

*UNOFFICIAL*

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

**Introduction:**

This document contains permanent amendments to Chapter 20 adopted by the Oklahoma Water Resources Board that became effective May 27, 2010. Also, this document was prepared by Oklahoma Water Resources Board staff as a convenience to the reader, and is not a copy of the official Title 785 of the Oklahoma Administrative Code. The rules in the official Oklahoma Administrative Code control if there are any discrepancies between the Code and this document.

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**[Authority:** 82 O.S., Sections 105.1 et seq.; and 1085.2]

**SUBCHAPTER 1. GENERAL PROVISIONS**

## Section

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**785:20-1-1. Purpose**

This Chapter of the rules is to set out the procedure and substantive requirements to establish appropriative rights to use stream water, to amend such rights, and provisions regarding loss of rights.

**785:20-1-2. Definitions**

The following words and terms, when used in this Chapter of this Title, shall have the following meaning, unless the context clearly indicates otherwise:

**"Agricultural use"** means water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also "Irrigation use").

**"Application"** means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

**"Appropriation"** means the process under 82 O.S. 1981, §§105 et seq., by which an appropriative stream water right is acquired. A completed appropriation results in an appropriative right.

**"Appropriative right to stream water"** means the right acquired under the procedure provided by law to take a specific quantity of public water, by direct diversion from a stream, an impoundment thereon, or a playa lake, and to apply such water to a specific beneficial use or uses.

**"Beneficial use"** means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

**"Board"** means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, duties authorized by law to be delegated to the Executive Director, or any employee or agent or staff member thereof as assigned by the Executive Director.

**"Commercial use"** means use which includes but is not limited to water for businesses, industrial parks, laundries, cafes, motels/hotels, institutions, food processing and water used in the transportation of metal ores and non-metals by pipelines.

**"Consumptive use"** means use of water which diverts it from a water supply.

**"Definite stream"** means a *watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area.* [82:105.1(A)]

**"Diffused surface water"** means water that occurs, in its natural state, in places on the surface of the ground other than in a definite stream or lake or pond.

**"Domestic use"** means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:105.1(B)]. Domestic use also includes:(1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of stream water used for any such purposes does not exceed five acre-feet per year.

**"Enhanced recovery of oil and gas"** means a long-term process using fresh water to recover substantial quantities of additional oil or gas which would not be recoverable under ordinary primary methods or short-term stimulation techniques. This definition applies to all non-primary forms of oil and gas recovery including but not limited to secondary, tertiary, or other enhanced recovery operations.

**"Excess or surplus water"** means water in excess of the appropriator's present and reasonable future need. For purposes of 82 O.S. 1981, §§1086.1 et seq., "excess or surplus water" shall mean that amount of water which is greater than the present or reasonable foreseeable future water requirements needed to satisfy all beneficial uses within an area of origin.

**"Industrial use"** means the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value.

**"Interested party"** means party.

**"Irrigation use"** means use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticultural services, and golf courses.

**"Mining use"** means any use wherein the water is applied to mining processes including but not limited to oil and gas recovery operations, for drilling and reworking wells, and for conducting oil and gas field operations.

**"Municipal and rural water use"** means the use of water by a municipality, rural water district, water corporations, or community for the promotion and protection of safety, health and comfort; distribution to natural persons for the maintenance of life and property; public and private business pursuits; and the furtherance of all generally recognized municipal purposes, except large recreational uses such as lakes unless in conjunction with

other uses.

**"Notice by publication"** means, unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval).

**"Party"** means a person or agency named and participating, or properly seeking and entitled by law to participate [75:250.3(7)], in hearings other than hearings on Board rules, regulations and standards.

**"Permittee"** means the person to whom a permit to use water has been issued by the Board or the person to whom such permit has been duly and properly transferred under Board rules.

**"Permit to appropriate stream water"** means the specific written authorization to construct works and make an appropriation of stream water which is issued to the one whose application for a permit has been approved by the Board. Types of stream water permits include regular, seasonal, temporary, term, and provisional temporary.

**"Person"** means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

**"Power use"** means water used for power generation, including, but not limited to, fossil-fueled electric power generation and hydroelectric power generation.

**"Priority"** means an appropriative stream water right, which is governed by the time the right is filed, is the superiority of a right over all later appropriative rights that attach to the same water supply when the aggregate quantities of water available are not sufficient to satisfy the aggregate rights which attach to such a water supply. The date of priority is the date the right accrues.

**"Public water supply"** means use of water for drinking water purposes by housing developments, trailer parks, churches, schools, etc., other than water used for "municipal or rural water use".

**"Recreation, fish and wildlife use"** means the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.

**"Return water or return flow"** means the portion of water diverted from a water supply which finds its way back into a watercourse.

**"Reservoir"** means any surface depression which contains or will contain the water impounded by a dam.

**"Stream system"** means the drainage area of a watercourse or series of watercourses which converge in a large watercourse the boundaries of which have been defined and which has been designated by the Board as a stream system.

**"Stream sub-system"** means the drainage area of a portion of a stream system.

**"Stream water"** means water in a definite stream and includes but is not limited to water in ponds, lakes, reservoirs and playa lakes.

**"Unappropriated water available"** means water available for appropriation which is the amount of water within a particular stream system, stream sub-system, or watershed available for appropriation as determined by the Board at a proposed point of diversion and/or from a specific water supply which currently is not appropriated.

**"Vested stream water right or vested right"** means the right established by the beneficial use of stream water from a water supply prior to the enactment and pursuant to the provisions of 82 O.S. Supp. 1963, §1 et seq., and the rules and regulations of the Board.

**"Waste"** means use of water in such an inefficient manner that excessive losses occur or any manner that is not a beneficial use or use of water in excess of the amount which is authorized by the water right.

**"Watershed"** means the boundaries of a drainage area of a watercourse or series of watercourses which diverge above a designated location or diversion point, as determined by the Board.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg , eff 7-1-96; Amended at 14 Ok Reg 2751, eff 7-1-97; Amended at 16 Ok Reg 2683-2685, eff 7-1-99]

### **785:20-1-3. Statutory provisions on violations and penalties**

As provided by 82 O.S. 1981, 105.20, *the unauthorized use of water, the unauthorized transfer of a water right, the continued use of works which are unsafe after receiving notice to repair, the waste of water, the unauthorized severance of a water right from the land to which it is appurtenant, the refusal to change unsafe works when directed to do so, or the injury or obstruction of waterworks shall be a misdemeanor, and each day such violation continues shall be a separate violation. The Board shall have the right, in addition to filing criminal complaints and any other remedies provided, to bring an action in the district court of the county wherein such act or omission*

*occurs to enjoin the same. The Board and its authorized agents shall have a reasonable right to go upon private property in the performance of its duties and shall have the duty to file complaints of violations. [82:105.20]*

#### **785:20-1-4. Statutory provisions on ownership and use of water**

(a) *The owner of land owns water standing thereon, or flowing over or under its surface but not forming a definite stream. The use of groundwater shall be governed by the Oklahoma Groundwater Law. Water running in a definite stream, formed by nature over or under the surface, may be used by the owner of the land riparian to the stream for domestic uses as defined in Section 105.1 of Title 82 of the Oklahoma Statutes, but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same, as such water then becomes public water and is subject to appropriation for the benefit and welfare of the people of the State, as provided by law; provided, however, that nothing contained herein shall prevent the owner of land from damming up or otherwise using the bed of a stream on his land for the collection or storage of waters in an amount not to exceed that which he owns, by virtue of the first sentence of this Section so long as he provides for the continued natural flow of the stream in an amount equal to that which entered his land less the uses allowed for domestic uses and valid appropriations made pursuant to Title 82 of the Oklahoma Statutes; provided further, that nothing contained herein shall be construed to limit the powers of the Oklahoma Water Resources Board to grant permission to build or alter structures on a stream pursuant to Title 82 of the Oklahoma Statutes to provide for the storage of additional water the use of which the land owner has or acquires by virtue of this act.*

(b) *All rights to the use of water in a definite stream in this state are governed by this section and other laws in Title 82 of the Oklahoma Statutes, which laws are exclusive and supersede the common law. [60:60]*

(c) *The State of Oklahoma is a party to four interstate stream compacts which were adopted by the Oklahoma Legislature as statutes, including the Canadian River Compact (82 O.S. 1991, §526.1), the Kansas-Oklahoma Arkansas River Compact (82 O.S. 1991, §1401), the Arkansas-Oklahoma Arkansas River Compact (82 O.S. 1991, §1421), and the Red River Compact (82 O.S. 1991, §1431). Among other matters, the compacts apportion water among the states that are party to the compacts. Water rights subject to regulation under this chapter of the rules are likewise subject to applicable provisions of the compacts.*

(d) *Use of water in a scenic river area in Oklahoma is also subject to applicable provisions of the Oklahoma Scenic Rivers Act, 82 O.S. 1991, §1451 and following.*

**[Source:** Amended at 15 Ok Reg 2435-2436, eff 6-11-98]

#### **785:20-1-5. Purposes for a water appropriation**

(a) *The purposes for which the public waters of this State may be appropriated are agriculture, irrigation, mining, drilling of oil and gas wells, recovery of oil and gas, milling, manufacturing, power production, industrial purposes, the construction and operation of water works for cities and towns, stock raising, public parks, game management areas, propagation and utilization of fishery resources, recreation, housing developments, pleasure resorts, artificial recharge of a groundwater basin or subbasin or any other beneficial uses.*

(b) *The amount or quantity of water to be appropriated for each purpose shall be so stated and shall be specifically appropriated for such purpose or purposes, provided that no amount shall be specified in water rights for non-consumptive uses in reservoirs if a consumptive use is also authorized by the same water right.*

**[Source:** Amended at 12 Ok Reg 2671, eff 7-1-95]

#### **785:20-1-6. Who should file an application**

(a) *Any person, firm, corporation, state or federal governmental agency, or subdivision thereof, intending to acquire the right to beneficial use of any water shall, before commencing any construction for such purposes or before taking the same from any constructed works, make an application to the Board [82:105.9] for a permit to appropriate such water.*

(b) *Water for domestic use, as defined herein, is exempt from such filing: however, where domestic use of water from a federal reservoir operated by the Corps of Engineers, U.S. Army, is desired, an application must be on file with the Board before the Federal Government through the Corps of Engineers will grant an easement to cross government property.*

(c) *Unless otherwise determined by the Board, a permit to use water for hydroelectric power generation, navigation, recreation fish and wildlife, and other nonconsumptive instream uses is required only where the water*

used for such purpose is taken from reservoir storage.

