

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

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 15. American Rescue Plan Act (ARPA) Water and Wastewater Infrastructure Grant Program Requirements [NEW]

785:50-15-1. Program description [NEW]

785:50-15-2. Definitions [NEW]

785:50-15-3. Application review and disposition [NEW]

785:50-15-4. Applicable law; deadline for applications; eligible project costs [NEW]

785:50-15-5. ARPA grant priority points system [NEW]

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

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

785:50-17-1. Program description [NEW]

785:50-17-2. Definitions [NEW]

785:50-17-3. Application review and disposition [NEW]

785:50-17-4. Applicable law; deadline for applications; eligible project costs [NEW]

785:50-17-5. Period of performance [NEW]

785:50-17-6. Evaluation of performance [NEW]

785:50-17-7. OKDR grant priority system [NEW]

785:50-17-8. Disbursement of funds [NEW]

**AUTHORITY:**

Senate Bill 429 (2022); Oklahoma Water Resources Board; 82 O.S., § 1085.2

**COMMENT PERIOD:**

July 15, 2022 to August 12, 2022

**ADOPTION:**

August 16, 2022

**EFFECTIVE:**

Immediately upon Governor's approval

**EXPIRATION:**

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

Water and wastewater infrastructure systems that do not meet state standards or are insufficient for the needs of the community present a threat to public health and safety. Ensuring disbursement of these funds as quickly as possible will help communities meet these needs more effectively. Additionally, emergency rules are necessary in this instance to comply with deadlines of the federal programs. To meet ARPA requirements, funds must be obligated in both grant programs for a project by December 31, 2024 and expended by December 31, 2026.

## **GIST/ANALYSIS:**

Subchapter 15 is proposed to add language to implement provisions of Senate Bill 429 (2022). This measure allocates funds to OWRB for water and wastewater infrastructure as authorized by the American Rescue Plan Act ("ARPA"). The legislation directs OWRB to create a water and wastewater infrastructure grant program for communities 7,000 or less and a water and wastewater infrastructure grant program for communities 7,001 or more from funds available from the ARPA. The intended effect of the emergency rules is to provide a structure for the OWRB to review ARPA water and wastewater infrastructure grant applications, create a priority point system, clarify the approval process, and disburse funds as well as provide necessary information to potential applicants regarding laws, guidelines, and the process.

Subchapter 17 is proposed to add language to implement provisions of Senate Bill 429 (2022). This measure allocates funds to OWRB for a publicly owned deficient dams grant program from funds available from ARPA. The intended effect of the emergency rules is to provide a structure for the OWRB to review Oklahoma Dam Rehabilitation Grant applications, create a priority point system, clarify the approval process, and disburse funds as well as provide necessary information to potential applicants regarding laws, guidelines, and the process.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):**

## **SUBCHAPTER 15. WATER AND WASTEWATER AMERICAN RESCUE PLAN ACT GRANT PROGRAM REQUIREMENTS AND PROCEDURES**

### **785:50-15-1. Program description**

Senate Bill 429 authorizes the American Rescue Plan Act ("ARPA") grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments. The Board's rules applicable to water and wastewater ARPA grants shall be construed so as to consider only the ARPA grant program administered by the Board and shall not be construed so as to consider ARPA grant programs administered by other governmental persons or other grant programs administered by the Board.

### **785:50-15-2. Definitions**

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

"Applicant" means a qualified entity which submits an application for an ARPA grant on its own behalf, or for whom an application is submitted.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"Project" means any project that meets the federal eligibility requirements of the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments, a part of the American Rescue Plan Act, Public Law 117-2.

"Qualified entity" means a Community as defined above.

### **785:50-15-3. Application review and disposition**

**(a) General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the ARPA grant program shall be as follows:

#### **(1) Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

#### **(2) Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity.

(B) In all instances, applications must be in a form which meets the requirements of the Board.

(C) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

**(3) Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

**(b) General approval standards and criteria.** In the review and consideration of applications for financial assistance under the ARPA grant program, the Board shall follow the priority point system set forth in 785:50-15-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:

**(1) Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

**(2) Eligibility.** The applicant must be qualified, and the proposed project must be for a qualified purpose as defined in 785:50-15-2.

**(3) Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **ARPA grant amount, availability of funds.** In sizing an ARPA grant, the Board shall take into consideration the current and anticipated availability of ARPA program funds.

