

OKLAHOMA WATER RESOURCES BOARD

OFFICIAL MINUTES

February 15, 2022

1. CALL TO ORDER

The Regular Meeting of the Oklahoma Water Resources Board was called to order by Vice Chairman Charles Darby at 9:30 a.m. on February 15, 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 February 11, 2022, at 8:30 a.m. at the Oklahoma Water Resources Board's office at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma and provided on the agency's website.

- A. Roll Call. Vice Chairman Charles Darby welcomed everyone to the meeting and asked for the roll call of members. In the absence of Chairman Muller, Vice Chairman Darby facilitated the meeting.

Board Members Present

Charles Darby, Vice Chairman
Jennifer Castillo, Secretary
Ron Justice
Robert L. Melton
Bob Latham
Robert L. Stallings, Jr.

Board Members Absent

Matt Muller, Chairman
Suzanne Landess
Thomas A. Gorman

Staff Members Present

Julie Cunningham, Executive Director
Sara Gibson, General Counsel
Joe Freeman, Chief, Financial Assistance Division
Bill Cauthron, Chief, Water Quality Programs Division
Chris Neel, Chief, Water Rights Administration Division
Cleve Pierce, Chief, Administrative Services Division

Others Attending

Kenneth Corn, City of Anadarko, OK

Jeff Everett, OG&E
Mack Greever, Rural Water District No. 16, Rogers Co, OK
Larry Steidley, Rural Water District No. 3, Rogers Co., OK
Chris Wolff, MFS-OK
Jennifer Wasinger, Freese and Nichols, Inc.
Charles Suruter, Bancfirst
Danny Trent, Harrah, OK
Mike Bower, Harrah, OK
Jane Hughes, Okemah, OK

- B. Discussion, Amendments and Vote to Approve Official Minutes of the January 18, 2022 Regular Meeting. Vice Chairman Darby stated members were provided the draft minutes of the January 18, 2022 meeting and asked the Board's pleasure regarding the minutes. There were no comments or amendments.

Mr. Stallings moved to approve the minutes of the January 18, 2022, Regular Meeting and Mr. Melton seconded. Vice Chairman Darby called for the vote.

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

- C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, welcomed everyone to the meeting. Ms. Cunningham presented the drought report, discussing the recent precipitation and major droughts developing in the South and Western part of the state. There were currently 22 counties across the Oklahoma in a burn ban located in the Panhandle, Central and Western parts of the state. It is mentioned that Chairman Muller is absent due to a Master Irrigators class he was attending which is sponsored by OWRB and Oklahoma State University. This program is to educate irrigators on water conservation, farming and irrigation practices. Ms. Cunningham recognizes the benefits of this program for relationships with irrigators, water conservation and opportunities to finance for non-point source and low water use tillage practices.

Ms. Cunningham introduced the new Executive Administrator, Lauren O'Donley who will be replacing Stephany Lively and taking over her duties.

Ms. Cunningham provided an update on funding as it pertains to ARPA, federal infrastructure financing. Ms. Cunningham met with the consultant who is working with the legislative committee that is reviewing applications for funding. OWRB was approached for a developed plan on the proposal for the Small System Grant fund, which is like the REAP fund. Lori Johnson, Assistant Division Chief, Financial Assistance Division, who also serves on the Board for the Council for Infrastructure Financing Authority reported no major updates for federal financing or the infrastructure bill implementation. Ms. Cunningham stated that OWRB will move forward as soon as possible because ARPA funds must be dedicated by 2024, and construction completed on every project by 2026.

On February 8th , there was a tribal Section 9 unity agreement with the Choctaw, Chickasaw, the State and the City of Oklahoma City. Section 9 is available online at waterunityok.com. Section 9 requires the coordination and sharing of water plans throughout the state at least once a year. Ms. Cunningham stated that tribes are looking to expand their environmental efforts and OWRB is assisting in training and projects such as bathometric mapping.

