

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2197

By: Lowe (Dick) of the House

and

Paxton of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to waters and water rights; amending 82 O.S. 2021, Section 105.1, which relates to definitions; modifying definition; amending 82 O.S. 2021, Section 105.13, which relates to permits; modifying entity granting certain approval; making certain exception; amending 82 O.S. 2021, Section 105.17, which relates to reversion of water to the public; requiring certain report by permit holders; allowing report to contain certain explanation; authorizing the Oklahoma Water Resources Board to promulgate certain rules; allowing for certain cancellation of permit; amending 82 O.S. 2021, Section 105.20, as amended by Section 1, Chapter 218, O.S.L. 2022 (82 O.S. Supp. 2023, Section 105.20), which relates to violations; authorizing the issuance of certain administrative orders upon findings; requiring orders to make certain finding and specifications; amending 82 O.S. 2021, Section 1020.10, which relates to permits; limiting period permit is in effect; allowing certain permit renewal; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 2021, Section 105.1, is amended to read as follows:

As used in Sections 105.2 through 105.32 of this title:

1. "Definite stream" means a watercourse in a definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply. The stream may flow intermittently or at irregular intervals if that is characteristic of the sources of supply in the area;

2. "Domestic use" means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards and lawns, and for such other purposes, specified by Board rules, for which de minimis amounts are used;

3. "Regular permit" means a permit granted by the Oklahoma Water Resources Board authorizing the holder to appropriate water on a year-round basis in an amount and from a source approved by the Board;

4. "Seasonal permit" means a permit granted by the Board authorizing the holder of such permit to divert available water for specified time periods during the calendar year;

5. "Temporary permit" means a permit granted by the Board authorizing the appropriation of water in an amount and from a source approved by the Board which does not exceed a time period of three (3) months, which does not vest in the holder any permanent

1 right and which may be canceled by the Board in accordance with its
2 terms;

3 6. "Term permit" means a permit granted by the Board
4 authorizing the appropriation of water in an amount and from a
5 source approved by the Board for a term of years which does not vest
6 the holder with any permanent right and which expires upon
7 expiration of the term of the permit; and

8 7. "Provisional temporary permit" means a ~~nonrenewable~~ permit
9 which may be summarily granted upon administrative approval by the
10 ~~Board~~ Executive Director of the Oklahoma Water Resources Board and
11 which authorizes an appropriation of water in an amount and from a
12 source approved by the ~~Board~~ Executive Director. A provisional
13 temporary permit shall ~~not~~ authorize an appropriation for a period
14 of time exceeding ninety (90) days, shall not vest in the holder any
15 permanent water right and shall be subject to cancellation by the
16 Board at any time within its term in accordance with its provisions.
17 A provisional temporary permit may be renewed three (3) times for
18 the oil and natural gas industry except in a sole source aquifer.

19 SECTION 2. AMENDATORY 82 O.S. 2021, Section 105.13, is
20 amended to read as follows:

21 Section 105.13 A. The Oklahoma Water Resources Board is
22 authorized to issue, in addition to regular permits, seasonal,
23 temporary, term or provisional temporary permits at any time the
24 Board finds such issuance will not impair or interfere with domestic

1 uses or existing rights of prior appropriators and may do so even
2 where it finds no unappropriated water is available for a regular
3 permit. All seasonal, temporary, term and provisional temporary
4 permits shall contain a provision making them subject to all rights
5 of prior appropriators. If any such permit is for water impounded
6 in any works for storage, diversion or carriage of water, the
7 applicant must comply with the provisions of Section 105.21 of this
8 title.

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

15 1. Not be effective for a period of more than ninety (90) days
16 except for the oil and natural gas industry;

17 2. Be granted at the discretion of the Board; and

18 3. Be subject to such terms, conditions and rules promulgated
19 by the Board for such purposes.

20 C. 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
24 by the Board. In no event shall the maximum quantity of water

1 authorized in a limited quantity stream water permit exceed the
2 amount of stream water that would otherwise be determined by the
3 Board pursuant to Section 105.12 of this title.

