

OKLAHOMA WATER RESOURCES BOARD MEETING INFORMATION

The Oklahoma Water Resources Board meets monthly in accordance with the date, time, and location shown on the final posted agenda. A draft Board meeting agenda and packet materials are scheduled to be prepared approximately 10 calendar days prior to the Board's meeting. A final agenda is scheduled to be posted at least 24 hours prior to the meeting. The standard sections of the agenda are numbered in a series; additional or special items will appear on the agenda subsequently. Standard sections include the following:

- 01000 = Call to Order
- 02000 = Financial Assistance Division
- 03000 = Summary Disposition Agenda
- 04000 = Items of Interest
- 05000 = Special Consideration Items

This meeting packet contains expanded information (summary documents, proposed orders, etc.) associated with individual agenda items. Each section of the packet contains a cover sheet noting the appropriate corresponding agenda item/number. (For example, to locate agenda item 2.D., concerning a grant or loan, review the packet for the section labeled, "2. Financial Assistance Division," which will begin on page 02000. Item D. is placed in alphabetical order in the section and is labeled accordingly.) The documents and information provided within the meeting packet are draft until approved by the Board. Please contact OWRB staff for the final, official documents as approved by the Board.

If you require assistance in locating an item or accompanying documents, please contact OWRB staff at (405) 530-8800.

1.B.

August 16, 2022, Regular Meeting Draft Minutes

For consideration at the September 20, 2022 Board Meeting

OKLAHOMA WATER RESOURCES BOARD

DRAFT MINUTES

August 16, 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 August 16, 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 August 12, 2022, at 9:00 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. Chairman Matt Muller welcomed everyone to the meeting and asked for the roll call of members.

Board Members Present

Matt Muller, Chairman
Jennifer Castillo, Secretary
Ron Justice
Bob Latham
Thomas A. Gorman
Robert L. Stallings, Jr.

Board Members Absent

Charles Darby, Vice Chairman
Suzanne Landess
Darren Cook

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
Yohanes Sugeng, Chief, Engineering and Planning Division

Others Attending

Craig Stephenson, City of Ponca City
Jesse Beck, City of Ponca City
Jerin Presley, OMMA

Dean Couch, City of Ponca City
Shana Mashburn, USGS
Isane Dale, USGS
Billy Mizer, Farmer
Jennifer Wasinger, Freese and Nichols
Jeff Everett, OG&E
Newakis Weber, Chickasaw Nation
Katherine Colclazier, Hartzog Conzer Cason
Shannon Epps, BOK
Allison Christian, McAfee & Taft
Chris Gander, BOKFS
Marla Peek, OK Farm Bureau
Bodie Bachelor, Centennial Law
Ron Peterson, RPGC

- B. Discussion, Amendments and Vote to Approve Official Minutes of the June 21, 2022 Regular Meeting. Chairman Muller stated members were provided the draft minutes of the June 21, 2022 regular meeting and asked the Board's pleasure regarding the minutes. There were no comments or amendments.

Ms. Castillo moved to approve the minutes of the June 21, 2022, Regular Meeting and Mr. Stallings seconded. Chairman Muller called for the vote.

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

- C. Executive Director's Report

Ms. Julie Cunningham, Executive Director, greets the Chairman and members of the Board. Ms. Cunningham begins with the Board committee assignments stating that if any member would like to change or serve in a different committee, than to please let OWRB know. The only change to the committee assignments from last year is Mr. Cook filling the committee roles of former Board Member Mr. Melton.

Ms. Cunningham proceeds to the drought report. The burn ban is still present in the whole southern part of the state as well as the panhandle. Ms. Cunningham states that during these times of drought the OWRB water right's personnel fields many calls for temporary permits, additional water and groundwater permits.

Ms. Cunningham gives credit to Bill Cauthron, Chief, Water Quality Programs Division for answering the calls on blue-green algae blooms throughout the summer. She states it is important to remember to stay out of stagnant water due to harmful algae. Ms. Cunningham has also been receiving reports from the Corps of Engineers during drought conditions and they are reporting that Pine Creek is at 75% conservation full and has reached drought level 2. Ms. Cunningham states that she hopes everyone is planning for their water needs as the drought is "putting an exclamation point" on the need for water planning. Ms. Cunningham mentions Owen

Mills who is currently working on the 2025 Oklahoma Comprehensive Water Plan (OCWP) and Yohanes Sugeng who is working on the Oklahoma Flood Plan.

Ms. Cunningham continues to her calendar updates complimenting the Southern Legislative Conference she attended in OKC. Ms. Cunningham has also attended water reuse plan meetings with contractors, focusing on the potential to reuse of water for many cities across the state. Ms. Cunningham has spoken with the Oklahoma City Management Association where the 2025 OCWP overview was presented. She states the focus is now meeting with communities to get them involved and focused on their long term water infrastructure needs.

Ms. Cunningham was nominated and elected as Secretary Treasurer of the Western States Water Council. She states that this is the main policy and water rights administration group and is most similar to Oklahoma. Since water rights administration is not under a federal agency, the WSWC is a great organization to have a voice when in Washington DC.

Multiple OWRB staff members attended the NOAA Southern Plains Early Drought Warning Systems Partner Meeting which involved great conversation with neighboring states as it pertains to drought.

Canton Lake Advisory Committee needs a release from Canton Lake which triggers an agreement with Oklahoma City, the Lake Managers Association at Canton, the Corps of Engineers and OWRB. Ms. Cunningham introduces Chris Neel, Chief, Water Rights Administration Division, to speak further on this. Mr. Neel states that there is a 1995 policy statement that states when Oklahoma City wants to make a request from Canton Lake, they own the rights out of the lake. He elaborates that Oklahoma City was requesting the release of 8,000 acre-feet of water from Canton Lake. This was after the last drought in an attempt to keep the lakes at the same level, instead of Lake Hefner dropping then requesting 30,000 acre-feet. Mr. Neel states that the meeting with Oklahoma City went well and Canton Lake started releasing last Thursday, August 11. The policy calls for a 30 day wait between the meeting and the release of water, but all parties agreed that it would be more beneficial for Oklahoma City to request the release now instead. Mr. Neel states that there is a possibility of Oklahoma City requesting another release in September to manage the lake levels.

Chairman Muller asks Mr. Neel what the loss of water is going downstream once it is released.

Mr. Neel responds that Oklahoma City claims to catch two-thirds of the released water. The released water is supposed to decrease the lake level by 1.3 feet at Canton Lake and increase it by about the same about in Hefner Lake. Mr. Neel states that past releases have been planned around rainfall events to wet the floodplain and saturate the soil beforehand.

Ms. Cunningham adds that Oklahoma City does own all the water rights and the storage of the water, but they work with the Lake Association to consider the wildlife, recreation and economy.

Ms. Cunningham proceeds to her last calendar item where she provided a lecture for Secretary Wagner's Water Law course at Oklahoma City University. She adds that Secretary Wagner has tendered his resignation and been appointed as Executive Director for the Hamm Energy Research Institute at OSU. Mr. Ken McQueen has been appointed to fill his role as Cabinet Secretary. Mr. McQueen was a Region 6 EPA Administrator during the Trump administration and is retired from a long career with Williams Petroleum in Oklahoma City. He was also previously appointed as the New Mexico Secretary for Energy and Environment.

Ms. Cunningham gives a legislative update on American Rescue Plan Act (ARPA) funding. OWRB was approved to administer the funding for water infrastructure. Ms.

Cunningham states that OWRB staff has been working extremely hard meeting with Guidehouse and OMES to best figure out the process. OWRB has been designated as low risk due to its experience and process of administering programs. Ms. Cunningham states that ARPA has received 2.7 billion dollars in water and wastewater infrastructure requests from communities. Ms. Cunningham concludes her report.

Mr. Muller asks for any questions for Ms. Cunningham. There were none.

D. Financial Update

1. Budget Report. Mr. Cleve Pierce, Chief, Administrative Services Division, presents the budget report for the period ending July 31, 2022. Mr. Pierce reports the agency has spent 9% of its appropriated budget, leaving 91%; has spent 3% of its revolving budget, leaving 97%; has spent 1% of its federal budget, leaving 99%. Overall, the total budget remaining is 96% with 92% of the year remaining. At this point last year, the agency had a total budget remaining of 97%. Mr. Pierce states that at the end of FY-22, the agency spent 60% of its overall budget; leaving 40%. Mr. Pierce states that July is usually a lighter spending month because the budget is being posted and contracts and purchase orders are still being set in place. There is no news to report about the audit.

There were no further questions or comments.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Extension of Time for Obligation of Funds for Clean Water Funding for The Grove Municipal Services Authority, Delaware County. Recommended for Approval. Mr. Freeman greets the Board and states that the first item needs to be pulled because The Grove Municipal Authority has found other funds to pay for the project considered for this loan.

B. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for Stillwater Utilities Authority, Payne County. Recommended for Approval. Mr. Freeman continues to the next item which is a \$6 million dollar loan request from the Stillwater Utilities Authority. They will use the loan proceeds to go along with \$5 million dollars in congressionally directed funding for installing approximately 7,500 feet of 48-inch sanitary sewer line, 730 feet of 42-inch sewer line, 943 feet of 10-inch sewer line, replacement of a 30-inch diameter sewer aerial crossing, replacement of a sewer lift station, and for an 18-inch drain line at their wastewater treatment plant. The loan will be funded from the Clean Water SRF loan program with a fixed interest rate plus a half point administrative fee. The loan will mature within 30 years of the completion of the project and will be secured with a lien on Stillwater's water, sewer, and electric system revenues, and a one cent sales tax. They currently have 6 loans outstanding with the Board with a balance of \$38.2 million dollars. Stillwater's debt coverage ratio stands at 4.51 times and staff recommends approval.

Representing Stillwater is Bill Millis, Deputy Director of Civil Engineering for the City of Stillwater. Mr. Millis addresses the Board and speaks of appreciation for the Board and its loan program. He states that it makes a real difference to Stillwater and the rate payers. He also

thanks OWRB staff for being professional and helpful.

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

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

C. 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 states that next is a \$65,635,000 loan request from the Shawnee Municipal Authority. They are requesting the loan to go along with \$49,920,000 in previously approved funding for upgrading and modifying the north wastewater treatment plant headworks, secondary treatment processes, and sludge handling. In addition, funds will be used to decommission Shawnee's south wastewater treatment plant and reroute the south plants wastewater flow to the north plant. The loan will be funded through the Clean Water SRF loan program with a fixed interest rate plus a half point administrative fee. The loan will mature within 30 years of the completion of the project and will be secured with a lien on Shawnee's water and sewer system revenues.

Over the last 10 years Shawnee's water connections have increased by about 3.2 percent and wastewater connections by 4.2 percent. Shawnee has been a long-time good loan customer of the Board's and they currently have 6 outstanding loans with a combined balance of \$14.2 million dollars. Based on the authority's current rates and fee adjustments their debt coverage ratio stands at 1.53 times and staff recommends approval.

Representing Shawnee is Nate Ellis, Bond Counsel and Chris Gander, Financial Advisor.

Chairman Muller asks if their funding sources are in a row to pay this loan off.

Mr. Freeman answers that there was a town council meeting the night before and it was approved.

Chairman Muller asked for questions or a motion. Mr. Gorman moved to approve the application and Mr. Stallings seconded. There were no questions or discussion and Chairman Muller called for the vote.

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

D. Consideration of and Possible Action on Proposed Resolution Authorizing Certain Individuals To Sign and Act on Behalf of the Board Regarding the Board's Financial Assistance Program, State Revolving Fund Programs, and Issues of Indebtedness and Authorizing Members to Act as Assistant Secretary. Recommended for Approval. Mr. Freeman states next on the agenda is a resolution noting who is authorized to sign on behalf of the Board regarding the Board's Financial Assistance Loan Program, Clean Water State Revolving Fund loan program and Drinking Water State Revolving Fund loan program. The resolution names each Board Member, except the Chairman, as assistant secretaries in the absence of the secretary. The

resolution allows BancFirst as your trustee to know the Board's composition and have signatures on file for verification. The resolution also adds Mr. Cook as a Board Member in place of Mr. Melton and staff recommends approval.

Chairman Muller asked for questions or a motion. Ms. Castillo moved to approve the application and Mr. Latham seconded. There were no further questions or discussion and Chairman Muller called for the vote.

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

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. Chairman Muller asked if there were any items being requested to be transferred from the Summary Disposition. Ms. Sara Gibson, OWRB General Counsel, asks to move items 3D.7-9 to the Special Consideration. Ms. Gibson explains that those are the ARPA grant agreements which need special resolution and there may be questions.

Mr. Muller agrees and items 3D.7, 3D.8, and 3D. 9 are removed from the Summary Disposition and transferred to Special Consideration. Mr. Muller asks for any other requests. There were none.

- B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Possible Action on Items Listed Below.

Chairman Muller asks for the Board's pleasure considering the remaining items listed. Mr. Stallings moved to approve the items and Ms. Castillo seconded. There were no questions or further discussion and Chairman Muller called for the vote.

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

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

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

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
ACOG				
a.	FAP-22-0012-R	Gracemont Public Works Authority	Caddo	\$150,000.00
COEDD				
b.	FAP-22-0027-R	Meeker Public Works Authority	Lincoln	99,999.00
INCOG				
c.	FAP-22-0020-R	Rural Water District #21	Osage	120,000.00
SWODA				
d.	FAP-22-0005-R	The Thomas Public Works Authority	Custer	68,423.08

2. CWSRF 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-22-0010-CW	Talala Public Works Authority	Rogers	\$88,679.25
b.	ORF-23-0096-CW	El Reno Municipal Authority	Canadian	\$440,000.00
c.	ORF-23-0068-CW	Caddo Public Works Authority	Bryan	\$615,380.00
d.	ORF-23-0066-CW	The Broken Bow Public Works Authority	McCurtain	\$617,710.00
e.	ORF-22-0078-CW	Marietta Municipal Authority	Love	\$650,000.00

f.	ORF-23-0122- CW	The Geronimo Public Works Authority	Comanche	\$653,500.00
g.	ORF-23-0101- CW	Tishomingo Municipal Authority	Johnston	\$1,000,000.00

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

1. Resolution with Federal Emergency Management Agency for funding assistance through FEMA's Cooperating Technical Partners (CTP) Program for flood risk assessment and mapping.
2. Resolution with Federal Emergency Management Agency for funding assistance through FEMA's program to rehabilitate high hazard-potential dams.
3. Amendment Agreement between Oklahoma Department of Environmental Quality and OWRB extending the date of service and updating contract pricing related to lab analysis.
4. Interagency Agreement between Oklahoma Department of Agriculture, Food and Forestry and OWRB for collecting groundwater samples at monitoring wells of swine licensed managed feeding operations (LMFOs).
5. Joint Funding Agreement between United States Geological Service and OWRB for hydrogeologic investigation and Framework of the Ogallala Aquifer in the Panhandle and northwestern Oklahoma.
6. Amendment to Joint Funding Agreement between United States Geological Service and OWRB increasing funding and extending time period for project providing enhanced monitoring and evaluation of hydrologic trends for the Eastern Arbuckle-Simpson Aquifer in south-central Oklahoma.
7. (Transferred to Special Consideration) Grant Agreement with Office of Management Enterprise Services for administrative services for the American Rescue Plan Act Grant Funds designated for water and wastewater infrastructure and dam rehabilitation grants.
8. (Transferred to Special Consideration) Grant Agreement with Office of Management Enterprise Services for administrative services for the American Rescue Plan Act Grant Funds designated for Lugert Altus Irrigation district project.
9. (Transferred to Special Consideration) Grant Agreement with Office of Management Enterprise Services for administrative services for the American Rescue Plan Act Grant Funds designated for tribal cooperation grant matching funds for water and wastewater infrastructure.

- E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:
1. Washita County RWD No. 2, Washita County, 2021-520
 2. AmeriTrust, Trustee of the Bertie O. Walls Revocable Trust, Caddo County, 2021-550
 3. The John & Mark Family, LP, Bryan County, 2022-505
- F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:
1. Truman & Laura Schrock, Custer County, 2014-0512
- G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:
1. Garrett Spillane, Pottawatomie County, 2021-525
- 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. Washita County RWD No. 2, Washita County, 1956-793
 2. Town of Seiling, Major County, 1972-300B
- J. Consideration of and Possible Action on Applications to for Term Permits to Use Stream Water:
1. Sewell Bros. Land, Inc., Washington County, 2021-0014
- K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:
1. Joshua LaFate Brewer & Cristina Ramos, Okfuskee County, 2022-005
- 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:

A. Licensee: County Line Water Well LLC	DPC-1016
1. Operator: Chris Dickson	OP-2415
Activities: Groundwater Wells & Pump Installation	
B. Licensee: Intercorp Industrial Solutions	DPC-1018
2. Operator: Brian Kramer	OP-2416
Activities: Groundwater Wells & Pump Installation	
C. Licensee: Charles Madsen	DPC-1020
3. Operator: Charles Madsen	OP-2417
Activities: Groundwater Wells	

- D. Licensee: W5 Water Well Services, LLC DPC-1022
4. Operator: Colton Wear OP-2419
Activities: Pump Installation

2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:

- A. Licensee: Layne Christensen DPC-0123
1. Operator: Lukas Brown OP-2418
Activities: Monitoring Wells

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. Oklahoma Department of Transportation, Payne County, #FP-2022-03
2. Oklahoma Department of Transportation, Creek County, #FP-2022-04
3. Oklahoma Department of Transportation, Creek County, #FP-2022-05
4. Oklahoma Department of Transportation, Cherokee County, #FP-2022-06
5. Oklahoma Department of Transportation, Beckham County, #FP-2022-07
6. Oklahoma Department of Transportation, Oklahoma County, #FP-2022-08
7. Oklahoma Department of Transportation, Pottawatomie County, #FP-2022-09

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

1. Josh Balch, Oklahoma County, #FPA-032
2. Rodney Sheets, Oklahoma County, # FPA-010

04000 4. PROPOSED EMERGENCY RULES OF THE BOARD Chairman Matt Muller

A. Consideration of and Possible Action on a Finding of Emergency and Adoption of Proposed Emergency Rules of the Board Relating to American Rescue Plan Water and Wastewater Grant Program Requirements and Procedures, Oklahoma Dam Rehabilitation (OKDR) Grant Program Requirements and Procedures, and Tribal Cooperation Grant Program Requirements and Procedures. Mr. Muller states that the following presentations are to get the American Rescue Plan Act rules in place before administering funds.

1. Summary of Finding of Emergency and Proposed Emergency Rules

Chapter 50. Financial Assistance

Subchapter 15. American Rescue Plan Act (ARPA) Water and Wastewater Infrastructure Grant Program Requirements [NEW]

785:50-15-1. Program description

- 785:50-15-2. Definitions
- 785:50-15-3. Application review and disposition
- 785:50-15-4. Applicable law; deadline for applications; eligible project costs
- 785:50-15-5. ARPA grant priority points system
- 785:50-15-6. Disbursement of funds

Mr. Joe Freeman explains that Senate Bill 429 of the Oklahoma State Senate appropriated \$50 million dollars of the American Rescue Plan Act funds from the statewide recovery fund to the OWRB. He continues that \$25 million dollars for a grant program for communities with a population of 7,000 or less and rural water districts with less than 2,300 non-pasture taps, \$20 million dollars for a grant programs to communities with a population greater than 7,000 or rural water districts with more than 2,300 non-pasture taps and \$5 million dollars for dams with a poor or unsatisfactory assessment. Section 5 of the Bill requires the Board to promulgate rules for evaluating grant applications. Mr. Freeman explains that in OWRB's proposal and in legislative committee meetings OWRB said that they would style the Water Board's ARPA program in line with the Rural Economic Action Plan Grant (REAP) grant program. The rules define that a project must meet the requirements of the U.S. Treasury's Coronavirus state and local fiscal recovery funds final rule for water and wastewater investments. The ARPA grant program will be on a closed cycle basis meaning that there will be an application deadline.

The proposed ARPA grant priority system will consist of a mathematical equation rating the qualified entities and the proposed projects by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is 72. The formula is composed of the following: applicant's water and sewer rate structure, applicants with higher rates will receive more points with a maximum of 10, applicants with flat, unmetered rates will have 3 points deducted, applicants with a decreasing block rate structure will be deducted 2 points, and those with an increasing block structure will receive 2 points. Communities who have dedicated sales tax in addition of rates for water and sewer improvements will receive one point. The maximum points for this category is 13 with a minimum of minus 3.

The second criteria is indebtedness per connection where the ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or wastewater purposes and dividing it by the number of connections served. The higher the debt per connection, the higher the points. The maximum for this category is 10 points with a minimum of zero.

The third category is adjusted per capita income with is the affordability criteria calculated based on a community's per capita income, population trends, and unemployment rate compared to the US criteria in each of the categories. The category has a maximum of 24 points and a minimum of 6.

The next category is if an applicant is subject to a consent order issued by an agency with environmental jurisdiction. They will then receive 5 points for a proposed project which will remedy the problem out of which the consent order arose.

The 5th category is if the applicant's project will also benefit another system or result in or lead to consolidation of systems. The category is for 5 points.

The next category is if an applicant has received a previous ARPA grant from the Board in the past, then 8 points shall be deducted. This potentially will occur only if OWRB receives additional ARPA funding and there is another round of applications accepted.

If the applicant has a long-range plan or is developing a plan, they will receive up to 10

points.

The last category is if an applicant submitted their proposals to the legislative ARPA committee portal, they will receive 5 points.

The proposed rules also address applications from Master Conservancy Districts. When evaluating a Master Conservancy District application, OWRB will look at the district's participating member entities in calculating the total points. The resulting score for each of the participating members of the district shall then be weighted by multiplying each participating members score by a fraction that is equal to ¹/₁₀₂ the participating member's relative participating share of the Master Conservancy District's total water allocation as of the date of when the application is filed. The resulting weighted score for all participating members of the District shall be summed together to determine the score for the Master Conservancy District's application.

Mr. Freeman continues to state that the rules also spell out general procedures such a defining compliance with applicable laws, criteria for denying an application, procedures for disbursement of funds and other administrative steps. The draft rules were distributed for comment on July 15th. Over 3,000 individuals and entities received notification of the rules and request for comments. In addition, they were distributed to the Oklahoma Municipal League and the Oklahoma Rural Water Association. OWRB requested that comments be provided to the Board by the close business last Friday, August 12.

Subchapter 17. Oklahoma Dam Rehabilitation (OKDR) Grant Program Requirements and Procedures [NEW]

785:50-17-1. Program description

785:50-17-2. Definitions

785:50-17-3. Application review and disposition

785:50-17-4. Applicable law; deadline for applications; eligible project costs

785: 50-17-5. Period of performance.

785:50-17-7. OKDR grant priority system

785:50-17-8. Disbursement of funds.

Mr. Yohanes Sugeng, Chief, Engineering and Planning Division speaks on Subchapter 17 for dam rehabilitation. Mr. Sugeng addresses the Board and begins with Senate Bill 429 authorizing the Board to extend \$5 million dollars for communities that own dams with a latest condition assessment of poor and unsatisfactory. The first category is priority funding for small communities with populations of less than 7,000. Mr. Sugeng elaborates on the second category which is dam potential hazard classification, where there are three classifications under dam safety: high hazard, significant, and low hazard. So high hazard potential dams will have a higher priority rating. The third category is condition rating and the statue itself defined only poor and unsatisfactory dams are eligible, with unsatisfactory being worse than poor. The last category is number of persons at risk. OWRB has already completed breech maps for all the high hazard potential dams and the higher the population at risk, the higher the priority.

Mr. Sugeng states that there are about 17 dams that have poor or unsatisfactory conditions in both small and large communities.

Subchapter 19. American Rescue Plan Act Tribal Cooperation Grant Program Requirements and Procedures [NEW]

- 785:50-19-1. Program description
- 785:50-19-2. Definitions
- 785:50-19-3. Application review and disposition
- 785:50-19-4. Applicable law; deadline for applications; eligible project costs
- 785:50-19-5. Project Selection
- 785:50-19-6. Disbursement of funds

Ms. Cunningham presents the last set of rules for the ARPA Tribal Cooperation Grant Program which was approved under Senate Bill 4. The Secretary of Energy and Environment proposed this to the committee to be alongside the other projects OWRB is administering. Ms. Cunningham states that these are emergency rules and the SOEE will decide which projects to move forward. There is a deadline on November 1 for the SOEE office to choose projects and provide funding that is cofunded by tribal entities. There is an agreement under the disbursement of funds for project costs stating that ARPA funds shall be extended for the designated project only after the other identified sources of funds for the project have been expended.

Ms. Gibson explains that right now the legislation is limited to the Chickasaw Nation, the Cherokee Nation and Choctaw Nation for eligibility. The draft rules were submitted to these tribes for comment.

2. Questions and Discussion by Board Members.

Chairman Muller reiterates his understanding of the rules presented. Ms. Cunningham clarifies that the Secretary of Energy and Environment will be choosing the projects and OWRB will be administering the funds for the projects.

3. Comments by Public

Mr. Freeman states that OWRB has received many questions and comments about the proposed rules. Mr. Freeman proceeds to read comments from the public and addresses each statement and suggestions given. Mr. Freeman states to the Chairman that he recommends approval of the rules as presented.

Mr. Muller asks if there is anyone in the audience that would like to make public comment. There were none.

4. Vote on Whether to Approve the Finding of Emergency and Proposed Emergency Rules Amendments as Presented or as May be Amended after Discussion and Comment.

Before a motion is made, Ms. Gibson adds that because these are emergency rules, this means that the money must be expended by 2026. She states that if OWRB waited for the permanent rules process, the rules would not be effective until September 2023. That is why OWRB is proceeding with emergency rules in addition to water, wastewater and dam safety being very important to public health.

Chairman Muller asked for questions or a motion. Mr. Stallings moved to approve the rules as they have been presented to the Board today and Ms. Castillo seconded. Chairman Muller asks if there are any further questions or comments.

Mr. Gorman states that he appreciates all the work being put into the proposed rules.

Mr. Muller adds that he heard that ARPA funds nationwide have been lagging in getting disseminated.

Ms. Cunningham responds that as far as water and sewer infrastructure, there are several states that are already moving on the ARPA funds. She states that there are a lot of moving parts to the ARPA funding and disbursement process.

Chairman Muller states that if there is no further discussion, there is already a motion and a second so he proceeded to the vote.

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

05000 5. SPECIAL CONSIDERATION

Chairman Matt Muller

A. Reconsideration of and Possible Action on the Application to Amend Prior Groundwater Right No. 1968-350, Billy and Kimberly Mizer, Cimarron County, Oklahoma:

1. Summary – Mr. Chris Neel approaches the Board and states that the order was brought to the Board in April and it was discussed in May. Mr. Neel states that initially the permit was filed on April 22, 2021 by Billy and Kimberley Mizer as an application to amend the prior groundwater permit in Cimarron County. The existing prior right authorizes 280 acre-feet of groundwater for irrigation purposes from one well, determined to be the “west well”. An additional well location and exception is referred to as the “east well”. Ronny and Audrey protested the application and were made parties herein and claimed that the location of the east well violates the well spacing requirements because of its close proximity to their well.

A hearing was held January 28, 2022 and the hearing examiner issued an order which was discussed at the April 2022 Board Meeting. The order did not have any conditions on the permit. Mr. Neel states the Board asks OWRB staff to recommend conditions on the permit to mediate between the two parties. Mediation was held on May 13, 2022 and on May 17, 2022 and the Board approved the recommended conditions to the permit. On June 29, 2022 the Board received a joint application to reopen and modify the Board order after the Applicant retained counsel and negotiated with the Protestants. Mr. Neel provides the revised conditions that were proposed by both parties. He continues to go through the restrictions and highlights the differences from the original proposal.

Mr. Muller clarifies that both parties are now in agreement of the revised conditions.

Mr. Neel responds that yes, the Applicant and Protestant have agreed to the revision.

2. Discussion and presentation by parties

Mr. Muller asks if the Applicant or Protestant would like to make a statement. There were no further comments by the Applicant or Protestant.

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.
- (b) Designation of person to keep written minutes of Executive Session, if authorized.
- (c) Executive Session, if authorized.
- 4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized.
- 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 asks for the Board’s pleasure. Mr. Stallings motions to approve the new set of restrictions and provisions to approve the permit and Ms. Castillo seconds the motion. Mr. Muller asks for any further questions or discussion. There being none, he proceeds to call for the vote.

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

B. Amendment to Schedule of Use & Reduction of Stream Water Permit No. 1993-034, City of Ponca City, Kay County, Oklahoma:

1. Summary – Mr. Chris Neel begins with explaining the background of the amendment. In 1993, the City of Ponca City applied for a surface water permit for 14,031 acre-feet per year on Kaw Reservoir. It was subsequently granted in 1994 with a schedule of use. Mr. Neel explains that a schedule of use is sometimes used with large municipal permits to reach projected amounts at the time. In this case, the City of Ponca City was scheduled a schedule of use in 10 year increments with about 20% of the total allocation added during each increment. In 2003, before the first increment in the schedule of use, the City of Ponca City requested an amendment to their permit to extend it 10 years to 2014. That amendment was granted in 2004. In 2013, the City of Ponca City sought again to extend the schedule of use but there was no record of an extension being granted by the OWRB.

According to Chapter 20 of the OWRB Rules, the Appropriation Use of Stream Water 20-9-3 covers the topic of loss of rights and reversion of water to the public. Mr. Neel states that Item B1. states that to the extent that the amount of water authorized is not put to beneficial use as provided by the terms of the permit including but not limited to a schedule of use of incremental amounts within corresponding time periods, the amount not used shall be forfeited by the holder of the permit and such unused water shall again become public water and available for appropriation. On June 27, 2022 the OWRB gave notice of hearing to the City of Ponca City for a reduction and cancellation of stream water permit 1993-034. On January 8, 2022 a hearing was conducted and the hearing examiner took testimony from OWRB staff and representatives from the City of Ponca City. After the hearing, the hearing examiner issued an order stating “that Ponca City has not lost any of its appropriation right to use 14,031 acre-feet of water from Kaw Reservoir.”

2. Discussion and presentation by parties

Representing the City of Ponca City is Mr. Dean Couch, Counsel, and Mr. Craig Stephenson, City Manager. Mr. Couch greets the Board and thanks them for their attention to the

matter. He states that the City of Ponca City recommends approval of the proposed findings and conclusions in the order. Mr. Couch asks for any questions.

Mr. Muller asks why it has taken 25 years and Ponca City is still not using all of the water allocated but instead has a placeholder over the 14,031 acre-feet.

Mr. Couch responds that the City of Ponca City has a lot of changes to requirements for a new wastewater treatment plant. There is also a contract with the Corps of Engineers for storage; therefore they would like to move forward with the full appropriated amount for storage, contact pending.

Mr. Craig Stephenson greets the Board. He explains that there are concerns with the drought and the recharge of aquifers. Therefore he would like to move forward with the water for his community.

Mr. Muller asks what hard plans are in place to start using the water and if there is a schedule.

Mr. Stephenson responds that there are no hard plans since they were unclear if they would receive the allocation or not.

Mr. Stallings states that the City of Enid gave up water rights which was a poor decision in hindsight. Mr. Stallings applauds the City of Ponca City for holding onto the rights and preparing water for its communities.

Mr. Stephenson says that there is a possibility to use the water rights to supply to other communities as well.

Ms. Gibson explains that this order directs the Board to go back to notice for a new schedule of use. Therefore the Board will see that schedule of use again, and there may be more information on the projects the next time the Board sees it.

Mr. Stephenson answers some additional questions from the Board and states that 30% of Kaw Lake's water is unappropriated.

Chairman Muller asks if there are any other questions. There were none.

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.
- (b) Designation of person to keep written minutes of Executive Session, if authorized.
- (c) Executive Session, if authorized.

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

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 asks the Board their pleasure concerning this order. Ms. Castillo motions for approval of the order and Mr. Stallings seconds.

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

C. Consideration of and Possible Action on items Transferred from Summary Disposition Agenda, if any.

Mr. Muller reminds the Board that Items 3D. 7-9 have been moved to Special Consideration. He states that the items cover agreements between OWRB and OMES to distribute the funds based on the proposed rules that were approved. Chairman Muller asks if there are any questions or discussions about these items.

Ms. Gibson adds that the reason why these items have been moved to Special Consideration is because part of the grant agreement is another risk assessment for the programs. Therefore it would be best to approve and authorize OWRB staff to complete that risk assessment on behalf of the Board. Mr. Muller asks if the Board would consider the authorization and to make a motion if so.

Ms. Gorman made a motion to approve Items 3D. 7-9 with the authority of the Executive Director to appoint OWRB staff to complete the risk assessment on behalf of the Board. Mr. Justice seconded the motion. Mr. Muller asks for any other questions or comments. There were none and it is called for a vote.

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

6. NEW BUSINESS

Chairman Matt Muller

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. ADJOURNMENT

Chairman Matt Muller

There being no further business, Chairman Muller adjourned the regular meeting of the Oklahoma Water Resources Board at 10:51 a.m. on August 16, 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

Charles Darby, Vice Chairman

Darren Cook

Suzanne V. Landess

Robert L. Stallings, Jr.

Thomas A. Gorman

Ron Justice

B. Latham

ATTEST:

Jennifer Castillo, Secretary
(SEAL)

1. D. FINANCIAL UPDATE

1. D.1. Monthly Budget Report

**Oklahoma Water Resources Board
FY 23 Revenues and Expenses
through August 31 , 2022**

Fund		General Revenue	Budgeted	Expended	Balance	Percentage Remaining
19201	1	FY 23 Appropriation	4,224,510	723,194.57	3,501,315	83%
		Total General Revenue	4,224,510	723,195	3,501,315	83%
		Revolving Funds				
21000	2	Drillers Indemnity Fund	50,000	0	50,000	100%
21500	3	OWRB Revolving Fund	3,174,907	295,808	2,879,099	91%
23500	4	Phase II A-S Hydro St Rev Fund	300,441	0	300,441	100%
24000	5	Revolving Fund	668,352	91,019	577,333	86%
25000	7	Water Infrastructure Dev. Fund (OCWP)	4,368,459	189,640	4,178,819	96%
42000	8	USGS Cooperative Agreement	288,200	0	288,200	100%
44400	9	DW Loan Administration Fund	1,262,334	0	1,262,334	100%
44500	10	CW Loan Administration Fund	2,868,453	84,678	2,783,775	97%
		Total Revolving Funds	12,981,146	930,551	12,050,595	93%
		Federal Funds				
40000	12	Federal Fund - General	1,469,406	113,670	1,355,736	92%
40700	12	Federal Fund - Engineering and Planning	3,411,334		3,411,334	100%
		Total Federal Funds	4,880,740	113,670	4,767,070	98%
		Total Funding	22,086,396	1,767,416	20,318,980	92%
			Budgeted	Expended	Balance	Percentage Remaining
510000	13	Salary Expense	7,032,360	1,062,726	5,969,634	85%
512000	14	Insurance	1,289,996	186,765	1,103,231	86%
513000	15	FICA and Retirement	1,688,281	249,813	1,438,468	85%
515000	16	Professional Services	7,620,362	183,507	7,436,855	98%
519000	17	Flexible Benefits	16,000	0	16,000	100%
		Total Personal Services	17,646,999	1,682,811	15,964,188	90%
520000	18	Travel Expense	498,911	24,640	474,271	95%
530000	19	Administrative Expense	1,161,118	59,964	1,101,154	95%
540000	20	Furniture and Equipment Expense	460,862		460,862	100%
550000	21	Intra Inter Agency Payments	2,318,506		2,318,506	100%
		Total Operating Expenses	4,439,397	84,604	4,354,793	98%
		Total Expenditures	22,086,396	1,767,416	20,318,980	92%
						83%

2. FINANCIAL ASSISTANCE DIVISION

September 20, 2022

OKLAHOMA WATER RESOURCES BOARD

Emergency Grant Program

Priority List

9/8/2022

Available Funds

\$69,549.61

Priority Ranking	Priority Points	Date Requested	Remain Justify Date	Grant Number	Applicant	County	Project Type	Amount Recommended
1	73	06/10/2021	06/28/2022	FAP-21-0010-G	Barnsdall Public Works Authority	Osage	Water	\$99,450.00
							Total Requests:	\$99,450.00

+ Recommended for approval when funds available

* Funds are available

**WATER RESOURCES FUND
EMERGENCY GRANT ACCOUNT
August 31, 2022**

Beginning Balance, 8/1/2022		\$ 563,375.92
<u>Income:</u>		
Interest Earnings	630.78	
Reserve Earnings		
2016 Gen Reserve		
1986 Gen Reserve		
<u>Grant Refunds:</u>		
Returned Grant Funds	Boynton 5,670.41	
Returned Grant Funds		
	<hr/>	
Total Income	6,301.19	6,301.19
 <u>Grants Funded:</u>		
	 <hr/>	
Total Grants Funded	-	<hr/> -
Ending Balance, 8/31/2022		569,677.11
Funds obligated for approved grants		(127.50)
Total of grants recommended for approval		
Total unobligated funds available for grants		<hr/> <u>\$ 569,549.61</u> <hr/>

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Salina Public Works Authority, Mayes County

Loan Application No.: ORF-23-0085-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$2,242,000.00

Interest Rate: The CWSRF Loan shall bear a fixed interest rate to be determined prior to loan closing plus an administrative fee of 0.5% per annum, all on the outstanding principal balance of the loan.

