

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 5
Proposed for Adoption During 2020

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

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing or is considering promulgation of amended or new rules in Oklahoma Administrative Code ("OAC") 785:5 as follows.

OAC 785:5-1-6 is proposed to be amended to reflect increased costs for the administration of water rights and associated records maintenance and storage, investigation of complaints, and legal review.

OAC 785:5-1-10 is proposed to add an additional fee for groundwater applications which overlie a sensitive sole-source groundwater basin.

OAC 785:5-1-11 is proposed to be amended to reflect increased administrative costs of the Well Driller and Pump Installers program, The proposed fees would provide funding to cover approximately 80% of the actual program costs.

OAC 785:5-1-16 is proposed to remove a fee that will no longer be charged by the OWRB.

OAC 785:5-1-21 is proposed to be add fees associated with taking and use of groundwater trapped in producing mines within a sensitive sole-source groundwater basin associated with Senate Bill 597 passed in 2011.

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

B. A DESCRIPTION OF THE CLASSES OF PERSONS WHO MOST LIKELY WILL BE AFFECTED BY THE PROPOSED RULES, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF THE PROPOSED RULES, AND ANY INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES.

Persons or entities that have a surface water right will be affected by the proposed rules by an increase in the annual file maintenance administration fee (OAC 785:5-1-6).

Persons or entities that apply for groundwater appropriation permits will be affected by the proposed rules by an additional application and petition fee for applications which overly sensitive-sole source groundwater basins (OAC 785:5-1-10).

Persons or entities who file for applications to obtain a license to drill groundwater wells and install pumps in Oklahoma and current OWRB licensed contractors who drill groundwater wells and install pumps in Oklahoma would be effected by the fee increases proposed in OAC 785:5-1-11. Out-of-state contractors would also be affected by the proposed fee increase, which would make fees for out-of-state contractors comparable to surrounding states. Persons meeting requirements to be classified as a low-income individual would be affected by the low-income fee waiver proposed in OAC 785:5-1-11.

The proposed removal of the fee in OAC 785:5:1:16 would reduce the impact to entities requesting a streamflow determination.

Mining entities that are required to submit documents to the OWRB related to water trapped in producing mines under OAC 785:30-15 would be affected by the proposed fees in OAC 785:5-1-21.

There has been no information submitted on the cost impacts from any public entities.

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

The State's taxpayers will benefit through a reduction of general appropriations required for the administration and maintenance of water rights and well drillers with respect to OAC Sections 785:5-1-06, 785:5-1-10, 785:5-1-11, and 785:5-1-21.

Entities requesting streamflow measurements would benefit from a reduction in fees as proposed in OAC 785:5:1:16.

In addition, low-income individuals who meet the requirements of HB2933 (adjusted gross income below 140% of the federal poverty level) will benefit from a fee waiver within the Well Drillers Program outlined in OAC 785:5-1-11(q).

D. A DESCRIPTION OF THE PROBABLE ECONOMIC IMPACT OF THE PROPOSED RULES UPON AFFECTED CLASSES OF PERSONS OR POLITICAL SUBDIVISIONS, INCLUDING A LISTING OF ALL FEE CHANGES AND, WHENEVER POSSIBLE, A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE.

The probable economic impact of the proposed changes in OAC Section 785:5-1-6 would be an annual fee increase of \$25 (from \$50 to \$75). The additional fee would be incurred by persons who currently hold a surface water right and persons who will apply for a surface water right in the future.

The probable economic impact of the proposed fee of \$250.00 in OAC Section 785:5-1-10 for groundwater permits over sensitive sole-source groundwater basins is anticipated to be minimal because the OWRB receives a small number of applications (less than 5 per year) for water from sensitive sole-source groundwater basins. Applications over sensitive sole-source groundwater basins require more scrutiny and staff time to process due to legislation passed in previous years (SB 288 and SB 597) and the additional increase is projected to cover the additional cost.

The probable economic impact of the proposed fees in OAC Section 785:5-1-11 is anticipated to be minimal. The proposed fee increases will bring the funding level of the Well Drillers Program from about 50% to approximately 80% and decrease reliance of General Revenue by about \$75,000, which would be incurred by well driller firms and operators.

The probable economic impact of the proposed fees in OAC Section 785:5-1-21 is anticipated to be minor for those mines managing water trapped in producing mines over sensitive sole-source groundwater basins. The requested fees are anticipated to be a minor cost relative to the overall operating cost of a mine. The requested fees will provide staff the resources necessary to ensure mining operations are in compliance with Senate Bill 597, passed in 2011, and reduce the potential of litigation against operators for mismanaging waters trapped in active pits.

E. THE PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY OF THE IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A PROJECTED NET LOSS OR GAIN IN STATE REVENUES IF IT CAN BE PROJECTED BY THE AGENCY.

Increase in fee revenues from the proposed changes in OAC 785:5-1-6 are estimated to be between \$37,000 and \$50,000 annually for OWRB's Water Rights program, based on previous years' revenue. There are 2,198 active surface water rights; assuming 100% compliance, the maximum annual revenue would be about \$55,000. The fees generated would reduce the program's reliance on general revenue appropriations, help alleviate rising IT costs, and allow the OWRB to contract attorneys to work on associated water right hearings.

Probable benefits to the agency regarding the proposed fee for persons applying to take groundwater from sensitive sole-source basins (OAC 785:5-1-6) are anticipated to be minimal. Fee revenue for these permits is anticipated to be minimal.

The probable benefits of the proposed fees in OAC Section 785:5-1-11 is anticipated to be significant. The proposed fee increases, which haven't been modernized in over a decade, will bring the funding level of the Well Drillers Program from about 50% to approximately 80% and decrease reliance of general revenue appropriations by about \$75,000.

