

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2235:

Langmacher

AS INTRODUCED

An Act relating to waters and water rights; creating Oklahoma Stream Water Law Act; amending 82 O.S. 2001, Section 105.2, which relates to right to use water; establishing conservation as a beneficial use; amending 82 O.S. 2001, Section 105.16, which relates to time for putting water to beneficial use; providing exemptions to time limitation for putting water to beneficial use; defining terms; providing for legislative intent; establishing voluntary programs; prescribing conservation proposal and contents; providing for notice; establishing certificates showing change in original water rights; authorizing promulgation of rules; considering effect of allocation on existing rights and mitigation; providing for priority of right to use conserved water; authorizing use of conserved water; providing for notice of dispensation of right to use conserved water; authorizing agencies and political subdivisions of the state to purchase or accept a gift of right to use conserved water; declaring legal status of water right for conserved water; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 82, unless there is created a duplication in numbering, reads as follows:

Sections 105.1 through 105.32 of Title 82 of the Oklahoma Statutes and Sections 4 through 13 of this act shall be known and may be cited as the "Oklahoma Stream Water Law Act".

SECTION 2. AMENDATORY 82 O.S. 2001, Section 105.2, is amended to read as follows:

Section 105.2 A. 1. Beneficial use shall be the basis, the measure and the limit of the right to the use of water; ~~provided,~~ ~~that water.~~ In developing and establishing beneficial uses for

purposes of the Oklahoma Stream Water Law Act, the Oklahoma Water Resources Board shall include water conservation as a beneficial use. Water conservation shall not constitute waste.

2. Water taken for domestic use shall not be subject to the provisions of ~~this act~~ the Oklahoma Stream Water Law Act, except as provided in Section 105.5 of this title. Any person has the right to take water for domestic use from a stream to which ~~he~~ such person is riparian or to take stream water for domestic use from wells on his or her premises. Water for domestic use may be stored in an amount not to exceed two (2) years' supply.

3. The provisions of ~~this act~~ the Oklahoma Stream Water Law Act shall not apply to farm ponds or gully plugs which are not located on definite streams and which have been constructed under the supervision and specifications of ~~the Soil and Water Conservation Districts~~ established pursuant to the Conservation District Act.

B. Priority in time shall give the better right. From and after the date of June 10, 1963, the following priorities for the use of water and no other shall exist:

1. Prestatehood uses. Priorities to the quantity of water put to beneficial use prior to November 15, 1907, to the extent to which the priority has not been lost in whole or in part pursuant to Section 105.16 of this title when the same ~~shall have~~ has been perfected as provided by this act and rules ~~and regulations adopted promulgated~~ by the Oklahoma Water Resources Board. Such ~~said~~ priorities shall date from the initiation of the beneficial use.

2. Spavinaw, Grand, North Canadian, Blue and North Boggy adjudications. Priorities decreed to exist in adjudications brought in pursuance of this act where such adjudications have been initiated prior to the date of June 10, 1963, to the extent to which these priorities have not been lost in whole or in part pursuant to Section 105.16 of this title. Such ~~said~~ priorities shall be dated

as of the date assigned to them in the respective adjudication decrees.

3. Spavinaw, Grand, North Canadian, Blue and North Boggy Rivers - Applications prior to June 10, 1963. Priorities based upon applications for appropriations where the same shall have been perfected heretofore under the law heretofore applicable to the extent to which the priority has not been lost in whole or in part pursuant to Section 105.16 of this title. Such ~~said~~ priorities shall be dated as of the date of the application therefor.

4. All other applications. Priorities based upon applications for appropriations to the extent the priority has not been lost in whole or in part pursuant to Section 105.16 of this title where the same shall be perfected after June 10, 1963, as provided by this act and rules ~~and regulations adopted~~ promulgated by the Board pursuant thereto. Such ~~said~~ priorities shall date from the date of application for the priority. Any permit to appropriate water issued by the Board from and after June 10, 1963, is hereby presumed to be valid and in full force and effect to the extent not lost in whole or in part due to nonuse, forfeiture or abandonment, pursuant to this title.

5. Federal withdrawals. Priorities based on the withdrawal of water by the United States pursuant to Section 105.29 of this title to the extent to which the priority has not been lost in whole or in part through nonutilization as provided by the ~~said~~ section or pursuant to Section 105.16 of this title. Such ~~said~~ priorities shall vest in the users of ~~said~~ the water as of the date of notification given pursuant to Section 105.29 of this title.

6. Poststatehood - Nonapplicant uses. Priorities based upon present beneficial use prior to June 10, 1963, and initiated on or subsequent to November 15, 1907, to the extent to which the priority has not been lost in whole or in part pursuant to Section 105.16 of this title where the same has been perfected as provided by this act

and rules ~~and regulations adopted~~ promulgated by the Board pursuant thereto. Such ~~said~~ priorities as to each quantity of water shall date from the initiation of the beneficial use of that quantity of water. Provided, however, that no priority based solely upon this paragraph shall take priority over priorities which bear a priority date earlier than the effective date of June 10, 1963, and which arise by virtue of compliance with the provisions of the first five paragraphs of this subsection.