(d) If an application is filed after non-domestic use of the water has begun, the application filing fee due for the type of permit requested as set forth in Chapter 5 of the Oklahoma Administrative Code, title 785, shall be doubled.

**785:20-1-7. Forms to be furnished by the Board (Revoked)**

[Source: Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2751, eff 7-1-97]

**785:20-1-8. Rejection of application where water has been withdrawn by the United States**

When an application is received in a stream system where all of the unappropriated water has been withdrawn by the United States under the provisions of 82 O.S. 1981, §105.29, for the economic justification of a water supply project, the application and fee shall be rejected and returned to the applicant by certified mail with a letter of explanation as to why the application was rejected.

**785:20-1-9. Use of water from a reservoir**

To clarify the distinction between regulation of the use of water in a reservoir and ownership and use of the storage space created by a reservoir, it is recognized:

(1) Water, not previously appropriated or otherwise not subject to previously recognized claims to use, in reservoirs owned by federal, state or local governments or non-governmental entities or persons is public water subject to appropriation as provided herein. The use of storage space created by a reservoir is subject to applicable laws and regulations and is recognized to be property of the owner of such reservoir.

(2) For reservoirs constructed by agencies of the federal government, such as the U.S. Army Corps of Engineers, Department of Interior Bureau of Reclamation, and U.S. Department of Agriculture Natural Resources Conservation Service, the Board will consider applications for regular permits to appropriate water only within quantities which represent the dependable yield of water from conservation storage space in such reservoirs, as calculated by such agencies, provided that for upstream flood control impoundments constructed under sponsorship of Soil and Water Conservation Districts, the amount of water in the sediment pool will be available to landowners or their successors who granted easements without compensation for such impoundments and who obtain water rights for the beneficial use of such water, and provided further that 785:20-11-1 shall be applicable where multiple landowners granted such easements.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 14 Ok Reg 2751, eff 7-1-97]

**785:20-1-10. Wastewater released to definite stream**

All wastewater or effluent released into a definite stream shall be considered public water subject to appropriation.

**785:20-1-11. Vested rights subject to administrative regulation**

Rights to the use of stream water recognized to be vested by the Board through vested stream water rights hearings conducted and orders entered under the procedures of 82 O.S. Supp. 1963, §§5 and 6, have been and shall remain subject to administrative regulation by the Board. Such regulation includes but is not limited to provisions on amending rights, annual use reports, loss of rights, assignment of rights, inspection of works for safety, and waste of water. Upon amendment of a vested right, an Amended Vested Right form shall be completed and forwarded to the vested right holder.

**785:20-1-12. Fees**

Fees required in filing for stream water permits and other matters will be charged in accord with Chapter 5 of this Title.

**SUBCHAPTER 3. APPLICATION REQUIREMENTS AND PROCESSING**

Section

785:20-3-1. Preparation of application

785:20-3-2. General application requirements

- 785:20-3-3. Place of use and irrigation use application requirements [REVOKED]
- 785:20-3-4. Enhanced oil recovery use application requirements
- 785:20-3-5. Content requirements of plats and maps [REVOKED]
- 785:20-3-6. Filing fee required [REVOKED]
- 785:20-3-7. Priority of application
- 785:20-3-8. Revisions and corrections to applications
- 785:20-3-9. Defective applications; when applications deemed withdrawn
- 785:20-3-10. Telecopier submittals

#### **785:20-3-1. Preparation of application**

- (a) The Board shall furnish without charge blank applications forms and instructions for the filing for a stream water permit. The application shall be typewritten or printed clearly in ink.
- (b) If the application is filled out in writing or in pencil, or is illegible, the application will be returned.
- (c) Each blank in the application shall be filled in carefully and as accurately and completely with the relevant data as the circumstances permit.
- (d) Supplements may be attached if there is not sufficient space on the printed form.
- (e) If a supplement is used, the data entered thereon should be segregated into paragraphs with numbers corresponding to the paragraph numbers of the printed form and properly cross-referenced thereto.
- (f) If there are any unusual or unique aspects concerning the application, such as multiple diversion points, the applicant should confer with agency staff. The applicant may also be required to submit additional information which is necessary for proper consideration of the application.

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 14 Ok Reg 2751, eff 7-1-97]

#### **785:20-3-2. General application requirements**

- (a) **Application form to be used.** The applicant shall complete all applications for a regular, term, seasonal or provisional temporary stream water permit on the approved form set out in Appendix A to this chapter, or on an electronic or other form approved by the Board, copies of which are provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, email, readable facsimile transmittal or through the Board's online application service. The filing fee must be submitted to the Board before application review and processing commences. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated.
- (b) **Right of access to diversion point and to cross lands of another.** If at the time the application is filed, the applicant has evidence regarding right of access to the diversion point and authority to cross lands of another with pipelines or other appurtenances related to the use of the water, such evidence shall be submitted with the application.

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2855, eff 7-1-96; Amended at 15 Ok Reg 2436, eff 6-11-98; Amended at 20 Ok Reg \_\_\_\_\_, eff 7-15-2003]

#### **785:20-3-3. Place of use and irrigation use application requirements [REVOKED]**

**[Source:** Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Revoked at 13 Ok Reg \_\_\_\_\_, eff 7-1-96]

#### **785:20-3-4. Enhanced oil recovery use application requirements**

- (a) To aid the Board in making its determinations, applicants filing for the use of fresh water for enhanced recovery of oil and gas, in addition to all other requirements, must furnish the following as part of and at the time of filing the application:

- (1) A copy of the easements or leases from the surface right owners giving the applicant the right to transport fresh stream water from point of diversion to point of injection for the recovery process;
- (2) An estimated schedule of use showing the amount of fresh water used each year in the recovery process;
- (3) An economic study containing the following information:
  - (A) A detailed analysis of the relative cost of obtaining salt water versus the relative cost of obtaining fresh water;

- (B) Total project costs and the amount of oil or gas expected to be recovered and the value expected to be realized;
  - (C) The estimated value of fresh water for other purposes (purposes or uses common to the area or vicinity subject of the application) as measured against the overall estimated value of the oil or gas to be recovered;
  - (D) The additional expense per barrel recovered if the applicant is required to use or treat salt water instead of fresh water in the recovery process, and
  - (E) A summary evaluation of other recovery methods or alternatives considered and why recovery requiring the use of fresh water was deemed to be necessary or the most feasible.
- (4) An inventory of all wells, fresh water, salt water, oil, gas, disposal, injection, both active and abandoned, within the boundaries of the proposed unitization and within two (2) miles from the outside boundaries of the proposed unitization;
- (5) The permeability, thickness, and estimated porosity of the injection zone; and
- (6) Information about reuse and recycling of the fresh groundwater.
- (b) The applicant may also be required to furnish other relevant material upon request which may include the following:
- (1) A copy of the unitization plan on file with the Corporation Commission;
  - (2) A copy of each injection well application and the approval of such application by the Corporation Commission; and
  - (3) A copy of all logs of each injection well showing the name of each zone containing salt water.
- [Source:** Amended at 13 Ok Reg , eff 7-1-96]

#### **785:20-3-5. Content requirements of plats and maps [REVOKED]**

**[Source:** Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok 2671, eff 7-1-95; Revoked at 13 Ok Reg , eff 7-1-96]

#### **785:20-3-6. Filing fee required [REVOKED]**

**[Source:** Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Revoked at 13 Ok Reg , eff 7-1-96]

#### **785:20-3-7. Priority of application**

The application and all attachments delivered to the Board will be date stamped "received" and noted in the records. The date of receipt of an application shall establish a priority date of filing.

**[Source:** Amended at 12 Ok Reg 2671, eff 7-1-95]

#### **785:20-3-8. Revisions and corrections to applications**

- (a) Applications for stream water will be altered, corrected or revised by the Board only upon written request signed by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation.
- (b) Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent.
- (c) All changes must meet the requirements of 82 O.S. §§ 105.1 et seq. and the rules in this Chapter.
- (d) Revisions to the application requested after notice has been published may be granted if the resultant change in the application is not substantial.

**[Source:** Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 20 Ok Reg \_\_\_\_\_, eff 7-11-2003]

#### **785:20-3-9. Defective applications; when applications deemed withdrawn**

- (a) Upon the filing of an application that *is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise the applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the refiling thereof.* [82:105.10]
- (b) *If refiled corrected as required within such time, the application shall, upon being accepted, take priority as of*

*the date of its original filing, subject to compliance with further provisions of the law and the rules herein. [82:105.10]*

(c) Any corrected application filed after the time allowed in (a) of this Section *shall be treated in all respects as a new application on the date of its refiling [82:105.10]* and the original priority date of filing shall be lost.

