

3 Senate Bill No. 525  
4 As Amended

5 SENATE BILL NO. 525 - By: BASS of the Senate and ASKINS of the  
6 House.

7 [ water and water rights - appropriation of land and water  
8 rights - ownership - temporary permits - time frame -  
9 reversion of water - Oklahoma Water Resources Board -  
10 emergency ]

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

12 SECTION 1. AMENDATORY 11 O.S. 2001, Section 37-103, is  
13 amended to read as follows:

14 Section 37-103. A. The municipal governing body may dam any  
15 river or stream which is not navigable, whether or not in a defined  
16 channel, and condemn, appropriate and divert the water from such  
17 river or stream, or so much thereof, as may be deemed necessary; and  
18 may condemn and appropriate in the name of and for the use of the  
19 municipality any land located in or outside of the corporate limits  
20 of the municipality as may be necessary for the construction and  
21 operation of waterworks. The appropriation of land or of water  
22 rights by any municipality shall be governed by the procedure  
23 prescribed for the condemnation of land for railway purposes. The  
24 water and the right to divert the water may be described, at the  
25 option of the municipality, in capacity by a given number of gallons

1 daily, or as a quantity sufficient for the purposes. Upon the  
2 payment made or deposit of the award of the commissioners to the  
3 clerk of the district court, the municipality shall be vested with  
4 the perpetual right to use the land so condemned and the right to  
5 divert the water so condemned for the purposes mentioned herein.  
6 The exercise of this power shall be a continuing right and not  
7 exhausted by one or more exercises thereof.

8 B. Neither a reservoir, constructed on land owned, managed or  
9 controlled by a municipality or land owned, managed, controlled or  
10 utilized by a Master Conservancy District, if the District has  
11 municipal members, nor the water being held by such reservoir shall  
12 be subject to the regulation, control of or the appropriation of  
13 such waters contained herein by the Oklahoma Water Resources Board.

14 C. The provisions of this section and Sections 37-104 and  
15 37-105 of this title shall be construed as cumulative to the rights  
16 and powers already possessed by municipalities to purchase, take and  
17 condemn land for public uses.

18 SECTION 2. AMENDATORY 60 O.S. 2001, Section 60, is  
19 amended to read as follows:

20 Section 60. A. The owner of the land owns water standing  
21 thereon, or flowing over or under its surface but not forming a  
22 definite stream. The use of groundwater shall be governed by the  
23 Oklahoma Groundwater Law. Water running in a definite stream,

1 formed by nature over or under the surface, may be used by the owner  
2 of the land riparian to the stream for domestic uses as defined in  
3 Section 105.1 of Title 82 of the Oklahoma Statutes, but he may not  
4 prevent the natural flow of the stream, or of the natural spring  
5 from which it commences its definite course, nor pursue nor pollute  
6 the same, as such water then becomes public water and is subject to  
7 appropriation for the benefit and welfare of the people of the  
8 state, as provided by law; Provided however, that nothing contained  
9 herein shall prevent the owner of land from damming up or otherwise  
10 using the bed of a stream on his land for the collection or storage  
11 of waters in an amount not to exceed that which he owns, by virtue  
12 of the first sentence of this section so long as he provides for the  
13 continued natural flow of the stream in an amount equal to that  
14 which entered his land less the uses allowed for domestic uses and  
15 for valid appropriations made pursuant to Title 82 of the Oklahoma  
16 Statutes; provided further, that nothing contained herein shall be  
17 construed to limit the powers of the Oklahoma Water Resources Board  
18 to grant permission to build or alter structures on a stream  
19 pursuant to Title 82 of the Oklahoma Statutes to provide for the  
20 storage of additional water the use of which the landowner has or  
21 acquires by virtue of this act.

22 B. All rights to the use of water in a definite stream in this  
23 state are governed by this section and other laws in Title 82 of the

1 Oklahoma Statutes, which laws are exclusive and supersede the common  
2 law.

3 C. The rights of a municipality or a Master Conservancy  
4 District of which a municipality is a member to use water in a  
5 definite stream in this state are superior to and supercede any  
6 rights provided herein except those rights provided in subsection A  
7 of Section 105.2 of Title 82 of the Oklahoma Statutes if said waters  
8 flow into a municipal water supply reservoir owned, managed or  
9 controlled by a municipality or reservoir owned, managed, controlled  
10 or utilized by a Master Conservancy District, where a municipality  
11 is a part of such Master Conservancy District or in which water is  
12 obtained by the Master Conservancy District.

