

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1040

By: Marlatt

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5
6 AS INTRODUCED

7 An Act relating to waters and water rights; amending
8 82 O.S. 2011, Section 105.2, which relates to water
9 rights; providing statutory reference; updating
10 gender; and declaring an emergency.

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

13 SECTION 1. AMENDATORY 82 O.S. 2011, 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~~ Section 105.1 et seq. of this title, except
19 as provided in Section 105.5 of this title. Any person has the
20 right to take water for domestic use from a stream to which he or
21 she is riparian or to take stream water for domestic use from wells
22 on his or her premises. Water for domestic use may be stored in an
23 amount not to exceed two (2) years' supply. The provisions of ~~this~~
24 ~~act~~ Section 105.1 et seq. of this title shall not apply to farm

1 ponds or gully plugs which are not located on definite streams and
2 which have been constructed under the supervision and specifications
3 of the Soil and 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~~ Section 105.1 et seq. of this title and
12 rules ~~and regulations~~ adopted by the Oklahoma Water Resources Board.
13 Such ~~said~~ priorities shall date from the initiation of the
14 beneficial use.

15 2. Spavinaw, Grand, North Canadian, Blue and North Boggy
16 adjudications. Priorities decreed to exist in adjudications brought
17 in pursuance of ~~this act~~ Section 105.1 et seq. of this title where
18 such adjudications have been initiated prior to the date of June 10,
19 1963, to the extent to which these priorities have not been lost in
20 whole or in part pursuant to Section 105.16 of this title. Such
21 ~~said~~ priorities shall be dated as of the date assigned to them in
22 the respective adjudication decrees.

23 3. Spavinaw, Grand, North Canadian, Blue and North Boggy Rivers
24 - 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 Section 105.1 et seq. of this title and rules ~~and regulations~~
11 adopted by the Board pursuant thereto. Such ~~said~~ priorities shall
12 date from the date of application for the priority. Any permit to
13 appropriate water issued by the Board from and after June 10, 1963,
14 is hereby presumed to be valid and in full force and effect to the
15 extent not lost in whole or in part due to nonuse, forfeiture or
16 abandonment, pursuant to this title.

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

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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 Section 105.1 et seq. of this title and rules ~~and regulations~~
7 adopted by the Board pursuant thereto. Such ~~said~~ priorities as to
8 each quantity of water shall date from the initiation of the
9 beneficial use of that quantity of water. Provided, however, that
10 no priority based solely upon this paragraph shall take priority
11 over priorities which bear a priority date earlier than the
12 effective date of June 10, 1963, and which arise by virtue of
13 compliance with the provisions of ~~the first five~~ paragraphs 1
14 through 5 of this subsection.

15 7. Soil Conservation Service sediment pools. Priorities based
16 upon beneficial use of that portion of the water designated by the
17 Soil Conservation Service engineers as necessary for the sediment
18 pool where landowners have granted easements without compensation
19 for upstream flood control impoundments under the sponsorship of
20 Soil and Water Conservation Districts prior to June 10, 1963, to the
21 extent to which the priority has not been lost in whole or in part
22 pursuant to Section 105.16 of this title when the same shall have
23 been perfected as provided by ~~this act~~ Section 105.1 et seq. of this
24 title and rules ~~and regulations~~ adopted by the Board. Such ~~said~~

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

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

14 D. From and after June 10, 1963, the only riparian rights to
15 the use of water in a definite stream, except water taken for
16 domestic use, are those which have been adjudicated and recognized
17 as vested through the proceedings under ~~§2 O.S. Supp. 1963, Sections~~
18 ~~5 and 6~~ Section 105.1 et seq. of this title, orders of the Oklahoma
19 Water Resources Board entered thereunder which became final, and
20 those decreed to exist in the Spavinaw, Grand, North Canadian, and
21 Blue and North Boggy adjudications, all to the extent such rights
22 have not been lost, in whole or in part, due to nonuse, forfeiture
23 or abandonment, pursuant to this title.

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1 SECTION 2. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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