

OKLAHOMA WATER RESOURCES BOARD MEETING INFORMATION

The Oklahoma Water Resources Board meets monthly in accordance with the date, time, and location shown on the final posted agenda. A draft Board meeting agenda and packet materials are scheduled to be prepared approximately 10 calendar days prior to the Board's meeting. A final agenda is scheduled to be posted at least 24 hours prior to the meeting. The standard sections of the agenda are numbered in a series; additional or special items will appear on the agenda subsequently. Standard sections include the following:

- 01000 = Call to Order
- 02000 = Financial Assistance Division
- 03000 = Summary Disposition Agenda
- 04000 = Items of Interest
- 05000 = Special Consideration Items

This meeting packet contains expanded information (summary documents, proposed orders, etc.) associated with individual agenda items. Each section of the packet contains a cover sheet noting the appropriate corresponding agenda item/number. (For example, to locate agenda item 2.D., concerning a grant or loan, review the packet for the section labeled, "2. Financial Assistance Division," which will begin on page 02000. Item D. is placed in alphabetical order in the section and is labeled accordingly.) The documents and information provided within the meeting packet are draft until approved by the Board. Please contact OWRB staff for the final, official documents as approved by the Board.

If you require assistance in locating an item or accompanying documents, please contact OWRB staff at (405) 530-8800.

1.B.

**December 19, 2023, Regular Meeting Draft Official Minutes
For consideration at the January 16, 2024, Board Meeting**

3. SUMMARY DISPOSITION AGENDA ITEMS

D. Contracts and Agreements Recommended for Approval

January 16, 2024

AGENDA ITEM 3D(1)

SPONSORED RESEARCH AGREEMENT

WITH: Board of Regents of the University of Oklahoma

PURPOSE: Provide for the modernization and migration of
OWRB Geospatial Resources

AMOUNT: Not to exceed \$89,565.00

TERM: January 1, 2023 through July 31, 2024

SPONSORED RESEARCH AGREEMENT

FY25-24-0457-19

THIS AGREEMENT is entered into by and between the Board of Regents of the University of Oklahoma, a constitutional entity of the State of Oklahoma (hereinafter referred to as "University") and The State of Oklahoma, Water Resources Board with principal offices at 3800 N. Classen Blvd., Oklahoma City, Oklahoma 73118 (hereinafter referred to as "Sponsor").

WITNESSETH

WHEREAS, the research program contemplated by this Agreement is of mutual interest and benefit to University and to Sponsor, will further the instructional and research objectives of University in a manner consistent with its status as a public higher educational institution, and may derive benefits for both Sponsor and University through the advancement of knowledge through discovery and the creation of new technologies;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree to the following:

SECTION 1. DEFINITIONS

1.1 "Invention" shall mean any invention, discovery, improvement, concept, product, or idea made during the Project whether or not patentable or copyrightable, including but not limited to processes, machines, methods, computer software, formulas, and know-how directly relating thereto. An Invention is "made during the Project" if it arises from work performed pursuant to the Project conducted under this Agreement and is made during the Period of Performance.

1.2 "Joint Invention" shall mean all Inventions conceived and/or made jointly by one or more employees of University and by one or more employees of Sponsor.

1.3 "Period of Performance" is the term of this Agreement as set forth in **Section 3** below, unless earlier terminated as provided for in **Section 5**.

1.4 "Project" shall mean the research project entitled "Phase 4: Modernization & Migration of OWRB Geospatial Resources" as described in **Appendix A**, under the direction of Dr. Todd Fagin, as Principal Investigator.

1.5 "Sponsor Invention" shall mean all Inventions conceived and/or made solely by one or more employees of Sponsor.

1.6 "University Invention" shall mean all Inventions conceived and/or made solely by one or more employees of University.

SECTION 2. RESEARCH WORK

2.1 University does not guarantee specific research results but will exercise good faith efforts to perform the Project substantially in accordance with the terms and conditions of this Agreement. Sponsor understands that University's primary mission is education and advancement of knowledge and consequently the Project will be designed to carry out that mission.

2.2 The manner of performance of the Project shall be determined solely by the Principal Investigator. In the event the Principal Investigator becomes unable or unwilling to continue the Project and a mutually acceptable substitute is not available, either party shall have the option to terminate the Project.

2.3 Sponsor agrees that, if funds are exhausted prior to completion of the research, University will, at the option of Sponsor, submit a final report of accomplishments or provide an estimate of additional funds required to complete the Project and will continue the research if such funds are provided by Sponsor.

2.4 Sponsor understands that University may be involved in similar research through the same or other researchers on behalf of itself and others. University shall be free to continue such research, and Sponsor shall not gain any rights *via* this Agreement to such other research.

2.5 The Principal Investigator shall furnish Sponsor periodic letter reports summarizing progress on the Project. The Principal Investigator shall prepare and submit, on behalf of University, a final report to the Sponsor within ninety (90) days of the termination of this Agreement.

2.6 As long as Principal Investigator is employed by University, it shall be conclusively presumed that any patentable invention conceived of and/or reduced to practice by such Principal Investigator was made in his/her/their capacity as an employee of University and shall be promptly disclosed to and exclusively owned by University regardless of the circumstances surrounding the conception and/or reduction to practice.

SECTION 3. PERIOD OF PERFORMANCE

3.1. The Period of Performance will be: January 1, 2024 through December 31, 2024.

SECTION 4. COSTS, BILLINGS AND OTHER SUPPORT

4.1 This is a cost reimbursable agreement. For the services, reports, and other items to be delivered hereunder, Sponsor shall pay University, in U.S. dollars, an amount not to exceed Eighty-Nine Thousand Five-Hundred Sixty-Five Dollars and zero cents (**\$89,565.00**), payable to the University of Oklahoma and sent to the business/payment address in **Section 10**. University shall bill Sponsor monthly, on a cost reimbursable basis, at Sponsor's business address set forth in **Section 10**. Payment shall be due within thirty (30) days of receipt of invoice, with final invoice due ninety (90) days following termination of this Agreement.

4.2 The University agrees to incur expenses substantially in accordance with the cost estimate included in **Appendix B** ("Budget"), incorporated herein by reference. University reserves the right to re-budget funds as necessary for completion of the Project.

4.3 Pre-award costs to cover obligations and expenditures made up to ninety (90) days prior to the starting date of the period of performance in this Agreement will be allowed hereunder if also in accordance with the budget/estimate of costs included in **Appendix B**.

4.4 University shall retain title to any equipment purchased with funds provided by Sponsor under this Agreement. Title to equipment furnished by Sponsor to University, if any, shall remain with the Sponsor. The costs of transporting, installing and servicing any equipment used herein, whether the property of University or Sponsor, shall be allowable under this Agreement.

4.5 University shall maintain relevant accounting records in a central location sufficient to enable Sponsor to determine whether University has properly expended Sponsor funds. Sponsor may examine the records upon reasonable, prior written notice sent to the University business address.

SECTION 5. TERMINATION

5.1 Either party may terminate this Agreement at any time by giving not less than sixty (60) days prior written notice to the other party. In the event of early termination, University shall take all reasonable steps to minimize termination costs. Provided, notwithstanding anything in this Agreement to the contrary, in the event of early termination, Sponsor shall pay all costs and noncancellable obligations incurred by University as of the date of termination. Noncancellable obligations may include, without limitation, compensation for Project personnel through the end of their contract term.

5.2 In the event that either party shall commit any breach of or default in any of the terms or conditions of this Agreement, and also shall fail to remedy the default or breach within thirty (30) days after receipt of written notice thereof from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of termination in accordance with **Section 10** to the defaulting party and the termination shall be effective as of the date of the receipt of the notice.

5.3 The performance by either Party hereunder shall be excused to the extent of unforeseen circumstances beyond such Party's reasonable control, including, but not limited to: National Weather Service forecasted weather events, hurricanes, tsunamis, floods, ice storms, lightning, landslide or similarly cataclysmic occurrence, or other acts of God; extended power outages; epidemics, pandemics, or related outbreaks if declared by the World Health Organization or federal government; county, state, or national declaration(s) of emergency as issued by an authorized government entity; war, acts of terrorism, or acts of public enemies; sabotage, riots or civil disturbances; or material destruction of facilities. In such event, the Parties shall be excused from performing an obligation or undertaking provided for in this Agreement, and the period for the performance of any such obligation or undertaking shall be extended for a period equivalent to the period of actual delay; provided, however, if performance is not restored within one hundred and twenty (120) days, either Party may terminate this Agreement.

5.4 Termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of this Agreement, except insofar as Sponsor's breach of contract for failure to make payments under **Section 4** shall cause Sponsor to forfeit its rights under **Section 8**. The rights and duties of **Sections 6, 8, 9** and **Paragraph 11.10** of this Agreement shall survive termination.

SECTION 6. PUBLICITY

Neither party to this Agreement may use the name or mark of the other nor the name(s) of the other's employees in news releases, publicity, advertising, or product promotion without the prior written permission of the other.

SECTION 7. PUBLICATION

Subject to confidentiality provisions, University shall have the right at its discretion to release non-proprietary information or to publish any material resulting from the Project. University will furnish a copy of any proposed publication to Sponsor for its review at least thirty (30) days in advance of submission for publication. Publication of specific results may be delayed for a limited period, not to exceed sixty (60) days, to obtain any intellectual property protection and remove Sponsor Proprietary Information contained in the publication. Sponsor agrees to limit disclosure of such copies to its employees solely for the purposes of review and comment unless otherwise agreed in writing by University. No unreasonable delay shall be imposed on the filing, defense or publication of any student thesis or dissertation. University shall give Sponsor the option of being acknowledged in such publication for its sponsorship of the Project.

SECTION 8. INTELLECTUAL PROPERTY

8.1 Any University Invention shall belong to University and any Sponsor Invention shall belong to Sponsor; provided however, University is hereby granted a royalty-free, nonexclusive and nontransferable right and license to Sponsor Inventions for non-commercial, educational and research purposes. Any Joint Invention shall belong to University and Sponsor, jointly.

8.2 University will provide Sponsor with a written disclosure of any University Invention or Joint Invention promptly upon its being reported to the University by the Principal Investigator. Sponsor will provide University with a written disclosure of any Sponsor Invention or Joint Invention promptly upon its being reported to Sponsor by a Sponsor investigator. Sponsor shall execute a non-disclosure agreement covering Inventions, as may be required by the University.

8.3 University hereby grants to Sponsor a non-exclusive, royalty-free license to use any University Invention in connection with Sponsor's field of commercial interest, subject to all of the following conditions and qualifications: (a) the license herein described applies to any University Invention only to the extent to which said Invention was actually and formally disclosed to University, (b) Sponsor does not license University Invention to third party(-ies), and (c) Invention is not embodied in any product or services sold or provided by Sponsor, or Sponsor's affiliates, in any manner.

8.4 University hereby grants to Sponsor an option to negotiate an exclusive license (to the extent University may be free to do so) to a University Invention and/or University rights in a Joint Invention subject to requirements that:

(a) Sponsor shall exercise its option to negotiate the exclusive license agreement for any such Invention(s), in writing, within sixty (60) days of disclosure of the Invention to Sponsor by University.

(b) Sponsor and University shall negotiate the terms and conditions of the license in good faith for a period that shall not exceed one hundred twenty (120) days from Sponsor's notice of intent to exercise said option, or such other period of time agreeable to both parties.

(c) In the event that Sponsor and University fail to enter into an agreement during that one hundred twenty (120) day period of time, the University shall have the right to dispose of the University Invention, at its sole and exclusive discretion with no further obligation to Sponsor.

8.5 The parties recognize that inventions, improvements, discoveries, copyrightable works, or other proprietary information may arise from research sponsored in whole or in part by governmental agencies. The parties agree that any such development shall be governed by the provisions of applicable law and subject to the reservation of the rights of the Government of the United States of America, as set forth in 37 CFR 401 and the Patent and Trademark Law Amendments Act of 1980 (Bayh-Dole Act).

SECTION 9. CONFIDENTIALITY

9.1 Any and all knowledge, proprietary information, know-how, practices, processes, or other information (hereinafter referred to as "Confidential Information") disclosed or submitted in writing or in other tangible form which is marked "Confidential Information" to either party by the other shall be submitted to the designated technical representative identified in Section 10 and maintained by the receiving party in strict confidence and shall not be disclosed to any third party. Furthermore, neither party shall use Confidential Information for any purpose other than those purposes specified in this Agreement. The parties may disclose Confidential Information to employees requiring access for the purposes of this Agreement; provided, however, that prior to making any such disclosure the employee shall be apprised of the duty to maintain Confidential Information in confidence and not to use such information for any purpose other than in accordance with the terms and conditions of this Agreement.

9.2 Each party shall use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties for a period of three (3) years from receipt thereof, provided that the receiving party's obligation hereunder shall not apply to information that:

a. is generally available to the public, or thereafter becomes available to the public through no act of the receiving party, or

- b. is documented to be independently known prior to receipt thereof, or is made available to the receiving party as a matter of lawful right by a third party, or
- c. is required by law to be released; provided, however, that prior to any such release, the other party will be notified so that it may take protective measures if it deems necessary, or
- d. is independently developed by an employee of receiving party that has not had access directly or indirectly to the Confidential Information, which claim is corroborated by written evidence.

SECTION 10. NOTICES

Notices, invoices, communications and payments shall be submitted to the offices identified below. All legal notices must be sent by personal delivery or certified mail, return receipt requested. All other contractual notices and communications hereunder shall be deemed made as of the date of mailing if given by overnight courier service or by registered, certified or first class mail, postage prepaid, and addressed to the party to receive such notice or communication at the address(es) given below, or such other address as may hereafter be designated by notice in writing.

If to Sponsor (Business/Invoices):	
Name:	Anil Pillai, CPO Accountant
Address:	3800 North Classen Blvd.
City, State, ZIP Code:	Oklahoma City, OK 73118
Phone/Fax:	(405) 530-8872
e-mail:	Anil.Pillai@owrb.ok.gov

If to Sponsor (Technical):	
Name:	Derrick Stark GIS Manager
Address:	3800 North Classen Blvd.
City, State, ZIP Code:	Oklahoma City, OK 73118
Phone/Fax:	(405) 530-8864
e-mail:	Derrick.Stark@owrb.ok.gov

If to University (Legal):	
Name:	The Executive Secretary of the Board of Regents of the University of Oklahoma
Address:	660 Parrington Oval, Room 119
City, State, ZIP Code:	Norman, OK 730191

If to University (Business/Payment):	
Name:	Don Smith
Address:	Research Financial Services University of Oklahoma 201 Stephenson Pkwy., Five Partners Place, Ste. 3100
City, State, ZIP Code:	Norman, OK 73019-5833
Phone/Fax:	(405) 325-4979
e-mail:	Donald.E.Smith-1@ou.edu

If to University (Business/Contract Terms):	
Name:	Joe Johnson
Address:	Office of Research Services University of Oklahoma 201 Stephenson Pkwy., Five Partners Place, Ste. 3100
City, State, ZIP Code:	Norman, OK 73019-5833
Phone/Fax:	(405) 325-4757
e-mail:	joej@ou.edu

If to University (Technical):	
Name:	Todd Fagin, Ph.D.
Address:	3100 Monitor Ave, Two Partners Place, Suite 180
City, State, ZIP Code:	Norman, OK 73019
Phone :	(405) 325-9611
e-mail:	Tfagin@ou.edu

SECTION 11. GENERAL TERMS AND CONDITIONS

11.1 This Agreement may not be assigned by either party in whole or in part without the prior written permission of the other party.

