

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1083

By: Hilliard, Roan, Smith (Dale)
and Mitchell of the House

and

Crutchfield and Gumm of the
Senate

COMMITTEE SUBSTITUTE

[water and water rights - amending 82 O.S., Sections
1020.1, 1020.2, 1020.5, 1020.6, 1020.8, 1020.10 and
1020.11 - groundwater - water permits - temporary
permits - noncodification - codification.-

emergency]

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1020.1, is
amended to read as follows:

Section 1020.1 As used in this ~~act~~ chapter:

1. "Groundwater" means fresh water under the surface of the
earth regardless of the geologic structure in which it is standing
or moving outside the cut bank of any definite stream;

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 whether or not the animals are actually owned by such natural
individual or family, 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. Domestic use also
includes:

- a. the use of water for agricultural purposes by natural individuals,
- b. use of water for fire protection, and
- c. the use of water by nonhousehold entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five (5) acre-feet per year;

3. "Major groundwater basin" shall mean a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and from which groundwater wells yield at least fifty (50) gallons per minute on the average basinwide if from a bedrock aquifer and at least one hundred fifty (150) gallons per minute on the average basinwide if from an alluvium or alluvium and terrace aquifer, or as otherwise designated by the Board;

4. "Subbasin" means a subdivision of a major or minor groundwater basin overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities;

5. "Board" means the Oklahoma Water Resources Board;

6. "Person" means any individual, firm, partnership, association, corporation, business trust, federal agency, state agency, the state or any political subdivision thereof, municipalities, and any other legal entities;

7. "Fresh water" means water which has less than five thousand (5,000) parts per million total dissolved solids. For the purpose of this act all other water is salt water;

8. "Commercial drilling", "commercial plugging" and "commercial installation" mean drilling or plugging and installation as a business, trade or occupation for compensation; ~~and~~

9. "Minor groundwater basin" means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and which is not a major groundwater basin; and

10. "Sensitive sole source groundwater basin or subbasin" means a major groundwater basin or subbasin that is determined by the Board in a proceeding on a permit application or maximum annual yield to have all of the following characteristics:

- a. all or a portion of the basin or subbasin has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act,
- b. the aquifer is composed of bedrock materials that are highly faulted and fractured,
- c. average thickness of the aquifer is greater than one-thousand (1000) feet, and
- d. groundwater from the aquifer contributes to historically significant springs.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 1020.2, is amended to read as follows:

Section 1020.2 A. 1. It is hereby declared to be the public policy of this state, in the interest of the agricultural stability, domestic, municipal, industrial and other beneficial uses, general economy, health and welfare of the state and its citizens, to utilize the groundwater resources of the state, and for that purpose to provide reasonable regulations for the allocation for reasonable use based on hydrologic surveys of fresh groundwater basins or subbasins to determine a restriction on the production, based upon the acres overlying the groundwater basin or subbasin.

2. Reasonable regulations for the allocation for reasonable use of groundwater from sensitive sole source groundwater basins or subbasins shall include additional protections, additional

monitoring and providing for a basin life to balance the utilization of the groundwater resources from such basins or subbasins with the conservation of historically significant springs and the base flow of streams used for other beneficial uses.

B. The provisions of this ~~act~~ chapter shall not apply to the taking, using or disposal of salt water associated with the exploration, production or recovery of oil and gas or to the taking, using or disposal of water trapped in producing mines.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 1020.5, is amended to read as follows:

Section 1020.5 A. After completing the hydrologic survey, the Oklahoma Water Resources Board shall make a tentative determination of the maximum annual yield of groundwater to be produced from each groundwater basin or subbasin therein. Such determination must be based upon the following:

1. The total land area overlying the basin or subbasin;
 2. The amount of water in storage in the basin or subbasin;
 3. The rate of recharge to the basin or subbasin and total discharge from the basin or subbasin;
 4. ~~Transmissibility~~ Transmissivity of the basin or subbasin;
- and
5. The possibility of pollution of the basin or subbasin from natural sources.

B. For sensitive sole source groundwater basins, the tentative determination may also identify any subbasins that are shown to exist by the hydrologic survey and investigation and may make a tentative determination of the maximum annual yield of such designated subbasins.

C. The maximum annual yield of each major groundwater basin or subbasin shall be based upon a minimum basin or subbasin life of twenty (20) years from the effective date of the order establishing the final determination of the maximum annual yield; provided, that

for sensitive sole source groundwater basins or subbasins, the maximum annual yield shall be based upon a minimum basin or subbasin life, or reasonably foreseeable future use of groundwater from such basins or subbasins, or combination thereof, to ensure that utilization of the groundwater from such basins or subbasins does not unreasonably affect historically significant springs and base flow of streams into which the basins or subbasins discharge.

