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 785:5-1-9 is proposed to be amended to reflect increased cost of labor to inspect and review dam safety applications.

OAC 785:5-1-11 is proposed to add an intent-to-drill fee for newly instituted marginal quality water rules in Chapter 35.

OAC 785:5-1-14 is proposed to be amended by updating the fee to reflect the increased cost of labor to amend stream water and groundwater permits.

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 submit an application for construction, repair, or modification of a dam and those with existing dams could be affected by the proposed rules to pass along a portion of costs by increasing application and inspection review/hazard verification fees (OAC Sections 785:5-1-9).

Well drillers who wished to drill a marginal quality water well will most likely be affected by the proposed rules to add an intent-to-drill fees (OAC Sections 785:5-1-11).

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 (OAC Sections 785:5-1-14). All persons who hold active water rights that are long-term (or permanent) and wish to amend their permit to add water will be directly affected by the increased fee. 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, well drillers and dam construction applications and ongoing oversight of dam hazard potential. All citizens of the State will benefit through further clarification of the Board’s ability to impose enforcement actions on unauthorized users of water, reducing potential threats to water quality, interference issues with current water right holders,
and to public water available for future appropriation. Dam owners and downstream landowners will benefit from a quicker review of applications to rehabilitate dam structures to ensure that those dams are safe. All marginal quality wells drillers will benefit from the planning process in place to ensure that the marginal water well is constructed according to the State’s minimum construction standards.

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

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, based on the proposed amount of increase in OAC Section 785:5-1-9. The fees for the application to construct, enlarge, or modify a dam, for which the construction cost is less than $99,999, is $500; which on average will cost the applicants 0.5% to 1% of the total construction cost. Fees for application to construct, enlarge, or modify a dam, for which construction cost is $100,000 through $19,999,999, would not exceed $5000; which will cost the applicants less than 0.5% of total construction cost for any construction more than $1,000,000.00.

The probable economic impacts should be minor, based on the proposed amount in OAC Section 785:5-1-11. The fee to file intent to drill for marginal water well construction is $500.00 which will be offset by new opportunity that allow the licensed well drillers to drill marginal quality water in the State.

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.

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 impacted by the proposed changes to OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14.

With respect to the fee increases in the proposed changes to OAC Sections 785:5-1-9 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, would generate approximately $20,000 to $30,000 based on activity in fiscal year 2017. Increase in revenues from proposed dam safety application fees are expected to be approximately $2,500 annually.

With respect to the proposed fee in OAC Section 785:5-1-11, probable costs to the OWRB may include actions to enforce the fee. No other state agency will be required to assist in implementing or enforcing the fees. The expected increase revenue for well drillers program is approximately $2,500 annually.

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 785:5-1-9, 785:5-1-11, and 785:5-1-14. 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 dams or partake in the drilling of a marginal quality groundwater well would be required to submit fees under the proposed changes to OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14. 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 be impacted by the proposed changes to OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14.

The proposed fees in OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14 are not expected to have an adverse economic impact on small business. 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. Dam safety and 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.
No persons or entities are likely to be impacted by the proposed changes to OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14.

Compliance with proposed water rights fee schedules under OAC Sections 785:5-1-14 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. There are no less costly, nonregulatory, or less intrusive methods for achieving the purpose of the proposed changes. The fees associated with Dam Safety inspections and marginal quality groundwater well intent-to-drill fees are calculated to offset the use of agency resources associated with administering these activities 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 impacted by the proposed changes to OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14.

Inadequate administration of dam safety may cause an increased risk to downstream landowner’s health and safety should a dam fail due to lack of dam construction oversight.

Inadequate administration of well drillers program may cause an increased risk of groundwater contamination due to marginal quality water wells that are not constructed according the State’s minimum standards.

With respect to the proposed changes to OAC Section 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.

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 impacted by the proposed changes to OAC Sections 785:5-1-9, 785:5-1-11, and 785:5-1-14.

As indicated in item I above, if the proposed changes in OAC Section 785:5-1-14 are not implemented and other funding is not provided, funding for water rights administration will continue to be inadequate. If droughts or other issues arise and sufficient water supplies cannot be obtained, adverse consequences to the public health and safety are possible. Additionally, the dam safety and well drillers program will not be able to conduct inspections or hazard verifications and the potential of adverse consequences to the public health, safety, and environment are possible.
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.