

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT

for Rule Amendments in OAC 785: Chapter 5
Proposed for Adoption During 2018

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 described below.

Sections 785:5-1-1, 785:5-1-2, and 785:5-1-3 are being amended to remove unnecessary definitions and outdated statutory references.

A recommendation is also proposed relating to stream water permit applications and administration (785:5-1-6) by increasing the existing amounts for each category of fee. The circumstances creating the need for the proposed amendments include the need to generate additional revenues to maintain current level of effort to implement the program and process applications in an efficient manner.

A recommendation is proposed to revoke the fee for a watercourse reclamation permit (785:5-1-7). While it is still necessary to obtain Board approval to reclaim water from a watercourse, this approval may be granted as part of a permit to use stream water; therefore, a separate fee is not necessary.

A recommendation is also proposed to amend the rule on fees for groundwater application and administration (785:5-1-10) to increase amounts for each category of fee. The circumstance creating the need for the proposed amendments include the need to generate additional revenues to maintain current level of effort to implement the program to continue and process applications in an efficient manner.

A recommendation is also proposed to amend the rule on fees for stream water and groundwater petition fees (785:5-1-14) to increase each category of fee. The circumstances creating the need for the proposed amendments include the need to generate additional revenues to maintain current level of effort to implement the program and to continue to process petitions to amend water rights in an efficient manner.

A recommendation is also proposed to amend 785:5-1-15 and 785:5-1-16 to update statutory references and to update the sections relating to the copying and transmittal of agency audio recordings. The amendments to these rules do not increase any fee and revoke fees that no longer reflect the operations of the agency.

A recommendation is also proposed to amend the fees for loan applications (785:5-1-17). The amendments do not increase the current schedule of fees, but sets the current fee schedule as the maximum that may be charged.

A recommendation is also proposed to add a new fee for requests for Water Quality Standards site specific criteria (785:5-1-19). The process of reviewing requests for site specific criteria involves significant staff time as well as adding the approved site specific criteria to the Oklahoma Water Quality Standards. The fee reflects the average amount of staff time spent reviewing and processing a site-specific criteria.

A recommendation is also proposed to add a filing and application fee for aquifer storage and recovery permits. Aquifer storage and recovery is a new Board program specifically authorized by Title 82, Section 1020.2A of the Oklahoma Statutes. The fee will be based on the estimated staff time necessary to process and review documents submitted to support the application, perform any necessary inspections, and to provide the opportunity for notice and a hearing.

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.

No persons or entities are likely to be affected by the proposed changes to Sections 785:5-1-1, 785:5-1-2, and 785:5-1-3.

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 (Sections 785:5-1-6; 785:5-1-10; 785:5-1-14). All persons who hold active water rights that are long-term (or permanent) and provisional temporary will be directly affected by the increased fee. There has been no information submitted on the cost impacts from any public entities.

A proposed amendment to the fee in 785:5-1-17 do not increase the current schedule of fees, but sets the current fee schedule as the maximum that may be charged. .

The proposed new fee created in Section 785:5-1-19 will impact a category of Oklahoma Pollutant Discharge Elimination System ("OPDES") permit holders or applicants. Generally, a water effects ratio study results in a relaxed site-specific metals criteria, as compared to the statewide criteria, which provides greater regulatory flexibility for the permittee. OWRB has not received any cost information from any public or private entity regarding this fee.

The proposed new fees created in Section 785:5-1-20 will only apply to persons or entities who intend to conduct Aquifer Storage and Recovery ("ASR") activities pursuant to the newly enacted statute, 82 O.S. § 1020.2A. ASR projects generally store readily available water (i.e. stream water, storm surge, treated wastewater, etc.) during times of high availability and low cost – water which would otherwise remain or be discharged into rivers and streams and leave the state unused. The stored water is then extracted pursuant to conditions of an ASR permit. Ideally, the stored water will be used during times of low water availability when the cost competing sources of water are relatively high. The ASR activity fees are intended to offset time and expense of agency staff reviewing and administering ASR permits and permit applications. These only entities affected by these fees are private or public entities desiring to conduct ASR activities.

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

No persons or entities are likely to benefit by the proposed changes to Sections 785:5-1-1, 785:5-1-2, 785:5-1-3 or 785:5-1-17.

With respect to the fee increases in the proposed changes to OAC Sections 785:5-1-6; 785:5-1-10; and 785:5-1-14, the State's taxpayers will benefit through a reduction of general appropriations required for the administration of water rights.

The proposed new fee created in Section 785:5-1-19 will benefit a category of Oklahoma Pollutant Discharge Elimination System ("OPDES") permit holders or applicants. Generally, a water effects ratio study results in a relaxed site-specific metals criteria, as compared to the statewide criteria, which provides greater regulatory flexibility for the permittee. The regulatory

flexibility is in the form of less stringent permit limits resulting in presumed cost savings because the permittee may avoid operational improvements and or treatment upgrades, which may be necessary under the statewide criteria.