~~C.~~ D. For minor groundwater basins or subbasins therein, the tentative determination of the maximum annual yield shall be based upon present and reasonably foreseeable future use of groundwater from such basin or subbasin, recharge and total discharge, the geographical region in which the basin or subbasin is located and other relevant factors.

SECTION 4. AMENDATORY 82 O.S. 2001, Section 1020.6, is amended to read as follows:

Section 1020.6 A. 1. Once the Oklahoma Water Resources Board has set a tentative maximum annual yield for the groundwater basin or subbasin, the Board shall call and hold hearings at centrally located places within the area of the major groundwater basin or subbasin or in the county for minor groundwater basins or subbasins.

2. Prior to such hearings being held, the Board shall make copies of such hydrologic survey available for inspection and examination by all interested persons and, at such hearings, shall present evidence of the geological findings and determinations upon which the tentative maximum annual yield has been based.

3. Any interested party shall have the right to present evidence in support or opposition thereto.

4. The hearings shall be conducted pursuant to Article II of the Administrative Procedures Act.

B. Notice of such hearings shall be published in a newspaper of general circulation in each county having lands that overlie the basin or subbasin. The notice shall be published at least once per

week for two (2) consecutive weeks and the last publication shall be at least thirty (30) days prior to the date of the hearing. Notice and hearing on the tentative determination of the maximum annual yield for minor groundwater basins or subbasins may be consolidated.

C. After such hearings are completed, the Board shall then proceed to make its final determination as to the maximum annual yield of groundwater which shall be allocated to each acre of land overlying such basin or subbasin by issuing a final order containing findings of fact and conclusions of law, which order shall be subject to judicial review pursuant to Article II of the Administrative Procedures Act.

D. The Board may, in subsequent basin or subbasin hearings, and after additional hydrologic surveys, increase the amount of water allocated but shall not decrease the amount of water allocated.

SECTION 5. AMENDATORY 82 O.S. 2001, Section 1020.8, is amended to read as follows:

Section 1020.8 A. 1. Except as otherwise provided by Section 4 1020.10 of this ~~act~~ title for limited quantity groundwater permits, upon the filing of an application which complies with the provisions of Chapter 11 of this title, and the rules promulgated by the Oklahoma Water Resources Board pursuant thereto, the Board shall instruct the applicant to provide notice thereof, at the applicant's expense, and as required by the Board's rules.

2. Such notice shall give all the essential facts as to the proposed taking, among them, the places of taking and the county or counties of use, amount of water, the purpose for which it is to be used, name and address of applicant, a statement that details of the proposed taking may be obtained by review of the application, the hearing date, time and place if a hearing is scheduled by the Board before instructions to provide notice are given, and the manner in which a protest to the application may be made.

3. No hearing shall be had upon the application until proper notice shall have been given.

4. Any interested party shall have the right to protest said application and present evidence and testimony in support of such protest.

B. If the Board does not schedule a hearing on the application before instructing the applicant to provide notice, a hearing on the application shall be scheduled by the Board upon receipt of a protest which meets the requirements of the Board's rules and the ~~Board~~ applicant shall notify the ~~applicant and~~ protestant of such hearing as required by Board rules.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1020.9a of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Before the Board may approve an application and issue a permit to use over one-thousand (1,000) acre-feet of groundwater per year from a sensitive sole source groundwater basin or subbasin in any county that is not underlain in whole or in part by such basin or subbasin, the Board shall review a plan submitted by the applicant to transfer groundwater from such basin or subbasin.

B. The Board shall determine that the plan is consistent with the Oklahoma Comprehensive Water Plan as updated and contains the following elements:

1. Population projections for the municipal area for a fifty-year period beginning from the date of the plan if the groundwater is to be used for municipal or public water supply;

2. Water demand projections for the user of the groundwater for a fifty-year period beginning from the date of the plan;

3. A list of existing surface and groundwater source or sources of supply available for the proposed use and a comparison to the projected water demands;

4. A list of alternative surface and groundwater sources for the proposed use and a comparison to the projected water demands;

5. An evaluation of the existing and alternative sources of supply, considering the following factors:

- a. proximity of the sources to the area of use,
- b. long-term dependability of the sources,
- c. infrastructure requirements and estimated costs to use the water to meet projected demand,
- d. engineering feasibility of using existing and alternative sources,
- e. institutional issues and constraints,
- f. environmental and ecological impacts utilizing the existing and alternative sources to meet projected demand,
- g. impacts on development in the area of origin,
- h. regional partnerships or agreements that may result in opportunities for economy of scale savings, and
- i. any legal constraints;

6. A general description of any real estate acquisitions that may be needed for the water to be supplied from the existing and alternative sources identified to the user;

7. The feasibility of increased use of water from the identified source or sources after the fifty-year plan period; and

8. The user's preferred alternative source for future water supply.

SECTION 7. AMENDATORY 82 O.S. 2001, Section 1020.10, is amended to read as follows:

Section 1020.10 A. The procedures provided for in this chapter for the granting of regular permits shall be applicable to the granting of temporary or special permits except that the determination of the maximum annual yield shall not be a condition precedent and the provisions of Section 1020.11 of this title apply.

