

CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

SUBCHAPTER 1. GENERAL PROVISIONS

785:20-1-3. Statutory provisions on violations and penalties

As provided by 82 O.S. 1981, §105.20, *the unauthorized use of water, the unauthorized transfer of a water right, the continued use of works which are unsafe after receiving notice to repair, the waste of water, the unauthorized severance of a water right from the land to which it is appurtenant, the refusal to change unsafe works when directed to do so, or the injury or obstruction of waterworks shall be a misdemeanor; and each day such violation continues shall be a separate violation. The Board shall have the right, in addition to filing criminal complaints and any other remedies provided, to bring an action in the district court of the county wherein such act or omission occurs to enjoin the same. The Board and its authorized agents shall have a reasonable right to go upon private property in the performance of its duties and shall have the duty to file complaints of violations. The Executive Director of the Oklahoma Water Resources Board may issue administrative orders requiring the immediate cessation of water use when Board staff has a reasonable belief the use is unauthorized or continued use will damage rights of prior appropriators. Such administrative orders shall indicate the finding of imminent peril and shall specify the actions that are to be taken immediately. In addition, the orders shall specify a time and place for a hearing to be held after such actions are taken. [82:105.20]*

SUBCHAPTER 3. APPLICATION REQUIREMENTS AND PROCESSING

785:20-3-2. General application requirements

(a) **Application form to be used.** The applicant shall complete all applications for a regular, term, seasonal or provisional temporary stream water permit on ~~the approved forms set out in Appendix A, or on an electronic or other form~~ provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, e-mail, ~~readable facsimile transmittal~~, or through the Board's online application service. The filing fee must be submitted to the Board before application review and processing commences. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated.

(b) **Right of access to diversion point and to cross lands of another.** If at the time the application is filed, the applicant has evidence regarding right of access to the diversion point and authority to cross lands of another with pipelines or other appurtenances related to the use of the water, such evidence shall be submitted with the application.

785:20-3-9. Defective applications; when applications deemed withdrawn

(a) Upon the filing of an application that *is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise the applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the refiling thereof.* [82:105.10]

(b) *If refiled corrected as required within such time, the application shall, upon being accepted, take priority as of the date of its original filing, subject to compliance with further provisions of the law and the rules herein.* [82:105.10]

(c) Any corrected application filed after the time allowed in (a) of this Section *shall be treated in all respects as a new application on the date of its refiling* [82:105.10] and the original priority date of filing shall be lost.

(d) If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after ~~last contact with~~ instructed by the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

(e) *For applications that have been pending for more than three (3) years prior to June 5, 2000, the Board shall provide written notice to the applicant at the applicant's last-known address that the application shall be deemed withdrawn and the priority date based on the original filing date shall be lost unless the applicant provides notice of the application as instructed by the Board. The Board shall provide an opportunity for a hearing if requested in order for the applicant to show cause why:*

(1) *notice should not be published, and*

(2) *the application should not be deemed withdrawn and the priority date lost.*

(3) *Cause may be shown by substantial competent evidence that:*

(A) *the applicant has been diligently pursuing plans for the project for which the water is proposed to be used,*

(B) *construction of the project is still practical, and*

(C) *the applicant is still able to complete the project.*

(4) *If the Board receives no response to the notice, the application shall be deemed withdrawn and priority date lost.*

(f) For applications that the Board initially determines may remain pending pursuant to subsection (e) of this section, such applications may remain pending for more than three (3) years and retain the priority date based on the original filing date or date of refiling in compliance with this Section *if the applicant files a request to extend pending status of the application before the end of the first three-year period and each successive three-year period thereafter and the Board determines after notice and an*

opportunity for hearing that the application may remain pending. *If a request to extend pending status is not filed in time and as required by Board rules, the application will be deemed withdrawn* [82 O.S. 105.10].