(d) If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

(e) *For applications that have been pending for more than three (3) years prior to June 5, 2000, the Board shall provide written notice to the applicant at the applicant's last-known address that the application shall be deemed withdrawn and the priority date based on the original filing date shall be lost unless the applicant provides notice of the application as instructed by the Board. The Board shall provide an opportunity for a hearing if requested in order for the applicant to show cause why:*

1. *Notice should not be published, and*
2. *The application should not be deemed withdrawn and the priority date lost.*
3. *Cause may be shown by substantial competent evidence that:*
  - a. *the applicant has been diligently pursuing plans for the project for which the water is proposed to be used,*
  - b. *construction of the project is still practical, and*
  - c. *the applicant is still able to complete the project.*
4. *If the Board receives no response to the notice, the application shall be deemed withdrawn and priority date lost.*

(f) For applications that the Board initially determines may remain pending pursuant to subsection (e) of this section, such *applications may remain pending for more than three (3) years and retain the priority date based on the original filing date or date of refiling in compliance with this Section if the applicant files a request to extend pending status of the application before the end of the first three-year period and each successive three-year period thereafter* and the Board determines after notice and an opportunity for hearing that the application may remain pending. *If a request to extend pending status is not filed in time and as required by Board rules, the application will be deemed withdrawn [82 O.S. 105.10].*

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 16 Ok Reg 2685, eff 7-1-99; Amended at 18 Ok Reg 2246, eff 7-1-2001]

### **785:20-3-10. Telecopier submittals**

Legible facsimile copies of applications, amendments to applications and corrections to applications will be accepted by the Board. The date and time of receipt of a facsimile copy of an application shall establish the priority date of filing as described in 785:20-3-7.

**[Source:** Amended at 14 Ok Reg 2751, eff 7-1-97]

## **SUBCHAPTER 5. NOTICE, HEARINGS AND BOARD ACTIONS**

### Section

- 785:20-5-1. Notice of application
- 785:20-5-2. Affidavit of notice publication [REVOKED]
- 785:20-5-3. Protests and hearings
- 785:20-5-4. Board determination and approval of application
- 785:20-5-5. Factors relating to statutory elements for application approval
- 785:20-5-6. Approval of application for out-of-stream system use
- 785:20-5-7. Denial of permit and amended application
- 785:20-5-8. Notice of Board decision
- 785:20-5-9. Issuance of permit

**785:20-5-1. Notice of application**

(a) **Application notice.** Notice of the application, including hearing date, time and place if scheduled prior to notice, shall be provided by the applicant as required by law and Board instructions. Accuracy and adequacy of notice shall be the responsibility of the applicant.

(b) **Proof of notice.** Adequate proof that notice was provided as instructed by the Board shall be submitted to the Board by the applicant within fifteen days after the last date of publication or as otherwise directed by the Board. Such proof shall show the dates on which said notice was published in the newspaper.

(c) **Failure to give adequate notice.** If adequate proof of notice is not provided by the applicant, the application may be dismissed and the application fee forfeited.

(d) **Revised published notice of application.** The Board may require a revised notice to be published at the applicant's expense in case material error is made, or if the applicant makes substantial revisions to his application after notice of the original application.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg , eff 7-1-96; Amended at 14 Ok Reg 2751, eff 7-1-97]

**785:20-5-2. Affidavit of notice publication [REVOKED]**

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Revoked at 13 Ok Reg , eff 7-1-96]

**785:20-5-3. Protests and hearings**

(a) *If the Board does not schedule a hearing on the application before instructing the applicant to publish notice, a hearing shall be scheduled by the Board upon receipt of a protest which meets the requirements of Section 785:4-5-4. The Board shall notify the applicant and protestant of such hearing.* Any interested party shall have the right to protest any application and appear and present evidence and testimony in support of such protest [82:105.11] at the hearing thereon. If, after the application is deemed complete, the application cannot be recommended to the Board for approval, the applicant shall be notified and shall be given an opportunity for hearing.

(b) Protests shall be made and hearings conducted in accordance with Chapter 4 of this Title.

(c) Even if no protest to the application is received, the applicant shall be advised and shall be given an opportunity for a hearing if the application cannot be recommended to the Board.

(d) For a limited quantity permit application, interested persons may submit written comments. A hearing on such application may be required by the Executive Director pursuant to 785:20-7-1(f) if it is shown that a significant public interest or property right would be affected by approval of the application.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 13 Ok Reg , eff 7-1-96; Amended 14 Ok Reg 2751, eff 7-1-97]

**785:20-5-4. Board determination and approval of application**

(a) **Elements of statute.** Before taking final action on the application, the Board shall determine from the evidence presented whether:

(1) *Unappropriated water is available in the amount applied for* [82:105.12(A)(1)] (as set forth in 785:20-5-5(a) and (b));

(2) *The applicant has a present or future need for the water and the use to which applicant intends to put the water is a beneficial use. In making this determination, the Board shall consider the availability of all stream water sources and such other relevant matters as the Board deems appropriate, and may consider the availability of groundwater as an alternative source* [82:105.12(A)(2)] as set forth in 785:20-5-5(c);

(3) The proposed use does not interfere with domestic or *existing appropriate uses* [82:105.12(A)(3)] as set forth in 785:20-5-5(d); and

(4) *If the application is for the transportation of water for use outside the stream system wherein the water originates,* [82:105.12(A)(4)] the provisions of Section 785:20-5-6 are met.

(b) **Application approval.** If the Board determines that the elements listed in subsection (a) of this section and the applicable provisions of this chapter of the rules have been established, *the Board shall approve the application by issuing a permit to appropriate water.* [82:105.12(A)]

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg , eff 7-1-96]

**785:20-5-5. Factors relating to statutory elements for application approval****(a) Determination of water available for appropriation from a stream.**

(1) For direct diversions from a stream, the determination of water available for appropriation shall take into consideration the mean annual precipitation run-off in the watershed above the point(s) of diversion, the mean annual flow, stream gauge measurements, domestic uses and all existing appropriations and other designated purposes in the stream system. The Board may consider other evidence or laws relating to stream flow or elevation, including but not limited to apportionment provisions of interstate stream compacts to which the State of Oklahoma is a party and the Oklahoma Scenic Rivers Act.

(2) Absent the presentation of more accurate evidence to the contrary, the Board shall estimate the amount of water required to satisfy domestic use to be six (6) acre-feet per household per year or three (3) acre-feet per non-household domestic use.

**(b) Determination of water available for appropriation from a reservoir, lake or pond.**

(1) The amount of water available for appropriation from a lake or reservoir shall be based on a ninety-eight percent (98%) dependable yield of the reservoir for municipal and industrial use and an eighty percent (80%) dependable yield of the reservoir for irrigation use. The Board may consider other dependable yields of reservoirs, considering the type of use proposed, interconnections with other reservoirs and other factors deemed relevant by the Board.

(2) The amount of water available from a Natural Resources Conservation Service flood detention structure shall be based on the designated sediment pool amount as specified in 785:20-11-1. For impoundments other than Natural Resources Conservation Service flood detention structures, the Board shall determine the amount of water available for appropriation by estimating the yield based on the storage capacity, evaporation amounts and other factors deemed appropriate by the Board.

(3) If an application is made to appropriate water from water supply storage at Sardis Reservoir, an amount of 20,000 acre-feet of water shall not be considered available for appropriation unless the applicant's use is within one or more of the 10 county area of southeastern Oklahoma. The 10 counties include LeFlore, McCurtain, Pushmataha, Latimer, Haskell, Choctaw, Pittsburg, Coal, Atoka, and Bryan. The following conditions apply to this paragraph:

- (i) Appropriations shall be granted first from the remainder of the yield of Sardis Reservoir; and
- (ii) Water appropriated from the 20,000 acre-feet amount cannot be used as a substitute for water which is used out of southeastern Oklahoma; and
- (iii) If the applicant's proposed use from the 20,000 acre-feet amount is for municipal or rural water district use, the service area must be within southeastern Oklahoma, and if the use from the 20,000 acre-feet is for industrial, commercial, irrigation or power use, the primary processes for such use must occur within southeastern Oklahoma; and
- (iv) No water shall be released or withdrawn from water supply storage in Sardis Reservoir unless a lake level management plan for the applicant's use has been reviewed by the Oklahoma Department of Wildlife Conservation and is approved by the Board, provided that an approved lake level management plan shall have an emergency clause for domestic use.

**(c) Present or future need.**

(1) In considering the amount of water requested, the Board may review the efficiency of the works proposed to place the water to beneficial use and may order modifications to such works or that different works be utilized.

(2) For a proposed public water supply or municipal use, the Board may review population projections for the area served or proposed to be served by the applicant.

(3) For a proposed irrigation use, the amount of water needed shall be based on the types of crops to be grown and the number of irrigable acres, as indicated by the "Technical Report on Irrigation Water Requirements State of Oklahoma," U.S. Department of the Interior, Bureau of Reclamation, Southwest Region, Amarillo, Texas, September 1986. Other appropriate publications may be utilized to calculate water demand for crops, and the applicant may submit additional information for consideration as to the amount of water needed. If more than one crop is to be irrigated, present and future need may be based on the crop which has the greatest irrigation water requirements during a dry year.

**(d) Determination of interference with domestic and existing appropriative uses.**

(1) For purposes of determination of interference with domestic uses of stream water, interference with domestic use of groundwater will not be considered.

(2) The Board may determine that conditions or restrictions are necessary to protect existing beneficial uses and rights and may establish and impose such conditions on certain stream flow whereby direct diversion may be allowed only during certain times of the year or when a certain level of stream flow or elevation in the stream is reached. In some cases, the Board may determine that water storage is necessary.

(3) If the Board determines water to be available for appropriation pursuant to 785:20-5-5(a) and (b) and the applicant agrees to the placement of a condition(s) on the permit that the proposed use will not interfere with domestic or existing appropriative uses and/or conditions or restrictions pursuant to 785:20-5-5(d)(2), it shall be a presumption that interference will not occur.