11.2 This agreement shall be governed by the laws of the state of Oklahoma, without giving force and effect to its choice of law provisions. Any legal action in connection with this agreement shall be filed in a state court of competent jurisdiction in the state of Oklahoma, to which jurisdiction and venue Sponsor expressly agrees.

11.3 Should the parties to this Agreement be unable to resolve between themselves any dispute arising from any of the provisions within this Agreement, each party shall have recourse under the law.

11.4 If any provision(s) of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11.5 This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior and/or contemporaneous discussions, representations, or agreements, whether written or oral, of the parties relating to the work to be performed. This Agreement may be extended, renewed or otherwise amended at any time by the mutual written agreement of the parties.

11.6 This Agreement may be executed in several counterparts, each of which shall be deemed the original, but all of which shall constitute one and the same instrument. This Agreement may be executed using electronic or digital signatures, which shall have the same force and effect as a manual signature.

11.7 The parties agree that this Agreement shall be binding upon their respective successors, assigns or transferees of any nature, if assignment and/or transfer is permitted in accordance with the terms of this Agreement.

11.8 Sponsor agrees that it shall comply with the export control laws and regulations, embargoes and sanctions. Each party agrees that in the event that export controlled information/technology is disclosed, disclosing party shall provide receiving party with sufficient and appropriate information including Export Control Classification Numbers (ECCNs) and/or the Munitions List categories to allow receiving party to properly comply with the export controls regulations. Sponsor maintains an export management system adequate to ensure compliance. Sponsor agrees that it will comply with all other applicable laws, orders and regulations relating to the use and/or transfer of deliverables specified in **Appendix A** and that it will not at any time take any action which would cause University to be in violation of any such laws, orders and regulations.

11.9 In the performance of all services hereunder, the parties shall be deemed to be and shall be independent contractors and, as such, neither shall be entitled to any benefits applicable to employees of the other. Neither party is authorized or empowered to act for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, and/or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

11.10 Sponsor shall indemnify, defend, and hold University, its Regents, officers, agents, students, and employees harmless from and against liability for any and all claims, demands, damages, liabilities, fines, penalties, losses, expenses, costs, and fees of any nature (e.g., attorneys' fees) including, but not limited to, bodily injury, death, personal injury, illness, product liability, and property damage arising from Sponsor's use of information or materials received from University, by Sponsor or its officers, servants, agents, or of any third party acting on behalf of or under authorization from Sponsor including without limitation, use of products, developed or made arising out of or in connection with this Agreement to the extent allowed by Oklahoma law. University will give Sponsor notice of any claim it receives within ten (10) business days of receipt of a claim by University.

11.11 University agrees to be responsible for its own negligent acts and omissions and those of its employees and agents in accordance with the Oklahoma Governmental Tort Claims Act, 51 O.S. 1991 151, *et seq.*, as amended.

11.12 As applicable, the provisions of Executive Order 11246, as amended by Executive Order No. 11375, Executive Order No. 11141, Executive Order No. 13665 and as supplemented in Department of Labor regulations (41 CFR Part 60-1.4(a), 60-300.5(a) and 60-741.5(a) *et. seq.*), are incorporated into this Agreement and must be included in any subcontracts awarded involving this Agreement. The parties represent that all services are provided without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, national origin, disability, political beliefs, or veteran's status; they do not maintain nor provide for their employees any segregated facilities, nor will the parties permit their employees to perform their services at any location where segregated facilities are maintained. In addition, the parties agree to comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, and the Vietnam Era Veteran's Readjustment Assistance Act of 1974, 38 U.S.C. § 4212.

11.13 The terms of this Agreement shall not be binding upon either of the parties hereto until it has been properly executed on behalf of each party to the Agreement in the spaces provided below. It is then effective as of the starting date of the period of performance.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

State of Oklahoma, Water Resources Board

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF OKLAHOMA**

BY: _____

TITLE: _____
DATE: _____

BY: Michael Purcell

Executive Director, Office of Research Services,
TITLE: Associate Vice President for Research and Partnerships
DATE: 12-13-2023

READ AND UNDERSTOOD:

BY: 

DATE: 11/15/2023

Todd Fagin

Principal
Investigator:

Oklahoma Water Resources Board Secretary

APPENDIX A

Scope of Work

Oklahoma Water Resources Board

Phase 4: Modernization and Migration of OWRB Geospatial Resources

SUBMITTED TO

Derrick Stark

GIS Manager, OWRB

Oklahoma Water Resources Board

3800 North Classen Blvd

Oklahoma City, OK 73118

SUBMITTED BY

Todd Fagin, Executive Associate Director

Center for Spatial Analysis

The University of Oklahoma

Two Partners Place

3100 Monitor Ave. Suite 180

Norman, OK 73019

November 2023

Overview

The Oklahoma Water Resources Board (OWRB) manages both spatial and non-spatial datasets critical to its mission. Currently, the hosting of these resources is spread across several entities, including the Office of Management and Enterprise Services (OMES) and the Center for Spatial Analysis (CSA). Recently, OWRB encountered internal data access restrictions caused by issues with connecting to CSA-hosted resources that were located on OMES managed networks. CSA, OWRB, and OMES resolved these issues, however potential for further disruptions remains likely. For instance, at present, compatibility issues exist between Relational Database Management System (RDBMS) versions and GIS server versions. Specifically, the OWRB internal RDBMS limits the ArcGIS Server/Portal (Portal) version OWRB can run. OWRB currently uses an Oracle 11.2.01 (Oracle) RDBMS as a data store for both its spatial and nonspatial data, limiting the Portal to version 10.6.1 (current release is 11.1). Therefore, OWRB must update its RDBMS version along with updating its Portal.

Upon discussion with key personnel at OWRB, CSA has proposed migrating select spatial OMES-hosted datasets (data) in its Oracle RDBMS to a CSA-hosted and Spatial Database Engine (SDE)-enabled PostgreSQL15 RDBMS. This will enable CSA to upgrade OWRB's Portal to 11.1. However, this will require first updating ArcGIS Server to 10.9 then to 11.1. Upon completion of the updates, CSA will migrate the data from Oracle to the PostgreSQL 15 RDBMS (PostgreSQL) following one of two proposed workflows, and noting that the method of data transfer is contingent upon data compatibility between Oracle and PostgreSQL. The first workflow involves the use of tools, such as [Ora2pg](#), that extract, translate, and load (ETL) Oracle databases to PostgreSQL. However, CSA has not tested this with SDE databases, therefore an alternative workflow is direct geodatabase copies from Oracle to PostgreSQL via client software, such as ArcGIS Pro.

Goals of Phase IV

1. Establish whether data access between CSA and OMES remains necessary for any data that will continue to be hosted by OMES;
2. Update OWRB's GIS data stores to Postgres 15 and GIS server to ArcGIS Server to 10.9 then 11.1;
3. Migrate OWRB Portal content from 10.6.1 to 10.9 and, then, 11.1;
4. Update the data stores in Portal to ensure it is consuming data from the PostgreSQL server. CSA will complete all necessary upgrades concurrent with OWRB's current operations, ensuring no disruptions in critical services. Further, CSA will maintain the ArcGIS Server 10.6.1 until OWRB approves the final migration to the new resources.

Scope of Work

1. Update the ArcGIS Server and Portal instances to the latest version.
 - a. Continue to support such upgrades as they become available under the current hosting agreement, while ensuring continuity of workflow.
2. Deploy a PostgreSQL RDBMS instance compatible with the latest ArcGIS Server and Portal instances.
3. Copy existing OWRB content from Oracle to the PostgreSQL instance identified in consensus between OWRB and CSA..
4. Evaluate and Discuss with OWRB any traceback, error message, error condition or intuition raised by execution of the existing OWRB data update scripting
5. Ensure all existing content (web maps, feature services, etc.) in the updated Portal for ArcGIS is consuming data from the PostgreSQL database (update data stores).

6. Continue to maintain old instances of ArcGIS Server and Portal for ArcGIS until the new system is fully operational.

Budget Justification

Todd Fagin, CSA executive associate director, will serve as a co-project lead on the project at 10.4 hours. He will assist all project tasks, including project management. Kelby Thomasson, GIS Systems Administrator, will take the lead on database configuration and migration. He will also provide IT support and set up new servers, database instance, ArcGIS Server, and Portal for ArcGIS Portal and assist in all aspects of data migration, at an estimated 780 hours. Daniela Spade, GIS Application and Outreach Coordinator, will work closely with both Kelby Thomasson in database and server configuration and data migration, at an estimated 780 hours. Jim Anderson, GIS Architect and Data Analyst, will provide technical support as needed at 80.6 hours. Leah Nash, Associate Director of Administration and Finance will administer the budget and assist in troubleshooting at 10.4 hours.

Todd Fagin

Hourly rate w/fringe: \$56.48

Kelby Thomasson

Hourly rate w/fringe: \$40.84

Daniela Spade

Hourly rate w/fringe: \$44.19

Jim Anderson

Hourly rate w/fringe: \$45.94

Leah Nash

Hourly rate w/fringe \$44.23

APPENDIX B

UNIVERSITY OF OKLAHOMA BUDGET Budget Period 1

See notes at bottom of spreadsheet

		1/1/2024	to		12/31/2024							
A. SENIOR PERSONNEL		(Sat) Appt Mos.				SALARY	SPONSOR REQUEST	OU COST SHARE	TOTAL	Salary Requested	Fringe Benefits	Total
1. Principal Investigator		12	0.50%	FTE	x 12 academic mos.	\$87,673		\$438	\$438	\$438	\$149	\$587
Todd Fagin					FTE x summer mos.	\$87,673						
2. Co-Principal Investigator		12	37.50%	FTE	x 12 academic mos.	\$63,400	\$23,775		\$23,775	\$23,775	\$8,084	\$31,859
Kelby Thomasson					FTE x summer mos.	\$63,400						
3. Co-Principal Investigator		12	37.50%	FTE	x 12 academic mos.	\$68,608	\$25,728		\$25,728	\$25,728	\$8,748	\$34,476
Daniela Spode					FTE x summer mos.	\$68,608						
4. Co-Principal Investigator		12	0.50%	FTE	x 12 academic mos.	\$68,662	\$343		\$343	\$343	\$117	\$460
Leah Nash					FTE x summer mos.	\$68,662						
5. Co-Principal Investigator		12		FTE	x academic mos.							
					FTE x summer mos.							
TOTAL SENIOR PERSONNEL			Fringe Rate			34.00%	TOTAL	\$50,284	\$50,284	\$50,284	\$17,098	\$67,382
B. OTHER PERSONNEL						Fringe Rate						
1. () POST DOCTORAL ASSOCIATES						19.13%						
2. (1) OTHER PROFESSIONALS (TECHNICIAN, PROGRAMMER, ETC.)						34.00%	\$2,762		\$2,762	\$2,762	\$939	\$3,701
3. () PROJECT SECRETARIAL/CLERICAL (restricted use --ask POB)						34.00%						
4. () GRADUATE STUDENTS	# MONTHS APPT					11.27%						
5. () UNDERGRADUATE STUDENTS	# MONTHS APPT					0.35%						
6. () OTHER						34.00%						
TOTAL SALARIES AND WAGES (A+B)							\$53,046		\$53,046	\$53,046	\$18,037	\$71,083
C. FRINGE BENEFITS (If temp employee or other FB rate needed contact PDS)									\$18,037	\$18,037		
TOTAL SALARIES WAGES AND FRINGE BENEFITS (A+B+C)									\$71,083	\$71,083		
D. PERMANENT EQUIPMENT (\$5,000 PER UNIT OR FABRICATED AND RETAINED BY OU AT LEAST 1 YEAR*)												
Item	Coet	Item	Coet									
_____	_____	_____	_____									
_____	_____	_____	_____									
_____	_____	_____	_____									
TOTAL PERMANENT EQUIPMENT												
E. TRAVEL												
Domestic _____												
Foreign _____												
Use federal/state rates; Detail travel costs in budget justification												
TOTAL TRAVEL												
F. PARTICIPANT SUPPORT COSTS (used only by NSF and some DoED)												
(NON-EMPLOYEE CONFERENCE/WORKSHOP ATTENDEES)												
1. STIPENDS	_____	3. SUBSISTENCE	_____									
2. TRAVEL	_____	4. OTHER	_____									
() Number of Participants	_____	TOTAL PARTICIPANT SUPPORT										
G. OTHER DIRECT COSTS												
1. MATERIALS AND SUPPLIES												
Item	Coet	Item	Coet									
_____	_____	_____	_____									
_____	_____	_____	_____									
_____	_____	_____	_____									
TOTAL MATERIALS & SUPPLIES												
2. PUBLICATION COSTS/DOCUMENTATION DISSEMINATION												
3. CONSULTANT SERVICES (PROVIDE DAILY RATE AND NUMBER OF DAYS IN JUSTIFICATION)												
4. COMPUTER (ADPE) SERVICES												
5. SUBCONTRACTS*							AMOUNT FOR IDC CALCULATION	\$ -				
6. TUITION FEE							To determine the total number of GRA months for more than one appointment add all months, for example one GRA appointed at 12 mos. plus one at 6 mos. = 18 months total. Partial month = full month (example 4.5 months = 5 months)					
							Total number of GRA months					
7. SHIPPING COSTS (Shipping for materials, supplies, equipment, etc.)												
8. INCENTIVES (Any allocation to study participants, focus groups, etc.)												
9. OTHER												
Item	Coet	Item	Coet									
_____	_____	_____	_____									
_____	_____	_____	_____									
_____	_____	_____	_____									
TOTAL OTHR												
TOTAL OTHER DIRECT COSTS (G1 - 9)												
Subtotal Direct Costs							\$71,083		\$71,083	\$71,083		
If ARRC or LASI Fees should be included, make selection on Info tab.												
H. TOTAL DIRECT COSTS (A THROUGH G)							\$71,083		\$71,083	\$71,083		
I. INDIRECT COSTS:							MTDC Base =	\$71,083				
							TDC Base =	N/A		\$18,482	\$18,482	
J. TOTAL COSTS - PERIOD ONE										\$89,565	\$89,565	
Third Party Costshare							Organization #1:					
							Organization #2:					
TOTAL							\$89,565		\$89,565	\$89,565		

NIH ONLY
Modular Amount = N/A
Total Direct Costs less IDC on subs

Gray shaded areas do not calculate-DO NOT USE
Yellow shaded areas to the right show salary related info in regards to sponsor request (no cost share)

* Permanent Equipment: Equipment, including fabricated equipment, that is not retained by OU does not qualify as permanent equipment. These items should be listed under materials and supplies and IDC will be charged on them.

