

Oklahoma

Water
News

MONTHLY NEWSLETTER OF THE OKLAHOMA WATER RESOURCES BOARD

Water Law Advisory Committee Condemns High Court Decision

A sharply divided Oklahoma Supreme Court has upheld a 1987 decision allowing riparian landowners, those adjacent to a stream or river, to exercise dominant authority over the use of stream water in the state. The opinion, which passed 5-4, was issued in late April.

Written for the majority by Justice Marian Opala, the opinion also reversed two aspects of the 1987 ruling. The first would have mandated that the OWRB consider available groundwater resources before appropriating streamwater. The second issue would have jeopardized the water rights of permit holders receiving supplies outside their stream system. The matter concerning riparian versus appropriative rights, however, is still very much in doubt.

Members of the Oklahoma Water Law Advisory Committee, who gathered to discuss the high court's decision, denounced the controversial opinion which, they said, could change the face of Oklahoma's 27-year-old water law.

"Riparian landowners, according to the opinion, have a superior right to the use of waters flowing through their lands than non-riparian landowners," according to Committee Chairman James R. Barnett, executive director of the OWRB. "The opinion

would also exempt riparians from having to obtain permits for the use of waters flowing through their property—waters which belong not only to them, but to all Oklahomans," Barnett pointed out. Under current law, riparians do not need a permit to use their waters for normal domestic purposes.

The original case involved a permit application by the City of Ada seeking additional water from Byrd's Mill Spring. The application was protested by downstream water users and landowners who argued that the permit's approval would diminish the flow of water in the stream. Protestants appealed the Board's decision to grant the permit to District Court which upheld the plaintiffs' arguments. The OWRB and City of Ada then appealed the case to Supreme Court whose decision, handed down in May 1987, severely threatened Oklahoma's appropriative process in determining proper use of stream and groundwaters, according to many water law experts. The appellants' request for rehearing was granted by the court.

The Water Law Advisory Committee, established in 1962, is made up of attorneys and other representatives from a wide range of interests who counsel the State Legislature and OWRB on issues affecting water law

in Oklahoma. At their May meeting, committee members—several of whom served on the original committee which drafted legislation in 1963 meshing riparian and appropriative doctrines of water rights—expressed understandable alarm at the high court's decision.

The Advisory Committee is convinced that majority opinion would create chaos in the administration of water rights. "Everyone in Oklahoma who holds an appropriative water right—regardless of the date of issuance—is in jeopardy," Barnett said. An appropriative right is a right to use

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Byrd's Mill Creek as it looks just downstream of its source spring. The OWRB has determined from U.S. Geological Survey stream gages that the prolific water source has an average annual yield of almost 10,000 acre-feet.

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water based on priority in time. "The opinion could deny the use of water by appropriative right holders during shortages—even if the right is 50 or 100 years old."

Barnett reported that the committee strongly endorsed Justice Robert Lavender's dissenting opinion which states "In the place of the statutory scheme drafted by the Legislature after years of study and debate, the majority [of the Supreme Court] acts as a super-legislature by rewriting the water law of this state in accord with its views of prudent public policy, something neither this Court or any other court has the power to do." Lavender's dissent prompted unanimous agreement among the committee for the OWRB and City of Ada to ask the Supreme Court for another rehearing of the case.

"If the opinion remains unchanged, it will be extremely difficult for anyone to get a new appropriation permit, and all previous appropriation rights will be subject to riparian use. Economic development could come to a standstill. Why would a large industry settle here without the assurance of a dependable water right?" Barnett asked.

The majority decision would also require the OWRB to approve a permit for the appropriation of water only after it determines that surplus water is available above and beyond all riparian uses—present and future—that the court deems 'reasonable.' "Such a requirement could flood the courts with individual lawsuits over water rights, and it would make it difficult, if not impossible, for the Water Board to plan for Oklahoma's future water needs," Barnett emphasized.

**Court Fines Illegal User**

An Ellis County District Court judge has fined Cimarron Operating Company \$356 for unlawful use of groundwater. The company, which drilled a water well to supply oil well

drilling activities in Ellis County, failed to obtain a required Board permit, according to Lou Klaver, OWRB attorney.

The penalty included \$250 for the one-day violation of state groundwater law, \$50 for Oklahoma's victim compensation fund and \$56 in court costs, Klaver pointed out. A Cimarron official pleaded guilty to the charge in early May.

"The State of Oklahoma will not tolerate the unlawful use of surface or groundwaters and we will prosecute those who persist in ignoring Board regulations concerning water use," Klaver said.

State law requires that prospective water users first seek a permit from the OWRB and, if approved, put the water to a beneficial use. Permits are not needed for domestic purposes.

McDonald Named to Board

Richard McDonald, Walters cattleman and banker, has been appointed by Governor Bellmon to the nine-member Water Resources Board. He will succeed Ralph McPherson, an at-large member from Altus who served two seven-year terms.

