

## Fee Justification Report

### Title 785. Oklahoma Water Resources Board Chapter 5. Fees

#### 1. Introduction

This report outlines the justification for adding a hearing fee to the Oklahoma Water Resources Board Administrative Rules. The proposed rule change adds a new requirement: "When an individual proceeding is required in response to protests received to an application, all parties to the proceeding shall be required to pay a Hearing Fee as authorized by 82 O.S. 1085.2 (9)(m)." This fee is essential for offsetting the direct costs incurred by the Board when hearings are required in response to protests received to an application for water permits.

#### 2. Justification of the Fee

The proposed fee directly addresses the financial burden placed on the Board by the hearing process. These costs have historically been covered by the agency's general revenue allocation, but costs have increased significantly over the last 5 years due to the number of hearings being scheduled and the cost to retain hearing examiners. The Board is taking steps to reduce costs by implementing an email filing process to reduce mailing costs and clarifying hearing examiner responsibilities so the Board is only considering issues within its jurisdiction.

In 2025, the Board will schedule approximately 44 hearings. The costs associated with each hearing are significant and include both fixed and variable expenses.

- **Fixed Costs:** **\$31.44** in mailing costs is incurred per party, per hearing. This accounts for sending three certified letters—the notice of hearing, notice of the proposed order, and the final order—to each party. The use of certified mail ensures legal notice is properly served, a critical component of due process. In a case with only one protestant and one applicant, this cost will be **at a minimum \$62.88**.
- **Staff Time:** The most substantial costs are related to staff time and salaries. Processing a single hearing requires significant time from multiple employees, including:
  - **Hearing Examiner:** A hearing examiner spends approximately **20 hours** on each hearing, with a cost to the Board of approximately **\$63.34 per hour**. Each hearing effectively costs the Board **\$1,266.80** to have it evaluated by a hearing examiner. This time reflects the time needed to evaluate the application materials, each protest letter, conduct the hearing, review the hearing record, prepare and edit a proposed order. While not all hearings are the same, this time represents an average for the typical hearing. Some hearings, which end in default or are minimally complex, may require less time; while others, which have more protests, complex legal issues, prehearing discovery, prehearings, or rehearing, may require substantially more time.

- **Legal Assistant:** A legal assistant spends approximately four hours per hearing processing protests, notices and other materials for hearings, in addition to the time spent in a hearing as the clerk. With an average hearing lasting four hours, that's 8 hours per hearing. A legal assistant's cost to the board is approximately **\$36.22 per hour**. That amounts to an average of **\$289.82 per hearing**.
- **Board Review:** After the proposed hearing order is submitted to OWRB, the proposed order is reviewed by the General Counsel and prepared for Board consideration. This process takes approximately two (2) hours at \$70.00 per hour for a total of \$140.00
- **The Average Hearing,** including Legal Assistant, Hearing Examiner Time, and Postage for the minimum number of parties, costs the Board **\$1,759.50** to administer. This does not include time for other staff who may be required to testify at a hearing or prepare materials in advance of a hearing.

### **3. Rule Change**

A rule change is necessary to allow the Board to recover some of the expenses associated with administering hearings. The proposed change would add a section (h) to 785:5-1-6. See below for exact language:

#### **Fixed Hearing Fees Payable by the Applicant at Time of Hearing**

While less individualized and less likely to recover the exact cost associated with each individual proceeding, a fixed hearing fee has the benefit of being predictable for the parties and may be assessed based on the average cost of a hearing. Additionally, a fixed fee, payable by the applicant is more likely to be paid as a permit may be withheld pending payment.

#### 785:5-1-16 Fees required in other matters

- (h) A hearing fee of \$1,750.00 must be submitted by the applicant for a permit when an individual proceeding is required on matters related to the application in response to protests received to an application.

### **Conclusion**

Implementing a Hearing Fee is a necessary and justifiable change to the Board's administrative rules. It is a reasonable and proportionate measure to recover ever-increasing costs directly associated with the hearing process, including mailing and substantial staff time. This change will help the Board maintain its operational efficiency and continue to provide effective and timely services to the public.