Need more than 5 Senior Personnel? Select Rows 14 & 55, right-click, and select unhide.

Need more Budget Periods? Right-click on the "Cumulative" tab, select "Unhide", and select the budget period you wish to unhide. Repeat this process for each budget period you wish to unhide.

Does your project include Intellectual Property? Please work with the Office of Technology Commercialization and include any

AGENDA ITEM 3D(2)

CONTRACT FOR PROFESSIONAL SERVICES

WITH: HISINC, LLC

PURPOSE: Employ HISINC, LLC, to administer, manage and implement floodplain administration assignments as requested by OWRB

AMOUNT: Not to exceed \$2,500.00

TERM: Through July 31, 2024

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services (“Contract”) between HISINC, L.L.C., an independent contractor, (“Contractor”), and the Oklahoma Water Resources Board (“OWRB”), an agency of the State of Oklahoma,

WITNESSETH:

WHEREAS, 27A O.S. § 1-3-101(C) provides that OWRB has the jurisdictional area of environmental responsibility in the State of Oklahoma for, among other things, flood plain management; and

WHEREAS, OWRB is authorized pursuant to 82 O.S. § 1085.2 to aid counties, incorporated cities and towns and special purpose districts in promoting and developing flood control; and

WHEREAS, in carrying out its statutory authority, among other things OWRB acts as the state coordinating agency for the National Flood Insurance Program (“NFIP”), and has scheduled a week-long course on floodplain management for floodplain administrators in Oklahoma entitled “Managing Floodplain Development Through the NFIP” (the “Course”) to be held in Oklahoma City, Oklahoma in February 2024; and

WHEREAS, Contractor currently employs Rev. W.B. Smith ("Smith") who is a registered professional engineer, a floodplain administrator, a Certified Floodplain Manager, and past Chairman of the Oklahoma Floodplain Managers Association, Inc., and who has over 40 years’ experience in floodplain management; and

WHEREAS, Contractor and OWRB are agreeable to entering into this Contract whereby OWRB will obtain the services of Smith from Contractor upon the terms which follow; and

WHEREAS, this Contract is authorized by 82 O.S. § 1085.2.

NOW, THEREFORE, IT IS AGREED by and between Contractor and OWRB as follows:

1. **SERVICES TO BE PROVIDED BY CONTRACTOR.** Contractor shall provide to OWRB the services of Smith to perform assignments which assist OWRB in implementing OWRB's NFIP and other floodplain management responsibilities. These assignments may include but are not necessarily limited to instructing local floodplain administrators during the course scheduled on or about February 12th-13th, 2024 in Oklahoma City, Oklahoma. Contractor shall make Smith available to report to and consult with the Division Chief of the OWRB's Planning and Management Division while continually being monitored by the OWRB’s State Floodplain Management Staff during the Course.

2. **OBLIGATIONS OF OWRB.** If necessary, to perform the assignments given to Smith, OWRB will provide workspace and a personal computer which Contractor may use as necessary for performing Contractor's work under this Contract. It is expressly agreed that the provision of

workspace and personal computer shall not be construed as creating an employer-employee relationship between OWRB and Smith nor between OWRB and Contractor.

3. COMPENSATION TO CONTRACTOR.

a. Compensation for Services. For all services performed by Contractor during the period of this Contract, OWRB shall pay to Contractor Fifty-five Dollars (\$55.00) per hour worked.

b. Reimbursement for actual, necessary expenses. Whenever approved by the Chief of the Planning and Management Division or her designee in advance of the travel and incurring of expenses, Contractor shall also be reimbursed for (i) Contractor's out-of-pocket expenses incurred in travel necessary for Contractor's performance under this Contract, as limited by and in accordance with the State Travel Reimbursement Act, 74 O.S. § 500.1 et seq., and (ii) to the extent authorized and permitted by state law including but not limited to 74 O.S. § 500.9A, Contractor's other actual out-of-pocket expenses necessary for Contractor's performance under this Contract, which shall not exceed Five Hundred Fifty Dollars (\$550.00) per event or occurrence.

c. Limit on compensation and reimbursement. Notwithstanding any other provision of this paragraph 3, the total amount paid to Contractor under this Contract, including any and all amounts as compensation for services and reimbursement for travel and other necessary expenses, shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00). As an employee of an independent contractor, Smith shall not receive nor be entitled to any benefits accorded to employees of the state, or any pay in lieu of benefits.

d. Invoices; payment procedure. On or before February 28, 2024, Contractor shall submit an invoice to OWRB for services performed and expenses incurred which are attributable to the Course. The invoice shall be in form and content acceptable to the OWRB; among other requirements, the invoice shall contain information about dates and hours worked and a general description of the services provided. If the invoice is unacceptable to OWRB, OWRB shall return the invoice to Contractor with the reason for rejection of the invoice.

e. Compensation and reimbursement subject to appropriation of funds. It is understood and agreed that funding for this Contract depends upon and is subject to State and/or Federal appropriations. In the event funds to finance this Contract become unavailable, either in full or in part, for whatever reason as determined by OWRB, OWRB may unilaterally terminate the Contract or reduce the consideration upon notice in writing to the Contractor. OWRB shall be the final authority as to the availability of funds. In the event of non-appropriation or discontinuance of funding for this Contract, the Contractor will be paid for production or services provided up to the effective date of termination.

4. TERM OF CONTRACT. This Contract shall become effective when all necessary signatures and approvals are obtained and shall be in full force and effect until July 31, 2024, unless terminated earlier as provided herein. This Contract may be amended, extended or renewed upon mutual agreement of the parties. OWRB and Contractor further agree that this Contract may be terminated at any time during its term by mutual agreement of the parties to terminate or may

be terminated unilaterally by either party upon thirty (30) days advance written notice of termination by the terminating party to the other party.

5. **INDEPENDENT CONTRACTOR STATUS.** For all purposes, Contractor is an independent contractor and Smith is an employee of Contractor. It is expressly understood and intended that neither Contractor nor Smith is, nor shall be, an employee of OWRB for any purpose. OWRB will not provide Contractor or Smith with worker's compensation coverage. OWRB will not provide to Contractor nor Smith any benefits that are accorded to state employees, whether full time employees, temporary employees, seasonal employees or other categories of employees recognized by the Oklahoma Personnel Act or otherwise by any court cases. Contractor is solely responsible for the payment of any required State and Federal income or other taxes, periodic withholding thereof, and all other liabilities of independent contractors, including but not limited to the payment of workers compensation insurance, other taxes, Social Security payments and adjustments relating to retirement benefits. Neither Contractor nor Smith is authorized to operate any motor vehicle of the State, and Smith may ride in a motor vehicle of the State only as necessary to provide the services set forth in this Contract. Contractor shall have the right to control and determine the method and means of performing the services described in paragraph 1 above; OWRB shall not have the right to control or determine such method or means. Contractor retains the right to perform services for other parties.

6. **AUDIT.** Contractor agrees that all records and other items of the Contractor relating to Contractor's professional services under this Contract shall be subject to examination by OWRB, the State Purchasing Director of the Central Purchasing Division of the Office of Management and Enterprise Services, and the State Auditor and Inspector of the State of Oklahoma. Access to such items shall be made available during reasonable business hours to any proper representative of these agencies or officials for inspection, copying and audit purposes. The term "records" includes books, documents, accounting procedures and practices, claims, and other data regardless of type whether in written form, computer data, or other form of Contractor relating to this Contract. Contractor shall maintain accurate records and documentation of all expenditures of time and resources in fulfilling its obligations under this Contract and shall retain all records relative to this Contract for a period of time not less than three (3) years following completion and/or termination of this Contract. If an audit, litigation or other action involving the records is commenced before the end of the foregoing three (3) year period, then the records shall be maintained for three (3) years after the date that all issues arising out of the action are resolved or until the end of the three year retention period, whichever is later.

7. **CONTRACT SUBJECT TO OKLAHOMA LAW AND APPROVING AUTHORITIES; SEVERABILITY.** This Contract shall be governed by and subject to the laws of the State of Oklahoma. The terms and conditions stated in any corresponding state purchasing and acquisition documentation, Purchase Order, and approval of any necessary authorities, are incorporated by reference herein and made a part hereof. If any provision of this Contract shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Contract and this Contract shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

AGREED to by the parties on the dates specified below.

HISINC, L.L.C.

W.B. Smith, President Date

OKLAHOMA WATER RESOURCES BOARD ATTEST:

Jennifer Castillo Date
Chairman

Suzanne Landess Date
Secretary

(SEAL)

**4. PUBLIC HEARING ON PROPOSED NEW AND AMENDED PERMANENT
RULES OF THE BOARD**

January 16, 2024

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 5. FEES**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

785:5-1-9. Dam safety and inspection fees [AMENDED]

SUMMARY:

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 by amending the rule to reflect increased cost of labor to review dam safety construction applications. Other amendments may be considered or proposed as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., § 1085.2; 82 O.S. § 1085.4.

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 p.m. on January 16, 2024. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 p.m. on January 16, 2024. Persons wishing to present oral comment to the OWRB may do so at the public hearing on January 16, 2024.

PUBLIC HEARING:

A public hearing will be held January 16, 2024, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the OWRB's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the OWRB's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from Chrystal Krittenbrink, Legal Assistant, at Cris.Krittenbrink@owrb.ok.gov. The proposed amendments may also be viewed on the OWRB web site at

<http://www.oklahoma.gov/owrb>.

RULE IMPACT STATEMENT:

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

<http://www.oklahoma.gov/owrb>.

CONTACT PERSON:

Sara D. Gibson, General Counsel, 405-530-8800, Sara.Gibson@owrb.ok.gov.

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 5
Proposed for Adoption During 2024

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 by amending OAC 785:5-1-9 to reflect increased cost of labor to review dam safety construction applications. 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 submit an application for construction, repair, or modification of a dam and those with existing dams will be affected by the proposed rule amendments.

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 of dam construction applications and ongoing oversight of dam hazard potential. All citizens of the State and dam owners will benefit from a more timely review of applications to rehabilitate dam structures to ensure that those dams are safe.

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 impacts should be relatively minor, based on the proposed amount of increase in OAC Section 785:5-1-9. The fees for an *Application to Construct, Enlarge, or Modify a Dam and/or Spillway* (hereinafter "application") are based on the estimated cost of construction as reported in the application. The application fee for dams for which construction cost is less than \$200,000, the fee would be \$1,000; fees for applications with a cost between \$200,000 and \$12,000,000 would be 0.5% of estimated cost, not to exceed \$6,000; and applications with an estimated cost of \$12,000,000 and greater, would have a fee of five hundredths of a percent (0.05%) of estimated cost, with no maximum fee applied.

To estimate the financial impact of these fee changes, the difference in current and proposed fees were examined for all dam construction applications that were received by the Board

between 1/1/2022 and 9/30/2023. For the applications examined with construction cost less than \$200,000, the \$1,000 fee was on average 1.3% of total construction cost. Of all applications examined, 42% fell into this category. For dams costing between \$200,000 to \$1 million, the application fee is unchanged by this amendment; 38% of the applications examined would not have been affected. For dams costing between \$1 and \$12 million, the proposed fee would cost up to an additional \$1,000 and would be 0.5% or less of the reported construction cost; 12% of applications received would have been affected by this change with the average fee being 0.25% of cost. For dam construction estimates between \$12 and \$20 million, the proposed fee would cost an additional \$1,000 to \$5,000; of the applications examined 8% fall into this category with the fee proposed to be set at 0.05% of construction cost.

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.

With respect to the fee increases in the proposed changes to OAC Section 785:5-1-9, no extraordinary costs to the agency are anticipated. No other state agency will be required to assist in implementing or enforcing the fees. Increase in revenues from proposed dam safety application fees are expected to be approximately \$15,000 annually.

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.

No persons or entities are likely to be impacted by the proposed changes to OAC Section 785:5-1-9. 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 would be required to submit fees under the proposed changes to OAC Section 785:5-1-9. 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 Section 785:5-1-9 are not expected to have an adverse economic impact on small business. Dam safety fees are unlikely to have an adverse economic effect on small business within the meaning of the Oklahoma Small Business Regulatory Flexibility Act.

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.

Compliance with proposed dam safety fee schedules under OAC Section 785:5-1-9 pose a minimal cost to applicants and dam owners. Expected revenues 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. There are no less costly, nonregulatory, or less intrusive methods for achieving the purpose of the proposed changes.

The proposed fees to OAC Section 785:5-1-9 Dam Safety application fees are calculated to offset the use of agency resources associated with administering these activities so as to not require additional appropriated funds from the legislature.

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 Section 785:5-1-9, to the extent that inadequate administration of dam safety may cause an increased risk to downstream landowner's health and safety should a dam fail due to lack of dam construction oversight.

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 Section 785:5-1-9 are not implemented the dam safety program will not be able to properly review the construction documents or hazard verifications and the potential of adverse consequences to the public health, safety, and environment are possible.

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

This rule impact statement was reviewed and approved on November 15, 2023, by Yohanes Sugeng, Chief, Engineering and Planning Division, Oklahoma Water Resources Board.

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 5. FEES**

FEE JUSTIFICATION

Oklahoma Administrative Code ("OAC") section 785:5-1-9(a) is proposed to be amended by updating the fees to reflect the increased cost of labor to review dam construction permit applications.

The Oklahoma Dam Safety Program requires about \$700,000 to fund the program with four (4) full-time employees. Approximately 75% of the Dam Safety Program is funded through the FEMA State Assistance Grant. The remaining 25% of funding comes from programmatic fees and state appropriations.

The primary driver of cost to review dam construction application is the variety and complexity of different elements a proposed dam has, such as spillways, drain and filter structures, anchoring, energy dissipation, etc. The major assumption is that the estimated construction cost is directly correlated to the number and complexity of these elements, and that fees to fund Board staff review time should be scaled accordingly.