SUBCHAPTER 7. PERMITS

785:20-7-1. Classes of stream water permits

- (a) **Regular permit.** A regular permit authorizes *the holder of such permit to appropriate water on a year-round basis in an amount and from a source approved by the Board.* [82:105.1(c)]
- (b) **Seasonal permit.** A seasonal permit authorizes *the holder of such permit to divert available water for specified time periods during the calendar year* [82:105.1(D)]
- (c) **Temporary permit.** A temporary permit authorizes *the appropriation of water in an amount and from a source approved by the Board is valid for a time period not to exceed three (3) months, does not vest in the holder any permanent right, and may be canceled by the Board in accordance with its terms.* [82:105.1(E)]
- (d) **Term permit.** A term permit authorizes *the appropriation of water in an amount and from a source approved by the Board for a term of years which does not vest the holder with any permanent right and which expires upon expiration of the term permit.* [82:105.1(F)]
- (e) **Provisional temporary permit.**
- (1) A provisional temporary permit *authorizes an appropriation of water in an amount and from a source approved by the Executive Director of the Board.* [82:105.1(G)] A provisional temporary permit is granted by the Board's Executive Director for a period not to exceed *ninety (90) days, is non-renewable, does not vest in the holder any permanent right and is subject to cancellation... at any time* [82:105.1(G)] within its term. *A provisional temporary permit may be renewed three (3) times for the oil and natural gas industry except in a sole source aquifer* [82:105.1(G)]. It is not necessary to hold a hearing, publish application data or notify adjacent downstream domestic or appropriative users prior to consideration of this type of permit. The permit may be issued summarily and immediately at the discretion of and upon administrative approval by the Executive Director.
 - (2) A provisional temporary permit may be issued only where the verified application and supporting materials filed therewith show:
 - (A) That the use will not interfere with domestic or prior appropriative users; and
 - (B) That economic hardship will occur if the permit is not granted; and
 - (C) That the applicant owns, leases or has the written consent of the respective landowners to use lands at the point of diversion or lands for placement of water lines or other appurtenances related to use of the water.
- (f) **Limited quantity permit.**
- (1) The Executive Director of the Board may administratively issue regular, seasonal, temporary or term permits to use 15 acre-feet or less of stream water in a calendar year or during its term if the term is less than one year [82:105.13].
 - (2) Notice of the application for such a permit shall be published by the applicant in a newspaper of general circulation one time only in the county of the point of diversion and in the adjacent downstream county, or as otherwise directed by the Board.
 - (3) Written comments about the application must be filed with the Board within ten (10) days after the date of publication or other notice provided.
 - (4) The permit may be issued or denied summarily and immediately after the ten (10) day period at the discretion of the Executive Director, provided that the Executive Director may require that a hearing on the application be held. After such hearing, the application shall be presented to the Board with proposed findings of fact and conclusions of law for consideration.
 - (5) Limited quantity permits cannot be combined to authorize the use of more than a total of 15 acre-feet per year.
- (g) **Priorities among classes.** In circumstances where there is less water actually available than that calculated for purposes of considering a regular permit application, regular permit holders shall have a better right over all other classes of permits. Among regular permit holders, priority in time, determined by date of filing an application as provided in these rules, shall give the better right. Among classes other than regular permit holders, priority in time, determined by date of filing an application as provided in these rules, shall give the better right.

SUBCHAPTER 9. ACTIONS AFTER STREAM WATER RIGHT OBTAINED

785:20-9-5. Reports

(a) Annual reports of water use.

- (1) Water use report forms will be mailed during January of each year to every holder of a valid water right. These reports must be completed and returned with the annual file maintenance fee to the Board within thirty (30) days of receipt thereof. This report shall become a part of each record of each stream water right holder. Willful failure to complete and return such report with the appropriate filing fee may be considered by the Board as nonuse of water under a water right. In a review of the water use by the water right holder, the Board may adjust its records regarding nonuse after payment of all past accrued fees.

(2) ~~Absent differing expressed direction of the water right holder, if~~ two or more water rights are held by the same person for use of water from the same point of diversion, from the same source of supply and for the same purpose, the total amount used annually under all such water rights shall be recorded first under the water right with the oldest priority date until full use is made, then the next amounts shall be reported under the next oldest priority date, until all amounts are accounted for.

(3) Holders of water rights with multiple diversion points may be required to report use from each diversion point, if diversion points are in different stream segments, or diversion points are in both a stream and lake or pond, or other valid reasons as determined by the Board.

(4) When reporting annual water use, holders of a valid water right may make application on a form provided by the Board to excuse nonuse for the reporting year. If the Board approves the application for the excused nonuse, the time for putting the water authorized to beneficial use shall be tolled for the period of excused nonuse.

(b) **Reports by temporary, and term permit holders.** Upon the expiration of the period for which a temporary, or term permit was granted, the appropriator shall cease the taking of water and file a written report with the Board stating the amount of water used under the temporary, or term permit and the date of cessation.

(c) **Change of address.** It shall be the responsibility of the holder of a water right to provide the Board with a current mailing address for receipt of all correspondence dealing with the water right.