(8) **Conservation Measures.** The Board shall consider whether the applicant has taken all reasonable measures to limit waste and conserve water.

**(c) Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board. Such criteria shall not be deemed exclusive. In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(2) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

**(d) Criteria for denying an application.** The Board may deny an application for an ARPA grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.

(2) Failure to complete the application and provide the required documentation.

(3) Any other reason based upon applicable law or the Board's judgment and discretion.

**(e) Board action.**

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements of funds and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

**785:50-15-4. Applicable law; deadline for applications; eligible project costs**

(a) The Board shall administer applications for ARPA funds in accordance with any provisions of law applicable to such applications and ARPA funds, which may include, but is not limited to:

(1) Recipients are required to complete procurement procedures according to 2 CFR 200.317-200.327.

(2) Recipients may be required to complete a Single Audit pursuant to 2 CFR Part 200, Subpart F.

(3) Recipients are required to have an active registration on Sam.gov pursuant to 2 CFR Part 25.

(b) To be considered for and receive funding from funds available for the ARPA grant program, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all material attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(c) For purposes of evaluating, approving, and funding an application for an ARPA grant, categories of project costs which are eligible for assistance shall include, but are not limited to:

(1) Architecture and/or engineer fees related to the project.

(2) Fees for soil testing.

(3) Fees for surveying.

(4) Payments to contractor(s) for construction of the improvements.

(5) Legal fees and expenses of counsel for the applicant which are related to the project.

(6) Services of full-time or part-time inspector. Provided, however, administrative expenses shall not be eligible project costs.

(d) The ARPA grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted, unless the applicant can provide sufficient justification for why their application was not received during the open application period.

(e) The Board will not approve nor fund any grant applications for communities with a population greater than 7,000 or rural water districts with more than 2,300 non-pasture taps unless the applicant contributes a percentage of the total cost of the proposed project.

**785:50-15-5. Water and Wastewater ARPA grant priority point system**

**(a) Basis of priority system and formula.**

(1) General description. The priority system consists of a mathematical equation rating the qualified entities and the proposed project by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is seventy-two (72). The Board may consider grants for approval at each Board meeting, and in order from the highest rating. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then

proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration.

(2) Total priority points. Total priority points will be calculated according to the priority formula set forth in subsection 785:50-15-5(b) below. Seniority date and time of applications submitted shall be utilized to decide ties in point totals among qualified entities.

**(b) Priority formula for eligible entities.**

(1) **Formula.** The following formula has been devised to rank grant applications:  $T = WR + I + APCI + C + BP + PG + S + LP$ , Where:

(A) T = Total of priority points

(B) WR = Water and sewer rate structure

(C) I = Indebtedness per connection

(D) APCI= Adjusted Per Capita Income

(E) C=Consent Order

(F) BP = Project benefit to other systems

(G) PG = Previous OWRB ARPA grant assistance

(H) S = Sustainability

(I) LP = Proposals submitted to the Legislative ARPA Committees

(2) **Explanation.** Each of these criteria are explained below:

(A) Water and Sewer rate structure (WR).

(i) For systems providing water service only:

(I) If the cost per 5,000 gallons is \$50.00 or greater, the applicant shall be given 10 points.

(II) If the cost per 5,000 gallons is \$45.00 to \$49.99, the applicant shall be given 9 points.

(III) If the cost per 5,000 gallons is \$40.00 to \$44.99, the applicant shall be given 8 points.

(IV) If the cost per 5,000 gallons is \$35.00 to \$39.99, the applicant shall be given 7 points.

(V) If the cost per 5,000 gallons is \$30.00 to \$34.99, the applicant shall be given 6 points.

(VI) If the cost per 5,000 gallons is \$25.00 to \$29.99, the applicant shall be given 5 points.

(VII) If the cost per 5,000 gallons is \$23.00 to \$24.99, the applicant shall be given 4 points.

(VIII) If the cost per 5,000 gallons is \$21.00 to \$22.99, the applicant shall be given 3 points.

(IX) If the cost per 5,000 gallons is \$19.00 to \$20.99, the applicant shall be given 2 points.

(X) If the cost per 5,000 gallons is \$18.00 to \$18.99, the applicant shall be given 1 point.

(XI) If the cost per 5,000 gallons is less than \$18.00, the applicant shall be given 0 points.