Current and Proposed Fee Schedules

Filing and review fees for dam construction and modification are based on the estimated cost of construction. The current fee schedule is built of three tiers of construction cost as follows:

- (1) \$99,999 or less estimated cost - \$500.00
- (2) \$100,000 through \$19,999,999 estimated cost – One-half of one percent (0.5%) of estimated cost; not to exceed \$5,000
- (3) \$20,000,000 \$12,000,000 or greater estimated cost - \$10,000.00

The proposed fee structure is to modify the rate tiers by estimated construction cost and adjust the maximum fees to be applied as follows:

- (1) \$199,999 or less estimated cost - \$1,000
- (2) \$200,000 through \$11,999,999 estimated cost – One half of one percent (0.5%) of estimated cost; not to exceed \$6,000
- (3) \$12,000,000 or greater estimated cost - Five hundredths of one percent (0.05%) of estimated cost

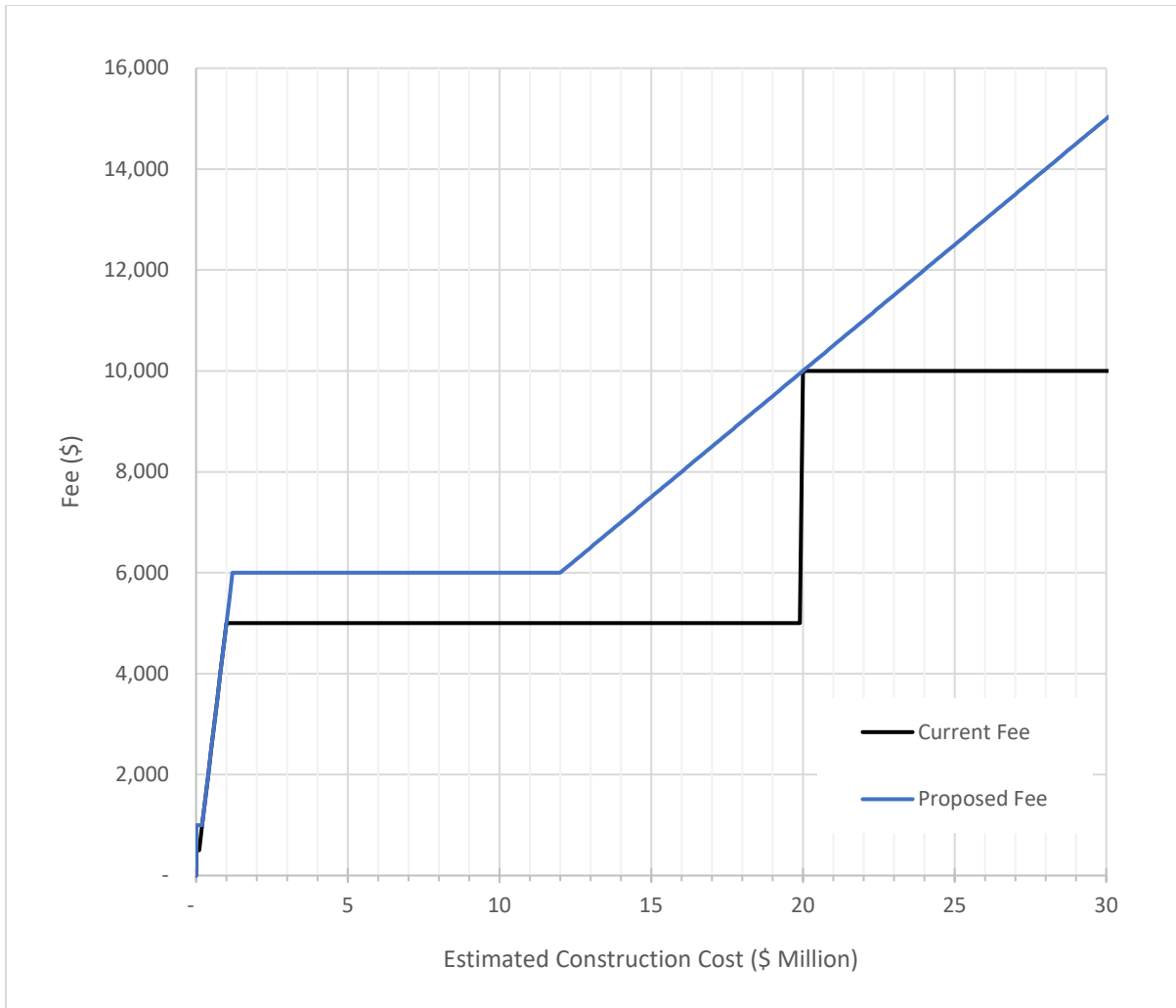


Figure 1: Dam Safety Application Fee Schedule

Discussion

Tier 1

The existing application fee for dam construction costing less than \$100,000 is a flat \$500 fee. The proposed fee structure would increase this minimum application fee to \$1,000 and apply to all dams with a cost less than \$200,000.

Typically, these lower cost dam applications are for simple modifications or repairs and are not for building an entirely new structure. Due to the low complexity and limited appurtenances requiring examination, staff review time for these applications is at a minimum with one staff engineer and one engineering manager spending about 12 hours total on reviewing the application and costing slightly more than \$1,000. The table below shows the approximate minimum time for these tasks. Actual staff review tasks vary depending on the nature of work being proposed (i.e., the review tasks will be different for a spillway repair versus embankment repair, but the staff time would be comparable).

Table 1: Minimum Dam Safety Staff Application Review Cost

Activity	Staff Engineer		Engineering Manager	
	Hours	Salary + Fringe & Indirect	Hours	Salary + Fringe & Indirect
Hazard Classification Verification	0	\$ -	0	\$ -
Hydrologic & Hydraulic Evaluation	2	\$ 347.48	0	\$ -
Geotechnical Evaluation	2	\$ -	0	\$ -
Design	4	\$ 347.48	0	\$ -
Means & Methods	1	\$ 86.87	0	\$ -
Project Meetings	1	\$ 86.87	0	\$ -
Documentation	1	\$ 86.87	0	\$ -
Final Manager Review	0	\$ -	1	\$ 103.76
Subtotal	11	\$ 955.58	1	\$ 103.76
Total				\$ 1,059.34

Tier 2

The existing application fee for dam construction between \$100,000 and \$19,999,999 is 0.5% of estimated construction cost with a maximum allowable fee of \$5,000. Under this structure, the maximum fee is quickly met with a project cost of \$1 million. The proposed fee structure would apply to dams with a cost of \$200,000 to \$11,999,999, have a fee rate of 0.5% of estimated construction cost, with an increased maximum allowable fee of \$6,000, which is met with a project cost of \$1.2 million.

Review time cost varies significantly for dam construction applications and depends on the complexity of the proposed work to be completed and number of separate design elements or appurtenances a dam is proposed to have. Typical review for new dam construction consists of

several different activities requiring time from at least one engineering staff (PE 1) and an engineering manager (EM 1). The following table is a list of review activities and minimum time expended for a typical new construction dam permit application review. Dam of this type are typically in the range of cost of \$2-12 million.

Table 2: Typical Dam Safety Staff Application Review Cost

Activity	Staff Engineer		Engineering Manager	
	Hours	Salary + Fringe & Indirect	Hours	Salary + Fringe & Indirect
Hazard Classification Verification	8	\$ 694.97	2	\$ 207.52
Hydrologic & Hydraulic Evaluation	8	\$ 694.97	2	\$ 207.52
Geotechnical Evaluation	8	\$ 694.97	2	\$ 207.52
Design	8	\$ 694.97	2	\$ 207.52
Means & Methods	8	\$ 694.97	2	\$ 207.52
Project Meetings	4	\$ 347.48	2	\$ 207.52
Documentation	4	\$ 347.48	2	\$ 207.52
Final Manager Review	0	\$ -	4	\$ 415.05
Subtotal	48	\$ 4,169.80	18	\$ 1,867.72
Total				\$ 6,037.52

Tier 3

The current applications for all dams costing \$20 million or more have a review fee of \$10,000. The proposed fee structure is to have a fee rate of five hundredths of one percent (0.05%) of construction cost, with no maximum fee, to all dams with an estimated cost over \$12 million. For high-cost structures, review costs most often scale directly with construction cost. For larger projects such as these, directly scaling the administrative fees could also allow for the program to acquire additional engineering resources as needed.

An example of a high-cost dam would be a recent application that was received for a large concrete dam that is planned to have many rock anchors installed to increase its structural stability. For this dam, the primary the cost of construction is driven by the number and length of rock anchors being installed. Each anchor needs to be analyzed separately, so time spent reviewing this dam is directly related to cost to construct.

Fee Comparison

The Oklahoma Dam Safety Program recently participated in a state dam safety program evaluation for the state of Kansas, which compared the dam safety programs of many neighboring states. In the Kansas program evaluation, it was reported:

Many states use a percentage of construction costs, with several states using as high as 3% of construction costs, as the permit application fees. In these cases, application fees can be in the tens or even hundreds of thousands of dollars. We

had discussions with one state where a dam modification application fee had exceeded \$1 million in the prior year.

The proposed fee increases are to ensure that the fees collected for review are sufficient to cover the increasing cost of labor. Presently, the minimum time required for review shown in Table 1 outpaces the fee currently collected for dams with a cost of under \$100,000. With the current fee structure under Tier 1 covering less than half of the minimum review time cost, these applications have the largest disparity between State staff cost and fees collected.

The effects of the proposed fee changes were examined for the latest 26 dam applications which were received between January 2022 to September 2023. Of those, 11 applications would have been affected by the changes in the Tier 1 fees, 4 applications would have increased fees under the Tier 2 changes, 1 application affected by Tier 3, and 10 applications would not have been affected. Out of all applications, only 3 dams would have had a fee greater than 1% of reported estimated cost.

Table 3: Existing and Proposed Fee Comparison for 2022 and 2023 Dam Applications

NIDID	Dam Name	Application Date	Est. Const. Cost	Current Fees	Proposed Fee Schedule	Fee Change	Percentage of Cost Proposed Fee
OK02418	Regal Lake HOA	1/20/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK00490	Security Nat Bank & Trust	1/27/2022	\$ 50,000	\$ 500	\$ 1,000	\$ 500	2.0%
OK10731	Waxhoma	2/8/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK01344	Hominy	3/9/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK02425	Aluma	3/15/2022	\$ 750,000	\$ 3,500	\$ 3,500	\$ -	0.5%
OK30586	Lakey Pond No. 2	3/17/2022	\$ 37,500	\$ 500	\$ 1,000	\$ 500	2.7%
OK30596	Liberty	4/4/2022	\$ 350,000	\$ 1,500	\$ 1,500	\$ -	0.4%
OK30597	Lowry	4/5/2022	\$ 2,093,650	\$ 5,000	\$ 6,000	\$ 1,000	0.3%
OK30601	Freeman Blue Bend	4/11/2022	\$ 425,000	\$ 2,000	\$ 2,000	\$ -	0.5%
OK30538	Carel #1	5/4/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK02123	Guthrie	5/20/2022	\$ 2,250,000	\$ 5,000	\$ 6,000	\$ 1,000	0.3%
OK11027	Hunter	8/1/2022	\$ 760,000	\$ 3,500	\$ 3,500	\$ -	0.5%
OK02201	Jap Beaver	9/1/2022	\$ 759,000	\$ 3,500	\$ 3,500	\$ -	0.5%
OK30602	Estates at Lynn Lane	9/14/2022	\$ 150,000	\$ 500	\$ 1,000	\$ 500	0.7%
OK30603	Bayou	10/17/2022	\$ 160,000	\$ 500	\$ 1,000	\$ 500	0.6%
OK11026	Eucha	1/4/2023	\$ 13,000,000	\$ 5,000	\$ 6,500	\$ 1,500	0.1%
OK30605	Yockey	2/24/2023	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK20976	OKNONAME 101001	3/2/2023	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK11005	Twin Lakes HOA	4/11/2023	\$ 50,000	\$ 500	\$ 1,000	\$ 500	2.0%
OK00452	Ellsworth	4/18/2023	\$ 16,400,000	\$ 5,000	\$ 8,200	\$ 3,200	0.1%
OK10642	Cushing	5/3/2023	\$ 350,000	\$ 1,500	\$ 1,500	\$ -	0.4%
OK11078	New Beggs	5/15/2023	\$ 1,000,000	\$ 5,000	\$ 5,000	\$ -	0.5%
OK13279	Comanche	8/4/2023	\$ 621,905	\$ 3,000	\$ 3,000	\$ -	0.5%
OK10248	Whittington	8/5/2023	\$ 1,000,000	\$ 5,000	\$ 5,000	\$ -	0.5%
OK10736	Clear Creek	8/31/2023	\$ 3,000,000	\$ 5,000	\$ 6,000	\$ 1,000	0.2%
OK12578	Summit Lake	9/20/2023	\$ 600,000	\$ 3,000	\$ 3,000	\$ -	0.5%
Total			\$ 44,407,055	\$ 62,000	\$ 75,200	\$ 13,200	N/A
Average			\$ 1,707,964	\$ 2,385	\$ 2,892	\$ 508	0.8%

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 5. FEES**

785:5-1-9. Dam safety and inspection fees

(a) Filing fees which must be submitted with each application to construct, enlarge, alter, or repair a dam (based on estimated cost of construction, enlargement, etc.) are as follows:

- (1) \$99,999 or less estimated cost - ~~\$ 500.00~~\$1,000.00.
- (2) \$100,000 through ~~\$19,999,999~~\$11,999,999 estimated cost – One-half of one percent (0.5%) of estimated cost; not to exceed ~~\$5,000~~\$6,000.00.
- (3) ~~\$20,000,000~~\$12,000,000 or greater estimated cost - ~~\$10,000.00~~Five hundredths of one percent (0.05%) of estimated cost.

(b) Fees for inspections of dams classified as low or significant hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel are as follows:

- (1) Small (see 785:25-3-3) - \$250.00 for each inspection visit.
- (2) Intermediate (see 785:25-3-3) - \$500.00 for each inspection visit.
- (3) Large (see 785:25-3-3) - \$1000.00 for each inspection visit.

(c) Fees for inspections of dams classified as high hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel shall be the actual cost of such inspection.

(d) The fee required for issuance of a certificate of completion is \$25.00 plus if applicable, the inspection fee set out in subsection (b) or (c) of this Section.

(e) Inspection report review and administration fees are due with submittal of the inspection reports as follows:

- (1) Significant hazard dams - \$300 once every three (3) years
- (2) High hazard dams - \$350 each year, provided that if the inspection report and fee is not submitted by the date specified, an additional fee of \$50.00 will be due.

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 13. Interference Conditions at Bureau of Reclamation Reservoirs [NEW]

785:20-13-1. Definitions

785:20-13-2. Lugert-Altus Reservoir

785:20-13-3. Tom Steed Reservoir

785:20-13-4. Notification of interference

SUMMARY:

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing or is considering promulgation of a new Subchapter 13 to Chapter 20. The proposed subchapter is proposed to use study data, setting specific drought thresholds to limit surface water withdrawal by junior surface water permits upstream of Lugert-Altus and Tom Steed reservoirs. Other amendments may be considered or proposed as a result of public comments.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., §§ 105.1, et seq and 82 O.S., § 1085.2.

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 p.m. on January 16, 2024. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 p.m. on January 16, 2024. Persons wishing to present oral comment to the OWRB may do so at the public hearing on January 16, 2024.