APPENDIX A. APPLICATION FOR A PERMIT TO USE SURFACE OR STREAM WATER [REVOKED]

Figure 1

OFFICE USE ONLY	
Application No.	_____
Type of Permit	_____
Stream System Code	_____
Reservoir Code	_____
Hydrologic Unit Code	_____

Application for a Permit to Use Surface or Stream Water
OKLAHOMA WATER RESOURCES BOARD
PLANNING & MANAGEMENT DIVISION
3800 North Classen Blvd.
Oklahoma City, OK 73118
Phone: (405) 530-8800
Fax: (405) 530-8900
Website: www.owrb.ok.gov

APPLICATION FILING FEE	
Amount of Water Requested	Fee
0 - 320 acre-feet	\$ _____
321 - 640 acre-feet	\$ _____
641 - 1500 acre-feet	\$ _____
Over 1500 acre-feet	\$ _____
*Plus \$ _____ for each 500 acre-feet (or any increment thereof) over 1500 acre-feet. (Maximum Fee \$3,000.00)	

1. NAME & ADDRESS (Print the applicant's full name, as listed on the ownership documentation, and mailing address)

Applicant Name _____ Phone () _____
City _____ State _____ Zip _____
Address _____
Contact Name (if applicable) _____ Phone () _____
City _____ State _____ Zip _____

2. TYPE OF SURFACE WATER PERMIT REQUESTED (Check One)

☐ Regular Permit - authorizes diversion and use of water on a year-round basis.
☐ Seasonal Permit - authorizes diversion and use of water for specific time periods during a calendar year.
☐ Term Permit - valid for a term of years and does not vest the holder with any permanent right.
(Provide ending date for term permit: _____ day of _____, 20____)

3. PURPOSE(S) FOR WHICH WATER WILL BE USED (List the purpose(s) for which the water will be used and the number of acre-feet for each purpose. Note: one acre-foot of water will cover one acre of land one foot deep and is equal to 325,851 gallons)

AMOUNT	PURPOSE
_____ acre-feet of water will be used for _____	OFFICE USE ONLY SIC Codes
_____ acre-feet of water will be used for _____	

Total Amount Requested _____ acre-feet; Pumping Rate not to Exceed _____ gallons per minute

Irrigation Only: _____ acres will be irrigated. Proposed Crops _____

4. DIVERSION(S) OF WATER. Source, Location and Method of Diversion (For each diversion point, state the amount of water in acre-feet to be diverted annually and give the legal description to the nearest ten (10)-acre tract. Legal description of the diversion point must match the area drawn on the attached plat. If additional space is needed, list on a separate sheet of paper.)

Figure 2

Will the water be used as a non-consumptive use in a pond, lake or reservoir and will not be pumped or moved from one location to another? ☐ Yes ☐ No (If yes, use the location of the dam or spillway as the point of diversion below.)

_____ acre-feet of water will be diverted from:
1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____ ☐ N ☐ EIM
_____ ☐ S Rng. _____ ☐ WIM in _____
_____ ☐ ECM County _____

Source of Water: (Check one and provide the requested information showing the source of water to be diverted.)

- ☐ Direct Diversion from a Stream or River- Name of Stream: _____
☐ Natural Resources Conservation Service Flood Control Site - N.R.C.S. Site No. _____
Watershed Name: _____
☐ Reservoir or Pond - Name of Reservoir: _____
River or Stream Name Reservoir is Located on: _____
Reservoir is (Check one) ☐ Existing (Date Completed: _____)
☐ Under Construction ☐ Planned

Storage: _____ acre-feet; Average Depth: _____ feet; Surface Area: _____ acres

Method of Diversion: (Check one and provide description of the system to be used)

- ☐ Gravity: _____
☐ Pump: _____

Do you own or lease the land on which the point of diversion will be located? ☐ Yes ☐ No (If available, attach a copy of the deed, lease agreement, etc. showing the right to use the point of diversion.)

Will water lines cross public right-of-ways or another landowner's property? ☐ Yes ☐ No (If yes and available, attach a copy of the easement.)
(Note: If the deed, lease agreement, etc. and/or the easement is not submitted, the permit, if issued, will contain a condition requiring submission of the information before water use begins.)

5. LEGAL DESCRIPTION OF AREA OF USE: (List the legal description of the area of use. Please do not use city lot and block numbers or metes and bounds. If additional space is needed, list on a separate sheet of paper. Legal description must be drawn on the attached plat and must match the area of use described below. Municipal and rural water entities refer to §§ 106 below.)