(ii) For systems providing water and sewer services:

(I) If the cost per 5,000 gallons is \$56.00 or greater, the applicant shall be given 10 points.

- (II) If the cost per 5,000 gallons is \$53.00 to \$55.99, the applicant shall be given 9 points.
- (III) If the cost per 5,000 gallons is \$49.00 to \$52.99, the applicant shall be given 8 points.
- (IV) If the cost per 5,000 gallons \$45.00 to \$48.99, the applicant shall be given 7 points.
- (V) If the cost per 5,000 gallons is \$41.00 to \$44.99, the applicant shall be given 6 points.
- (VI) If the cost per 5,000 gallons is \$37.00 to \$40.99, the applicant shall be given 5 points.
- (VII) If the cost per 5,000 gallons is \$34.00 to \$36.99, the applicant shall be given 4 points.
- (VIII) If the cost per 5,000 gallons is \$32.00 to \$33.99, the applicant shall be given 3 points.
- (IX) If the cost per 5,000 gallons is \$31.00 to \$31.99, the applicant shall be given 2 points.
- (X) If the cost per 5,000 gallons is \$30.00 to \$30.99, the applicant shall be given 1 point.
- (XI) If the cost per 5,000 gallons is less than \$30.00, the applicant shall be given 0 points.
- (iii) For systems providing sewer service only:
  - (I) If the cost per connection per month is \$34.00 or greater, the applicant shall be given 10 points.
  - (II) If the cost of connection per month is \$32.00 to \$33.99, the applicant shall be given 9 points.
  - (III) If the cost of connection per month is \$30.00 to \$31.99, the applicant shall be given 8 points.
  - (IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant shall be given 7 points.
  - (V) If the cost of connection per month is \$26.00 to \$27.99, the applicant shall be given 6 points.
  - (VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant shall be given 5 points.
  - (VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant shall be given 4 points.
  - (VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant shall be given 3 points.
  - (IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant shall be given 2 points.
  - (X) If the cost of connection per month is \$16.00 to \$17.99, the applicant shall be given 1 point.
  - (XI) If the cost of connection per month is less than \$16.00, the applicant shall be given 0 points.
- (iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat-water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which

lowers the cost per 1000 gallons for connections using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons. Two (2) points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is - 3 points.

**(B) Indebtedness per connection (I).** The indebtedness per connection ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of connections served.

- (i) If the indebtedness per connection is \$20.00 or greater, the applicant shall be given 10 points.
- (ii) If the indebtedness per connection is \$17.50 to \$19.99, the applicant shall be given 9 points
- (iii) If the indebtedness per connection is \$16.00 to \$17.49, the applicant shall be given 8 points.
- (iv) If the indebtedness per connection is \$14.50 to \$15.99, the applicant shall be given 7 points.
- (v) If the indebtedness per connection is \$13.00 to \$14.49, the applicant shall be given 6 points.
- (vi) If the indebtedness per connection is \$11.50 to \$12.99, the applicant shall be given 5 points.
- (vii) If the indebtedness per connection is \$10.00 to \$11.49, the applicant shall be given 4 points.
- (viii) If the indebtedness per connection is \$8.50 to \$9.99, the applicant shall be given 3 points.
- (ix) If the indebtedness per connection is \$7.00 to \$8.49, the applicant shall be given 2 points.
- (x) If the indebtedness per connection is \$5.50 to \$6.99, the applicant shall be given 1 point.
- (xi) If the indebtedness per connection is less than \$5.50, the applicant shall be given 0 points.

**(C) Adjusted Per Capita Income (APCI).** The affordability criteria is calculated based on a Communities per capita income, population trends, and unemployment rate and compared to the United States criteria in each of the categories. All data is taken from the United States Census Bureau.

- (i) if the APCI of an applicant is 81%, then the applicant falls into Tier 4 and shall be given 6 points.
- (ii) if the APCI of an applicant is less than 81% but more than or equal to 71% then the applicant falls into Tier 3 and shall be given 12 points.
- (iii) if the APCI of an applicant is less than 71% but more than or equal to 56% then the applicant falls into Tier 2 and shall be given 18 points.
- (iv) if the APCI of an applicant is less than or equal to 55% then the applicant falls into Tier 1 and shall be given 24 points.