PUBLIC HEARING:

A public hearing will be held January 16, 2024, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the OWRB's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the OWRB's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from Chrystal Krittenbrink, Legal Assistant, at Cris.Krittenbrink@owrb.ok.gov. The proposed amendments may also be viewed on the OWRB web site at <http://www.oklahoma.gov/owrb>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The

Rule Impact Statement may also be viewed on the OWRB web site at
<http://www.oklahoma.gov/owrb>.

CONTACT PERSON:

Sara D. Gibson, General Counsel, 405-530-8800, Sara.Gibson@owrb.ok.gov.

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785:20
Proposed for Adoption During 2024

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 a new Subchapter 13 to Chapter 20. The subchapter is proposed to use study data to set specific drought thresholds to limit surface water withdrawal by junior surface water permits upstream of Lugert-Altus and Tom Steed reservoirs. 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.

The persons or entities effected by the new Subchapter 13 proposing drought thresholds for junior water right holders upstream from Lugert-Altus and Tom Steed reservoirs would be the junior surface water permit holders. The rule would set definitive thresholds for junior permit holders to sufficiently plan for a reduction in available water. Irrigators and permit holders may also benefit from potential savings resulting from avoided crop losses.

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

Users of water from Lugert-Altus and Tom Steed reservoirs would benefit from definitive drought condition thresholds under the proposed OAC 785:20-13 that would help establish a more reliable water source. Junior water right holders would be subject to specific situations of curtailment, but would have the benefit of sufficient time to anticipate and plan for potential water shortages.

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 economic impacts regarding the new subchapter proposed as OAC 785:20-13 would be positive for entities or persons relying on water from Lugert-Altus and Tom Steed reservoirs. In addition, setting conditions for junior permits upstream from these reservoirs would provide definitive thresholds that would prevent junior surface water permit holders from investing in crops. However, for junior permits for anything other than irrigation, the economic impact may

be more significant as those entities would need to procure a more reliable water source, which could take time and investment.

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.

Enforcement of 785:20-13 may incur costs associated with enforcing junior water right holders cease water use when drought thresholds are met. Sending staff out on potential complaints or enforcement activities would be the primary cost. There would be no cost to any other agency.

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.

The new subchapter (OAC 785:20-13) may impact political subdivisions, such as public water suppliers, who use surface water above Lugert-Altus and Tom Steed reservoirs. The staff of OWRB will provide sufficient notice so that water suppliers can work to mitigate any impacts to the system.

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.

OAC 785:20-13 may impact junior water right holders who rely on water year-round. The drought conditions that would be placed on junior water right holders may impact their ability to use water. However, the proposed rules would implement these conditions in September of any given year if those conditions are met, allowing junior water right holders to adequately plan for less/no water during the irrigation cycle. In addition, as written, the proposed rule would allow the junior water right holder to use water if the conditions were no longer applicable after September (in the event the drought conditions are lifted).

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.

For OAC 785:20-13, implementation of drought conditions on junior water right holders above Tom Steed and Lugert-Altus reservoirs, the reservoirs have operated without a clear definition of interference from upstream junior water right holders. The language clarifies the

unknown and is based on published data by the U.S. Bureau of Reclamation. Costs to the agency to implement the new subchapter would be associated with correspondence with junior permit holders and possible enforcement actions caused by non-compliance.

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.

The addition of the proposed Subchapter 13 would reduce the risk of water supply shortages in Lugert-Altus and Tom Steed reservoirs, which would positively affect the ability of the water management districts to deliver water for public health and safety.

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 new Subchapter 13 is not implemented, the ability to deliver water from Lugert-Altus and Tom Steed reservoirs will continue to be hindered. Although Subchapter 13 is not a complete solution to the issues that arise during drought conditions for these two reservoirs, Subchapter 13 would be a first step in protecting the water supply from these reservoirs.

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

This rule impact statement was reviewed and approved on November 16, 2023 by Christopher R. Neel, Chief, Water Rights Administration Division, Oklahoma Water Resources Board.

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

**SUBCHAPTER 13. INTERFERENCE CONDITIONS AT BUREAU OF
RECLAMATION RESERVOIRS [NEW]**

785:20-13-1. Definitions

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

"12-month cumulative inflow" means the sum of monthly inflow.

"Conservation pool" means a lake level elevation above the National Geodetic Vertical Datum of 1929 of 1,411 feet for Tom Steed Reservoir and 1,559 feet for Lugert-Altus Reservoir.

"Monthly inflow" means, absent of stream gage data, the monthly change in lake volume calculated using lake elevation, plus the volume of evaporation, plus the volume of water used from the reservoir, plus the volume of water released downstream from the reservoir, plus (for Lugert-Altus Reservoir) the volume of seepage from the dam.

"Palmer Drought Severity Index" means a standardized index, developed and maintained by the National Oceanic and Atmospheric Administration ("NOAA"), based on a simplified soil water balance and estimates relative soil moisture conditions. The magnitude of PDSI indicates the severity of the departure from normal conditions.

"Standardized Precipitation Index" means a widely used index, developed and maintained by National Oceanic and Atmospheric Administration ("NOAA"), to characterize meteorological drought on a range of timescales.

785:20-13-2. Lugert-Altus Reservoir

(a) The following drought conditions shall be applied to determine interference with the water rights associated with the Lugert-Altus Reservoir based on findings published in the Bureau of Reclamation Upper Red River Basin Study Full Report (2023):

(1) Lake level elevation is below the top of conservation pool;

(2) The 12-month cumulative inflow to the reservoir is less than 79,000 acre-feet; and

(3) The Standardized Precipitation Index (SPI) is less than -0.01 for the West Central Oklahoma Climate Division 4.

(b) The Board will review the conditions at least once a year in September of each year. If the drought conditions are met, Board staff will notify holders of stream water permits that are junior to Lugert-Altus Reservoir that water use must cease. Such notification will occur according to the provisions of OAC 785:20-13-4.

(c) Curtailment may be requested by the Lugert-Altus Irrigation District at any time upon reasonable belief that the conditions in this section have been met. Upon this request, Board staff will review the drought conditions and take appropriate action.

785:20-13-3. Tom Steed Reservoir

(a) The following drought conditions shall be applied to determine interference with the water rights association with the Tom Steed Reservoir and the Bretch Diversion Dam on Elk Creek in Kiowa County based on findings published in the Bureau of Reclamation Upper Red River Basin Study Full Report (2023):

(1) Lake level elevation is below the top of conservation pool;

(2) The 12-month cumulative inflow to the reservoir is less than 28,600 acre-feet; and

(3) The Palmer Drought Severity Index (PDSI) is less than -0.49 for the Southwest Oklahoma Climate Division 7.

(b) The Board will review the conditions at least once a year in September of each year. If the drought conditions are met, Board staff will notify holders of stream water permits that are junior to Tom Steed Reservoir and the Bretch Diversion Dam on Elk Creek in Kiowa County that water use must cease. Such notification will occur according to the provisions of OAC 785:20-13-4.

(c) Curtailment may be requested by the Mountain Park Conservation District at any time upon reasonable belief that the conditions in this section have been met. Upon this request, Board staff will review the drought conditions and take appropriate action.

785:20-13-4. Notification of interference

(a) When the Board determines that interference is occurring according to the provisions of this Subchapter, the Board shall notify via telephone and U.S. mail each holder of a junior stream water permit that water use must cease. If an email address is on file with the Board, the Board shall also contact the junior permit holder via email.

(b) Failure to comply with the Board's direction will result in an enforcement action that may include monetary penalties pursuant to 82 O.S. § 105.20. The Board may also seek an injunction in the District Court where the diversion point is located.

(c) If one of the conditions in 785:20-13-3(a) no longer exists, the Board will notify holders of junior permits that water use authorized under their permit may resume.

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Responsibility, Classification and Design Standards

785:25-3-2. Owner's responsibility [AMENDED]

785:25-3-6. Minimum spillways performance standards [AMENDED]

785:25-3-7. Minimum outlet conduit capacities [AMENDED]

Subchapter 5. Applications and Approval of Construction

785:25-5-1. Application and fee required [AMENDED]

Subchapter 7. Post Approval Actions

785:25-7-6. Notice of completion and filing of supplementary drawings or descriptive matter [AMENDED]

785:25-7-7. Emergency action plans

Subchapter 9. Actions After Construction

785:25-9-1. Inspection of dams [AMENDED]

Appendix A. JURISDICTION OF BOARD BY SIZE AND ~~NAZARD~~HAZARD CLASSIFICATION

SUMMARY:

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”) 785:25 as follows:

OAC 785:25-3-2 is proposed to be amended by including a seller’s responsibility for the notification of transfer of ownership of a dam.

OAC 785:25-3-6 is proposed to require that if a spillway which was originally constructed prior to June 13, 1973, is proposed to be enlarged, modified, or reconstructed, that the spillway standards described in OAC 785-25-3-6(a) shall be used in its design.

OAC 785:25-3-7 modifies the language to refer to dam “valley floor drains” in place of “outlet conduits” to remove the ambiguity between other dam appurtenances of similar name.

OAC 785:25-5-1 clarifies that an *Application to Construct, Enlarge, Repair or Alter Dam and/or Spillway* be submitted to and approved by the Board prior to the commencement of dam construction activities with the exception of some site preparation.

OAC 785:25-5-1 is also proposed to be amended in regard to the application requirements for the modification of an existing agriculture-exempt dam. If the proposed modification is not being prepared with the assistance of a local conservation district or federal agriculture related agency, the owner shall submit an application in accordance with 785-25-5 for the modification.

OAC 785:25-7-6 would apply a 30-day time limit to file a Notice of Completion of Works upon dam completion.

OAC 785:25-7-7 would require that a dam Emergency Action Plan be submitted to the Board, at minimum, once every five years.

OAC 785:25-9-1 would be reorganized for clarity. Subsection (c) would be given a more descriptive title. The minimum standards for dam inspections would have an additional

requirement to assign a condition rating of all dam appurtenances in accordance with the Board's dam inspection guidelines.

OAC 785:25 Appendix A for the correction of the appendix title.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 110.1 and following; 82 O.S. § 105.20 and 105.27.

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 p.m. on January 16, 2024. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 p.m. on January 16, 2024. Persons wishing to present oral comment to the OWRB may do so at the public hearing on January 16, 2024.

PUBLIC HEARING:

A public hearing will be held January 16, 2024, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the OWRB's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the OWRB's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from Chrystal Krittenbrink, Legal Assistant, at Cris.Krittenbrink@owrb.ok.gov. The proposed amendments may also be viewed on the OWRB web site at <http://www.oklahoma.gov/owrb>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.oklahoma.gov/owrb>.

CONTACT PERSON:

Sara D. Gibson, General Counsel, 405-530-8800, Sara.Gibson@owrb.ok.gov.

OKLAHOMA WATER RESOURCES BOARD
RULE IMPACT STATEMENT
for Rule Amendments in OAC 785: Chapter 25
Proposed for Adoption During 2023

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”) 785:25 DAMS AND RESERVOIRS as follows:

OAC 785:25-3-2 is proposed to be amended by including a seller’s responsibility for the notification of transfer of ownership of a dam.

OAC 785:25-3-6 is proposed to require that if a spillway which was originally constructed prior to June 13, 1973, is proposed to be enlarged, modified, or reconstructed, that the spillway standards described in OAC 785-25-3-6(a) shall be used in its design.

OAC 785:25-3-7 modifies the language to refer to dam “valley floor drains” in place of “outlet conduits” to remove the ambiguity between other dam appurtenances of similar name.

OAC 785:25-5-1 clarifies that an *Application to Construct, Enlarge, Repair or Alter Dam and/or Spillway* be submitted to and approved by the Board prior to the commencement of dam construction activities with the exception of some site preparation.

OAC 785:25-5-1 is also proposed to be amended in regard to the application requirements for the modification of an existing agriculture-exempt dam. If the proposed modification is not being prepared with the assistance of a local conservation district or federal agriculture related agency, the owner shall submit an application in accordance with 785-25-5 for the modification.

OAC 785:25-7-6 would apply a 30-day time limit to file a Notice of Completion of Works upon dam completion.

OAC 785:25-7-7 would require that a dam Emergency Action Plan be submitted to the Board, at minimum, once every five years.

OAC 785:25-9-1 would be reorganized for clarity. Subsection (c) would be given a more descriptive title. The minimum standards for dam inspections would have an additional requirement to assign a condition rating of all dam appurtenances in accordance with the Board’s dam inspection guidelines.

OAC 785:25 Appendix A for the correction of the appendix title.

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.

Dam owners who do not meet current spillway capacity requirements could have the increased cost associated with engineering requirements and increased cost of construction for the modification of some existing dam spillways or other outlet works. Engineering and construction costs to dam owners will depend on the current and proposed design of the dam. Dam owners who wish to modify existing agriculture-exempt dams without further assistance from local

conservations districts or agricultural agencies could have the increase cost associated with engineering and construction. There should be no cost impacts to the agency.

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

Persons who will benefit from the proposed rules are those individuals who live downstream of dams or own structures or property downstream of dams. Owners of dams will benefit from the rule changes by maintaining safe impoundments and limiting the liabilities that arise from dam failures.

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.

There are potential economic impacts to dam owners that would be incurred for the modification of some existing dam spillways or other outlet works. Engineering and construction costs to dam owners will depend on the current and proposed design of the dam.

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.

The agency is not anticipated to incur additional costs through increased engineering plan reviews or increased enforcement action. Additional costs will be borne by the dam owner. No additional costs are anticipated to be incurred by other agencies. The proposed amendments will have no effect on state revenues.

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.

The proposed rules are not anticipated to have an economic impact on any political subdivision or require the cooperation of political subdivisions in implementing or enforcing the rules. If a political subdivision owns a dam that has not been maintained in a safe condition, it may bear the cost of repair, removal, or additional inspections.

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.

There should be no adverse economic impact on small businesses unless the small business owns a dam that was built without agency approval of plans and specifications or that has not been maintained in a safe condition.

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

There are no known less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rules, which is protection of life and property.

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.

The proposed rules will result in increased safety for those persons who live downstream from an unpermitted dam or a dam that is in an unsafe or poor condition. Dam failures can result in loss of life and property damage.

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

If the proposed rules are not implemented, there is an increased risk of harm to persons living downstream from dams. Loss of life and extensive or irreparable environmental and property damages could occur. Economic losses would be significant.

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

This rule impact statement was reviewed and approved on November 16, 2023, by Yohanes Sugeng, Chief, Engineering and Planning Division, Oklahoma Water Resources Board.

CHAPTER 25. DAMS AND RESERVOIRS

SUBCHAPTER 3. RESPONSIBILITY, CLASSIFICATION AND DESIGN STANDARDS

785:25-3-2. Owner's responsibility

(a) **General.**

(1) Owners of dams to which the provisions of this Chapter apply shall have the responsibility to provide for the safety of such works by making any necessary changes to put the works in a safe condition.

