

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1083

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

and

Crutchfield and Gumm of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to water rights; amending 82 O.S. 2001, Sections 1020.1, 1020.2, 1020.5 and 1020.11, which relate to the Oklahoma Groundwater Law; modifying and adding definitions; providing for promulgation of certain rules for allocation of groundwater from certain basins or subbasins; providing for contents; modifying tentative determinations for certain groundwater basins and subbasins; authorizing certain tentative determinations; providing basis for determining maximum annual yield; modifying provisions related to issuance of certain water permits; providing for construction and applicability of act to certain permits; specifying certain contents of certain temporary permits; limiting amount of withdrawal of groundwater from certain sources; modifying content, requirements and effect of certain temporary permits; making certain temporary permits subject to certain requirements; and declaring an 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;

- a. 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,~~
- b. for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards and lawns, and
- c. for such other purposes, specified by ~~Board~~ rules promulgated by the Oklahoma Water Resources Board, for which de minimis amounts are used;

3. "Major groundwater basin" ~~shall mean~~ means 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~~ chapter 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" means a major groundwater basin or subbasin all or a portion of which has been designated as a "Sole Source Aquifer" by the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act as of the effective date of this act including any portion of any contiguous aquifer located within five (5) miles of the known areal extent of the surface outcrop of the sensitive sole source groundwater basin.

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~~ rules 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 rules for the allocation for reasonable use of groundwater from sensitive sole source groundwater basins or subbasins shall include but not be limited to:

- a. additional protections and additional monitoring, and
- b. the provision of a basin life to balance the utilization of the groundwater resources from such basins or subbasins with the conservation of springs and streams.

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~~ shall 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. 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, 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 springs or streams into which the basins or subbasins discharge.

C. 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 1020.11, 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. ~~if~~

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 the effective date of this act that would lead to any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin or subbasin outside of any county that overlays in whole or in part said basin or subbasin may allocate up to the average annual recharge of the land overlying the basin or subbasin which is dedicated to the application. The Board may condition the issuance of such temporary permits, and the continuance of existing temporary permits, with requirements including but not limited to additional monitoring, well spacing and other restrictions the Board may impose to conserve springs and streams.

4. a. A temporary permit ~~must~~ shall:

(1) be revalidated annually during its term.—~~The permit shall, or~~

(2) 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~~ permit or 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 the effective date of this act that would lead to any municipal or public water supply use of groundwater from a sensitive sole source groundwater basin or subbasin outside of any county that overlays in whole or in part said basin or subbasin 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 5. 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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