CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION

Cherokee Nation Environmental Protection Office 208 E. Allen Road, Tahlequah, OK May 3, 2011

PRESENT:

Commissioner: Marty Matlock, via conference phone

Commissioner: Ed Fite

APPROVED
DATE 4-7-11

STAFF AND GUESTS:

Roger Fields, CNB
Doug Bane, CNWM
Shaun West, CNEP
Nancy John, CNEP
Laura Adair, CNEP
Jackie Woodward, CNEP
Tom Elkins, CNEP
Jerrid Diffee, CNEP
Ryan Callison, CNEP
Sara Hill, CN Office of AG
Debra Wilson, CNGC
Rebecca LeClair, CNGC
Greg Butcher, Guest, Kenwood Water District

- 1. Meeting called to order by Commissioner Fite at 9:53 AM.
- 2. Commissioner Fite acknowledged and placed into the record the Record of Public Notice. Introductions by all meeting attendees.
- 3. Commissioner Matlock made a Motion to approve the minutes from the March 1, 2011 meeting. Commissioner Fite seconded the Motion, roll call vote. Minutes approved.
- 4 Public Comment None

5. Reports

- A. EPC & Environmental Programs & NEPA projects for Realty, IHS, NAHASDA, Roads Mr. Elkins reported that due to excessive rainfall, project work has increased. One project is repair of a bridge abutment. Mr. Elkins provided additional information regarding the need for environmental work in regards to funds used for the repair. Mr. Elkins stated, that in his opinion, when a bridge is built too many trees are knocked down. When bridges are being put in, even though the companies look like they are controlling their sediment, they don't. By volume, sediment is the biggest pollution problem in the United States. When there are issues, this needs to be brought to the attention of people for correction. When we get this level of flooding there are many issues that need to be investigated. Commissioner Fite stated that sediment has been a big issue, not a lot of folks think about that, they think about nutrients and chemical issues but they never think about the dirt. When you have dirty water, it absorbs heat and affects the fish community and water quality. Commissioner Matlock agrees with all on this topic. Sediment is an understated concern for the health of our waters.
- B. Natural Resources Department Mr. Gwin was not present, no questions regarding the report.
- C. Cherokee Nation Entertainment Mr. Fields For the month there were two minor spills at Outpost 2 in Fort Gibson, one half quart and one half gallon. Both were diesel, quickly responded to and cleaned. A surprise inspection was conducted by EPA on storm water/wastewater (April 26) on property in Ramona. No issues were noted. They were under the impression that the city of Ramona had closed their lagoons and we had not permitted for

onsite treatment of wastewater, so they were curious to what we were doing. Staff advised the inspectors that the wastewater goes to the City of Bartlesville and provided supporting documentation. Commissioner Fite asked if any glass companies had contacted them regarding recycling. Mr. Fields stated in the affirmative and it was looking fruitful. Commissioner Fite stated that he had been directing some glass companies and their lobbyist from the State Capitol to Cherokee Nation Entertainment to begin the process of capturing the glass stream from the Nation's entertainment processes. Hopefully in the near future it will be reported that glass is bring reused. Mr. Fields stated that they create a large volume and if it all comes back to Tulsa this would help support justification to be a crush back in the City of Tulsa.

D. Emergency Management – Mr. Fain was not present to report. Commissioner Fite stated that a FEMA Team and Oklahoma Floodplains Managers Association were here today to assess the damage of the flood, related to Illinois River flooding last week. The Illinois River at Watts set a new record two feet above the previous record at 28.6 feet. The previous record was 25.97. The Tahlequah gage did not get as high as it did in 1957 but it was still tied with 1916 at 25.97 feet. The record at Baron Fork was shattered at 28.51 feet. Remarkable flood event. Mr. Elkins stated that requests had been received from tribal citizens near nurseries that were flooded and their homes are being tested for organophosphates. Mr. Diffee stated it is Park Hill Nursery; Ginger Acres near the Heritage Center, there are 12-15 homes. Commissioner Fite asked if it was related to land being cleared and received an affirmative response. Commissioner Fite stated that one acre of land with that type of pre-existing vegetation will hold and retain about 300,000 gallons of water and release it slowly back into the environment for each surface acre. Commissioner Fite inquired about the nursery on highway 10, Midwestern Nursery. Mr. Elkins stated that no tribal citizens had contacted the program regarding this nursery.

