

Act 469 of the 1989 Regular Session.

Act 469

HB1491

By: Representatives Northcutt, Mahony and O. Miller

"AN ACT TO AMEND ARKANSAS CODE 15-22-202 TO ADD DEFINITIONS; TO AMEND ARKANSAS CODE 15-22-217 TO ALLOW THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION TO ESTABLISH AND ENFORCE STREAM FLOWS THROUGH ALLOCATION; TO AMEND ARKANSAS CODE 15-22-503(e) TO REQUIRE ALL WATER DEVELOPMENT PROJECTS OF LOCAL GOVERNMENTS AND STATE AGENCIES TO BE IN COMPLIANCE WITH THE ARKANSAS WATER PLAN; TO AMEND ARKANSAS CODE 15-22-505 TO ALLOW THE COMMISSION TO FILE A CIVIL ACTION TO PREVENT THE EXPENDITURE OF STATE FUNDS ON ANY WATER DEVELOPMENT PROJECT NOT IN COMPLIANCE WITH THE ARKANSAS WATER PLAN; TO ADD A NEW SECTION 15-22-221 TO CHAPTER 22 OF TITLE 15 OF THE ARKANSAS CODE OF 1987, ANNOTATED TO ALLOW FOR THE DELEGATION OF ALLOCATION AUTHORITY TO CONSERVATION AND REGIONAL WATER DISTRICTS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 15-22-202 is hereby amended to read as follows:

"15-22-202. Definitions. As used in this subchapter, unless the context otherwise requires:

- (1) 'Commission' means the Arkansas Soil and Water Conservation Commission;
- (2) 'Conservation district' means conservation districts created under the Conservation Districts Law, Title 14, Chapter 125 of the Arkansas Code of 1987 Annotated;
- (3) 'Diffused surface water' means water occurring naturally on the surface of the ground other than in natural channels, lakes, or ponds;
- (4) 'District' means conservation district or regional water district;
- (5) 'Domestic use' means the use of water for ordinary household purposes including human consumption, washing, watering of domestic livestock, poultry and animals, and watering of home gardens for consumption by the household;
- (6) 'Ordinary high watermark' means the line delimiting the bed of a stream from its bank, that line at which the presence of water in continued for such length of time as to mark upon the soil and vegetation a distinct character;
- (7) 'Person' means any natural person, partnership, firm, association, cooperative, municipality, county, public or private corporation, and any state or local governmental agency;
- (8) 'Regional water district' means a regional water distribution district created under the Regional Water Distribution Act, Title 14, Chapter 116 of the Arkansas Code of 1987 Annotated;
- (9) 'Stream' means a stream of water and its channel, including springs, lakes, or marshes in which the stream originates or through which it flows, where the stream flows in a reasonably definite channel, excluding a depression, swale, or gully, through which diffused water flows.
- (10) 'minimum streamflow' means the quantity of water required to meet the largest of the following instream flow needs as determined on a case by case basis:

- (A) interstate compacts;
- (B) navigation;
- (C) fish and wildlife;
- (D) water quality;
- (E) aquifer recharge."

SECTION 2. Arkansas Code 15-22-217 is hereby amended to read as follows:

"15-22-217. (a) Whenever a shortage of water in any stream, or part thereof, exists to the extent that there is not sufficient water therein to meet the requirements of all water needs, the commission, on its own initiative or on the petition of any person affected by such shortage of water, after notice and hearing, may allocate the available water therefrom among the uses of water affected by the shortage of water in a manner that each of them may obtain an equitable portion of the available water.

(b) In allocating water in such a case, the commission may consider the use that each person involved is to make of the water allocated to that person.

(c) In making such allocations of water, reasonable preferences shall be given to different uses in the following order of preference:

- (1) Sustaining life;
- (2) Maintaining health; and
- (3) Increasing wealth.

(d) Water needs shall include domestic and municipal water supply needs, agricultural and industrial water needs, and navigational, recreational, fish and wildlife, and other ecological needs.

(e) The following priorities shall be reserved prior to allocation:

- (1) domestic and municipal domestic;
- (2) minimum streamflow;
- (3) federal water rights."

SECTION 3. Arkansas Code 15-22-503(e) is hereby amended to read as follows:

"(e) No political subdivision nor agency of the state shall spend any state funds on or engage in any water development project, excluding any project in which game protection funds or federal or state outdoor recreation assistance grant funds are to be spent provided such project will not diminish the benefits of any existing water development project, until a preliminary survey and report therefor, which sets forth the purpose of the project, the benefits to be expected, the general nature of the works of improvement, the necessity, feasibility, and the estimated cost thereof, is filed with the commission and is approved by the commission to be in compliance with the Arkansas Water Plan. Upon approval of the report, no political subdivision nor agency board or commission thereof filing the report, or designated by the commission as having responsibility for constructing, operating, managing and maintaining the improvement, shall be dissolved, merged, abolished or otherwise changed during the life of the water development project without prior approval of the commission."