On February 7th , the legislature session began and includes many bills pertaining to water. The request bills are to modernize the penalties for unauthorized and unlawful water use along with water right administration fees and gross production tax. These bills have passed through the first round of the Natural Resources Subcommittee of the Appropriations Committee for the Legislator. Ms. Cunningham stated Senator Jech carried the gross production bill for the Senate which was approved unanimously, and Representative Newton carried the bill for the House which was also approved. OWRB groundwater administrative fees, which were previously capped by legislation at \$25, has now been changed to \$50 and stream water fees being set at \$75, which has been approved in its first round. March 3rd is the deadline for measures to be heard by committees.

Ms. Sara Gibson, OWRB General Counsel, presented a letter from the Office of the Attorney General. Ms. Gibson explained that EPA has a program for tribes called Treatment as State or Tribe where a tribe can receive delegation or primacy to implement the federal programs like states do, including water quality standards. The tribes have sought this treatment from EPA for funding portions for grant monies to help with water and wastewater issues. So far only one or two small tribes have received approval to implement a water quality standards program which is not yet complete. Ms. Gibson stated that several years ago Senator Inhofe created an amendment to the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFETEA) stating that if a tribe in Oklahoma wishes to pursue water quality standards it would work as such. If the EPA approves the State Water Quality Standards Program, the State can implement that in Indian country upon request of the State. Ms. Gibson recalled up until the McGirt ruling, water quality standards were implemented by the state and the agencies with delegation statewide. With the McGirt ruling, it changed what was known as Indian country and therefor allows a large piece of Indian country to implement programs. The State wrote a letter to EPA Region 6 to requesting that the State's Water Quality Programs are implemented into Indian country, which was approved by EPA Region 6. EPA Region 6 has now issued a notice that they are reconsidering that approval including possible withdrawal. The tribes in Oklahoma have not yet pursued delegation of programs. There are no federal water quality standards so if the State's water quality standards don't apply, there are no water quality standards to write permits for these facilities. Ms. Gibson concluded her updates.

There were no questions for Ms. Cunningham or Ms. Gibson.

D. Financial Update

1. Budget Report. Mr. Cleve Pierce presented the budget report for the period ending January 31, 2022. Mr. Pierce reported the agency has spent 34% of its appropriated budget, leaving 66%; has spent 35% of its revolving budget, leaving 65%; has spent 19% of its federal

budget, leaving 78%. Overall, the total budget remaining is 67% with 42% for the year remaining. Last year, the agency had 63% of the budget remaining. Mr. Pierce reminded that there are 2 million extra dollars in appropriation for the Arbuckle-Simpson Phase II, so taking that into consideration the remaining budget is around 64%.

Mr. Pierce reported that on January 13th, the agency received an email informing there will be an operational audit conducted by the State Auditor Inspector for the period of 1/1/2017 to 6/30/2021. OWRB is currently working on a list of information requested and well as questionnaire from their office. Mr. Pierce stated the last audit was in 2016 and there were no further questions about the audit. Cleve Pierce introduced Gene Higgins to speak on new changes in Human Resources.

Gene Higgins, Human Resources Manager at OWRB, summarized the civil service and human capital modernization rules that came into effect on January 1st. Mr. Higgins stated that under the old merit protection commission, there were unclassified and classified employees. Unclassified are at-will, while classified are protected under the merit protection commission. The OWRB has 95 full time employees and 38% were unclassified, while 62% were classified. The key changes to the Civil Service Act is the requirement of a pre-termination hearing and advanced notice to employees for disciplinary actions, which is no longer required. Under the new system, there are state employees and exempt executive management employees which can account for 5%. Therefore 95% of employees are now protected under the new rules as opposed to 62% that were previously protected under the old rules.