**(e) Additional factors to be determined for scenic rivers and outstanding resource waters.** If the application is to divert water from a definite stream which has been designated as a "scenic river area" under the Scenic Rivers Act, 82 O.S. 1991, §1451 et seq., or a stream designated as Outstanding Resource Waters under Chapter 45 of this Title, the Board shall consider, in addition to the guidelines set forth in (a), (b), (c) and (d) of this Section, the following factors insofar as sufficient information is readily available to assure that appropriate instream flows are protected:

(1) Quantity of water requested in comparison to the amount of water available for appropriation based on mean annual precipitation run-off produced within the drainage area of the watershed above the proposed point of diversion;

(2) Quantity of flow needed in cubic feet per second (cfs) for recreational purposes, including sustaining existing fish species in the stream, spawning periods for such species, etc., provided that for sustaining existing fish species in the Barren Fork Creek, and unless information to the contrary is shown, a flow restriction of 50 cfs will be considered as needed;

(3) Existing water quality in the stream and the potential of the diversion to alter the water quality or physical characteristics of the stream; and

(4) Other information as deemed relevant by the Board.

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg , eff 7-1-96; Amended at 14 Ok Reg 2751, eff 7-1-97; Amended at 16 Ok Reg 2686, eff 7-1-99; Amended at 20 Ok Reg \_\_\_\_\_, eff 7-11-2003]

**785:20-5-6. Approval of application for out-of-stream system use**

(a) In considering applications for the transportation and use of water outside the stream system where the water originates, the following provisions are applicable:

(1) *The proposed use must not interfere with existing or proposed beneficial uses within the stream system and the needs of the water users therein. In making this determination, the Board shall utilize the review conducted pursuant [82:105.12(A)(4)] to (b) of this Section.*

(2) *In the granting of water rights for the transportation of water for use outside the stream system wherein water originates, pending applications to use water within such stream system shall first be considered in order to assure that applicants within such stream system shall have all of the water required to adequately supply their beneficial uses. [82:105.12(B)]*

(b) *The Board shall review the needs within such area of origin every five (5) years to determine whether the water supply is adequate for municipal, industrial, domestic, and other beneficial uses. [82:105.12] Ongoing studies and information about proposed or potential needs may be used by the Board. Adequacy for future needs of water within the stream system shall be based on reasonably foreseeable prospects for use and for a period of not longer than fifty (50) years from the date of issuance of the permit for use outside the stream system.*

(c) *The review conducted pursuant to (b) of this Section shall not be used to reduce the quantity of water authorized to be used pursuant to permits issued prior to such review. Such permits, however, remain subject to loss, in whole or in part, due to nonuse, forfeiture or abandonment, pursuant to this [82:105.12(c)] Chapter.*

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94]

**785:20-5-7. Denial of permit and amended application**

(a) **Denial of permit and notification.** If the Board finds from the evidence presented that the applicant has failed to meet the requirements of 82 O.S. 1981, §105.12 and 785:20-5-4, the permit shall be denied and the applicant shall be notified of the rejection.

(b) **Denial of permit on basis of no unappropriated water available; amended application.** *If the Board denies a permit on the basis that no unappropriated water is available in the amount applied for, but [82:105.14] finds that water is available in a lesser amount and that the other requirements of 785:20-5-4 were complied with, the applicant shall be notified of the amount that is available. The applicant may amend the application previously filed and apply for said lesser amount. Such amendment shall not be deemed a waiver of the right of applicant to appeal from the Board's action in denying the permit on the original application. Such amended application shall be returned to the Board by certified mail no later than fifteen (15) days after receipt of the notice of denial...by the Board. Upon receipt of the amended application, the Board shall approve the application for the lesser amount at its next regularly scheduled meeting. [82:105.14]*

(c) **Denial of permit on basis of no present or future need; amended application.** If the Board denies a permit on the basis that the applicant has not demonstrated a present or future need for the water in the amount applied for but finds that he has demonstrated a need in some lesser amount and finds that the other requirements of 785:20-5-4 were complied with as to this lesser amount, the applicant shall be so notified. The applicant may then amend the application previously filed and apply for the lesser amount. The amended application shall be returned to the Board by certified mail no later than fifteen (15) days after receipt of the notice of denial of the amount applied for. The Board shall then approve the permit for the lesser amount at its next regularly scheduled meeting. The amendment of the application to a lesser amount shall not be deemed a waiver of the right of the applicant to appeal from the Board's action in denying the permit on the original application.

[Source: Amended at 12 Ok Reg 2671, eff 7-1-95]

#### **785:20-5-8. Notice of Board decision**

The Board shall give written notice to the applicant, and any protestants or other interested parties, announcing its findings and decision. If such decision results in an amended application as provided in 785:20-5-7, the Board shall give written notice to the parties of its decision on the amended application.

[Source: Amended at 14 Ok Reg 2751, eff 7-1-97]

#### **785:20-5-9. Issuance of permit**

Upon the decision of the Board to grant a permit, an original permit to appropriate water shall be forwarded to the applicant. Forms for notice of commencement of works and for completion of works shall be enclosed with the permit.

[Source: Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2751, eff 7-1-97]

### **SUBCHAPTER 7. PERMITS**

#### Section

785:20-7-1. Classes of stream water permits

785:20-7-2. Contents of regular permits

785:20-7-3. Contents of seasonal, temporary, term or provisional temporary permits

785:20-7-3.1. Contents of permits to divert water from Barren Fork Creek

785:20-7-4. Additional provisions of seasonal, temporary, or term permits for impounded water

785:20-7-5. Permits issued from federal projects requiring a repayment contract

785:20-7-6. Acceptance of permit by applicant

#### **785:20-7-1. Classes of stream water permits**

(a) **Regular permit.** A regular permit authorizes *the holder of such permit* to appropriate water on a year-round basis in an amount and from a source approved by the Board. [82:105.1(c)]

(b) **Seasonal permit.** A seasonal permit authorizes *the holder of such permit* to divert available water for specified time periods during the calendar year. [82:105.1(D)]

(c) **Temporary permit.** A temporary permit authorizes *the appropriation of water in an amount and from a source approved by the Board*, is valid for a time period *not to exceed three (3) months*, does not vest in the holder any

*permanent right, and may be canceled by the Board in accordance with its terms. [82:105.1(E)]*

(d) **Term permit.** A term permit authorizes *the appropriation of water in an amount and from a source approved by the Board for a term of years which does not vest the holder with any permanent right and which expires upon expiration of the term permit. [82:105.1(F)]*

(e) **Provisional temporary permit.**

(1) A provisional temporary permit *authorizes an appropriation of water in an amount and from a source approved by the Board. [82:105.1(G)]* A provisional temporary permit is granted by the Board's Executive Director for a period not to exceed *ninety (90) days, is non-renewable, does not vest in the holder any permanent right and is subject to cancellation...at any time [82:105.1(G)]* within its term. It is not necessary to hold a hearing, publish application data or notify adjacent downstream domestic or appropriative users prior to consideration of this type of permit. The permit may be issued summarily and immediately at the discretion of and upon administrative approval by the Executive Director.

(2) A provisional temporary permit may be issued only where the verified application and supporting materials filed therewith show:

(A) That the use will not interfere with domestic or prior appropriative users; and

(B) That economic hardship will occur if the permit is not granted; and

(C) That the applicant owns, leases or has the written consent of the respective landowners to use lands at the point of diversion or lands for placement of water lines or other appurtenances related to use of the water.

(f) **Limited quantity permit.**

(1) The Executive Director of the Board may administratively issue regular, seasonal, temporary or term permits to use 15 acre-feet or less of stream water in a calendar year or during its term if the term is less than one year [82:105.13].

(2) Notice of the application for such a permit shall be published by the applicant in a newspaper of general circulation one time only in the county of the point of diversion and in the adjacent downstream county, or as otherwise directed by the Board.

(3) Written comments about the application must be filed with the Board within ten (10) days after the date of publication or other notice provided.

(4) The permit may be issued or denied summarily and immediately after the ten (10) day period at the discretion of the Executive Director, provided that the Executive Director may require that a hearing on the application be held. After such hearing, the application shall be presented to the Board with proposed findings of fact and conclusions of law for consideration.

(5) Limited quantity permits cannot be combined to authorize the use of more than a total of 15 acre-feet per year.

(g) **Priorities among classes.** In circumstances where there is less water actually available than that calculated for purposes of considering a regular permit application, regular permit holders shall have a better right over all other classes of permits. Among regular permit holders, priority in time, determined by date of filing an application as provided in these rules, shall give the better right. Among classes other than regular permit holders, priority in time, determined by date of filing an application as provided in these rules, shall give the better right.

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2751, eff 7-1-97]

## **785:20-7-2. Contents of regular permits**

Every regular permit issued by the Board shall contain substantially the following:

(1) The stream system name and number;

(2) The county;

(3) Application number and date of filing;

(4) The permit number and date issued, which shall be the date the permit is issued by the Board;

(5) The name and address to whom issued;

(6) The source, amount of water in acre-feet, and maximum rate of withdrawal in gallons per minute;

(7) A legal description of the point or points of diversion to the nearest ten (10) acre subdivision of the legal description;

- (8) The purpose of the diversion; and
  - (9) The area of use or in the case of irrigation, the number of acres to be irrigated and the legal description of same;
  - (10) A provision making the permit and holder thereof subject to domestic users and existing appropriators;
  - (11) The time within which construction shall commence and the time within which the water shall be applied to beneficial use;
  - (12) If an applicant's water lines are to cross a public right-of-way or another landowner's property, it shall be a condition of the permit that the applicant provide, within a reasonable time as determined by the Board, an easement, license, or other evidence that he can cross the right-of-way or another's property in order to put the water to beneficial use;
  - (13) If the applicant leases the land on which the water is authorized to be used for irrigation, the permit shall expire upon termination of the lease or renewals thereof unless the permit is transferred to the owner of the land within thirty (30) days of the termination of the lease, and that copies of any such lease renewals shall be filed with the Board within thirty (30) days of the effective date of such renewal;
  - (14) Water released for navigation purposes pursuant to project operations adopted by the United States shall not be diverted; and
  - (15) Any additional terms, conditions, limitations, or restrictions the Board may prescribe.
- [Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 22 Ok Reg \_\_\_\_\_, eff 7-1-2005]