With respect to the proposed new rule language in Section 785:5-1-20, the new fees for ASR activities will benefit state taxpayers from a more thorough, comprehensive, and timely review of site plans and annual reports as well as greater resources available to investigate possible concerns and/or complaints from persons within the area of influence or the persons conducting such ASR activities.

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.

No persons or entities are likely to be impacted by the proposed changes to Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, 785:5-1-16, and 785:5-1-17.

For Sections 785:5-1-6; 785:5-1-10; and 785:5-1-14, the probable economic impacts should be relatively minor, based on the proposed amount of increase in water rights fees. These fee changes are detailed in section A., above. Individuals, entities and political subdivisions that hold multiple active water rights and would therefore bear a greater amount of the fee costs.

The proposed new fee created in Section 785:5-1-19 will impact a category of Oklahoma Pollutant Discharge Elimination System ("OPDES") permit holders or applicants. Generally, a water effects ratio study results in a relaxed site-specific metals criteria, as compared to the statewide criteria, which provides greater regulatory flexibility for the permittee. The regulatory flexibility is in the form of less stringent permit limits resulting in presumed cost savings because the permittee may avoid operational improvements and or treatment upgrades, which may be necessary under the statewide criteria. OWRB staff did not receive any information from affected persons, political subdivisions, or other state agencies regarding the probable economic impact of the proposed rules.

For Section 785:5-1-20, the overall economic impact of the proposed rules to public or private entities who desire to conduct ASR activities, including political subdivisions, is likely to be a benefit in the long term. Taxpayers will benefit because the fees will allow the agency to administer ASR application review and ASR permits without the need for additional appropriations from the state legislature. Fees for application to conduct ASR projects will be \$5,000 based on meetings with applicants, staff time to visit the proposed ARS site, and review the site specific ASR plan. A separate annual reporting fee of \$2,000 is required by January 31st of each year unless otherwise specified by the OWRB. Such annual reporting is essential in order to account for the amount of water in storage as well as the amount of stored water being recovered or intended to be recovered. The proposed ASR fees are not likely to have a significant economic impact on any of the classes of persons or entities affected. Those fees include a one-time application fee and annual permit maintenance fees, and will be borne by those conducting ASR activities. Compared to the capital construction and operating costs associated with ASR projects and the anticipated economic benefits, these fees are not likely to have a significant impact.

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.

No persons or entities are likely to be affected by the proposed changes to OAC Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, 785:5-1-16, and 785:5-1-17.

With respect to the fee increases in the proposed changes to OAC Sections 785:5-1-6; 785:5-1-10; and 785:5-1-14, no extraordinary costs to the agency are anticipated. No other state agency will be required to assist in implementing or enforcing the fees. The expected approximate revenue gain for the water rights program, which will replace general appropriation cuts and help to support water rights, will generate approximately \$110,000 to \$120,000 based on activity in fiscal year 2017.

Oklahoma's state environmental agencies currently implement and/or enforce water quality standards through existing programs under their respective jurisdictions. The proposed new fee does not create any new implementation programs. The proposed new fee created in Section 785:5-1-19 will impact a category of Oklahoma Pollutant Discharge Elimination System ("OPDES") permit holders or applicants. However, it is not expected that this new fee will require the Oklahoma Department of Environmental Quality (ODEQ) to modify their implementation and/or enforcement activities related to OPDES permitting.

For Section 785:5-1-20, the expected estimated revenue gain for the Aquifer Storage and Recovery activities would generate approximately \$4,000 to \$10,000 annually based on current interested parties and anticipated projects. The fees charged for ASR permit application review and for annual ASR permit reporting will merely mitigate the additional time and expense of reviewing additional permits.

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.

No persons or entities are likely to be impacted by the proposed changes to OAC Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, and 785:5-1-16. 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.

Because most political subdivisions are eligible entities for purposes of financial assistance of the OWRB, such political subdivisions who apply for financial assistance will be required to cooperate in completing applications and paying loan application fees in OAC Section 785:5-1-17. There should be no significant economic impact on any political subdivisions.

Political subdivisions are not expected to have implementation or enforcement responsibilities associated with the proposed new fee created in Section 785:5-1-19. However, political subdivisions such as, counties and/or municipalities that are required to obtain an OPDES permit for discharges may be impacted by the proposed new rule if they seek a site-specific criteria for metals.

Political subdivisions that own or maintain water permits, or those that intend to conduct newly-authorized ASR activities, would be required to submit fees under the proposed changes to OAC Sections 785:5-1-6, 785:5-1-10, 785:5-1-14, and 785:5-1-20. 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.

No persons or entities are likely to suffer an adverse impact by the proposed changes to OAC Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, 785:5-1-16, and 785:5-1-17.