13 SECTION 3. AMENDATORY 82 O.S. 2001, Section 105.2, is  
14 amended to read as follows:

15 Section 105.2 A. Beneficial use shall be the basis, the  
16 measure and the limit of the right to the use of water; provided,  
17 that water taken for domestic use shall not be subject to the  
18 provisions of this act, except as provided in Section 105.5 of this  
19 title. Any person has the right to take water for domestic use from  
20 a stream to which he is riparian or to take stream water for  
21 domestic use from wells on his premises. Water for domestic use may  
22 be stored in an amount not to exceed two (2) years' supply. The  
23 provisions of this act shall not apply to farm ponds or gully plugs

1 which are not located on definite streams and which have been  
2 constructed under the supervision and specifications of the Soil and  
3 Water Conservation Districts.

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

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

14 2. Spavinaw, Grand, North Canadian, Blue and North Boggy  
15 adjudications. Priorities decreed to exist in adjudications brought  
16 in pursuance of this act where such adjudications have been  
17 initiated prior to the date of June 10, 1963, to the extent to which  
18 these priorities have not been lost in whole or in part pursuant to  
19 Section 105.16 of this title. Such said priorities shall be dated  
20 as of the date assigned to them in the respective adjudication  
21 decrees.

22 3. Spavinaw, Grand, North Canadian, Blue and North Boggy Rivers  
23 - Applications prior to June 10, 1963. Priorities based upon

1 applications for appropriations where the same shall have been  
2 perfected heretofore under the law heretofore applicable to the  
3 extent to which the priority has not been lost in whole or in part  
4 pursuant to Section 105.16 of this title. Such said priorities  
5 shall be dated as of the date of the application therefor.

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

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

1           6. Poststatehood - Nonapplicant uses. Priorities based upon  
2 present beneficial use prior to June 10, 1963, and initiated on or  
3 subsequent to November 15, 1907, to the extent to which the priority  
4 has not been lost in whole or in part pursuant to Section 105.16 of  
5 this title where the same has been perfected as provided by this act  
6 and rules and regulations adopted by the Board pursuant thereto.  
7 Such said priorities as to each quantity of water shall date from  
8 the initiation of the beneficial use of that quantity of water.  
9 Provided, however, that no priority based solely upon this paragraph  
10 shall take priority over priorities which bear a priority date  
11 earlier than the effective date of June 10, 1963, and which arise by  
12 virtue of compliance with the provisions of the first five  
13 paragraphs of this subsection.

14           7. Soil Conservation Service sediment pools. Priorities based  
15 upon beneficial use of that portion of the water designated by the  
16 Soil Conservation Service engineers as necessary for the sediment  
17 pool where landowners have granted easements without compensation  
18 for upstream flood control impoundments under the sponsorship of  
19 Soil and Water Conservation Districts prior to June 10, 1963, to the  
20 extent to which the priority has not been lost in whole or in part  
21 pursuant to Section 105.16 of this title when the same shall have  
22 been perfected as provided by this act and rules and regulations  
23 adopted by the Board. Such said priorities shall date from the date

1 of the grant of the easement. Subsequent to June 10, 1963, those  
2 landowners who shall grant easements for such upstream flood control  
3 impoundments may acquire a priority for beneficial use of that water  
4 designated as the sediment pool by complying with paragraph 4 of  
5 subsection B of this section.

6 8. Municipal uses. Notwithstanding any other provision of law,  
7 with the exception provided in subsection A of this section, no  
8 water may be taken or diverted for any other purpose when such  
9 waters flow into a municipal water reservoir owned, managed or  
10 controlled by a municipality or a reservoir owned, managed,  
11 controlled or utilized by a Master Conservancy District, where a  
12 municipality is a part of such Master Conservancy District, or in  
13 which water is obtained by the Master Conservancy District.