#### **785:20-7-3. Contents of seasonal, temporary, term or provisional temporary permits**

In addition to regular permits, *the Board is authorized to issue seasonal, temporary, term or provisional temporary permits at any time it finds such issuance will not impair or interfere with domestic uses or existing rights of prior appropriators and may do so even where it finds no unappropriated water is available for a regular permit. All seasonal, temporary, term or provisional temporary permits shall contain [82:105.13] substantially the same information as a regular permit and shall contain a provision making them subject to all rights of prior appropriators [82:105.13] and domestic users.*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94]

#### **785:20-7-3.1. Contents of permits to divert water from Barren Fork Creek**

- (a) This section shall apply to permits (except provisional temporary permits) issued after July 1, 2003, to divert water from the Barren Fork Creek and its tributaries in Adair and Cherokee Counties, provided that this section shall not be construed to alter or remove any condition on diversions based on flow in permits issued prior to July 1, 2003.
- (b) Unless contrary information is shown and the Board determines that a different flow restriction is needed for aquatic community purposes on the Barren Fork Creek, the Board will include a condition in the permit that diversions must be temporarily suspended beginning the sixth day after the stream flow measured at the United States Geological Survey gage number 07197000 near Eldon, Oklahoma, falls below 50 cfs for a period of five (5) consecutive days.
- (c) The condition shall indicate that the temporary suspension shall continue until the flow at the Eldon gage increases to 50 cfs.
- (d) In establishing the condition, the Board may utilize an alternative gage that reliably measures stream flow on the Barren Fork Creek or its tributaries and may make corresponding adjustments to the flow restriction.
- (e) Details relating to notice of the flow at the Eldon gage (or its equivalent) shall be set forth in the permit condition.
- (f) The permittee may be required to utilize storage or an alternative source of water for supply when diversions are temporarily suspended.

[Source: Added at 20 Ok Reg \_\_\_\_\_, eff 7-11-2003]

#### **785:20-7-4. Additional provisions of seasonal, temporary, or term permits for impounded water**

If any seasonal, temporary, or term permit is for water impounded in any works for storage, diversion, or carriage of water, the applicant must comply with the provisions of 82 O.S. 1981, §105.21 (Surplus Water) and

785:20-11-4.

**785:20-7-5. Permits issued from federal projects requiring a repayment contract**

It shall be a condition of permits issued for water from existing federal reservoir projects that a storage repayment contract be negotiated and signed within two (2) years from the date the permit is issued or from the date of impoundment, whichever is later. Provided, for good cause shown, such contract negotiation and signature time requirement may be extended by the Board.

**785:20-7-6. Acceptance of permit by applicant**

Acceptance of the permit shall be an acknowledgment and agreement by the permittee that he will comply with all the terms, provisions, limitations, conditions, and restrictions contained in such permit and that such permit shall be subject to forfeiture or revocation for failure to comply with such material terms, provisions, limitations, conditions, and restrictions.

[Source: Amended at 12 Ok Reg 2671, eff 7-1-95]

**SUBCHAPTER 9. ACTIONS AFTER STREAM WATER RIGHT OBTAINED**

Section

- 785:20-9-1. Construction of works
- 785:20-9-2. Time for putting water to beneficial use
- 785:20-9-3. Loss of rights and reversion of water to public
- 785:20-9-4. Amendments of stream water rights
- 785:20-9-5. Reports

**785:20-9-1. Construction of works**

(a) **Time for beginning of construction.**

(1) Any regular, term or seasonal permit issued by the Board *shall expire unless the applicant commences construction of the works within two (2) years of the issuance of the permit. If the Board does not receive a written notice of commencement of works or request to extend time within thirty (30) days after the end of the two-year period, the permit shall be deemed expired after written notice to the applicant.* [82:105.15] The commencement of construction shall be deemed to consist of the commencement of any of the following activities: land acquisition, preparation of the land, the acquisition of equipment, or construction of the dam or diversion works. Within ten (10) days after beginning actual construction of a project, the permit holder shall file in a written statement with the Board showing that such work was begun within the time limit allowed in the permit.

(2) The construction of non-federal dams is governed by the provisions of Chapter 25 of this Title.

(b) **Amendment of construction plans.** *The plans of construction may be amended by the permittee, with the approval of the Board, at any time, [82:105.10] upon approval of a petition, but no change shall authorize an extension of time for construction or placing the water to beneficial use beyond that authorized in the permit, except as provided in 82 O.S. 1981, §105.15, and rules in this Chapter.*

(c) **Extension of time for beginning of construction.** Upon written request by the permittee the Board may *extend the time for the beginning of construction beyond the time allowed in the permit for good cause shown, such as engineering difficulty or other valid reason over which the applicant has no control; [82:105.15] provided that no extension shall be granted beyond seven (7) years or beyond the first time step of a schedule of use, whichever is longer.*

(d) **Notice of completion of works.** Within ten (10) days following completion of the works, a regular, seasonal or term permittee shall give notice on forms previously provided by the Board, that the work has been completed. If the works were constructed prior to obtaining a permit to appropriate, the permittee shall file a notice of completion of works within ten (10) days after receiving the permit and notice form.

(e) **Inspection of works.** Upon due notice of completion by the owner, the Board shall make an inspection of the works which *shall be thorough and complete in order to determine the actual capacity of the works and their safety and efficiency.* [82:105.25] Inspections of dams are governed by the provisions of Chapter 25 of this Title. Inspection fees shall be as set forth in Chapter 5 of this Title and shall be due on the date set forth in the invoice

sent to the permittee.

(f) **Improperly constructed works to be changed.** *If not properly and safely constructed, the Board may require the necessary changes and shall give notice of the changes to be made within a reasonable time and shall not issue a certificate of completion until such changes are made.* [82:105.25]

(g) **Postponement of priority for failure to make necessary changes.** *Failure to make necessary changes within the time required by the Board shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the Board, and applications subsequent in time shall have the benefit of such postponement of priority.* [82:105.25]

(h) **Report by registered professional engineer accepted.** *The Board may accept the report of inspection by a registered professional engineer.* [82:105.25]

(i) **Certificate of completion.**

(1) *When the works other than dams are found in satisfactory condition, after inspection and after payment of any inspection fees due, the Executive Director shall approve the issuance of a certificate of completion of construction, setting forth the actual capacity of the works [82:105.26] in acre-feet per year, and in gallons per minute or cubic feet per second as appropriate, and such limitations upon the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.* [82:105.26]

(2) *If the actual capacity of the works is less than that authorized in the permit, and no schedule of use was made part of the permit, the actual capacity amount set forth in the certificate of completion shall govern and the Board shall issue an amended permit showing the actual capacity amount as the amount authorized to be used.*

(3) *Certificates of completion for dams are governed by Chapter 25 of these rules.*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95]

#### **785:20-9-2. Time for putting water to beneficial use**

(a) *Unless a schedule of use is provided by the Board..., a regular permit shall require that the whole of the amount of the water authorized by the permit be put to beneficial use within a period of no less than seven (7) years.* [82:105.16] *The time for commencing construction and putting the entire amount of appropriated water to beneficial use shall be stated in any permit issued but in no event will the permittee be required to place the whole amount authorized to use within a period of less than seven (7) years [82:105.16] under a regular permit. Unless a schedule of use is requested by the applicant and granted by the Board, the time for putting the entire amount of appropriated water to beneficial use shall be seven (7) years under a regular permit.*

(b) *Upon evidence presented to the Board and considering the present and future needs of the stream system of origin, if it appears that the proposed project, improvement or structure will promote the optimal beneficial use of water in the State and if it further appears that the total amount of water to be utilized by the facility and authorized by the permit cannot be put to beneficial use within (7) years, then the Board shall, [82:105.16] based upon a proposed schedule of use to be submitted by the applicant and, where appropriate, supported by population data from the Oklahoma Department of Commerce or its successor, provide in the permit a schedule of the time within which certain percentages of the total amount to be authorized shall be put to beneficial use.* [82:105.16] *However, in no event shall the extended schedule of use exceed the useful life of the proposed project, improvement or structure as found by the Board or, where such useful life is indeterminate, beyond fifty (50) years from the date of the permit.*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95]

#### **785:20-9-3. Loss of rights and reversion of water to public**

(a) **Forfeiture and loss of rights.** *Nothing in 82 O.S. 1981, §§105.1 et seq. shall be deemed to reestablish any right to the use of any water which has been lost by failure to use same or by forfeiture prior to July 5, 1961.* [82:105.16]

(b) **Loss of right to use water under permit.**

(1) *To the extent that the amount of water authorized is not put to beneficial use as provided by the terms of the permit including but not limited to a schedule of use of incremental amounts within the corresponding time periods, the amount not so used shall be forfeited by the holder of the permit and such unused water shall again become public water and available for appropriation.* [82:105.17]