Payment Term: Interest, administrative fee, and principal payments shall be made on a semi-annual basis. The applicant shall commence principal repayment no later than one (1) year following Project completion and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and sanitation systems, a one cent sales tax and may include a mortgage on their water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) convert a pump station to submersible pumps, install a forced main, a pump station, a generator, and wastewater plant drying beds, replace a creek crossing, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$2,242,000.00	Project	\$2,161,500.00
		Bond Counsel	32,500.00
		Financial Advisor	32,500.00
		Local Counsel	15,000.00
		Trustee Bank	500.00
Total	<u>\$2,242,000.00</u>	Total	<u>\$2,242,000.00</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-23-0085-CW IN THE NAME OF)
SALINA PUBLIC WORKS AUTHORITY)
MAYES COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, Salina Public Works Authority (the "Applicant") has made its Application for Funding No. ORF-23-0085-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-23-0085-CW in the name of Salina Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) convert a pump station to submersible pumps, install a forced main, a pump station, a generator, and wastewater plant drying beds, replace a creek crossing, all related appurtenances (the "Project"), and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$2,242,000.00. The Applicant shall pay interest on the loan at a fixed rate to be determined prior to closing plus an administrative fee at the rate of 0.5% per annum, all on the outstanding balance of disbursed loan proceeds. Interest, administrative fee, and any principal payments shall be made on a semi-annual basis. The Applicant shall commence principal repayment no later than one (1) year following Project completion, and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

**ORDER APPROVING LOAN APPLICATION
SALINA PUBLIC WORKS AUTHORITY
ORF-23-0085-CW**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and sanitation systems, a one cent sales tax and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
SALINA PUBLIC WORKS AUTHORITY
ORF-23-0085-CW**

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Perry Municipal Authority, Noble County

Loan Application No.: ORF-22-0018-DW
Drinking Water SRF Loan (“DWSRF Loan”)

Funding Requested: \$4,000,000.00

Loan Interest Rate: The DWSRF Loan shall bear a fixed interest rate to be determined prior to loan closing plus an administrative fee of 0.5% per annum, all on the outstanding principal balance of the loan.

Loan Payment Term: Interest, administrative fee, and principal payments shall be made on a semi-annual basis. The applicant shall commence principal repayment no later than one (1) year following Project completion and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

Loan Security Position: The DWSRF loan shall be secured with a lien on the revenues of the applicant's water system and a 2.25 cents sales tax, and may include a mortgage on the applicant's water system and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) replace water lines, install mixers in elevated water storage facilities, install generators, replace high service pumps, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$4,000,000.00	Project	\$3,869,500.00
		Bond Counsel	52,500.00
		Financial Advisor	52,500.00
		Local Counsel	25,000.00
		Trustee Bank	500.00
Total	\$4,000,000.00	Total	\$4,000,000.00

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-22-0018-DW IN THE NAME OF)
PERRY MUNICIPAL AUTHORITY)
NOBLE COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, Perry Municipal Authority (the "Applicant") has made its Application for Funding No. ORF-22-0018-DW (the "Loan Application") to the Board and to the Oklahoma Department of Environmental Quality (the "DEQ") for a loan from the Drinking Water Treatment Revolving Loan Account (the "DWSRF"), pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.71 *et seq*, as amended; and

WHEREAS, the Applicant intends to use the loan for drinking water system improvements, to further compliance with State and Federal standards and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the DEQ has certified the Loan Application with regards to compliance with applicable technical program requirements and forwarded it to the Board with a recommendation that the Loan Application be considered and approved for a DWSRF Loan; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-22-0018-DW in the name of Perry Municipal Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) replace water lines, install mixers in elevated water storage facilities, install generators, replace high service pumps, all related appurtenances (the "Project"), and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$4,000,000.00. The Applicant shall pay interest on the loan at a fixed rate to be determined prior to closing plus an administrative fee at the rate of 0.5% per annum, all on the outstanding balance of disbursed loan proceeds. Interest, administrative fee, and any principal payments shall be made on a semi-annual basis. The Applicant shall commence principal repayment no later than one (1) year

**ORDER APPROVING LOAN APPLICATION
PERRY MUNICIPAL AUTHORITY
ORF-22-0018-DW**

following Project completion, and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

2. The loan shall be secured with a lien on the revenues of the Applicant's water system and a 2.25 cents sales tax, and may include a mortgage on the Applicant's water system and other real property.

3. Upon the Applicant's acceptance of the DEQ's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other DWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the DWSRF in accordance with the DWSRF program regulations as approved by the United States Environmental Protection Agency.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, DWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the DWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of September, 2022 in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
PERRY MUNICIPAL AUTHORITY
ORF-22-0018-DW**

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Coweta Public Works Authority, Wagoner County

Loan Application No.: ORF-19-0002-CWA
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$4,600,000.00

Interest Rate: The CWSRF Loan shall bear a fixed interest rate to be determined prior to loan closing plus an administrative fee of 0.5% per annum, all on the outstanding principal balance of the loan.

Payment Term: Interest, administrative fee, and principal payments shall be made on a semi-annual basis. The applicant shall commence principal repayment no later than one (1) year following Project completion and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and sanitation systems, a 3 cent sales tax and may include a mortgage on the applicant's water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) provide additional funds needed to modify and upgrade the existing wastewater treatment plant for which a loan was approved on October 15, 2019, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$4,600,000.00	Project	\$4,502,500.00
		Bond Counsel	48,500.00
		Financial Advisor	37,000.00
		Local Counsel	11,500.00
		Trustee Bank	500.00
Total	<u><u>\$4,600,000.00</u></u>	Total	<u><u>\$4,600,000.00</u></u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-19-0002-CWA IN THE NAME OF)
THE COWETA PUBLIC WORKS AUTHORITY)
WAGONER COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, The Coweta Public Works Authority (the "Applicant") has made its Application for Funding No. ORF-19-0002-CWA (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-19-0002-CWA in the name of The Coweta Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) provide additional funds needed to modify and upgrade the existing wastewater treatment plant for which a loan was approved on October 15, 2019, all related appurtenances (the "Project"), and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$4,600,000.00. The Applicant shall pay interest on the loan at a fixed rate to be determined prior to closing plus an administrative fee at the rate of 0.5% per annum, all on the outstanding balance of disbursed loan proceeds. Interest, administrative fee, and any principal payments shall be made on a semi-annual basis. The Applicant shall commence principal repayment no later than one (1) year following Project completion, and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

**ORDER APPROVING LOAN APPLICATION
THE COWETA PUBLIC WORKS AUTHORITY
ORF-19-0002-CWA**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and sanitation systems, a 3 cent sales tax and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE COWETA PUBLIC WORKS AUTHORITY
ORF-19-0002-CWA**

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Broken Arrow Municipal Authority, Tulsa County

Loan Application No.: ORF-23-0167-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$19,305,000.00

Interest Rate: The CWSRF Loan shall bear a fixed interest rate to be determined prior to loan closing plus an administrative fee of 0.5% per annum, all on the outstanding principal balance of the loan.

Payment Term: Interest, administrative fee, and principal payments shall be made on a semi-annual basis. The applicant shall commence principal repayment no later than one (1) year following Project completion and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and sanitation systems, a one cent sales tax and may include a mortgage on the applicant's water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) design and build a belt filter press building, install an AMI system, acquire land, construct or improve lift stations and force mains, install manholes, rehabilitate and construct trunk sewers, conduct flow monitoring, make sewer improvements, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$19,305,000.00	Project	\$19,153,975.00
		Bond Counsel	75,262.50
		Financial Advisor	75,262.50
		Trustee Bank	500.00
Total	<u>\$19,305,000.00</u>	Total	<u>\$19,305,000.00</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-23-0167-CW IN THE NAME OF)
BROKEN ARROW MUNICIPAL AUTHORITY)
TULSA COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, Broken Arrow Municipal Authority (the "Applicant") has made its Application for Funding No. ORF-23-0167-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-23-0167-CW in the name of Broken Arrow Municipal Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) design and build a belt filter press building, install an AMI system, acquire land, construct or improve lift stations and force mains, install manholes, rehabilitate and construct trunk sewers, conduct flow monitoring, make sewer improvements, all related appurtenances (the "Project"), and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$19,305,000.00. The Applicant shall pay interest on the loan at a fixed rate to be determined prior to closing plus an administrative fee at the rate of 0.5% per annum, all on the outstanding balance of disbursed loan proceeds. Interest, administrative fee, and any principal payments shall be made on a semi-annual basis. The Applicant shall commence principal repayment no later than one (1) year following Project completion, and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

**ORDER APPROVING LOAN APPLICATION
BROKEN ARROW MUNICIPAL AUTHORITY
ORF-23-0167-CW**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and sanitation systems, a one cent sales tax and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
BROKEN ARROW MUNICIPAL AUTHORITY
ORF-23-0167-CW**

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Oklahoma City Water Utilities Trust, Oklahoma County

Loan Application No.: ORF-21-0008-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$104,113,000.00

Interest Rate: The CWSRF Loan shall bear a fixed interest rate to be determined prior to loan closing plus an administrative fee of 0.5% per annum, all on the outstanding principal balance of the loan.

Payment Term: Interest, administrative fee, and principal payments shall be made on a semi-annual basis. The applicant shall commence principal repayment no later than one (1) year following Project completion and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and sanitation systems and may include a mortgage on the applicant's water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds for: (i) WWTP improvements, lift station improvements, biosolids and odor control management, disinfection and dechlorination improvements, dam structural stability improvements, residential sewer tie-ins and septic system decommission, all related appurtenances (the “Project”), and to (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$104,113,000.00	Project	\$104,095,500.00
		Bond Counsel	17,500.00
Total	<u>\$104,113,000.00</u>	Total	<u>\$104,113,000.00</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-21-0008-CW IN THE NAME OF)
OKLAHOMA CITY WATER UTILITIES TRUST)
OKLAHOMA COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, Oklahoma City Water Utilities Trust (the "Applicant") has made its Application for Funding No. ORF-21-0008-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-21-0008-CW in the name of Oklahoma City Water Utilities Trust be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used for (i) WWTP improvements, lift station improvements, biosolids and odor control management, disinfection and dechlorination improvements, dam structural stability improvements, residential sewer tie-ins and septic system decommission, all related appurtenances (the "Project"), and (ii) to pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$104,113,000.00. The Applicant shall pay interest on the loan at a fixed rate to be determined prior to closing plus an administrative fee at the rate of 0.5% per annum, all on the outstanding balance of disbursed loan proceeds. Interest, administrative fee, and any principal payments shall be made on a semi-annual basis. The Applicant shall commence principal repayment no later than one (1) year following Project completion, and the maturity of the loan shall be no later than thirty (30) years following the date the Project is completed.

**ORDER APPROVING LOAN APPLICATION
OKLAHOMA CITY WATER UTILITIES TRUST
ORF-21-0008-CW**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and sanitation systems and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
OKLAHOMA CITY WATER UTILITIES TRUST
ORF-21-0008-CW**

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of Selection of Bond Counsel)
In Connection With the Issuance of One or More)
Obligations to Provide Funding for the)
State Loan Program)

**PROPOSED
RESOLUTION**

WHEREAS, Article X, Section 39 of the Oklahoma Constitution authorizes a program for financial assistance to public entities for water resource and sewage treatment purposes as authorized by the Legislature; and

WHEREAS, the Oklahoma Water Resources Board (the "Board") has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.2 and 1085.31 et seq. amended (the "Act") to sell and issue its obligations to provide necessary funds for the funding of properly approved projects. The State Loan Program Revenue Bond obligations are issued for the purpose of providing funds to loan to local eligible entities throughout the State for making water and sewer improvements or refinancing thereof, all in accordance with the provisions of the Act; and

WHEREAS, the Board desires to aid and assist eligible entities for the aforementioned purposes by issuing obligations and using the proceeds thereof for making loans to eligible entities for qualified purposes; and

WHEREAS, the Board has heretofore requested proposals from a plurality of bond counsel firms for consideration in selecting bond counsel for the proposed issuance of State Loan Program Revenue Bond obligations; and

WHEREAS, the Board has given due consideration to the bond counsel firms' proposals, and has determined that the following Resolution providing for selection of bond counsel and other provisions relating thereto should be adopted and approved.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

1. The Board hereby selects the firm of _____ to provide services as the bond counsel for the Board's proposed issuance(s) of State Loan Program Revenue Bond obligations.

Resolution Selecting Bond Counsel – State Loan Program Revenue Bonds
September 20, 2022
Page 2

2. The scope of services of the bond counsel shall be in accordance with the "Scope of Services" terms of the Board's Request for Proposals heretofore distributed.

3. All fees and expenses of the bond counsel in connection with the proposed issuance of State Loan Program Revenue Bond obligations shall be duly subject to approval by the Deputy Treasurer for Debt Management in accordance with state law.

4. To the extent that any conflict of interest may exist or arise with regard to the bond counsel firm selected by this resolution serving as local bond counsel on any of the Board's Local Loans to Eligible Entities, the Board hereby consents to the Board's bond counsel serving in such capacity.

ADOPTED and APPROVED this 20th day of September 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of a Resolution Selecting a)
Disclosure Counsel to the Board in Connection)
With the Issuance of One or More)
Obligations to Provide Funding for the)
State Loan Program)

**PROPOSED
RESOLUTION**

WHEREAS, Article X, Section 39 of the Oklahoma Constitution authorizes a program for financial assistance to public entities for water resource and sewage treatment purposes as authorized by the Legislature; and

WHEREAS, the Oklahoma Water Resources Board (the "Board") has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.2 and 1085.31 et seq. amended (the "Act") to sell and issue its obligations to provide necessary funds for the funding of properly approved projects. The State Loan Program Revenue Bond obligations are issued for the purpose of providing funds to loan to local eligible entities throughout the State for making water and sewer improvements or refinancing thereof, all in accordance with the provisions of the Act; and

WHEREAS, the Board desires to aid and assist eligible entities for the aforementioned purposes by issuing obligations and using the proceeds thereof for making loans to eligible entities for qualified purposes; and

WHEREAS, the Board has heretofore requested proposals from law firms experienced in providing disclosure counsel services in respect to applicable federal securities laws and rules for consideration in selecting a disclosure counsel to the Board's financing programs; and

WHEREAS, the Board has given due consideration to the disclosure counsel proposals submitted, and has determined that the following Resolution providing for selection of disclosure counsel and other provisions relating thereto should be adopted and approved.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

1. The Board hereby selects the firm of _____ to provide services as the disclosure counsel for the Board's proposed issuance(s) of State Loan Program Revenue Bond obligations.

Resolution Selecting Disclosure Counsel – State Loan Program Revenue Bonds
September 20, 2022
Page 2

2. The scope of services of the disclosure counsel shall be in accordance with the "Scope of Services" terms of the Board's Request for Proposals heretofore distributed.

3. All fees and expenses of the disclosure counsel in connection with the proposed issuance of State Loan Program Revenue Bond obligations shall be duly subject to approval by the Deputy Treasurer for Debt Management in accordance with state law.

ADOPTED and APPROVED this 20th day of September 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of Selection of Investment Banker(s))
In Connection With the Issuance of One or More)
Obligations to Provide Funding for the)
State Loan Program)

**PROPOSED
RESOLUTION**

WHEREAS, Article X, Section 39 of the Oklahoma Constitution authorizes a program for financial assistance to public entities for water resource and sewage treatment purposes as authorized by the Legislature; and

WHEREAS, the Oklahoma Water Resources Board (the "Board") has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.2 and 1085.31 et seq. amended (the "Act") to sell and issue its obligations to provide necessary funds for the funding of properly approved projects. The State Loan Program Revenue Bond obligations are issued for the purpose of providing funds to loan to local eligible entities throughout the State for making water and sewer improvements or refinancings thereof, all in accordance with the provisions of the Act; and

WHEREAS, the Board desires to aid and assist eligible entities for the aforementioned purposes by issuing obligations and using the proceeds thereof for making loans to eligible entities for qualified purposes; and

WHEREAS, the Board has heretofore requested proposals from a plurality of investment banking firms for consideration in selecting investment bankers for the proposed issuance of State Loan Program Revenue Bond obligations; and

WHEREAS, the Board has given due consideration to the investment banking firms' proposals, and has determined that the following Resolution providing for selection of investment bankers, and other provisions relating thereto should be adopted and approved.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

1. The Board hereby selects the firm of _____ to provide services as Senior Managing Investment Banker for the Board's proposed issuance of State Loan Program Revenue Bond obligations and the firm(s) of _____ as Co-Managing Investment Banker(s).

2. The scope of services of the investment banker(s) shall be in accordance with the "Scope of Services" terms of the Board's Request for Proposals heretofore distributed.

Resolution Selecting Investment Banker – State Loan Program Revenue Bonds
September 20, 2022
Page 2

3. All fees and expenses of the investment banker(s) in connection with the proposed issuance of State Loan Program Revenue Bond obligations shall be duly subject to approval by the Deputy Treasurer for Debt Management in accordance with state law.

4. The issuance of obligations shall be allocated based on a bond allotment and designation rules developed by _____ and approved by the Board’s staff and the Deputy Treasurer for Debt Management.

5. Due responsibility and decision-making authority regarding the obligations' issuance shall be reserved to the Board, with appropriate consultation from its staff. _____, as Senior Managing Investment Banker shall be primarily responsible for managing the proposed issuance to its conclusion. The Co-Managing Investment Banker(s) may consult with _____, the Board and its staff, but _____ shall have sole authority among the Underwriters for underwriting management decisions and/or recommendations to the Board and its staff. Notwithstanding any of the foregoing, the scope of services of both the Senior Managing Investment Banker on the one hand and the Co-Managing Underwriters on the other hand shall be in accordance with the "Scope of Services" terms of the Board's Request for Proposal heretofore distributed regarding investment banking services.

ADOPTED and APPROVED this 20th day of September 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA

In the Matter of Selection of a Bond Counsel)
In Connection With the Issuance of One)
Or More Obligations to Provide Funding)
For the Clean Water and Drinking Water)
State Revolving Fund Loan Programs)

PROPOSED
RESOLUTION

WHEREAS, Article X, Section 39 of the Oklahoma Constitution authorizes a program for financial assistance to public entities for water resource and sewage treatment purposes as authorized by the Legislature; and

WHEREAS, the Board has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.51 through 1085.65 as amended (the "Clean Water Act") to sell and issue its obligations to provide necessary funds for the Clean Water State Revolving Fund Loan Account (the "CWSRF Account") in order to provide financial assistance to eligible entities for wastewater treatment projects all in accordance with the provisions of the Clean Water Act; and

WHEREAS, the Board has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.71 through 1085.84A as amended (the "Drinking Water Act") to sell and issue its obligations to provide necessary funds for the Drinking Water Treatment Revolving Loan Account (the "DWSRF Account") in order to provide financial assistance to eligible entities for financing drinking water treatment projects all in accordance with the provisions of the Drinking Water Act; and

WHEREAS, the Board desires to aid and assist eligible entities for the aforementioned purposes by issuing obligations and using the proceeds thereof so as to make the best use of moneys in the CWSRF Account and the DWSRF Account for making loans to eligible entities for qualified purposes; and

WHEREAS, the Board has heretofore requested proposals from a plurality of bond counsel firms for consideration in selecting bond counsel for the proposed issuance of Clean Water and Drinking Water State Revolving Fund Program obligations; and

WHEREAS, the Board has given due consideration to the bond counsel firms' proposals, and has determined that the following Resolution providing for selection of bond counsel and other provisions relating thereto should be adopted and approved.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

1. The Board hereby selects the firm of _____ to provide services as the bond counsel for the Board's proposed issuance(s) of Clean Water and Drinking Water State Revolving Fund Program obligations.

Resolution Selecting Bond Counsel - SRF Loan Program

September 20, 2022

Page 2

2. The scope of services of the bond counsel shall be in accordance with the "Scope of Services" terms of the Board's Request for Proposals heretofore distributed.

3. All fees and expenses of the bond counsel in connection with these proposed issuances of Clean Water and Drinking Water State Revolving Fund Program obligations shall be duly subject to approval by the Deputy Treasurer for Debt Management in accordance with state law.

4. To the extent that any conflict of interest may exist or arise with regard to the bond counsel firm selected by this resolution serving as local bond counsel on any of the Board's Local Loans to Eligible Entities, the Board hereby consents to the Board's bond counsel serving in such capacity.

ADOPTED and APPROVED this 20th day of September 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Acting Secretary

(SEAL)

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA

In the Matter of a Resolution Selecting a)
Disclosure Counsel to the Board in Connection)
With the Issuance of One or More)
Obligations to Provide Funding for the)
State Loan Program)

PROPOSED
RESOLUTION

WHEREAS, Article X, Section 39 of the Oklahoma Constitution authorizes a program for financial assistance to public entities for water resource and sewage treatment purposes as authorized by the Legislature; and

WHEREAS, the Oklahoma Water Resources Board (the "Board") has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.2 and 1085.31 et seq. amended (the "Act") to sell and issue its obligations to provide necessary funds for the funding of properly approved projects. The State Loan Program Revenue Bond obligations are issued for the purpose of providing funds to loan to local eligible entities throughout the State for making water and sewer improvements or refinancing thereof, all in accordance with the provisions of the Act; and

WHEREAS, the Board desires to aid and assist eligible entities for the aforementioned purposes by issuing obligations and using the proceeds thereof for making loans to eligible entities for qualified purposes; and

WHEREAS, the Board has heretofore requested proposals from law firms experienced in providing disclosure counsel services in respect to applicable federal securities laws and rules for consideration in selecting a disclosure counsel to the Board's financing programs; and

WHEREAS, the Board has given due consideration to the disclosure counsel proposals submitted, and has determined that the following Resolution providing for selection of disclosure counsel and other provisions relating thereto should be adopted and approved.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

1. The Board hereby selects the firm of _____ to provide services as the disclosure counsel for the Board's proposed issuance(s) of State Loan Program Revenue Bond obligations.

Resolution Selecting Disclosure Counsel – State Loan Program Revenue Bonds
September 20, 2022
Page 2

2. The scope of services of the disclosure counsel shall be in accordance with the "Scope of Services" terms of the Board's Request for Proposals heretofore distributed.

3. All fees and expenses of the disclosure counsel in connection with the proposed issuance of State Loan Program Revenue Bond obligations shall be duly subject to approval by the Deputy Treasurer for Debt Management in accordance with state law.

ADOPTED and APPROVED this 20th day of September 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of Selection of an Investment)
Banker Pool In Connection With the Issuance of)
Obligations to Provide Funding for the)
Clean Water State Revolving Fund and Drinking)
Water State Revolving Fund Loan Programs)

**PROPOSED
RESOLUTION**

WHEREAS, Article X, Section 39 of the Oklahoma Constitution authorizes a program for financial assistance to public entities for water resource and sewage treatment purposes as authorized by the Legislature; and

WHEREAS, the Board has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.51 through 1085.65 as amended (the "Clean Water Act") to sell and issue its obligations to provide necessary funds for the Clean Water State Revolving Fund Loan Account (the "CWSRF Account") in order to provide financial assistance to eligible entities for financing wastewater projects all in accordance with the provisions of the Clean Water Act; and

WHEREAS, the Board has been authorized by the Legislature in 82 O.S. 2011, Sections 1085.71 through 1085.84A as amended (the "Drinking Water Act") to sell and issue its obligations to provide necessary funds for the Drinking Water Treatment Revolving Loan Account (the "DWSRF Account") in order to provide financial assistance to eligible entities for financing drinking water treatment projects all in accordance with the provisions of the Drinking Water Act; and

WHEREAS, the Board desires to aid and assist eligible entities for the aforementioned purposes by issuing obligations and using the proceeds thereof so as to make the best use of moneys in the CWSRF Account and the DWSRF Account for making loans to eligible entities for qualified purposes; and

WHEREAS, the Board has heretofore requested proposals from a plurality of investment banking firms for consideration in selecting an investment banker pool for the proposed issuance of Clean Water and Drinking Water State Revolving Fund Loan Program Revenue Bond obligations; and

WHEREAS, the Board has given due consideration to the investment banking firms' proposals, and has determined that the following Resolution providing for selection of an investment banker pool and other provisions relating thereto should be adopted and approved.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

1. The Board hereby selects the following investment banking firms to be included in the investment banking pool for the Board's proposed issuance(s) of Clean Water and Drinking Water State Revolving Fund Loan Program Revenue Bond obligations (the "SRF Bonds"):

Resolution Selecting SRF Investment Banker Pool
September 20, 2022
Page 2

- a. BofA Securities, Inc.
- b. BOK Financial Securities, Inc.
- c. Citi Global Markets Inc.
- d. D.A. Davidson & Co.
- e. J.P. Morgan Securities LLC
- f. Morgan Stanley & Co. LLC
- g. Piper Sandler & Co.
- h. Raymond James & Associates, Inc.
- i. Siebert, Williams, Shank & Co., LLC
- j. Stephens Inc.
- k. Stifel, Nicolaus & Co. Inc.
- l. TD Securities LLC
- m. UBS Financial Securities, Inc.

Resolution Selecting SRF Investment Banker Pool
September 20, 2022
Page 3

2. The Board will hereby select as needed Senior Manager Investment Banker and Co-Managing Investment Bankers for each of the Board's proposed issuance of SRF Bonds from this designated pool of investment bankers.

ADOPTED and APPROVED this 20th day of September 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Acting Secretary

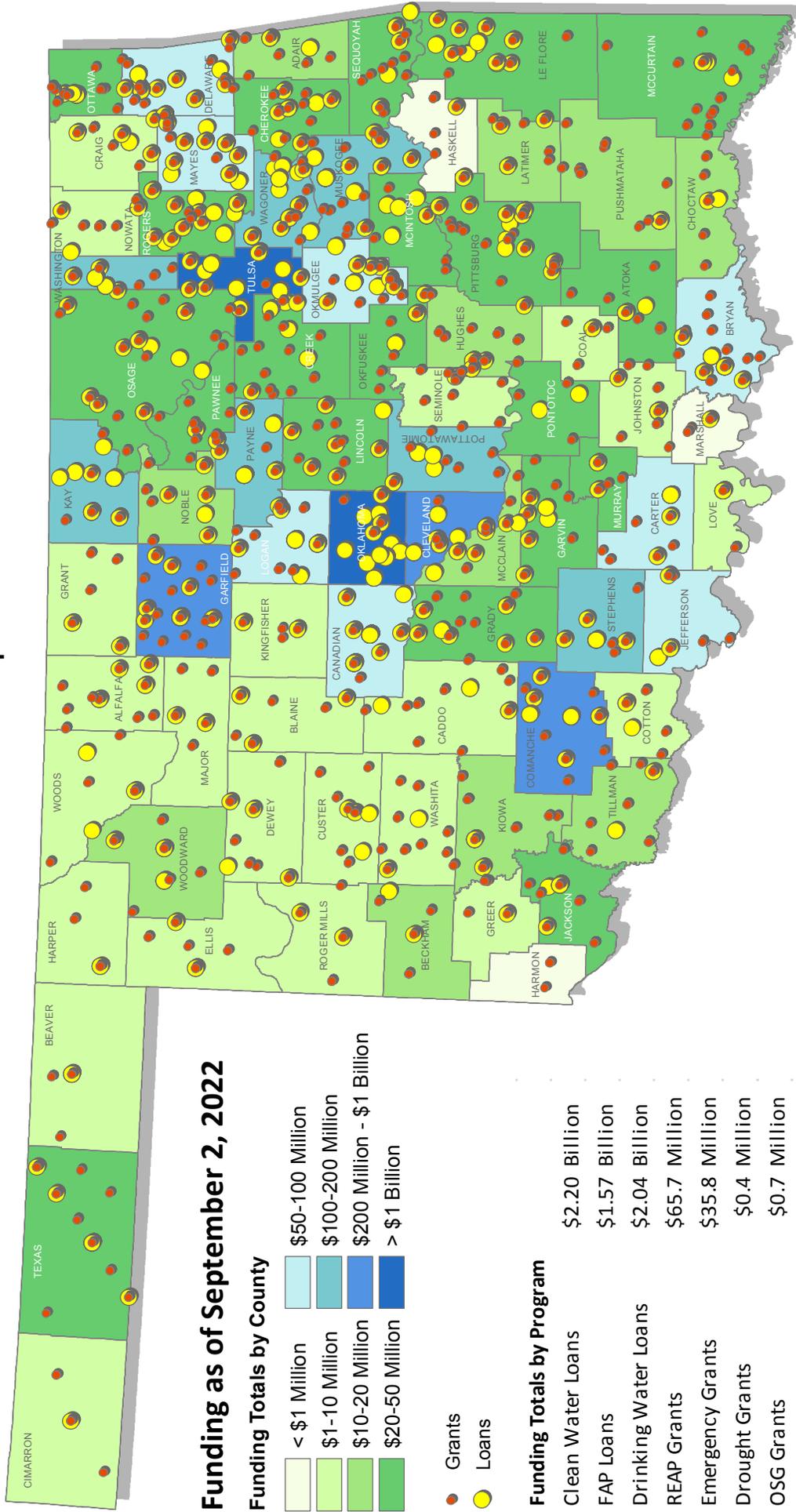
(SEAL)

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

Financial Assistance Division

Loan and Grant Recipient Status



3.C. SUMMARY DISPOSITION AGENDA ITEMS

FINANCIAL ASSISTANCE DIVISION

September 20, 2022

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Inola Public Works Authority, Rogers County

Loan Application No.: ORF-23-0152-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$171,000.00

Payment Term: The applicant shall be required to comply with all CWSRF loan provisions. If all CWSRF loan provisions are met to the satisfaction of the OWRB, then the funding shall be forgiven in total without fees for administration or interest.

Purpose: The applicant will utilize the loan proceeds to: (i) plan and design drainage improvements, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$171,000.00	Project	\$200,000.00
Local Funds	57,000.00	Bond Counsel	22,500.00
		Local Counsel	5,500.00
Total	\$228,000.00	Total	\$228,000.00

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-23-0152-CW IN THE NAME OF)
THE INOLA PUBLIC WORKS AUTHORITY)
ROGERS COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, The Inola Public Works Authority (the "Applicant") has made its Application for Funding No. ORF-23-0152-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-23-0152-CW in the name of The Inola Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The proceeds, along with other funds of the Applicant, if any, will be used to (i) plan and design drainage improvements, all related appurtenances (the "Project") and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. Funding shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$171,000.00.

2. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

ORDER APPROVING LOAN APPLICATION

The Inola Public Works Authority

ORF-23-0152-CW

3. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay all or a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

4. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other funding documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

5. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered on this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

ORDER APPROVING LOAN APPLICATION
The Inola Public Works Authority
ORF-23-0152-CW

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Barnsdall, Oklahoma, Public Works Authority, Osage County

Loan Application No.: ORF-22-0063-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$275,372.78

Payment Term: The applicant shall be required to comply with all CWSRF loan provisions. If all CWSRF loan provisions are met to the satisfaction of the OWRB, then the funding shall be forgiven in total without fees for administration or interest.

Purpose: The applicant will utilize the loan proceeds to: (i) survey, test, design and engineer the reconstruction of the dam's spillway, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$275,372.78	Project	\$240,372.78
		Bond Counsel	17,500.00
		Local Counsel	17,500.00
Total	<u>\$275,372.78</u>	Total	<u>\$275,372.78</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-22-0063-CW IN THE NAME OF)
THE BARNSDALL, OKLAHOMA, PUBLIC WORKS AUTHORITY)
OSAGE COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, The Barnsdall, Oklahoma, Public Works Authority (the "Applicant") has made its Application for Funding No. ORF-22-0063-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-22-0063-CW in the name of The Barnsdall, Oklahoma, Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The proceeds, along with other funds of the Applicant, if any, will be used to (i) survey, test, design and engineer the reconstruction of the dam's spillway, all related appurtenances (the "Project") and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. Funding shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$275,372.78.

2. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

ORDER APPROVING LOAN APPLICATION
The Barnsdall, Oklahoma, Public Works Authority
ORF-22-0063-CW

3. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay all or a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

4. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other funding documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

5. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered on this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

ORDER APPROVING LOAN APPLICATION
The Barnsdall, Oklahoma, Public Works Authority
ORF-22-0063-CW

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Covington Utilities Authority, Garfield County

Loan Application No.: ORF-23-0147-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$392,968.00

Payment Term: The applicant shall be required to comply with all CWSRF loan provisions. If all CWSRF loan provisions are met to the satisfaction of the OWRB, then the funding shall be forgiven in total without fees for administration or interest.

Purpose: The applicant will utilize the loan proceeds to: (i) replace existing sewer lines, construct new manholes, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$392,968.00	Project	\$360,468.00
		Bond Counsel	30,000.00
		Local Counsel	2,500.00
Total	\$392,968.00	Total	\$392,968.00

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-23-0147-CW IN THE NAME OF)
THE COVINGTON UTILITIES AUTHORITY)
GARFIELD COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, The Covington Utilities Authority (the "Applicant") has made its Application for Funding No. ORF-23-0147-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-23-0147-CW in the name of The Covington Utilities Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The proceeds, along with other funds of the Applicant, if any, will be used to (i) replace existing sewer lines, construct new manholes, and all related appurtenances (the "Project") and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. Funding shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$392,968.00.

2. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

ORDER APPROVING LOAN APPLICATION

The Covington Utilities Authority

ORF-23-0147-CW

3. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay all or a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

4. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other funding documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

5. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered on this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

ORDER APPROVING LOAN APPLICATION
The Covington Utilities Authority
ORF-23-0147-CW

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Pawhuska Public Works Authority, Osage County

Loan Application No.: ORF-23-0080-CW
Clean Water SRF Loan (“CWSRF Loan”)

Amount Requested: \$962,500.00

Payment Term: The applicant shall be required to comply with all CWSRF loan provisions. If all CWSRF loan provisions are met to the satisfaction of the OWRB, then the funding shall be forgiven in total without fees for administration or interest.

Purpose: The applicant will utilize the loan proceeds to: (i) rehabilitate lift stations, all related appurtenances (the “Project”), and (ii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$962,500.00	Project	\$912,500.00
		Bond Counsel	30,000.00
		Local Counsel	20,000.00
Total	\$962,500.00	Total	\$962,500.00

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. ORF-23-0080-CW IN THE NAME OF)
PAWHUSKA PUBLIC WORKS AUTHORITY)
OSAGE COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 20th day of September, 2022.

WHEREAS, Pawhuska Public Works Authority (the "Applicant") has made its Application for Funding No. ORF-23-0080-CW (the "Application") to the Board for a loan from the Clean Water State Revolving Fund (the "CWSRF") program, pursuant to Title 82 Oklahoma Statutes 2011, Sections 1085.51 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan for wastewater system improvements and/or water quality protection efforts to further compliance with State and Federal standards, and/or to refinance existing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Application and related information, and finds that the Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. ORF-23-0080-CW in the name of Pawhuska Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The proceeds, along with other funds of the Applicant, if any, will be used to (i) rehabilitate lift stations and all related appurtenances (the "Project") and (ii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. Funding shall be made to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$962,500.00.

2. Upon the Applicant's acceptance of the Board's Letter of Binding Commitment, the funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other CWSRF loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from the CWSRF in accordance with the CWSRF program regulations as approved by the United States Environmental Protection Agency.

ORDER APPROVING LOAN APPLICATION
Pawhuska Public Works Authority
ORF-23-0080-CW

3. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, CWSRF, and Bond Resolution requirements. In accordance with applicable authority and the United States Environmental Protection Agency ("EPA") guidelines for the implementation of the CWSRF Capitalization Grant, the loan conditions may include principal forgiveness to be used to pay all or a portion of the costs of the Project as described in the Application or for other purposes authorized by applicable authority and EPA guidelines. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

4. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other funding documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

5. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered on this 20th day of September, 2022, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

ORDER APPROVING LOAN APPLICATION
Pawhuska Public Works Authority
ORF-23-0080-CW

Reviewed By:

Joe Freeman, Chief
Financial Assistance Division

3. SUMMARY DISPOSITION AGENDA ITEMS

D. Contracts and Agreements Recommended for Approval

September 20, 2022

AGENDA ITEM 3D(1)

JOINT FUNDING AGREEMENT

WITH: United States Geological Service (USGS)

PURPOSE: For the collection of continuous monitoring of seven stream-flow sites and three lakes within the Little Washita River Basin and the Washita River near Carnegie

AMOUNT: OWRB to pay amount not to exceed \$51,100.00

TERM: October 1, 2022 through September 30, 2023



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Oklahoma-Texas Water Science Center
202 NW 66th Street
Oklahoma City, OK 73116

August 10, 2022

Mr. Lance Phillips
Oklahoma Water Resources Board
3800 N. Classen Boulevard
Oklahoma City, Oklahoma 73118

Dear Mr. Phillips:

Enclosed is one signed copy of our standard joint-funding agreement for the project(s) Oklahoma-Texas Water Science Center Water Resources Investigations, during the period October 1, 2022 through September 30, 2023 in the amount of \$51,100 from your agency. U.S. Geological Survey contributions for this agreement are \$44,300 for a combined total of \$95,400. Please sign and return one fully-executed original to Beau V. Griffin at the address above.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **October 1, 2022**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Jason Lewis by phone number (405) 651-2029 or email jmlewis@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed quarterly via Down Payment Request (automated Form DI-1040). Please allow 30-days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Julie Murray at phone number (405) 205-1952 or email at jamurray@usgs.gov.

The results of all work performed under this agreement will be available for publication by the U.S. Geological Survey. We look forward to continuing this and future cooperative efforts in these mutually beneficial water resources studies.

Sincerely,

Timothy H. Raines
Director

Enclosure
232SJFAOK002000

003102

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the October 1, 2022, by the U.S. GEOLOGICAL SURVEY, Oklahoma-Texas Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Oklahoma Water Resources Board party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations (per attachment), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$44,300 by the party of the first part during the period October 1, 2022 to September 30, 2023
- (b) \$51,100 by the party of the second part during the period October 1, 2022 to September 30, 2023
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of: \$0

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices>).