7. ~~Soil~~ Conservation Service sediment pools. Priorities based upon beneficial use of that portion of the water designated by the ~~Soil~~ Conservation Service engineers as necessary for the sediment pool where landowners have granted easements without compensation for upstream flood control impoundments under the sponsorship of ~~Soil and Water~~ Conservation Districts prior to June 10, 1963, to the extent to which the priority has not been lost in whole or in part pursuant to Section 105.16 of this title when the same shall have been perfected as provided by this act and rules ~~and regulations adopted~~ promulgated by the Board. Such said priorities shall date from the date of the grant of the easement. Subsequent to June 10, 1963, those landowners who shall grant easements for such upstream flood control impoundments may acquire a priority for beneficial use of that water designated as the sediment pool by complying with paragraph 4 of subsection B of this section.

C. When any person might claim a priority under more than one of the numbered paragraphs of subsection B of this section, ~~he~~ the person may elect which paragraphs shall control ~~his~~ the priority date of the person. Nothing in this provision shall be construed to prohibit ~~his~~ a person from electing different priorities under one or more of the paragraphs of subsection B of this section for different quantities of water.

D. From and after June 10, 1963, the only riparian rights to the use of water in a definite stream, except water taken for

domestic use, are those which have been adjudicated and recognized as vested through the proceedings under 82 O.S. Supp. 1963, Sections 5 and 6, orders of the Oklahoma Water Resources Board entered thereunder which became final, and those decreed to exist in the Spavinaw, Grand, North Canadian, and Blue and North Boggy adjudications, all to the extent such rights have not been lost, in whole or in part, due to nonuse, forfeiture or abandonment, pursuant to this title.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 105.16, is amended to read as follows:

Section 105.16 A. ~~Unless a schedule of use is provided by the Board as authorized in this section,~~ a A regular permit shall require that the whole of the amount of the water authorized by the permit be put to beneficial use within a period of less than seven (7) years unless:

1. A schedule of use is provided by the Board as authorized in subsection B of this section; or

2. A permit holder can demonstrate that conservation methods as authorized by the Oklahoma Water Resources Board pursuant to the provisions of The Oklahoma Stream Water Law Act are being used. If a permit holder can demonstrate that authorized water conservation methods are being used, the permit shall require that the whole amount of water authorized by the permit be put to beneficial use within a period of less than twelve (12) years.

B. 1. If, upon evidence presented to the Board, and considering the present and future needs of the stream system of origin, it appears to the Board that:

a. the proposed project, improvement or structure will promote the optimal beneficial use of water in the state, and ~~it further appears that~~

b. the total amount of water to be authorized by the permit cannot be put to beneficial use within seven (7) years, ~~then~~

the Board shall provide in the permit the time within which the total amount to be authorized shall be put to beneficial use. This time shall be the useful life of the proposed project, improvement or structure as found by the Board.

2. In order to insure orderly progress toward total beneficial utilization within the ~~said~~ time set by the Board, the Board shall provide in the permit a schedule of times within which certain percentages of the total amount to be authorized must be put to beneficial use.

C. Nothing in this ~~act~~ section shall be deemed to reestablish any right to the use of any water which has been lost by failure to use same or by forfeiture prior to July 5, 1961.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.34 of Title 82, unless there is created a duplication in numbering, reads as follows:

As used in Sections 4 through 13 of this act:

1. "Conservation" means the reduction of the amount of water diverted to satisfy an existing permitted use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures approved by the Oklahoma Water Resources Board;

2. "Conserved water" means that amount of water that results from conservation measures, measured as the difference between:

a. the smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities, and

- b. the amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate; and

3. "Efficient utilization" means use without waste, upgrading of irrigation equipment to comply with modern practices within a reasonable time period or other methods used to meet both current and future water needs at the least cost.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.35 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Legislature finds and declares that conservation and efficient utilization of water is essential for the public safety, health and welfare, is necessary to provide water to satisfy current and future needs, improves water quality by reducing contaminated return flow, prevents erosion and allows increased in-stream flow.

B. It is therefore declared to be the policy of the State of Oklahoma to:

1. Aggressively promote conservation; and
2. Encourage local cooperation and coordination in development of conservation proposals to provide incentives for increased efficiency and to improve streamflows.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.36 of Title 82, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 4 through 13 of this act establish a voluntary program and apply only to those persons who choose to submit a conservation proposal under Section 7 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.37 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Any person or group of persons holding one or more water right permits issued under Sections 105.2, 105.12 or 105.13 of Title 82 of the Oklahoma Statutes may submit a conservation proposal to the Oklahoma Water Resources Board for approval.