_____ acres in _____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____ ☐ N ☐ EIM
_____ ☐ S Rng. _____ ☐ WIM in _____
_____ ☐ ECM County _____

_____ acres in _____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____ ☐ N ☐ EIM
_____ ☐ S Rng. _____ ☐ WIM in _____
_____ ☐ ECM County _____

_____ acres in _____ 1/4 of _____ 1/4 of _____ 1/4 of Section _____ Twp. _____ ☐ N ☐ EIM
_____ ☐ S Rng. _____ ☐ WIM in _____
_____ ☐ ECM County _____

FOR IRRIGATION ONLY: Do you own or lease the land to be irrigated? ☐ Yes ☐ No (If available, attach a copy of the deed or lease. If not available, the permit, if issued, will require that a deed or lease be submitted before water use begins.)

6. JUSTIFICATION OF PRESENT AND FUTURE NEED

IRRIGATION: Completion of #3 serves as justification of need for amounts requested for irrigation for common crops grown in Oklahoma. The Board will use appropriate publications and information the applicant submits in determining the amount of water needed.

MUNICIPAL AND RURAL WATER ENTITIES: Submit population projection figures and all other methodologies, calculations, and additional information used to determine amount of water requested. Submit a map of the service areas and the water line locations. The map must show points of reference or scale. A schedule of use based on population growth may also be submitted.

Figure 3

INDUSTRIAL, COMMERCIAL AND AGRICULTURE (NON-IRRIGATION): Submit methodology, calculations, and additional information used to determine amount of water requested.

7. CITIZENSHIP AFFIDAVIT

Are you a citizen of the United States of America? ☐ Yes ☐ No

If no, are you a qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States? ☐ Yes ☐ No. My A-number is _____ and a true and correct copy of my immigration document, including my date of birth, user case number, and immigration document type and its expiration date, must be attached.

(PLEASE NOTE: Each natural individual listed as an applicant must provide a citizenship affidavit. If the land is owned by more than one person, a copy of this page will need to be filled out, signed, notarized and filed with the completed application.)

8. SIGNATURES

Upon my oath or affirmation, I swear or affirm (1) that all information submitted to the Oklahoma Water Resources Board in connection with this application is true and accurate to the best of my knowledge; and (2) that I or the person or entity I represent will comply with all applicable laws and regulations contained in Chapter 20 of the Oklahoma Water Resources Board rules and all other applicable regulations of the State of Oklahoma or its agencies, and any lawful conditions imposed by the Oklahoma Water Resources Board, which apply or pertain to the use of fresh stream water.

SIGNATURE OF APPLICANT _____
PRINT NAME _____
TITLE (IF APPLICABLE) _____
The foregoing instrument was acknowledged before me this _____ day of _____, 20____.

NOTARY
STATE OF _____)
COUNTY OF _____) ss

Notary Public
My commission expires _____
(SEAL)

APPLICATION SUBMISSION AND PROCESSING

To be deemed complete, the submitted application must:

- The appropriate filing fee;
- The original application, typed or printed in ink, signed and notarized;
- One copy of the plat(s) showing the information requested in items #4 and #5 above and as otherwise instructed on this form; and
- If available, Deed(s), lease(s), and / or letter(s) of consent as required.

If you believe that within the first seven (7) years after issuance of your permit you will not be able to use the full amount of water applied for, please contact Board staff.

Please note: Any incomplete or unresponsive answers may cause a delay in the processing of your application. In addition, Oklahoma Administrative Code (OAC) 785-20-3-9 states: (a) "Upon filing of an application that is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the filing thereof." (82-105-10) (b) "Any corrected application filed after the time allowed in (a) of this Section shall be treated in all respects as a new application on the date of its refiling (82-105-10) and the original priority date of filing shall be lost." (c) "If an application does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn."

Figure 4

**Oklahoma Water Resources Board
STREAM WATER Application Plat**

Applicant Name _____ Application # _____

Note: Drawings must match the legal descriptions provided in questions #4 and #5 in the application and one copy of the plat must be filed with the application.

NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NE 1/4	NE 1/4 NE 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4
SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NE 1/4	NE 1/4 NE 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4
SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NE 1/4	NE 1/4 NE 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4
SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NE 1/4	NE 1/4 NE 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4
SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4
NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NW 1/4	NE 1/4 NW 1/4	NW 1/4 NE 1/4	NE 1/4 NE 1/4	NW 1/4 SE 1/4	NE 1/4 SE 1/4
SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NW 1/4	SE 1/4 NW 1/4	SW 1/4 NE 1/4	SE 1/4 NE 1/4	SW 1/4 SE 1/4	SE 1/4 SE 1/4

Section - Township - Range _____ County _____

Land Owned or Leased

Area of Use

● Point of Diversion