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR

Customer #: 600000284
Agreement #: 232SJFAOK002000
Project #: SJ009ME
TIN #: 73-6017987

Water Resource Investigations

9. Billing for this agreement will be rendered quarterly. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Jason Lewis
Branch Chief
Address: 202 NW 66th Street
Oklahoma City, OK 73116
Telephone: (405) 651-2029
Fax:
Email: jmlewis@usgs.gov

Customer Technical Point of Contact

Name: Lance Phillips
Address: 3800 N. Classen Boulevard
Oklahoma City, Oklahoma 73118
Telephone: (405) 530-8800
Fax:
Email: lance.phillips@owrb.ok.gov

USGS Billing Point of Contact

Name: Julie Murray
Budget Analyst
Address: 202 NW 66th Street
Oklahoma City, OK 73116
Telephone: (405) 205-1952
Fax:
Email: jamurray@usgs.gov

Customer Billing Point of Contact

Name: Jessica Billingsley
Address: 3800 N. Classen Blvd.
Oklahoma City, OK 73118
Telephone: (405) 530-8800
Fax:
Email: jessica.billingsley@owrb.ok.gov

U.S. Geological Survey
United States
Department of Interior

Oklahoma Water Resources Board

Signature

Signatures

By _____ Date: _____
Name: Timothy H. Raines
Title: Director

By _____ Date: _____
Name:
Title:

By _____ Date: _____
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By _____ Date: _____
Name:
Title:

Cooperative Program
between the **Oklahoma Water Resources Board**
and the **U.S. GEOLOGICAL SURVEY**
for the **Little Washita River**
for the Fiscal Year ending September 30, 2023

Program Description:

The program, initiated February 1992, provided for the collection of continuous monitoring of seven stream-flow sites and three lakes within the Little Washita River Basin; and the Washita River near Carnegie Station beginning October 2003.

Beginning October 2004, the program discontinued two lake gages, 07327484 Pond 11 and 073274460 Pond 31, and discontinued three surface-water gages; 073274408 Little Washita Tributary near Cyril, 073274458 Creek Inflow to Pond 31 near Cement, and 073274830 Boggy Creek North of Ninnekah. This reduced the original program to four stream-flow sites and one lake gage in the Little Washita River Basin.

Beginning October 2004, the program transferred funding from the Little Washita Basin to the Fort Cobb Basin for the purpose of reinstating two surface-water gages, 073258500 Lake Creek near Eakly and 073258600 Willow Creek near Albert Willow and construction of a new station on Upper Lake Creek, 07325840 Lake Creek near Sickles, chosen to study surface runoff and constituent loading on small drainages. Cobb Creek near Eakly, Lake Creek near Eakly, and Willow Creek near Albert will include base-flow and event-flow sampling. The purpose of these gages is to monitor the inflow into Fort Cobb and nutrient and sediment constituents of major tributaries.

Beginning October 2009, the Ft Cobb Basin sampling program changed in that the base-flow samples for Cobb Creek near Eakly, Lake Creek near Eakly, and Willow Creek near Albert have been discontinued and only the six event-flows will continue to be sampled. Beginning October 2012 the six event-flows will be discontinued at these three stations.

Beginning October 2012 all sampling has been discontinued. The Little Washita River above Pond 26 and Pond 26 streamgaging station have been discontinued in FY 2014 due to reductions in federal funding.

The continuous data provided by satellite telemetry is used in research by: Agriculture Research Service, Grazing Lands Research Laboratory; Oklahoma and Oklahoma State Universities; National Weather Service NEXRAD calibration; and various other agencies concerned with rainfall, soil moisture, crop land runoff, land use changes, and constituent loading of the Ft Cobb watershed.

The program cost for October 1, 2022 to September 30, 2023 for operation, maintenance, and publication is summarized in the following table:

<u>Station No.</u>	<u>Station Name</u>	<u>Line Item Cost</u>	<u>Total</u>
Fort Cobb Lake Basin			
07325800*	Cobb Creek near Eakly, Six Base-Flow Samples	\$ 0	
07325800*	Cobb Creek near Eakly, Six Event-Flow Samples	\$ 0	\$ 0
07325840	Lake Creek near Sickles, Annual O&M	\$15,900	\$15,900
07325850	Lake Creek near Eakly, Annual O&M	\$15,900	
07325850	Lake Creek near Eakly, Six Base-Flow Samples	\$ 0	
07325850	Lake Creek near Eakly, Six Event-Flow Samples	\$ 0	\$15,900
07325860	Willow Creek near Albert, Annual O&M	\$15,900	
07325860	Willow Creek near Albert, Six Base-Flow Samples	\$ 0	
07325860	Willow Creek near Albert, Six Event-Flow Samples	\$ 0	\$15,900
Little Washita River Basin			
07327440.6	Little Washita River above Pond 26	\$ 0	\$ 0
07327441	SCS Pond No. 26	\$ 0	\$ 0
07327442	Little Washita River near Cyril	\$15,900	\$15,900
07327447	Little Washita River near Cement	\$15,900	\$15,900
07327550	Little Washita River East of Ninnekah	\$15,900	\$15,900
	Total		\$95,400

*Annual Surface-Water O&M funded by Ft. Cobb Master Conservancy District and the USGS

USDA ARS to Oklahoma Water Resources Board share.....	\$51,100
U.S. Geological Survey matching share.....	\$44,300

AGENDA ITEM 3D(2)

CONTRACT

WITH: Oklahoma Floodplain Managers Association, Inc.

PURPOSE: Publish informational materials to educate the public, floodplain managers and administrators on flood hazards and the reduction of these hazards

AMOUNT: Not to exceed \$10,000.00

TERM: Through November 30, 2023

CONTRACT
between
OKLAHOMA WATER RESOURCES BOARD
and
OKLAHOMA FLOODPLAIN MANAGERS ASSOCIATION, INC.

This Contract between the Oklahoma Water Resources Board ("OWRB"), an agency of the State of Oklahoma, and Oklahoma Floodplain Managers Association, Inc. ("OFMA"), an Oklahoma corporation, dated for convenience of reference September 1, 2022, but to be effective from and after the date of approval by all necessary persons as provided below,

WITNESSETH:

WHEREAS, the OWRB is given general statutory authority under 82 O.S. § 1085.2 to aid at all times counties and cities and towns in promoting and developing flood control, to make and execute such contracts that are necessary or convenient to the exercise of any powers conferred on the OWRB by law, and to accredit persons having requisite knowledge in floodplain management and minimization and prevention of flood hazards and losses; and

WHEREAS, OFMA, recognized by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, is a nonprofit organization whose purposes are to encourage and support flood safe development and flood mitigation; to promote sound floodplain management practices and the natural and cultural benefits of the floodplain; and to support the floodplain management profession through education and certification; and

WHEREAS, in furtherance of its purposes, among other things OFMA publishes informational materials in various media and otherwise engages in efforts to educate floodplain administrators, floodplain managers and the general public about flood hazards and reduction thereof; and

WHEREAS, the Federal Emergency Management Agency ("FEMA") has approved a Community Assistance Program ("CAP") grant of funds to the OWRB, a portion of which FEMA has approved for payment to OFMA to assist in funding advanced training workshops for floodplain administrators and officials, and producing, publishing and distributing certain educational materials which support the National Flood Insurance Program ("NFIP") and the State's flood loss reduction goals and objectives.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants stated herein, OFMA and the OWRB agree as follows:

1. OFMA Obligations.

- A. **CAP Grant Projects.** Using funding from FEMA through OWRB (subject to “#3. Payments Contingent On Receipt Of Federal Funds” below) and other funds available OFMA will:

- (1) Develop, print and distribute calendars for calendar year 2023 that incorporate the winning poster designs submitted by Oklahoma elementary school children during OFMA's "Turn Around, Don't Drown" poster contest, provided that the total number of calendars printed and distributed may be reduced at the direction of an authorized representative of the OWRB; and
- (2) Develop and distribute public outreach and educational materials to support the state NFIP program including media advertising through social media, radio, television or other means.

OFMA shall provide the OWRB the opportunity to review the OFMA's proposed work product and suggest changes as appropriate.

B. Non-profit status. OFMA shall maintain its non-profit organization status and non-profit organization postage permit.

C. Invoices. OFMA shall submit appropriate invoices for costs incurred. Invoices shall be submitted by the 15th day of the month following each month that costs are incurred, or as otherwise mutually agreed by representatives of OFMA and OWRB. Each invoice shall be in a form approved by the OWRB and shall itemize costs in the categories of "Calendars", "Educational", or other specified expenses. Each category of costs shall contain a detailed description of the specific cost claimed and any receipts in support of such claim. Invoices not approved by the OWRB shall be returned to OFMA with a written explanation of the reasons for disapproval of the invoice.

2. OWRB Obligations.

A. Invoices. The OWRB shall review invoices from OFMA in a timely manner.

B. Payment. Subject to receipt of federal funds as described in paragraph 3 below, the OWRB shall pay to OFMA:

- (1) an amount not to exceed Ten Thousand and No/100 Dollars (\$10,000.00) for costs incurred in Turn Around Don't Drown Public Outreach including the following items;
 - a. TADD Calendars \$3,000.00
 - b. NFIP Outreach Materials \$0.00
 - c. Activity Booklets \$0.00

The total amount paid to OFMA under this Contract shall not exceed three thousand dollars (\$3,000.00).

3. Payments Contingent On Receipt Of Federal Funds. The parties agree that the OWRB's obligation to make payments to OFMA under this Contract is subject entirely to the OWRB's receipt of funds from FEMA for the purposes stated in this Contract, and if for any reason such

funding is reduced or terminated, the OWRB's obligation to pay OFMA shall accordingly be reduced or terminated. The OWRB shall notify OFMA as soon as practical of any changes in funding from FEMA.

4. OFMA Personnel Not Considered Employees of OWRB; Workers Compensation Coverage. OFMA is and shall be considered to be an independent contractor and no person or entity associated with OFMA shall be considered to be an employee of the State of Oklahoma or the OWRB solely by the person's or entity's association with OFMA. On request by the OWRB, the OFMA shall provide a certification to the OWRB that it maintains applicable workers compensation coverage as may be required by Oklahoma law, including but not limited to 85 O.S. § 1 et seq.

5. State Audit. Books, records, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, of OFMA relevant to this Contract shall be subject to examination by the OWRB, the State Purchasing Director of the Central Purchasing Division of the Office of Management and Enterprise Services, and the State Auditor and Inspector of the State of Oklahoma. OFMA shall maintain accurate records and documentation of all expenditures of time and resources in fulfilling its obligations under this Contract and shall retain the same for three (3) years following completion and/or termination of the Contract. Access to such records and documentation shall be made available during reasonable business hours to any proper representative of the OWRB and State of Oklahoma for inspection, copying and audit purposes. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

6. Contract Period; Termination; Extensions Or Other Modifications. This Contract shall become effective when approved by all necessary persons and agencies. This Contract shall terminate on November 30, 2023 unless earlier terminated by (a) either party giving written notice to the other party at least 30 days in advance of the party's intention to terminate the Contract and the effective date thereof, or (b) full performance by both parties. This Contract may be amended at the option and by mutual written agreement of the parties.

In witness whereof, the parties have approved this Contract and caused their duly authorized officers to execute it on the dates shown below.

FOR THE OKLAHOMA WATER RESOURCES BOARD

ATTEST:

Matt Muller
Chairman

Date

Jennifer Castillo
Secretary

(SEAL)

OKLAHOMA FLOODPLAIN MANAGERS ASSOCIATION.
Employer Identification No. 73-1437151

Lincoln Irvine
Chairman

Date

AGENDA ITEM 3D(3)

CONTRACT FOR PROFESSIONAL SERVICES

WITH: HISINC, LLC

PURPOSE: Employ HISINC, LLC, to administer, manage and implement floodplain administration assignments as requested by OWRB

AMOUNT: Not to exceed \$2,500.00

TERM: Through July 31, 2023

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services (“Contract”) between HISINC, L.L.C., an independent contractor, (“Contractor”), and the Oklahoma Water Resources Board (“OWRB”), an agency of the State of Oklahoma,

WITNESSETH:

WHEREAS, 27A O.S. § 1-3-101(C) provides that OWRB has the jurisdictional area of environmental responsibility in the State of Oklahoma for, among other things, flood plain management; and

WHEREAS, OWRB is authorized pursuant to 82 O.S. § 1085.2 to aid counties, incorporated cities and towns and special purpose districts in promoting and developing flood control; and

WHEREAS, in carrying out its statutory authority, among other things OWRB acts as the state coordinating agency for the National Flood Insurance Program (“NFIP”), and has scheduled a week-long course on floodplain management for floodplain administrators in Oklahoma entitled “Managing Floodplain Development Through the NFIP” (the “Course”) to be held in Oklahoma City, Oklahoma in January or February 2022; and

WHEREAS, Contractor currently employs W.B. Smith ("Smith") who is a registered professional engineer, a floodplain administrator, a Certified Floodplain Manager, a current and past Chairman of the Oklahoma Floodplain Managers Association, Inc., and who has over 30 years’ experience in floodplain management; and

WHEREAS, Contractor and OWRB are agreeable to entering into this Contract whereby OWRB will obtain the services of Smith from Contractor upon the terms which follow; and

WHEREAS, this Contract is authorized by 82 O.S. § 1085.2.

NOW, THEREFORE, IT IS AGREED by and between Contractor and OWRB as follows:

1. SERVICES TO BE PROVIDED BY CONTRACTOR. Contractor shall provide to OWRB the services of Smith to perform assignments which assist OWRB in implementing OWRB's NFIP and other floodplain management responsibilities. These assignments may include, but are not necessarily limited to: instructing local floodplain administrators during the course scheduled on or about January 1st - February 4th , 2023 in Oklahoma City, Oklahoma. Contractor shall make Smith available to report to and consult with the Division Chief of the OWRB's Engineering and Planning Division while continually being monitored by the OWRB’s State Floodplain Management Staff during the Course.

2. OBLIGATIONS OF OWRB. If necessary in order to perform the assignments given to Smith, OWRB will provide workspace and a personal computer which Contractor may use as necessary for performing Contractor's work under this Contract. It is expressly agreed that the

provision of work space and personal computer shall not be construed as creating an employer-employee relationship between OWRB and Smith nor between OWRB and Contractor.

3. COMPENSATION TO CONTRACTOR.

a. Compensation for Services. For all services performed by Contractor during the period of this Contract, OWRB shall pay to Contractor Fifty-five Dollars (\$75.00) per hour worked.

b. Reimbursement for actual, necessary expenses. Whenever approved by the Chief of the Planning and Management Division or her designee in advance of the travel and incurring of expenses, Contractor shall also be reimbursed for (i) Contractor's out-of-pocket expenses incurred in travel necessary for Contractor's performance under this Contract, as limited by and in accordance with the State Travel Reimbursement Act, 74 O.S. § 500.1 et seq., and (ii) to the extent authorized and permitted by state law including but not limited to 74 O.S. § 500.9A, Contractor's other actual out-of-pocket expenses necessary for Contractor's performance under this Contract, which shall not exceed Four Hundred Fifty Dollars (\$450.00) per event or occurrence.

c. Limit on compensation and reimbursement. Notwithstanding any other provision of this paragraph 3, the total amount paid to Contractor under this Contract, including any and all amounts as compensation for services and reimbursement for travel and other necessary expenses, shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00). As an employee of an independent contractor, Smith shall not receive nor be entitled to any benefits accorded to employees of the state, or any pay in lieu of benefits.

d. Invoices; payment procedure. On or before February 28, 2023, Contractor shall submit an invoice to OWRB for services performed and expenses incurred which are attributable to the Course. The invoice shall be in form and content acceptable to the OWRB; among other requirements, the invoice shall contain information about dates and hours worked and a general description of the services provided. If the invoice is unacceptable to OWRB, OWRB shall return the invoice to Contractor with the reason for rejection of the invoice.

e. Compensation and reimbursement subject to appropriation of funds. It is understood and agreed that funding for this Contract depends upon and is subject to State and/or Federal appropriations. In the event funds to finance this Contract become unavailable, either in full or in part, for whatever reason as determined by OWRB, OWRB may unilaterally terminate the Contract or reduce the consideration upon notice in writing to the Contractor. OWRB shall be the final authority as to the availability of funds. In the event of non-appropriation or discontinuance of funding for this Contract, the Contractor will be paid for production or services provided up to the effective date of termination.

4. TERM OF CONTRACT. This Contract shall become effective when all necessary signatures and approvals are obtained, and shall be in full force and effect until July 31, 2023 unless terminated earlier as provided herein. This Contract may be amended, extended or renewed upon mutual agreement of the parties. OWRB and Contractor further agree that this Contract may be terminated at any time during its term by mutual agreement of the parties to terminate, or may

be terminated unilaterally by either party upon thirty (30) days advance written notice of termination by the terminating party to the other party.

5. **INDEPENDENT CONTRACTOR STATUS.** For all purposes, Contractor is an independent contractor and Smith is an employee of Contractor. It is expressly understood and intended that neither Contractor nor Smith is, nor shall be, an employee of OWRB for any purpose. OWRB will not provide Contractor or Smith with worker's compensation coverage. OWRB will not provide to Contractor nor Smith any benefits that are accorded to state employees, whether full time employees, temporary employees, seasonal employees or other categories of employees recognized by the Oklahoma Personnel Act or otherwise by any court cases. Contractor is solely responsible for the payment of any required State and Federal income or other taxes, periodic withholding thereof, and all other liabilities of independent contractors, including but not limited to the payment of workers compensation insurance, other taxes, Social Security payments and adjustments relating to retirement benefits. Neither Contractor nor Smith is authorized to operate any motor vehicle of the State, and Smith may ride in a motor vehicle of the State only as necessary to provide the services set forth in this Contract. Contractor shall have the right to control and determine the method and means of performing the services described in paragraph 1 above; OWRB shall not have the right to control or determine such method or means. Contractor retains the right to perform services for other parties.

6. **AUDIT.** Contractor agrees that all records and other items of the Contractor relating to Contractor's professional services under this Contract shall be subject to examination by OWRB, the State Purchasing Director of the Central Purchasing Division of the Office of Management and Enterprise Services, and the State Auditor and Inspector of the State of Oklahoma. Access to such items shall be made available during reasonable business hours to any proper representative of these agencies or officials for inspection, copying and audit purposes. The term "records" includes books, documents, accounting procedures and practices, claims, and other data regardless of type whether in written form, computer data, or other form of Contractor relating to this Contract. Contractor shall maintain accurate records and documentation of all expenditures of time and resources in fulfilling its obligations under this Contract and shall retain all records relative to this Contract for a period of time not less than three (3) years following completion and/or termination of this Contract. If an audit, litigation or other action involving the records is commenced before the end of the foregoing three (3) year period, then the records shall be maintained for three (3) years after the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

7. **CONTRACT SUBJECT TO OKLAHOMA LAW AND APPROVING AUTHORITIES; SEVERABILITY.** This Contract shall be governed by and subject to the laws of the State of Oklahoma. The terms and conditions stated in any corresponding state purchasing and acquisition documentation, Purchase Order, and approval of any necessary authorities, are incorporated by reference herein and made a part hereof. If any provision of this Contract shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Contract and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

AGREED to by the parties on the dates specified below.

HISINC, L.L.C.

W.B. Smith, President Date

OKLAHOMA WATER RESOURCES BOARD ATTEST:

Matt Muller Date
Chairman

Jennifer Castillo
Secretary

(SEAL)

AGENDA ITEM 3D(4)

**REHABILITATION OF HIGH HAZARD POTENTIAL DAMS
GRANT AGREEMENT**

WITH: Oklahoma City Water Utilities Trust, Oklahoma County

PURPOSE: Rehabilitation of high hazard potential dams grant agreement for the Overholser Dam Structural Stability Study

AMOUNT: Not to exceed 65% of the eligible activity costs or the amount of \$552,500.00, whichever is less

TERM: Through June 15, 2024

OKLAHOMA WATER RESOURCES BOARD

REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT AGREEMENT Between the Oklahoma City Water Utilities Trust, Oklahoma County and Oklahoma Water Resources Board

This Agreement, dated as of the date of the last signature herein but to be effective as provided below, by and between the Oklahoma City Water Utilities Trust, Oklahoma County (hereinafter "Sub-applicant:), and the Oklahoma Water Resources Board, an agency of the State of Oklahoma and recipient of the Federal Emergency Management Agency's Rehabilitation of High Hazard Potential Dams (hereinafter "HHPD") Grant.

In accepting said grant, Sub-applicant duly acknowledges and agrees that in all regards and respects, Sub-applicant must and shall comply with the requirements of all applicable federal and state statutory provisions and all Oklahoma Water Resources Board (hereinafter "the Board") rules, regulations, and the Rehabilitation of High Hazard Potential Dams (hereinafter "HHPD") Grant Program applicable grant policies. Attached are the FY 2021 HHPD grant conditions and regulations. Without limiting the generality of the foregoing, Sub-applicant agrees as follows:

1. **Description of approved project** This grant has been approved by the Board for Sub-applicant's project which shall consist of the Overholser Dam Structural Stability Study; the scoping narrative for the project is attached hereto as **Attachment 1**.
2. **Determination of amount of grant** The amount of this grant shall not exceed 65 percent of the eligible activity costs or the amount of \$552,500.00 whichever is less.
3. **Creation and maintenance of separate account** As a prerequisite to receiving grant funds from the Board, Sub-applicant shall establish to the satisfaction of the Board staff, a special and separate federally insured account entitled "Oklahoma Water Resources Board HHPD Grant Account" (hereinafter referred to as "HHPD Grant Account") through which the grant proceeds shall be administered and accounted for by Sub-applicant. Prior to the Board's release of any grant funds, Sub-applicant shall file a letter with the Board identifying the account number for the HHPD Grant Account. Sub-applicant shall then submit to the Board a monthly invoice detailing the project activities to be funded and the proposed cost of those activities. Once the Board has deemed the proposed activities listed in the invoice are eligible for HHPD Rehab Grant funding and are within the approved scope of work, the Board shall make payment of the grant matching funds, up to 65% of the total eligible activity cost as defined above in Section 2, to the HHPD Grant Account. Sub-applicant shall then expend funds from the account only as permitted in this HHPD Grant Agreement, Board rules, and FEMA Guidelines.
4. **Expenditure of funds in grant account only for authorized Project purposes** Sub-applicant shall disburse or expend funds from the HHPD Grant Account only toward eligible and authorized purposes for the Project approved by the Board. Authorized Project costs include technical, planning, design, and other pre-construction activities. Construction and renovation costs are not allowable for FY 2021 HHPD grant. Any amount of grant funds expended from the HHPD Grant Account for unauthorized purposes shall be repaid by Sub-applicant to the Board, together with payment of interest accrued from the date of the expenditure at the maximum rate allowed by law, no later than thirty (30) days after the date of written demand from Board staff. Reimbursements for eligible activities are only applicable for approved activities to be completed after the finalization of this agreement. Sub-applicant shall maintain proper books, records, and supporting documentation (such as invoices, billing statements, and canceled checks drawn on the HHPD Grant Account) showing to the satisfaction of the Board staff the amounts and purposes of all expenditures from the HHPD Grant Account and shall make the same available for inspection and examination by the Board. Any disbursement of grant funds without adequate supporting documentation shall be deemed to be an unauthorized expenditure of grant funds which Sub-applicant shall repay to the Board with interest as provided above. Sub-applicant shall direct to the Board staff any and all questions regarding whether an expenditure is authorized prior to making the expenditure.

5. **Time limit to file for reimbursement; expiration of approval** All reimbursement invoices for eligible project activities must be received by the Board by June 15, 2024. If the project is unable to be completed by June 15, 2024, the Sub-applicant shall submit a request for a project extension. If the extension is determined by the Board to be necessary and appropriate, the Board or its staff may permit additional time, but no later than September 15, 2024, to file an acceptable reimbursement invoice. The approval of this grant shall not extend past September 15, 2024 without prior approval from the grantor (FEMA). If an acceptable reimbursement is not received on or before September 15, 2024, then the approval of this grant shall expire and no grant funds will be released to Sub-applicant, unless authorized by the grantor.
6. **Return of unexpended grant funds** Sub-applicant shall return to the Board any unexpended grant funds, including any unexpended contingencies funds, within thirty (30) days after completion of the construction of the Project or within thirty (30) days from Sub-applicant's receipt of all invoices, whichever is later.
7. **Recipient Cost Share** Sub-applicant will provide documentation to the Board showing the appropriate amount of recipient cost share is available for the grant.
8. **Additional Requirements** Sub-applicant may be subject to additional requirements as may be directed by the Board in accordance with the HPPD Grant Program and associated procedures for implementing the program. The Board may require additional documentation or information as needed to meet any of the requirements of the HPPD Grant Program.

In consideration of Sub-applicant's agreement to these terms and conditions, Sub-applicant has entered and signed this HPPD Grant Agreement this _____ day of _____, 20__.

OKLAHOMA WATER RESOURCES BOARD

ATTEST:

Matt Muller, Chairman

Jennifer Castillo, Secretary

(BOARD SEAL)

* * * * *

Reviewed by:

Yohanes Sugeng, Chief
Engineering and Planning Division



Attest:

By: Carl O. Curry
Title: Administrative Specialist

Oklahoma City Water Utilities Trust, Oklahoma
County Oklahoma

By Chris Browning
Chris Browning, General Manager
Date: 9-2-2022

ATTACHMENT 1

Overholser Dam Structural Stability Improvements
By Freese and Nichols, Inc.
[Following pages]

TO: Kamran Mokhtari, PE
CC: Larry Hare, PE
FROM: Colin Young, PE
SUBJECT: Rehabilitation Scope of Work for FEMA FY 2021 HHPD Grant Application
DATE: 7/5/2022
PROJECT: COC21442

PROJECT DESCRIPTION: The 1,200-foot-long concrete spillway was evaluated for stability and hydraulic adequacy in response to recent annual inspections. Those inspections identified dam safety deficiencies that needed further assessment. A Preliminary Engineering Report (PER) with recommendations has been prepared and was in draft form at the time of this grant application.

Two main dam safety deficiencies exist:

- 1) Hydraulic Inadequacy
 - a. There are 23 radial Tainter gates, but the system is antiquated and there is no means to open enough flood gates to pass the regulatory inflow design flood without overtopping the dam. Only one gate can be opened at a time and the time to fully open a gate is 12 hours. It was determined that 7 open gates are required to pass the regulatory design flood (75% PMF) without the dam overtopping.
 - b. The existing gate system is manual, antiquated and needs to be upgraded to an electric system with modern hoist systems and control equipment in order to meet the hydraulic requirements.
 - c. The other 16 existing gates will be removed and replaced with permanent concrete bulkheads to eliminate a dam safety risk of future gate failures.
- 2) Structural Stability
 - a. The concrete dam, minus the central ungated overflow spillway, does not meet OWRB (and by reference, USACE) requirements for stability. In fact, the calculated factors of safety against a bearing capacity or sliding failure are significantly below minimum standards under normal pool conditions.
 - b. Seismic stability was not considered in the original designs (1916, 1923) and the dam does not meet current seismic stability criteria.

Both deficiencies represent significant risk due to the downstream consequences that would result from a structural stability failure, a flood overtopping event, or structural gate failure. All could result in complete uncontrolled loss of reservoir, with the degree of consequences varying depending on the failure mode and its progression.

Rehabilitation of the structure to mitigate these risks and bring the dam into compliance with dam safety guidelines will require extensive work. The proposed scope of work items is planned to bring the dam into compliance with State requirements:

Hydraulic Adequacy

1. Install 7 new gates meeting current USACE design criteria for steel radial gates.
2. Fabricate one set of modern steel stoplogs to provide for future gate dewatering for inspection and maintenance.
3. Install electric hoists and associated electric gate controllers.
4. Remove 16 existing gates and replace with permanent concrete bulkheads.

Structural Stability Improvements:

5. Add cast-in-place concrete ballast in hollow sections between existing buttresses to improve sliding resistance and decrease bearing pressures to acceptable values.
6. Install downstream concrete slabs below older gated spillway sections to improve stability and provide scour protection.

The design is planned to start in the fall of 2022 and consist of the following preliminary work activities:

Subtask	Description	Amount	Scheduled Completion (from NTP)
1.1	Preliminary Design Investigations	\$200,000	6 months
1.2	Preliminary Structural and Geotechnical design	\$150,000	9 months
1.3	Preliminary Agency Coordination	\$50,000	2 months
1.4	Preliminary Design Drawings (30%)	\$175,000	12 months
1.5	Preliminary Design Report, Specifications, and Cost Estimate	\$175,000	12 months
1.6	Management & Administration	\$100,000	12 months
Totals		\$850,000	

The deliverables for this phase of the project are associated with the major task items and are summarized as follows:

- Technical Memorandum with results of preliminary design investigations
- Technical Memorandum with results of preliminary agency coordination (USACE, OWRB, SHPO)
- Preliminary (30%) design drawings, specifications, design report, and construction cost estimate

ATTACHMENT 2

OWRB BOARD RESOLUTION APPROVING
REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT APPLICATION
[Following pages]

**PLEASE RETAIN THE FOLLOWING
BOARD ORDER FOR YOUR RECORDS**

**A RESOLUTION OF THE OKLAHOMA WATER RESOURCES BOARD
AUTHORIZING AN APPLICATION FOR FUNDING ASSISTANCE THROUGH THE
FEDERAL EMERGENCY MANAGEMENT AGENCY PROGRAM TO
REHABILITATE HIGH HAZARD-POTENTIAL DAMS**

WHEREAS, the United States Department of the Homeland Security, Federal Emergency Management Agency (“FEMA”) has implemented the Rehabilitation of High Hazard Potential Dams program to provide grant funds to reduce or eliminate the risk of dams of highest consequence and increase understanding and management of risks posed by eligible dams.

WHEREAS, FEMA has solicited proposals for cost-shared financial assistance from States, Indian Tribes, and nonprofit dam owners for projects to develop.

WHEREAS, the Oklahoma Water Resources Board (“Agency”) has identified itself as an eligible applicant under FEMA’s HHPD Grant Program, Funding Opportunity Number: DHS-21-[MT]-[041]-[00]-[01].

WHEREAS, the Agency is pursuing grant funding assistance under the HHPD grant program in an amount up to \$949,058.00 to provide technical, planning, design, and pre-construction activities related to the repair, removal, or rehabilitation of eligible high hazard dams.

NOW, THEREFORE, be it resolved by the Board as follows:

1. The Board has reviewed the scope and purpose of the funding application and finds that the Project will serve the needs of the people of Oklahoma and satisfy the goals of the HHPD program, and on that basis, supports the staff’s submittal of the grant proposal to FEMA.
2. The Agency is capable of funding the minimum 35-percent cost share required to obtain grant funding under the HHPD Grant Program.
3. Pursuant to state policy, the Agency has sought and received approval from the Office of the Secretary of Energy and Environment in order to pursue this funding opportunity.
4. The Board hereby ratifies the action of its Chief Financial Officer or his designee of the Agency in applying for financial assistance from FEMA’s HHPD Grant Program and authorizes the Chief Financial Officer or his designee to execute any related document, including a cooperative financial assistance agreement with FEMA.
5. The Chief Financial Officer and staff are directed to take all other actions necessary to secure funding for the Project under the HHPD Grant Program, including working with FEMA to meet established deadlines for entering into a cooperative financial assistance agreement.

PASSED AND ADOPTED by the Oklahoma Water Resources Board on the 21th day of JUNE 2022:

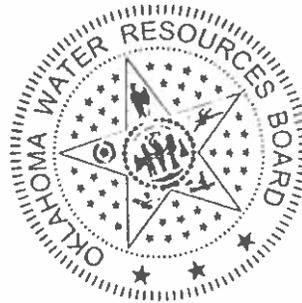


Matt Muller, Chairman

ATTEST:



Jennifer Castillo, Secretary



ATTACHMENT 3

FY 2021 Rehabilitation of High Hazard Potential Dams (HHPD) Program Summary
[Following pages]

The Department of Homeland Security (DHS) FY 2021 Rehabilitation of High Hazard Potential Dams (HHPD)

A. Allowable Activities

FEMA will evaluate proposed activities for eligibility. Eligible activities include repair, removal, or any other structural or nonstructural measures to rehabilitate an eligible high hazard potential dam. Note that all eligible activities included in the list must also have eligible subrecipients that can meet the cost-share requirements and have taxing ability.

For the purposes of this grant program, the activities shown in Table 1 could qualify for funding. The activities are categorized into two types of activities: planning and design. This list is not exhaustive; other activities may also be eligible.

- **Planning Activities** - Planning activities include investigations and risk assessments that further define the dam risk using the FEMA risk prioritization methodology. See Section H.14, Minimum Requirements for Risk-Based Prioritization. Planning activities can also include alternatives analysis to identify a preferred plan for dam rehabilitation and the estimated cost for design and construction. For project planning, the alternatives should involve the preparation of preliminary hydrologic and hydraulic modeling to address the regulations of the state and local governments for alterations in floodplain areas as well as the minimum requirements of the NFIP. The local community should be consulted during the alternative identification and selection process to address local planning, zoning, and floodplain management regulations. Potential environmental impacts should also be considered in the selection of the preferred plan. Early coordination with EHP should be conducted to address applicable environmental requirements.
- **Design Activities** – Design activities include work to develop conceptual, preliminary, or final design plans and specifications for dam rehabilitation projects that have been planned using an alternative evaluation process that complies with NEPA requirements. Coordination with EHP during the design should be conducted to confirm that the design complies with NEPA requirements. Detailed hydrologic and hydraulic modeling should be performed for use in designing the dam rehabilitation and to address the permit requirements of the state and local government as well as the minimum requirements of the NFIP. For all projects located in Special Flood Hazard Areas on FEMA Flood Insurance Rate Maps, a FEMA conditional review of the project design for compliance with NFIP requirements should be conducted through the process outlined in 44 CFR §65.8. The design effort should include obtaining all state, local, and federal permits for approval to construct the project in the floodplain and to meet all environmental requirements.

Note that all grant-funded activities must comply with Federal Environmental Planning and Historic Preservation (EHP) regulations. See Section F.3.c, Environmental Planning and Historic Preservation (EHP) Compliance, for more information about EHP Compliance.

Table 1: Examples of Allowable Activities

Category	Eligible Scope of Work Activities
Planning	Development of evacuation plans, plans for flood fighting, or community response plans to include in the floodplain management plan Coordination of EAP and EOPs for different release conditions
Planning	Activities and studies that determine risks associated with eligible dams Environmental studies for NEPA compliance Development of operation and maintenance plans
Planning	Public education and awareness of flood risks associated with the eligible dam project
Planning	Dam risk and consequence assessments Feasibility studies Preliminary engineering studies Alternatives analysis Mapping, engineering survey, and inundation modeling
Design	Engineering design Development of specifications

B. Environmental Planning and Historic Preservation (EHP) Compliance

As a federal agency, FEMA is required to consider the effects of its actions on the environment and historic properties to ensure that all activities and programs funded by FEMA, including grant-funded projects, comply with federal EHP laws, Executive Orders, regulations, and policies, as applicable.

Recipients and subrecipients proposing projects that have the potential to impact the environment, including, but not limited to, the construction of communication towers, modification or renovation of existing buildings, structures, and facilities, or new construction including replacement of facilities, must participate in the FEMA EHP review process. The EHP review process involves the submission of a detailed project description along with any supporting documentation requested by FEMA in order to determine whether the proposed project has the potential to impact environmental resources or historic properties.

In some cases, FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. Federal law requires EHP review to be completed before federal funds are released to carry out proposed projects. FEMA may not be able to fund projects that are not in compliance with applicable EHP laws, Executive Orders, regulations, and policies.

DHS and FEMA EHP policy is found in directives and instructions available on the [FEMA.gov EHP](https://www.fema.gov/ehp) page, the FEMA website page that includes documents regarding EHP responsibilities and program requirements, including implementation of the National Environmental Policy Act and other EHP regulations and Executive Orders. Individual FEMA programs have separate

procedures to conduct and document EHP review. Guidance for individual grant programs are available from applicable program offices.

Recipients and subrecipients applying for HHPD projects that have the potential for physical impacts to the environment or cultural resources are encouraged determine the information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370h) as part of their initial and ongoing planning in order to lessen potential impacts to the environment or cultural resources and to identify the best possible solution for their dam safety initiative. Recipients and subrecipients should be aware that approval or funding of a dam rehabilitation plan or study under HHPD does not guarantee that additional EHP review will not be required if FEMA or another federal agency was to fund construction or rehabilitation activities that result from these grant activities.

C. Requirements Related to Contractor and Subcontractor Wages

Recipients and Sub-recipients are required to comply with the requirements of 42 U.S.C. § 5196(j)(9). All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

D. Requirements Related to Contract and Subcontract Services

A contract awarded shall not be considered to confer a proprietary interest upon the United States. As a condition on the receipt of a grant under this section of an amount greater than \$1,000,000, recipients and sub-recipients shall require that each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services entered into using funds from the grant be awarded in the same manner as a contract for architectural and engineering services is awarded under 40 U.S. Code Chapter 11 or an equivalent qualifications-based requirement prescribed by the recipient state.

E. Sub-recipients are required to submit the following documents to the state dam safety office:

1. Scoping Narrative.
 - a. Scope of work including details that the proposed activities increase risk understanding through studies, planning, and preliminary engineering, or how proposed activities reduce consequences through rehabilitation.
 - b. Schedule
 - c. Cost estimate (budget narrative and budget worksheet)
2. Link to or copy of FEMA-approved hazard mitigation plan, specifically referencing section(s) that includes all dam risk.
3. Request for mitigation plan extraordinary circumstance, if applicable, including written justification that identifies the circumstance for not meeting the mitigation plan requirement and explains how a mitigation plan will include all dam risks and be approved by FEMA within twelve (12) months. (See Section H, Mitigation Plan Extraordinary Circumstances.)
4. Have in place (or will be developed not later than 2 years after the date of execution of a dam rehabilitation or removal project agreement and implemented not later than 2 years after the date of completion of a project) a floodplain management plan to reduce the impacts of future flood events in the area impacted by the project. The floodplain management plan shall address:
 - a. potential measures, practices, and policies to reduce loss of life, injuries, damage to property and facilities, public expenditures, and other adverse impacts of flooding in the area protected by the project;
 - b. plans for flood fighting and evacuation; and
 - c. public education risk communication targeting communities in the inundation area.If the floodplain management plan is not in place, then an assurance statement (as defined below) must be included.
5. Information to demonstrate conformance with 44 CFR Part 9 and Part 10 and including all available information relating to known historic, archaeological, or environmentally sensitive areas.
6. Documentation of consideration of alternatives that avoid or minimize harm to the environment or historic resources.
7. Demonstration that the sub-recipient can meet the cost share requirements.
8. Required assurance statements include:
 - a. Statement of project approval from the relevant state dam safety agency.
 - b. Statement that the Sub-applicant participates in, and complies with, all applicable federal flood insurance programs.
 - c. Statement that the Sub-applicant acts in accordance with the state dam safety program.
 - d. Documentation that the dam has an emergency action plan approved by the relevant state dam safety agency, and that the dam is classified as “high hazard potential” by the state dam safety agency in the state in which the dam is located.