Mr. Higgins continued with other rules that include removing the top 10 rule for classified positions and no veteran's preference. Veterans now have a separate division in which they can apply to and be matched for positions, where they will be interviewed but not necessarily hired. Mr. Higgins stated that the Carl Albert internship program no longer exists and is now the state internship program which allows benefits for interns who work over 1,000 hours. OMES is implementing these new rules, job codes and job descriptors into the state database. Under the new system progressive discipline will be implemented, so if a written reprimand, suspension without pay, involuntary demotion, or termination occurs a complaint can be filed within 5 days and handled through the HR process. Mr. Higgins concluded his rules summary.

Mr. Darby asked if there were any questions. There were none.

2. FINANCIAL ASSISTANCE DIVISION

- A. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Harrah Public Works Authority, Oklahoma County, Recommended for Approval. Mr. Joe Freeman, Chief, Financial Assistance Division, stated to the Board this item is for a \$2,560,000 loan request from the Harrah Public Works Authority. They are requesting the loan for the extension of water and sewer mains in the vicinity of Luther Road and Southeast 29th street and Northeast 23rd street.; construction of a

Northeast 23rd street lift station, collection main and force main; for approximately 1100 feet of sewer line along 23rd street, and the retrofit and upgrade of a sewer lift station on Harrah Road. The loan will be funded through the state revenue bond loan program also known as the FAP Loan Program. The loan will have a fixed interest rate and will have a maturity not to exceed 30 years. The loan will be secured with a lien on Harrah's water and sewer system revenues, a three-cent sales tax and a mortgage. Over the last 10 years, Harrah's water connections have increased by approximately 49% and sewer connections have increased by approximately 41%. Harrah has been a long-time loan customer of the Board's and they currently have 4 loans outstanding with the Board with a combined principal balance of \$11.4 million. Their debt coverage ratio stands at 3.53 times. Representing Harrah is Mayor Danny Trent and City Manager, Mike Bower. Staff recommends approval.

Vice Chairman Darby asked for questions or a motion. Mr. Stallings moved to approve the application and Mr. Latham seconded. There were no questions or discussion and Vice chairman Darby called for the vote.

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

- B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for El Reno Municipal Authority, Canadian County. Recommended for Approval. Recommended for Approval. Mr. Freeman, stated that item 2.B. on the agenda is a \$7.5 million loan request from the El Reno Municipal Authority. They are requesting the loan to renovate their water treatment plant. This will include repair of the Aerator Tower, install a raw water meter at the plant, install a new claricone, and repair a recarbonation basin vault. This project will also remove and replace filters, rehabilitate the chemical feed room, replace backwash meters, plant controls, pumps, sample lines, filters, and existing claricones as well as upgrade the water distribution building. The loan will be funded through the state revenue bond loan program and will have a maturity not to exceed 30 years. The loan will be secured with a lien on El Reno's water and sewer system revenues along with a one-cent sales tax. El Reno currently has four loans with the Board with a combined principal balance of \$22.7 million. Their debt coverage ratio stands at 3.37 times. Mr. Freeman was asked to express thanks to the Board for the consideration of the loan request on behalf of El Reno. Staff recommends approval.

Vice Chairman Darby asked for questions or a motion. Ms. Castillo moved to approve the application and Mr. Justice seconded. There were no questions or discussion and chairman Darby called for the vote.

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

- C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for Okemah Utilities Authority, Okfuskee County. Recommended for Approval. Mr. Freeman stated that item 2.C. on the agenda is a \$22,870,000 loan request from the Okemah Utilities Authority. They are requesting the loan for a new 3 million gallon per day water treatment plant, a new raw water intake structure at Okemah Lake, installation of new AMI water meters, and for the construction of two new 500,000 gallon water storage tanks. The loan will be funded through the FAP state revenue bond loan program with a fixed interest rate and a maturity not to exceed 30 years. The loan will be secured with a lien on Okemah's water and sewer system revenues, a one-cent sales tax, and a mortgage. They currently have one loan with the Board with a principal balance of approximately \$1.4 million and their debt coverage ratio stands at 1.6 times. Representing Okemah is the City Manager of Okemah, Jane Hughes. Staff recommends approval.