(D) **CONSENT ORDER (C).** An applicant who is subject to a consent order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the problem out of which the consent order arose.

(E) Project benefit to other systems (BP). If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(F) **Previous OWRB ARPA grant assistance (PG).** For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has received a previous ARPA grant from the Board in the past, 8 points shall be deducted from the application.

(G) **Sustainability.** Points will be awarded for an applicant's sustainability and long-range planning as follows:

(xii) Have and have implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 10 points.

(xiii) Have but have not implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 6 points.

(xiv) Applicant is willing to develop and implement a Fiscal Sustainability Plan prior to funding that meets the requirements of the Board Staff shall be awarded 3 points.

(H) **Proposals submitted to the Legislative ARPA Committees (LP).** Five (5) points will be awarded to applicants who submitted their proposals to the Legislative ARPA committee portal.

(3) When evaluating an application from a master conservancy district, Board Staff shall determine the score for the master conservancy district's application by looking through to each and every participating member of the master conservancy district. Board Staff shall assign a raw score to each and every participating member of the master conservancy district, as if such participating member had made application on their own behalf, applying the criteria for each component of the formula to such participating member based on such participating member's underlying facts and circumstances. The resulting raw score for each of the participating members of the master conservancy district shall then be weighted by multiplying such participating member's raw score by a fraction that is equal to that participating member's relative participating share of the master conservancy district's total water allocation as of the date the master conservancy district's application is filed with the Board. The resulting weighted score for all participating members of the master conservancy district shall be summed together to determine the score for the master conservancy district's application. If the proposed project will only benefit a portion of the members of the master conservancy district, then the Board will consider the participating members of the project when evaluating the project priority points.

#### **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 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) 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**

### **785:50-17-1. Program description**

Senate Bill 429 authorizes the American Rescue Plan Act ("ARPA") grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for Oklahoma dams in poor or unsatisfactory condition. Projects funded by this grant program shall be limited to up to One Million Dollars (\$1,000,000.00) per community. The Board's rules applicable to OKDR grants shall be construed to consider only the OKDR grant program administered by the Board and shall not be construed to consider OKDR grant programs administered by other governmental persons.

### **785:50-17-2. Definitions**

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

"Applicant" means a qualified entity which applies for an OKDR grant on its own behalf, or for whom an application is submitted shall be deemed not to be an applicant.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"Qualified project" means any necessary investment to rehabilitate public non-federal dams subject to the Board's jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

"Qualified entity" means a community which own a public non-federal dam subject to the Board's jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

"Improvements" means correction of design flaws, including but not limited to, engineering and/or construction deficiencies considered inconsistent with current state-of-practice dam design and construction.

"Routine maintenance and repair" mean activities performed routinely to prevent deterioration of structures and equipment required to maintain a dam in a safe and functioning condition, failure of which to perform timely results in dam deterioration or impairment. Routine maintenance activities include but are not limited to replacement of parts, systems, or components; and other activities needed to preserve or maintain the dam.

"High Hazard-Potential Dam" means dams where failure will probably cause loss of human life as classified under the provisions of 785:25-3-3(a) (2) (C).

### **785:50-17-3. Application review and disposition**

(a) General procedures. The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the OKDR grant program shall be as follows:

(1) Notification of potential eligibility. The Board may notify potentially eligible dam owners of the availability of the OKDR grant program.

(2) Pre-application conference

(A) While not specifically required, all potential applicants are encouraged to contact the Board for purposes of arranging participation in a pre- application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be discussed to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(3) Application.

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(C) All applicants shall submit a proposed scope of work, operation and maintenance plan, schedule, and budget packet outlining the proposed activities that will be completed using grant funds.

(D) Engineering studies, plans, or design drawings and specifications must be approved, signed, and stamped by a qualified design professional registered in Oklahoma.

(E) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(4) **Submittal to Board.** Upon completion of staff review, the submitted application (with recommendations, if any from the Board Dam Safety Program Manager) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the OKDR grant program, the Board shall follow the priority ranking system set forth in 785:50-17-5. The Board shall also give consider the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in complying with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation. Prior to commencement of construction, recipients shall submit a dam safety construction permit application form along with all construction documents to OWRB as stated in the OAC:785-25 to be approved by the Board.