- e. Statement from the state that the proposed project dam fails to meet minimum state dam safety standards and poses an unacceptable risk to the public (as determined by the state) with official documentation that the dam owner has been notified of the deficiencies and unacceptable risk.
- f. Operation and maintenance agreement where all applicable parties enter a legally binding contract to provide operation and maintenance of the project for the 50-year period following completion of rehabilitation.
- g. Assurance that the Sub-applicant will have adequate funding resources for operation and maintenance activities to be carried out over 50-year period following completion of rehabilitation project.
- h. A statement that activities relating to the public in the area around the dam are performed in accordance with the hazard mitigation plan.
- i. If the floodplain management plan is not in place, a statement that the plan will be developed not later than one (1) year after the date of execution of a project agreement and implemented not later than one (1) year after the date of completion of construction of the project must be included.
- j. A statement that the Sub-applicant will comply with section 5196(j)(9) of title 42 (as in effect on December 16, 2016). See section C for language.
- k. A statement that the Sub-applicant will comply with chapter 11 of title 40; Selection of Architects and Engineers. The language can be viewed at: <http://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/cchapter11&edition=prelim>.

ATTACHMENT 4

2 CFR Part 200- Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards
[Following pages]

**PLEASE SIGN, RETURN, AND RETAIN THE FOLLOWING
FOR YOUR RECORDS**



NOTICE OF FEDERAL PROCUREMENT REQUIREMENTS

Date: _____

Jurisdiction Name: _____

Jurisdiction Type: _____

SIGNATURE AUTHORITY

The request for Rehabilitation of High Hazard Potential Dams (HHPD) Grant funding through a Notice of Funding Opportunity has been approved, it is now necessary for you, as the Subgrantee/Subrecipient, to acknowledge the requirements and regulations of **2 CFR PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

The following specific officers/officials, or their authorized designees, are required to sign this Acknowledgement on behalf of the specified type of Subgrantee/Subrecipient. (NOTE: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Sub grantee/Sub recipient must be attached to the Agreement for review by OWRB.

- a. **Corporation:** the Chair of the Board of Directors or President
- b. **City:** the Mayor, City Manager, or Town Administrator
- c. **County:** the Chairman of the Board of County Commissioners
- d. **School Board:** the Superintendent
- e. **Fire District:** the District Chief
- f. **Special Districts:** the Executive Director
- g. **Institution of Higher Education:** the President of the institution
- h. **Charter School:** the Chair of the Board of Directors
- i. **County Sheriff's Office:** the Sheriff
- j. **State Agencies:** the Director or Deputy Director of the agency
- k. **All other Sub grantee/Sub recipients:** the Chief Executive Officer of the entity

Title 2 Subtitle A Chapter II PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS- https://ecfr.io/Title-02/cfr200_main

Subpart D—Post Federal Award Requirements

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322

Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326

Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-

Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost

controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can

only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure those minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the

particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

§ Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act(40 U.S.C. 3141-3144) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Thenon-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR

180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection

with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

Terms

Non-Federal Entity (NFE) - A State, local government, Indian tribe, institution of higher education or nonprofit organization that carries out a High Rehabilitation of High Hazard Potential Dams award as a recipient or subrecipient (2 C.F.R. § 200.69).

Federal Award- The Federal financial assistance that a NFE receives directly from a FEMA or indirectly through a pass-through entity (2 C.F.R. § 200.38); also, the instrument setting forth the terms and conditions.

Recipient - A NFE that receives a Rehabilitation of High Hazard Potential Dams award directly from FEMA to carry out an activity under a Federal program (2 C.F.R. § 200.86).

Pass-Through Entity- A NFE that provides a subaward to a subrecipient to carry out part of the Rehabilitation of High Hazard Potential Dams program (2 C.F.R. § 200.74).

Subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Rehabilitation of High Hazard Potential Dams award received by the pass-through entity; it does not include payments to a contractor (2 C.F.R. § 200.92).

Subrecipient - A NFE that receives a subaward from a pass-through entity to carry out part of the Hazard Mitigation Assistance program, but does not include an individual that is a beneficiary of such program (2 C.F.R. § 200.93).

Signed: _____ Position: _____

(Elected Official or Jurisdiction Representative authorized to apply for Federal Grants)

Printed Name: _____

STATE OF OKLAHOMA

COUNTY OF _____

Signed or attested before me on _____ (date)

by _____ (name(s) of person(s)).

NOTARY PUBLIC

Title (and Rank):

Print Name:

My Commission Expires:

AGENDA ITEM 3D(5)

**REHABILITATION OF HIGH HAZARD POTENTIAL DAMS
GRANT AGREEMENT**

WITH: City of Lawton, Comanche County

PURPOSE: Rehabilitation of high hazard potential dams grant agreement for the Lake Ellsworth Dam Gate Operations Study

AMOUNT: Not to exceed 65% of the eligible activity costs or the amount of \$86,017.03, whichever is less

TERM: Through June 15, 2024

OKLAHOMA WATER RESOURCES BOARD

REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT AGREEMENT Between the City of Lawton, Comanche County and Oklahoma Water Resources Board

This Agreement, dated as of the date of the last signature herein but to be effective as provided below, by and between the City of Lawton, Comanche County (hereinafter "Sub-applicant"), and the Oklahoma Water Resources Board, an agency of the State of Oklahoma and recipient of the Federal Emergency Management Agency's Rehabilitation of High Hazard Potential Dams (hereinafter "HHPD") Grant.

In accepting said grant, Sub-applicant duly acknowledges and agrees that in all regards and respects, Sub-applicant must and shall comply with the requirements of all applicable federal and state statutory provisions and all Oklahoma Water Resources Board (hereinafter "the Board") rules, regulations, and the Rehabilitation of High Hazard Potential Dams (hereinafter "HHPD") Grant Program applicable grant policies. Attached are the FY 2021 HHPD grant conditions and regulations. Without limiting the generality of the foregoing, Sub-applicant agrees as follows:

1. **Description of approved project** This grant has been approved by the Board for Sub-applicant's project which shall consist of the Lake Ellsworth Dam Gate Operations Study; the scoping narrative for the project is attached hereto as **Attachment 1**.
2. **Determination of amount of grant** The amount of this grant shall not exceed 65 percent of the eligible activity costs or the amount of \$86,017.03 whichever is less.
3. **Creation and maintenance of separate account** As a prerequisite to receiving grant funds from the Board, Sub-applicant shall establish to the satisfaction of the Board staff, a special and separate federally insured account entitled "Oklahoma Water Resources Board HHPD Grant Account" (hereinafter referred to as "HHPD Grant Account") through which the grant proceeds shall be administered and accounted for by Sub-applicant. Prior to the Board's release of any grant funds, Sub-applicant shall file a letter with the Board identifying the account number for the HHPD Grant Account. Sub-applicant shall then submit to the Board a monthly invoice detailing the project activities to be funded and the proposed cost of those activities. Once the Board has deemed the proposed activities listed in the invoice are eligible for HHPD Rehab Grant funding and are within the approved scope of work, the Board shall make payment of the grant matching funds, up to 65% of the total eligible activity cost as defined above in Section 2, to the HHPD Grant Account. Sub-applicant shall then expend funds from the account only as permitted in this HHPD Grant Agreement, Board rules, and FEMA Guidelines.
4. **Expenditure of funds in grant account only for authorized Project purposes** Sub-applicant shall disburse or expend funds from the HHPD Grant Account only toward eligible and authorized purposes for the Project approved by the Board. Authorized Project costs include technical, planning, design, and other pre-construction activities. Construction and renovation costs are not allowable for FY 2021 HHPD grant. Any amount of grant funds expended from the HHPD Grant Account for unauthorized purposes shall be repaid by Sub-applicant to the Board, together with payment of interest accrued from the date of the expenditure at the maximum rate allowed by law, no later than thirty (30) days after the date of written demand from Board staff. Reimbursements for eligible activities are only applicable for approved activities to be completed after the finalization of this agreement. Sub-applicant shall maintain proper books, records, and supporting documentation (such as invoices, billing statements, and canceled checks drawn on the HHPD Grant Account) showing to the satisfaction of the Board staff the amounts and purposes of all expenditures from the HHPD Grant Account and shall make the same available for inspection and examination by the Board. Any disbursement of grant funds without adequate supporting documentation shall be deemed to be an unauthorized expenditure of grant funds which Sub-applicant shall repay to the Board with interest as provided above. Sub-applicant shall direct to the Board staff any and all questions regarding whether an expenditure is authorized prior to making the expenditure.

5. **Time limit to file for reimbursement; expiration of approval** All reimbursement invoices for eligible project activities must be received by the Board by June 15, 2024. If the project is unable to be completed by June 15, 2024, the Sub-applicant shall submit a request for a project extension. If the extension is determined by the Board to be necessary and appropriate, the Board or its staff may permit additional time, but no later than September 15, 2024, to file an acceptable reimbursement invoice. The approval of this grant shall not extend past September 15, 2024 without prior approval from the grantor (FEMA). If an acceptable reimbursement is not received on or before September 15, 2024, then the approval of this grant shall expire and no grant funds will be released to Sub-applicant, unless authorized by the grantor.
6. **Return of unexpended grant funds** Sub-applicant shall return to the Board any unexpended grant funds, including any unexpended contingencies funds, within thirty (30) days after completion of the construction of the Project or within thirty (30) days from Sub-applicant's receipt of all invoices, whichever is later.
7. **Recipient Cost Share** Sub-applicant will provide documentation to the Board showing the appropriate amount of recipient cost share is available for the grant.
8. **Additional Requirements** Sub-applicant may be subject to additional requirements as may be directed by the Board in accordance with the HPPD Grant Program and associated procedures for implementing the program. The Board may require additional documentation or information as needed to meet any of the requirements of the HPPD Grant Program.

In consideration of Sub-applicant's agreement to these terms and conditions, Sub-applicant has entered and signed this HHPD Grant Agreement this ____ day of _____, 20__.

OKLAHOMA WATER RESOURCES BOARD

ATTEST:

Matt Muller, Chairman

Jennifer Castillo, Secretary

(BOARD SEAL)

* * * * *

Reviewed by:

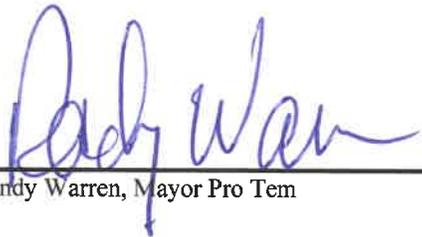
Yohanes Sugeng, Chief
Engineering and Planning Division

City of Lawton, Comanche County Oklahoma

Attest:

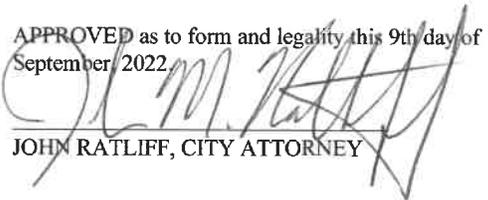
By: 

Title: City Clerk


Randy Warren, Mayor Pro Tem

Date: September 13, 2022

APPROVED as to form and legality this 9th day of
September, 2022.


JOHN RATLIFF, CITY ATTORNEY

ATTACHMENT 1

Lake Ellsworth – Gate Operations Planning Analysis
By Jacobs Engineering Group, Inc.
[Following pages]

Lake Ellsworth – Gate Operations Planning Analysis

List of Acronyms

CFD	Computational Fluid Dynamics
CFS	Cubic Feet per Second
CoL	City of Lawton
FT	Feet
HEC-1	Hydrologic Engineering Center – 1 “Program”
NAVD	North American Vertical Datum
PMF	Probable Maximum Flood
USACE	United States Army Corps of Engineers
USBR	United States Bureau of Reclamation
WSE	Water Surface Elevation

Background

The City of Lawton undertook an initiative in early 2000 to develop a gate operation policy such that it would meet specific dam safety, water supply, and downstream discharge and inundation duration criteria. Some of the specifics include considering downstream interests to avoid a sudden increase in spillway flow and the spillway flow needs to increase with more gates opened if the water level continues to rise in the reservoir to avoid overtopping the gates and the dam embankment.

Multiple hydrologic runs were performed to satisfy these criteria and is assumed to be still valid. The gate hydraulics though were found to be in error when comparing results of evaluating the spillway performance. It is assumed the gate operation policy criteria can be achieved if gate operations with correct gate hydraulics can be developed to replicate the spillway discharge for a given reservoir stage until the gate went to full open. Under current gate policy, the gates are full open at a water surface elevation (WSE) of 1242 and the spillway discharge is 39,855 cfs. Above a WSE 1242, gate operations will replicate the spillway discharge until reaching a potentially unsafe gate opening is reached and the gates will be fully open and the outflow is controlled by weir flow over the ogee.

Problem Statement

As part of the spillway analysis, an evaluation of the existing spillway gate operations was performed. The evaluation determined that the current spillway rating is not accurate, and the current spillway gate operation has the potential to compromise dam safety.

The current spillway rating was provided by the City in a spreadsheet. The equations and references used were included in the header with tabulated calculations for flow. The tabulation followed the “Revised Alternative 7” gate operation with the water level rising and a sequential

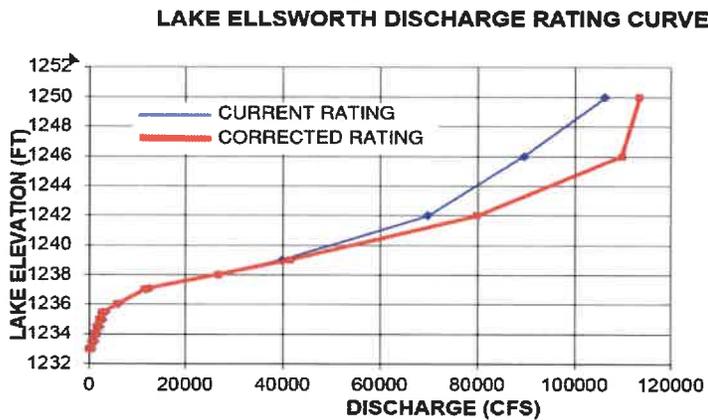


FIGURE 1. Comparison of Spillway Flow Rating.
Corrected Rating uses a more accurate method and applies the equations correctly (Elevation is NAVD 29 datum)

opening of gates and increasing gate opening. The equation used for estimating the flow is from the second edition of *Design of Small Dams* (USBR 1974).

The equations used for estimating the spillway gate flow uses a different form of the orifice equation that is not typical with current dam practice. The C-value (discharge coefficient) used also represents averages for type of gates, geometry of the approach and downstream conditions. The C-value and flow efficiency for a vertical lift gate will typically be less than the average that includes an inclined radial gate. The final words presented in the USBR reference is that the curve “is sufficiently reliable for determining discharges for small spillway structures.” The third edition of the *Design of Small Dams* changes the equation to the more typical form of the orifice equation and the method to determine C is a function of the angle of the approach to the opening (angle between the gate seat on the spillway sill and the bottom of the gate). The current spillway rating also applies the equation beyond the limits of when a gate can control the flow. A comparison of the flow rating is shown in **Figure 1**. In general, the current rating is overestimating flows below WSE of 1238 and underestimating above. Note that other issues explained below need to be vetted before the corrected spillway curve is used.

The other issue found is that the orifice equations are being used for larger gate openings than the equation is to be used. At large gate openings, the spillway flow can transition to be controlled by weir hydraulics of the ogee crest instead of the gate controlling. An orifice or gate opening needs to be submerged by the upstream water level. The recommended maximum gate

LAKE ELLSWORTH – GATE OPERATIONS PLANNING ANALYSIS

PROPOSED GATE OPERATION POLICY (REV. ALTERNATIVE POLICY NO. 7)
 REVISED AUGUST, 2001
 FILE : EW-AL7RT.XLS

SPILLWAY EL. = 1225.0
 HEIGHT OF GATE = 10.0 FT
 TOP OF DAM EL. = 1250.0
 NORMAL POOL EL. = 1232.5

FOR FLOW UNDER GATE : - $Q = 2/3S(2g)CL(H_1^{3/2} - H_2^{3/2})$ [REFERENCE 'DESIGN OF SMALL DAMS' PAGE 386]
 WHERE, WIDTH OF GATE = 20 FT

EQUATION FOR DISCHARGE
 $Q = CDL\sqrt{2g}H$
 D = Net gate opening
 L = Crest width
 H = Head to center of gate opening
 For C, use dashed line when gate seats on crest and solid line when gate seats below crest.

Minimum Submergence for orifice = 0.681 (d/H1)
 CORIFICE = 0.682
 CWIER = 3.8 H₀/Hd - 0.8

C = COEFFICIENT OF DISCHARGE FOR FLOW UNDER GATES

CURRENT RATING										CORRECTED RATING					
TOP OF GATE	LAKE WSE	H ₁ (ft)	H ₂ (ft)	d (ft)	d/H ₁	C	Q per Gate (cfs)	No. of Gates OPEN	TOTAL Q (cfs)	FLOW REGIME	C	Q per Gate (cfs)	TOTAL Q (cfs)	TOTAL DELTA C (cfs)	% DELTA Q
1235.00	1232.99	7.99	7.99	0.00	0.00	0.724	-	0	-						
1235.50	1233.00	8.00	7.50	0.50	0.06	0.724	162	3	486	ORIFICE	0.682	152	457	(29)	-6%
1235.50	1233.49	8.49	7.99	0.50	0.06	0.724	167	3	501	ORIFICE	0.682	157	471	(30)	-6%
1235.50	1233.50	8.50	8.00	0.50	0.06	0.724	167	6	1,002	ORIFICE	0.682	157	943	(59)	-6%
1235.50	1233.99	8.99	8.49	0.50	0.06	0.724	172	6	1,032	ORIFICE	0.682	162	971	(61)	-6%
1235.50	1234.00	9.00	8.50	0.50	0.06	0.724	172	9	1,548	ORIFICE	0.682	162	1,457	(91)	-6%
1235.50	1234.49	9.49	8.99	0.50	0.05	0.728	178	9	1,602	ORIFICE	0.682	166	1,497	(105)	-7%
1235.50	1234.50	9.50	9.00	0.50	0.05	0.728	178	12	2,136	ORIFICE	0.682	166	1,997	(139)	-6%
1235.50	1234.99	9.99	9.49	0.50	0.05	0.728	182	12	2,184	ORIFICE	0.682	171	2,050	(134)	-6%
1235.50	1235.00	10.00	9.50	0.50	0.05	0.728	182	15	2,730	ORIFICE	0.682	171	2,563	(167)	-6%
1235.50	1235.49	10.49	9.99	0.50	0.05	0.728	187	15	2,805	ORIFICE	0.682	175	2,627	(178)	-6%
1235.58	1235.50	10.50	9.92	0.58	0.06	0.724	215	15	3,225	ORIFICE	0.682	203	3,043	(182)	-6%
1236.08	1236.00	11.00	9.92	1.08	0.10	0.713	400	15	6,000	ORIFICE	0.682	382	5,735	(265)	-4%
1237.08	1237.00	12.00	9.92	2.08	0.17	0.703	777	15	11,655	ORIFICE	0.682	754	11,306	(349)	-3%
1237.25	1237.08	12.08	9.83	2.25	0.19	0.699	835	15	12,525	ORIFICE	0.682	815	12,227	(298)	-2%
1240.00	1238.00	13.00	8.00	5.00	0.38	0.680	1,764	15	26,460	ORIFICE	0.682	1,773	26,602	142	1%
1243.00	1239.00	14.00	6.00	8.00	0.57	0.659	2,657	15	39,855	ORIFICE	0.682	2,769	41,537	1,682	4%
1252.00	1242.00	17.00	0.00	17.00	1.00	0.520	4,650	15	69,750	WEIR	3.800	5,327	79,906	10,156	15%
1252.00	1246.00	21.00	4.00	17.00	0.81	0.632	5,967	15	89,505	WEIR	3.800	7,314	109,707	20,202	23%
1252.00	1248.00	23.00	6.00	17.00	0.74	0.632	6,465	15	96,975	WEIR	3.800	8,383	125,747	28,772	30%
1252.00	1250.00	25.00	8.00	17.00	0.68	0.547	7,087	15	106,305	ORIFICE	0.682	7,559	113,361	7,076	7%

FIGURE 2. Spreadsheet Comparing the Spillway Flow Ratings and Potential Issues of Spillway Surge
Spillway Surge is a transient condition that compromises Dam Safety. Elevations in NAVD29.

opening for which a gate will control the discharge should be taken as 0.625 times the head on the weir crest (USACE 1992). Other factors, such as the how far the pier extends upstream of the gate and the width of the gate, can also change the head requirement. Figure 2 shows the spreadsheet currently used for estimating the flow rating and the addition of a corrected estimate. The flow regime is shown for both orifice or weir control. As the flow transitions between the conditions, an unsteady phenomenon of slug flow occurs. Slug flow will result in an undesirable transient condition referred to as "spillway surge". The phenomenon creates oscillating loads on and off the gate as well as changes in the flow and can alternate in spillway bays. Exposure to the load dynamics should be avoided as it is uncertain what the result may be, raising the potential for compromising dam safety. When following the current gate operations, the potential for slug flow occurs when the lake water surface elevation exceeds approximately 1239 with a gate opening of 8 feet (96 inches). Review of the historic gate operations was 6 feet (72 inches) during a flood in 2015 when the lake level was recorded to have reached elevation 2038.09. Current gate operations are to open all the gates at a rate 3 times the rate of the water level rising when the lake level is above 1238. The likely result would be with slug flow occurring before the lake water surface reached 1239.25. The safest operation for the dam would be to stop raising the gates incrementally and to open individual gates to the full height instead.

Recommendation

It is Jacobs recommendation that the gate operating table should be revisited to avoid or limit these conditions that put the dam at risk while still achieving criteria of passing the 75% Probable Maximum Flood (PMF) event and providing some downstream flood control. It is also recommended that a structural assessment be made for the mode of failure of the gates and modifications required to raise the gates approximately an additional 4 feet (21 feet total) at Ellsworth.

Scope of Work

Phase 1 – Planning, Study and Analysis

Task 1 Literature Review

Previous notes from Ellsworth literature review will be performed as well as the CH2M HILL report “Evaluation of Alternative Gate Operations at Lake Ellsworth and Lake Lawtonka” instead of only a summary report.

Task 2 Structural Condition and Assessment of Spillway Gates

A structural evaluation will be made to assess the following structural issues:

1. Evaluate the condition of the existing gates and lift mechanical system

Task 3 CFD Model of Spillway and Stilling Basin Performance

The CFD model will be used to evaluate the complex hydraulics of the spillway, stilling basin, and tailrace at both Ellsworth. The flow simulations will be steady-state. A total of 3 geometry baseline cases will be performed:

1. Gates fully raised out of the water for the Standard Project Flood and 100-year flood (weir flow).
2. Gates at approximately 60% open at 3 different flood stages to establish max gate opening.
3. Gates at 30% open and flood stage.

The CFD results will be used to:

- a. Calibrate an analytical calculation for the spillway flow rating so a spreadsheet calculation can be used to efficient evaluate multiple configurations for gate operations.
- b. Determine the limitations of the spillway gate openings or gate opening submergence to reduce the potential of spillway surge.
- c. Inform what the effect is from adjacent spillway bays operating creating a local drawdown on the flow stability due to the local water level being drawn down
- d. Better understand the stilling basin ability to contain a hydraulic jump. Particularly when the gate openings are not uniform as a bulking pattern of spillway bays with high flow may have a hydraulic jump that sweeps out of the stilling basin.

Task 4 Draft Gate Operations

The calibrated equations will be used in developing scenarios for gate operations that replicate the stage versus discharge. The scenario of gate operations will use the corrected spillway rating, apply limitations of gate opening submergence, and be informed of stilling basin performance. The draft gate operations will be reviewed with operators to ensure it can be implemented in the field.

Task 5 Determining PMF Outflow

Given the reported 75% PMF inflow is 200,907 cfs and the corresponding outflow is only 106,481 cfs. The reservoir attenuation of inflows has a significant effect on the resulting outflow. The proposed changes to gate operations will change the reservoir stage and outflow relationship at some WSE above 1242. Reservoir routing should be performed to determine if there is a different outflow for the 75% PMF. It is assumed the hydrologic models CH2M HILL developed to perform the gate operations using U.S. Army Corps of Engineers (USACE) Hydrologic Engineering Center – Hydrologic Modeling System (HEC-1) software are available. Jacobs will use the HEC-1 model to route the PMF through the river and reservoir system with making no changes to the watershed hydrology and the river routing parameters from previous PMF modeling efforts to provide a new spillway outflow.

Task 6: Gate Operation Memorandum

A technical memorandum will be prepared explaining the analysis and presenting the results of a new gate operations.

Phase 2 – Engineering Analysis and Study

To be authorized at the discretion of the Owner. These tasks may be required to refine or further define future work.

Task 1. Structural Analysis:

1. Estimate the failure mode of the gate/pier structural system
2. Develop a concept to raise the gates an additional amount as needed to pass the 75% PMF.

Task 2. Gate Operations Confirmations

The draft gate operation was developed using information extrapolated from general conditions in Task 3. The extrapolation results in some uncertainty of actual performance given the complexity of spillway flows interacting. A confirmation of the assumed performance should be tested specifically. It is assumed that 3 configurations will bracket the performance and provide confidence to finalize the gate operations.

Phase	Description	Total Cost
1	Hydraulic Planning (Task 1,3)	\$30,571.30
1	Hydraulic Analysis (Task 4,5,6)	\$35,331.41
1	Structural Study (Task 2)	\$12,687.32
	Total Phase 1	\$78,590.03
2	Structural Analysis	\$41,052.01
2	Proposed Plan Verification	\$12,691.85
	Total Phase 2	\$53,743.86
	Total All Phases	\$132,333.89
	Grant Request (65%)	\$86,017.03
	Local Funds (35%)	\$46,316.86

ATTACHMENT 2

OWRB BOARD RESOLUTION APPROVING
REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT APPLICATION
[Following pages]

**PLEASE RETAIN THE FOLLOWING
BOARD ORDER FOR YOUR RECORDS**

**A RESOLUTION OF THE OKLAHOMA WATER RESOURCES BOARD
AUTHORIZING AN APPLICATION FOR FUNDING ASSISTANCE THROUGH THE
FEDERAL EMERGENCY MANAGEMENT AGENCY PROGRAM TO
REHABILITATE HIGH HAZARD-POTENTIAL DAMS**

WHEREAS, the United States Department of the Homeland Security, Federal Emergency Management Agency ("FEMA") has implemented the Rehabilitation of High Hazard Potential Dams program to provide grant funds to reduce or eliminate the risk of dams of highest consequence and increase understanding and management of risks posed by eligible dams.

WHEREAS, FEMA has solicited proposals for cost-shared financial assistance from States, Indian Tribes, and nonprofit dam owners for projects to develop.

WHEREAS, the Oklahoma Water Resources Board ("Agency") has identified itself as an eligible applicant under FEMA's HHPD Grant Program, Funding Opportunity Number: DHS-21-[MT]-[041]-[00]-[01].

WHEREAS, the Agency is pursuing grant funding assistance under the HHPD grant program in an amount up to \$949,058.00 to provide technical, planning, design, and pre-construction activities related to the repair, removal, or rehabilitation of eligible high hazard dams.

NOW, THEREFORE, be it resolved by the Board as follows:

1. The Board has reviewed the scope and purpose of the funding application and finds that the Project will serve the needs of the people of Oklahoma and satisfy the goals of the HHPD program, and on that basis, supports the staff's submittal of the grant proposal to FEMA.
2. The Agency is capable of funding the minimum 35-percent cost share required to obtain grant funding under the HHPD Grant Program.
3. Pursuant to state policy, the Agency has sought and received approval from the Office of the Secretary of Energy and Environment in order to pursue this funding opportunity.
4. The Board hereby ratifies the action of its Chief Financial Officer or his designee of the Agency in applying for financial assistance from FEMA's HHPD Grant Program and authorizes the Chief Financial Officer or his designee to execute any related document, including a cooperative financial assistance agreement with FEMA.
5. The Chief Financial Officer and staff are directed to take all other actions necessary to secure funding for the Project under the HHPD Grant Program, including working with FEMA to meet established deadlines for entering into a cooperative financial assistance agreement.

PASSED AND ADOPTED by the Oklahoma Water Resources Board on the 21th day of JUNE 2022:

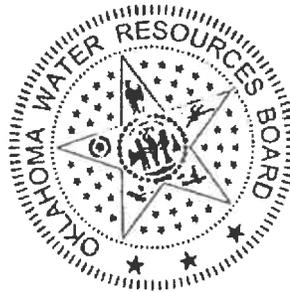


Matt Muller, Chairman

ATTEST:



Jennifer Castillo, Secretary



ATTACHMENT 3

FY 2021 Rehabilitation of High Hazard Potential Dams (HHPD) Program Summary
[Following pages]

The Department of Homeland Security (DHS)
FY 2021 Rehabilitation of High Hazard Potential Dams (HHPD)

A. Allowable Activities

FEMA will evaluate proposed activities for eligibility. Eligible activities include repair, removal, or any other structural or nonstructural measures to rehabilitate an eligible high hazard potential dam. Note that all eligible activities included in the list must also have eligible subrecipients that can meet the cost-share requirements and have taxing ability.

For the purposes of this grant program, the activities shown in Table 1 could qualify for funding. The activities are categorized into two types of activities: planning and design. This list is not exhaustive; other activities may also be eligible.

- **Planning Activities** - Planning activities include investigations and risk assessments that further define the dam risk using the FEMA risk prioritization methodology. See Section H.14, Minimum Requirements for Risk-Based Prioritization. Planning activities can also include alternatives analysis to identify a preferred plan for dam rehabilitation and the estimated cost for design and construction. For project planning, the alternatives should involve the preparation of preliminary hydrologic and hydraulic modeling to address the regulations of the state and local governments for alterations in floodplain areas as well as the minimum requirements of the NFIP. The local community should be consulted during the alternative identification and selection process to address local planning, zoning, and floodplain management regulations. Potential environmental impacts should also be considered in the selection of the preferred plan. Early coordination with EHP should be conducted to address applicable environmental requirements.
- **Design Activities** – Design activities include work to develop conceptual, preliminary, or final design plans and specifications for dam rehabilitation projects that have been planned using an alternative evaluation process that complies with NEPA requirements. Coordination with EHP during the design should be conducted to confirm that the design complies with NEPA requirements. Detailed hydrologic and hydraulic modeling should be performed for use in designing the dam rehabilitation and to address the permit requirements of the state and local government as well as the minimum requirements of the NFIP. For all projects located in Special Flood Hazard Areas on FEMA Flood Insurance Rate Maps, a FEMA conditional review of the project design for compliance with NFIP requirements should be conducted through the process outlined in 44 CFR §65.8. The design effort should include obtaining all state, local, and federal permits for approval to construct the project in the floodplain and to meet all environmental requirements.

Note that all grant-funded activities must comply with Federal Environmental Planning and Historic Preservation (EHP) regulations. See Section F.3.c, Environmental Planning and Historic Preservation (EHP) Compliance, for more information about EHP Compliance.

Table 1: Examples of Allowable Activities

Category	Eligible Scope of Work Activities
Planning	Development of evacuation plans, plans for flood fighting, or community response plans to include in the floodplain management plan Coordination of EAP and EOPs for different release conditions
Planning	Activities and studies that determine risks associated with eligible dams Environmental studies for NEPA compliance Development of operation and maintenance plans
Planning	Public education and awareness of flood risks associated with the eligible dam project
Planning	Dam risk and consequence assessments Feasibility studies Preliminary engineering studies Alternatives analysis Mapping, engineering survey, and inundation modeling
Design	Engineering design Development of specifications

B. Environmental Planning and Historic Preservation (EHP) Compliance

As a federal agency, FEMA is required to consider the effects of its actions on the environment and historic properties to ensure that all activities and programs funded by FEMA, including grant-funded projects, comply with federal EHP laws, Executive Orders, regulations, and policies, as applicable.

Recipients and subrecipients proposing projects that have the potential to impact the environment, including, but not limited to, the construction of communication towers, modification or renovation of existing buildings, structures, and facilities, or new construction including replacement of facilities, must participate in the FEMA EHP review process. The EHP review process involves the submission of a detailed project description along with any supporting documentation requested by FEMA in order to determine whether the proposed project has the potential to impact environmental resources or historic properties.

In some cases, FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. Federal law requires EHP review to be completed before federal funds are released to carry out proposed projects. FEMA may not be able to fund projects that are not in compliance with applicable EHP laws, Executive Orders, regulations, and policies.

DHS and FEMA EHP policy is found in directives and instructions available on the [FEMA.gov EHP](https://www.fema.gov/ehp) page, the FEMA website page that includes documents regarding EHP responsibilities and program requirements, including implementation of the National Environmental Policy Act and other EHP regulations and Executive Orders. Individual FEMA programs have separate

procedures to conduct and document EHP review. Guidance for individual grant programs are available from applicable program offices.

Recipients and subrecipients applying for HHPD projects that have the potential for physical impacts to the environment or cultural resources are encouraged determine the information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370h) as part of their initial and ongoing planning in order to lessen potential impacts to the environment or cultural resources and to identify the best possible solution for their dam safety initiative. Recipients and subrecipients should be aware that approval or funding of a dam rehabilitation plan or study under HHPD does not guarantee that additional EHP review will not be required if FEMA or another federal agency was to fund construction or rehabilitation activities that result from these grant activities.

C. Requirements Related to Contractor and Subcontractor Wages

Recipients and Sub-recipients are required to comply with the requirements of 42 U.S.C. § 5196(j)(9). All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

D. Requirements Related to Contract and Subcontract Services

A contract awarded shall not be considered to confer a proprietary interest upon the United States. As a condition on the receipt of a grant under this section of an amount greater than \$1,000,000, recipients and sub-recipients shall require that each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services entered into using funds from the grant be awarded in the same manner as a contract for architectural and engineering services is awarded under 40 U.S. Code Chapter 11 or an equivalent qualifications-based requirement prescribed by the recipient state.

E. Sub-recipients are required to submit the following documents to the state dam safety office:

1. Scoping Narrative.
 - a. Scope of work including details that the proposed activities increase risk understanding through studies, planning, and preliminary engineering, or how proposed activities reduce consequences through rehabilitation.
 - b. Schedule
 - c. Cost estimate (budget narrative and budget worksheet)
2. Link to or copy of FEMA-approved hazard mitigation plan, specifically referencing section(s) that includes all dam risk.
3. Request for mitigation plan extraordinary circumstance, if applicable, including written justification that identifies the circumstance for not meeting the mitigation plan requirement and explains how a mitigation plan will include all dam risks and be approved by FEMA within twelve (12) months. (See Section H, Mitigation Plan Extraordinary Circumstances.)
4. Have in place (or will be developed not later than 2 years after the date of execution of a dam rehabilitation or removal project agreement and implemented not later than 2 years after the date of completion of a project) a floodplain management plan to reduce the impacts of future flood events in the area impacted by the project. The floodplain management plan shall address:
 - a. potential measures, practices, and policies to reduce loss of life, injuries, damage to property and facilities, public expenditures, and other adverse impacts of flooding in the area protected by the project;
 - b. plans for flood fighting and evacuation; and
 - c. public education risk communication targeting communities in the inundation area.If the floodplain management plan is not in place, then an assurance statement (as defined below) must be included.
5. Information to demonstrate conformance with 44 CFR Part 9 and Part 10 and including all available information relating to known historic, archaeological, or environmentally sensitive areas.
6. Documentation of consideration of alternatives that avoid or minimize harm to the environment or historic resources.
7. Demonstration that the sub-recipient can meet the cost share requirements.
8. Required assurance statements include:
 - a. Statement of project approval from the relevant state dam safety agency.
 - b. Statement that the Sub-applicant participates in, and complies with, all applicable federal flood insurance programs.
 - c. Statement that the Sub-applicant acts in accordance with the state dam safety program.
 - d. Documentation that the dam has an emergency action plan approved by the relevant state dam safety agency, and that the dam is classified as “high hazard potential” by the state dam safety agency in the state in which the dam is located.

- e. Statement from the state that the proposed project dam fails to meet minimum state dam safety standards and poses an unacceptable risk to the public (as determined by the state) with official documentation that the dam owner has been notified of the deficiencies and unacceptable risk.
- f. Operation and maintenance agreement where all applicable parties enter a legally binding contract to provide operation and maintenance of the project for the 50-year period following completion of rehabilitation.
- g. Assurance that the Sub-applicant will have adequate funding resources for operation and maintenance activities to be carried out over 50-year period following completion of rehabilitation project.
- h. A statement that activities relating to the public in the area around the dam are performed in accordance with the hazard mitigation plan.
- i. If the floodplain management plan is not in place, a statement that the plan will be developed not later than one (1) year after the date of execution of a project agreement and implemented not later than one (1) year after the date of completion of construction of the project must be included.
- j. A statement that the Sub-applicant will comply with section 5196(j)(9) of title 42 (as in effect on December 16, 2016). See section C for language.
- k. A statement that the Sub-applicant will comply with chapter 11 of title 40; Selection of Architects and Engineers. The language can be viewed at: <http://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/cchapter11&edition=prelim>.

