

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

Subchapter 3. Application Requirements and Processing

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.

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, or on an electronic or other form 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, e-mail, 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.

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 ~~accomplished in~~

accordance with 785:20-5-1 may be granted if the resultant change in the application is not substantial.

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~~provide 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*provided, 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].

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.~~

Subchapter 5. Notice, Hearings and Board Actions

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. Unless otherwise instructed by the Board, such notice shall be provided by the applicant as follows:

- (1) the applicant must publish the notice of application in a daily or weekly newspaper of general circulation once a week for two (2) consecutive weeks (minimum seven day interval) in the county from which the diversion would be made and the downstream county; and
- (2) notice of application must be sent by certified mail to the owner or owners of each tract of land adjacent to the stream identified in the permit application for a distance of one mile upstream and one mile downstream from the proposed diversion point(s); and
- (3) notice must also be provided by certified mail to every stream water permit holder and to any person(s) or entity(ies) with a pending stream water application which was received by the Board prior to the applicant's application for a distance of one mile upstream and one mile downstream from the proposed diversion point(s).

(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 and that the applicant did properly notify the estate owners, stream water permit holders, and other applicants with pending applications as directed in 785:20-5-1(a).

(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.

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 provide 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.

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~~"Technical Report on Irrigation Requirements – State of Oklahoma, Based on 1970-2000 climatic data", U.S. Department of the Interior, Bureau of Reclamation, Oklahoma City, 2002. 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.

Subchapter 9. Actions After Stream Water Right Obtained

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 in the same manner detailed in 785:20-5-1.~~

(2) The notice to be ~~published provided~~ 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.