4 SECTION 3. AMENDATORY 82 O.S. 2021, Section 105.17, is
5 amended to read as follows:

6 Section 105.17 A. To the extent that the water authorized is
7 not put to beneficial use as provided by the terms of the permit,
8 that amount not so used shall be forfeited by the holder of the
9 permit and shall become public water and available for
10 appropriation.

11 B. When the party entitled to the use of water commences using
12 water but thereafter fails to beneficially use all or any part of
13 the water claimed by him or her, for which a right of use has been
14 vested for the purpose for which it was appropriated for a period of
15 seven (7) continuous years, such unused water shall revert to the
16 public and shall be regarded as unappropriated public water.

17 C. Permit holders shall report their annual water use to the
18 Oklahoma Water Resources Board in a manner provided by the Board.
19 The water use report shall provide the permit holder an opportunity
20 to explain any nonuse of the water allocated by the permit. In
21 addition to the procedure for individual proceedings provided for in
22 Section 105.18 of this title, the Board is authorized to promulgate
23 rules for reporting stream water used and the approval of excused
24 nonuse of stream water.

1 D. Failure to report annual water usage may result in
2 cancellation of the permit by the Board upon proper notice and
3 hearing as provided in Section 105.18 of this title.

4 SECTION 4. AMENDATORY 82 O.S. 2021, Section 105.20, as
5 amended by Section 1, Chapter 218, O.S.L. 2022 (82 O.S. Supp. 2023,
6 Section 105.20), is amended to read as follows:

7 Section 105.20 A. The unauthorized use of water, the
8 unauthorized transfer of a water right, the continued use of works
9 which are unsafe after receiving notice to repair, the waste of
10 water, the unauthorized severance of a water right from the land to
11 which it is appurtenant, the refusal to change unsafe works when
12 directed to do so, the injury or obstruction of waterworks, or the
13 violation of a permit condition shall be a misdemeanor and each day
14 such violation continues shall be a separate violation. In addition
15 to filing criminal complaints and any other remedies provided
16 herein, the Oklahoma Water Resources Board shall have the right to
17 bring an action in the district court of the county wherein such act
18 or omission occurs to enjoin the same.

19 B. The unauthorized use of water, the unauthorized transfer of
20 a water right, the continued use of works which are unsafe after
21 receiving notice to repair, the waste of water, the unauthorized
22 severance of a water right from the land to which it is appurtenant,
23 the refusal to change unsafe works when directed to do so, the
24 injury or obstruction of waterworks, or the violation of a permit

1 condition are considered violations of Sections 105.1 through 105.32
2 of this title and shall be subject to administrative penalties
3 issued by the Board of up to Five Thousand Dollars (\$5,000.00) per
4 day of violation. Such administrative penalties shall be imposed
5 only after notice and opportunity for hearing on the proposed
6 imposition of such penalties.

7 C. The Board and its authorized agents shall have a reasonable
8 right to go upon private property in the performance of their duties
9 hereunder and shall have the duty to file complaints of violations
10 of the penal provisions of this section.

11 D. Notwithstanding any other provision of law, the Executive
12 Director of the Oklahoma Water Resources Board may issue
13 administrative orders requiring the immediate cessation of water use
14 when Board staff has a reasonable belief the use is unauthorized or
15 continued use will damage rights of prior appropriators. Such
16 administrative orders shall indicate the finding of imminent peril
17 and shall specify the actions that are to be taken immediately. In
18 addition, the orders shall specify a time and place for a hearing to
19 be held after such actions are taken.

20 SECTION 5. AMENDATORY 82 O.S. 2021, Section 1020.10, is
21 amended to read as follows:

22 Section 1020.10 A. The procedures provided for in this chapter
23 for the granting of regular permits shall be applicable to the
24 granting of temporary or special permits except that the

1 determination of the maximum annual yield shall not be a condition
2 precedent. Provided a provisional temporary permit for water may
3 immediately be granted upon administrative approval by the Oklahoma
4 Water Resources Board. This permit will ~~not~~ be effective for a
5 period of ~~more than~~ ninety (90) days. A provisional temporary
6 permit may be renewed three (3) times for the oil and natural gas
7 industry except in a sole source aquifer.

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

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