(2) Such responsibility includes but is not necessarily limited to the following: the filing of an application to construct, enlarge, alter or repair the dam pursuant to Subchapter 5; the modification of the dam to meet applicable minimum requirements in this Subchapter; and the adequate maintenance, operation, and inspection of an existing dam.

(b) **Multiple owners.**

(1) When there is more than one owner of a dam, the Board shall consider all such owners responsible for the safety of such dam unless evidence to the contrary shows otherwise.

(2) The Board shall provide copies of inspection reports to at least one owner of record at the Board and shall provide notice of hearing on dam safety related matters to such owner with an instruction that the notice shall be delivered or mailed to all owners.

(3) Unless otherwise agreed by all the owners and the Board, the Board may, after such notice and hearing, order all the owners to take whatever remedial action is necessary to put the dam in a safe condition.

(4) The Board will not attempt to delineate levels of responsibility or allocate particular items of action among the owners.

(c) **Transfer of ownership.** Upon transfer of ownership of the works, both the new and previous owner owners shall notify the Board of such transfer.

785:25-3-6. Minimum spillways performance standards

(a) **General performance standards.**

(1) Except as otherwise provided in this Chapter, all dams must meet or exceed the following performance standards as determined by analysis of plans and specifications for the dam and existing site conditions.

(2) Owners of existing dams which do not meet the following performance standards must make necessary changes in the dam to meet the applicable performance standards.

(3) The discharge capacity and/or storage capacity of the project shall be capable of passing the indicated spillway design flood without infringing on the minimum freeboard requirements, provided that a design which includes overtopping of the dam may be authorized if specifically approved by the Board.

(4) The minimum performance standards expressed as magnitude of spillway design flood and minimum freeboard will be assigned to the various size and hazard potential classification determined under 785:25-3-3 as described in Appendix B.

(b) **Amending minimum freeboard.** The minimum freeboard requirement may be amended by the Board on a case-by-case basis for good cause shown by the owner.

(c) **Probable maximum flood.**

- (1) PMF means and refers to the Probable Maximum Flood and is defined as the flood that may be expected from the most severe combination of critical meteorologic conditions, defined as the Probable Maximum Precipitation (PMP), and critical hydrologic conditions that are reasonably possible in the region.
 - (2) Since design floods are usually determined by using mathematical computations through computer modeling and since several different acceptable models are available, flood design calculations must fall within plus/minus 5% PMF of the Board's current model results.
 - (3) The PMF storm should be the most conservative PMP storm type and duration to adequately reflect the size and hydrologic characteristics of the watershed in which the dam is located.
 - (4) *Regional Probable Maximum Precipitation Study for Oklahoma, Arkansas, Louisiana, and Mississippi* (Applied Weather Associates, 2019) shall be used in determining precipitation depth, area, and duration relationships for the PMP. The location-specific precipitation depth-area-duration relationship shall be applied to the spatial and temporal distribution methods described in *Hydrometeorological Report No. 52* (National Oceanic and Atmospheric Administration, 1982).
- (d) **PMF on dam designated for regulation.** Adam which the Board has determined is subject to regulation because of its high hazard potential, although otherwise considered too small, shall be required to safely pass 25% PMF with no minimum freeboard.
- (e) **Dams constructed prior to June 13, 1973.**
- (1) Any dam constructed prior to June 13, 1973, classified as having high hazard-potential as described in 785:25-3-3 shall be required to pass a minimum design flood as follows:
 - ~~(1)~~(A) Small size - 25% PMF with one foot of freeboard.
 - ~~(2)~~(B) Intermediate size - 50% PMF with no minimum freeboard.
 - ~~(3)~~(C) Large size - 75% PMF with no minimum freeboard.
 - (2) Proposed designs to enlarge, alter, or repair a spillway of any dam constructed prior to June 13, 1973, may be required meet the general performance standards set forth in 785-25-3-6(a) as determined by the Board. Provided that any dam constructed prior to June 13, 1973, that does not meet minimum spillway performance standards in Appendix B, and the spillway/spillways is/are proposed to undergo substantial modification, the minimum spillway performance standards defined in 785-25-3-6(a) shall be met by the proposed design.
- (f) **Dams constructed after 1973 without Board approval.** An owner of a dam constructed after 1973 without prior approval by the Board shall remove the dam or may request a variance or waiver from the requirement for submittal of plans and specifications as provided for in 785:25-5-2 and 785:25-5-3, provided the owner of the dam shall submit an application containing the following:
- (1) A topographic map of the dam site showing the location of spillway and outlet works.
 - (2) Drawings showing the length, width, and height of dam.
 - (3) Detailed plans of spillway structures, spillway profile, and procedures for operating of the spillway structure.

- (4) Hydrologic and hydraulic analysis report as described in Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, Oklahoma Water Resources Board, Dam Safety Program, August 2011.
- (5) Complete a dam breach inundation analysis and map if Board staff determines the dam may be a significant or high hazard-potential structure.
- (6) Inspection of the dam by a registered Professional Engineer and submit a written inspection report to the Board not later than 30 days after the inspection and shall contain information as set forth in a Board hazard inspection report.
- (7) Pay minimum application fee as provided in 785:5-1-9(a) and 785:5-1-9(f).
- (8) In addition, the applicant may be required to submit a detailed geotechnical investigation and analysis of the dam and report on such investigation. The geotechnical investigation shall include a minimum boring layout as follows:
 - (A) One (1) crest boring extending through the embankment and foundation materials to bedrock.
 - (B) Two (2) crest borings extending through the embankment and foundation materials to bedrock, one near each abutment.
 - (C) One (1) boring extending through the embankment and foundation materials to bedrock near the mid-height on the downstream slope of the dam.
 - (D) One (1) boring extending through the embankment and foundation material to bedrock along the toe of the dam.

785:25-3-7. Minimum ~~outlet conduit~~ valley floor drain capacities

- (a) **Requirements for ~~outlet conduit~~ valley floor drain capacity shall be as follows:**
 - (1) All dams subject to the Board's jurisdiction shall have at least one ~~outlet conduit~~ valley floor drain of sufficient capacity to prevent interference with natural streamflow and injury of downstream appropriators and domestic users. Absent evidence to the contrary, the minimum size of the ~~outlet conduit~~ valley floor drains shall be as set forth in subsection (d) of this section.
 - (2) The height of the ~~outlet conduit~~ valley floor drain shall be no more than five feet (5') above the natural stream channel unless otherwise ordered by the Board. The capacity of the reservoir below the ~~outlet conduit~~ valley floor drain shall be designated as the inactive pool.
- (b) **Conduit Valley floor drain operation.** All ~~conduits~~ valley floor drains shall be gate- or valve-operated on the upstream side and shall be maintained in an operable condition at all times.
- (c) **Conduit Valley floor drain design life.** The design life expectancy of the conduit shall be equal to or greater than the design life of the dam.
- (d) **Minimum size ~~outlet conduit~~ valley floor drain requirements.** The ~~outlet conduit~~ valley floor drain must be of sufficient size to draw down the entire reservoir to the inactive pool within twenty (20) days, provided that minimum size outlet requirements are as follows:
 - (1) For less than 100 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 6-inch pipe.
 - (2) For 101 to 150 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 8-inch pipe.
 - (3) For 151 to 200 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 10-inch pipe.

- (4) For 201-250 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 12-inch pipe.
- (5) For 251-300 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 14-inch pipe.
- (6) For 301-350 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 15-inch pipe.
- (7) For 351-500 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 16-inch pipe.
- (8) For more than 500 acre-feet normal pool capacity (at principal spillway), the minimum size of ~~outlet conduit~~ valley floor drain is 24-inch pipe.

(e) **Amendments of minimum requirements for good cause.** Minimum size requirements may be amended by the Board for good cause. However, ~~conduit~~ the valley floor drain must be of sufficient size to draw down the entire reservoir to the inactive pool within a period of not more than twenty (20) days.

SUBCHAPTER 5. APPLICATIONS AND APPROVAL OF CONSTRUCTION

785:25-5-1. Application and fee required

(a) **General.**

- (1) Any person who shall desire to construct, enlarge, alter, remove, or repair any dam under the Board's jurisdiction shall submit an application upon printed forms which will be furnished by the Board upon request. Applicant must receive Board approval prior to the commencement of any construction activities other than clearing, grubbing, or other site preparation that will not have the effect of impounding water.
- (2) For the purposes of this subchapter, repair shall not be deemed to include routine normal maintenance.
- (3) The maps, plans, drawings, and specifications of the proposed work along with the required fee shall form a part of the application.
- (4) The application and attachments shall be filed in duplicate.
- (5) Notwithstanding the provisions of paragraph (1) of this subsection, *an owner who proposes to construct a new dam that will be considered an agriculture-exempt dam shall be required only to notify the Board of such construction and file a notice of completion in accordance with 785:25-7-6 [82:110.5].* An owner who proposes to enlarge, alter, remove, or modify an existing agriculture-exempt dam shall submit an application prepared with the assistance of a local conservation district or federal agriculture related agency, or shall submit an application for consideration by the Board in accordance with 785-25-5.

(b) **Signature Of applicant.** The application shall be signed as follows:

- (1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent, who shall present satisfactory evidence of his authority to represent the applicant.
- (2) A joint application shall be signed by each applicant or his duly authorized agent, provided that a joint application by husband and wife may be signed by either party (joint applicants are required to select one among them to act for and represent the others in dealing with the Board).

- (3) If the application is by a partnership, the applicant shall be designated by the firm name followed by the words "A Partnership" and the application shall be signed by each of the general partners or, if signed by one partner or other agent, a written statement of the agent's authorization to make the application, signed by the other parties of interest, shall be attached to the application.
 - (4) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate, and a certified copy of the letter issued by the court shall be attached to the application.
 - (5) In the case of a water district, county, municipality, etc., the application shall be signed by a duly authorized official, and a certified copy of the resolution or other authorization to make the application shall be attached.
 - (6) In the case of a private corporation, the application shall be signed by a duly authorized person and, if not attested by the secretary or assistant secretary, a copy of the authorization shall be attached to the application.
- (c) **Notary public required.** All applicants shall subscribe and swear to the application before a Notary Public, who shall also sign his name and affix his seal to the application.
- (d) **Water rights.** Water rights requested or required in connection with a planned dam or reservoir may be approved based on preliminary information; however, no construction, enlargement, alteration or repair shall proceed until the application required by this Section has been submitted and approved in accordance with the rules of this subchapter and until the water rights required are approved.

SUBCHAPTER 7. POST APPROVAL ACTIONS

785:25-7-6. Notice of completion and filing of supplementary drawings or descriptive matter

~~Immediately upon~~ Within thirty (30) days of completion of a new dam or reservoir or enlargement or repair of a dam or reservoir, the owner shall give notice of completion and as soon thereafter as possible shall file supplementary drawings or descriptive matter showing or describing the dam or reservoir as actually constructed, including the following:

- (1) A record of all grout holes and grouting;
- (2) A record of permanent location points and bench marks;
- (3) A record of tests of concrete soils, or other materials used in the construction of the dam or reservoir;
- (4) Any other items which may be of permanent value and have a bearing on the safety and performance of the dam or reservoir; and
- (5) For dams classified as high hazard-potential, a breach analysis report and map showing the breach inundation area utilizing the publication Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, Oklahoma Water Resources Board, Dam Safety Program, August 2011.

785:25-7-7. Emergency action plans

- (a) Owners of existing or proposed dams classified as high hazard-potential, regardless of the size of such dams, and any other dam as determined by the Board, shall create and maintain an EAP that utilizes the recommendations, as determined by the Board, of the "Federal Guidelines

for Dam Safety, Emergency Action Planning for Dams," published July 2013 by the Federal Emergency Management Agency. The owner shall submit a copy of the EAP to the Board.

(b) Owners shall ~~annually~~ review their EAPs annually to assure they are still accurate and applicable, ~~and submit any updates to the EAPs to the Board.~~ EAP updates shall be submitted annually as applicable, or at a minimum, once every five (5) years.

SUBCHAPTER 9. ACTIONS AFTER CONSTRUCTION

785:25-9-1. Inspections of dams

(a) **Oversight vested in Board.** Oversight of the maintenance and operation of constructed dams and reservoirs insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the Board.

(b) **Periodic inspections.** Except for low hazard potential dams, owners are required to have their dams inspected at their expense by qualified persons periodically according to a schedule prepared by the Board to meet the requirements of paragraphs (1) and (2) of this subsection. ~~Periodic inspections of dams shall be~~ Periodic inspections shall be conducted and the inspection report submitted to the Board by the end of the calendar year according to hazard potential classifications as follows:

(1) High hazard. High hazard potential dams shall be inspected at least once ~~annually~~ each calendar year.

(2) Significant hazard. Significant hazard shall be inspected at least once every three years.

(3) Low hazard. Low hazard potential dams shall be inspected at least once every five years, which inspection shall be conducted by the owner and shall consist of a review of the hazard classification on forms provided by the Board.

(4) Significant or high hazard dams in an unsatisfactory or poor condition, described in Section 6 of the National Dam Safety Review Board's Guidelines for Updating the 2008 National Inventory of Dams (NID), April 2008, as determined by the Board shall be inspected by a registered Professional Engineer at the expense of the owner at least every six months until such time as the deficiencies have been corrected.

~~(5) — Periodic inspections shall be conducted by the end of the calendar year indicated by the schedule above.~~

(c) ~~Expense of periodic inspections~~ Inspections by Qualified Persons. ~~Periodic inspections shall be at the owner's expense (except for low hazard potential dams, periodic inspections) and~~ shall be conducted by a Registered Professional Engineer hired by the owner, who is licensed in the state of Oklahoma, and shall have training and/or experience concerning the analysis, design, and/or construction of dams and reservoirs, or by an engineer of any United States governmental agency acting in his official capacity. Provided that inspections of low hazard classification dams may be conducted by persons who are not Registered Professional Engineers but who are trained in inspecting dams.

(d) **Unscheduled inspections.** Unscheduled (non-periodic) inspections such, as those conducted in response to complaints, after major heavy precipitation events, after earthquakes within 50 miles of a high or significant hazard potential dam that measure 5.0 or greater on the Richter magnitude scale, or in emergency situations, may be conducted by Board staff, or the Board may require the owner to conduct an unscheduled inspection at the owner's expense. No

fee for such inspection shall be due, provided that a request for inspection by other parties shall be governed by 785:25-9-6.

(e) **United States dams not subject to inspection.** Any dam *constructed by the United States or its duly authorized agencies shall not be subject to inspection while under the supervision of officers or the United States.* [82:105.27]

(f) **Board to notify when inspection due; violation.** The Board shall notify persons shown by its records to own the dam of the date the periodic inspection of the dam is due. Failure to have the inspection completed shall constitute a violation of Board rules.