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

20 D. From and after June 10, 1963, the only riparian rights to  
21 the use of water in a definite stream, except water taken for  
22 domestic use, are those which have been adjudicated and recognized  
23 as vested through the proceedings under 82 O.S. Supp. 1963, Sections

1 5 and 6, orders of the Oklahoma Water Resources Board entered  
2 thereunder which became final, and those decreed to exist in the  
3 Spavinaw, Grand, North Canadian, and Blue and North Boggy  
4 adjudications, all to the extent such rights have not been lost, in  
5 whole or in part, due to nonuse, forfeiture or abandonment, pursuant  
6 to this title. The provisions of this subsection shall not apply to  
7 water flowing into and becoming a part of a municipal water supply  
8 reservoir owned, managed or controlled by a municipality or a  
9 reservoir owned, managed, controlled or utilized by a Master  
10 Conservancy District, where a municipality is a part of such Master  
11 Conservancy District, or from which the Master Conservancy District  
12 obtains its water.

13 SECTION 4. AMENDATORY 82 O.S. 2001, Section 105.13, is  
14 amended to read as follows:

15 Section 105.13 A. The Oklahoma Water Resources Board is  
16 authorized to issue, in addition to regular permits, seasonal,  
17 temporary, term or provisional temporary permits at any time the  
18 Board finds such issuance will not impair or interfere with domestic  
19 uses or existing rights of prior appropriators and may do so even  
20 where it finds no unappropriated water is available for a regular  
21 permit. All seasonal, temporary, term and provisional temporary  
22 permits shall contain a provision making them subject to all rights  
23 of prior appropriators. If any such permit is for water impounded

1 in any works for storage, diversion or carriage of water, the  
2 applicant must comply with the provisions of Section 105.21 of this  
3 title.

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

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

14 C. Neither a reservoir, constructed on land owned, managed or  
15 controlled by a municipality or land owned, managed, controlled or  
16 utilized by a Master Conservancy District, if the District has  
17 municipal members, nor the water being held by such reservoir shall  
18 be subject to the regulation, control of or the appropriation of  
19 such waters contained therein by the Oklahoma Water Resources Board.

20 D. The Executive Director of the Board may administratively  
21 issue permits to use limited quantities of stream water. Notice,  
22 procedures and the maximum quantity authorized for limited quantity  
23 stream water permits shall be in compliance with rules promulgated

1 by the Board. In no event shall the maximum quantity of water  
2 authorized in a limited quantity stream water permit exceed the  
3 amount of stream water that would otherwise be determined by the  
4 Board pursuant to Section 105.12 of this title.

5 SECTION 5. AMENDATORY 82 O.S. 2001, Section 105.16, is  
6 amended to read as follows:

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

12 B. If, upon evidence presented to the Board, and considering  
13 the present and future needs of the stream system of origin, it  
14 appears that the proposed project, improvement or structure will  
15 promote the optimal beneficial use of water in the state, and it  
16 further appears that the total amount of water to be authorized by  
17 the permit cannot be put to beneficial use within seven (7) years,  
18 then the Board shall provide in the permit the time within which the  
19 total amount to be authorized shall be put to beneficial use. This  
20 time shall be the useful life of the proposed project, improvement  
21 or structure as found by the Board. In order to insure orderly  
22 progress toward total beneficial utilization within the said time  
23 set by the Board, the Board shall provide in the permit a schedule

1 of times within which certain percentages of the total amount to be  
2 authorized must be put to beneficial use.

3 C. The provisions of this subsection shall not apply to water  
4 flowing into and becoming a part of a municipal water supply  
5 reservoir owned by a municipality or a reservoir owned, managed or  
6 controlled by a municipality or a reservoir owned, managed,  
7 controlled or utilized by a Master Conservancy District, where a  
8 municipality is a part of such Master Conservancy District or in  
9 which water is obtained by the Master Conservancy District.