- (2) If a permit authorizes use of water for more than one purpose and water is not used for a purpose under the terms of the permit, the Board may delete such purpose from the permit upon notice and hearing as provided in this section.
- (3) If the permittee fails to comply with any material term, limitation, condition or restriction provided in the permit, including but not limited to the requirements to file a Notice of Completion of Works on the date specified, the Board may revoke and cancel said permit upon notice and hearing as provided in this section.
- (4) For a permit containing a schedule of use, the amount lost in any increment shall be subtracted from the total amount authorized by the permit and the amounts for any remaining increments shall be adjusted based on the percentages of the time intervals in the schedule of use.
- (5) If the water right authorizes use of water from a reservoir, a reduction or cancellation of the right to use water shall not affect the storage rights in the reservoir, and any appropriation permit issued thereafter which authorizes use of water in such storage shall contain a condition that the permittee shall pay to the owner of the storage rights the proportionate amount of the costs of the storage attributable to the permit.
- (c) **Loss of right after commencing use.**
- (1) *When any person entitled to the use of water commences using water but thereafter fails to beneficially use all or any part of the water claimed by him, for which a right of use has been vested for the purpose for which it was appropriated, for a period of seven (7) continuous years, the right of use of the unused amount of water for such purpose shall be lost and such unused water shall revert to the public and shall be regarded as unappropriated public water [82:105.17]; provided however, the application of this paragraph shall not conflict with use under a schedule of use or other terms of a water right. Periods of excused nonuse shall stop the running of the forfeiture period for the period of the excused nonuse and such period shall not be included in computing the forfeiture period.*
- (2) This subsection is applicable to vested rights and permits to use stream water.
- (3) The following shall not be calculated as amounts used in determining whether a loss of right has occurred:
- (A) use of water on lands not described in a water right,
  - (B) use of water for purposes other than that described in the water right,
  - (C) use of water in a manner that constitutes waste.
- (4) If the water right authorizes use of water from a reservoir, a reduction or cancellation of the right to use water shall not affect the storage rights in the reservoir, and any appropriation permit issued thereafter which authorizes use of water in such storage shall contain a condition that the permittee shall pay to the owner of the storage rights the proportionate amount of the costs of the storage attributable to the permit.
- (d) **Notice of loss of right to use water.**
- (1) **When Board may send notice.** *When the Board has reasonable cause to believe that the right to use water has been lost in whole or in part,... the Board may proceed to cancel administratively such water right by notifying the claimant, or his latest successor in such rights, by written notification mailed by registered or certified mail to his last known address that there is reasonable cause for believing that he has lost his water rights under the provisions of [82:105.18] 82 O.S. 1981, §§105.16 and 105.17.*
- (2) **Contents of notice.** Such notice shall contain:
- (A) A statement of the time, place, and location of the hearing;
  - (B) A statement of the nature and of the legal authority and jurisdiction under which the hearing is to be held;
  - (C) A reference to the particular sections of the statutes and rules involved;
  - (D) A short and plain statement of matters asserted.
- (3) **Mailing notice; publication.** *The notice must be mailed at least thirty (30) days prior to the date set for a hearing...If there is evidence that delivery of such notice by registered or certified mail cannot be made to the claimant or his successor in such water rights, the Board shall give notice by publishing the same in a local newspaper qualified to publish such notice, nearest the point where said water right had attached, once each week for two (2) consecutive weeks. [82:105.18] A certified mailing which is returned to the Board and marked "refused" or "unclaimed" is not evidence that delivery cannot be made to the claimant or his successor.*
- (e) **Hearing on loss of right.**
- (1) The hearing date shall be set not earlier than thirty (30) days after the notice by certified mail or the last publication date of the notice.

- (2) At the hearing the claimant or his successor shall have the right to show cause why such water right should not be declared to have been lost through nonuse or non-compliance with water right terms, conditions, etc. *Such cause may be shown by substantial competent evidence that the failure to beneficially use the water subject to forfeiture was caused by circumstances beyond the control of the claimant and the claimant was ready and willing to use the water.* [82:105.18]
- (3) In addition to any cause which may be provided by law, acceptable cause for nonuse includes but is not limited to the following:
- (A) damage to claimant's field, pump, pipe or other equipment caused by flooding or other events after reasonable diligence to repair same;
  - (B) claimant's service on active duty in the armed forces;
  - (C) placement of land to which an irrigation water right is appurtenant into a federally sponsored conservation reserve or soil bank program;
  - (D) wrongful acts of others which prevented water usable for claimant's authorized purposes from reaching the claimant's point of diversion, and
  - (E) need for the water did not develop as anticipated when the water right was obtained or when a schedule of use was added or amended, and the water right holder acquired and has properly maintained significant infrastructure (such as lakes, storage rights in lakes, pipelines, pumps and other appurtenances) at a capacity necessary to put the amount of water subject to forfeiture to the use authorized;
- (4) In any instances of reported nonuse, the claimant may be required to state the reasons for such nonuse and furnish to the Board sufficient verification and evidence of the reasons, underlying basis or cause for the nonuse.
- (f) **Notice of Board's determination on loss of right.** The Board shall notify the claimant, or successor in such water right, of its determination in accordance with the Oklahoma Administrative Procedures Act.
- (g) **Failure of Board to determine loss of right.** *The failure of the Board to determine that a right to use water has been lost in whole or in part for nonuse shall not in any way revive or continue the said right.* [82:105.18]
- (h) **Voluntary surrender of water rights.** *The Board may accept the voluntary surrender of any water right by the holder thereof.* [82:105.19] Forms for surrender shall be furnished by the Board.
- [Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 13 Ok Reg 2860, eff 7-1-96; Amended at 15 Ok Reg 2437, eff 6-11-98; Amended at 22 Ok Reg \_\_\_\_, eff 7-1-2005]

#### **785:20-9-4. Amendments of stream water rights**

- (a) **Severance and transfer of water rights for irrigation.** *All water used...for irrigation purposes shall remain appurtenant to the land upon which it is used, provided, however, if for any reason it should at any time become impracticable beneficially or economically to use water for the irrigation of land to which the right of use of same is appurtenant, the right may be severed...and simultaneously transferred to become appurtenant to other land without losing priority of right theretofore established, if such change can be made without detriment to existing rights.* [82:105.22] Forms to petition the change will be furnished by the Board. The petition shall be accompanied by a plat showing the legal description of the land to be irrigated under the transfer and the petition fee as required in Chapter 5 of this Title. The amount of water authorized shall not be increased over that originally permitted.
- (b) **Amendments in place or rate of diversion, storage, areas of use or purpose.**
- (1) *Any appropriator of water including but not limited to one who uses water for irrigation, may use the same for other than the previously approved purposes for which it was appropriated or may change the place or rate of diversion, storage, or use in the manner and under the conditions prescribed* [82:105.23] in subsections (a) through (d) of this section; provided however, an appropriator may not change use from a previously approved non-consumptive recreation, fish and wildlife purpose to any other purpose unless the water is taken from the sediment pool amount in an upstream flood control impoundment constructed under the supervision of the Natural Resources Conservation Service.
  - (2) The required information set forth in 785:20-3-4 for an application for enhanced oil and gas recovery purposes shall be submitted with any request to change or add such a purpose.
  - (3) The procedures set forth herein shall apply to requests to change uses authorized by a vested right.

(c) **Additions and amendments to schedules of use.**

(1) Upon request of the permit holder, permits may be amended to life of the project by the Board after a regular permit has been issued if it is found that such amendment will promote the optimal beneficial use of the water and that the total amount of water cannot be put to use in the seven (7) year period of the original permit.

(2) All permits for life of the project will contain a schedule of use.

(3) Any or all of the use dates on a schedule of use may be amended at the discretion of the Board for good cause at any time; however, no lapsed use date can be extended pursuant to this provision.

(4) To qualify as a project for which a schedule of use may be added to a permit, or for which an existing schedule of use may be amended, there must be a change or proposed change of condition relied upon to utilize the water which will promote the optimal beneficial use of water in the state. However, a schedule of use shall not be added to any permit to extend the time for using amounts of water which have vested.

(5) The procedures described in subsections (a) through (d) of this section must be completed prior to Board consideration.

(d) **Notice of petition to make amendments, changes and revisions of rights.**

(1) Before any petition for amendment, change, or revisions of water rights, except for changes in name or address of the permit holder, is approved, the petitioner must give notice thereof by publication once a week for two (2) consecutive weeks in a newspaper or newspapers of general circulation in the county or counties designated by the Board.

(2) The notice to be published shall be furnished by the Board and shall include the name of the petitioner; a description of the nature of proposed change; *and the manner in which a protest to the application may be made.* [82:105.11]

(3) If the petitioner does not own the land where the proposed new point of diversion is to be located, in addition to published notice, the petitioner is required to give actual notice of the requested water right amendment by certified mail to said landowner.

(4) *Upon receipt of a protest which meets the requirements of Section 785:4-5-4, the Board shall schedule a hearing on the petition and notify the applicant and protestant of such hearing. Any interested party shall have the right to protest said petition and present evidence and testimony in support of such protest* [82:105.11] at the hearing thereon.

(5) Protests shall be made and hearings conducted in accordance with Chapter 4 of this Title.

(6) Even if no protest to the petition is received, the petitioner shall be advised and shall be given an opportunity for a hearing if the petition to amend, change or revise cannot be recommended to the Board.

(e) **Board order.** *The Board order may deny or grant the petition for amendment, change, or revision in whole or in part upon such conditions as are necessary to preserve the rights of the parties.* [82:105.22] If the petitioner does not own the land on which a new diversion point is to be located or upon which pipelines or other appurtenances related to the water right will be located, it shall be a condition of the permit that the petitioner provide, within a reasonable time as provided by the Board, evidence of the right of access and use.

(f) **Assignment or transfer of appropriation permit and transfer of title of land.**

(1) *Any permit to appropriate water may be assigned, but no assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the Board;...provided, however, that no permit to appropriate water for irrigation purposes shall be assigned, or the ownership thereof in any way transferred apart from the land to which it is appurtenant, except in the manner* [82:105.24] provided in (a) of this section and in 82 O.S. 1981, §105.22.

(2) *The transfer of title to land shall carry with it all rights to use of water appurtenant thereto for irrigation purposes.* [82:105.24]

(3) Upon transfer of any water rights, the transferee shall furnish to the Board a notarized notice of transfer containing the name and address of the transferee and a statement that the transfer has been properly completed.

(4) A fee, as required herein, shall accompany the assignment or notice of transfer of water right, and upon receipt of such fee, the Board shall record such assignment or transfer and provide copies of the transferred or assigned water right.

(5) If notification of the transfer of a water right is made by the previous owner, the Board shall advise the

transferee of the transfer procedure and he shall then have thirty (30) days from receipt of the Board's notice to submit the required fee or use of water by the transferee will be considered unauthorized by the Board.