Provided a provisional temporary permit for water may immediately be granted upon administrative approval by the Oklahoma Water Resources Board. This permit will not be effective for a period of more than ninety (90) days.

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

SECTION 8. AMENDATORY 82 O.S. 2001, Section 1020.11, is amended to read as follows:

Section 1020.11 A. Regular Permit. 1. A regular permit:

a. is an authorization to put groundwater to beneficial use for other than domestic purposes. ~~The regular permit,~~ and

b. shall be granted only after completion of the hydrologic survey and determination of the maximum annual yield for the appropriate basin or subbasin.

~~It can~~

2. A regular permit may be revoked or canceled only as provided in Sections 1020.12 and 1020.15 of this title.

B. Temporary Permit.

1. A temporary permit is an authorization for the same purposes as a regular permit but granted by the Oklahoma Water Resources Board prior to completion of the hydrologic survey and the determination of the maximum annual yield of the basin or subbasin.

2. a. Except as otherwise provided by this paragraph and paragraph 3 of this subsection, unless requested by a majority of the surface owners of the land or by the

applicant, the water allocated by a temporary permit shall not be less than two (2) acre-feet annually for each acre of land owned or leased by the applicant in the basin or subbasin. ~~It~~

- b. Except as otherwise provided by paragraph 3 of this subsection, if the applicant presents clear and convincing evidence that allocations in excess of two (2) acre-feet annually for each acre of land overlying the basin or subbasin will not exhaust the water thereunder in less than twenty (20) years, then the Board may issue temporary permits in such basin or subbasin in such amounts in excess of ~~said~~ the limitation as will assure a minimum twenty-year life for such basin or subbasin.

3. Temporary permits issued after July 1, 2003, that authorize withdrawal of groundwater from sensitive sole source groundwater basins or subbasins therein shall allocate the average annual recharge of the land overlying the basin or subbasin which is dedicated to the application.

4. a. A temporary permit ~~must~~ shall be revalidated annually during its term. ~~The~~ A temporary permit shall lapse at expiration of its term or upon the issuance of a regular permit, whichever ~~shall occur~~ occurs first.

~~It~~

- b. A temporary permit is subject to revocation or cancellation as provided in Sections 1020.12 and 1020.15 of this title.
- c. For temporary permit revalidation purposes, water use report forms shall be mailed by the Board to each temporary permit holder.
- d. Timely return of the completed, signed, and dated water use report form to the Board shall automatically

revalidate a temporary groundwater permit if the revalidation is not protested and if the water use report form does not show or reflect any permit-water use violations.

4. 5. If the revalidation of a permit is protested, the Board shall immediately set a date for hearing and notify the applicant and each protestant of the time and place of the hearing. At the hearing~~r~~:

a. any interested person may appear and present evidence and argument in support of or in opposition to the protest and revalidation. ~~At the hearing on the revalidation protest, and~~

b. matters previously presented or considered and adjudicated shall not be subject to reconsideration or readjudication. The protest issues which may be entertained shall be limited to matters not previously determined, including but not limited to: a material or substantial change in conditions since issuance of the permit; evidence of the applicant's noncompliance with any of the terms, provisions, or conditions of the permit; or subsequent violations of the Oklahoma Groundwater Law, or Board rules ~~and regulations~~.

5. 6. Subject to compliance with all other and applicable provisions of this chapter and rules ~~and regulations~~ of the Board, all temporary permits "revalidated" by the Board prior to ~~the effective date of this act~~ May 28, 1985, are hereby validated.

7. Temporary permits issued after July 1, 2003, shall be subject to well spacing provisions of Section 1020.17 of this title and the location exception provisions of Section 1020.18 of this title.

C. Special Permit. 1. A special permit:

- a. is an authorization by the Board in lieu of or in addition to a regular or temporary permit. ~~The special permit,~~
- b. is granted to put groundwater to a beneficial use which ~~shall require~~ requires quantities of water in excess of that allocated under a regular or temporary permit. ~~The water~~ Water so authorized may be used only for the purpose designated in the permit. ~~The permit,~~ and
- c. shall be granted for a period not to exceed six (6) months and may be renewed three ~~(3)~~ times.

2. Successive special permits shall not be granted for the same purpose. ~~It~~

3. A special permit is subject to revocation or cancellation upon failure to use the water for the purpose granted or as provided in Sections 1020.12 and 1020.15 of this title.

D. Except as provided in Section 1020.21 of this title, no permits shall be issued to an applicant who is not the surface owner of the land on which the well is to be located, or does not hold a valid lease from such owner permitting withdrawal of water from such basin or subbasin.

SECTION 9. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be applicable to groundwater permit applications that are pending before the Oklahoma Water Resources Board on the effective date of this act.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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