(g) **Minimum standards.** ~~For each inspection completed~~ ~~Except for low hazard potential dams,~~ qualified persons shall submit a written inspection report describing any dam safety deficiencies observed and outline remedial actions to be taken to address those deficiencies as follows:

~~(1) — Engineering inspection reports shall be prepared for each inspection completed. The inspecting engineer shall record their findings of the inspection and submit a written inspection report to the Board not later than 30 days after the inspection.~~

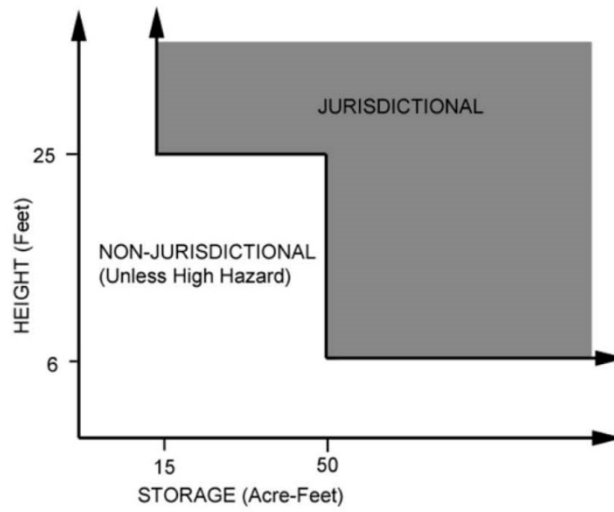
~~(2)~~(1) All inspections shall also include documentary digital photographs of the dam, auxiliary spillway, principal spillway inlet structure, principal spillway outlet, any other appurtenances, and any potential safety concerns. A condition rating of all appurtenances shall be assigned in the inspection report in accordance with Board dam inspection guidelines. When explanation is needed to identify or describe the safety concern, notes shall be included in the written report to provide this explanation. Photographs shall be attached to the completed inspection report.

~~(3)~~(2) Inspection reports shall include a schedule of corrective actions to be taken to address dam safety deficiencies.

~~(4)~~(3) Periodic inspection reports shall also include review of the Emergency Action Plan and of the operation and maintenance manual to assure they are still accurate and applicable, as well as any changes in downstream development or other conditions if applicable.

APPENDIX A. JURISDICTION OF BOARD BY SIZE AND ~~HAZARD~~HAZARD CLASSIFICATION

JURISDICTION OF BOARD BY SIZE AND HAZARD CLASSIFICATION



**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Permit Application Requirements and Processing
785:30-3-4. Notice of application [AMENDED]

SUMMARY:

Staff proposes that the Oklahoma Water Resources Board ("Board") amend Oklahoma Administrative Code ("OAC") section 785:30-3-4 to require that public notice of a ground water application be provided to permit holders on a property in addition to the owner of the surface estate. The information to meet this new requirement can be found on the website of the Oklahoma Water Resources Board.

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. § 1020.7, 82 O.S. § 1021.1a

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 p.m. on January 16, 2024. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 p.m. on January 16, 2024. Persons wishing to present oral comment to the OWRB may do so at the public hearing on January 16, 2024.

PUBLIC HEARING:

A public hearing will be held January 16, 2024, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the OWRB's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The OWRB requests that any business entities affected by these proposed rules provide the Board, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen, Oklahoma City, Oklahoma before the close of the comment period.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the OWRB's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from Chrystal Krittenbrink, Legal Assistant, at Cris.Krittenbrink@owrb.ok.gov. The proposed amendments may also be viewed on the OWRB web site at <http://www.oklahoma.gov/owrb>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.oklahoma.gov/owrb>.

CONTACT PERSON:

Sara D. Gibson, General Counsel, 405-530-8800, Sara.Gibson@owrb.ok.gov.

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785:30
Proposed for Adoption During 2024

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

Staff proposes that the Oklahoma Water Resources Board ("Board") amend Oklahoma Administrative Code ("OAC") section 785:30-3-4 to require that public notice of a ground water application be provided to permit holders on a property in addition to the owner of the surface estate. The information to meet this new requirement can be found on the website of the Oklahoma Water Resources Board.

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 submit an application for a permit to take and use groundwater or an amendment to an existing permit will be affected by the proposed rule amendments. The cost impacts will be minimal and will only include the cost of certified mail to a few additional entities.

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

Persons/entities who hold groundwater permits, but do not own the surface estate, will benefit from rule amendment. The rights to groundwater may be sold/leased by the landowner to another party, often municipalities or rural water districts. Because of this, the landowner who receives notice of an application for a permit to use groundwater has no interest in the outcome of the application and the party with the existing permit and interest in the application does not receive notice.

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.

This amendment does not involve fee changes. The probable economic impact to any party is minimal and is based on the number of parties required to receive notice of an application to use groundwater.

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.

No other state agency will be required to assist in implementing or enforcing this amendment. There is no projected net loss or gain in state agency revenues.

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.

No persons or entities are likely to be impacted by the proposed changes to OAC Section 785:30-3-4. 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 need to obtain a permit to use groundwater will be required to comply with notice provisions.

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 Section 785:30-3-4 are not expected to have an adverse economic impact on small business.

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.

Compliance with the proposed amendments pose a minimal cost to applicants. There are no less costly, nonregulatory, 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.

The proposed amendment will expand the number of entities that receive notice of an application to use groundwater. This will ensure that all interested entities are able to protest applications that may impact existing water uses.

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

If municipalities and rural water districts are not aware of applications to use groundwater that may affect the operation of existing wells, the water providers may encounter issues in providing adequate water to customers.

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

This rule impact statement was reviewed and approved on November 15, 2023, by Sara Gibson, General Counsel, Oklahoma Water Resources Board.

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER**

785:30-3-4. 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. Unless otherwise directed by the Board, such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county where each existing or proposed well is located. Notice shall also be provided by certified mail to all surface estate owners of lands and holders of existing and pending permits to use groundwater located within one-thousand three hundred twenty feet (1,320') from actual locations of existing or proposed wells shown on the application plat and from the outside boundaries of any potential well areas shown on the application plat. 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 newspaper publication, or as otherwise directed by the Board. Such proof shall show the dates on which said notice was published in such newspaper and that the applicant did properly notify the surface estate owners as instructed.
- (c) **Failure to give adequate notice.** If adequate notice and proof of notice is not provided by the applicant, the application may be dismissed and the application fee forfeited.
- (d) **Revised published notice of hearing.** The Board may require a revised notice to be published at the applicant's expense in case material error or deviation is made in the description of the land, the well location, *or the manner in which a protest to the application may be made* [82:1020.8], or if the applicant makes substantial amendments to his application after notice of the original application, or fails to effect proper publication in any manner.
- (e) **Protests and hearings.**
- (1) If the Board does not schedule a hearing on the application before instructing the applicant to provide notice, a hearing on the application shall be scheduled by the Board upon receipt of a protest which meets the requirements of Section 785:4-5-4, and the Board shall notify the applicant and protestant of such hearing [82:1020.8].
 - (2) Any interested person shall have the right to protest said application and present evidence and testimony in support of such protest. Such protests shall be made in accordance with Chapter 4 of this Title.
 - (3) Even if no protest is received, the applicant shall be advised and given opportunity for hearing if the application cannot be recommended for approval to the Board.
 - (4) For limited quantity permit applications, interested persons may submit written comments about the application. A hearing on such application may be required by the Executive Director pursuant to 785:30-5-4.1(d) if it is shown that a significant public interest or property right would be affected by approval of the application.

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 15. Waste and Wastewater American Rescue Plan Act (ARPA) Grant Program Requirements and Procedures

785: 50-15-6. Disbursement of funds [AMENDED]

Subchapter 17. Oklahoma Dam Rehabilitation (OKDR) Grant Program Requirements and Procedures

785: 50-17-8. Disbursements of funds [AMENDED]

Subchapter 19. American Rescue Plan Act Tribal Cooperation Grant Program Requirements and Procedures

785: 50-19-6. Disbursement of funds [AMENDED]

SUMMARY:

Subchapter 15, Subchapter 17, and Subchapter 19 are proposed to be amended to remove from the American Rescue Plan Act (ARPA) grant language the section requiring an acceptable bid filed with the Oklahoma Water Resources Board (OWRB) within ninety (90) days of approval by the OWRB and language that allows for a bid exception up to a certain amount of time. The language will now allow for acceptable bids to be submitted as they are created without a delay to ARPA grantees. The intended effect of the rule change is to help alleviate time delays on projects and construction costs for grantees.

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., § 1085.2.; Senate Bills 1325 (2022); Senate Bill 429, 4xx, 13xx (2022)

COMMENT PERIOD:

Persons wishing to present written comments may do so at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 16, 2024. Written comments may also be submitted via e-mail to Cris.Krittenbrink@owrb.ok.gov before 5:00 PM on January 16, 2024. Persons wishing to present oral comments to the Board may do so at the public hearing on January 16, 2024.

PUBLIC HEARING:

A public hearing will be held January 16, 2024, during the monthly meeting of the Board which will begin at 9:30 a.m. in the Board Room of the Board's offices located at 3800 North Classen Blvd., Oklahoma City, Oklahoma, 73118.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that any business entities affected by these proposed rules provide, within the Comment Period from December 1, 2023 through January 16, 2024, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules. Business entities may submit this information in writing to Chrystal Krittenbrink at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118 before 5:00 P.M. on January 16, 2024 or Cris.Krittenbrink@owrb.ok.gov.

COPIES OF PROPOSED RULES:

Copies of the proposed amendments may be reviewed by appointment at the Board's office location at 3800 North Classen Blvd., Oklahoma City, Oklahoma 73118, or may be obtained from the Chrystal Krittenbrink, Legal Assistant, at Cris.Krittenbrink@owrb.ok.gov. The proposed amendments may also be viewed on the Board's web site at <http://www.oklahoma.gov/owrb>.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a Rule Impact Statement is available for review by appointment at the OWRB's office, 3800 North Classen Blvd., Oklahoma City, Oklahoma. The Rule Impact Statement may also be viewed on the OWRB web site at <http://www.oklahoma.gov/owrb>.

CONTACT PERSON:

Sara D. Gibson, General Counsel, 405-530-8800, Sara.Gibson@owrb.ok.gov.

OKLAHOMA WATER RESOURCES BOARD

RULE IMPACT STATEMENT
for Rule Amendments in OAC 785:50
Proposed for Adoption During 2022

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

The staff of the Oklahoma Water Resources Board ("OWRB") is proposing to amend various provisions of OAC 785:50 as follows:

Subchapter 15, Subchapter 17, and Subchapter 19 are proposed to be amended to remove from the American Rescue Plan Act (ARPA) grant language the section requiring an acceptable bid filed with the Oklahoma Water Resources Board (OWRB) within ninety (90) days of approval by the OWRB and language that allows for a bid exception up to a certain amount of time. The language will now allow for acceptable bids to be submitted as they are created without a delay to ARPA grantees. The intended effect of the rule change is to help alleviate time delays on projects and construction costs for grantees.

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.

Eligible entities who qualify for ARPA Grants from the OWRB are most likely affected by the proposed rules. The same classes affected will bear the costs of the rules if any. No cost is anticipated for these ARPA Grant rule changes.

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

Representatives of the eligible entities who pursue ARPA Grants from the OWRB will benefit by the proposed rules.

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

The probable economic impact upon affected classes of persons or political subdivisions will be positive. No negative economic impact is anticipated.

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.

Any costs associated with these ARPA Grants have designated administrative fees in the creation legislation. It is anticipated that the proposed amendments will have no effect on state revenues.

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.

Because most political subdivisions are eligible entities for purposes of ARPA Grants from the OWRB, such political subdivisions who apply for ARPA Grants will be required to cooperate in completing applications and complying with terms of the financial assistance obtained. The probable economic impact upon affected political subdivisions will be positive. No negative economic impact is anticipated.

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.

There will be no adverse economic impact on small business.

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

There are no measures to be taken to minimize compliance costs, and there are no less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rules.

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.

The proposed rules should have no negative effect on the public health, safety and environment.

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

If the proposed rules are not implemented, there should be no detrimental effect on the public health, safety and environment.

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

This rule impact statement was prepared by Kate Burum, Financial Assistance Division, on November 16, 2023.

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 5. FEES**

FEE JUSTIFICATION

Oklahoma Administrative Code ("OAC") section 785:5-1-9(a) is proposed to be amended by updating the fees to reflect the increased cost of labor to review dam construction permit applications.

The Oklahoma Dam Safety Program requires about \$700,000 to fund the program with four (4) full-time employees. Approximately 75% of the Dam Safety Program is funded through the FEMA State Assistance Grant. The remaining 25% of funding comes from programmatic fees and state appropriations.

The primary driver of cost to review dam construction application is the variety and complexity of different elements a proposed dam has, such as spillways, drain and filter structures, anchoring, energy dissipation, etc. The major assumption is that the estimated construction cost is directly correlated to the number and complexity of these elements, and that fees to fund Board staff review time should be scaled accordingly.