6. Cherokee Nation Sanitary Landfill

- A. Report Mr. Bane Repair work has been ongoing, no major issues. A report was submitted stating that the leachate pond had reached two feet of free board, now it is 17 inches, all caused from rainfall. The pond has not received any leachate since we put in the tank system. The leachate is being hauled to be dealt with. The berm is going to be raised on the storm water pond at outfall 1, the rain outpaced the drawdown system's ability to keep up, the road and dike will be raised a couple of feet in case more rain. Commissioner Fite asked if the collection tanks took on more water during the rainfall event as an indicator of packing going on at the landfill. Mr. Bane responded that they will take on more water the month following as the rainfall filters down through the trash, it doesn't change right away, and it takes the water a while to get down through the trash. Our biggest problem is keeping cover on everything with the mud and the excessive rainfall. Mr. Elkins stated that in regards to the issues with the leachate pond that in the coming months a plan will be prepared to get rid of the leachate pond. Mr. Bane stated that they would like to convert it to another storm water detention for the long term. Deffenbaugh Industries chose not to renew their contract so tonnage is down and will be reflected in the next month's report. Other customers are being contacted and roll-off boxes have gone out for bid to start a limited hauling operation for the Stilwell, Watts, west Siloam areas.
- B. Compliance Issues Mr. West stated that Mr. Bane reported on the free board and the only other issue was the gas level on one of the wells is still elevated. Mr. Bane stated that they had received new directives on negotiations for gas remediation and hopes to be settled in the next 30 days. One obstacle will be Tribal Council approval, I'm confident that in the next 30 days will have a plan in place if we receive the needed approvals through Tribal Council. Commissioner Fite asked if the anticipated constraint will be financial. Mr. Elkins stated financial and lease approval for a third party to be onsite. The Commissioners support would be beneficial. Commissioner Fite commented that any time staff needs Commissioners at the Tribal Council meetings, we will go. Mr. Bane stated that when the plan is complete, he will confer with Mr. Elkins regarding attendance at a Committee and/or Council meeting. Mr. West stated that a quarterly inspection of the landfill was complete and it is operating very well except for that one issue.

- 7. CNEP Strategy regarding mercury contamination and fish consumption Mr. Elkins stated that Mr. Callison has a presentation on mercury and Ms. Hill will discuss the directions needing to be taken from a regulatory standpoint. Mr. Ryan Callison provided a brief description and introduction of the short film. At the conclusion of the film, Mr. Callison provided additional information regarding funding, program objectives, processes and current work and testing. Mr. Diffee was introduced to provide additional information in regards to the 106 program via a Power point presentation. Mr. Diffee and Mr. Callison answered questions and provide additional information regarding this project, related funding and long-term strategies. Mr. Elkins provided additional information on the status of current funding and the uses of funding. If the Commission believes an advisory is necessary, we will support it, but with the extent of sampling done we do not believe that from our data we cannot say there are issues that affect our people. Commissioner Matlock offered assistance this summer with this project via help from students. A risk assessment can be developed based upon the data to date and evaluate the potential risk and hazards associated with consumption of fish in Cherokee County. The need to monitor and have adequate data is understood, but I also understand the insidious and horrific nature of lead pollution and contamination on a developing brain. We cannot afford to allow our people to be affected that way. Mr. Elkins concurred. Mr. Elkins commented we have been working with Mr. Butcher from the Kenwood Water District and have a consent order from the EPA on the Kenwood Water District on their equipment, the Cherokee Nation has the funding to rehab and/or replace that equipment, the proposed consent order was to the Cherokee Nation government and we have been in negotiations with them about working with Nation and the Nation doing the regulatory work in the order itself to the Kenwood Water District organization. It is my belief that our proposed consent order will be the one to go forward. It is on trust land.
- Cherokee Nation Water Plan Development & Plan/Report on status of 2011 Water Resources Meeting - Ms. Hill stated that we have been working on the Cherokee Nation Water Plan. Oklahoma has been putting together the Oklahoma Comprehensive Water Plan for some time. Initially, tribe in Oklahoma were ignored, at some point it was brought to their attention to include the tribes in the process. Lindsay Robertson, a law professor at the University of Oklahoma has been contracted to work with the tribes. A series of meetings were held where tribal officials participated but there was really no avenue for government to government discussion between the State of Oklahoma and the tribes regarding water needs, what should go in the water plan. The Oklahoma Draft Water Plan has been published and is available on the OWRB website. It identifies the issues that exist regarding water rights in the state of Oklahoma. Cherokee Nation does not see it necessary to wait on the State of Oklahoma to determine what our water plan should be so we have begun the process to put together our own water plan. We are in the early planning process and we are going to put together a mission statement, a chronology that explains Cherokee Nation water, an inventory of our water resources are pulled from currently existing resources. We are also discussing if public meetings need to be held with Cherokee Nation citizens. Any legal questions concerning strategy can be discussed in Executive Session if needed concerning water rights. I am available to discuss with you any issues concerning the process. There are three upcoming meeting that Oklahoma has scheduled to get feedback on their draft water plan. It never hurts to reiterate that Cherokee Nation citizens want government to government engagement and we think that is the right course of Oklahoma to be engaged in, the state needs to take notice that these issues exist and need to be resolved in a manner that does not involve litigation and needless expense to all respective taxpayers. Commissioner Matlock stated that were are statutorily obliged to participate and to be engaged with the Cherokee Nation in this activity. We have an outstanding deliverable for the citizens of the Cherokee Nation, the annual Water Resources Meeting. Before I ask Tom address the strategy for that, I'd like to offer students that have project interest in helping to support the development of that inventory for the summer months starting June 1. Ms. Hill stated that she will take the students up on that offer. Mr. Elkins we would like to have a first meeting before the end of our fiscal year on September 30. Start off with a meeting at the Cherokee Nation headquarters and then go out for regional meetings and then finalize one back at the Cherokee Nation by the end of next fiscal year. Commissioner Fite asked, in regard to air monitoring at Stilwell, is there an opportunity to get

science folks from Stilwell High School involved with us so we may can tweak their interest in pursuing that for higher education. Mr. Callison responded that Larry Scrapper and Jackie Woodward have visited with several schools and have had visitors at the site. Mr. Elkins stated that the Stilwell site is impressive.