The proposed fees in OAC Sections 785:5-1-6, 785:5-1-10, 785:5-1-14, and 785:5-1-20 are not expected to have a significant adverse economic impact on small business. While small businesses who hold or apply for water rights permits will bear an increased cost, this cost will be mitigated by an improved capacity by the agency to process permit applications and resolve disputes in a timely manner. Failure to have a properly and fully implemented water rights administration program for which the fee would be used could have a significant adverse impact on small businesses that count on adequate water rights. Aquifer Storage and Recovery fees are unlikely to have an adverse economic effect on small business within the meaning of the Oklahoma Small Business Regulatory Flexibility Act.

It is possible that the proposed new fee created in Section 785:5-1-19 may result in an economic effect on small businesses (defined in 75 O.S. § 502) if the small business is required to obtain an OPDES permit for discharge of wastewater and seeks site-specific metals criteria.

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.

No persons or entities are likely to be affected by the proposed changes to OAC Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, 785:5-1-16, and 785:5-1-17..

Compliance with proposed water rights fee schedules under OAC Sections 785:5-1-6, 785:5-1-10, and 785:5-1-14 will not impose excessive costs 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. There are not less costly, nonregulatory, or less intrusive methods for achieving the purpose of the proposed changes.

The proposed new fee created in Section 785:5-1-19 will impact a category of Oklahoma Pollutant Discharge Elimination System ("OPDES") permit holders or applicants. Generally, a water effects ratio study results in relaxed site-specific metals criteria, as compared to the statewide criteria, which provides greater regulatory flexibility for the permittee. The regulatory flexibility is in the form of less stringent permit limits resulting in presumed cost savings because the permittee may avoid operational improvements and or treatment upgrades, which may be necessary under the statewide criteria. However, this not a mandatory fee and no permittee will be required to develop site-specific metals criteria.

The compliance costs associated with the proposed fees in OAC 785:5-1-20 are only those imposed by the legislature's charge to the agency in the newly-enacted 82 O.S. § 1020.2A and the legislature's previous charges under Oklahoma Groundwater Law and the Administrative Procedures Act, which are not within the OWRB's discretion. Thus, the OWRB is not able to alter or to use nonregulatory or less intrusive methods to achieve the same purpose. The fees associated with ASR permit application and ASR permit annual use fees are calculated to offset the use of agency resources associated with administering these permits so as to not require additional appropriated funds from the legislature.

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.

No persons or entities are likely to be affected by the proposed changes to OAC Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, 785:5-1-16, 785:5-1-17, and 785:5-1-19.

With respect to the proposed changes to OAC Sections 785:5-1-6, 785:5-1-10, and 785:5-1-14, 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.

Likewise, fees intended to support the administration of ASR applications and permits under the proposed OAC 785:5-1-20 generally promote public health, safety and environmental interests by providing necessary funding for the agency to implement new and existing statutory responsibilities. The purposes and anticipated effects of ASR projects are aligned with the general policy of Oklahoma Groundwater Law; specifically, to promote "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[]." See 82 O.S. § 1020.2(A). The ASR projects intend to accomplish that purpose by providing a means to artificially store water underground for use at a later time. Subject to the limitations and conditions in an ASR permit, that stored water will be available for beneficial use during times of drought, or high demand.

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

No persons or entities are likely to be affected by the proposed changes to OAC Sections 785:5-1-2, 785:5-1-3, 785:5-1-7, 785:5-1-15, 785:5-1-16, and 785:5-1-17.

As indicated in item I above, if the proposed changes in OAC Sections 785:5-1-6, 785:5-1-10, and 785:5-1-14 are not implemented and other funding is not provided, water rights administration will continue to be inadequate and if droughts or other issues arise and sufficient water supplies cannot be obtained, adverse consequences to the public health and safety are possible.

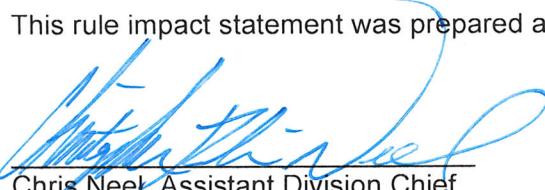
The Oklahoma Water Quality Standards contain statewide criteria for metals, which protect aquatic life beneficial uses. If the proposed new fee created in Section 785:5-1-19, supporting the development of site-specific metals criteria, is not adopted it is not expected to

affect public health, safety, or the environment because the statewide criteria is still effective for application in various implementation programs.

Failure to implement the ASR activity fees as proposed in OAC 785:5-1-20 will likely impair the agency's ability to implement the statutory directives found in the newly-enacted 82 O.S. § 1020.2A. Failure to implement those directives is likely to maintain the status quo in Oklahoma; namely that state's groundwater resources will continue to become extremely taxed during times of drought or peak demand, and may foreseeably be exhausted or severely impaired for future use.

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

This rule impact statement was prepared and approved on December 1, 2017, by:



Chris Neel, Assistant Division Chief
Planning and Management Division
Oklahoma Water Resources Board