

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1308

By: Benson of the House

and

Easley of the Senate

AS INTRODUCED

An Act relating to waters and water rights; amending 82 O.S. 1991, Sections 105.11, 105.17 and 105.18, which relate to the authority of the Oklahoma Water Resources Board; modifying certain procedures; providing for certain hearings and notifications; providing for water right forfeitures; providing for certain avoidances; modifying certain conditions; removing certain obsolete language; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 1991, Section 105.11, is amended to read as follows:

Section 105.11 A. Upon the ~~filing~~ acceptance of an application which complies with the provisions of this act and the rules and regulations established thereunder, the Board shall instruct the applicant to publish, within ~~ninety (90) days after the filing of the application~~ the time required by the Board, a notice thereof, at the applicant's expense, in a form prescribed by the Board in a newspaper of general circulation in the county of the point of diversion, and in a newspaper of general circulation published within the adjacent downstream county and any other counties

designated by the Board once a week for two (2) consecutive weeks. Such notice shall give all the essential facts as to the proposed appropriation, among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant ~~and the time and place when the application will be taken up by the Board for consideration~~ and the manner in which a protest to the application may be made. In case of failure to give such notice in accordance with the rules and regulations applicable thereto within the time required, or if such notice is defective, the priority of application shall be lost; however, if proper notice shall be given within thirty (30) days after the Board has given him notice of his failure to give effective and proper notice, the application shall thereafter carry the original date of filing, and shall supersede any subsequent application to the same source of water supply. Any interested party shall have the right to protest said application and present evidence and testimony in support of such protest.

B. Upon receipt of a protest which meets the requirements of the Board's rules, the Board shall schedule a hearing on the application and notify the applicant and protestant of such hearing.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 105.17, is amended to read as follows:

Section 105.17 A. To the extent that the water authorized is not put to beneficial use as provided by the terms of the permit, that amount not so used shall be forfeited by the holder of the permit and shall become public water and available for appropriation.

B. When the party entitled to the use of water commences using water but thereafter fails to beneficially use all or any part of the water claimed by him, for which a right of use has been vested for the purpose for which it was appropriated for a period of seven

(7) continuous years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

C. After a water right becomes subject to forfeiture for nonuse pursuant to the provisions of subsections A or B of this section, such forfeiture may be avoided and the priority date maintained if the claimant demonstrates by clear and convincing evidence that:

1. The forfeiture can be avoided without detriment to other existing rights;

2. The claimant began using the water for the purpose authorized; and

3. No applications are pending and no other persons have obtained permits for the water which would otherwise be subject to the reversion.

SECTION 3. AMENDATORY 82 O.S. 1991, Section 105.18, is amended to read as follows:

Section 105.18 A. When the Board has reasonable cause to believe that the right to use water has been lost in whole or in part, as provided in Section 105.17 of this title, the Board may proceed to cancel administratively such right by notifying the claimant of such right, or his latest successor in such rights, by written notification mailed by registered or certified mail to his last known address that there is reasonable cause for believing that he has lost his water rights under the provisions of Sections 105.16 or 105.17 of this title.

B. Such notice shall be mailed at least thirty (30) days prior to the date set for the hearing and shall give the time and place set for the hearing on such water rights; provided that if there is evidence that delivery of such notice by registered or certified mail cannot be made to the claimant, or his successor in such water rights, the Board shall give notice by publishing the same in a local newspaper qualified to publish such notice, nearest the point where said water right had attached, once each week for three (3)

consecutive weeks. Such hearing date shall be set not earlier than thirty (30) days after the last publication date of said notice.

C. At such hearing the claimant of such water right, or his successor in such right, shall have the right to show cause why such water right should not be declared to have been lost through nonuse. ~~Within sixty (60) days after the hearing, the Board shall notify the claimant, or his successor in such water right, of its determination by registered or certified mail. If the claimant or his successor in such water right is aggrieved by the determination of the Board, he may appeal to the district court as provided~~ Procedures of said hearings and appeals therefor shall be governed by The Administrative Procedures Act.

D. Provided, that the failure of the Board to determine that a right to use water has been lost in whole or in part for nonuse shall not in any way revive or continue the said right.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-5501

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