B. A conservation proposal submitted under subsection A of this section shall include:

1. A description of the proposed measures;

2. A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities;

3. The amount of water which will be needed to supply the existing rights after implementation of the conservation measures;

4. The amount of conserved water expected from implementation of the conservation measures;

5. The proposed allocation and use of the conserved water if different from the allocation specified in Section 8 of this act;

6. The intended use of any water allocated to the applicant; and

7. Any other information the commission considers necessary to evaluate the effectiveness of the proposal.

C. If a person proposes conservation measures within the boundaries of an irrigation district organized under the Oklahoma Irrigation District Act, a water control district organized under the Regional Water Distribution District Act, or a rural water district organized under Section 1324.3 of Title 82 of the Oklahoma Statutes, at the time the person submits the proposal, the person must submit evidence that the district has approved the conservation proposal.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.38 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a conservation proposal pursuant to Section 7 of this act, the Oklahoma Water Resources Board shall give notice of receipt of the proposal in accordance with Section 105.11 of Title 82 of the Oklahoma Statutes.

B. The Board shall allocate conserved water as provided in subsection C of this section and approve modifications of water rights as provided in subsection F of this section.

C. After determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the Board shall allocate twenty-five percent (25%) of the remaining conserved water to the state and seventy-five percent (75%) to the applicant, unless the applicant proposes a higher allocation to the state or more than twenty-five percent (25%) of the funds used to finance the conservation measures comes from federal or state public sources. If more than twenty-five percent (25%) of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the Board shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. If the Board determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with Section 105.2 of Title 82 of the Oklahoma Statutes, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority. In no event, however, shall the applicant receive less than twenty-five percent (25%) of the remaining conserved water unless the applicant proposes a higher allocation to the state.

D. The Board shall notify the applicant and any other person requesting notice of the action the Board intends to take under

subsection C of this section. Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the Board.

E. The modification of water rights under a conservation proposal shall not require a separate request for transfer under Section 105.22 or 105.24 of Title 82 of the Oklahoma Statutes.

F. After the Board completes the allocation of conserved water under subsection C of this section, the Board shall issue orders for proposed new permits covering the changes in the original water rights. Once the conservation project is completed, separate new permits preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new permits indicating the priority of rights as set forth in Section 10 of this act shall be issued to cover the right to the use of the allocated water.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.39 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Water Resources Board shall promulgate rules necessary to carry out the provisions of Sections 4 through 13 of this act. The rules may include formulas or other criteria for evaluating the effects of allocation of water on existing rights and for determining whether, and to what extent, mitigation shall be required.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.40 of Title 82, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of Chapter 1 of Title 82 of the Oklahoma Statutes, the priority of any right to the use of conserved water, including an in-stream water right, under a proposal submitted and approved by the Oklahoma Water Resources Board under Sections 7 and 8 of this act shall be one (1) minute

after the priority of the water right held by the person implementing the conservation measures.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.41 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Any person or agency allocated conserved water under Section 8 of this act may reserve the water in stream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the commission of the dispensation of the right to the use of conserved water. The notice shall include:

1. The name and address of the person buying or leasing the right to the use of conserved water;

2. The use to which the conserved water is to be put; and

3. The terms of any agreement between the appropriator and the person using the conserved water.

B. Notwithstanding any other provision of law, a person who holds a water right permit having a subsequent priority to a permit issued under Section 8 of this act may not acquire a vested right to any water or return flow of water that results from either the lease of the right to the use of conserved water or the reservation of conserved water in stream for future use under subsection A of this section.

C. Any right to the use of conserved water sold under subsection A of this section:

1. Shall become appurtenant to the premises upon which the purchaser uses the water; and

2. Shall be subject to the provisions of Sections 105.1 through 105.32 of Title 82 of the Oklahoma Statutes.

D. When the Board receives notice of the sale of the right to the use of conserved water under subsection A of this section, the Board shall issue to the purchaser a new water right permit covering

the right to the use of conserved water that was sold. The permit shall indicate the priority of the water right according to the provisions of Section 10 of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.42 of Title 82, unless there is created a duplication in numbering, reads as follows:

Any agency or political subdivision of this state may purchase a right to the use of conserved water, as defined under Section 4 of this act, or accept a gift of a right to the use of conserved water as defined under Section 4 of this act. If an agency or political subdivision requests that the conserved water remain in the stream, the Board shall manage the water in a manner that results in the conserved water remaining in the stream.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.43 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. A water right for conserved water under Sections 4 through 13 of this act shall have the same legal status as any other water right for which a permit has been issued.

B. A water right for conserved water that is reserved in stream for future out-of-stream use under Section 105.2 of Title 82 of the Oklahoma Statutes, is not subject to cancellation under Section 105.18 of Title 82 of the Oklahoma Statutes or to abandonment or forfeiture under 105.17 of Title 82 of the Oklahoma Statutes.

SECTION 14. This act shall become effective November 1, 2004.

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