(g) **Assignment of rights on works constructed by the United States.** *The evidence of the right to use water from any works constructed by the United States or its duly authorized agencies shall in like manner be filed in the office of the Board upon assignment.* [82:105.24]

(h) **Board may initiate action to amend water right.**

(1) If, in the exercise of its duties to properly administer the stream water use laws of this state and of any interstate stream compacts heretofore entered by the State of Oklahoma, the Board determines it to be necessary to amend or add conditions to existing vested rights or permits, the Board shall so notify the holder of such rights or permits by certified mail.

(2) The notice to amend rights or permits shall specify the proposed action and provide that the holder of the water right or permit may request a hearing be held thereon.

(3) After such hearing pursuant to (2) of this subsection, or if no hearing is requested, the Board will proceed to consider the proposed amendments or conditions.

**[Source:** Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended at 14 Ok Reg 2751, eff 7-1-97]

### **785:20-9-5. Reports**

(a) **Annual reports of water use.**

(1) Water use report forms will be mailed during January of each year to every holder of a valid water right. These reports must be completed and returned with the annual file maintenance fee to the Board within thirty (30) days of receipt thereof. This report shall become a part of each record of each stream water right holder. Willful failure to complete and return such report with the appropriate filing fee may be considered by the Board as nonuse of water under a water right. In a review of the water use by the water right holder, the Board may adjust its records regarding nonuse after payment of all past accrued fees.

(2) Absent differing expressed direction of the water right holder, if two or more water rights are held by the same person for use of water from the same point of diversion, from the same source of supply and for the same purpose, the total amount used annually under all such water rights shall be recorded first under the water right with the oldest priority date until full use is made, then the next amounts shall be reported under the next oldest priority date, until all amounts are accounted for.

(3) Holders of water rights with multiple diversion points may be required to report use from each diversion point, if diversion points are in different stream segments, or diversion points are in both a stream and lake or pond, or other valid reasons as determined by the Board.

(b) **Reports by temporary, and term permit holders.** Upon the expiration of the period for which a temporary, or term permit was granted, the appropriator shall cease the taking of water and file a written report with the Board stating the amount of water used under the temporary, or term permit and the date of cessation.

(c) **Change of address.** It shall be the responsibility of the holder of a water right to provide the Board with a current mailing address for receipt of all correspondence dealing with the water right.

**[Source:** Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95]

## **SUBCHAPTER 11. MISCELLANEOUS PROVISIONS**

### Section

785:20-11-1. Multiple ownership of reservoir sites

785:20-11-2. Reclaiming water turned into a watercourse

785:20-11-3. Right of eminent domain

785:20-11-4. Surplus water

785:20-11-5. Impairment of water rights

785:20-11-6. Measurement of water

785:20-11-7. Water supply contracts from federal projects

785:20-11-8. Release of easement or easement deed

785:20-11-9. Miscellaneous Provisions

**785:20-11-1. Multiple ownership of reservoir sites**

(a) In those instances in which a Natural Resources Conservation Service flood detention structure or other non-natural impoundment is located on land owned by more than one person and an applicant desires to use his portion of the storage therein for beneficial use, the Oklahoma Water Resources Board will, absent evidence to the contrary, apportion the site among all the owners using the following formula:

$$0.25 \text{ FP} + 0.75 \text{ (D \& S)} + 1.00 \text{ SP} = \text{TV}$$

FP = total area of flood pool exclusive of sediment pool.

D & S = total area of dam and spillway.

SP = total area of sediment pool.

TV = total value.

$$\text{Individual shares} - 0.25 \text{ FP}' + 0.75 \text{ (D' \& S')} + 1.00 \text{ SP}' = \text{PV}$$

FP' = area in flood pool owned by an individual.

D' & S' = area of dam and spillway owned by an individual. SP' = area of sediment pool owned by an Individual.

PV = proportionate value of total.

$\text{PV} \times 100 = \%$  of water stored (To which individual is TV entitled).

(b) The Board may adjust the total amount of water available for appropriation in the reservoir by utilizing a refill factor that is based on average annual precipitation and runoff within the drainage area for the reservoir, in addition to or with correlative stream gauge data. In no case shall the refill factor exceed a value of two (2) times the amount of water available for appropriation from the sediment pool of the reservoir.

(c) Absent evidence to the contrary, storage in natural impoundments shall be divided in accordance with the percent of surface area of impoundment on the applicant's property.

[Source: Amended at 10 Ok Reg 3281, eff 6-25-93; Amended at 12 Ok Reg 2671, eff 7-1-95; Amended 14 Ok Reg 2751, eff 7-1-97]

**785:20-11-2. Reclaiming water turned into a watercourse**

(a) **Application to reclaim required.** *Water turned into any natural or artificial watercourse by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, subject to existing rights, due allowance for losses being made by the Board.* [82:105.4] Anyone wishing to reclaim such water using the bed and banks of any stream for conveyance shall, before commencing such conveyance, file an application setting forth the following information:

(1) The name of the applicant and the place and purpose of use.

(2) The name of the stream whose bed and banks are to be used for the transportation of the water.

(3) The name of the owner of any reservoir located on the stream through which the waters are to be conveyed.

(4) The place of origin and the terminus of the proposed transported waters.

(5) The time of commencement and termination of the transit.

(6) The number of acre-feet of water to be transported and the approximate flow at the point of origin in cubic feet per second of time.

(7) The number of the water right which authorizes the storage and the number of the water right which authorizes the use of the water proposed to be transported.

(b) **Other requirements.** Other requirements to reclaim water turned into a watercourse are as follows:

(1) Any copy of any water purchase contract shall also be filed.

(2) The Board shall have the right to require the alteration or amendment of any contract for the transportation of water where it finds such alteration or amendment is necessary to protect domestic uses or existing appropriative uses.

(3) The conveyor shall not permit the water to overflow the banks of any stream, nor shall he interfere with those having a lawful right to the use of that rate of flow of the stream which would prevail in the absence of the water in transit.

(4) When stored waters are released from a reservoir or dam and such waters are designated for use or

storage downstream by a specified user legally entitled to receive such waters, it shall be unlawful for any person without legal right to divert, store, appropriate, use, or otherwise interfere with the passage of such water for downstream use or storage.

(5) Anyone whose rights are impaired by such transport of water may bring suit under the provisions of 82 O.S. 1981, §105.5.

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94; Amended at 12 Ok Reg 2671, eff 7-1-95]

#### **785:20-11-3. Right of eminent domain**

*Any person, corporation or association may exercise the right of eminent domain to acquire right-of-way for the storage or conveyance of waters for beneficial use, including the right to enlarge existing structures, and use the same in common with the former owner. Such right-of-way shall in all cases be so located as to do the least damage to private or public property, consistent with proper and economical engineering construction. Such rights may be acquired in the manner provided by law for the taking of private property for public use. [82:105.3]*

#### **785:20-11-4. Surplus water**

*The owner of any works for the storage, diversion, or carriage of water, which contain water in excess of his needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus, at reasonable rates for storage or carriage or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal by the owner to deliver any such surplus water at reasonable rates as determined by the Board, he may be compelled to do so by the district court for the county in which the surplus water is to be used. [82:105.21]*

#### **785:20-11-5. Impairment of water rights**

*Any person having a right to the use of water from a stream as defined in 82 O.S. 1981, §105.1, or this Chapter, whose right is impaired by the act or acts of another or others may bring suit in the district court of any county in which any of the acts complained of occurred. [82:105.5]*

#### **785:20-11-6. Measurement of water**

*The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred sixty (43,560) cubic feet, or 325,851 U.S. gallons. [82:105.28]*

[Source: Amended at 11 Ok Reg 2917, eff 6-13-94]

#### **785:20-11-7. Water supply contracts from federal projects**

(a) The Board shall obtain the amount of storage together with the estimated dependable yield available for contract from the federal agency responsible for construction of federal projects and notify the managing agency for the project as to who has the rights to the water and the priority of such rights.

(b) The responsible federal construction agency shall notify the Board upon completion of a project for water supply and the managing agency will be requested to execute water supply contracts for storage in federal projects with holders of permits with a priority falling within the amount of water supply storage available in the project.

(c) In cases in which the appropriation is from storage other than water supply, the permit holders with appropriation from the water supply storage should be granted first opportunity to sign repayment contracts with the responsible managing agency.

(d) If a holder of a permit from the water supply pool does not sign a contract as provided in 785:20-7-5, then the permit holder with the next best priority will be given an opportunity to sign a contract.

#### **785:20-11-8. Release of easement or easement deed**

The Oklahoma Water Resources Board, as successor to the Conservation Commission of the State of Oklahoma and the Oklahoma Planning and Resources Board, shall execute and deliver a written release of any easement or easement deed given to the Conservation Commission on land situated in the State for the purpose of constructing a dam, spillway, and appurtenances whenever it appears that the need for such easement or easement deed no

longer exists. Any person desiring such release of easement or easement deed shall make application to the Board accompanied by a filing fee as set forth in Chapter 5 of this Title. Upon receipt of such application a notice will be prepared by the Board setting the date, time, and place of a hearing thereon. The hearing notice shall be published by the applicant at his expense once a week for two (2) consecutive weeks in a newspaper having a general circulation in the county where the land is situated. The last notice shall be published at least ten (10) days prior to the date set for the hearing. Upon approval of the release the applicant shall submit a copy of the release as recorded in the office of the County Clerk in the county wherein the land is situated showing the date, book, and page of such filing.

**785:20-11-9. Impoundment of water in mine pits.**

Unless otherwise required by the Board for purposes of proper administration and accounting of water uses and rights, the impoundment of water in a mine pit as described in a surface mining closure plan approved by the Oklahoma Department of Mines shall not be deemed a beneficial use of water requiring a regular permit, provided that the Board may request that the Oklahoma Department of Mines include conditions and requirements as part of the closure plan to protect downstream domestic and appropriate uses.

