

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.