ATTACHMENT 4

2 CFR Part 200- Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards
[Following pages]

**PLEASE SIGN, RETURN, AND RETAIN THE FOLLOWING
FOR YOUR RECORDS**



OKLAHOMA
Water Resources Board

NOTICE OF FEDERAL PROCUREMENT REQUIREMENTS

Date: _____

Jurisdiction Name: _____

Jurisdiction Type: _____

SIGNATURE AUTHORITY

The request for Rehabilitation of High Hazard Potential Dams (HHPD) Grant funding through a Notice of Funding Opportunity has been approved, it is now necessary for you, as the Subgrantee/Subrecipient, to acknowledge the requirements and regulations of **2 CFR PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

The following specific officers/officials, or their authorized designees, are required to sign this Acknowledgement on behalf of the specified type of Subgrantee/Subrecipient. (NOTE: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Sub grantee/Sub recipient must be attached to the Agreement for review by OWRB.

- a. **Corporation:** the Chair of the Board of Directors or President
- b. **City:** the Mayor, City Manager, or Town Administrator
- c. **County:** the Chairman of the Board of County Commissioners
- d. **School Board:** the Superintendent
- e. **Fire District:** the District Chief
- f. **Special Districts:** the Executive Director
- g. **Institution of Higher Education:** the President of the institution
- h. **Charter School:** the Chair of the Board of Directors
- i. **County Sheriff's Office:** the Sheriff
- j. **State Agencies:** the Director or Deputy Director of the agency
- k. **All other Sub grantee/Sub recipients:** the Chief Executive Officer of the entity

Title 2 Subtitle A Chapter II PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS- https://ecfr.io/Title-02/cfr200_main

Subpart D—Post Federal Award Requirements

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322

Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326

Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-

Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost

controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can

only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure those minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the

particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

§ Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act(40 U.S.C. 3141-3144) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Thenon-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR

180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection

with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

Terms

Non-Federal Entity (NFE) - A State, local government, Indian tribe, institution of higher education or nonprofit organization that carries out a High Rehabilitation of High Hazard Potential Dams award as a recipient or subrecipient (2 C.F.R. § 200.69).

Federal Award- The Federal financial assistance that a NFE receives from a FEMA or indirectly through a pass-through entity (2 C.F.R. § 200.38); also, the instrument setting forth the terms and conditions.

Recipient - A NFE that receives a Rehabilitation of High Hazard Potential Dams award directly from FEMA to carry out an activity under a Federal program (2 C.F.R. § 200.86).

Pass-Through Entity- A NFE that provides a subaward to a subrecipient to carry out part of the Rehabilitation of High Hazard Potential Dams program (2 C.F.R. § 200.74).

Subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Rehabilitation of High Hazard Potential Dams award received by the pass-through entity; it does not include payments to a contractor (2 C.F.R. § 200.92).

Subrecipient - A NFE that receives a subaward from a pass-through entity to carry out part of the Hazard Mitigation Assistance program, but does not include an individual that is a beneficiary of such program (2 C.F.R. § 200.93).

Signed: Randy Warren Position: Mayor Pro Tem
(Elected Official or Jurisdiction Representative authorized to apply for Federal Grants)

Printed Name: Randy Warren

STATE OF OKLAHOMA

COUNTY OF Comanche

Signed or attested before me on 9/13/22 (date)

by Randy Warren (name(s) of person(s)).

NOTARY PUBLIC

Title (and Rank):

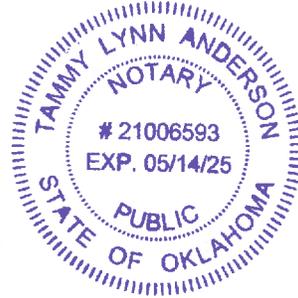
Tammy Anderson, Deputy City Clerk

Print Name:

Tammy Anderson

My Commission Expires:

5/14/25



AGENDA ITEM 3D(6)

**REHABILITATION OF HIGH HAZARD POTENTIAL DAMS
GRANT AGREEMENT**

WITH: City of Lawton, Comanche County

PURPOSE: Rehabilitation of high hazard potential dams grant agreement for the Lawtonka Lake Dam Gate Operations Study

AMOUNT: Not to exceed 65% of the eligible activity costs or the amount of \$105,639.37, whichever is less

TERM: Through June 15, 2024

OKLAHOMA WATER RESOURCES BOARD

REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT AGREEMENT Between the City of Lawton, Comanche County and Oklahoma Water Resources Board

This Agreement, dated as of the date of the last signature herein but to be effective as provided below, by and between the City of Lawton, Comanche County (hereinafter "Sub-applicant:), and the Oklahoma Water Resources Board, an agency of the State of Oklahoma and recipient of the Federal Emergency Management Agency's Rehabilitation of High Hazard Potential Dams (hereinafter "HHPD") Grant.

In accepting said grant, Sub-applicant duly acknowledges and agrees that in all regards and respects, Sub-applicant must and shall comply with the requirements of all applicable federal and state statutory provisions and all Oklahoma Water Resources Board (hereinafter "the Board") rules, regulations, and the Rehabilitation of High Hazard Potential Dams (hereinafter "HHPD") Grant Program applicable grant policies. Attached are the FY 2021 HHPD grant conditions and regulations. Without limiting the generality of the foregoing, Sub-applicant agrees as follows:

1. **Description of approved project** This grant has been approved by the Board for Sub-applicant's project which shall consist of the Lawtonka Lake Dam Gate Operations Study; the scoping narrative for the project is attached hereto as **Attachment 1**.
2. **Determination of amount of grant** The amount of this grant shall not exceed 65 percent of the eligible activity costs or the amount of \$105,639.37 whichever is less.
3. **Creation and maintenance of separate account** As a prerequisite to receiving grant funds from the Board, Sub-applicant shall establish to the satisfaction of the Board staff, a special and separate federally insured account entitled "Oklahoma Water Resources Board HHPD Grant Account" (hereinafter referred to as "HHPD Grant Account") through which the grant proceeds shall be administered and accounted for by Sub-applicant. Prior to the Board's release of any grant funds, Sub-applicant shall file a letter with the Board identifying the account number for the HHPD Grant Account. Sub-applicant shall then submit to the Board a monthly invoice detailing the project activities to be funded and the proposed cost of those activities. Once the Board has deemed the proposed activities listed in the invoice are eligible for HHPD Rehab Grant funding and are within the approved scope of work, the Board shall make payment of the grant matching funds, up to 65% of the total eligible activity cost as defined above in Section 2, to the HHPD Grant Account. Sub-applicant shall then expend funds from the account only as permitted in this HHPD Grant Agreement, Board rules, and FEMA Guidelines.
4. **Expenditure of funds in grant account only for authorized Project purposes** Sub-applicant shall disburse or expend funds from the HHPD Grant Account only toward eligible and authorized purposes for the Project approved by the Board. Authorized Project costs include technical, planning, design, and other pre-construction activities. Construction and renovation costs are not allowable for FY 2021 HHPD grant. Any amount of grant funds expended from the HHPD Grant Account for unauthorized purposes shall be repaid by Sub-applicant to the Board, together with payment of interest accrued from the date of the expenditure at the maximum rate allowed by law, no later than thirty (30) days after the date of written demand from Board staff. Reimbursements for eligible activities are only applicable for approved activities to be completed after the finalization of this agreement. Sub-applicant shall maintain proper books, records, and supporting documentation (such as invoices, billing statements, and canceled checks drawn on the HHPD Grant Account) showing to the satisfaction of the Board staff the amounts and purposes of all expenditures from the HHPD Grant Account and shall make the same available for inspection and examination by the Board. Any disbursement of grant funds without adequate supporting documentation shall be deemed to be an unauthorized expenditure of grant funds which Sub-applicant shall repay to the Board with interest as provided above. Sub-applicant shall direct to the Board staff any and all questions regarding whether an expenditure is authorized prior to making the expenditure.

5. **Time limit to file for reimbursement; expiration of approval** All reimbursement invoices for eligible project activities must be received by the Board by June 15, 2024. If the project is unable to be completed by June 15, 2024, the Sub-applicant shall submit a request for a project extension. If the extension is determined by the Board to be necessary and appropriate, the Board or its staff may permit additional time, but no later than September 15, 2024, to file an acceptable reimbursement invoice. The approval of this grant shall not extend past September 15, 2024 without prior approval from the grantor (FEMA). If an acceptable reimbursement is not received on or before September 15, 2024, then the approval of this grant shall expire and no grant funds will be released to Sub-applicant, unless authorized by the grantor.
6. **Return of unexpended grant funds** Sub-applicant shall return to the Board any unexpended grant funds, including any unexpended contingencies funds, within thirty (30) days after completion of the construction of the Project or within thirty (30) days from Sub-applicant's receipt of all invoices, whichever is later.
7. **Recipient Cost Share** Sub-applicant will provide documentation to the Board showing the appropriate amount of recipient cost share is available for the grant.
8. **Additional Requirements** Sub-applicant may be subject to additional requirements as may be directed by the Board in accordance with the HPPD Grant Program and associated procedures for implementing the program. The Board may require additional documentation or information as needed to meet any of the requirements of the HPPD Grant Program.

In consideration of Sub-applicant's agreement to these terms and conditions, Sub-applicant has entered and signed this HHPD Grant Agreement this ____ day of _____, 20__.

OKLAHOMA WATER RESOURCES BOARD

ATTEST:

Matt Muller, Chairman

Jennifer Castillo, Secretary

(BOARD SEAL)

* * * * *

Reviewed by:

Yohanes Sugeng, Chief
Engineering and Planning Division

City of Lawton, Comanche County Oklahoma

Attest:

By: *Mari L. Husbeck*

Title: City Clerk

Randy Warren
Randy Warren, Mayor Pro Tem

Date: September 13, 2022

APPROVED as to form and legality this 9th day of
September, 2022.
John M. Ratliff
JOHN RATLIFF, CITY ATTORNEY

ATTACHMENT 1

Lake Lawtonka – Gate Operations Planning Analysis
By Jacobs Engineering Group, Inc.
[Following pages]

Lake Lawtonka – Gate Operations Planning Analysis

List of Acronyms

CFD	Computational Fluid Dynamics
CFS	Cubic Feet per Second
CoL	City of Lawton
FT	Feet
HEC-1	Hydrologic Engineering Center – 1 "Program"
NAVD	North American Vertical Datum
PMF	Probable Maximum Flood
USACE	United States Army Corps of Engineers
USBR	United States Bureau of Reclamation
WSE	Water Surface Elevation

Background

The City of Lawton undertook an initiative in approximately early 2000 to develop a gate operation policy such that it would meet specific dam safety, water supply, and downstream discharge and inundation duration criteria. Some of the specifics include considering downstream interests to avoid a sudden increase in spillway flow and the spillway flow needs to increase with more gates opened if the water level continues to rise in the reservoir to avoid overtopping the gates and the dam embankment.

Multiple hydrologic runs were performed to satisfy these criteria and is assumed to be still valid. The gate hydraulics at Lake Lawtonka appear to not have as significant issue as Ellsworth gate operations based on the information provided. It appears a slightly less aggressive gate opening rate between the water surface elevation (WSE) of 1347.6 and 1349.16 can avoid the a potentially unsafe gate opening with the gates fully open. It is assumed the outflow can be controlled by gate opening and weir flow avoided.

Problem Statement

Similar to Lake Ellsworth, equations used for the spillway rating at Lake Lawtonka should be updated to current standards and the current spillway gate operations should be evaluated for spillway surge that has the potential to compromise dam safety.

A brief review of gate operations for Lawtonka was performed to determine if there is a similar concern. When following the current gate operations, the potential for spillway surge occurs when the lake water surface elevation approaches approximately 1349.1 with a gate opening approaching 10 feet (120 inches). Current gate operations are to open all the gates at a rate 4 times the rate of the water level rising when the lake level is above 1347.6. The likely result would be with spillway surge occurring before the lake water surface reached 1347.6. The

potential unsafe gate opening can be reduced by changing the gate operation rate to something less and the full gate opening of 10 feet at a WSE greater than 1350.

Recommendation

It is Jacobs' recommendation that the gate operating table should be revisited to avoid or limit these conditions that put the dam at risk. It will likely reduce the flood capacity of the existing gates. A gate opening greater than 10 feet will likely be required to achieve criteria of passing the 75% Probable Maximum Flood (PMF) event while providing some downstream flood control. It is recommended that a structural assessment be made for the mode of failure of the gates and modifications required to raise the gates to pass the 75% PMF (approximately an additional 1 to 2 feet (11 to 12 feet total) at Lawtonka.

Scope of Work

Phase 1 – Planning, Study and Analysis

Task 1 Literature Review

A full review will be performed of Lawtonka current gate operations, hydrology, and downstream flood channel modeling, and any other pertinent and available information.

Task 2 Structural Condition and Assessment of Spillway Gates

A structural evaluation will be made to assess the following structural issues:

1. Evaluate the condition of the existing gates and lift mechanical system

Task 3 CFD Model of Lawtonka Spillway and Stilling Basin

A CFD model already exists of Ellsworth spillway and stilling basin. Similar will be necessary for Lawtonka to perform case specific hydraulic model studies of the spillway and stilling basin. It is assumed the structure has differences from generalized design to define the overall performance characteristics.

- a) A review of original construction drawings and field information will be reviewed.
- b) Construct the model geometry to include the forebay bathymetry (simplified), ogee, spillway apron, stilling basin, and downstream river (simplified).

Task 4 CFD Model of Spillway and Stilling Basin Performance

The CFD model will be used to evaluate the complex hydraulics of the spillway, stilling basin, and tailrace at Lawtonka. The flow simulations will be steady-state. A total of 3 geometry baseline cases will be performed:

1. Gates fully raised out of the water for the Standard Project Flood and 100-year flood (weir flow).
2. Gates at approximately 60% open at 3 different flood stages to establish max gate opening.
3. Gates at 30% open and flood stage.

The CFD results will be used to:

- a. Calibrate an analytical calculation for the spillway flow rating so a spreadsheet calculation can be used to efficient evaluate multiple configurations for gate operations.

- b. Determine the limitations of the spillway gate openings or gate opening submergence to reduce the potential of spillway surge.
- c. Inform what the effect is from adjacent spillway bays operating creating a local drawdown on the flow stability due to the local water level being drawn down
- d. Better understand the stilling basin ability to contain a hydraulic jump. Particularly when the gate openings are not uniform as a bulking pattern of spillway bays with high flow may have a hydraulic jump that sweeps out of the stilling basin.

Task 5 Draft Gate Operations

The calibrated equations will be used in developing scenarios for gate operations that replicate the stage versus discharge. The scenario of gate operations will use the corrected spillway rating, apply limitations of gate opening submergence, and be informed of stilling basin performance. The draft gate operations will be reviewed with operators to ensure it can be implemented in the field.

Task 6 Determining Required Gate Opening to Pass 75% PMF

The proposed changes to gate operations will change the reservoir stage and outflow relationship at some WSE above 1242. Reservoir routing should be performed to determine a gate opening to pass the 75% PMF. It is assumed the hydrologic models currently by USACE or CH2M HILL developed to perform the gate operations using U.S. Army Corps of Engineers (USACE) Hydrologic Engineering Center – Hydrologic Modeling System (HEC-1) software are available.

Task 7: Gate Operation Memorandum

A technical memorandum will be prepared explaining the analysis and presenting the results of a new gate operations.

Phase 2 – Engineering Analysis and Study

To be authorized at the discretion of the Owner. These tasks may be required to refine or further define future work engineering design.

Task 1. Structural Analysis:

1. Estimate the failure mode of the gate/pier structural system
2. Develop a concept to raise the gates an additional amount as needed to pass the 75% PMF.

Task 2. Gate Operations Confirmations

The draft gate operation was developed using information extrapolated from general conditions in Task 3. The extrapolation results in some uncertainty of actual performance given the complexity of spillway flows interacting. A confirmation of the assumed performance should be tested specifically. It is assumed that 3 configurations at Lawtonka will bracket the performance and provide confidence to finalize the gate operations.

Phase	Description	Total Cost
1	Hydraulic Planning (Task 1, 2, 4)	\$61,996.55
1	Hydraulic Analysis (Task 5,6,7)	\$34,153.66
1	Structural Study (Task 3)	\$12,628.04
	Total Phase 1	\$108,778.25
2	Structural Analysis	\$41,052.01
2	Proposed Plan Verification	\$12,691.85
	Total Phase 2	\$53,743.86
	Total All Phases	\$162,522.11
	Grant Request (65%)	\$105,639.37
	Local Funds (35%)	\$56,882.74

ATTACHMENT 2

OWRB BOARD RESOLUTION APPROVING
REHABILITATION OF HIGH HAZARD POTENTIAL DAMS GRANT APPLICATION
[Following pages]

**PLEASE RETAIN THE FOLLOWING
BOARD ORDER FOR YOUR RECORDS**

**A RESOLUTION OF THE OKLAHOMA WATER RESOURCES BOARD
AUTHORIZING AN APPLICATION FOR FUNDING ASSISTANCE THROUGH THE
FEDERAL EMERGENCY MANAGEMENT AGENCY PROGRAM TO
REHABILITATE HIGH HAZARD-POTENTIAL DAMS**

WHEREAS, the United States Department of the Homeland Security, Federal Emergency Management Agency (“FEMA”) has implemented the Rehabilitation of High Hazard Potential Dams program to provide grant funds to reduce or eliminate the risk of dams of highest consequence and increase understanding and management of risks posed by eligible dams.

WHEREAS, FEMA has solicited proposals for cost-shared financial assistance from States, Indian Tribes, and nonprofit dam owners for projects to develop.

WHEREAS, the Oklahoma Water Resources Board (“Agency”) has identified itself as an eligible applicant under FEMA’s HHPD Grant Program, Funding Opportunity Number: DHS-21-[MT]-[041]-[00]-[01].

WHEREAS, the Agency is pursuing grant funding assistance under the HHPD grant program in an amount up to \$949,058.00 to provide technical, planning, design, and pre-construction activities related to the repair, removal, or rehabilitation of eligible high hazard dams.

NOW, THEREFORE, be it resolved by the Board as follows:

1. The Board has reviewed the scope and purpose of the funding application and finds that the Project will serve the needs of the people of Oklahoma and satisfy the goals of the HHPD program, and on that basis, supports the staff’s submittal of the grant proposal to FEMA.
2. The Agency is capable of funding the minimum 35-percent cost share required to obtain grant funding under the HHPD Grant Program.
3. Pursuant to state policy, the Agency has sought and received approval from the Office of the Secretary of Energy and Environment in order to pursue this funding opportunity.
4. The Board hereby ratifies the action of its Chief Financial Officer or his designee of the Agency in applying for financial assistance from FEMA’s HHPD Grant Program and authorizes the Chief Financial Officer or his designee to execute any related document, including a cooperative financial assistance agreement with FEMA.
5. The Chief Financial Officer and staff are directed to take all other actions necessary to secure funding for the Project under the HHPD Grant Program, including working with FEMA to meet established deadlines for entering into a cooperative financial assistance agreement.

PASSED AND ADOPTED by the Oklahoma Water Resources Board on the 21th day of JUNE 2022:

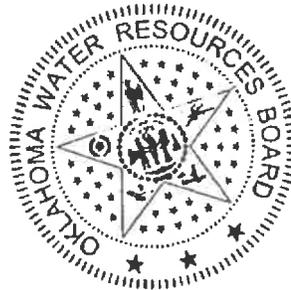


Matt Muller, Chairman

ATTEST:



Jennifer Castillo, Secretary



ATTACHMENT 3

FY 2021 Rehabilitation of High Hazard Potential Dams (HHPD) Program Summary
[Following pages]

The Department of Homeland Security (DHS) FY 2021 Rehabilitation of High Hazard Potential Dams (HHPD)

A. Allowable Activities

FEMA will evaluate proposed activities for eligibility. Eligible activities include repair, removal, or any other structural or nonstructural measures to rehabilitate an eligible high hazard potential dam. Note that all eligible activities included in the list must also have eligible subrecipients that can meet the cost-share requirements and have taxing ability.

For the purposes of this grant program, the activities shown in Table 1 could qualify for funding. The activities are categorized into two types of activities: planning and design. This list is not exhaustive; other activities may also be eligible.

- **Planning Activities** - Planning activities include investigations and risk assessments that further define the dam risk using the FEMA risk prioritization methodology. See Section H.14, Minimum Requirements for Risk-Based Prioritization. Planning activities can also include alternatives analysis to identify a preferred plan for dam rehabilitation and the estimated cost for design and construction. For project planning, the alternatives should involve the preparation of preliminary hydrologic and hydraulic modeling to address the regulations of the state and local governments for alterations in floodplain areas as well as the minimum requirements of the NFIP. The local community should be consulted during the alternative identification and selection process to address local planning, zoning, and floodplain management regulations. Potential environmental impacts should also be considered in the selection of the preferred plan. Early coordination with EHP should be conducted to address applicable environmental requirements.
- **Design Activities** – Design activities include work to develop conceptual, preliminary, or final design plans and specifications for dam rehabilitation projects that have been planned using an alternative evaluation process that complies with NEPA requirements. Coordination with EHP during the design should be conducted to confirm that the design complies with NEPA requirements. Detailed hydrologic and hydraulic modeling should be performed for use in designing the dam rehabilitation and to address the permit requirements of the state and local government as well as the minimum requirements of the NFIP. For all projects located in Special Flood Hazard Areas on FEMA Flood Insurance Rate Maps, a FEMA conditional review of the project design for compliance with NFIP requirements should be conducted through the process outlined in 44 CFR §65.8. The design effort should include obtaining all state, local, and federal permits for approval to construct the project in the floodplain and to meet all environmental requirements.

Note that all grant-funded activities must comply with Federal Environmental Planning and Historic Preservation (EHP) regulations. See Section F.3.c, Environmental Planning and Historic Preservation (EHP) Compliance, for more information about EHP Compliance.

Table 1: Examples of Allowable Activities

Category	Eligible Scope of Work Activities
Planning	Development of evacuation plans, plans for flood fighting, or community response plans to include in the floodplain management plan Coordination of EAP and EOPs for different release conditions
Planning	Activities and studies that determine risks associated with eligible dams Environmental studies for NEPA compliance Development of operation and maintenance plans
Planning	Public education and awareness of flood risks associated with the eligible dam project
Planning	Dam risk and consequence assessments Feasibility studies Preliminary engineering studies Alternatives analysis Mapping, engineering survey, and inundation modeling
Design	Engineering design Development of specifications

B. Environmental Planning and Historic Preservation (EHP) Compliance

As a federal agency, FEMA is required to consider the effects of its actions on the environment and historic properties to ensure that all activities and programs funded by FEMA, including grant-funded projects, comply with federal EHP laws, Executive Orders, regulations, and policies, as applicable.

Recipients and subrecipients proposing projects that have the potential to impact the environment, including, but not limited to, the construction of communication towers, modification or renovation of existing buildings, structures, and facilities, or new construction including replacement of facilities, must participate in the FEMA EHP review process. The EHP review process involves the submission of a detailed project description along with any supporting documentation requested by FEMA in order to determine whether the proposed project has the potential to impact environmental resources or historic properties.

In some cases, FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. Federal law requires EHP review to be completed before federal funds are released to carry out proposed projects. FEMA may not be able to fund projects that are not in compliance with applicable EHP laws, Executive Orders, regulations, and policies.

DHS and FEMA EHP policy is found in directives and instructions available on the [FEMA.gov EHP](https://www.fema.gov/ehp) page, the FEMA website page that includes documents regarding EHP responsibilities and program requirements, including implementation of the National Environmental Policy Act and other EHP regulations and Executive Orders. Individual FEMA programs have separate

procedures to conduct and document EHP review. Guidance for individual grant programs are available from applicable program offices.

Recipients and subrecipients applying for HHPD projects that have the potential for physical impacts to the environment or cultural resources are encouraged determine the information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4370h) as part of their initial and ongoing planning in order to lessen potential impacts to the environment or cultural resources and to identify the best possible solution for their dam safety initiative. Recipients and subrecipients should be aware that approval or funding of a dam rehabilitation plan or study under HHPD does not guarantee that additional EHP review will not be required if FEMA or another federal agency was to fund construction or rehabilitation activities that result from these grant activities.

C. Requirements Related to Contractor and Subcontractor Wages

Recipients and Sub-recipients are required to comply with the requirements of 42 U.S.C. § 5196(j)(9). All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of any contribution of Federal funds made by the Administrator under this subsection shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40, and every such employee shall receive compensation at a rate not less than one and ½ times the basic rate of pay of the employee for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek, as the case may be. The Administrator shall make no contribution of Federal funds without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

D. Requirements Related to Contract and Subcontract Services

A contract awarded shall not be considered to confer a proprietary interest upon the United States. As a condition on the receipt of a grant under this section of an amount greater than \$1,000,000, recipients and sub-recipients shall require that each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services entered into using funds from the grant be awarded in the same manner as a contract for architectural and engineering services is awarded under 40 U.S. Code Chapter 11 or an equivalent qualifications-based requirement prescribed by the recipient state.

E. Sub-recipients are required to submit the following documents to the state dam safety office:

1. Scoping Narrative.
 - a. Scope of work including details that the proposed activities increase risk understanding through studies, planning, and preliminary engineering, or how proposed activities reduce consequences through rehabilitation.
 - b. Schedule
 - c. Cost estimate (budget narrative and budget worksheet)
2. Link to or copy of FEMA-approved hazard mitigation plan, specifically referencing section(s) that includes all dam risk.
3. Request for mitigation plan extraordinary circumstance, if applicable, including written justification that identifies the circumstance for not meeting the mitigation plan requirement and explains how a mitigation plan will include all dam risks and be approved by FEMA within twelve (12) months. (See Section H, Mitigation Plan Extraordinary Circumstances.)
4. Have in place (or will be developed not later than 2 years after the date of execution of a dam rehabilitation or removal project agreement and implemented not later than 2 years after the date of completion of a project) a floodplain management plan to reduce the impacts of future flood events in the area impacted by the project. The floodplain management plan shall address:
 - a. potential measures, practices, and policies to reduce loss of life, injuries, damage to property and facilities, public expenditures, and other adverse impacts of flooding in the area protected by the project;
 - b. plans for flood fighting and evacuation; and
 - c. public education risk communication targeting communities in the inundation area.If the floodplain management plan is not in place, then an assurance statement (as defined below) must be included.
5. Information to demonstrate conformance with 44 CFR Part 9 and Part 10 and including all available information relating to known historic, archaeological, or environmentally sensitive areas.
6. Documentation of consideration of alternatives that avoid or minimize harm to the environment or historic resources.
7. Demonstration that the sub-recipient can meet the cost share requirements.
8. Required assurance statements include:
 - a. Statement of project approval from the relevant state dam safety agency.
 - b. Statement that the Sub-applicant participates in, and complies with, all applicable federal flood insurance programs.
 - c. Statement that the Sub-applicant acts in accordance with the state dam safety program.
 - d. Documentation that the dam has an emergency action plan approved by the relevant state dam safety agency, and that the dam is classified as “high hazard potential” by the state dam safety agency in the state in which the dam is located.

- e. Statement from the state that the proposed project dam fails to meet minimum state dam safety standards and poses an unacceptable risk to the public (as determined by the state) with official documentation that the dam owner has been notified of the deficiencies and unacceptable risk.
- f. Operation and maintenance agreement where all applicable parties enter a legally binding contract to provide operation and maintenance of the project for the 50-year period following completion of rehabilitation.
- g. Assurance that the Sub-applicant will have adequate funding resources for operation and maintenance activities to be carried out over 50-year period following completion of rehabilitation project.
- h. A statement that activities relating to the public in the area around the dam are performed in accordance with the hazard mitigation plan.
- i. If the floodplain management plan is not in place, a statement that the plan will be developed not later than one (1) year after the date of execution of a project agreement and implemented not later than one (1) year after the date of completion of construction of the project must be included.
- j. A statement that the Sub-applicant will comply with section 5196(j)(9) of title 42 (as in effect on December 16, 2016). See section C for language.
- k. A statement that the Sub-applicant will comply with chapter 11 of title 40; Selection of Architects and Engineers. The language can be viewed at: <http://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/chapter11&edition=prelim>.

ATTACHMENT 4

2 CFR Part 200- Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards
[Following pages]

**PLEASE SIGN, RETURN, AND RETAIN THE FOLLOWING
FOR YOUR RECORDS**



OKLAHOMA
Water Resources Board

NOTICE OF FEDERAL PROCUREMENT REQUIREMENTS

Date: _____

Jurisdiction Name: _____

Jurisdiction Type: _____

SIGNATURE AUTHORITY

The request for Rehabilitation of High Hazard Potential Dams (HHPD) Grant funding through a Notice of Funding Opportunity has been approved, it is now necessary for you, as the Subgrantee/Subrecipient, to acknowledge the requirements and regulations of **2 CFR PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

The following specific officers/officials, or their authorized designees, are required to sign this Acknowledgement on behalf of the specified type of Subgrantee/Subrecipient. (NOTE: If this Agreement is signed by a designee, a duly authenticated delegation of authority evidencing the signer's authority to execute the Agreement for and on behalf of the Sub grantee/Sub recipient must be attached to the Agreement for review by OWRB.

- a. **Corporation:** the Chair of the Board of Directors or President
- b. **City:** the Mayor, City Manager, or Town Administrator
- c. **County:** the Chairman of the Board of County Commissioners
- d. **School Board:** the Superintendent
- e. **Fire District:** the District Chief
- f. **Special Districts:** the Executive Director
- g. **Institution of Higher Education:** the President of the institution
- h. **Charter School:** the Chair of the Board of Directors
- i. **County Sheriff's Office:** the Sheriff
- j. **State Agencies:** the Director or Deputy Director of the agency
- k. **All other Sub grantee/Sub recipients:** the Chief Executive Officer of the entity

Title 2 Subtitle A Chapter II PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS- https://ecfr.io/Title-02/cfr200_main

Subpart D—Post Federal Award Requirements

PROCUREMENT STANDARDS

§200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322

Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326

Contract provisions.

§200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-

Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost

controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can

only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure those minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the

particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

§ Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act(40 U.S.C. 3141-3144) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti- Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Thenon-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR

180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection

with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

Terms

Non-Federal Entity (NFE) - A State, local government, Indian tribe, institution of higher education or nonprofit organization that carries out a High Rehabilitation of High Hazard Potential Dams award as a recipient or subrecipient (2 C.F.R. § 200.69).

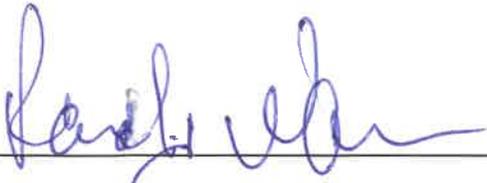
Federal Award- The Federal financial assistance that a NFE receives directly from a FEMA or indirectly through a pass-through entity (2 C.F.R. § 200.38); also, the instrument setting forth the terms and conditions.

Recipient - A NFE that receives a Rehabilitation of High Hazard Potential Dams award directly from FEMA to carry out an activity under a Federal program (2 C.F.R. § 200.86).

Pass-Through Entity- A NFE that provides a subaward to a subrecipient to carry out part of the Rehabilitation of High Hazard Potential Dams program (2 C.F.R. § 200.74).

Subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Rehabilitation of High Hazard Potential Dams award received by the pass-through entity; it does not include payments to a contractor (2 C.F.R. § 200.92).

Subrecipient - A NFE that receives a subaward from a pass-through entity to carry out part of the Hazard Mitigation Assistance program, but does not include an individual that is a beneficiary of such program (2 C.F.R. § 200.93).

Signed:  Position: Mayor Pro Tem
(Elected Official or Jurisdiction Representative authorized to apply for Federal Grants)

Printed Name: Randy Warren

STATE OF OKLAHOMA
COUNTY OF Comanche

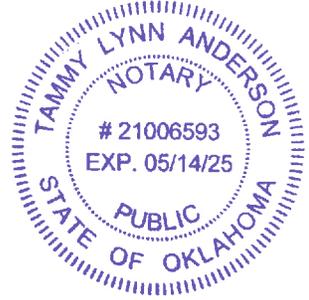
Signed or attested before me on _____ (date)
by Randy Warren (name(s) of person(s)).

NOTARY PUBLIC

Title (and Rank):
Tammy Anderson, Deputy City Clerk

Print Name:
Tammy Anderson

My Commission Expires:
5/14/25



AGENDA ITEM 3D(7)

PROFESSIONAL SERVICES AGREEMENT

WITH: Hilltop Securities, Inc.

PURPOSE: For financial advisor services related to the Board's Financial assistance programs

AMOUNT:

1. Refunding Bonds – no set amount, but not to exceed amounts listed on fee schedule
2. New Money Bond Issue – Not to exceed \$102,500.00
3. Consulting Services – Not to exceed \$32,500.00

TERM: From the date this Agreement is fully executed by both parties through and including the date that is one year after the first date bonds are sold

Agreement to Provide Services as Financial Advisor

This Agreement to Provide Services as Financial Advisor (the "Agreement") is entered into this 20th day of September, 2022, by and between Hilltop Securities Inc. (the "Advisor") and the Oklahoma Water Resources Board (the "OWRB"), a body corporate and politic and an instrumentality, agency and department of the State of Oklahoma (the "State").

WHEREAS, the OWRB has heretofore resolved it can best prepare to meet the future water and sewer funding needs of the people of the State of Oklahoma by obtaining the recommendations of professional financial advisors with respect to the Board's financial assistance programs; and

WHEREAS, the OWRB has requested proposals from a plurality of qualified entities providing financial advisory services pursuant to a Request for Proposals for Financial Advisors; and

WHEREAS, the Advisor represents that it has the financial management experience and expertise required to provide such services; and

WHEREAS, the OWRB has duly selected the Advisor to provide such services to the OWRB;

NOW THEREFORE, it is hereby agreed that:

1. Services by the Advisor. The Advisor shall, in consideration of the compensation to be paid to it by the OWRB pursuant to paragraph 2, below, provide the financial advisory services specified in Exhibit A, attached hereto and incorporated herein by this reference, as and when requested by the OWRB during the term of this Agreement. The Advisor and the OWRB understand and agree that any and all services provided related to the issuance of debt obligations shall be governed by this agreement.

2. Payment.

A. Amounts to be paid for each debt issuance. For and in consideration of the consulting services to be provided by the Advisor, the OWRB shall pay the Advisor an amount not to exceed \$102,500.00 per new money bond issue, such total amount being inclusive of all fees and expenses for all work pursuant to each debt issuance. Amounts to be paid shall be computed pursuant to the schedule of charges attached hereto as Exhibit B, which shall apply for the initial term of this Agreement.

B. Amounts to be paid for services related to Maintaining and Improving OWRB Financial Assistance Programs. For and in consideration of the consulting services to be provided by the Advisor, the OWRB shall pay the Advisor an amount not to exceed \$32,500.00, such total amount being inclusive of all fees and expenses for all work as described in this paragraph 2.B. Amounts to be paid shall be computed pursuant to the schedule of charges attached hereto as Exhibit B, which shall apply for the initial term of this Agreement.

C. Hourly Fee Schedule. For and in consideration of the Consulting Services to be provided by the Advisor, the OWRB shall pay the Advisor hourly fees as detailed below for all work not included in paragraphs 2.A. and 2.B.

above, examples including but not limited too, TIPRA, and post issuance disclosure requirements.

Hourly Fee Schedule

<u>Staff Classification</u>	<u>Standard Fee</u>	<u>OWRB's Discounted Fee</u>
Regional Managing Director and Managing Director	\$ 350	\$ 300
Director	315	270
Vice President	275	240
Assistant Vice President	225	160
Analysts and Associates	190	115
Clerical/Support	90	65

- D. Mode of payment. Payment shall be made as follows:
- (1) The Advisor shall submit an invoice by or before the closing date of each debt issuance. The invoices shall show the work performed, hours spent, and direct expenses incurred during the period leading up to the closing, detailing these items by task. The Advisor shall provide any additional documentation of charges (including receipts, time sheets, time breakdowns, or other documents) at the request of the OWRB.
 - (2) The OWRB shall pay each approved invoice from proceeds of the respective debt issuance on the closing date of each respective debt issuance or other available funds upon completion of services provided. Approval of invoices shall not be unreasonably withheld or delayed.

3. Written Records Required. The Advisor shall be compensated pursuant to this Agreement only to the extent that it maintains reasonable records which provide evidence of the services actually performed and expenses actually incurred.

4. Term. The term of this Agreement shall be from the date this Agreement is fully executed by both parties through and including the date that is one year after the first date bonds are sold as contemplated by this Agreement, unless sooner terminated pursuant to paragraph 6 below.

5. Assignment. This Agreement is personal in nature and may not be sold, assigned, or otherwise transferred to any other person or entity without the express written approval of the OWRB.

6. Termination. This Agreement may be terminated at any time, with or without cause, by either party upon thirty (30) days' notice in writing to the non-terminating party.

7. Professional Services Contract. This agreement constitutes a professional services contract as defined in Title 62 O.S. Section 695.7(C)(1). Accordingly, the Advisor and the OWRB shall comply with the provisions of Title 74 O.S. Section 85.41 regarding professional service contracts, including but not limited to:

A. The OWRB will periodically provide an evaluation of the Advisor's work pursuant to Oklahoma law addressing the quality of service or work product.

B. The OWRB shall file with the State Librarian and Archivist a copy of any final reports generated by the Advisor if necessary.

C. The Advisor understands and agrees that all books, records, and any other items of the Advisor that relate to the professional services provided under this Agreement are subject to examination by the OWRB and the State Auditor and Inspector.

D. The Advisor hereby certifies that the Advisor has not previously provided the OWRB or any other state agency with a final product that is a substantial duplication of the final product of this Agreement.

8. Audit and Records Clause.

A. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting this Agreement with the OWRB, the Advisor agrees any pertinent State or Federal agency will have the right to examine and audit all records relevant to services provided under this Agreement at reasonable intervals and upon reasonable request with reasonable notice.