[Source: Amended at 22 Ok Reg \_\_\_\_\_, eff 7-1-2005]

APPENDIX A. APPLICATION FOR A PERMIT TO USE SURFACE OR STREAM WATER

<b><u>OFFICE USE ONLY</u></b>	
Application No.	_____
Type of Permit	_____
Stream System Code	_____
Reservoir Code	_____

**Application for a Permit to Use Surface or Stream Water**

**OKLAHOMA WATER RESOURCES BOARD**  
**PLANNING & MANAGEMENT DIVISION**  
 3800 North Classen Blvd.  
 Oklahoma City, OK 73118  
 Phone: (405) 530-8800  
 Fax: (405) 530-8900  
 Website: [www.owrb.ok.gov](http://www.owrb.ok.gov)

<b><u>APPLICATION FILING FEE</u></b>	
<u>Amount of Water Requested</u>	<u>Fee</u>
0 – 320 acre-feet.....	\$ _____
321 – 640 acre-feet.....	\$ _____
641 – 1500 acre-feet.....	\$ _____
Over 1500 acre-feet.....	\$ _____*
*Plus \$ _____ for each 500 acre-feet (or any increment thereof) over 1500 acre-feet (Maximum Fee \$3 000 00)	

1. NAME & ADDRESS (Print the applicant's full name, as listed on the ownership documentation, and mailing address)

Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Applicant Name \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Contact Name (if applicable) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. TYPE OF SURFACE WATER PERMIT REQUESTED (Check One)

- Regular Permit – authorizes diversion and use of water on a year-round basis
- Seasonal Permit – authorizes diversion and use of water for specific time periods during a calendar year.
- Term Permit – valid for a term of years and does not vest the holder with any permanent right.  
 (Provide ending date for term permit: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_)

3. PURPOSE(S) FOR WHICH WATER WILL BE USED (List the purpose(s) for which the water will be used and the number of acre-feet for each purpose. Note: one acre-foot of water will cover one acre of land one foot deep and is equal to 325,851 gallons)

AMOUNT \_\_\_\_\_ acre-feet of water will be used for PURPOSE \_\_\_\_\_

<b><u>OFFICE USE ONLY</u></b>	
<u>SIC Codes</u>	

\_\_\_\_\_acre-feet of water will be used for\_\_\_\_\_

Total Amount Requested \_\_\_\_\_acre-feet; Pumping Rate not to Exceed \_\_\_\_\_gallons per minute

**Irrigation Only:** \_\_\_\_\_acres will be irrigated. Proposed Crops\_\_\_\_\_

**4. DIVERSION(S) OF WATER: Source, Location and Method of Diversion** *(For each diversion point, state the amount of water in acre-feet to be diverted annually and give the legal description to the nearest ten (10)-acre tract. Legal description of the diversion point must match the area drawn on the attached plat. If additional space is needed, list on a separate sheet of paper.)*

Will the water be used as a non-consumptive use in a pond, lake or reservoir and will not be pumped or moved from one location to another?  Yes  No *(If yes, use the location of the dam or spillway as the point of diversion below.)*

\_\_\_\_\_acre-feet of water will be diverted from:  
\_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Twp. \_\_\_\_\_ N \_\_\_\_\_ EIM \_\_\_\_\_ S Rng. \_\_\_\_\_  WIM in \_\_\_\_\_ County  
 ECM

**Source of Water:** *(Check one and provide the requested information showing the source of water to be diverted.)*

- Direct Diversion from a Stream or River– Name of Stream:\_\_\_\_\_
- Natural Resources Conservation Service Flood Control Site – N.R.C.S Site No. \_\_\_\_\_ Watershed

Name \_\_\_\_\_  
 Reservoir or Pond – Name of Reservoir: \_\_\_\_\_  
River or Stream Name Reservoir is Located on: \_\_\_\_\_  
Reservoir is *(Check one)*:  Existing (Date Completed \_\_\_\_\_)  
 Under Construction  Planned  
Storage: \_\_\_\_\_acre-feet; Average Depth: \_\_\_\_\_feet; Surface Area: \_\_\_\_\_acres

**Method of Diversion:** *(Check one and provide description of the system to be used)*

- Gravity: \_\_\_\_\_
- Pump: \_\_\_\_\_

Do you own or lease the land on which the point of diversion will be located?  Yes  No *(If available, attach a copy of the deed, lease agreement, etc. showing the right o use the point of diversion.)*

Will water lines cross public right-of-ways or another landowner’s property?  Yes  No *(If yes and available, attach a copy of the easement.)*

*(Note: If the deed, lease agreement, etc. and/or the easement is not submitted, the permit, if issued, will contain a condition requiring submittal of the information before water use begins.)*

**5. LEGAL DESCRIPTION OF AREA OF USE** *(List the legal description of the area of use. Please do not use city lot and block numbers or metes and bounds. If additional space is needed, list on a separate sheet of paper. Legal description must be drawn on the attached plat and must match the area of use described below. Municipal and rural water entities refer to #6 below.)*

\_\_\_\_\_ acres in \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Twp. \_\_\_\_\_ N \_\_\_\_\_ EIM \_\_\_\_\_ S Rng. \_\_\_\_\_  WIM in \_\_\_\_\_ County  
 ECM

\_\_\_\_\_ acres in \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Twp. \_\_\_\_\_ N \_\_\_\_\_ EIM \_\_\_\_\_ S Rng. \_\_\_\_\_  WIM in \_\_\_\_\_ County  
 ECM

\_\_\_\_\_ acres in \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Twp. \_\_\_\_\_ N \_\_\_\_\_ EIM \_\_\_\_\_ S Rng. \_\_\_\_\_   
 WIM in \_\_\_\_\_   
 ECM County

**FOR IRRIGATION ONLY:** Do you own or lease the land to be irrigated?  Yes  No (If available, attach a copy of the deed or lease. If not available, the permit, if issued, will require that a deed or lease be submitted before water use begins.)

**6. JUSTIFICATION OF PRESENT AND FUTURE NEED**

**IRRIGATION:** Completion of #3 serves as justification of need for amounts requested for irrigation for common crops grown in Oklahoma. The Board will use appropriate publications and information the applicant submits in determining the amount of water needed.

**MUNICIPAL AND RURAL WATER ENTITIES:** Submit population projection figures and all other methodologies, calculations, and additional information used to determine amount of water requested.

Submit a map of the service areas and the water line locations. The map must show points of reference or scale. A schedule of use based on population growth may also be submitted.

**INDUSTRIAL, COMMERCIAL AND AGRICULTURE (NON-IRRIGATION):** Submit methodology, calculations, and additional information used to determine amount of water requested.

**7. CITIZENSHIP AFFIDAVIT**

Are you a citizen of the United States of America?  Yes  No

If no, are you a qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States?  Yes  No. My A-number is \_\_\_\_\_ and a true and correct copy of my immigration document, including my date of birth, user case number, and immigration document type and its expiration date, must be attached.

**(PLEASE NOTE: Each natural individual listed as an applicant must provide a citizenship affidavit. If the land is owned by more than one person, a copy of this page will need to be filled out, signed, notarized and filed with the completed application.)**

**8. SIGNATURES**

Upon my oath or affirmation, I swear or affirm (1) that all information submitted to the Oklahoma Water Resources Board in connection with this application is true and accurate to the best of my knowledge; and (2) that I or the person or entity I represent will comply with all applicable laws and regulations contained in Chapter 20 of the Oklahoma Water Resources Board rules and all other applicable regulations of the State of Oklahoma or its agencies, and any lawful conditions imposed by the Oklahoma Water Resources Board, which apply or pertain to the use of fresh stream water.

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE ( IF APPLICABLE)

**NOTARY**  
STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**APPLICATION SUBMISSION AND PROCESSING**

**To be deemed complete, the submitted application must include:**

- a. The appropriate filing fee;

- b. The original application, typed or printed in ink, signed and notarized;**
- c. One copy of the plat(s) showing the information requested in items #4 and #5 above and as otherwise instructed on this form; and**
- e. If available, Deed(s), lease(s), and / or letter(s) of consent as required.**

*If you believe that within the first seven (7) years after issuance of your permit you will not be able to use the full amount of water applied for, please contact Board staff.*

**Please note:** Any incomplete or unresponsive answers may cause a delay in the processing of your application.

In addition, Oklahoma Administrative Code (OAC) 785:20-3-9 states: (a) “Upon filing of an application that is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the filing thereof. {82:105.10}” (b) “Any corrected application filed after the time allowed in (a) of this Section shall be treated in all respects as a new application on the date of its refiling [82:105.10] and the original priority date of filing shall be lost.” (c) “If an application does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.”

### Oklahoma Water Resources Board STREAM WATER Application Plat

Applicant Name \_\_\_\_\_ Application # \_\_\_\_\_

**Note: Drawings must match the legal descriptions provided in questions #4 and #5 in the application and one copy of the plat must be filed with the application.**

NW NW NW	NE NW NW	NW NE NW	NE NE NW	NW NW NE	NE NW NE	NW NE NE	NE NE NE
SW NW NW	SE NW NW	SW NE NW	SE NE NW	SW NW NE	SE NW NE	SW NE NE	SE NE NE
NW SW NW	NE SW NW	NW SE NW	NE SE NW	NW SW NE	NE SW NE	NW SE NE	NE SE NE
SW SW NW	SE SW NW	SW SE NW	SE SE NW	SW SW NE	SE SW NE	SW SE NE	SE SE NE
NW NW SW	NE NW SW	NW NE SW	NE NE SW	NW NW SE	NE NW SE	NW NE SE	NE NE SE
SW NW SW	SE NW SW	SW NE SW	SE NE SW	SW NW SE	SE NW SE	SW NE SE	SE NE SE
NW SW SW	NE SW SW	NW SE SW	NE SE SW	NW SW SE	NE SW SE	NW SE SE	NE SE SE
SW SW SW	SE SW SW	SW SE SW	SE SE SW	SW SW SE	SE SW SE	SW SE SE	SE SE SE

\_\_\_\_\_ Section – Township – Range

\_\_\_\_\_ County

