

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1901

By: Askins

AS INTRODUCED

An Act relating to waters and water rights; amending 11 O.S. 2001, Section 37-103, which relates to municipal water rights; providing for certain exemptions; amending 82 O.S. 2001, Sections 105.2, 105.13, 105.16 and 105.17, which relate to stream water use; providing certain exemptions for certain entities; exempting certain entities from certain permits; amending 82 O.S. 2001, Section 1085.2, as amended by Section 1, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2004, Section 1085.2), which relates to authority of Oklahoma Water Resources Board; restricting authority; amending 60 O.S. 2001, Section 60, which relates to ownership of water; providing for certain rights of certain entities; and providing an effective date.

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

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

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

payment made or deposit of the award of the commissioners to the clerk of the district court, the municipality shall be vested with the perpetual right to use the land so condemned and the right to divert the water so condemned for the purposes mentioned herein. The exercise of this power shall be a continuing right and not exhausted by one or more exercises thereof.

B. A reservoir, constructed on land owned, managed or controlled by a municipality or land owned, managed, controlled or utilized by a Master Conservancy District, if the District has municipal members, and the water contained by the reservoir shall not be subject to the regulation, control of or the appropriation of the waters contained by the Oklahoma Water Resources Board.

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

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

Section 105.2 A. Beneficial use shall be the basis, the measure and the limit of the right to the use of water; provided, that water taken for domestic use shall not be subject to the provisions of this 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 is riparian or to take stream water for domestic use from wells on his premises. Water for domestic use may be stored in an amount not to exceed two (2) years' supply. The provisions of this 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.

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 been perfected as provided by this act and rules and regulations adopted by the 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 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 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 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 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.

8. Unless otherwise provided by law, and except as provided in subsection A of this section, no water may be taken or diverted for any other purpose when the waters flow into:

- a. a municipal water reservoir owned, managed or controlled by a municipality,
- b. a reservoir owned, managed, controlled or utilized by a Master Conservancy District, where a municipality is a part of a Master Conservancy District, or
- c. a reservoir in which water is obtained by the Master Conservancy District.

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

D. 1. 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.

2. The provisions of this subsection shall not apply to water flowing into and becoming a part of a municipal water supply reservoir owned, managed or controlled by a municipality or a reservoir owned, managed, controlled or utilized by a Master Conservancy District, where a municipality is a part of the Master Conservancy District or in which water is obtained by the Master Conservancy District.

SECTION 3. AMENDATORY 82 O.S. 2001, 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. A reservoir, constructed on land owned, managed or controlled by a municipality or land owned, managed, controlled or utilized by a Master Conservancy District, if the District has municipal members, and the water contained by the reservoir shall not be subject to the regulation, control of or the appropriation of the contained waters by the Oklahoma Water Resources Board.

D. 1. 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.

2. 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 4. 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 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.

B. 1. If, upon evidence presented to the Board, and considering the present and future needs of the stream system of origin, it appears that the proposed project, improvement or structure will promote the optimal beneficial use of water in the state, and it further appears that 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.

2. This time shall be the useful life of the proposed project, improvement or structure as found by the Board.

3. 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. The provisions of this subsection shall not apply to water flowing into and becoming a part of:

1. A municipal water supply reservoir owned by a municipality;

2. A reservoir owned, managed or controlled by a municipality;

3. A reservoir owned, managed, controlled or utilized by a Master Conservancy District, where a municipality is a part of such Master Conservancy District; or

4. A reservoir in which water is obtained by the Master Conservancy District.

D. Nothing in this act 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 5. AMENDATORY 82 O.S. 2001, 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. The provisions of this subsection shall not apply to water flowing into and becoming a part of:

1. A municipal water supply reservoir owned by a municipality;

2. A reservoir owned, managed or controlled by a municipality;

3. A reservoir owned, managed, controlled or utilized by a Master Conservancy District, where a municipality is a part of such Master Conservancy District; or