(2) **Dam rehabilitation.** Qualified projects must result in improvements to the overall condition of the dam and shall not be used for routine maintenance and repair.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project is feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall consider the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **OKDR grant amount and availability of funds.** In sizing an OKDR grant, the Board shall take into consideration the current and anticipated availability of OKDR program funds.

(8) **Commitment by applicant.** The applicant shall commit to provide operation and maintenance of the project for the expected life of the dam following completion of rehabilitation.

(c) **Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

**(d) Criteria for denying an application.** The Board may deny an application for an OKDR grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not a qualified entity.

(2) Any other reason based upon applicable law or the Board's judgment and discretion.

**(e) Board action.**

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

#### **785:50-17-4. Applicable law; deadline for applications; eligible project costs**

(a) The Board shall administer applications for OKDR funds in accordance with any provisions of law applicable to such applications and OKDR funds. To be considered for and receive funding from funds available for OKDR, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(b) For purposes of evaluating, approving, and funding an application for an OKDR grant, categories of project costs which are eligible for assistance shall include architecture and/or engineer fees construction costs, and other costs related to construction of a qualified project. Provided, however, that for construction costs to be eligible for award, applicants shall provide

documentation that all construction funding is available. Failure to secure construction funding timely shall result in forfeiture of grant assistance for construction costs

(c) Funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant as approved by the Board.

(d) The OKDR grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted unless the applicant can provide sufficient justification for why their application was not received during the open application period.

#### **785:50-17-5. Period of performance**

Period of performance for selected projects commences upon finalization of the funding agreement by the Board and dam owner and shall have a term of twenty-four (24) months following finalization or until the project has been completed, whichever is shorter.

#### **785:50-17-6. Evaluation of performance**

Progress of selected projects may be monitored during the period of performance by the Board Dam Safety Program as described in Chapter 25 and may include evaluation of subrecipients ability to meet proposed deadlines and ability to provide required documentation to the Board. Subrecipient's consulting engineer shall function as the primary technical assistance provider throughout the period of performance. Board staff may provide technical assistance at their discretion.

#### **785:50-17-7. OKDR grant priority system**

##### **(a) Basis of priority system and formula.**

(1) **Prioritization.** The Board or its staff shall prioritize the selection of projects. Prioritization criteria include community size, dam hazard-potential classification, dam condition, and number of persons at risk from dam failure.

(A) **Community size.** Communities with a population of 7,000 people or less shall receive higher priority than communities with a population of over 7,000 as reported in the most recent decennial census published by the United States Bureau of the Census.

(B) **Dams hazard-potential classification.** Following prioritization for community population, project dams shall be prioritized by hazard-potential classification as defined in 785:25-3-3. High hazard-potential dams are prioritized highest; significant hazard-potential dams shall be prioritized second highest, and low hazard-potential dams shall be prioritized lowest.

(C) **Dam condition rating.** Following prioritization for hazard-potential classification, project dams shall be prioritized by a combination of condition rating and the number of persons at risk due to dam failure. The inspecting engineer for the project dam shall report condition ratings for verification by the Board Dam Safety staff. Dam condition ratings are reported to USACE for the National Inventory of Dams (NID) by the Board which has final authority on assignment of official condition ratings. Only dams assigned a condition rating of poor or unsatisfactory are eligible for funding through this program.

(D) **Number of persons at risk.** The number of persons at risk due to dam failure (PAR) shall be calculated by Board staff using dam breach inundation maps required by 785:25-7-6, population data obtained from the Department of Homeland Security, and roadway maps. PAR is calculated by overlaying breach inundation maps with population grid datasets for both day and night scenarios.

**(b) Final ranking.** Once all eligible projects have been prioritized as set forth above, they are then ranked by the following priority system based on dam condition and PAR.

- (1) Unsatisfactory condition, greater than 1,000 PAR
- (2) Unsatisfactory condition, between 100 and 1,000 PAR
- (3) Poor condition, greater than 1,000 PAR
- (4) Unsatisfactory condition, between 10 and 100 PAR
- (5) Poor condition, between 100 and 1,000 PAR
- (6) Unsatisfactory condition, between 1 and 10 PAR
- (7) Poor condition, between 10 and 100 PAR
- (8) Poor condition, between 1 and 10 PAR
- (9) Unsatisfactory condition, 0 PAR
- (10) Poor condition, 0 PAR

#### **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 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.