

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC 785: Chapter 5

Proposed for Adoption During 2022

A. A BRIEF DESCRIPTION OF THE PURPOSE OF THE PROPOSED RULES.

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing or is considering promulgation of amended or new rules in Oklahoma Administrative Code ("OAC") 785:5 as follows.

OAC 785:5-1-6 is proposed to be amended by updating the fee structure for long-term and provisional temporary stream water right permits to reflect the increased cost of labor for stream water permit applications and administration fees.

OAC 785:5-1-10 is proposed to be amended by updating the fee structure for long-term and provisional temporary groundwater right permits to reflect the increased cost of labor for groundwater permit applications and administration fees.

OAC 785:5-1-11 is proposed to be amended to show a cost associated with proposed changes in Chapter 35 with regards to an intent-to-drill system.

OAC 785:5-1-14 is proposed to be amended by updating the fees to reflect the increased cost of labor to amend stream water and groundwater permits and petitions for a change of ownership of existing water rights.

B. A DESCRIPTION OF THE CLASSES OF PERSONS WHO MOST LIKELY WILL BE AFFECTED BY THE PROPOSED RULES, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF THE PROPOSED RULES, AND ANY INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES.

Persons that apply for stream water or groundwater appropriation permits and amendments will most likely be affected by the proposed rules to increase application and petition fees. All persons who apply for water rights that are long-term (or permanent) and provisional temporary or wish to amend their permit to add water will be directly affected by the increased fee. Persons who are petitioning to transfer ownership of a water right would also be affected. Licensed, commercial groundwater well drillers will most likely be affected by the proposed fees for filing an intent-to-drill notice. Some or all of the cost may possibly be passed from the licensed well driller to the client or well owner. There has been no information submitted on the cost impacts from any public entities.

C. A DESCRIPTION OF THE CLASSES OF PERSONS WHO WILL BENEFIT FROM THE PROPOSED RULES.

The State's taxpayers will benefit through a reduction of general appropriations required for the administration of water rights and the well drillers program. The increased revenue would

also improve the effectiveness of the water rights permitting program by hiring unfilled positions, lower stress/higher staff retention rate, and a reduction in processing time of applications and petitions. Revenue from the fee for filing an intent-to-drill will provide funding for staff time spent processing intent-to-drill authorizations. A reduction in staff time is also anticipated regarding enforcement of construction standards and remediation of non-compliant wells. Staff spends a portion of their time on enforcement/remediation issues that is funded through general revenue (i.e. taxpayers dollars). Reducing non-compliance issues would therefore reduce the amount of general revenue needed for enforcement of construction standards.

D. A DESCRIPTION OF THE PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULES UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS, INCLUDING A LISTING OF ALL FEE CHANGES AND, WHENEVER POSSIBLE, A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE.

For OAC Section 785:5-1-6 and 785:5-1-10, the probable economic impacts should be relatively minor, based on the proposed amount of increase to make an application for a water right. These fee changes are detailed in section A, above. Individuals, entities, and political subdivisions that request to apply for a water right with a large quantity of water would therefore bear a greater amount of the fee costs (add justification table for application costs). The proposed wording in part C of both sections is a grammatical change to indicate that expedited provisional temporary permit applications will be an additional \$100 cost. The additional cost has historically been \$100 for an expedited application; however, previous verbiage lists the complete fee. For part (d) in both sections, the proposed deletion of the maximum administration fee of \$500 would impact those individuals or entities that have over 20 groundwater rights or greater than 7 surface water rights. The proposed additional fees for applications for enhanced recovery of oil covers the cost to review the complexity of applications and legal review.

For 785:5-1-6(g), the probable economic impacts should be relatively minor. This administrative fee would be for surface water applications that are put on administrative hold because of a lack of available surface water. The fee would cover the costs of keeping the application in active review on an annual basis, similar to active water right holders.

For OAC Section 785:5-1-11, the economic impact to the well drillers would be minimal. The recommended \$25 fee for an intent-to-drill notification, the proposed \$100 fee for an expedited notification, and the proposed \$250 fee for an intent-to-drill notification for wells requiring water rights or permits would likely be passed from the well driller to the well owner.

For OAC Section 785:5-1-14, the probable economic impacts should be relatively minor, based on the proposed amount of increase to amend water rights. These fee changes are detailed in section A., above. Individuals, entities, and political subdivisions that request to amend their permit with a large quantity of water would therefore bear a greater amount of the fee costs. The proposed additional fees to amendments overlying sensitive sole-source groundwater basins covers the cost to review the complexity of amendments and legal review. Petitions for change of ownership of long-term (permanent) water rights require a review of the permit, review of ownership documents, communication with petitioner, and cancellation or reduction of water

rights based on historical use (for surface water rights only).

E. THE PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A PROJECTED NET LOSS OR GAIN IN STATE REVENUES IF IT CAN BE PROJECTED BY THE AGENCY.