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

13 SECTION 6. AMENDATORY 82 O.S. 2001, Section 105.17, is  
14 amended to read as follows:

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

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

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

3 C. The provisions of this subsection shall not apply to water  
4 flowing into and becoming a part of a municipal water supply  
5 reservoir owned by a municipality or a reservoir owned, managed or  
6 controlled by a municipality or reservoir owned, managed, controlled  
7 or utilized by a Master Conservancy District, where a municipality  
8 is a part of such Master Conservancy District or in which water is  
9 obtained by the Master Conservancy District.

10 SECTION 7. AMENDATORY 82 O.S. 2001, Section 1085.2, as  
11 last amended by Section 1, Chapter 95, O.S.L. 2004 (82 O.S. Supp.  
12 2004, Section 1085.2), is amended to read as follows:

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

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

18 2. To make such contracts and execute such instruments as in  
19 the judgment of the Board are necessary or convenient to the  
20 exercise of any of the powers conferred upon it by law. Provided,  
21 however, no contract shall be made conveying the title or use of any  
22 waters of the State of Oklahoma to any person, firm, corporation or  
23 other state or subdivision of government, for sale or use in any

1 other state, unless such contract be specifically authorized by an  
2 act of the Oklahoma Legislature and thereafter as approved by it;

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

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

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

1           6. To adopt and use an official seal;

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

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

17           9. To determine, charge and receive fees to be collected in  
18 advance for the filing and examination of applications for permits  
19 to:

- 20           a. construct water use works,
- 21           b. appropriate groundwater,
- 22           c. appropriate stream water,
- 23           d. establish vested rights,

- 1 e. inspect water use works,
- 2 f. file other papers,
- 3 g. make copies of documents,
- 4 h. make prints of maps and drawings,
- 5 i. certify copies of documents, maps and drawings,
- 6 j. file transfers of water rights,
- 7 k. gauge wells and ditches, changes in point of diversion
- 8 and changes in place of use of water,
- 9 l. test wells, and
- 10 m. hold hearings, make records and provide transcripts of
- 11 hearings.

12 Such fees shall not be collected from any state agency or state  
13 institution;

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

1 and approved by the Legislature of the state and the Governor of the  
2 state, and Congress and the President of the United States  
3 conformable to the State and Federal Constitutions;

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

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

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

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

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

22 16. To adopt, modify or repeal and promulgate standards of  
23 quality of the waters of the state and to classify such waters

1 according to their best uses in the interest of the public under  
2 such conditions as the Board may prescribe for the prevention,  
3 control, and abatement of pollution. The standard of quality of  
4 waters of the state adopted by the Board pursuant to the provisions  
5 of Section 1085.30 of this title shall be utilized by all  
6 appropriate state environmental agencies in implementing their  
7 respective duties to abate and prevent pollution to the waters of  
8 the state;

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

21 18. To provide workshop training sessions for board members of  
22 rural water districts and not-for-profit rural water corporations  
23 throughout the year on a regional basis for the purpose of study and

1 instruction in the areas of financing, law and the ethics, duties  
2 and responsibilities of such board members. Such training shall be  
3 provided by the Board in conjunction with the Oklahoma Rural Water  
4 Association as required by law. To the extent possible, the Board  
5 shall attempt to schedule training workshops in three-hour segments  
6 to be held in any public facility at a time convenient to the  
7 attendees;

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

13 20. To accredit persons having requisite knowledge in  
14 floodplain management and in minimization and prevention of flood  
15 hazards and losses.

16 B. The Oklahoma Water Resources Board shall have no authority  
17 over waters flowing into or waters stored in a water reservoir owned  
18 in its entirety by a municipality or a reservoir owned, managed, or  
19 controlled by a municipality or waters flowing into a reservoir or  
20 waters stored in a reservoir owned, managed, controlled or utilized  
21 by a Master Conservancy District where a municipality is a part of  
22 such Master Conservancy District. Should the Oklahoma Water  
23 Resources Board receive an application for the taking or using of

1 waters as set out in this subsection for purposes other than  
2 provided in subsection A of Section 105.2 of this title, the Board  
3 shall dismiss said application for want of jurisdiction.

4 SECTION 8. It being immediately necessary for the preservation  
5 of the public peace, health and safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

8 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated  
9 2-24-05 - DO PASS, As Amended and Coauthored.