

ENROLLED SENATE
BILL NO. 875

By: Roberts and Capps of the
Senate

and

Beutler of the House

An Act relating to waters and water rights; amending 82 O.S. 1991, Sections 105.11, as last amended by Section 2, Chapter 112, O.S.L. 1995 and 105.13 (82 O.S. Supp. 1995, Section 105.11), which relate to stream water; amending 82 O.S. 1991, Sections 1020.8, as last amended by Section 6, Chapter 112, O.S.L. 1995 and 1020.10, as amended by Section 15, Chapter 164, O.S.L. 1995 (82 O.S. Supp. 1995, Sections 1020.8 and 1020.10), which relate to groundwater; updating language; providing an exception to notice and publication requirements; authorizing administrative issuance of limited quantity permits by executive director of the Oklahoma Water Resources Board; providing for promulgation of certain rules; specifying certain restrictions; specifying certain contents; amending 82 O.S. 1991, Section 1085.2, as last amended by Section 1, Chapter 162, O.S.L. 1994 (82 O.S. Supp. 1995, Section 1085.2), which relates to the Oklahoma Water Resources Board; authorizing the Board to provide funding for certain engineering reports and studies; authorizing Board to establish agency special account for certain purpose; 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, as last amended by Section 2, Chapter 112, O.S.L. 1995 (82 O.S. Supp. 1995, Section 105.11), is amended to read as follows:

Section 105.11 A. Except as otherwise provided by Section 2 of this act for limited quantity stream water permits, upon the acceptance of an application which complies with the provisions of Chapter 1 of this title, and the rules promulgated by the Oklahoma Water Resources Board pursuant thereto, the Board shall instruct the applicant to publish, within 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, the hearing date, time and place if a hearing is scheduled by the Board before instructions to publish notice are given, 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. If the Board does not schedule a hearing on the application before instructing the applicant to publish notice, a hearing shall be scheduled by the Board upon receipt of a protest which meets the requirements of the Board's rules, the Board shall notify the applicant and protestant of such hearing.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 105.13, is amended to read as follows:

Section 105.13 A. The Oklahoma Water Resources Board is authorized to issue, in addition to regular permits, seasonal, temporary, term or provisional temporary permits at any time the Board finds such issuance will not impair or interfere with domestic uses or existing rights of prior appropriators and may do so even where it finds no unappropriated water is available for a regular permit. All seasonal, temporary, term and provisional temporary permits shall contain a provision making them subject to all rights of prior appropriators. If any such permit is for water impounded in any works for storage, diversion or carriage of water, the applicant must comply with the provisions of Section 105.21 of this title.

B. Except as otherwise provided by this section, application, notice and administrative hearing as provided in Sections 105.9 through 105.12 of this title shall be required for all permits. A provisional temporary permit may be immediately and summarily granted upon administrative approval by the Board. Provisional temporary permits shall:

1. Not be effective for a period of more than ninety (90) days;
2. Be granted at the discretion of the Board; and
3. Be subject to such terms, conditions and rules promulgated by the Board for such purposes.

C. The Executive Director of the Board may administratively issue permits to use limited quantities of stream water. Notice, procedures and the maximum quantity authorized for limited quantity stream water permits shall be in compliance with rules promulgated by the Board. In no event shall the maximum quantity of water authorized in a limited quantity stream water permit exceed the amount of stream water that would otherwise be determined by the Board pursuant to Section 105.12 of this title.

SECTION 3. AMENDATORY 82 O.S. 1991, Section 1020.8, as last amended by Section 6, Chapter 112, O.S.L. 1995 (82 O.S. Supp. 1995, Section 1020.8), is amended to read as follows:

Section 1020.8 Except as otherwise provided by Section 4 of this act for limited quantity groundwater permits, upon the filing of an application which complies with the provisions of Chapter 11 of this title, and the rules promulgated by the Oklahoma Water Resources Board pursuant thereto, the Board shall instruct the applicant to provide notice thereof, at the applicant's expense, and as required by the Board's rules. Such notice shall give all the essential facts as to the proposed taking, among them, the places of taking and of use, amount of water, the purpose for which it is to be used, name and address of applicant, the hearing date, time and place if a hearing is scheduled by the Board before instructions to provide notice are given, and the manner in which a protest to the application may be made. No hearing shall be had upon the application until proper notice shall have been given. Any interested party shall have the right to protest said application and present evidence and testimony in support of such protest. If the Board does not schedule a hearing on the application before instructing the applicant to provide notice, a hearing on the application shall be scheduled by the Board upon receipt of a protest which meets the requirements of the Board's rules and the Board shall notify the applicant and protestant of such hearing.

SECTION 4. AMENDATORY 82 O.S. 1991, Section 1020.10, as amended by Section 15, Chapter 164, O.S.L. 1995 (82 O.S. Supp. 1995, Section 1020.10), is amended to read as follows:

Section 1020.10 A. The procedures provided for in this chapter for the granting of regular permits shall be applicable to the granting of temporary or special permits except that the determination of the maximum annual yield shall not be a condition precedent. Provided a provisional temporary permit for water may immediately be granted upon administrative approval by the Oklahoma Water Resources Board. This permit will not be effective for a period of more than ninety (90) days.

B. The Executive Director of the Board may administratively issue permits to use limited quantities of groundwater. Notice, procedures and the maximum groundwater quantity authorized for limited quantity groundwater permits shall be in compliance with rules promulgated by the Board. In no event shall the maximum quantity of water authorized in a limited quantity groundwater permit exceed the amount that would otherwise be allocated by this chapter.