B. The Advisor is required to retain all records relevant to this Agreement for the duration of the Agreement term and for a period of three years following completion and/or termination of the contract. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

9. Generally Accepted Professional Practices. The Advisor represents that the services to be furnished under this Agreement will be in accordance with generally accepted professional practices for financial advisory consultants.

10. Prohibition Against Underwriting. The Advisor understands and agrees that the Advisor shall be prohibited from participating in an underwriting capacity on any outstanding or future debt issuance connected in any way with the services provided as financial advisor to the OWRB during any term of service as financial advisor, in accordance with Municipal Securities Rulemaking Board (MSRB) Rules.

11. Key Personnel. The personnel designated for the performance of the services under this Agreement by the Advisor in its proposal shall be the personnel assigned to the performance of this agreement. The OWRB's Division Chief of the Financial Assistance Division shall be the OWRB's principal contact for these services. Any changes in these key personnel shall be subject to the approval of the OWRB.

12. Independent Contractor. The Advisor is an independent contractor, not an employee, agent, or representative of the OWRB. As such, without limiting the foregoing, neither the Advisor nor any of its employees shall be entitled to receive any of the benefits of the State personnel system, or the OWRB personnel system, or have any claim therefor whatsoever. In addition, the Advisor shall maintain worker's compensation insurance for its agents and employees in an amount acceptable to the OWRB.

13. Indemnification. The Advisor hereby agrees to indemnify, hold harmless, and defend the OWRB and the State from all claims and liability arising out of the negligent, intentionally wrongful, or willful acts, errors, or omissions of the Advisor, its agents, and/or employees in performing the work required by this Agreement.

14. Data. All information, data, and analyses gathered, generated, or otherwise prepared by the Advisor during the performance of this Agreement, including, but not limited to: all analyses in whatever form; published reports, articles; written, typed, and printed documents; visual aids; and all current computer input and output data; shall become the property of the OWRB and shall be delivered, appropriately indexed, to the OWRB by the Advisor upon demand at any time prior to or after the termination of this Agreement. One or more copies of all documents prepared under this Agreement may be retained by the Advisor, but shall not be used for or supplied to any third party without the written consent of the OWRB.

15. Legal Compliance. At all times during the performance of this Agreement, the Advisor shall strictly adhere to all applicable federal and state laws that have been or may hereafter be established.

16. Notices. All notices, directives, and approvals relating to this Agreement shall be in written form delivered in person or by United States mail, postage prepaid, as follows:

If to the OWRB:

Oklahoma Water Resource Board
ATTN: Division Chief
Financial Assistance Division
3800 North Classen Boulevard
Oklahoma City, Oklahoma 73118

If to the Advisor:

Hilltop Securities Inc
ATTN: Anne Burger Entekin
70 Northeast Loop 410, Suite 710
San Antonio, Texas 78216

17. Entire Agreement. This agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto, except as provided for in paragraph 14, above, shall have any force or effect unless embodied in a written contract duly executed and approved.

18. Agreement Inconsistencies. In the event that any provision of the Scope of Work attached hereto as Exhibit A should be in any way inconsistent or in conflict with the terms and conditions of this Agreement, then the terms and conditions of this Agreement shall control.

19. Severability. If any part of this Agreement, including, but not limited to, any Exhibit, provision, paragraph, clause, phrase, or words, is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall be given full force and effect.

20. Survival. Any agreements and covenants herein which require performance after the term of the agreement shall survive the expiration of the term of the agreement.

21. Choice of Law. The laws of the State of Oklahoma shall be applied in the interpretation, execution, and enforcement of this Agreement.

22. Disputes. This Agreement is made and performed in Oklahoma, and the parties agree that the trial of any action arising out of any dispute hereunder shall be brought in the District Court of Oklahoma County in the State of Oklahoma.

23. Specific Performance. This is an Agreement for performance of unique professional services by the Advisor, and it may, at the option of the OWRB, be enforced by an action for specific performance.

[Remainder of Page Left Blank Intentionally]

Exhibit A

Scope of Work

The OWRB is seeking a financial advisor to perform a comprehensive review of the OWRB's Financial Assistance Programs. The following subsections set forth the general areas of review.

A. Provide review and assessment of the adequacy of the CWSRF, DWSRF, and Revenue Bond Programs. This includes analyzing current funding demands, developing and modeling anticipated future funding demands, and making recommendations as to how the OWRB can appropriately meet such demands. Specifically, the advisor will be expected to recommend the continuation or modification of current financing strategies, and coordinate efforts on behalf of the OWRB in obtaining public comment and input from prospective borrowers (Public Trusts, Rural Water and Sewer Districts, etc.) on how to best meet the borrowers' needs. In addition, the advisor would assist the Board's Staff in developing and enhancing its cash flow analysis models of the CWSRF, DWSRF, and Revenue Bond Programs.

B. Review and optimize the OWRB's Investment Strategies. Provide recommendations to help maximize potential investment returns with respect to Revenue Bond funds, CWSRF funds, and DWSRF funds held by the State Treasury, and the Trustee Bank.

C. Review and make recommendations with respect to the OWRB's Loan Review Procedures. Particularly, the OWRB would like recommendations that will assist in providing the most accurate and relevant data to the appropriate rating agencies. Also, the OWRB would expect recommendations to facilitate and improve the presentation of the data to the appropriate rating agencies, the OWRB Board Members, and interested investors.

D. Make recommendations and suggestions to the OWRB on ways to compete with, collaborate with, and improve upon other water and sewer funding sources.

E. Make recommendations and suggestions to the OWRB with respect to any other programmatic and related issues as they may arise.

Additionally, the financial advisor will provide services relating to specific issuance of debt:

Recommend and develop new money financing for the CWSRF and DWSRF Programs as appropriate. The advisor would be expected to take a leading role in assisting the OWRB in procuring the necessary service providers, and then working with those providers to successfully issue any bonds or notes necessary to implement the OWRB's Financing Strategies.

With respect to any particular issue, the financial advisor would be expected to: (as applicable)

1. Consult with the OWRB and any underwriters regarding the timing, size, structure, and final maturity of the proposed financing;

2. Provide recommendations regarding security features and credit rating levels;
3. Assist bond counsel in preparation of legal documentation for each financing;
4. Assist underwriter, underwriter's counsel, and disclosure counsel in preparation of the preliminary and final official statement for each bond or note issue;
5. Participate with the OWRB, Deputy State Treasurer for Debt Management, underwriter, and bond counsel in activities associated with rating agency reviews;
6. Assist the OWRB with all activities associated with the marketing of the bonds;
7. Review and comment on any contract for the purchase of bonds or notes for resale to investors between the OWRB and underwriter or syndication group.
8. Assist the OWRB, Deputy State Treasurer for Debt Management, underwriter, disclosure counsel, and the bond counsel in other matters as necessary to ensure the successful marketing and sale of the bonds;
9. Review and comment on any *Pricing Book* prepared by underwriter;
10. Coordinate closing arrangements with underwriter, disclosure counsel, bond counsel, and the OWRB;
11. Assist in the preparation of RFP's and evaluation of proposals for underwriter, disclosure counsel, and bond counsel selection for negotiated bond sales.

The financial advisor would be responsible for the preparation of written reports and oral presentations, as appropriate, to the OWRB Board and its Committees, the OWRB Staff, prospective borrowers and other public forums, various state and federal agencies (specifically, the Environmental Protection Agency and the Oklahoma Department of Environmental Quality), and service providers (bond counsel, underwriter, etc.) on future debt issuance. The financial advisor would work closely with the OWRB Staff and other appropriate entities in the development and implementation of any recommendations.

Exhibit B

Consulting Fees and Expenses

Proceeds Amount	New Money Transactions	Refunding Transactions*
\$1,000,000 - \$50,000,000	\$70,000	Plus \$850 per borrower
\$50,001,000 - \$100,000,000	\$80,000	Plus \$850 per borrower
\$100,001,000 and over	\$90,000	Plus \$850 per borrower

* Should the OWRB make the policy decision to share a portion of the refunding savings with its program participants, our fee for refundings will be the New Money Transaction fee plus \$850 per program participant that will either share in the three different savings structure options and program participants that decide to pay off their loan obligation.

For refunding and/or restructuring bond issues, fees will be mutually agreed upon at the time that the nature and the complexity of that bond issue is determined.

Advisor agrees to cap its not-to-exceed out-of-pocket expense to \$12,500.00 per transaction.

OWRB shall be responsible for the following expenses, if and when applicable, whether they are charged to the OWRB directly as expenses or charged to the OWRB by the Advisor as reimbursable expenses:

- Bond counsel
- Bond ratings
- Computer structuring
- Credit enhancement
- CPA fees for refunding
- Disclosure counsel
- Official statement preparation and printing
- Paying agent/registrar/trustee
- Underwriter and underwriters counsel
- Travel expenses
- Miscellaneous, including copy, delivery, and phone charges

The payment of reimbursable expenses that the Advisor has assumed on behalf of the OWRB shall NOT be contingent upon the delivery of bonds and shall be due at the time that services are rendered and payable upon receipt of an invoice therefor submitted by the Advisor.

The fees due for services related to Maintaining and Improving OWRB Financial Assistance Programs to Advisors for the Services set forth and described in this Agreement during the term of this Agreement shall be as follows:

Not to exceed \$25,000 plus \$7,500 (out-of-pocket expenses)

For a total of \$32,500 per contract period

OWRB shall be responsible for the following expenses, if and when applicable, whether they are charged to the OWRB directly as expenses or charged to the OWRB by the Advisor as reimbursable expenses:

Travel expenses

Miscellaneous, including copy, delivery, and phone charges

Below please find the Hourly Fee Schedule as referenced pursuant to Section 2.C.:

Hourly Fee Schedule

<u>Staff Classification</u>	<u>Standard Fee</u>	<u>OWRB's Discounted Fee</u>
Regional Managing Director and Managing Director	\$ 350	\$ 300
Director	315	270
Vice President	275	240
Assistant Vice President	225	160
Analysts and Associates	190	115
Clerical/Support	90	65

AGENDA ITEM 3D(8)

PROFESSIONAL SERVICES AGREEMENT

WITH: Freese and Nichols, Inc.

PURPOSE: To provide a one-day Dam Inspection Basics Class for OWRB

AMOUNT: Not to exceed \$12,350.00

TERM: November, 2022 (date to be determined)

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services (“Contract”) between Freese and Nichols, Inc., a professional engineering firm in Oklahoma, (“FNI”), and the Oklahoma Water Resources Board (“OWRB”), an agency of the State of Oklahoma,

WITNESSETH:

WHEREAS, 82 O.S. § 110.2 provides that OWRB is authorized to create and maintain a dam safety regulatory program; and,

WHEREAS, OWRB is authorized pursuant to 82 O.S. § 110.5 to disseminate information about the dam safety program; and,

WHEREAS, in carrying out its statutory authority, OWRB desires to provide education regarding dam construction and maintenance to dam owners and professional engineers and to provide continuing education credit to professional engineers; and,

WHEREAS, FNI has the relevant professional and practical experience to provide the education; and,

WHEREAS, FNI and OWRB are agreeable to entering into this Contract whereby OWRB will obtain the services of FNI upon the terms which follow; and,

WHEREAS, this Contract is authorized by 82 O.S. § 1085.2.

NOW, THEREFORE, IT IS AGREED by and between FNI and OWRB as follows:

1. SERVICES TO BE PROVIDED BY FNI.

a. FNI shall conduct a one-day Dam Inspection Basics Class for OWRB in Oklahoma City, Oklahoma in November 2022 (date to be determined). The class will be targeted toward embankment dam owners. The first half of the day will be in the classroom and will consist of an introduction to dams, typical dam safety issues, and practical guidance on conducting dam safety inspections. The second half of the day will include a trip to Cottonwood Creek Site 17, or other equivalent site agreed to by OWRB staff and FNI. Attendees will gain a basic understanding of the major components of dams and their functions, how dams and components fail, what to look for, and how to conduct inspections.

b. FNI will coordinate with OWRB for class announcements and promotion and will provide contact information for possible participants and interested parties.

2. OBLIGATIONS OF OWRB.

a. OWRB shall create and manage the registration process and shall provide space for the classroom portion of the class at the OWRB offices at 3800 N. Classen Blvd., Oklahoma City, OK 73118, or other appropriate space in Oklahoma City, OK.

b. OWRB shall provide the printed course materials for participants.

3. COMPENSATION TO FNI.

a. Compensation for Services. For all services performed by FNI during the period of this Contract, OWRB shall pay to FNI twelve thousand three hundred and fifty dollars (\$12,350.00) upon receipt of an invoice from FNI.

b. Invoices; payment procedure. Within thirty (30) days of the final event, FNI shall submit an invoice to OWRB for services performed and expenses incurred which are attributable to this agreement. The invoice shall be in form and content acceptable to the OWRB; among other requirements, the invoice shall contain information about dates and hours worked and a general description of the services provided. If the invoice is unacceptable to OWRB, OWRB shall return the invoice to FNI with the reason for rejection of the invoice.

c. Compensation and reimbursement subject to appropriation of funds. It is understood and agreed that funding for this Contract depends upon and is subject to State and/or Federal appropriations. In the event funds to finance this Contract become unavailable, either in full or in part, for whatever reason as determined by OWRB, OWRB may unilaterally terminate the Contract or reduce the consideration upon notice in writing to the FNI. OWRB shall be the final authority as to the availability of funds. In the event of non-appropriation or discontinuance of funding for this Contract, the FNI will be paid for production or services provided up to the effective date of termination.

4. TERM OF CONTRACT. This Contract shall become effective when all necessary signatures and approvals are obtained, and shall be in full force and effect until July 31, 2023 unless terminated earlier as provided herein. This Contract may be amended, extended or renewed upon mutual agreement of the parties. OWRB and FNI further agree that this Contract may be terminated at any time during its term by mutual agreement of the parties to terminate, or may be terminated unilaterally by either party upon thirty (30) days advance written notice of termination by the terminating party to the other party.

5. INDEPENDENT CONTRACTOR STATUS. For all purposes, FNI is an independent contractor. It is expressly understood and intended that neither FNI nor employees of FNI are, nor shall be, an employee of OWRB for any purpose. OWRB will not provide FNI or its employees with worker's compensation coverage. OWRB will not provide to FNI or its employees any benefits that are accorded to state employees, whether full time employees, temporary employees, seasonal employees or other categories of employees recognized by the Oklahoma Personnel Act or otherwise by any court cases. FNI is solely responsible for the payment of any required State and Federal income or other taxes, periodic withholding thereof, and all other liabilities of independent contractors, including but not limited to the payment of

workers compensation insurance, other taxes, Social Security payments and adjustments relating to retirement benefits. FNI retains the right to perform services for other parties.

6. AUDIT. FNI agrees that all records and other items of FNI relating to the professional services under this Contract shall be subject to examination by OWRB, the State Purchasing Director of the Central Purchasing Division of the Office of Management and Enterprise Services, and the State Auditor and Inspector of the State of Oklahoma. Access to such items shall be made available during reasonable business hours to any proper representative of these agencies or officials for inspection, copying and audit purposes. The term "records" includes books, documents, accounting procedures and practices, claims, and other data regardless of type whether in written form, computer data, or other form of FNI relating to this Contract. FNI shall maintain accurate records and documentation of all expenditures of time and resources in fulfilling its obligations under this Contract and shall retain all records relative to this Contract for a period of time not less than three (3) years following completion and/or termination of this Contract. If an audit, litigation or other action involving the records is commenced before the end of the foregoing three (3) year period, then the records shall be maintained for three (3) years after the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

7. CONTRACT SUBJECT TO OKLAHOMA LAW AND APPROVING AUTHORITIES; SEVERABILITY. This Contract shall be governed by and subject to the laws of the State of Oklahoma. The terms and conditions stated in any corresponding state purchasing and acquisition documentation, Purchase Order, and approval of any necessary authorities, are incorporated by reference herein and made a part hereof. If any provision of this Contract shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Contract and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

AGREED to by the parties on the dates specified below.

Freese and Nichols, Inc.

 09/08/2022
Alan C. Hutson, PE Date

OKLAHOMA WATER RESOURCES BOARD ATTEST:

Matt Muller Date
Chairman

Jennifer Castillo
Secretary

(SEAL)

AGENDA ITEM 3D(9)

AMENDMENT AGREEMENT

WITH: Office of the Secretary of Energy & Environment

PURPOSE: To extend the budget/project period for the Clean Water Act OK FY18 604(b) Water Management Planning Program Grant

AMOUNT: No cost

TERM: Through August 31, 2023

THIRD AGREEMENT AMENDMENT
BETWEEN THE
OFFICE OF THE SECRETARY OF ENERGY & ENVIRONMENT AND
OKLAHOMA WATER RESOURCES BOARD

THIS AGREEMENT AMENDMENT is made and entered into this ____ day of _____, 2022, by and between the Office of the Secretary of Energy & Environment ("OSEE"), an office within the Cabinet of the Governor of the State of Oklahoma, and OKLAHOMA WATER RESOURCES BOARD ("AGENCY"), an agency of the State of Oklahoma.

WITNESSETH:

WHEREAS, OSEE and AGENCY entered into a certain "**Agreement/Amendment for Oklahoma's FY 18 WATER MANAGEMENT PLANNING PROGRAM CA# C6-4000056-3**" dated as of December 19, 2018 (the "Original Contract"), whereby the OSEE agreed to make certain Federal funding available to AGENCY for performance of certain work as set forth in said Original Agreement; and,

WHEREAS, the parties amended the Agreement on April 1, 2021, to extend the Agreement for an additional period of time; and,

WHEREAS, the parties desire to amend the Agreement to the No Cost Amendment to again extend the Agreement for an additional period of time.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual agreements and covenants contained herein, the parties to this Amendment Agreement do hereby agree as follows:

1. **AMENDMENT OF AGREEMENT.** The Agreement is hereby amended to reflect the revised budget/project period. A copy of the revised work plan is attached hereto and incorporated by reference herein. For purposes of this Amendment, both the original Agreement in its entirety with all attachments are incorporated by reference herein and made a part hereof, and the AGENCY shall continue to perform the work described in the Agreement as amended.

2. **EXTENSION OF CONTRACT TERM EFFECTIVE DATES.** The Original Contract is hereby amended and extended for an additional period of time, to be effective September 3, 2018 through **August 31, 2023**, inclusive.

IN WITNESS WHEREOF, the parties have caused this Amendment Agreement to be executed by their duly authorized officers on the dates indicated below.

AGENCY

Title: _____

OFFICE OF THE SECRETARY OF ENERGY & ENVIRONMENT

Deputy Secretary of Environment

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the duly authorized _____ on behalf of the AGENCY identified in the above instrument.

Notary Public

(SEAL)

My commission expires:

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by the duly authorized Deputy Secretary of Environment, on behalf of the OSEE.

Notary Public

(SEAL)

My commission expires:

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 40000056 MODIFICATION NUMBER: 3 PROGRAM CODE: C6	DATE OF AWARD 08/25/2022
		TYPE OF ACTION No Cost Amendment	MAILING DATE 08/25/2022
		PAYMENT METHOD: ASAP	ACH# 60603
		RECIPIENT TYPE: State	
RECIPIENT: Office of the Secretary of Energy & Environment 204 N. Robinson Suite 1010 Oklahoma City, OK 73102-7001 EIN: 73-6017987		PAYEE: Oklahoma Department of Environmental Quality 707 North Robsinson Oklahoma City, OK 73101-1677	
PROJECT MANAGER Lynda Williamson 204 N. Robinson Suite 1010 Oklahoma City, OK 73102-7001 Email: Lynda.Williamson@ee.ok.gov Phone: 405-522-7143		EPA PROJECT OFFICER Nikole Witt 1201 Elm Street, Ste 500, WQDAS Dallas, TX 75270-2102 Email: Witt.Nikole@epa.gov Phone: 214-665-2781	
		EPA GRANT SPECIALIST Oswald Taylor Mission Support Division, MSDCA 1201 Elm Street, Ste 500 Dallas, TX 75270-2102 Email: Taylor.Oswald@epa.gov Phone: 214-665-7527	
PROJECT TITLE AND EXPLANATION OF CHANGES OK FY18 604(b) Water Management Planning Program This amendment extend the Project and Budget Period end date to August 31, 2023.			
BUDGET PERIOD 09/03/2018 - 08/31/2023	PROJECT PERIOD 09/03/2018 - 08/31/2023	TOTAL BUDGET PERIOD COST \$131,000.00	TOTAL PROJECT PERIOD COST \$131,000.00
NOTICE OF AWARD			
<p>Based on your Application dated 06/08/2018 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$0.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$131,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS U.S. EPA, Region 6 , Acquisition and Assistance Section 1201 Elm Street, Suite 500 Dallas, TX 75270-2102		ORGANIZATION / ADDRESS U.S. EPA, Region 6, Water Division R6 - Region 6 1201 Elm St., Suite 500 Dallas, TX 75270-2102	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Oswald Taylor - Grants Management Specialist			DATE 08/25/2022

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$131,000	\$0	\$131,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$131,000	\$0	\$131,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.454 - Water Quality Management Planning	CleanWaterAct:Secs.205(j)(1)&(2), CleanWaterAct:Sec.604(b)	2 CFR 200, 2 CFR 1500, 40 CFR 33 and 40 CFR 35 Subpart A

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$131,000
9. Total Direct Charges	\$131,000
10. Indirect Costs: 0.00 % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$131,000
12. Total Approved Assistance Amount	\$131,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$0
15. Total EPA Amount Awarded To Date	\$131,000

Administrative Conditions

All Administrative Conditions Remain the Same

Programmatic Conditions

All Programmatic Conditions Remain the Same

2019 - 2020
TECHNICAL PREPARATION FOR
REVISION OF
OKLAHOMA'S WATER QUALITY STANDARDS
& IMPLEMENTATION RULES

FY18 604(b)(3)



WATER QUALITY PROGRAMS DIVISION
OKLAHOMA WATER RESOURCES BOARD

June 1, 2018

Revision 1, Appr 10/11/2018
Revision 2, NCTE, Appr 1/20/2021
Revision 3, NCTE, Appr 8/25/2022

Project: 1 (Rev 1) Approved 10/11/18; Rev 2 APPR 1/20/21; Rev 3 APPR 8/25/22

Title: 2019 – 2020 Technical Preparation for Revisions to Oklahoma Water Quality Standards & Implementation Rules

Agency: Oklahoma Water Resources Board (OWRB)

Project Location: Statewide

Strategic Plan Goal: Goal 1 – Core Mission

Background

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In order to produce a comprehensive program to assist in the prevention, control and abatement of pollution of the Waters of the State of Oklahoma, and in order to establish state standards which comply with the Federal Water Pollution Control Act, the Oklahoma Water Resources Board is authorized to promulgate rules to be known as "Oklahoma Water Quality Standards" (OWQS), which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters. OWRB staff continually works toward the adoption of new and/or the evolution of existing narrative and numeric nutrient criteria, beneficial use support assessment protocols, anti-degradation provisions, and a host of other important issues that contribute to water quality management in Oklahoma. Many new issues dealing with creation of specific criteria or implementation strategies for existing criteria continue to arise and require attention. The objectives and tasks of this workplan outline projects that will be the focus of work conducted over the next two years.

Strategic Plan Objectives:

Objective 1.2 – Provide for Clean and Safe Water

.....

The objective of this project will be to provide technical research and preparation for needed revisions for Oklahoma Water Quality Standards and associated implementation rules to protect beneficial uses and to meet the requirements of rule revisions outlined in the Oklahoma Administrative Procedures Act.

This workplan outlines technical preparation necessary for three WQS projects: 1) modify dissolved oxygen criteria and/or the associated beneficial use assessment protocol to address implementation program needs 2) preliminary evaluations to support development of a narrative

nutrient translator and/or nutrient criteria for lakes, and 3) phase three of ammonia pre-criteria analysis and additional preparation necessary to propose adoption of numeric ammonia criteria. The outcome of this project will be preparation of materials for the 2019 WQS rulemaking and/or subsequent rulemakings anticipated in 2020 and 2021. Materials prepared will include technical staff reports and supporting documents required for rule adoption in Oklahoma and approval by the EPA regional administrator. Specific outcomes will be the evolution of dissolved oxygen beneficial use assessment protocols to address data from new monitoring technologies and progress toward both lake nutrient criteria and numeric ammonia criteria. The true environmental result of this project will be increased protection of water quality and over time measurable improvements in water quality.

Work Plan Commitments: Project Tasks

Task 1.

Technical review/modification of dissolved oxygen criteria and/or beneficial use support assessment protocols

In 2010 and in 2014 revisions were made to the dissolved oxygen (DO) criteria and associated beneficial use support assessment protocol (USAP); these revisions addressed urgent concerns at the time regarding unapproved WQS and confusion between criteria language and USAP language. While these changes provided some clarity and refinement of the DO criteria and its assessment protocol, misinterpretation and confusion around the DO criteria and USAP persist. This task includes actions to refine/clarify/modify the DO regulatory language and USAP. A key effort will be addressing continuous and/or diurnal DO data sets. As water quality monitoring programs have evolved and continuous DO measurements and diurnal data sets have become more common the DO USAP requires revision to address these data sets, which are quite different than typical discrete measurement data sets. Moreover, a standard method for the assessment of the Oklahoma's lake volumetric DO criterion is needed.

OWRB intends to convene a technical workgroup comprised of sister agencies, the regulated community, and tribes to discuss and collaborate on the efforts described above and other issues as identified by the workgroup. This task will result in technical staff report(s), regulatory language, and program guidance documents, as needed. Formal presentation of any WQS rule changes would be expected to be in the fall of 2019 and/or 2020 and be done under a separate workplan.

Time frame: October 2018 – August 2022

Deliverables: Staff report(s) and supporting document(s) submitted to EPA with the 2019-2020 WQS revision packet(s).

Task 2. Development of lake nutrient criteria

The 2012 Oklahoma Nutrient Criteria Development Plan identifies three phases for nutrient criteria development and phase two explicitly outlines the need for nutrient criteria to protect reservoirs. The plan summarizes that beneficial use protection was partially achieved for some reservoirs (those classified as sensitive water supply) through the adoption of a chlorophyll criterion and two reservoir-specific total phosphorus criteria. The Nutrient Criteria Development Plan identifies continued WQS work: *"the next steps will be to develop criteria for all lakes and N & P criteria for the SWS"*. As a step forward to meeting the goals of this plan, staff initiated a Nutrient Scientific Technical Exchange Partnership Support (N-STEPS) project with EPA Region 6 to perform an analysis of Oklahoma's lake water quality data. The draft final report of this initial study is complete and OWRB staff hopes to continue the work through several future N-STEPS projects. As the draft final report notes, *"the objective of this analysis was to explore relationships between chlorophyll and valued beneficial use assessment endpoint measures and between nutrient and chlorophyll responses for reservoirs in Oklahoma to support development of numeric thresholds for chlorophyll and nutrients..."* and *"the analyses developed here are in support of the OWRB nutrient analysis effort and are only one component of a broader effort, which may include other lines of evidence including but not limited to other stressor-response analyses, literature review, reference based analysis, and mechanistic modeling."*

OWRB staff intends to advance the output of the N-STEP project by initiating stakeholder involvement and considering the range of criteria options. This grant will be used to: 1) preliminarily scope various criteria approaches and decision-tree models for nitrogen, phosphorus, and chlorophyll, 2) preliminary work to outline the range of implementation program needs/concerns and possible implementation strategies, and 3) begin a stakeholder participation process unique to nutrient criteria and implementation.

Time frame: January 2019 – August 2023

Deliverables: Summary report outlining the findings from preliminary evaluations and stakeholder outreach activities conducted.

Task 3. Numeric Aquatic Life Criteria for Ammonia

In support of the goal to purpose numeric ammonia criteria to protect aquatic life, OWRB staff will continue necessary pre-criteria technical work. The intent of this technical work is to address expected challenges regarding both the criteria necessity and implementation concerns.

Staff will further cooperation with the Oklahoma Department of Environmental Quality on a more robust analysis of the current ammonia NPDES permitting approach. It is anticipated that the following 2 questions will be explored:

- What are the ammonia concentrations (measured and/or modeled) in receiving waters downstream of discharges with ammonia limits?
- Is the 6 mg/L screening threshold effective for aquatic life protection?

Additionally, staff will review the statewide distribution of ammonia sensitive species (as necessary), consider options for effective wastewater treatment (particularly for small rural systems), and evaluate implementation strategies.

Staff will also begin stakeholder participation activities in order to ensure a transparent and inclusive process.

Time frame: January 2019 – August 2023

Deliverables: Report(s) presenting findings and analysis.

Table 1. Milestone Dates and Expenditures for Project

Task	Milestone Dates	Expenditure
Task 1	Aug-22	\$ 30,300
Task 2	Aug-23	\$ 19,000
Task 3	Aug-23	\$ 30,300
		\$ 79,600

Project Management

The Oklahoma Water Resources Board will be the lead agency for all project activities.

Project Duration

The project will be approximately 46 months in duration.

Budget Summary

A detailed budget for work to be performed as part of this project is included as Table 3.

Table 2. Allocation of Funds for Project

Allocation of Funds	Monies
EPA (100% of total cost)	\$79,600
Total Project Cost	\$79,600

Table 3. Proposed Budget for 2019 – 2020 Technical Preparation for Revision of Oklahoma’s WQS

Itemized Project Budget			
Personnel	Person Years		Expenditure
Environmental Program Manager I	0.10		\$ 6,450
Environmental Program Specialist III	0.55		\$ 28,972
Total Person Years =	0.65	Sub-Total of Salaries =	\$ 35,422
Fringe Benefits and Indirect Costs			
59.06% of Salary for Fringe Benefits			\$ 20,920
65.66% of Salary for Indirect Costs			\$ 23,258
		Sub-Total of Other Costs	\$ 44,178
		Total Project Cost =	\$ 79,600

AGENDA ITEM 3D(10)

AMENDMENT AGREEMENT

WITH: United States Department of Agriculture-
Agricultural Research Service (ARS)

PURPOSE: For monitoring and evaluating water resources in
the Upper Washita River Basin

AMOUNT: Not to exceed \$49,900.00

TERM: August 31, 2022 through August 31, 2023

Agency AGRICULTURAL RESEARCH SERVICE	Type of Instrument Non-Assistance Cooperative Agreement		Authority 7 USC 3318(b)
Title of Project Monitoring and Evaluating Water Resources in Upper Washita River Basin	Agreement Number/FAIN 58-3070-9-006	Type of Action Amendment 03	Correction N
	Period of Performance Start 09/01/2019 End 08/31/2023		CFDA No. 10.001
Agency Administrative Point of Contact/ADO SYDNEY JOSEPHINE DEAN USDA, ARS, AFM, PA Administrative Office Financial Management, Travel and Agreements 2150 Centre Avenue, Building D Ft. Collins CO 80526-8119 Phone: 970-492-7002 Fax: E-mail: Sydney.Dean@usda.gov	Total Federal Amount \$199,600.00	Federal Amount Obligated by This Action \$49,900.00	Indirect Cost Rate 0.00%
	Non-Federal Entity/Federal Agency (Legal Name and Address) OKLAHOMA WATER RESOURCES BOARD 3800 North Classen Boulevard OKLAHOMA CITY OK 73118-2862 USA POC: CHRYSTAL KRITTENBRINK LEGAL SECRETARY Phone: 405-530-8800 Fax: 405-530-8900 E-mail: AFMaher@owrb.ok.gov UEI: E5KGD1NYA1S5		
Agency Principal Investigator PATRICK J STARKS USDA, ARS, PA, GRAZINGLANDS RESEARCH LABORATORY 7207 WEST CHEYENNE STREET EL RENO OK 73036-2144 Phone: 405-262-5291 Fax: E-mail: patrick.starks@usda.gov	Non-Federal Entity/Federal Agency Principal Investigator LANCE PHILLIPS ENVIRONMENTAL PROGRAM MANAGER 3800 NORTH CLASSEN BOULEVARD OKLAHOMA CITY OK 73118-2862 USA Phone: 405-530-8800 Fax: E-mail: LANCE.PHILLIPS@OWRB.OK.GOV		
	Method of Payment <input checked="" type="checkbox"/> HHS/Payment Management System <input type="checkbox"/> Advance Payment Authorized <input type="checkbox"/> EFT/Treasury Check <input type="checkbox"/> Pre-Award Costs Authorized <input type="checkbox"/> Agency Receives Funds <input type="checkbox"/> UES (for FAS awards only) <input type="checkbox"/> ASAP <input type="checkbox"/> IPAC		
Agency Finance Office LISA M MULLENAX USDA, ARS, PA AO FINANCIAL MANAGEMENT, TRAVEL AND AGREEMENTS 2150 CENTRE AVENUE, BUILDING D FORT COLLINS CO 80526-8119 Phone: 970-492-7022 Fax: E-mail: Lisa.Mullenax@USDA.GOV			

PROVISIONS

This Agreement incorporates the following:

- Statement/Scope of Work
 - Proposal
 - Non-Federal Entity Proposal/Award/Agreement
 - Research & Related Budget (Total Fed + Non-Fed) or REE-454
 - Research & Related Budget or REE-455
 - Prime Award attached (for subrecipients)
 - Comments (REE-451, page 2)
- These are available at <https://www.ars.usda.gov/afm/fmad/agreements/agreements-home/>
- Conflict of Interest Policy
 - USDA Civil Rights Policy Statement USDA Civil Rights Poster (AD-475-C)
 - REE-157 - Research Support Agreement Management Report Template

Reporting Requirements:

- Submit to: Agency PI ADO Non-Federal Entity/Federal Agency
- | | | |
|--|--|--------------------------------------|
| Performance Reports | Financial Reports | Management Reports |
| <input type="checkbox"/> Quarterly | <input type="checkbox"/> Quarterly | <input type="checkbox"/> Monthly |
| <input type="checkbox"/> Semi-Annual | <input type="checkbox"/> Semi-Annual | <input type="checkbox"/> Quarterly |
| <input checked="" type="checkbox"/> Annual | <input checked="" type="checkbox"/> Annual | <input type="checkbox"/> Semi-Annual |
| <input checked="" type="checkbox"/> Final | <input checked="" type="checkbox"/> Final | <input type="checkbox"/> Final |
- Intellectual Property Reports (www.iEdison.gov)
 - Form SF-428-B Tangible Personal Property Report - Final Report

Applicable Regulations, Terms and Conditions, and Required Certifications (available at <https://www.ars.usda.gov/afm/fmad/agreements/agreements-home/>)

- 2 CFR Part 200 and 2 CFR Part 400
- 7 CFR Part 550 - General Administrative Policy for Non-Assistance Cooperative Agreements, published 10/11/2016
- General Provisions, Research Support Agreement (REE-452R)
- General Provisions, Trust Fund and Reimbursable Cooperative Agreements (REE-22)
- AD-1047 - Certification Regarding Debarment, Suspension and other Responsibility Matters - Primary Covered Transactions
- AD-1048 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
- AD-1049 - Certification Regarding Drug-Free Workplace Requirements (Grants) - Alt I - For Grantees Other Than Individuals
- AD-1050 - Certification Regarding Drug-Free Workplace Requirements (Grants) - Alt II - For Grantees Who Are Individuals
- AD-1052 - Certification Regarding Drug-Free Workplace State and State Agencies
- AD-3031 - Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants
- Certification Regarding Lobbying
- REE-26 - Organization Information, Representations, Assurances & Certifications

This agreement, subject to the provisions above, is executed by the United States Department of Agriculture:

Signature	ADO Name SYDNEY JOSEPHINE DEAN	Federal Award Date
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By signing this agreement, the signor certifies that they are vested with the authority to enter into this agreement.

Non-Federal Entity/Federal Agency Signature	Name and Title	Date
Non-Federal Entity/Federal Agency Signature	Name and Title	Date

Agreement Number/FAIN: 58-3070-9-006

Type of Action: Amendment 03

Project Number: 3070-13000-013-001S

Accession No.: 437000

Agency Control No.: 51303

BOC: 4500

PO No.: 4500087129

FMMI Vendor Code : 1500000692

 Agency Funds Chargeable - Agency Use Only

Account Code	FY	Amount	FMMI Fund Code	Cost Center	WBS Element
201-3070-510	2022	\$49,900.00	AR0001BASE	AR30700510	AR.MU.3070.01.0510

Comments:

Amendment 03 is issued with the following modifications to meet the needs of the project:

- 1) Additional FY2022 funds of \$49,900 for the continuation or expansion of the project.
- 2) Extension of expiration date from 08/31/2022 (36 months) to 08/31/2023 (48 months).
- 3) Expanded statement of work and updated terms and conditions incorporated.
- 4) Change to ARS contact information.

B. REPRESENTATIONS

In accepting this award, the authorized representative for the organization or individual awardee (Cooperator/Awardee) identified on page 1 certifies that he or she has the authority to enter into this award on behalf of the awardee organization and the Cooperator/Awardee has the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost, when applicable) to ensure proper planning, management, and completion of the project(s) described in the award.

C. ASSURANCES

As a condition of this award, the Cooperator/Awardee agrees to comply, over the course of the award period of performance, with the terms and conditions of the award and all applicable laws, regulations, and Federal Executive Orders including, but not limited to, the list found at

[Partnership Resources for Cooperators : USDA ARS](#) , as applicable.

D. CERTIFICATIONS

See the Agency's Award Face Sheet, REE-451, for required certifications. The Cooperator/Awardee will comply with the terms and conditions outlined in their SAM.GOV Grants Certifications Report, as applicable.

Statement of Work

Agreement No.:58-3070-9-006

Type of Action: Amendment 03

Cooperator: OKLAHOMA WATER RESOURCES BOARD

Control No.:51303

Objective:

The objective of this cooperative research project is to conduct a field investigation to support hydrologic research and provide a database on stream flow and water quality in the Little Washita River and Fort Cobb Reservoir Lake Experimental Watersheds.

