

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:20-1-2 Definitions [AMENDED]

785:20-1-5 Purposes for a water appropriation [AMENDED]

Subchapter 3. Application requirements and processing

785:20-3-9 Defective applications; when applications deemed withdrawn
[AMENDED]

Subchapter 5. Notice, hearings and Board actions

785:20-5-5 Factors relating to statutory elements for application approval
[AMENDED]

SUMMARY:

The Oklahoma Water Resources Board ("OWRB") proposes to amend this Chapter of the Oklahoma Administrative Code ("OAC") as follows:

Amend the definition of "enhanced recovery of oil and gas" to clarify that water used for fracturing is not considered to be enhanced production, which in turn would clarify that an applicant proposing to use water to fracture an oil or gas formation would not need to provide the additional information required by the substantive rules concerning enhanced recovery of oil and gas. The circumstances which created the need for the rule included an individual proceeding in which an issue was raised whether the use of water for fracturing activities of an oil company triggered the additional requirement in the rule to present information about enhanced recovery of oil or gas. Additionally, there is significant oil and gas drilling in southeast Oklahoma in which fracturing the oil or gas bearing formations with water is a common practice, and the additional information required by existing rule for enhanced recovery would not be helpful in making the decision about use of the water.

Amend the rule on purposes for a water appropriation to provide flexibility in the rule regarding the need for a water right for a non-consumptive use if a consumptive purpose is also authorized, by adding language "unless otherwise determined by the Board", which would also make the rule consistent with the provision about need to obtain permit for hydropower and other non-consumptive uses. The circumstances creating the need for the rule was the staff review of the rules to ensure consistency among provisions. The intended purpose of the rule is to provide a consistent approach to non-consumptive purposes for use of water.

Amend language on deeming applications withdrawn, to clarify treatment of applications pending before the law was amended in 2000 and applications that are placed in pending status after the law was amended, and to provide more flexibility to the Board. The circumstances creating the need for the rule was the staff review of the rules to ensure consistency among rules and the statutes. The intended purpose of the rule is to provide for consistency and flexibility for the public benefit.

Amend the rule concerning information needed to show that the applicant has a present or future need for the water, in accordance with the recommendation by the

State Auditor, to obtain copies of water sale contracts, financial reports, etc. The circumstances creating the need for the rule include the State Auditor's report. The intended purpose of the rule is to implement the recommendation of the State Auditor.

Other amendments may be considered as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board general authority and duties in 82 O.S. Section 1085.2; stream water use law in 82 O.S. Section 105.1 and following.

COMMENT PERIOD:

Persons wishing to present data, views, or arguments orally or in writing may do so at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 7, 2008.

PUBLIC HEARING:

A public hearing is scheduled for January 8, 2008, beginning at 9:30 A.M. in the Board Room of the OWRB's offices located at 3800 North Classen, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide to the OWRB, within the Comment Period from November 15, 2007 through January 7, 2008, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Dean Couch at 3800 North Classen, Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 7, 2008.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118, upon prepayment of the copying charge, or on the Board's web site, www.owrb.state.ok.us.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review at the OWRB's office, 3800 North Classen, Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at www.owrb.state.ok.us.

CONTACT PERSON:

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