SECTION 5. AMENDATORY 82 O.S. 1991, Section 1085.2, as last amended by Section 1, Chapter 162, O.S.L. 1994 (82 O.S. Supp. 1995, Section 1085.2), is amended to read as follows:

Section 1085.2 In addition to any and all other authority conferred upon it by law, the Oklahoma Water Resources Board shall also have authority:

1. Generally to do all such things as in its judgment may be necessary, proper or expedient in the accomplishment of its duties;

2. To make such contracts and execute such instruments as in the judgment of the Board are necessary or convenient to the exercise of any of the powers conferred upon it by law. Provided, however, no contract shall be made conveying the title or use of any

waters of the State of Oklahoma to any person, firm, corporation or other state or subdivision of government, for sale or use in any other state, unless such contract be specifically authorized by an act of the Oklahoma Legislature and thereafter as approved by it;

3. To negotiate contracts and other agreements with the federal government to arrange for the development of water resources and for the storage and distribution of water for beneficial purposes; provided, however, that the Board shall act in such capacity only as an intermediary in assisting others, and under no circumstances shall the Board have any power or authority to build, construct or finance any waterways, dams or other such projects for itself, except as may be otherwise specifically provided by the laws of this state;

4. To develop statewide and local plans to assure the best and most effective use and control of water to meet both the current and long-range needs of the people of Oklahoma; to cooperate in such planning with any public or private agency, entity or person interested in water, and is directed to prepare such plans for consideration and approval by the Legislature; and to aid, at all times, counties, incorporated cities and towns and special purpose districts in the state in promoting and developing flood control and water conservation in the state;

5. To employ and fix the compensation of such officers, agents, attorneys, technical personnel and employees of the Board as it shall deem necessary to the proper performance of its duties;

6. To adopt and use an official seal;

7. To make such rules, regulations and orders as it may deem necessary or convenient to the exercise of any of the powers or the performance of any of the duties conferred or imposed upon it by this or any other law;

8. To institute and maintain, or to intervene in, any actions or proceedings in or before any court, board, commission or officer of this or any other state or of the United States to stop or prevent any use, misuse, appropriation or taking of any of the waters of this state which is in whole or in part in violation of any law, or of any rules, regulations, orders, judgments or decrees of any court, board, commission or officer of this or any state or of the United States; and to institute and maintain or intervene in any other action or proceeding where the Board deems it necessary to the proper execution and discharge of any of the powers or duties conferred or imposed upon it by law;

9. To determine, charge and receive fees to be collected in advance for the filing and examination of applications for permits to construct water use works; appropriate groundwater; appropriate stream water; establish vested rights; inspect water use works; file other papers; make copies of documents; make prints of maps and drawings; certify copies of documents, maps and drawings; file transfers of water rights; gauge wells and ditches, changes in point of diversion and changes in place of use of water; test wells; hold hearings, make records and provide transcripts of hearings; provided that such fees shall not be collected from any state agency or state institution;

10. To negotiate contracts or water compacts with the federal government or any department or bureau thereof, or with any state in this Union for the purpose of obtaining assistance and cooperation in the accomplishment of the purpose of flood control and water conservation and use in the state. To that end, the Board may match funds with the federal government and with other states upon such terms as shall be agreed upon and approved by the Governor of the state, with the limitation that contracts or water compacts with other states for the division and apportionment of the cost and use of the water controlled by interstate projects shall be submitted to and approved by the Legislature of the state and the Governor of the

state, and Congress and the President of the United States conformable to the State and Federal Constitutions;

11. To accept gifts and grants of money and property or any interest therein;

12. To provide funding from federal and state monies for water and wastewater project purposes to eligible entities for preliminary engineering reports and planning and feasibility studies;

13. To sell or dispose of real or personal property held by the Board when no longer needed in such manner as provided by law;

14. To make appropriations of water to all special purpose districts;

15. To execute and deliver, without actual consideration therefor, a written release of any easement or easement deed heretofore given to the Conservation Commission of the State of Oklahoma, the Planning and Resources Board or the Oklahoma Water Resources Board on lands situated in this state, whenever it shall appear to said Oklahoma Water Resources Board that the need for such easement or easement deed no longer exists; provided, the owner of the lands affected shall file a written application for such release with the Oklahoma Water Resources Board;

16. To adopt, modify or repeal and promulgate standards of quality of the waters of the state and to classify such waters according to their best uses in the interest of the public under such conditions as the Board may prescribe for the prevention, control, and abatement of pollution. The standard of quality of waters of the state adopted by the Board pursuant to the provisions of Section 1085.30 of this title shall be utilized by all appropriate state environmental agencies in implementing their respective duties to abate and prevent pollution to the waters of the state;

17. To review disputes involving service areas or territories, rates for raw or treated water, and abrogation clauses in contracts among municipalities and rural water districts or not-for-profit rural water corporations; to recommend mediation and refer parties in appropriate disputes to mediators and provide technical information to such mediators; and to recommend other means of resolving disputes; provided, that no party to such dispute may initiate action in any district court regarding the dispute until written notice of the dispute has been filed with the Board; provided further that the provisions of this paragraph shall not be construed to diminish any right of access to the court granted to a party by law; and

18. To establish an agency special account through the Office of State Finance and the State Treasurer's Office as necessary for the collection and distribution of funds, including funds of sponsors and registration fees related to conferences, meetings and training sessions.

SECTION 6. 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.