The benefits from the proposed fee in OAC Section 785:5-1-21 is anticipated to be minimal with respect to the overall budget of the Water Rights Section in the Planning and Management Division. However, the proposed fee will alleviate reliance on general revenue for tasks related to the compliance of managing water trapped in producing mines. The anticipated annual revenue from the proposed fee would be about \$11,250.

F. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES WILL HAVE AN ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR REQUIRE THEIR COOPERATION IN IMPLEMENTING OR ENFORCING THE RULES.

In general, political subdivisions are not charged with the implementation or enforcement of the proposed rules; therefore no general economic impact is anticipated for these entities. However, political subdivisions that own or maintain surface water rights would be required to submit fees under the proposed changes to OAC Sections 785:5-1-6. State statutes provide that other state agencies or state institutions are exempt from fee requirements.

G. A DETERMINATION OF WHETHER IMPLEMENTATION OF THE PROPOSED RULES MAY HAVE AN ADVERSE ECONOMIC EFFECT ON SMALL BUSINESS AS PROVIDED BY THE OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT.

The proposed fees in OAC Sections 785:5-1-6 and 785:5-1-10 are expected to have a minor economic impact on small business for those that have a surface water right or apply for groundwater from a sensitive sole-source basin. Failure to have a properly and fully

implemented water rights administration program for which the fee would be used could have a significant adverse impact on small businesses that rely on sustainable water rights.

The OWRB currently licenses 372 well drilling/contractor firms and 630 operators. The proposed increase would equate to approximately a 60% increase in current fees. However, the proposed fees in OAC Section 785:5-1-11 are expected to have only a minor economic impact to the groundwater well driller community.

The proposed fees in OAC Section 785:5-1-21 are expected to have very minor impact on small businesses as there are few small businesses that operate mines in sensitive sole-source groundwater basins and are required to manage water trapped in producing mines.

H. AN EXPLANATION OF THE MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE COSTS AND A DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF THE PROPOSED RULES.

With respect to the proposed fee increase in OAC Section 785:5-1-6, over the last several years, the Water Rights Program has been implementing strategies to streamline permit application and processes time, such as updating application forms to make them easier to fill out and providing on-line frequently asked questions to help applicants fill out applications allowing for more efficient use of staff time.

Recently, the Well Drillers Program has examined several other avenues to account for the discrepancy between the funding level of the program and actual costs including an ‘intent-to-drill’ fee for firms and a registration fee that would be attached to each newly constructed groundwater well. The Well Driller and Pump Contractor Advisory Council recommended that the proposed fees was the most economical and would minimize costs to the well driller community.

Since the passage of Senate Bill 597 in 2011, the OWRB has been working with the mining aggregate industry to streamline the rule-making, enforcement and permitting processes with respect to water trapped in producing mines in sensitive sole-source groundwater basins. The resulting efforts outlined the information needed for the OWRB to determine compliance with the most cost-effective methods. The proposed fees in OAC Section 785:5-1-21 represent the minimum actual costs the OWRB would incur to determine compliance to Senate Bill 597.

Expected revenue will allow the OWRB to administer statutory requirements at a reduced cost to all taxpayers, putting a greater percentage of the cost on the applicant or permittee. There are no less costly, non-regulatory, or less intrusive methods for achieving the purpose of the proposed changes.

I. A DETERMINATION OF THE EFFECT OF THE PROPOSED RULES ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT AND, IF THE PROPOSED RULES ARE DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULES WILL REDUCE THE RISK.

With respect to the proposed changes to OAC Sections 785:5-1-6 and 785:5-1-10, to the extent that an inadequate water rights administration program may cause a public water supply to

have an insufficient amount of water available for public use, the public health can certainly be affected by failure to have sufficient funding as generated by the proposed fees.

The proposed changes in OAC Sections 785:5-1-11 would increase the amount of revenue generated for the Indemnity Fund, which is used to help remediate poorly constructed wells, plug and abandon poorly constructed wells, and plug and abandon contaminated groundwater wells. Without the increase in funding, there is a significant risk to the public health, safety, and environment as costs to remediate groundwater well sites has increased over the last decade.

The proposed fees for mines managing water trapped in producing mines in sensitive sole-source groundwater basins would help the OWRB determine any effects water management would have on the flow of springs and streams emanating from the groundwater basin. In addition, the proposed fees would help the OWRB determine if any activities detrimentally effected groundwater flow to groundwater users.

J. A DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULES ARE NOT IMPLEMENTED.

As indicated in item I above, if the proposed changes in OAC Sections 785:5-1-6 and 785:5-1-10 are not implemented and other funding is not provided, funding for water rights administration will continue to be inadequate. If droughts or other issues arise and sufficient water supplies cannot be obtained, adverse consequences to the public health and safety are possible.

If the proposed changes to OAC Section 785:5-1-11 are not implemented, the Well Driller program will continue to be underfunded and reliant on general revenue for the funding source, which puts the public health, safety, and environment at the discretion of legislative appropriations. During times of economic downturn, the Well Drillers Program is at risk of not being capable of regulating the well driller community and ensuring that groundwater wells are drilled to specifications, that the risk of contamination to groundwater is reduced, and that groundwater well sites can be remediated using the Indemnity Fund.

If the OWRB is not adequately funded to oversee the management of water trapped in producing mines, water shortages could be incurred to permit holders and municipalities within the sensitive sole-source groundwater basins as well as downstream of the groundwater basins. Municipalities and other entities could experience water shortages during drought conditions caused by the mismanagement of water, which could be detrimental to the citizens of Oklahoma and various industries.

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

This rule impact statement was reviewed and approved on December 2, 2019 by Kent Wilkins, Chief, Planning and Management Division, Oklahoma Water Resources Board.