the legislative session.

Mr. Melton asked if the medical marijuana industry could aid in the supplementing agency funding and Ms. Gibson responded that there would be significant increase in revenue if the agency were able to permit every grow facility in the state but currently that isn't a possibility. Mr. Neel advised that the Oklahoma Medical Marijuana Authority is currently working to be able to ensure that medical marijuana grow facilities are obtaining the correct permits, one of which would be a water rights permit.

Chairman Muller asked the Board if there were any further comments. There were none and he asked if anyone would like to make public comment.

c. Public Comment

Marla Peek with Oklahoma Farm Bureau addressed the Board expressing her concerns regarding the Chapter 5 fee changes. She stated any time a fee doubles her organization has concern. Ms. Peek said the agency's budget submission to the legislature did not include a request to hire additional employees and she had questions as to why.

Ms. Peek also asked if the OWRB had a plan to bring the non-compliant medical marijuana grow facilities into compliance.

2. a. Summary of Proposed Amendments to Chapter 35 – Well Diller and Pump Installer Licensing **Chris Neel**

Subchapter 13. Authorization to Drill Groundwater Wells [NEW]

785:35-13-1. Authorization to Drill Groundwater Wells [NEW]

Chris Neel began by advising the Board there has been immense interest from the legislature and public regarding an Intent to Drill system. He explained that an Intent to Drill system would require a well driller to notify the agency and provide certain specifications before they drill a well.

Chairman Muller asked Mr. Neel if the proposed rules were for domestic wells and Mr. Neel replied that the draft proposal includes domestic wells and wells requiring a water right.

Mr. Neel said an Intent to Drill system would allow the agency to know where wells are being drilled. He stated currently, well drillers are required to submit well logs after a well is drilled but not all drillers submit their well logs.

He stated an Intent to Drill system would be beneficial on wells that require a water rights permit saying the agency would then also know what Aquaphor the well is tapping into. In addition, the agency would know the location of the water well and be able to ensure the well meets well spacing requirements.

He stated this portion of the rules has been in place since 1972 but the agency hasn't been enforcing an Intent to Drill system.

Mr. Neel advised the board that staff had met with the Well Driller's Advisory Council who supplied a letter for public comment stating they did not support an Intent to Drill system for domestic wells.

Chairman Muller asked Mr. Neel if based on his interaction with the Well Driller's Advisory Council, would Mr. Neel still support logging of all wells and Mr. Neel responded, yes. Mr. Melton asked Mr. Neel if an Intent to Drill system would require the agency to hire more staff and he stated there is an Intent to Drill fee in the Chapter 5 fees that would facilitate staff costs to process Intent to Drill applications.

Mr. Stallings asked if there was an onsite inspection and Mr. Neel advised the Board members that the agency is looking to hire staff to be out in the field to perform inspections. He also asked the ratio of domestic wells to wells that require a water rights permit. Staff member, Charles O'Malley answered there are 300-500 wells that would require a water right and the agency receives around 5,000 well logs. Mr. Neel advised that number is the number of well logs received and the agency does not have 100% compliance.

Mr. Neel advised he had communicated with the Well Driller's Advisory Council and informed them that removing the requirement for an Intent to Drill system for a domestic well places the responsibility on the landowners. He also let them know that this system would require the well drillers to have basic knowledge about well drilling requirements and permitting. He stated the Board plans to host an informational event to inform well drillers of drilling requirements.

He also stated the Well Driller's Council intends to write a letter to their legislator about obtaining funds to enforce an Intent to Drill system rather than charge well drillers a penalty fee.

Mr. Justice asked Mr. Neel if he could explain the timeline of the Intent to Drill System. Mr. Neel stated the draft proposal states that an Intent to Drill application would be approved or denied by the agency within 30 days and Sara Gibson stated there is also an option to expediate an application which is explained in the Chapter 5 fee rules.

Mr. Gorman asked if other states had implemented an Intent to Drill system and Mr. Neel responded that most states do. Mr. Gorman also asked if other states require a permit for a domestic well. Mr. Neel advised most states do require a water rights permit for domestic wells.

Mr. Stallings expressed concerns about the 30 day timeline and Mr. Neel advised there is an option on the application to have the application expedited. He advised that it is not in the current draft proposal, but the agency has decided that an expedited application would take 24 hours to process. Sara Gibson added that the agency has recognized that 30 days is too long and plans to amend that time frame.

Chairman Muller commented that every hole drilled into the ground in Oklahoma needs to be recorded to prevent natural disaster. He further stated the agency needs to know where every well is drilled to protect public health but not be so onerous that well drillers and landowners can't make a living. He then asked

b. Questions and Discussions by Board Members

c. Public Comment

5. SPECIAL CONSIDERATION

A. No Items.

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.

7. ADJOURNMENT

There being no further business, Chairman Matt Muller adjourned the Regular Meeting of the Oklahoma Water Resources Board at 10:40 a.m., on January 18, 2022.

OKLAHOMA WATER RESOURCES BOARD

Absent
Matt Muller, Chairman

/s/
Charles Darby, Vice Chairman

/s/
Robert L. Melton, Sr.

Absent
Suzanne V. Landess

/s/
Robert L. Stallings, Jr.

Absent
Thomas A. Gorman

/s/
Ron Justice

/s/
B. Latham

ATTEST:

/s/
Jennifer Castillo, Secretary
(SEAL)