"McDonald's experience in rural water development, soil conserva-

tion, ranching and the oil and gas business makes him an excellent addition to the Board," according to OWRB Executive Director James R. Barnett.

McDonald also serves as a member of the Oklahoma Bankers Association and Oklahoma Cattlemen's Association.

McDonald graduated from Walters High School in 1961 and attended Central State University where he earned a degree in marketing. Upon graduation, he worked 12 years for the Bell and Howell Corporation in Cleveland, where he served as vice-president of marketing.



Richard McDonald

18 Summer Employees Report for Work with OWRB

In May, 15 summer employees began jobs at the OWRB's Oklahoma City offices. Shown are (bottom row, from left) Carolyn Bryant, Virginia Roy, Rob Grim, Jason Peterson, (middle row) Monty Gray, Christina Gonzalez, Katie Shaw, Shawn Brown, Bruce Vande Lune, Sandra Gosnell, (back row) Patrick Collins, Mike Matthews, Scott Sturtz and Daniel Ratcliff. Not pictured are Jean Barry and OWRB branch office employees, David Freeman, McAlester; Lyndon Whitmire, Woodward; and Cindy Scherfer, Tulsa.

Commissioners Confirmed

Two new commissioners have been confirmed by the Oklahoma Senate to serve on the Arkansas-Oklahoma Arkansas River Compact Commission. J. Denny Moffett, of Altus, and Jacob B. Miller, of Cookson, will each serve four-year terms as Oklahoma representatives on the interstate council. The two men were appointed to the posts by Governor Bellmon.

Moffett replaces 93-year-old conservationist Dr. Lloyd Church, Wilburton, who served for 20 years as a member of the OWRB. Miller succeeds John Moffit, of Fort Gibson.

The Arkansas-Oklahoma Arkansas River Compact Commission meets yearly to discuss issues pertinent to development in the portion of the Arkansas River Basin which is shared by the two states.

Canton Memorial Dedicated

Nearly a hundred flood control advocates gathered at the overlook at Canton Reservoir on the North Canadian River April 28 to dedicate a memorial to the men and women who endured in their efforts to see the lake to completion.

Part of the inscription on the three-paneled marker reads, "The people of the North Canadian River Valley and the State of Oklahoma dedicate this memorial to those courageous and determined pioneers on flood control and water development that gave

over 30 years of their time and effort, without compensation from any source, to secure construction of Optima, Fort Supply and Canton Reservoirs."

The effort to secure construction of the three-reservoir system was led by Frank Raab, early Water Resources Board executive director, who served as president of the North Canadian River Flood Control and Improvement Association, organized at Hitchcock, Oklahoma, on May 31, 1931. Canton Reservoir was completed in 1948; Fort Supply in 1942; and Optima in 1978.

J. A. Wood, OWRB Stream Water division chief, represented the Board at the Canton dedication on April 28.

Agencies Discuss Reservoir

The feasibility of constructing Mangum Reservoir in southwest Oklahoma was explored at a workshop May 4 at the Quartz Mountain State Lodge near Altus.

The reservoir, proposed for construction on the Salt Fort of the Red River near Mangum, was originally envisioned to supplement supply of the nearby W. C. Austin irrigation project through a 23-mile long canal. Mangum Reservoir would also provide flood control, recreation and possibly fish and wildlife benefits.

According to Glenn Sullivan, Secretary of Natural Resources, officials from the Bureau of Reclamation, U.S.

Geological Survey, Oklahoma Water Resources Board and Department of Corrections were on hand to address various aspects of the Mangum Reservoir project, including a description of the proposed dam site, streamflow conditions and water quality trends in the watershed and how the project could impact existing and potential upstream diversions.

Participants also discussed the potential for using convict labor from the State Department of Corrections to assist in the construction of Mangum Reservoir, Sullivan said. "Because estimated costs of the project are so high, we believe the concept of using convict labor deserves investigation," he pointed out.