New Business - Commissioner Fite asked if Dwayne Fain has been involved with the recent flooding events in other areas in the Cherokee Nation. Are we identifying people that have been displaced from their homes and offering assistance. Mr. Elkins stated that Mr. Fain or Ms. Copeland would be asked to provide this information at the next meeting. Mr. Elkins stated that the Department of Energy has held regional meetings for tribal leaders regarding energy and energy development. Mr. Ross Swimmer is representing the Nation and working at Chilocco with wind energy issues and hydro power issues. We are working on developing an Energy Policy for the Cherokee Nation government and businesses. There have been some issues with tribal citizens regarding Tulsa business LaFarge with air emissions and possible hazards air pollutants. LaFarge has offered to provide a presentation regarding the business. Mr. Elkins stated that there is a lot of interest in this. They have offered to provide the presentation two weeks from today. Commissioner Fite and Commissioner Matlock both agreed that they are available that day for the presentation. Commissioner Fite asked about EPA denying Oklahoma's air permit for several coal fire generating plants, OG&E, PSO that scrubbers would have to be added. EPA wanted more stringent standards put on those plants. Mr. Callison stated that it may more of a recommendation rather than a requirement pursuant to a couple of new regulations coming out which affected the permit process. Commissioner Fite observed that tops of trees, in the upper canopy, do not look as healthy as the rest of the tree. Is air deposition an issue? Mr. Callison responded that EPA has primary and secondary standards. The ozone standard was due to be pushed out last August. Commissioner Fite asked Mr. Callison to follow up on his observation. Commissioner Matlock that it is probably related to regional stress phenomena due to changes in climate. Commissioner Matlock made a Motion to recess and reconvene at 9:30 AM on May 17, 2011 for the LaFarge presentation. Commissioner Fite seconded the Motion, roll vote, meeting recessed.

CHEROKEE NATION ENVIRONMENTAL PROTECTION COMMISSION

Cherokee Nation Environmental Protection Office 208 E. Allen Road, Tahlequah, OK RECONVENED MEETING – May 3, 2011 May 17, 2011

PRESENT:

Commissioner: Marty Matlock

Commissioner: Ed Fite

APPROVED
DATE (-7-1)

STAFF AND GUESTS:

Shaun West, CNEP
Laura Adair, CNEP
Tom Elkins, CNEP
Ryan Callison, CNEP
Nancy John, CNEP
Doug Bane, CNWM
Roger Fields, CNB
Dwayne Fain, CNEM
Sara Hill, CN Office of AG
Debra Wilson, CNGC
Jim Bachmann, LaFarge Industries

- 1. Meeting reconvened by Commissioner Matlock at 10:10 AM.
- 2. New Business Mr. Elkins introduced Mr. Jim Bachmann from LaFarge and stated that discussions have been held regarding public concerns. Mr. Bachmann provided a short introduction, background of a cement plant, and provided a power point presentation. At the conclusion of the meeting, Mr. Bachmann answered questions regarding the presentation and LaFarge. Commissioner Matlock asked Ms. Hill what jurisdiction does the Cherokee Nation have in this affair, if any. Ms. Hill responded has treatment of state on the air permitting side, I do not know enough about the history to give a good explanation of the Cherokee Nation's role in the air permitting process was or if there was a role for Cherokee Nation in the process. Mr. Callison stated that the site is not on tribal trust or individual trust land so it is not a permit issue. Mr. Elkins stated that we did get notification as an affected state. Ms. Hill stated that as long as that was done, which was required under federal law. In terms of permitting the storage issue, we can enforce federal law on tribal land but this is not a tribal land issue. Commissioner Green stated to Mr. Bachmann, that you are a generous provider of stakeholder information and for that we appreciate your time. Mr. Bachmann stated that we have reached out to Cherokee Nation along with multiple groups and we will continue to do so. Commissioner Fite asked if storage facilities for fuels had structures in place to protect leaking and pluming below those storage facilities. Mr. Bachmann replied, yes, there are gas detection devices that collect the gases and reintroduce them back into the tank. There are a variety of safeguards.
- 3. Announcement of upcoming meetings and events The next EPC meeting date is June 7, 2011 at 9:30 AM.
- 4. Adjournment Commissioner Fite made a Motion to adjourn, Commissioner Matlock seconded the Motion, meeting adjourned.