Vice Chairman Darby asked for questions or a motion. Mr. Stallings moved to approve the application and Ms. Castillo seconded. There were no questions or discussion and chairman Darby called for the vote.

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

- D. Resolution Authorizing the Issuance of Oklahoma Water Resources Board State Loan Program Revenue Bonds in an Aggregate Principal Amount not to Exceed \$150,000,000; 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 2022B 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 requested that item 2.D be moved to next month's board meeting because only 6 members were present. This item requires a supermajority of 7 votes from the Board so it was withdrawn from consideration of approval.

3. SUMMARY DISPOSITION AGENDA ITEMS

All of the items listed below under this Summary Disposition Agenda are recommended for approval.

Any item listed under this Summary Disposition Agenda may, at the request of any member of the Board, the Board’s staff, or any other person attending this meeting, 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. Vice Chairman Darby asked if there were any items being requested to be removed. There were no requests to remove items to the Special Consideration Agenda.
- B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Possible Action on Items Listed Below.

Vice Chairman Darby asked for motion for approval. Mr. Latham moved to approve the application and Ms. Castillo seconded. There were no questions or discussion and chairman Darby called for the vote.

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

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>
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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>
	ORF-21-0011-DW	Anadarko Public Works Authority	Caddo	\$141,551.33

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

1. Interagency agreement between OWRB and Office of the Secretary of Energy & Environment providing funding for the State of Oklahoma's Water Quality Management Planning Program to improve impaired water and protect unimpaired waters across the state.
2. Professional Engineering Services Agreement between OWRB and Freese and Nichols, Inc., to implement the FEMA Cooperative Technical Partner Program in Oklahoma by creating accurate flood hazard data for OWRB.

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

1. West Franklin Sod Farm, LLC, Cleveland County, #2021-526

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

None.

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

1. Robert David Mills & Rhonda Jean Mills Revocable Living Trusts, Tillman County, #2021-540
2. William Casey Murdock, Cimarron County, #2021-549

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:

None.

K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:

None.

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:
 1. Licensee: Vannoy and Son Drilling
Operator: Brent Goff
 - DPC-0213
OP-2391

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

1. Seth Koenig (Security Nat. Bank & Trust), Cleveland County, #OK00490
2. Regal Lake HOA (Regal Lake), Oklahoma County, #OK02418
3. Sovereign Properties Hold Co., LLC (Sportsmans Club), Oklahoma County, #OK02426
4. City of Barnsdall (Waxhoma), Osage County, #OK10731

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, Woods County, #FP-2021-17

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

1. Cindy Gaddis, City of Blackwell, #FPA-027

Q. Consideration of and Possible Action on Applications to Merge and/or Acquire Assets:

1. Joint Application No. RWA2021-0002 for Acquisition of Assets of Rural Water District No. 16 by Rural Water District No. 3, Rogers County, Oklahoma

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

A. Rules Amendments Recommended for Adoption in Chapter 5 – Fees

1. Summary-

Mr. Chris Neel, Chief, Water Rights Administration, addressed the Board and referred to the December and January board meetings when he presented on Chapter 5 and 35 draft rules, under the Well Drillers and Pump Installers Chapter. There were public comments from the last board meeting that were addressed, and updated copies of the draft rules were passed out to the Board. Mr. Neel stated that he would present on the draft rules and changes that were made. Changes were made under Chapter 785:5-1-11, item (p): a fee to file an intent-to-drill for authorization to construct a groundwater well for domestic use. It was advised by the Well Driller’s Advisory Council not to push forward with an intent-to-drill for domestic wells and therefor item (p) was taken out of the draft rules. Another change was made for item (q): a fee to file an intent-to-drill for expedited, same-day authorization to construct a groundwater well for domestic use which requires a permit or water right shall be an additional \$100. The language in item (q) was changed to remove the word “domestic” and has been moved to replace the previous item (p). Mr. Neel concluded his report on changes to Chapter 5.