Rains Abundant in 1990

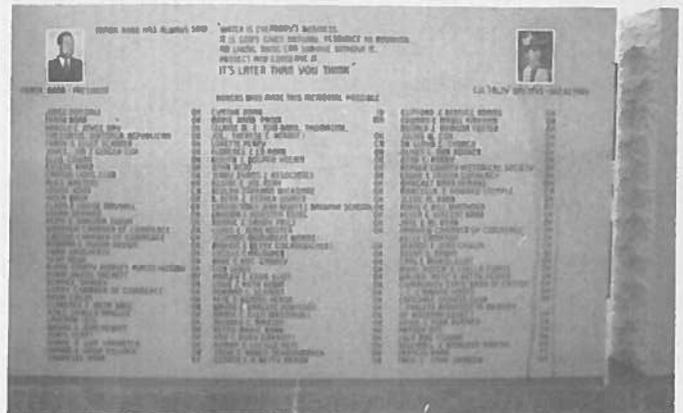
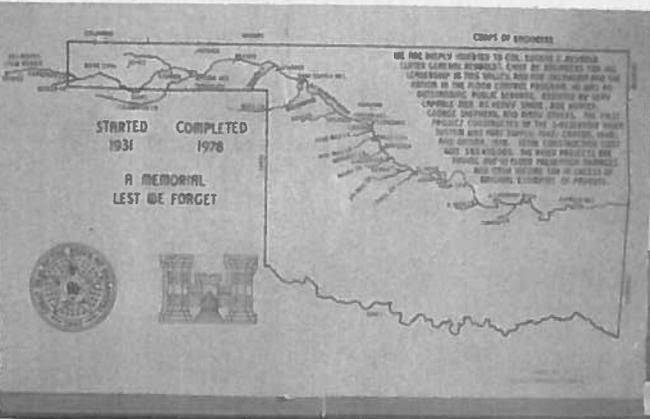
Precipitation in Oklahoma for the first three months of 1990 was more than 7 inches above normal. According to Howard Johnson, a climatologist with the Oklahoma Climatological Survey, official totals for the first three months point to the wettest first quarter in Oklahoma history.

The statewide average rainfall total for January was 2.98 inches—1.57 inches above normal for the past 30 years, Johnson said. The February total, 3.94 inches, measured at 1.53 inches above normal. Both January and February precipitation totals were among the five greatest for those months since record-keeping began

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Center of three-panel granite marker erected at the overlook at Canton Reservoir maps the flood control system built on the North Canadian River. Support for the construction began in 1931; the final reservoir (Optima) was completed in 1978.

Back of the monument pictures Frank Raab, early executive director of the OWRB, and C. V. "Salty" Walters, flood control advocate and secretary of the organization formed in 1931 in support of the North Canadian River project. It also lists contributors to the memorial.



in Oklahoma in 1892, Johnson pointed out. Rainfall in March (5.93 inches) was the second most for that month in the state's history, almost twice the norm (3.61 inches).

Preliminary measurements for April continue to reflect the deluge that has

plagued Oklahoma so far in 1990. The unofficial total for April, which averages 3.34 inches, is 6.26 inches.

May rainfall amounts will also be high. Torrential rains early in the month swelled state reservoirs, especially in the southeast, forcing the

rapid release of waters in flood storage. According to the U.S. Army Corps of Engineers, Eufaula Lake, Wister Lake, Arbuckle Reservoir, Sardis Lake, McGee Creek Reservoir, Lake Texoma and Hugo Lake all attained record levels.

**ACTIVE CONSERVATION STORAGE IN SELECTED OKLAHOMA LAKES AND RESERVOIRS
AS OF MAY 23, 1990**

PLANNING REGION LAKE/RESERVOIR	CONSERVATION STORAGE (AF)	PERCENT OF CAPACITY	PLANNING REGION LAKE/RESERVOIR	CONSERVATION STORAGE (AF)	PERCENT OF CAPACITY
SOUTHEAST			Wister	63,250	100.0 ²
Atoka	123,475	100.0	Sardis	302,250	100.0
Broken Bow	918,100	100.0	NORTHEAST		
Pine Creek	77,700	100.0 ²	Eucha	79,567	100.0
Hugo	157,600	100.0 ²	Grand	1,491,800	100.0
McGee Creek	109,800	100.0	Oologah	544,240	100.0
CENTRAL			Hulah	30,594	100.0
Thunderbird	105,925	100.0	Fort Gibson	365,200	100.0
Hefner	75,355	100.0	Heyburn	6,600	100.0
Overholser	15,935	100.0	Birch	19,200	99.0
Draper	89,488	100.0	Hudson	200,300	100.0
Arcadia	27,390	100.0	Spavinaw	30,000	100.0
SOUTH CENTRAL			Copan	43,400	100.0
Arbuckle	62,571	100.0	Skiatook	319,400	100.0
Texoma	2,637,700	100.0	NORTH CENTRAL		
Waurika	203,100	100.0	Kaw	428,600	100.0 ²
SOUTHWEST			Keystone	616,000	100.0
Altus	132,886	100.0	NORTHWEST		
Fort Cobb	78,307	99.8	Canton	97,500	100.0
Foss	157,862	64.7 ¹	Fort Supply	13,756	98.9
Tom Steed	88,971	100.0	Great Salt Plains	31,400	100.0
EAST CENTRAL			STATE TOTALS	12,702,422	99.2
Eufaula	2,329,700	100.0			
Tenkiller	627,500	100.0			

1. Conservation storage lowered for project modification
2. Seasonal pool operation

Data courtesy of U.S. Army Corps of Engineers, Bureau of Reclamation, Oklahoma City Water Resources Department, and City of Tulsa Water Superintendent's Office.

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