Probable costs to the OWRB may include actions to enforce the fee and reporting requirements. No other state agency will be required to assist in such enforcement efforts. The expected approximate revenue gain for the water rights program, which will replace general appropriation cuts and help to support water rights, would generate approximately \$257,000. Below is a summary:

- Doubling the administration fees for long-term applications parts a and c in 785:5-1-6, 785:5-1-10, and 785:5-1-14(a)(6) would generate about \$52,000 annually based on revenue from 2017-21.
- Increasing the administration fees for provisional temporary (90-day) permits in 785-5-1-6(b) and 785:5-1-10(b) would increase revenue by about \$153,000. (Doubling everything would be an increase of about \$57,000 if we chose this route)
- Increasing the fee to transfer ownership of a water right would generate an additional \$48,000 of revenue.
- The proposed fee for enhanced oil recovery in 785:5-1-6(f) and 785:5-1-10(g) would increase revenue by \$4,000. The OWRB only receives about 1 application or amendment for enhanced oil recovery per year, however, the amount of time staff dedicates to these applications is considerably more than a typical application or amendment.

The proposed fee for the intent-to-drill system for groundwater wells would generate about \$96,500 for groundwater wells requiring a water right in 785:5-1-11(o) and \$65,900 for domestic wells in 785:5-1-11(p). These fees would be increase funding levels for the Well Drillers Program.

F. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES WILL HAVE AN ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR REQUIRE THEIR COOPERATION IN IMPLEMENTING OR ENFORCING THE RULES.

In general, political subdivisions are not charged with the implementation or enforcement of the proposed rules; therefore, no general economic impact is anticipated for these entities. However, political subdivisions that own or maintain water permits, or those that intend to, would be required to submit fees. State statutes provide that other state agencies or state institutions are exempt from fee requirements.

G. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES MAY HAVE AN ADVERSE ECONOMIC EFFECT ON SMALL BUSINESS AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

The proposed fees are not expected to have an adverse economic impact on small business. Failure to have a properly and fully implemented water rights administration and well drillers programs for which the fee would be used could have a significant adverse impact on small businesses that count on adequate water rights.

H. AN EXPLANATION OF THE MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE COSTS AND A DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULES.

Compliance with proposed water rights fee schedules pose a minimal cost to applicants and water rights holders. Expected revenues will allow the OWRB to administer statutory requirements at a reduced cost to all taxpayers, putting a greater percentage of the cost on the applicant or permittee. With respect to water rights permitting the OWRB has operated at a reduced staffing level for several years. As a result of lower staffing, staff has examined application requirements and has reduced non-essential information in an effort to reduce processing time. However, the measures have not made a significant impact in the number of backlogged applications.

For the well drillers program, the OWRB has operated on a reactionary basis with regards to compliance with Chapter 35 rules. Although the program has worked with minimal regulation, it has cost taxpayers in the form of remediation of well sites and tracking down non-compliant well drillers. With an intent-to-drill system, checks and balances of proposed wells will put an emphasis on properly following construction standards. The proposed cost of an intent-to-drill fee will be minimal and would allow the program to hire additional staff to monitor incoming applications.

I. A DETERMINATION OF THE EFFECT OF THE PROPOSED RULES ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT AND, IF THE PROPOSED RULES ARE DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULES WILL REDUCE THE RISK.

To the extent that an inadequate water rights administration program may cause a public water supply to have an insufficient amount of water available for public use, the public health can certainly be affected by failure to have sufficient funding as generated by the proposed fees. The proposed fees associated with water rights administration are designed to increase funding levels to adequately administer water rights. The program has been operating at a reduced staff for several years, which puts public health at risk by not ensuring adequate well spacing between groundwater wells. Without proper administration of the program, issues such as well spacing and

specific well location information, may jeopardize the livelihood of water right holder and domestic groundwater well users.

The intent-to-drill system proposed in Chapter 35 is designed to reduce the risk to the environment and public safety by ensuring properly constructed groundwater wells are installed for the constituents of Oklahoma. The proposed fees in Chapter 5 will generate revenue to fund staffing levels for review of well construction specifications, ensuring greater protection of groundwater for the patrons of Oklahoma.

J. A DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULES ARE NOT IMPLEMENTED.

As indicated in item I above, if the fee rules are not implemented and other funding is not provided, water rights administration and the well drillers program will continue to be inadequate. Public health and safety would continue to be at risk through inadequate water rights administration and oversight of well construction standards. Specifically, risks to well spacing requirements could be detrimental to water right holders and citizens who use groundwater as their livelihood. In addition, without a fee for an intent-to-drill system, compliance of minimum construction standards will continue to be insufficient, which is an extreme risk to the public health and safety with regards to potential contamination of groundwater. In addition, there is a need to ensure due process through administrative hearings when water right protests are presented to the Board.

K. THE DATE THE RULE IMPACT STATEMENT WAS PREPARED AND IF MODIFIED, THE DATE MODIFIED:

This rule impact statement was reviewed and approved on November 21, 2021 by Christopher Neel, Division Chief, Water Rights Administration Division, Oklahoma Water Resources Board.

This rule impact statement was reviewed and approved on _____ by:

**Christopher R. Neel, Division Chief
Water Rights Administration Division
Oklahoma Water Resources Board**