

OKLAHOMA WATER RESOURCES BOARD
RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 5
Proposed for Adoption During 2008

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

The purpose of the proposed rules is to implement the intent of the Oklahoma Water Resources Board (OWRB) to increase certain fees to be used to partially support water rights administration activities and studies that are required to fully carry out the mandates of statutes, as follows:

Replace the existing annual file maintenance fee (that ranges from \$10 to \$25) with an annual water rights administration fee to be due with each annual stream water use report that must be filed. The fee is proposed to be \$100.00, regardless of the amount authorized by the stream water right. With a total of approximately 2,500 stream water rights that are considered active, the Board anticipates generating about \$250,000 per year to be used to fund part of the cost to administer the water rights programs as required by the various statutes concerning the regulation of the right to use water. The current stream water file maintenance fee generated less than \$23,000 for FY 2007. There is no proposal to impose an annual water rights administration fee for groundwater use. There are approximately 12,000 groundwater permits.

The stream water permit application fees are proposed to be increased from the current range (depending on the volume requested) of \$125 to \$2000 to a new range of \$250 not to exceed \$4000. In FY 2007, regular stream water permit application fees generated under \$20,000. Approximately 40 applications for long-term permits to use stream water are filed annually.

Likewise, the groundwater permit application fees are proposed to be increased from the current range (depending on the volume requested) of \$125 to \$2000 to a new range of \$250 not to exceed \$4000. In FY 2007, long-term groundwater permit application fees generated under \$14,000. Approximately 90 applications for long-term groundwater use permits are filed annually.

If the number of applications and volumes requested remained the same, the revised application fee schedule as proposed would generate approximately \$40,000 for stream water and approximately \$28,000 for groundwater (total of \$68,000).

The last time fees of the Oklahoma Water Resources Board were increased was 1995. All fees charged by the OWRB (long-term application and provisional temporary permit application fees, petition fees, copies of maps, etc.) generate a total of about \$340,000 per year. State appropriated funds of approximately \$500,000 are utilized for the water rights administration program, but that includes about \$150,000 cost match for the U.S. Geological Survey stream gaging program. The total water rights administration program costs approximately \$1.6 million per year. For the last several years, the OWRB has leveraged state appropriated funds and special funding for individual projects to match federal funds for water studies. The state appropriated funds have been steadily decreasing over the last several years, and the OWRB has been delaying studies or simply not fulfilling statutorily mandated duties to pay budgeted expenditures. The anticipated revenues generated from the proposed annual water rights administration fee and increased application fees would be used to provide base

funding for staffing and other costs necessary to implement requirements of state law, including the completion and update of many hydrological studies and data collection needed to ensure proper administration and protection of water rights for the required security, certainty, and stability of water rights and property rights for current and future economic development and prosperity and health, safety and welfare of all state citizens.

Because the proposed fee would be due with the filing of annual stream water use reports, the annual fee is not due for the provisional temporary permits that are authorize use of water for only 90 days. These kinds of permits are often obtained by oil and gas drilling companies who need relatively small amounts of water for a short duration while drilling the oil and gas well.

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.

All persons who hold existing active stream water rights that are long-term or permanent will be directly affected by the annual stream water use fee. All persons who apply for new long-term permits to use stream water or groundwater would be affected by the proposed increase in application fees. There has been no information submitted on the cost impacts from any public entities. In 2006, the Board adopted proposed rules for an annual water rights administration fee for both stream water and groundwater rights, but those rules were not ultimately promulgated. During the discussions of the then proposed fees in 2006, one person indicated that the organization represented may seek to increase legislative appropriated funding instead of having the fee increase. Subsequently, there was no increase in legislative appropriated funding.

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

All citizens of the state will benefit by having a more fully functioning water rights administration program, but more direct benefits will be enjoyed by owners of land and others who apply for permits to use water and interested persons who wish to understand the potential impact from proposed uses of water by having more available and accurate data concerning the use of water in the state.

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 impact upon affected classes of persons and political subdivisions should be relatively minor, based on the annual fee of \$100 for stream water rights and the increase in application fees. There are some individuals, entities and political subdivisions that hold multiple active water rights and would therefore bear more 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.

Probable costs to the OWRB may include actions to enforce the fee requirement, which would be funded from existing operations budget funds. No other state agency will be required to assist in such enforcement efforts. The anticipated revenue gain for the OWRB is described in item A. above.

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.

Political subdivisions that hold water rights would be required to submit the fee, just as the fees for filing applications for new permits to use water. The statutes governing the OWRB provide an exemption from payment of fees by other state agencies or state institutions. No political subdivision will be required to cooperate in implementing or enforcing the fee rule.

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 fee should have a minor adverse economic impact on small businesses that hold stream water rights or that apply for permits. However, 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 business that hold their own permits or that rely on political subdivisions to provide adequate water supply.

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 possible to minimize the cost of compliance with the fee rule. There are no less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rules, except to have sufficient appropriated funding to fully implement the water rights program as specified in the various statutes governing the use of water, or to eliminate the statutory administration requirements and have a water rights registration system only.

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 fee to ensure an adequate water rights administration program.

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 rule is not implemented and other funding is not provided, the water rights administration program will continue to be inadequate and if droughts or other needs arise and sufficient water supplies cannot be obtained for failure a proper water rights system, adverse consequences to the public health and safety 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 November 15, 2007, by:

**Dean A. Couch
General Counsel
Oklahoma Water Resources Board**