4. A reservoir in which water is obtained by the Master Conservancy District.

SECTION 6. AMENDATORY 82 O.S. 2001, Section 1085.2, as amended by Section 1, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2004, Section 1085.2), is amended to read as follows:

Section 1085.2 A. 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~~ draft 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~~ its 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 promulgate ~~such~~ rules and make 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, 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:

- a. construct water use works,
- b. appropriate groundwater,
- c. appropriate stream water,
- d. establish vested rights,
- e. inspect water use works,
- f. file other papers,
- g. make copies of documents,
- h. make prints of maps and drawings,
- i. certify copies of documents, maps and drawings,
- j. file transfers of water rights,
- k. gauge wells and ditches, changes in point of diversion and changes in place of use of water,
- l. test wells, and
- m. hold hearings, make records and provide transcripts of hearings.

~~Such fees~~ 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 other state 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~~ achieve flood control and water conservation, 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~~ the 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~~ the 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;

18. To provide workshop training sessions for board members of rural water districts and not-for-profit rural water corporations throughout the year on a regional basis for the purpose of study and instruction in the areas of financing, law and the ethics, duties and responsibilities of ~~such~~ board members. ~~Such training~~ Training shall be provided by the Board in conjunction with the Oklahoma Rural Water Association as required by law. To the extent possible, the Board shall attempt to schedule training workshops in three-hour segments to be held in any public facility at a time convenient to the attendees;

19. 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; and

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

B. The Oklahoma Water Resources Board shall not have authority over waters flowing into or waters stored in a water reservoir owned in its entirety by a municipality or waters flowing into a reservoir or waters stored in a reservoir owned, managed, controlled or

utilized by a Master Conservancy District where a municipality is a part of a Master Conservancy District. If the Oklahoma Water Resources Board receives an application for the taking or using of waters as set out in this subsection for purposes other than provided in Section 105.2 of this title the Board shall dismiss the application for want of jurisdiction.

SECTION 7. AMENDATORY 60 O.S. 2001, Section 60, is amended to read as follows:

Section 60. A. The owner of the land owns water standing thereon, or flowing over or under its surface but not forming a definite stream. The use of groundwater shall be governed by the Oklahoma Groundwater Law. Water running in a definite stream, formed by nature over or under the surface, may be used by the owner of the land riparian to the stream for domestic uses as defined in Section 105.1 of Title 82 of the Oklahoma Statutes, but ~~he~~ the owner may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same, as such water then becomes public water and is subject to appropriation for the benefit and welfare of the people of the state, as provided by law; ~~Provided however, that nothing contained herein.~~ Nothing in this section shall prevent the owner of land from damming up or otherwise using the bed of a stream on ~~his~~ the land for the collection or storage of waters in an amount not to exceed that which ~~he owns, by virtue of the first sentence of this section so~~ is owned as long as he the owner provides for the continued natural flow of the stream in an amount equal to that which entered ~~his~~ the land of the owner less the uses allowed for domestic uses and for valid appropriations made pursuant to Title 82 of the Oklahoma Statutes; ~~provided further, that nothing contained herein.~~ Nothing in this section shall be construed to limit the powers of the Oklahoma Water Resources Board to grant permission to build or alter structures on a stream pursuant to Title 82 of the

Oklahoma Statutes to provide for the storage of additional water the use of which the landowner has or acquires by virtue of this act.

B. All rights to the use of water in a definite stream in this state are governed by this section and other laws in Title 82 of the Oklahoma Statutes, which laws are exclusive and supersede the common law.

C. The rights of a municipality or a Master Conservancy District of which a municipality is a member to use water in a definite stream in this state are superior to and supersede any rights provided herein except those rights provided in Section 105.2 of Title 82 of the Oklahoma Statutes if the waters flow into:

1. A municipal water supply reservoir owned, managed or controlled by a municipality;

2. A reservoir owned, managed, controlled or utilized by a Master Conservancy District, where a municipality is a part of such Master Conservancy District; or

3. A reservoir in which water is obtained by the Master Conservancy District.

SECTION 8. This act shall become effective November 1, 2005.

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