Current and Proposed Fee Schedules

Filing and review fees for dam construction and modification are based on the estimated cost of construction. The current fee schedule is built of three tiers of construction cost as follows:

- (1) \$99,999 or less estimated cost - \$500.00
- (2) \$100,000 through \$19,999,999 estimated cost – One-half of one percent (0.5%) of estimated cost; not to exceed \$5,000
- (3) \$20,000,000 \$12,000,000 or greater estimated cost - \$10,000.00

The proposed fee structure is to modify the rate tiers by estimated construction cost and adjust the maximum fees to be applied as follows:

- (1) \$199,999 or less estimated cost - \$1,000
- (2) \$200,000 through \$11,999,999 estimated cost – One half of one percent (0.5%) of estimated cost; not to exceed \$6,000
- (3) \$12,000,000 or greater estimated cost - Five hundredths of one percent (0.05%) of estimated cost

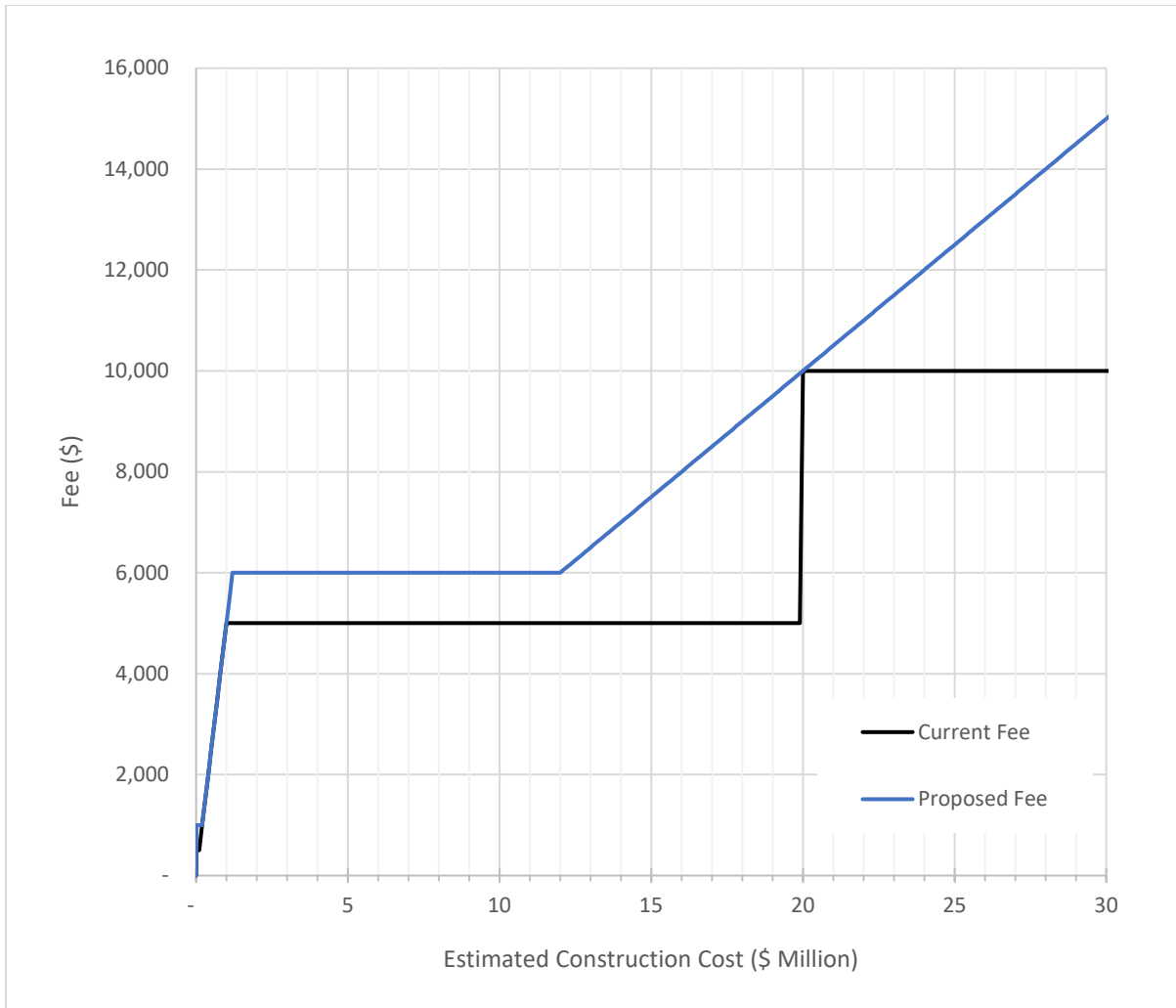


Figure 1: Dam Safety Application Fee Schedule

Discussion

Tier 1

The existing application fee for dam construction costing less than \$100,000 is a flat \$500 fee. The proposed fee structure would increase this minimum application fee to \$1,000 and apply to all dams with a cost less than \$200,000.

Typically, these lower cost dam applications are for simple modifications or repairs and are not for building an entirely new structure. Due to the low complexity and limited appurtenances requiring examination, staff review time for these applications is at a minimum with one staff engineer and one engineering manager spending about 12 hours total on reviewing the application and costing slightly more than \$1,000. The table below shows the approximate minimum time for these tasks. Actual staff review tasks vary depending on the nature of work being proposed (i.e., the review tasks will be different for a spillway repair versus embankment repair, but the staff time would be comparable).

Table 1: Minimum Dam Safety Staff Application Review Cost

Activity	Staff Engineer		Engineering Manager	
	Hours	Salary + Fringe & Indirect	Hours	Salary + Fringe & Indirect
Hazard Classification Verification	0	\$ -	0	\$ -
Hydrologic & Hydraulic Evaluation	2	\$ 347.48	0	\$ -
Geotechnical Evaluation	2	\$ -	0	\$ -
Design	4	\$ 347.48	0	\$ -
Means & Methods	1	\$ 86.87	0	\$ -
Project Meetings	1	\$ 86.87	0	\$ -
Documentation	1	\$ 86.87	0	\$ -
Final Manager Review	0	\$ -	1	\$ 103.76
Subtotal	11	\$ 955.58	1	\$ 103.76
Total				\$ 1,059.34

Tier 2

The existing application fee for dam construction between \$100,000 and \$19,999,999 is 0.5% of estimated construction cost with a maximum allowable fee of \$5,000. Under this structure, the maximum fee is quickly met with a project cost of \$1 million. The proposed fee structure would apply to dams with a cost of \$200,000 to \$11,999,999, have a fee rate of 0.5% of estimated construction cost, with an increased maximum allowable fee of \$6,000, which is met with a project cost of \$1.2 million.

Review time cost varies significantly for dam construction applications and depends on the complexity of the proposed work to be completed and number of separate design elements or appurtenances a dam is proposed to have. Typical review for new dam construction consists of

several different activities requiring time from at least one engineering staff (PE 1) and an engineering manager (EM 1). The following table is a list of review activities and minimum time expended for a typical new construction dam permit application review. Dam of this type are typically in the range of cost of \$2-12 million.

Table 2: Typical Dam Safety Staff Application Review Cost

Activity	Staff Engineer		Engineering Manager	
	Hours	Salary + Fringe & Indirect	Hours	Salary + Fringe & Indirect
Hazard Classification Verification	8	\$ 694.97	2	\$ 207.52
Hydrologic & Hydraulic Evaluation	8	\$ 694.97	2	\$ 207.52
Geotechnical Evaluation	8	\$ 694.97	2	\$ 207.52
Design	8	\$ 694.97	2	\$ 207.52
Means & Methods	8	\$ 694.97	2	\$ 207.52
Project Meetings	4	\$ 347.48	2	\$ 207.52
Documentation	4	\$ 347.48	2	\$ 207.52
Final Manager Review	0	\$ -	4	\$ 415.05
Subtotal	48	\$ 4,169.80	18	\$ 1,867.72
Total				\$ 6,037.52

Tier 3

The current applications for all dams costing \$20 million or more have a review fee of \$10,000. The proposed fee structure is to have a fee rate of five hundredths of one percent (0.05%) of construction cost, with no maximum fee, to all dams with an estimated cost over \$12 million. For high-cost structures, review costs most often scale directly with construction cost. For larger projects such as these, directly scaling the administrative fees could also allow for the program to acquire additional engineering resources as needed.

An example of a high-cost dam would be a recent application that was received for a large concrete dam that is planned to have many rock anchors installed to increase its structural stability. For this dam, the primary the cost of construction is driven by the number and length of rock anchors being installed. Each anchor needs to be analyzed separately, so time spent reviewing this dam is directly related to cost to construct.

Fee Comparison

The Oklahoma Dam Safety Program recently participated in a state dam safety program evaluation for the state of Kansas, which compared the dam safety programs of many neighboring states. In the Kansas program evaluation, it was reported:

Many states use a percentage of construction costs, with several states using as high as 3% of construction costs, as the permit application fees. In these cases, application fees can be in the tens or even hundreds of thousands of dollars. We

had discussions with one state where a dam modification application fee had exceeded \$1 million in the prior year.

The proposed fee increases are to ensure that the fees collected for review are sufficient to cover the increasing cost of labor. Presently, the minimum time required for review shown in Table 1 outpaces the fee currently collected for dams with a cost of under \$100,000. With the current fee structure under Tier 1 covering less than half of the minimum review time cost, these applications have the largest disparity between State staff cost and fees collected.

The effects of the proposed fee changes were examined for the latest 26 dam applications which were received between January 2022 to September 2023. Of those, 11 applications would have been affected by the changes in the Tier 1 fees, 4 applications would have increased fees under the Tier 2 changes, 1 application affected by Tier 3, and 10 applications would not have been affected. Out of all applications, only 3 dams would have had a fee greater than 1% of reported estimated cost.

Table 3: Existing and Proposed Fee Comparison for 2022 and 2023 Dam Applications

NIDID	Dam Name	Application Date	Est. Const. Cost	Current Fees	Proposed Fee Schedule	Fee Change	Percentage of Cost Proposed Fee
OK02418	Regal Lake HOA	1/20/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK00490	Security Nat Bank & Trust	1/27/2022	\$ 50,000	\$ 500	\$ 1,000	\$ 500	2.0%
OK10731	Waxhoma	2/8/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK01344	Hominy	3/9/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK02425	Aluma	3/15/2022	\$ 750,000	\$ 3,500	\$ 3,500	-	0.5%
OK30586	Lakey Pond No. 2	3/17/2022	\$ 37,500	\$ 500	\$ 1,000	\$ 500	2.7%
OK30596	Liberty	4/4/2022	\$ 350,000	\$ 1,500	\$ 1,500	-	0.4%
OK30597	Lowry	4/5/2022	\$ 2,093,650	\$ 5,000	\$ 6,000	\$ 1,000	0.3%
OK30601	Freeman Blue Bend	4/11/2022	\$ 425,000	\$ 2,000	\$ 2,000	-	0.5%
OK30538	Carel #1	5/4/2022	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK02123	Guthrie	5/20/2022	\$ 2,250,000	\$ 5,000	\$ 6,000	\$ 1,000	0.3%
OK11027	Hunter	8/1/2022	\$ 760,000	\$ 3,500	\$ 3,500	-	0.5%
OK02201	Jap Beaver	9/1/2022	\$ 759,000	\$ 3,500	\$ 3,500	-	0.5%
OK30602	Estates at Lynn Lane	9/14/2022	\$ 150,000	\$ 500	\$ 1,000	\$ 500	0.7%
OK30603	Bayou	10/17/2022	\$ 160,000	\$ 500	\$ 1,000	\$ 500	0.6%
OK11026	Eucha	1/4/2023	\$ 13,000,000	\$ 5,000	\$ 6,500	\$ 1,500	0.1%
OK30605	Yockey	2/24/2023	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK20976	OKNONAME 101001	3/2/2023	\$ 100,000	\$ 500	\$ 1,000	\$ 500	1.0%
OK11005	Twin Lakes HOA	4/11/2023	\$ 50,000	\$ 500	\$ 1,000	\$ 500	2.0%
OK00452	Ellsworth	4/18/2023	\$ 16,400,000	\$ 5,000	\$ 8,200	\$ 3,200	0.1%
OK10642	Cushing	5/3/2023	\$ 350,000	\$ 1,500	\$ 1,500	-	0.4%
OK11078	New Beggs	5/15/2023	\$ 1,000,000	\$ 5,000	\$ 5,000	-	0.5%
OK13279	Comanche	8/4/2023	\$ 621,905	\$ 3,000	\$ 3,000	-	0.5%
OK10248	Whittington	8/5/2023	\$ 1,000,000	\$ 5,000	\$ 5,000	-	0.5%
OK10736	Clear Creek	8/31/2023	\$ 3,000,000	\$ 5,000	\$ 6,000	\$ 1,000	0.2%
OK12578	Summit Lake	9/20/2023	\$ 600,000	\$ 3,000	\$ 3,000	-	0.5%
Total			\$ 44,407,055	\$ 62,000	\$ 75,200	\$ 13,200	N/A
Average			\$ 1,707,964	\$ 2,385	\$ 2,892	\$ 508	0.8%

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE**

**SUBCHAPTER 15. WATER AND WASTEWATER AMERICAN RESCUE PLAN
ACT (ARPA) GRANT PROGRAM REQUIREMENTS AND PROCEDURES**

785:50-15-6. Disbursement of funds

(a) Action following Board approval and prior to disbursement of funding.

(1) **Notification of approval.** Upon approval of an ARPA grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** ~~Within ninety (90) days following the date of the written notice of approval,~~ The applicant shall file with the Board an acceptable bid in compliance with the Competitive Bidding Act for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

(3) Additional conditions prior to disbursement of grant funds.

(A) Applicant shall maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) Board action on request for increase in approved amount. If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the ARPA grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) that the Board reconsider the application with an increased ARPA grant amount.

(5) Board action on request for change in scope of approved project. If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to

change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action.

(b) Disbursement of funding to applicant; action following disbursement.

(1) Disbursement contingent on completion of conditions; reduction from approved amount. At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of ARPA grant funds to the applicant for the approved project.

(2) Disbursement in whole or part; timing. As the Board may direct, grant funds may be disbursed to the applicant in installments by pay requests or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) Post-disbursement requests for increases in funding amount. If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(4) Post-disbursement requests for changes in scope of approved project. If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) Post-disbursement action regarding unexpended funding. If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(6) Additional requirements. The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of ARPA grant funds, all as may be deemed appropriate by the Board.

SUBCHAPTER 17. OKLAHOMA DAM REHABILITATION (OKDR) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-17-8. Disbursement of funds

(a) Action following Board approval and prior to disbursement of funding.

(1) Notification of approval. Upon approval of an OKDR grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board

may require.

~~(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the~~ The applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six (6) months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) Additional conditions prior to disbursement of grant funds.

(A) Applicant shall establish and maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant. Once the Board or its staff has deemed the proposed activities listed in the invoice are eligible for OKDR Grant funding, are within the approved scope of work, and meet all legal requirements, the Board shall deposit the grant funds into the (appropriate account). The applicant shall then expend funds from the account only as permitted in the grant agreement, Board rules, and state guidelines

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(D) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) Board action on request for increase in approved amount. If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the OKDR grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased OKDR grant amount during the following fiscal year. The request for an increased OKDR grant amount shall be treated as a new application on its own merits; provided, the

original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonable and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of OKDR grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the OKDR grant amount disbursed by the Board, then any request for additional OKDR grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonable and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return or de-obligate the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of OKDR grant funds, all as may be deemed appropriate by the Board.

SUBCHAPTER 19. AMERICAN RESCUE PLAN ACT TRIBAL COOPERATION GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-19-6. Disbursement of funds

(a) **Action following Board approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of an ARPA grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** ~~Within ninety (90) days following the date of the written notice of approval,~~ ~~the~~The applicant shall file with the Board an acceptable bid in compliance with the Competitive Bidding Act for completion of the proposed project. ~~Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid;~~ provided, notwithstanding any approval of additional time, if such a bid is not filed within 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

(3) **Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the ARPA grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) that the Board reconsider the application with an increased ARPA grant amount.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file

a written request for approval of such a change. If the Board staff determines that the change is reasonable and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of ARPA grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments by pay requests or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Disbursement of funds for project costs.** ARPA funds shall be expended for the designated project only after the other identified sources of funds for the project have been expended. This shall in no way limit the Board from expending ARPA funds according to the Public Law 117-2 and in order to meet the required deadlines.

(4) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(5) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonable and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(6) **Post-disbursement action regarding unexpended funding.** If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(7) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of ARPA grant funds, all as may be deemed appropriate by the Board.