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]

2. Questions and discussion by Board Members

Mr. Darby asked for any questions for Mr. Neel as it pertains to changes made in Chapter 5, there were no further questions.

3. Vote to approve recommended amendments to draft rules as presented or as may be revised after discussions, or other appropriate action as determined by the Board.

Vice Chairman Darby entertained a motion for the changes to Chapter 5. Ms. Castillo motioned to approve the changes and Mr. Latham seconded. There were no questions or discussion and chairman Darby called for the vote.

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

B. Rules Amendments Recommend for Adoption in Chapter 35 – Well Driller and Pump Installer Licensing

1. Summary-

Mr. Chris Neel stated that changes made to Chapter 35: Well Drillers and Pump Installer Licensing were based off comments made by the Well Drillers Advisory Council and Oklahoma Farm Bureau. The first change is under 785:35-13-1(a) where the word “domestic use” was added into authorizations that are not required, it now states “authorizations are not required for groundwater wells completed for domestic use, test holes, geotechnical borings, or heat exchange well, monitoring wells, and temporary dewatering wells”.

Mr. Neel continues that next change is under 785: 35-13-1(c) where clarification was added so it reads “Failure to make an application for an intent-to-drill for a well requiring a water right shall be subject to administrative fines.” Comments were made from the Oklahoma Farm Bureau and the Citizens for Protection of the Arbuckle-Simpson Aquifer to clarify that fines will be administered for individuals that are not upholding the rules.

Mr. Neel addresses changes that were made under 785:35-13-1(e) where if there is an application for authorization to drill a groundwater well it will be approved in five (5) business days as opposed to the previously stated thirty (30) business days. The language of “domestic well” was removed from the expedited, same-day applications so that it now states “Expedited, same-day applications that meet the above criteria may be approved for an additional filing fee”.

Mr. Neel stated another change made to 785:35-13-1(h). The sentence “for domestic groundwater wells” was removed because of the Well Drillers Advisory Council’s recommendation to not push forward with an intent-to-drill for domestic wells. There was verbiage added that states if after a year the well is unable to be drilled, “The applicant can request, in writing, a 1-year continuance of the authorization”. This is similar to the water rights on a well location authorization which will resonate with the water right’s verbiage. Mr. Neel concluded his presentation on rule changes.

Subchapter 13. Authorization to Drill Groundwater Wells [NEW]
785:35-13-1. Authorization to drill groundwater wells [NEW]

2. Questions and discussion by Board Members.

Vice Chairman Darby asked for any questions. Ms. Landess congratulated Mr. Neel on a great job done and working through the comments and concerns for a great balance of allowing the agency to do its job while working with the public that needs the services. There were no questions.

3. Vote to approve recommended amendments to draft rules as presented or as may be revised after discussions, or other appropriate action as determined by the Board.

Vice Chairman Darby entertained a motion for approval. Ms. Castillo moved to approve the changes and Mr. Stallings seconded. Vice Chairman Darby called for the vote.

AYE: Latham, Stallings, Justice, Castillo, Melton, Darby

NAY: None

ABSTAIN: None

ABSENT: Landess, Gorman, Muller

5. SPECIAL CONSIDERATION

A. No Items.

B. 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 which could not have been reasonable 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. ADJORNMENT

Vice Chairman Darby stated the next meeting will be held March 15, 2022.

There being no further business, Vice Chairman Darby adjourned the regular meeting of the Oklahoma Water Resources Board at 10:13 a.m. on February 15, 2022.

OKLAHOMA WATER RESOURCES BOARD

 Absent
Matt Muller, Chairman

 /s/
Charles Darby, Vice Chairman

 /s/
Robert L. Melton, Sr.

 Abstain
Suzanne V. Landess

 /s/
Robert L. Stallings, Jr.

 Absent
Thomas A. Gorman

 /s/
Ron Justice

 Absent
B. Latham

ATTEST:

 /s/
Jennifer Castillo, Secretary
(SEAL)