Approach:

Streams in the Little Washita River and Fort Cobb Reservoir watersheds in central Oklahoma will be monitored for gauge height and flow. Measurements are made on a continuous basis. Data are quality processed, analyzed, and archived. Data are used in hydrologic analyses and with environmental and water resource models. Water quality samplers will be installed in the Fort Cobb watershed.

STATEMENT OF MUTUAL INTEREST:

Both parties are actively engaged in independent research projects relating to climatic variability and hydrologic resource management. The parties agree that meeting the objectives of this cooperative project will strengthen and enhance ongoing research within the scope of this agreement. The Oklahoma Water Resources Board cooperator (OWRB) has the responsibility to manage and protect the waters of the State and plan for Oklahoma's long-range water needs in a responsive, innovative, and professional manner to ensure that all Oklahomans have adequate quantities of good quality water. Critical components of their mission include collection and dissemination of water resource data, special water resource studies, and a monitoring program to ensure that beneficial uses are maintained and protected. OWRB staff utilize water resource models to evaluate alternatives and project outcomes of alternative management scenarios. The mission of the Great Plains Agroclimate and Natural Resources Research Unit (ARS) is to develop assessment and planning tools for forage and livestock producers, conservation agencies, and downstream water users, which promote stewardship and reduce environmental and economic risks associated with variable climate. These products are based on remote sensing, modeling, and climate forecasting technologies and better understanding of interactions among land use, agricultural management, climate, and the water cycle. The research quantifies impacts of weather variability and extreme events like drought on agricultural productivity and water quality and quantity.

THE COOPERATOR AGREES TO:**AMENDMENT 03 UPDATED STATEMENT OF WORK**

1. Work closely with ARS and U.S. Geological Survey (USGS) in planning and conducting a project to be undertaken which will be the work plan set forth in the Joint Funding Agreement herein referred to as Cooperative Agreement between the U.S. Geological Survey (USGS) and the Oklahoma Water Resources Board (OWRB).
2. The Oklahoma Water Resources Board (OWRB) will collaborate through an additional Cooperative Agreement with USGS to conduct necessary field and analytical work directly related to stream flow monitoring of seven stream sites and reservoir height in three lakes in the Little Washita River Basin.
3. Provide necessary personnel for planning and execution of this agreement.
4. Provide USDA-ARS an annual performance report per the applicable provisions. The annual reports are due by June 1 of each year the Agreement is active.
5. Provide USDA-ARS an annual financial report per the applicable provisions. The annual reports are due by June 1 of each year the Agreement is active.
3. Submit copies of all publications resulting from the research conducted under this cooperative agreement to the ARS Principal Investigator (ARS PI). The publications will be entered into the USDA-ARS publication database for cooperative agreement research accountability purposes and to facilitate data distribution and sharing via the world-wide web. The publication information entered into the USDA-ARS publication database will be accessible to the public through the USDA-ARS web site(s), including the name of the Cooperator's Principal Investigator and affiliation.
4. The Cooperator's personnel are NOT authorized to operate government owned vehicles. The Cooperator's personnel are authorized to be passengers/riders in motor vehicles owned and operated by ARS personnel.

AGENCY AGREES TO:

Reference original agreement and previous amendments for additional elements of this agreement.

Statement of Work

Agreement No.:58-3070-9-006

Type of Action: Amendment 03

Cooperator: OKLAHOMA WATER RESOURCES BOARD

Control No.:51303

MUTUAL AGREEMENTS:

1. The agreement budget is hereby incorporated into the agreement. The awarding agency will reimburse the Cooperator for the costs as budgeted, in the amount of \$49,900.00 . As evidence of the Cooperator's contribution to this project, the Cooperator will contribute resources in the amount of \$4,990.00 . Cooperators are required to report budget deviations which they automatically invoke, and when applicable request prior approval for budget revisions, per 7 CFR Part 550.116(c).
2. Payments to the Cooperator will be made through: HHS/Payment Management System
As a recipient of this agreement the Cooperator shall submit the following reports within the HHS/Payment Management System: a) Quarterly FFR-Federal Cash Transaction Reports (FFR-FCTR) to HHS throughout the life of the agreement, and b) a final FFR-FCTR to HHS. Instructions for completing the reports can be found at:
<https://pms.psc.gov/pms-user-guide/federal-cash-transaction-report.html>.
3. Correspondence and documentation submitted by the Cooperator to the Agency PI in reference to this agreement should cite Agreement No. 58-3070-9-006
4. Refer to 7 CFR Part 550, Section 550.111 for Project Supervision Responsibilities requirements.
5. Refer to 7 CFR Part 550, Section 550.112 for Administrative Supervision requirements.
6. Refer to 7 CFR Part 550, Section 550.113 for Rules of the Workplace requirements.
7. Refer to 7 CFR Part 550, Section 550.119 for Publications and audiovisuals requirements.
8. Refer to 7 CFR Part 550, Section 550.124 for Technical and property reporting requirements.
9. The method of reimbursement for your USDA-ARS award is the Department of Health and Human Services-Payment Management System (PMS). As a recipient of this ARS award, you are required to submit the following reports within the PMS: a) Quarterly FFR-Federal Cash Transaction Reports (FFR-FCTR) throughout the life of the agreement, and b) A final FFR- FCTR to HHS (within 90-days of the term date). Instructions for completing the reports can be found at: <https://pms.psc.gov/pms-user-guide/federal-cash-transactionreport.html>.
10. The Research Performance Progress Report (RPPR) has been mandated by the Federal Office of Management and Budget and coordinated by the National Science Foundation. Must meet mandatory reporting requirements and any other reporting requirements that may have been identified in the award document. (This is the document found on the National Science Foundation website). Reports must also include the provisions set forth in 2 CFR 200, sec. 200.328.
11. Per 2 CFR sec 200.344 (a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.
12. This Agreement does not replace the need for real property and/or technology transfer documents that may be required by the USDA-ARS and/or Cooperator as per regulatory requirements.

U.S. DEPARTMENT OF AGRICULTURE
RESEARCH, EDUCATION, AND ECONOMICS

AGREEMENT BUDGET

COOPERATOR: OKLAHOMA WATER RESOURCES BOARD	AGENCY TO REIMBURSE	COOPERATOR CONTRIBUTION(S)
AGREEMENT NO.: 58-3070-9-006		
TYPE OF ACTION: Amendment 03		
A. Salaries and Wages		
1. Senior/Key Person(s)	\$0.00	\$2,500.00
2. Other Personnel (Post-Doctoral Associates, Graduate Students, Undergraduate Students)	\$0.00	\$2,490.00
3. Support Personnel/Secretarial/Clerical.	\$0.00	\$0.00
Total Salaries and Wages →	\$0.00	\$4,990.00
B. Fringe Benefits (If charged as Direct Costs)	\$0.00	\$0.00
C. Total Salaries, Wages, and Fringe Benefits (A plus B) →	\$0.00	\$4,990.00
D. Equipment (Provide supporting data; list items and dollar amounts for each item exceeding \$5,000)	\$0.00	\$0.00
E. Materials and Supplies	\$0.00	\$0.00
F. Travel (List destination and amount for each trip)		
1. Domestic (Include Canada, Mexico, and U.S. Possessions)	\$0.00	\$0.00
2. Foreign	\$0.00	\$0.00
G. Publication Costs	\$0.00	\$0.00
H. ADP/Computer Services	\$0.00	\$0.00
I. Subawards	\$49,900.00	\$0.00
J. All Other Direct Costs (Provide supporting data. List items and dollar amounts for each item.)	\$0.00	\$0.00
K. Total Direct Costs (C through J) →	\$49,900.00	\$4,990.00
L. Indirect Costs (Specify rate and base)		
Rate : 0.00 %		
Base : \$0.00	\$0.00	\$4,990.00
M. Total Costs (K plus L) →	\$49,900.00	\$9,980.00

NOTES:

1. A separate budget is required for each year.
2. Federal Statute (7 U.S.C. 3318 (b)(1)(B)) requires a contribution of resources by all parties toward meeting the objectives of the Cooperative Agreement.
3. The Cooperator's contribution must be no less than 20 percent of the total of the resource contributions under the cooperative agreement. Resource contributions of the Cooperator must consist of a sufficient amount of itemized direct costs to substantiate a true stake in the project as determined by the ADO. The Cooperator's contribution must be maintained at 20 percent of Federal funding throughout the period of performance.
4. Under 7 USC 3319, USDA is prohibited from reimbursing State Cooperative Institutions for indirect costs or tuition remission in connection with non-assistance cooperative agreements awarded under the authority of 7 USC 3318(b).
5. Indirect costs will be reimbursed only upon receipt of a current approved Negotiated Indirect Cost Rate Agreement for all non-State Cooperative Institutions.
6. Unrecovered indirect costs may be used to meet a portion of the resource contribution requirement toward the cooperative effort. Indirect costs only for the resource contribution requirement is not allowed.
7. Unallowable costs as defined in 2 CFR Part 200, Subpart E - Cost Principles, cannot be considered a resource contribution.

U.S. DEPARTMENT OF AGRICULTURE
RESEARCH, EDUCATION, AND ECONOMICS

AGREEMENT BUDGET JUSTIFICATION
FOR 58-3070-9-006
Amendment No. 3

Budget Category	Cost
Subawards	
USGS SERVICES TO MONITOR WATERSHEDS	\$49,900.00

3. SUMMARY DISPOSITION AGENDA ITEMS

WATER RIGHTS ADMINISTRATION DIVISION
AND
ENGINEERING AND PLANNING DIVISION

September 20, 2022

WATER RIGHTS ADMINISTRATION DIVISION
Applications for Temporary Permits to Use Groundwater

September 20, 2022

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
2022-501 01/10/2022	Allen Entz	3	Caddo County Rush Springs Sandstone	160 acres Section 13, T12N, R13WIM	Irrigation 320 a.f.
2022-503 02/07/2022	Darren Reimer	4	Major County Cimarron A & T	150 acres Section 14, T22N, R11WIM	Irrigation 300 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications to Amend Temporary Permits to Use Groundwater

September 20, 2022

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
1974-091 03/25/2022	Garden Valley Land & Cattle Company, Inc.	3	Harmon County Blaine Gypsum	160 acres Section 14 T03N, R26WIM	Irrigation 320 a.f.
2011-607A 12/02/2021	Goldsby Water Authority	18	McClain County A & T Deposits of the Canadian River	1110.7 acres Sections 12, 13, and 24 T08N, R03WIM	Municipal 2016.78 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications for Regular Permits to Use Groundwater

September 20, 2022

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
2022-519 04/04/2022	Bantu Wind A, LLC	2	Love County Antlers Sandstone	180 acres Section 15, T08S, R02WIM	Irrigation 378 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications to Amend Regular Permits to Use Groundwater

September 20, 2022

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
1976-552 01/18/2022	A & S Farms, LLC	9	Texas County Ogallala Panhandle Region	1156.57 acres Section 14, T03N, then Section 16 and 21, T04N, all R18ECM	Irrigation 2313.14 a.f.
1997-679 09/30/2021	Luthi Land & Cattle LLC	4	Ellis County Ogallala-Northwest Region	560 acres Section 3, 4, 10, and 11, T20N, R23WIM	Irrigation, Agriculture & Public Water Supply 784 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications for Regular Permits to Use Stream Water

September 20, 2022

APP. NO. & DATE FILED	NAME OF APPLICANT	POINTS OF DIVERSION	COUNTY & STREAM SYSTEM	PURPOSE & AMOUNT RECOMMENDED
2022-001 01/10/2022	Terral Klaassen	One point of diversion on Deer Creek Sec. 6, T12N, R13WIM	Caddo County SS 2-6-3	Irrigation of 120 acres 320 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications to Amend Regular Permits to Use Stream Water

September 20, 2022

APP. NO. & DATE FILED	NAME OF APPLICANT	POINTS OF DIVERSION	COUNTY & STREAM SYSTEM	PURPOSE & AMOUNT RECOMMENDED
2014-011 02/28/2022	Danny Shane & Amy J. McDonald	One point of diversion on two farm ponds on a tributary to the Little River Sec. 5, T5N, R8EIM	Hughes County SS 2-6-1	Irrigation of 180 acres 70 a.f.

**WATER RIGHTS ADMINISTRATION DIVISION
Well Driller and Pump Installer Licensing**

September 20, 2022

DPC NUMBER	NAME OF FIRM	CERTIFIED ACTIVITIES	OPERATORS
New Licenses, Accompanying Operator Certificates and Activities:			
DPC-0959	Wright Water Well	Groundwater Wells & Pump Installation	Stephen Wright OP-2129
DPC-1024	Cooper Water Well Services	Groundwater Wells & Pump Installation	Andrew Cooper OP-2420
DPC-1026	John Banman	Groundwater Wells	John Banman OP-2421
New Operators, License Name Change, and/or Activities for Existing Licenses:			
DPC-0106	J & J Drilling	Groundwater Wells & Pump Installation	James Winkler OP-2422
DPC-0063	H & E Waterwells	Groundwater Wells, Monitoring Wells, Pump Installation, & Heat Exchange	Masen Hoffman OP-2423
DPC-0765	B & H Construction	Heat Exchange	Derk Morris OP-2424
DPC-0820	Hauser Water Resources LLC	Groundwater Wells	Mel Hancock OP-2425

ENGINEERING AND PLANNING DIVISION
Applications to Construct, Enlarge, Repair or
Alter Dam and/or Spillway

September 20, 2022

NID. NO. & COUNTY	NAME OF APPLICANT & NAME OF PROJECT	PLANS & SPECS PREPARED BY	HAZARD CLASSIFICATION	LEGAL DESCRIPTION
OK02201	Oklahoma Department Of Wildlife Conservation	Cole Niblett/ Chris Gatling, PE	Low	Section 29, T04S, R08WIM
Jefferson County	Lake Jap Beaver	Garver, LLC		
<p>The applicant requests approval for repair of the auxiliary spillway of a low hazard-potential dam. Its primary purpose is Fish & Wildlife, while the secondary purpose is recreation. The dam is 38 feet tall and has a maximum impoundment capacity of 662 acre-feet.</p>				
OK11027	City of Hobart	Kenneth Sullivan, PE	High	Section 33, T07N, R18WIM
Kiowa County	Hunter Lake Dam	Glenn Sullivan & Associates, Inc.		
<p>The applicant requests approval for repair of a high hazard-potential dam. The repairs primarily consist of the removal of large trees from the embankment. The primary purpose of the dam is domestic, while the other purposes are recreation and Fish and Wildlife. The dam is 31 feet tall. It has a normal impoundment capacity of 134 acre-feet and a maximum impoundment capacity of 369 acre-feet.</p>				

3.N. (cont.)

OK30602	Tulsa Dev., LLC.	Justin Morgan, PE	High	Section 24, T18N, R14EIM
Tulsa County	Estate at Lynn Lake	Tanner Consulting, LLC.		

The applicant requests approval for the modification of a high hazard-potential dam. The primary purpose of the dam will be stormwater management. The dam will be 16 feet tall. It will have a normal impoundment capacity of 13 acre-feet and a maximum impoundment capacity of 30 acre-feet. The modification includes reducing the size of the dam and constructing new primary and auxiliary spillways. The hazard-potential classification will be reduced from high upon completion of the modifications and the dam will no longer be under OWRB jurisdiction.

ENGINEERING & PLANNING DIVISION
Permit Applications for Proposed Development on
State Owned or Operated Property with Floodplain Areas

September 20, 2022

Application NO.	NAME OF APPLICANT	LOCATION	PROJECT NARRATIVE
FP-2022-10	ODOT	I-40 over unnamed tributary Of North Canadian, 4.5 miles East of the Canadian County line, Oklahoma County	Extend existing RCB upstream BFE: 1206.54 ft msl
FP-2022-11	ODOT	SH-20 over unnamed Tributary to Hominy Creek, Osage County	Widen existing SH-20 with two 8' Shoulders and resurface existing pavement and extend RCB 21' South and 23' North BFE: 753.70 ft msl
FP-2022-12	GRDA	Section 22, T21N, R20EIM, Mayes County	Replace 6' Sewer Main with a 10' Force Main BFE: 637

**ENGINEERING AND PLANNING DIVISION
Floodplain Administrator Accreditation Applications**

September 20, 2022

NUMBER	NAME OF COMMUNITY	FLOODPLAIN ADMINISTRATOR
FPA-018	City of Kingfisher, Kingfisher County	Nikolas Smith
FPA-054	City of Woodward, Woodward County	Terry Bryan

life. State Highway 16 is approximately 300 feet from the dam. No homes or businesses have been identified in the dam's potential breach inundation area.

5. On December 21, 2021, the Board received a regularly scheduled inspection report submitted by Respondent which detailed the condition of the New Beggs Dam. The visual inspection described by the report was completed on December 4, 2021. The overall condition of the dam was assessed to be "satisfactory condition". No issues were discovered that would place the dam in jeopardy, and continued operation of the dam was recommended. "Satisfactory condition" is defined as having no existing or potential dam safety deficiencies recognized. Acceptable performance is expected under all loading conditions in accordance with the applicable regulatory criteria or tolerable risk guidelines.

6. On June 7, 2022, an overtopping event caused by historic rainfall on May 4, 2022 was discovered on the New Beggs Dam. The recently discovered overtopping event caused severe erosion in several locations on the downstream side of the embankment which presents a danger to the remaining structural integrity of the dam. No evidence of seepage in any of the slough areas was discovered during either the initial inspection or subsequent inspections. Temporary remediation was accomplished by excavation of a trench through the emergency spillway to draw down the water supply reservoir level by approximately three (3) feet.

7. Respondent and the Board agree that it is beneficial to resolve this matter promptly and by agreement.

8. Respondent and the Board waive the filing of a petition or other pleading, and Respondent waives the right to a hearing and does not contest the assertions of the Board.

9. Respondent has completed and submitted plans, drawings, and technical specifications for the repair of the dam to the Board for approval.

III. CONCLUSIONS OF LAW

10. Respondent, as owner of the dam and spillway, is responsible for the safety of the structure and for meeting the requirements placed on owners of dams by the State of Oklahoma. *See* 82 O.S. §§ 110.1 et seq., Chapter 25 of Title 785 of the Oklahoma Administrative Code (OAC), specifically OAC 785:25-3-1(a).

11. The Board is the state agency responsible for oversight and approval of the construction, repair, and alteration of certain dams in Oklahoma, including the New Beggs Dam. *See* 82 O.S. §§ 110.5 and 110.10.

12. New Beggs Dam is classified as high hazard-potential because if the dam were to fail, the failure would probably cause loss of human life. *See* OAC 785:25-3-3(a)(2)(C).

13. As stated in Paragraph 6 of the Findings of Fact above, Board staff has determined that the recent overtopping of the New Beggs Dam violates of OAC 785:25-3-4, OAC 785:25-3-10, and OAC 785:25-9-3.

14. Respondent and the Board are authorized by 75 O.S. § 309(E) and OAC 785:4-5-5(b) to resolve this matter by agreement.

IV. ACTIONS

15. Respondent is hereby Ordered to take the following actions, if not already taken:

- a. Implement and continue implementing Emergency Level 1 notification pursuant to the Emergency Action Plan (EAP) for the New Beggs Dam until further notice from the OWRB.
- b. From the date of this order, respondent will continue to make minor or semi-permanent modifications and/or installations to the dam or its appurtenances as needed (i.e., spillway notch, pump, or reservoir siphon) in order to maintain the water surface elevation of the reservoir at least 3 vertical feet below the normal pool elevation until repair has been completed.
- c. Respondent will consult with the professional engineer to develop a plan for monitoring methods and observations routine for the damaged areas of the downstream slope and submit the proposed plan to OWRB for approval by **September 30, 2022**. Also, please submit the collected data to OWRB on a monthly basis after the monitoring plan has been established and inform OWRB and your engineer immediately if seepage is observed through the embankment, or if further damage or sloughing of the embankment is observed.
- d. Respondent will submit an application to construct or modify a dam. Once the Board approves the plans for remediation, Respondent will determine the method of construction, remediation, and funding for the project.
- e. The licensed dam safety engineer hired by Respondent to direct and supervise remediation will make periodic visits during the reconstruction of the dam slope.
- f. Respondent will begin reconstruction of the dam by no later than **September 30, 2023**.

V. PENALTIES

16. The Oklahoma Dam Safety Act, 82 O.S. § 110.10 (C) authorizes the Board to seek penalties of up to \$500.00 per day of violation, for each day during which a violation of the Act, associated rules, or Order continues. Based on the facts and circumstances of this case, the Board assesses a penalty of one hundred dollars (\$100) per day per violation. The Board agrees to defer the assessed penalty pending compliance with the actions listed in paragraph 14 of this Consent Order

- A. If the Respondent fails to complete an action by the scheduled due date, the penalty allocated to that task in subparagraph (C) becomes immediately due and payable.
- B. If the Respondent completes an action by its due date, the Board agrees to waive the deferred penalty allocated to that action in subparagraph (C).

- C. Action b - \$100.00
- Action c - \$100.00
- Action f - \$100.00

All penalty payments shall be by check or money order payable to: Oklahoma Water Resources Board (or OWRB), showing the case number of this Consent Order and delivered to:

Oklahoma Water Resources Board
3800 N. Classen Blvd.
Oklahoma City, OK 73118

17. Respondent agrees that if it fails to complete any of the action(s) by the specified due dates set forth in Paragraph 14 of this Consent Order, the Board may assess stipulated penalties as follows:

<u>ACTION</u>	<u>PENALTIES</u>
b. Maintain the reservoir at least 3 vertical feet below normal pool	\$100.00
c. Develop dam monitoring program by Sep. 30, 2022 and submit monthly reports by the end of each month	\$100.00
f. Begin reconstruction of the dam by Sep. 30, 2023	\$100.00

Stipulated penalties begin to accrue on the day performance is due, with the total amount of stipulated penalties not to exceed five hundred dollars (\$500.00) per day of violation. If the Board notifies Respondent that it is not in compliance with this Consent Order and that stipulated penalties are being assessed, Respondent may request a hearing to contest the finding of noncompliance.

18. If Respondent fails to pay any penalty, the Board may bring a separate action in District Court. An action by the Board for the collection of a penalty does not affect the actions required by this Consent Order.

VI. GENERAL PROVISIONS

19. This Consent Order is enforceable as a final order. The Board retains jurisdiction of this matter for the purposes of interpreting, implementing, and enforcing the terms and conditions of this Consent Order and for the purposes of resolving disputes.

20. Nothing in this Consent Order limits the Board’s right to take enforcement action for violations discovered or occurring after the effective date of this Consent Order.

21. Nothing in this Consent order excuses Respondent from its obligation to comply with all applicable federal, state, and local statutes, rules, and ordinances. Respondent and the Board agree that the provisions of this Consent Order are considered severable, and if a court of competent jurisdiction finds any provisions to be unenforceable because they are inconsistent with state or federal law, the remaining provisions will remain in full effect.

22. The provisions of this Consent Order apply to and bind Respondent and the Board and their officers, officials, directors, employees, agents, successors, and assigns. No change in the ownership or corporate status of Respondent will affect Respondent's responsibilities under this Consent order.

23. Compliance with the terms and conditions of this Consent Order fully satisfies Respondent's liability to the Board for all allegations of noncompliance in this Consent Order. If Respondent satisfies the requirements of this Consent Order, the Board will not pursue any other remedy, sanction, or relief that might otherwise be available to address the allegations of noncompliance with this Consent Order. Nothing in this Consent Order shall be deemed to satisfy Respondent's liability, if any, for actions or remedies not within the scope of authority of the Board.

24. This Consent Order is for the purpose of settlement. Neither the fact that Respondent and the Board have agreed to this Consent order, nor the findings of fact and conclusions of law, shall be used for any purpose in any proceeding except the enforcement by Respondent and the Board of this Consent Order. As to others who are not parties to this Consent Order, nothing contained herein is an admission of Respondent of any findings of fact or conclusions of law, and this Consent Order is not an admission by Respondent of liability for conditions at or near the dam and is not a waiver of any right, cause of action, or defense to which Respondent is otherwise entitled.

25. Respondent and the Board agree that the venue of any action in district court for the purposes of interpreting, implementing, and enforcing this Consent Order will be Oklahoma County, Oklahoma.

26. The requirements of this Consent Order will be considered satisfied, and this Consent Order terminated when Respondent receives written notice from Board staff that Respondent has demonstrated that all the terms of the Consent order have been completed to the satisfaction of the Board.

27. The individuals signing this Consent Order certify that they are authorized to sign it and to legally bind the parties they represent.

VI. EFFECTIVE DATE AND AMENDMENTS

28. The effective date of this Order shall be the date on which it is approved by the Board.

29. This Consent Order may be amended by mutual agreement of the Board and Respondent. Amendments shall be in writing and shall be in effect when approved by the Board.

ORDER

IT IS SO ORDERED in regular and open meeting of the Oklahoma Water Resources Board this ___th day of July 2022.

CITY OF Beggs, OKALHOMA
a Municipal Corporation

OKLAHOMA WATER RESOURCES
BOARD

By: _____
Mayor

By: _____
Matt Muller, Chairman

ATTEST:

ATTEST:

By: _____
City Clerk

By: _____
Jennifer Castillo, Secretary

5. SPECIAL CONSIDERATION

WATER RIGHTS ADMINISTRATION DIVISION

September 20, 2022

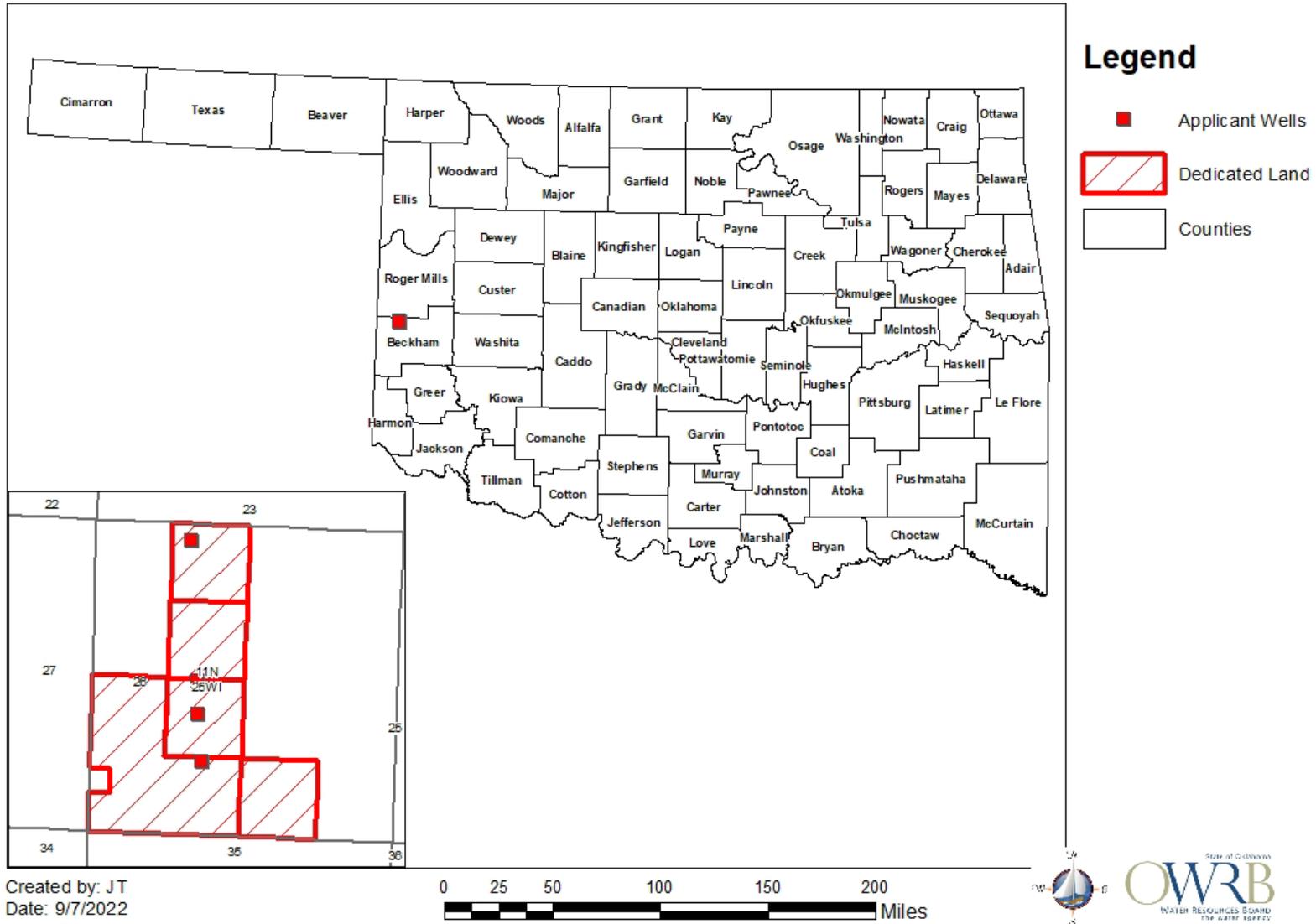
WATER RIGHTS ADMINISTRATION DIVISION
Application for a Temporary Permit to Use Groundwater

September 20, 2022

NUMBER & DATE	COUNTY	NAME OF APPLICANT	RECOMMENDATION
2021-513 3/17/2021	Beckham County	Jesse Joe & Rachael Elizabeth Newell	Approval of Proposed Order

Jesse Joe & Rachael Elizabeth Newell of 17092 East 1120 Road, Sweetwater, OK 73666 have filed an application, #2021-513, with the Board for a permit to use 240 acre-feet of groundwater per year. The groundwater is proposed to be used for irrigation and taken from 276 acres located as follows: 40 acs. in the NE NW, 40 acs. in the SE NW, 40 acs. in the NE SW, 116 acs. in the SW and 40 acs. in the SW SE of Section 26, T11N, R25WIM, Beckham County. The water is to be withdrawn from four (4) wells located as follows: two in the NW NE SW, one in the NW SE SW and one in the NW NE NW of same Section 26, and used in Beckham County, Oklahoma, as more specifically described in the application. Dedicated land and wells are located over the Western Oklahoma groundwater basin. Board rules require that the wells be located a distance of at least 1,320 feet from existing wells or proposed well locations on lands of another unless a well location exception is granted. The applicant asked for a well location exception and obtained a signed No Objection statement for one well within the spacing restriction. The applicant gave proper Public Notice. While a protest was received from a neighboring landowner and an administrative hearing was held, the protestant was not able to provide sufficient evidence to prove they had a well within the 1,320 foot spacing distance. The hearing examiner recommends approval of application #2021-513 and that their well spacing exception be granted.

Special Consideration: Groundwater Application: Permit #20210513 - Jesse and Rachael Newell - Beckham County



Created by: JT
Date: 9/7/2022

STATE OF OKLAHOMA

In the Matter of the Application of Jesse Joe)
and Rachael Elizabeth Newell for a Permit) Application No. 2021-513
to use Groundwater in Beckham County)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND BOARD ORDER

INTRODUCTION

This matter arises out of the application filed by Jesse Joe and Rachael Elizabeth Newell (“Applicants”) for a groundwater use permit. Applicants requested to permit four wells on the property for purposes of irrigation.¹ Patricia F. Nation and Jeff Davis submitted written protests to the application and the matter was set for hearing May 9, 2022. Jeff Davis appeared at the hearing.

A hearing was held at the Board offices in Oklahoma City, Oklahoma. The parties were present and represented by counsel. After the hearing was adjourned, the matter was taken under advisement. A proposed Order was prepared, served on the parties, and presented to the Board for consideration and action.

Based upon the separately stated Findings of Fact and Conclusions of Law that follow, the Board determines that the application should be granted as follows.

BACKGROUND

1. On March 17, 2021, Applicants filed Application No. 2021-513 with the Board for a groundwater use permit. Applicants requested authorization to use 240 acre-feet of groundwater each year from the proposed groundwater wells for irrigation. Applicants dedicated to the application 276 acres of land; namely 40 acres owned in the NE ¼ of NW ¼ of Section 26, Township 11 North, Range 25 West, Indian Meridian, 40 acres owned in the SE ¼ of NW ¼ of Section 26, Township 11 North, Range 25 West, Indian Meridian and 40 acres owned in the NE ¼ of SW ¼ of Section 26, Township 11 North, Range 25 West, Indian Meridian, Beckham County, Oklahoma. Applicants also lease 156 acres of land; namely 116 acres in the SW ¼ of the SE ¼ of Section 26, Township 11 North, Range 26 West and 40 acres of the SW ¼ of the SE ¼ of Section 26, Township 11 N, Range 25 West, Indian Meridian, Beckham County. The proposed groundwater wells are located on said dedicated lands. Applicants proposed to use the groundwater in Beckham County. Applicants also sought a well location exception. The application contained various other terms, including that it would be taken from the Western Oklahoma Aquifer.

2. To support this application, Applicants submitted a Warranty Deed (Book 2142 Page 244), and a Groundwater Lease. The Warranty Deed was signed and delivered on November 13, 2013 from Stanley W. and Tami LeaMerideth Little to Jesse Joe and Rachael Elizabeth Newell. The lease, signed by Fuchs Properties, L.L.C. on May 12, 2021, as the surface owner of 156 acres

¹ On May 10, 2021, correspondence from Applicant to board staff indicates they do not intend on using well number 204941 because it does not produce enough water.

of land located in the SW ¼ and SE ¼ of Section 26, Township 11 North, Range 25 WIM in Beckham County, authorized Jesse Joe and Rachael Elizabeth Newell to apply for a permit, locate wells on the land and withdraw groundwater from the land herein described. This lease is for a period of two years from May 12, 2021.

3. Applicants revised the application as necessary by Board rules and statute. Applicants also submitted a surface estate owner's map for notification purposes.

NOTICE

4. On September 13, 2021, Board staff notified Applicants that the application had been reviewed and directed Applicants to give notice of the application by certified mail to each surface owner of land within 1,320 feet of the outside boundary of the ten-acre tract of land with a groundwater well location covered by the application, and publish notice of the application in a newspaper of general circulation in the county in which the wells are located on the weeks beginning September 26, 2021 and October 3, 2021. Applicants requested the publication be extended to the last two weeks of October to which Board Staff obliged. The notice was published on October 20 and October 27, 2021 in The Beckham County Record, a newspaper of general circulation in Beckham County. The notice listed a protest deadline of November 22, 2021 and included Applicants well location exception request. Applicants also sent, by certified mail, direct notice to those individuals listed on the surface estates owners map.

PROTEST

5. Patricia F. Nation and Jeff Davis protested the application and were made parties herein. Jeff Davis attended the hearing.

HEARING

6. The hearing commenced on May 9, 2022, at the Board's office in Oklahoma City, Oklahoma. The parties appeared without counsel. The hearing was opened, appearances were entered, witnesses were sworn, the protestant's evidence and arguments were heard, and the hearing was adjourned. Judicial notice was taken of all documents and correspondence filed with the OWRB. Thereafter, a proposed order was prepared, served on the parties, and presented to the Board for consideration at the September 20, 2022 Board meeting.

7. Applicant Jesse Newell testified that they are seeking a permit for irrigation. Applicants set up an irrigation pivot due to the drought. Their main permitting is a surface water permit on the creek. Applicants drilled three additional wells on their property because the creek gets very low during the summer months. Applicants spread the wells out and kept them as far from the fence line as they could. Their well driller told him that 640 feet was the distance they needed to be from neighboring wells, but Applicant Jesse Newell testified they went well beyond that measurement. With regards to Protestant Davis' well, and in rebuttal to Protestant Davis' testimony, Applicant Jesse Newell moved to admit Exhibit 10. Exhibit 10 was a document he created from a program on the Board's website. The program generated a measurement from the distance of Protestant Davis' unlogged well on the South end of Protestant Davis' property to

Applicants' closest well. The distance between the two measured 1,608.7 feet. Applicant Jesse Newell testified that distance is the closest his wells are to any of the neighbors.

8. Protestant Davis testified at the hearing that depletion of water from any part of that area in the State will decrease the value of his property. That is his biggest concern. Protestant Davis also testified that granting Applicants' permit would decrease the number of potential buyers who may need water. He also testified that additional water usage would lower the water table and make the cost of future drilling or pumping of water more costly for him and his neighbors. The following are some of the items that were also listed on Protestant Davis' written protest and incorporated by reference at the hearing:

- a. *Potential* exists for contamination to water from a variety of sources including fertilizer and chemicals in the recharge area;
- b. *Potential* for contamination of the water from oilfield sites in the area;
- c. Topography is in low lying area and contributes to the contamination *potential*;
- d. Unknown permeability in the recharge zone *could* lead to contamination from excess nitrates and other soluble compounds;
- e. *Concern exists* about the volume and safety of water available in the proposed well site area; and
- f. *Concern exists* about the safety and availability of fuel use in pumping.

9. Protestant Davis testified the two items listed in his written protest about the construction of the wells was no longer a concern.

10. Protestant Davis testified that the Applicants' wells that are near his well on the South of his property did not meet the spacing requirements. Although Protestant Davis testified that he did not measure it, he testified he "would almost bet" it did not meet the spacing requirements. However, Protestant Davis testified he was not actually sure where Applicants wells were located.

11. The undersigned requested Board Staff Jason Tutkowski testify. Tutkowski testified the spacing is calculated pursuant to the requirements of a minor bedrock without a maximum annual yield (MAY). Tutkowski also testified that although the permit is a long-term permit, it is classified as temporary because there is no MAY. With regards to spacing, OWRB bases the measurements on well logs and what the applicant specifies on the application. OWRB also relies on what is specified on the plat map and any well logs on file for neighboring wells. The well spacing exception Applicants sought here was based on a landowner whose well was logged. OWRB doesn't have a well log on the two protestor's wells, but that does not mean the wells are

not there, just that they are not logged. Tutkowski testified that his department relies on the measurements and information given by an applicant for unlogged wells.

