

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB2053**

By: Hardin of the House and Howard of the Senate

Title: Water and water rights; groundwater; application protests; appeals; emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

**SENATE CONFEREES**

Howard \_\_\_\_\_

Paxton \_\_\_\_\_

Green \_\_\_\_\_

Kidd \_\_\_\_\_

Boren \_\_\_\_\_

1 CONFERENCE COMMITTEE  
SUBSTITUTE  
2 FOR ENGROSSED HOUSE  
BILL NO. 2053

By: Hardin, Fetgatter, West  
(Josh), and Sims of the  
House

and

Howard and Woods of the  
Senate

8 CONFERENCE COMMITTEE SUBSTITUTE

9 An Act relating to water and water rights; amending  
10 82 O.S. 2021, Section 1020.9, which relates to  
applications for permits to take and use  
11 groundwater; allowing certain actions during  
appeals; requiring certain proof for injunctive  
12 relief; limiting injunctive relief; authorizing  
dismissal of certain appeals; requiring certain  
13 finding; authorizing sanctions; and declaring an  
emergency.

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

17 SECTION 1. AMENDATORY 82 O.S. 2021, Section 1020.9, is  
18 amended to read as follows:

19 Section 1020.9 A. 1. Before the Oklahoma Water Resources  
20 Board takes final action on an application, the Board shall  
21 determine from the evidence presented, from the hydrologic surveys  
22 or reports and from other relevant data available to the Board and  
23 applicant, whether:

- a. the lands owned or leased by the applicant overlie a fresh groundwater basin or subbasin,
- b. the use to which the applicant intends to put the water is a beneficial use,
- c. waste as specified by Section 1020.15 of this title will occur, and
- d. the proposed use is likely to degrade or interfere with springs or streams emanating in whole or in part from water originating from a sensitive sole source groundwater basin or subbasin as defined in Section ~~4~~ 1020.9A of this ~~act~~ title.

2. The Board shall approve the application by issuing a regular permit, if the Board finds that:

- a. the lands owned or leased by the applicant overlie the fresh groundwater basin or subbasin,
- b. the use to which the applicant intends to put the water is a beneficial use,
- c. waste specified by Section 1020.15 of this title will not occur. When determining whether waste will occur pursuant to this subparagraph, if the activity for which the applicant intends to use the water is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental

1           Quality or the State Department of Agriculture, Food,  
2           and Forestry the Board shall be precluded from making  
3           a determination whether waste by pollution pursuant to  
4           paragraph 7 of subsection A of Section 1020.15 of this  
5           title will occur as a result of such activity. Each  
6           groundwater protection agency, as such term is defined  
7           by Section 1-1-201 of Title 27A of the Oklahoma  
8           Statutes, shall be responsible for developing and  
9           enforcing groundwater protection practices to prevent  
10          groundwater contamination from activities within their  
11          respective jurisdictional areas of environmental  
12          responsibility, and

13          d. the proposed use is not likely to degrade or interfere  
14          with springs or streams emanating in whole or in part  
15          from water originating from a sensitive sole source  
16          groundwater basin as defined in Section ~~4~~ 1020.9A of  
17          this ~~act~~ title.

18          B. Except as otherwise provided in subsection C of this  
19          section, a regular permit shall allocate to the applicant the  
20          proportionate part of the maximum annual yield of the basin or  
21          subbasin. The proportionate part shall be that percentage of the  
22          total annual yield of the basin or subbasin, previously determined  
23          to be the maximum annual yield as provided in Section 1020.5 of this  
24          title, which is equal to the percentage of the land overlying the

1 fresh groundwater basin or subbasin which the applicant owns or  
2 leases and which is dedicated to the application.

3 C. If the lands dedicated to the application overlie two or  
4 more groundwater basins and both basins have had maximum annual  
5 yields determined, the amount to be authorized by the regular permit  
6 shall be calculated on the basin having the greatest maximum annual  
7 yield. If the lands dedicated to the application overlie two or  
8 more groundwater basins or subbasins and the maximum annual yield  
9 has been determined for at least one but not all the basins or  
10 subbasins, a temporary permit may be issued to the applicant if the  
11 applicant demonstrates by substantial competent evidence that the  
12 water to be withdrawn by the temporary permit will not be taken from  
13 a basin or subbasin for which the maximum annual yield has been  
14 determined. If the land overlies two or more groundwater basins or  
15 subbasins and the maximum annual yield has not been determined for  
16 any of the basins or subbasins, more than one temporary permit may  
17 be issued for the land if the applicant demonstrates by substantial  
18 competent evidence from which basin the water will be withdrawn for  
19 each of the permits.

20 D. The permit shall specify the location of the permitted well  
21 or wells and other terms and conditions as specified by the Board,  
22 including, but not limited to, the rate of withdrawal, the level of  
23 perforating and the level of sealing the well. A regular permit  
24

1 shall not be granted for less than the remaining life of the basin  
2 or subbasin as previously determined by the Board.

3 E. Except for applications for use of groundwater from sole  
4 source aquifers, if the Board's final action to approve an  
5 application is appealed, the applicant may take and use groundwater  
6 as is set forth under the permit while any appeals are pending with  
7 the Board, in district court, or in the appellate courts. For a  
8 court to enjoin the approved use of groundwater pending appeal,  
9 appellants must show a high likelihood of success on the merits,  
10 that there is clear and convincing evidence that they will suffer  
11 irreparable harm, that the balance of the equities tips  
12 significantly in their favor, and that the order is clearly in the  
13 public interest. Any preliminary injunctive relief must be narrowly  
14 drawn, extend no further than necessary to correct the harm the  
15 court finds requires preliminary relief, and be the least intrusive  
16 means necessary to correct that harm. For sole source aquifers, if  
17 the Board's final action to approve an application is appealed, a  
18 district court may enjoin the approved use of groundwater pending  
19 appeal by appellants showing any one of the following:

20 1. Appellants must show a high likelihood of success on the  
21 merit;

22 2. That there is clear and convincing evidence that they will  
23 suffer irreparable harm;  
24

1       3. That the balance of the equities tips significantly in their  
2 favor; or

3       4. That the order is clearly in the public interest.

4       F. If all statutory requirements for groundwater permits are  
5 fulfilled and the Board approves the application, appeals seeking to  
6 prohibit the use of water based solely on the industry or entity  
7 applying to use the water are considered to have no genuine issue as  
8 to any material fact and shall be dismissed pursuant to Section 2056  
9 of Title 12 of the Oklahoma Statutes. Further, if such claims are  
10 found to be frivolous, the court may impose sanctions against the  
11 appellant, the appellant's attorney, or both including requiring the  
12 appellant or the appellant's attorney to reimburse the appellee for  
13 reasonable costs and expenses such as reasonable attorney fees and  
14 other expenses incurred as a result of the appeal.

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

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20       59-1-8353           AQH       05/11/23  
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