SECTION 4. Arkansas Code 15-22-505 is hereby amended to read as follows:

"15-22-505. Powers and duties of commission generally. In addition to such other powers, authorities, and duties as are provided to it by law, the Arkansas Soil and Water Conservation Commission shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this subchapter including, but not limited to, the following powers and duties:

(1) To be responsible for the proper distribution and allocation of water stored in the ownership of the state as developed by the commission

under the provisions of this subchapter;

(2) To approve a reasonable method of delivery and measurement of water sold from storage;

(3) To furnish to each regular session of the General Assembly a report containing a complete accounting of all sums received and expended on water development projects included in the Arkansas Water Plan, including economic justification, based upon need, estimated costs, and feasibility of any such project to be financed in whole or in part, with state funds and an outline of benefits accruing to the state as a whole;

(4) To sell, assign, or lease water or water storage capacity at costs designed to return the investment to the state and to sufficiently discharge as they mature all obligations pertaining to the principal of and interest on any water development bonds issued by the commission;

(5) To make and execute contracts for financial assistance to political subdivisions of the State of Arkansas who are engaged as local sponsors of any water development project which is an integral part of the Arkansas Water Plan. The financial assistance shall be funded by the Water Development Fund established under A.C.A. 15-22-507 and may consist of long-term loans designed to return the investment to the state, or the financial assistance may consist of the underwriting of local assurances for the payment of water development project costs;

(6) To acquire by lease, purchase, gift, devise, or otherwise, water rights, water storage capacity, and the facilities of any water development project including lands, rights-of-way, and easements;

(7) To invest any cash funds of the Arkansas Water Development Fund by converting the funds into bonds of the United States of America or into certificates of deposit in banks or savings and loan associations qualifying for the deposit of public funds. Provided, that if any condition shall arise whereof the investment of federal funds is restricted by the federal government, such federal funds may not be invested;

(8) To adopt and enforce such rules and regulations as are necessary for the proper and efficient administration of this subchapter. However, all rules and regulations adopted by the commission are subject to judicial review in accordance with the Arkansas Administrative Procedure Act, as amended, A.C.A. 25-15-201 et seq.;

(9) To institute a civil action in the chancery court of Pulaski County or in the chancery court of the county where the water development project is located to restrain any political subdivision or agency of the state from spending any state funds from any source on or engaging in any water development project which has not been approved as in compliance with the Arkansas Water Plan, to compel compliance with the provisions of this subchapter, and to recover all costs and expenses of the commission and any inappropriately spent state funds."

SECTION 5. The commission shall establish and enforce minimum stream flows for the protection of instream water needs. Prior to the establishment of minimum streamflows, the Commission shall notify by certified mail, return receipt requested, the Arkansas Game and Fish Commission, the Arkansas Pollution Control and Ecology Commission, and any other interested state boards and commissions. Within thirty (30) days of receipt of notice, the Arkansas Game and Fish Commission and the Arkansas Pollution Control and Ecology Commission shall file written comments with the commission. In establishing minimum streamflows, the Commission shall follow the procedure for rulemaking, including publishing notice and the conduct of a public hearing. Nothing in this section shall be construed to override any other duties or powers of the Commission.

SECTION 6. Arkansas Code of 1987, Annotated, Title 15, Chapter 22, Subchapter 2 is hereby amended by adding a new Section 15-22-221 to read as follows:

"15-22-221. Delegation of Allocation Authority. (a) The commission may delegate the power to allocate water during times of shortage, as provided in this subchapter, to conservation districts and regional water districts.

(b) A district to which the commission has delegated its authority to allocate water during shortages shall have all powers under this subchapter and shall be governed by the procedures set out in this subchapter. The commission shall provide technical assistance and shall establish guidelines which shall be followed by districts to which the commission has delegated powers.

(c) The commission shall have all the necessary power to effectuate this delegation including, but not limited to the power to determine disputes between, approve or disapprove regulations of, and hear appeals from decisions of districts to which the commission has delegated powers. The commission may reserve any or all power in itself and may withdraw its delegation of power at any time."

SECTION 7. In the event that any section, subsection, sentence, clause, phrase, or word of this act is declared or adjudged to be invalid or unconstitutional, such declaration or judgement shall not affect the remaining portions of this act which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally part of this act.

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws or parts of laws in conflict with this act are hereby repealed.

APPROVED: March 10, 1989

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