OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 30
Proposed for Adoption During 2019

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") 785:30 as follows.

OAC 785:30-1-2 is proposed to be amended to add certain definitions.
OAC 785:30-3-1 is proposed to add general application requirements.
OAC 785:30-3-5.1 is proposed to revoke certain prohibitions.
OAC 785:30-3-6 is proposed to establish certain well spacing.
OAC 785:30-3-6 is proposed to expand the list of identified springs discharging more than 50 gallons per minute and emanating from a sensitive sole source groundwater basin in the United States Geologic Survey’s National Water Information System database.
OAC 785:30-7-4 is proposed to allow the addition or replacement of a well for the purpose of exercising prior rights or existing permits.
Appendix A is amended to remove an Application for a Permit to Use Groundwater.
Other amendments may be considered or proposed as a result of public comments.

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 or entities that wish to obtain a groundwater permit to use Marginal Quality groundwater are the most likely affected classes. The changes proposed are necessary to conform the administrative rules to recent statutory changes authorizing the Board to monitor and regulate marginal water wells. This proposed change will allow the use of a previously unused source of water for water users in the State. Cost of the application fee will be incurred by the applicant or the user of the Marginal Quality water (OAC Sections 785:30-1-2).

Persons or entities that apply for a groundwater permit will be required to use groundwater application forms provided by the Board or found on the Board’s website. 785:30 Appendix A and a reference in 785:30-3-1 are proposed to be removed due to the version of the form being an outdated version that is no longer being utilized by the Board. No additional costs will be associated with the proposed rule.

The statutory provisions authorizing this section, 82 O.S. § 1020.11a, were repealed in 2011, and the section no longer has any application within the Board’s implementation of the program. Therefore, 785:30-3-5.1, which contains provisions regarding groundwater permits for
swine animal feeding operations are proposed to be revoked. Since this statutory provision was revoked in 2011, no persons or entities should be affected by the proposed rule change.

Persons or entities that file an application to add a groundwater well will be affected by this proposed rule if the well is within the proposed setback distances of 1320 feet for bedrock basins or 660 feet for alluvial and terrace basins in Temporary unstudied basins. The proposed amendment to 785:30-3-6 is intended to implement recent legislative amendments to Oklahoma Groundwater Law (Senate Bill 1294) which authorized the Board to enact well spacing rules over basins for which no maximum annual yield has been determined. Exceptions to the spacing can be approved by our Board, but costs associated with providing evidence to obtain the exception or the cost of having to drill a well in compliance with the new spacing distances will be incurred by the applicant or groundwater permit holder. Existing users will not be affected by the rule, but will be provided additional protection of their existing domestic well or permitted well.

Persons or entities that have springs on their property or applicants that apply for a groundwater permit overlying the Arbuckle Simpson Aquifer could be affected by the proposed amendment to 785:30-3-6. This proposed change will maintain a current list of identified springs discharging more than 50 gallons per minute and emanating from a sensitive sole source groundwater basin to include springs identified in the United States Geologic Survey’s National Water Information System database which were not listed in Appendix D. No additional costs would be associated with the proposed rule change.

Persons or entities that are permit holders of groundwater permits that apply to add additional wells to their existing permit on land owned or leased by the permit holder or with written permission from the landowner may be affected. The amendment to 785:30-7-4 will allow holders to reconcile differences in well location requirements between new permit applicants and existing permit holders in the Board’s rules. No additional costs should be incurred by the affected classes.

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

Owners or users of Marginal Quality groundwater will benefit from the regulatory framework of 785:30-1-2 by utilizing a previously unused source of water for oil and gas, public supply or other beneficial purpose.

Revoking an outdated version of the Board’s groundwater application form from Chapter 30 Appendix A will benefit Board staff for clarification purposes and all applicants applying for a new groundwater permit.

Revoking 785:30-3-5.1, which contained provisions regarding groundwater permits for swine animal feeding operations, will benefit swine animal feeding operations since section, 82 O.S. § 1020.11a, was repealed in 2011, and the section no longer has any application within the Board’s implementation of the program.

Amending 785:30-3-6 to allow the Board to implement well spacing rules for unstudied groundwater basins will benefit all existing domestic users and permits holders by requiring that any new wells be constructed to meet separation distances or obtain a spacing exception.
Persons applying for groundwater permits or adjacent landowners will benefit from having a current listing of springs identified in the United States Geologic Survey’s National Water Information System database which was shown in Appendix D.

Holders of groundwater permits that wish to add additional wells to their existing permit on land owned or leased by the permit holder or with written permission from the landowner will benefit from this change. This change reconciles differences in well location requirements between new permit applicants and existing permit holders in the Board’s rules.

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.

The probable economic impacts should be relatively minor for all 785:30 proposed changes. Marginal Quality users or permit holders would be required to submit the same fees as current freshwater users; however a new construction permit fee of $500.00 will be required for a Marginal Quality well construction permit. Revoking the groundwater application form from Appendix A and the swine animal feeding operation rules will have no probable economic impact on current persons or subdivisions. Implementing spacing requirements for applicants may require additional studies be completed by the applicant in order to obtain an approved spacing exception. There should be no probable economic impacts to affected classes, persons or political subdivisions by utilizing a more accurate USGS spring inventory list. Amending 785:30-7-4 to allow holders of groundwater permits to add additional wells to their existing permit on land owned or leased by the permit holder or with written permission from the landowner should actually reduce the economic 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 extraordinary costs to the OWRB or other agencies are anticipated. It is anticipated that the proposed amendments will have no effect on state revenues. Probable costs to the OWRB may include actions to enforce the water use permit requirements. No other state agency will be required to assist in implementing or enforcing the proposed rules amendments.

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 785:30-1-2, 785:30-3, 785:30-7-4 and Appendix A. 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 partake in the drilling of a marginal quality groundwater well would be required to submit fees under the proposed changes to OAC Sections 785:5-1-10 and 785:5-1-11. 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.

Small businesses are not expected to be impacted by the proposed changes to OAC Sections 785:30-1-2, 785:30-3, 785:30-7-4. Marginal Quality groundwater well fees are unlikely to have an adverse economic effect on small business within the meaning of the Oklahoma Small Business Regulatory Flexibility Act.

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.

There are no measures to be taken to minimize compliance costs, and there are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rules.

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.

The proposed rules should have very little to no negative effect on the public health, safety and environment. Section 785:30-3-6 will provide protection for existing groundwater users. Proper administration of the Marginal Quality permitting program under Section 785:30-1-2 may reduce the risk of groundwater contamination due to marginal quality water wells that are not permitted and constructed according to the State’s minimum standards.

J. A DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULES ARE NOT IMPLEMENTED.
If the proposed rules are not implemented, there could be minimal detrimental effect on the public health, safety and environment. With respect to the proposed changes to Section 785:30-1-2 for Marginal Quality, users of this type of water may have an insufficient amount of water available for private and public use causing fresh water sources to be utilized instead. If droughts or other issues arise and sufficient water supplies cannot be obtained, adverse consequences to the public health and safety are possible. In regard to 785:30-3-6, existing wells could be impacted by newly drilled wells.

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

This rule impact statement was reviewed and approved on December 1, 2018 by Kent Wilkins, Chief, Planning and Management Division, Oklahoma Water Resources Board.