FINDINGS OF FACT

OWNERSHIP

12. The surface of land dedicated to this permit is 276 acres and is located as follows: namely 40 acres owned in the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, Township 11 North, Range 25 West, Indian Meridian, 40 acres owned in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, Township 11 North, Range 25 West, Indian Meridian and 40 acres owned in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 26, Township 11 North, Range 25 West, Indian Meridian, Beckham County, Oklahoma. The title to the land is held by Jesse Joe and Rachael Elizabeth Newell. Applicants also leases 156 acres of land; namely 116 acres in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 26, Township 11 North, Range 26 West and 40 acres of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 26, Township 11 N, Range 25 West, Indian Meridian, Beckham County. The groundwater lease will expire May 12, 2023. Ownership was not disputed at the hearing.

LAND LOCATED OVER GROUNDWATER BASIN

13. The land dedicated to this application overlies the Western Oklahoma Aquifer. The Western Oklahoma Aquifer is not a sensitive-sole source aquifer. This was not disputed at the hearing.

BENEFICIAL USE

14. The proposed use of the groundwater is to irrigate 50 acres of the land dedicated to the permit to grown Bermuda grass. The evidence established Applicants intend to grow Bermuda grass. The beneficial use of the groundwater was not disputed at the hearing.

WASTE BY DEPLETION

15. Applicants intend to use the groundwater to irrigate the land dedicated to the permit to grow Bermuda grass. There was no evidence introduced to indicate that Applicants' water system/use is or will be inefficient. There was no evidence that granting the permit would create waste in the future. There was no evidence that in the future Applicants will take more fresh groundwater than is authorized by the permit; take or use fresh groundwater in any manner so that the water is lost for beneficial use; transport the water from the wells to the place of use in such a manner that there is an excessive loss in transit; use the water in such an inefficient manner that excessive losses occur; allow any fresh groundwater to reach a pervious stratum and be lost into cavernous or pervious materials encountered in a well; or use the water for air conditioning or cooling purposes without providing facilities to aerate and reuse such water.

WASTE BY POLLUTION

16. There was no evidence of any abandoned or unused water wells, hand dug wells or windmills on the dedicated land, or evidence that Applicants failed to properly plug any such abandoned wells.

WELL SPACING

17. Well spacing set by the Board for minor bedrock without a MAY has been set at 1320 feet. Applicants applied for a well spacing exception based on the location of the far North well and its proximity to a well owned by Carolyn Newell. The OWRB record shows Carolyn Newell executed a “No Objection Statement” on May 19, 2021.

18. OWRB records do not reflect Protestant Davis’ well because it is not logged. The only evidence admitted at the hearing showed the distance is 1608.7 feet between Protestant Davis’ well on the furthestmost south end of Protestant Davis’ property and Applicants’ well. *See* Exhibit 10. A comparison of the plat map to Exhibit 10 indicates that Applicants’ well is # 204940 and is located near the southernmost section of Protestant Davis’ property.

CONCLUSIONS OF LAW

19. Based upon applicable law, and as applied to the above Findings of Fact and evidence in the record, the Board draws the following Conclusions of Law:

USE OF GROUNDWATER

20. Under 60 O.S. § 60, the owner of the surface of a given tract of land owns the fresh groundwater beneath the surface of that land. That surface owner or his lessee may use such groundwater in accordance with the use regulations imposed by the Oklahoma Groundwater Law, 82 O.S. § 1020.1 and following.

SUBJECT MATTER JURISDICTION

21. The Board has subject matter jurisdiction to adjudicate applications for permits according to the Oklahoma Groundwater Law and the Board’s rules promulgated pursuant thereto.

PERSONAL JURISDICTION; DUE PROCESS

22. Due and proper notice of the application and subsequent proceedings was given to all potentially interested persons as required by law. Applicants and Protestant Davis are interested parties to this proceeding. All other potentially interested persons have defaulted or abandoned their interests. Oklahoma Administrative Code (“OAC”) 785:4-7-3.

ELEMENTS TO BE DETERMINED

23. When a person makes an application for a groundwater permit, 82 O.S. § 1020.9 and OAC 785:30-3-5 requires the Board to determine several specific issues. These are:

(a) whether the applicant owns the surface of the dedicated land or holds a valid lease for the taking of groundwater from the land;

(b) whether the dedicated land overlies a fresh groundwater basin or subbasin;

(c) whether the use to which the applicant intends to put the water is a beneficial use; and

(d) that waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur.

24. If the Board finds for the applicant on all of the above, the rule provides that the Board shall approve the application and issue the appropriate permit. Section 1020.9(D) of Title 82 provides further that the Board may specify conditions in the permit, including but not limited to the rate of withdrawal and the level of perforation and sealing wells.

OWNERSHIP; LEASE

25. Based on the information submitted in the application and at the hearing, the Board concludes that Applicants provided evidence of their right to take groundwater from the land, in the form of ownership documentation, an executed lease and testimony.

GROUNDWATER BASIN

26. The dedicated land overlies the Western Oklahoma Aquifer. The water allocated to a temporary permit shall not be less than two (2) acre-feet annually for each acre of land owned or leased by an applicant. 82 O.S. 1020.11B(2). Applicants are entitled to a groundwater allocation of two (2) acre-feet per acre per year, as provided in 82 O.S. § 1020.11B(2).

BENEFICIAL USE

27. “Beneficial use” is defined in OAC 785:30-1-2 as:

The use of such quantity of ... groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, **irrigation**, recreation, fish and wildlife. . . .

28. “Irrigation use” is defined in OAC 785:30-1-2 as:

The use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.

29. The facts in this case establish that Applicants proposed use meets the definition of irrigation use. The Board concludes that Applicants proposed use is a beneficial use under applicable law.

WASTE BY DEPLETION

30. The Board must determine whether Applicants will allow waste as specified by 82 O.S. § 1020.15 to occur. Section 1020.15 is quoted as follows:

A. The Oklahoma Water Resources Board shall not permit any fresh groundwater user to commit waste by:

1. Drilling a well, taking or using fresh groundwater without a permit, except for domestic use;
2. Taking more fresh groundwater than is authorized by the permit;
3. Taking or using fresh groundwater in any manner so that the water is lost for beneficial use;
4. Transporting fresh groundwater from a well to the place of use in such a manner that there is an excessive loss in transit;
5. Using fresh groundwater in such an inefficient manner that excessive losses occur;
6. Allowing any fresh groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well;
7. Permitting or causing the pollution of fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin. The Board shall be precluded from determining whether waste by pollution will occur pursuant to the provisions of this paragraph if the activity for which the applicant or water user intends to or has used the water as specified under Section 1020.9 of [Title 82] is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental Quality or the Oklahoma Department of Agriculture, Food and Forestry;
8. Drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board;
9. Using fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water; or
10. Failure to properly plug abandoned fresh water wells in accordance with rules of the Board and file reports thereof.

31. According to OAC 785:30-1-1, paragraphs (1) through (6) and paragraphs (8) and (9) are forms of “waste by depletion” (as that term is used in the case of *Oklahoma Water Resources Board v. Texas County Irrigation and Water Resources Ass’n*, 1984 OK 96). Paragraphs (7) and (10) are forms of “waste by pollution”).

32. The Board acknowledges Protestant Davis’ concern about the groundwater supply in the area and that the use of groundwater could potentially be adversely affected by neighboring

uses of groundwater from the same basin. However, there is no basis in this case to determine that Applicants proposed use will be impermissible or unlawful. The legislative policy expressed in the Oklahoma Groundwater Law is “to utilize the groundwater resources of the state.” 82 O.S. § 1020.2(A). To implement that policy, the Oklahoma Groundwater Law authorizes the controlled reduction of a groundwater basin as long as that reduction is done in an orderly fashion according to the statutory scheme for reasonable restrictions on such use. The surface owner or lessee of land overlying a fresh groundwater basin is entitled to use the groundwater beneath the surface once certain elements of the Oklahoma Groundwater Law have been met. Here the application is in accordance with and not contrary to the law and rules.

33. Pursuant to 785:30-3-6, well spacing for minor bedrock groundwater basin or subbasins is 1320 feet. Evidence established Applicants have drilled three wells that are in accordance with the well spacing previously determined by the Board. The one well that is within the 1320 feet is not objected to by that landowner.

34. The Board concludes, based on the findings of fact that waste by depletion will not occur if this permit is approved.

WASTE BY POLLUTION

35. The provisions of 82 O.S. 1020.15(A)(7) provides the Board shall not permit any groundwater used to commit waste by “permitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin.” Subsection (10) also declares waste as an owner's “failure to properly plug abandoned water wells in accordance with rules of the Board and file reports thereof.” As stated above, no evidence was adduced by either party regarding pollution, so the Board must conclude, based on the above findings of fact that waste by pollution will not occur.

WELL SPACING EXCEPTION

36. To qualify for a spacing exception, Applicants must show that completing a new well that would satisfy the spacing requirements of 785:30-3-6(a) would be inequitable or unreasonable. *See* 785:30-3-6(b). The rule goes on to state that compliance with well spacing would be inequitable or unreasonable when “[n]o objection is received from any landowner having a well located within the established well spacing distance of the proposed well” requesting authorization.

37. Here, although the exception is met with a protest, evidence could not establish that well spacing between Protestant Davis’ well and Applicants’ wells was less than 1,320 feet. The only evidence admitted established the distance was 1,608.7 feet. As for the well that was considered within the spacing distance, a “No Objection Letter” was received.

38. The Board concludes that it would be inequitable to require Applicants to complete a new well that would satisfy the spacing requirements. Therefore, the well spacing exception should be granted.

CONCLUSION

39. The Board hereby orders that Application No. 2021-513 in the name of Jesse Joe and Rachael Elizabeth Newell shall and is hereby **APPROVED**. The well spacing exception requested is **GRANTED**.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Application No. 2021-513 in the name of Jesse Joe and Rachael Elizabeth Newell shall be and the same is hereby granted. A permit shall be issued which authorizes four groundwater wells located in the W/2 of Section 26, Township 11 North, Range 25, West, Indian Meridian, Beckham County, Oklahoma.

IT IS FURTHER ORDERED that all other terms and provisions set forth in the application and not inconsistent with provisions of this Order shall be incorporated into and made a part of the permit.

IT IS SO ORDERED by the Oklahoma Water Resources Board in regular and open meeting this __ day of September, 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

WATER RIGHTS ADMINISTRATION DIVISION
Ashby Investments, LLC Pre-Existing Exemption Under 82 O.S. § 1020.2

September 20, 2022

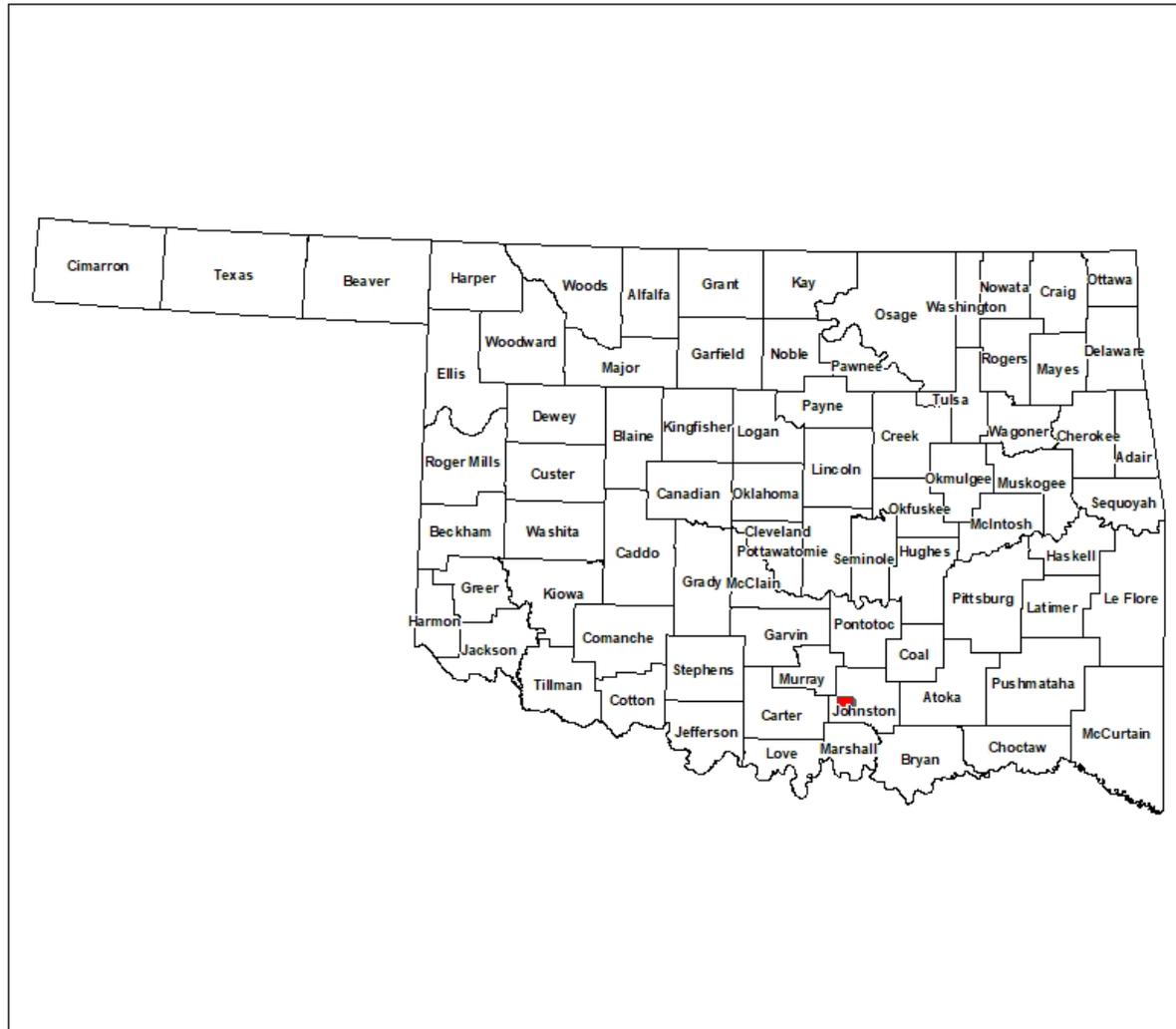
DATE	COUNTY	NAME	RECOMMENDATION
4/26/2021	Johnston County	Ashby Investments, LLC	Approval of Proposed Order

On July 23, 2011, Ashby Investments, LLC (“Ashby”) submitted to the Oklahoma Department of Mines (“ODM”) an initial Application for a Permit to Engage in Non-Coal Mining as the Blue Sky Rock Quarry near Ravia, Oklahoma in Johnston County. While the Legislature has established a moratorium on mines overlying sensitive sole source groundwater basins and subbasins, the moratorium does not apply if a mine satisfies the criteria of paragraph 1 or 2 of subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes.

On April 26, 2021, the OWRB notified Ashby that it was not considered an exempt mine pursuant to 82 O.S. § 1020.2(E). Ashby timely filed a response and documentation to support its assertion that Ashby was exempt pursuant to 82 O.S. § 1020.2(C) and did not lose its exemption under 82 O.S. § 1020.2(E). Ashby’s initial ODM application for 5,280 acres was filed before the August 1, 2011, deadline imposed by 82 O.S. § 1020.2(C)(2) and OAC 785:30-15-1(c)(2)(B). To maintain the exemption an operator of a mine must still follow the requirements of O.S. § 1020.2(E) and OAC 785:30-15-4. The statutes provide that any operator who does not file reports shall be allowed to show cause why the exemption should still apply.

Ashby argued that because the ODM had not approved its mining application, no mining operations had or could have legally occurred on the subject property, thus, Ashby was not an operator and was not legally required to comply with 82 O.S. 1020.2(E). The hearing examiner accepted their argument and recommended the Board order that Ashby Investments, LLC is exempt from the requirements of Oklahoma Groundwater Law under 82 O.S. §1020.2.

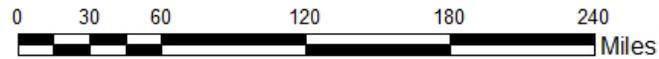
Special Consideration: Ashby Investments, LLC, Johnston County



Legend

-  Approximate Location
-  Counties

Created by: JT
Date: 9/7/2022



**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of Ashby Investments, LLC)
Permit to Take Pit Water) **Case No. 017930**
Pursuant to Pre-Existing Exemption Under)
82 O.S. § 1020.2)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND BOARD ORDER

INTRODUCTION

On April 26, 2021, Oklahoma Water Resources Board (OWRB) Planning and Management Division notified Ashby Investments, LLC (Ashby) that it was not considered an exempt mine pursuant to 82 O.S. § 1020.2(E). The Board informed Ashby had thirty (30) days in which to submit documentation that would support Ashby’s status as an exempt mine. Ashby timely filed a response and documentation to support its assertion that Ashby was in fact exempt pursuant to 82 O.S. § 1020.2 (C) and did not lose its exemption under 82 O.S. § 1020.2(E).

The parties conferred and informed that at this point a hearing was unnecessary and requested a decision on Ashby’s exempt status be made based on pleadings they would file with the Board. On August 5, 2021, Ashby filed Ashby Investments, LLC’s Motion for Summary Judgment (Summary Judgment Motion). On August 16, 2021, OWRB filed Oklahoma Water Resources Board’s Response to Ashby Investments, LLC’s Motion for Summary Judgment (Response). Ashby sought additional time to file a Reply to include documents it was seeking from an Open Records Request. Further, a parallel administrative action was and still is currently pending before the Oklahoma Department of Mines (ODM) that has caused delay in Ashby being able to file a reply. On August 3, 2022, Ashby filed a Reply in Support of Ashby’s Motion for Summary Judgment (Reply).

The OWRB rules are silent regarding motions for summary judgment. Likewise, motions for summary judgment are foreign to the APA. *See State ex rel. Protective Health Services State Department of Health v. Vaughn*, 222 p.3D 1058, 1063 fn. 10. Regardless, the parties agree that the only matters to be determined are legal matters. The parties have stipulated to the facts and have attached exhibits to the filings to support the facts. Therefore, at the request of the parties, the ruling made herein is based on the arguments and exhibits attached to the parties’ filings in the above matter.

FINDINGS OF FACT

The following are stipulated facts by the parties and reiterated here verbatim. *See* Ashby’s Proposed Stipulated Facts and OWRB’s Additional Proposed Stipulated Facts, signed by both parties.

1. On July 23, 2011, Ashby submitted to the Oklahoma Department of Mines (“ODM”) an initial Application for Permit to Engage in Non-Coal Mining as the Blue Sky Rock Quarry near

Ravia, Oklahoma. Ex. 1, Application. Thus, Ashby's initial Application for 5280 Acres (which included Hanson Aggregates' lease area of approximately 3500 acres) was filed before the August 1, 2011, deadline imposed by 82 O.S. § 1020.2(C)(2).

2. In 45 O.S. § 950(B), the Legislature established a moratorium on mines overlying certain groundwater basins and subbasins. However, the moratorium does not apply if a mine "[s]atisfies the criteria of paragraph 1 or 2 of subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes." 45 O.S. § 950(A)(2).

3. A title dispute regarding the 3500 acres of land that Hanson leased from Ashby, which ultimately resulted in years of litigation, arose between Ashby and Hanson Aggregates, LLC ("Hanson"). As a result, ODM wrote a letter to Ashby on July 29, 2011, notifying both companies that ODM could not adjudicate property disputes and that Ashby's pending mining permit application "shall be suspended until the Department receives notice that such dispute has been conclusively resolved." Ex. 2, ODM Letter, July 29, 2011.

4. On July 30, 2018, Ashby informed ODM that the title dispute with Hanson had been conclusively resolved. Ex. 3, Findings of the ODM Conference Officer, at ¶ D.

5. On October 9, 2018, ODM wrote to Ashby, requesting additional information for Ashby's permit application. Ex. 4, ODM Letter, Oct. 9, 2018.

6. On November 5, 2018, Ashby responded to ODM's letter by providing the requested information. Ex. 5, Ashby Letter, Nov. 5, 2018. Ashby continued to provide further information at ODM's request thereafter.

7. On October 23, 2019, ODM informed Ashby that its "application had been ruled complete and is ready for public notification." Ex. 6, ODM Letter, Oct. 23, 2019.

8. On January 13, 2020, ODM informed Ashby that an Informal Conference had been set for February 21, 2020, to hear public objections to Ashby's application. Ex. 7, ODM Letter, Jan. 13, 2020. That letter did not mention any allegedly missing reports to OWRB. *Id.*

9. Following the Informal Conference on February 21, 2020, the Informal Conference Officer issued his report on August 3, 2020. Ex. 8, Informal Conference Officer Report. While the Officer remanded two issues back to ODM for further determination, neither related to Ashby's filing or non-filing of quarterly or annual reports on accumulation or disposition of pit water. *Id.*

10. On August 18, 2020, ODM issued a memorandum that commented on Ashby's Water Management Plan and found it "reasonable for the purposed non-coal mining" and "in accordance with OAC:785.30.15." Ex. 9, ODM First Memo., Aug. 18, 2020. This memorandum made no mention of any issue relating to Ashby's filing or non-filing of quarterly or annual reports on accumulation or disposition of pit water. *Id.*

11. On October 19, 2020, ODM issued a second memorandum, stating for the first time that Ashby "did not file a 'plan to monitor and report' with the OWRB before January 1, 2013, nor did they file any quarterly or annual reports for many years." Ex. 10, ODM Second Memo., Oct. 19, 2020.

12. However, Ashby had previously submitted a water management plan to ODM and to OWRB on February 19, 2020. Ex. 11, Water Management Plan. Obviously, as of January 1, 2013, Ashby's application was still in suspense due to the ongoing title dispute.²

13. ODM has since granted Hanson's mining permit application for its portion of the Blue Sky Rock Quarry and did not question the exempt status of the mine.

14. To date, Ashby's non-coal mining permit application remains pending, having been neither approved nor denied by ODM.³

15. Ashby has not operated a mine or conducted any mining operations at the site in question since its initial application on July 26, 2011.

16. This issue was previously briefed before ODM. See ODM Case No. PAN 20-02 IC, Permit L.E.-2670. In that briefing, Ashby pointed out that ODM did not have the authority or jurisdiction to determine whether Ashby had complied with 82 O.S. § 1020.2(E), the enforcement of which is exclusively within the province of OWRB under 27A O.S. § 1-3-101(C), *Citizens for Prot. of Arbuckle-Simpson Aquifer v. Okla. Dept' of Mines*, 2019 OK CIV APP 17, ¶ 20, 437 P.3d 1074, 1081 ("OWRB would have the ultimate say as to whether Aggregates could claim an exemption under the amended law [i.e., §1020.2]."), and *Ricks Expl. Co. v. Okla. Water Res. Bd.*, 1984 OK 73, ¶ 5, 695 P.2d 498, 501 ("[B]y law the [OWRB's] authority to regulate groundwater use and to issue permits allowing its withdrawal is exclusive."). Only after Ashby made that showing was this matter referred to OWRB by ODM, which had previously taken no action with respect to Ashby's quarterly or annual reports (or lack thereof) while Ashby's application was in suspense.

17. The lease between Ashby and Hanson entitles Ashby to the benefit of any filing Hanson makes with the OWRB. Specifically, the lease provides that "all governmental permits and any water rights obtained for the Premises belong exclusively to OWNER [i.e., Ashby] on termination of this Agreement." Ex. 12, Ashby/Hanson 2005 Lease Agreement. The lease has since terminated, meaning any permits and/or rights obtained by Hanson now also belong to Ashby.

CONCLUSIONS OF LAW

18. On May 26, 2011, Section 1020.2 of Title 82 became effective and reads in pertinent part as follows:

² Ashby filed with the OWRB a Site-Specific Water Management and Conservation Plan for the Blue Sky Rock Quarry. See Reply, Exhibit 11. The OWRB forwarded the plan to ODM on August 13, 2020 and the memo to file states the plan is reasonable and in accordance with OAC: 785-30-15. See Summary Judgment Motion, Exhibit 9. On March 31, 2020, Ashby began to file Status Reports. See Response, Exhibit 2.

³ On November 30, 2021, Ashby was notified by the ODM that its application for a permit was denied. Pursuant OAC 460:10-17-15, on December 27, 2021 Ashby requested a Formal Hearing with the ODM. On July 18, 2022, the ODM continued the hearing pending the resolution of this matter. See Reply, Exhibit 1.

A. It is hereby declared to be the public policy of this state, in the interest of the agricultural stability, domestic, municipal, industrial and other beneficial uses, general economy, health and welfare of the state and its citizens, to utilize the ground water resources of the state, and for that purpose to provide reasonable regulations for the allocation for reasonable use based on hydrologic surveys of fresh ground water basins or subbasins to determine a restriction on the production, based upon the acres overlying the ground water basin or subbasin.

B. The provisions of Section 1020.1 et seq. of this title shall not apply to the taking, using or disposal of salt water associated with the exploration, production or recovery of oil and gas. The provisions of this act shall not apply to the taking, using or disposal of water trapped in producing mines outside of a sensitive sole source groundwater basin or subbasin.

C. Except as provided for in subsection E of this section, the provisions of this act shall not apply to the taking, using or disposal of water trapped in producing mines:

1. That overlie a sensitive sole source groundwater basin or subbasin and have been permitted by the Oklahoma Department of Mines as of August 1, 2011;

2. That overlie a sensitive sole source groundwater basin or subbasin for which an initial application for a permit shall have been filed with the Oklahoma Department of Mines as of August 1, 2011; or

3. That overlie a sensitive sole source groundwater basin or subbasin and for which a permit revision is approved by the Oklahoma Department of Mines.

Provided that the use of mine pit water, pursuant to a site-specific water management and conservation plan prepared in consultation with the Oklahoma Water Resources Board, by mines that are exempted from this act by the terms of this subsection and in furtherance of mine operations and associated manufacturing and commercial activities on the mine site, shall be considered as permitted beneficial uses for all purposes under the laws of the state.

* * *

E. 1. By no later than January 1, 2013, the operator of a mine that is exempted from this act by the provisions of subsection C of this section shall adopt and implement a plan to monitor and report to the Board the accumulation and disposition of pit water during the previous calendar year. The operator shall also file with the Board interim quarterly reports containing information about the accumulation and disposition of pit water during the previous quarter. The first interim quarterly report for calendar year 2013 shall be sent to the Board by June 30, 2013, and the annual report for the calendar year 2013 shall be sent to the Board by March 31, 2014. Thereafter, the annual report for each calendar year shall be sent to the Board by March 31st of the following year. The monitoring plan will provide for the measurement or reasonable estimation of groundwater and surface water volumes, separately stated, entering the pit, of the water diverted from the pit, of the disposition of the water from the pit, and of the consumptive use, as defined in this section, of the mine pit water by the mine operator. The reports received by the Board will be subject to the provisions of the Oklahoma Open Records Act. If an operator of a mine that is exempted from this act by the provisions of subsection C of this section fails to timely submit an interim quarterly report or annual report, the exemption of subsection C shall no longer apply to the mine and the rules promulgated pursuant to subsection D of this section shall become applicable, provided that such rules shall contain provisions to allow the operator to show cause why the exemption contained in subsection C of this section should continue to apply. (Emphasis added)

* * *

19. On June 13, 2013, OAC 785:30-15-1 and OAC 785:30-15-4 became effective.

20. OAC 785:30-15-1 establishes rules for the taking, using and disposal of water trapped in producing mines that overlie a Sensitive Basin and that are not otherwise exempt from the Subchapter as provided for in 82 O.S. § 1020.2. Pertinent here, the rule states in part:

(c) This Subchapter shall not apply to the taking, using or disposal of water trapped in [82 O.S. 1020.2(C)] a producing mine:

(1) that overlies a Sensitive Basin; and

(2) that satisfies one or more of the following tests:

(A) a permit that authorizes mining operations or activities for the mine was issued by the ODM on or before August 1, 2011;

(B) the mine operator filed an initial application for a permit for the mine with the ODM on or before August 1, 2011; or

(C) a revision to the permit for the mine is approved by the ODM; and

(3) for which the operator maintains the exemption as provided in 785:30-15-4. (Emphasis added).

REQUIREMENTS OF 82 O.S. 1020.2(C)

21. The parties stipulated that Ashby's initial application was filed with the ODM prior to August 1, 2011, deadline.⁴ Therefore, pursuant to statute, Ashby is an exempt mine pursuant to 82 O.S. § 1020.2 (C)(2). *See also* OAC 785:30-15-1(c)(2)(B).⁵

REQUIREMENTS OF 82 O.S. 1020.2(E)

22. Although Ashby is considered an exempt mine pursuant to 82 O.S. § 1020.2(C)(2), whether Ashby has maintained said exemption or lost it for failing to comply with 82 O.S. § 1020(E) must be determined by this Board.

23. As stipulated to by the parties, the review of Ashby's mining permit application was suspended on July 29, 2011, pending the resolution of litigation. Once litigation resolved, Ashby was notified on October 23, 2019, that its application was complete and ready for public notification. Ashby's application was denied on November 30, 2021, and the formal hearing on that denial has been continued pending resolution of this matter. *See* Reply, Exhibit 3.

⁴ Likewise, ODM reviewed Findings Requested by the Informal Conference Officer in the ODM proceedings and determined that Ashby's initial application "appears to meet the description of "an initial application for a permit" found in 82 O.S. § 1020.2(C)(2)." Summary Judgment Motion, Exhibit 10 p. 3.

⁵ As will be discussed, Ashby's position is that because it was not permitted to operate the mine, it was not an operator, thus, Section 1020.2(E) was not triggered. OWRB responded by arguing that according OAC 785:30-15-1(c)(2)(b), Ashby would not qualify for the exemption because the rule requires "the operator" file the initial application for a permit with the ODM. First, it must be noted that OAC 785:30-15-1(c)(2)(B) was adopted after the deadlines set forth in both sections C and E of Title 82, Section 1020.2. Further, even if the rule was adopted simultaneous with the statute, the rule goes beyond what the statute authorizes. For example, nothing in 82 O.S. § 1020.2(c)(2) requires the initial application for a permit to be filed by an operator, it just merely requires the initial application be filed by August 1, 2011. Second, there has been nothing presented that the ODM requires the initial application be filed by an operator – a factor that must be considered. Therefore, any reliance on OAC 785:30-15-1(c)(2)(b) for the position that Ashby must have been an operator to qualify for the exemption under 82 O.S. § 1020.2(C)(2) is not persuasive especially considering the ODM has already determined Ashby met the filing deadline of 82 O.S. § 1020.2(C)(2). Summary Judgment Motion, Exhibit 10 p. 3.

25. Effective June 13, 2013, OAC 785:30-15-4 was enacted in accordance with 82 O.S. § 1020.2(E). The rule governs Mines with preexisting exemptions and reads as follows:

(a) To maintain the exemption, **an operator** of a mine with a preexisting exemption must:

(1) adopt and implement a plan to monitor and report to the Board the accumulation and disposition of pit water during the previous calendar year; and

(2) make quarterly and annual reports of the measured or reasonably estimated groundwater and surface water volumes, separately stated, entering the pit, of the water that is diverted from the pit, of the disposition of the water from the pit, and of the consumptive use of the water from the pit on or before the deadlines provided by 82 O.S. § 1020.2(E)(1); and

(3) at any time after March 31, 2015, demonstrate to the satisfaction of the Board within the pertinent report or reports that it has not consumptively used during the previous twelve-month period, from the mining site, an amount of groundwater which combined with any amounts used from permitted groundwater wells exceeds the MEPS. Such demonstration may require providing to the Board a copy of the mine's monitoring plan and all of the data collected and procedures used to support the calculations and results reported.

(b) Subject to (c) and (d) of this Section, if at any time the **mine operator** fails to satisfy any of the provisions of (a) of this Section, the preexisting exemption shall be lost for that mine and the pertinent provisions of the Act and this Subchapter shall become applicable.

(c) Whenever it may appear to the Board that a preexisting exemption has been lost for a mine due to failure under 785:30-15-4(a)(1) or (a)(2), the Board shall give **the operator** thereof reasonable notice and an opportunity to show cause why the exemption should continue to apply. Absent a showing by the **mine operator** and a determination by the Board that the exemption should continue to apply, the exemption shall be deemed lost as of the date of the operator's failure under 785:30-15-4(a)(1) or (a)(2).

(d) Whenever it may appear to the Board that a preexisting exemption has been lost for a mine due to failure under 785:30-15-4(a)(3), the Board shall give **the operator** thereof reasonable notice thereof and a hearing opportunity to show cause as provided in (e) of this Section why the exemption should continue to apply.

(e) **The operator** may avoid loss of the preexisting exemption by submitting a Management Plan which contains the information provided in 785:30-15-6(a)(1) through (10) that demonstrates to the satisfaction of the Board that such consumptive use exceedance is:

(1) offset by augmentation of stream water flow or of groundwater by recharge as provided in 785:30-15-5; or

(2) not likely to reduce the natural flow of springs or streams emanating from the Sensitive Basin; or

(3) remedied by acquisition of sufficient groundwater rights within the ninety-day period after the reported exceedance.

(f) If **the operator** does not satisfy the preceding requirements to maintain the exemption, **the operator** shall come into compliance with 82 O.S. § 1020.2(D) and 785:30-15-3 ninety (90) days after the date of receipt by **the operator** of the notice from the Board. Upon application and good cause shown by **the operator**, the Board may grant additional time to come into compliance.

(g) Hearings under this Section shall be conducted in accordance with Title 785, Chapter 4 of the Oklahoma Administrative Code. (Emphasis added).

26. As stated in footnote 3, Ashby's position is that because it was not permitted by the ODM to operate the mine, it was not an operator, thus, Section 1020.2(E) was not triggered. Ashby argues that the exempt status under 82 O.S. §1020.2(C) is intact.

27. The OWRB argues that the Board has received documentation (Summary Judgment Motion, Exhibit 10) from the ODM that Ashby is considered a "subject mine" that is not exempt under 82 O.S. 1020.2(C) because Ashby *failed to remain exempt* when Ashby failed to file the reporting requirements pursuant to 82 O.S. 1020.2(E). *See* Response at 4. OWRB argues only the ODM can determine whether a mine is a "subject mine" and that if the ODM determines Ashby is a "subject mine" the OWRB cannot issue Ashby a pit water permit. *Id.*

28. Section 950(A) of Title 45 reads in pertinent part as follows:

A. For purposes of this section, a "subject mine" shall mean a mine, as defined in paragraph 2 of Section 723 of Title 45 of the Oklahoma Statutes, proposed for a location overlying a sensitive sole source groundwater basin or subbasin, exclusive of any mine that meets at least one of the following conditions:

1. As of November 1, 2019, is engaged in the permitted extraction of minerals from natural deposits; or

2. Satisfies the criteria of paragraph 1 or 2 of subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes; or

* * *

29. There is no question that Ashby meets 45 O.S. § 950(A)(2).

30. Further, as stated above, the parties have previously stipulated that Ashby has satisfied 82 O.S. § 1020.2(C)(2) by filing an application for a permit with the ODM before August 1, 2011. Likewise, the ODM has also acknowledged same. *See* Summary Judgment Motion, Exhibit 10, p.3.

31. Although the ODM is tasked with determining what a subject mine is, a determination of whether an exemption has been lost under 82 O.S. § 1020.2(E) must be determined by this Board, not the ODM.

32. The parties take differing positions of whether 82 O.S. § 1020.2(E) actually required Ashby to report operations prior to Ashby receiving a permit from the ODM that would entitle Ashby to operate.

33. The parties stipulated that ODM suspended Ashby's application until the property dispute with Hanson was resolved. That dispute was resolved in July of 2018.

34. Operator is defined as "any person, partnership, firm or corporation engaged in and controlling a mining operation." 45 O.S. § 723; OAC 460:10-1-5, 10-3-5.

35. Ashby convincingly argues that because the ODM had not approved the mining application, no mining operations had or could have legally occurred on the subject property, thus, Ashby was not an operator.

36. Likewise, the parties stipulated that Ashby has not operated a mine or conducted any mining operations at the site in question since its initial application on July 26, 2011.

37. A plain reading of the statute and the OWRB's rules supports Ashby's position. Therefore, because Section 1020.2(E) and OAC 785:30-15-4(a) filing requirements specifically apply to operators, as opposed to applicants, Ashby has not failed to comply with either, thus subjecting Ashby to lose its exempt status under 82 O.S. § 1020.2(C).⁶ Ashby has not been permitted to commence mining operations by the ODM.

38. Therefore, Ashby is not an operator and not legally required to comply with Section 1020.2(E).⁷

⁶ It appears that the scenario we see here was not likely contemplated when the deadlines for filings in 82 O.S. §1020.2(E) and OAC 785:30-15-4(a)(1) were established. The approximate seven-year delay caused by the litigation between Ashby and Hanson causes this matter to fall within a gray area, thereby showing the necessity for applicants like Ashby to present evidence to the Board showing why the reporting requirements pursuant to 82 O.S. §1020.2(E) should not cause loss of exemption.

⁷ The fact that Ashby attempted to comply with the reporting requirements prior to the issuance of a permit does not detract from Ashby's argument that it should not lose exempt status for failing to comply with

39. Any determination by this Board that Ashby has failed to comply with 82 O.S. 1020.2(E) is premature until such time Ashby receives a permit to operate from the ODM.

CONCLUSION

40. The Board hereby orders that Ashby Investments LLC's has satisfied 82 O.S. § 1020.2(C).

41. The Board hereby orders that Ashby Investments LLC is not in violation of any reporting requirements pursuant to 82 O.S. § 1020.2(E).

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Ashby Investments LLC is EXEMPT from the requirements of Oklahoma Groundwater Law under 82 O.S. §1020.2

IT IS SO ORDERED by the Oklahoma Water Resources Board in regular and open meeting this __ day of September, 2022.

OKLAHOMA WATER RESOURCES BOARD

Matt Muller, Chairman

ATTEST:

Jennifer Castillo, Secretary

(SEAL)

Section 1020.2(E). It appears this might have been done based on the protests received that triggered the Informal Conference held on February 21, 2020, at the ODM.