

ENGROSSED HOUSE
BILL NO. 1083

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

and

Crutchfield and Gumm of the
Senate

(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 -
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, the
use of water for agricultural purposes including 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)~~ five (5) acres in area for the growing of
gardens, orchards and lawns, the use of water for fire protection,
and 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, and for such other purposes, specified by Board rules, for which de minimis amounts are used;

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.

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. It is in the interest of property owners to promote the sustainability of groundwater basins.

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 of the basin or subbasin; and
5. The possibility of pollution of the basin or subbasin from natural sources.

B. ~~The~~ For major groundwater basins and subbasins where the final order determining maximum annual yield has been issued prior to July 1, 2003, 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.

C. For major groundwater basins and subbasins where the final order determining maximum annual yield has not been issued prior to July 1, 2003, the maximum annual yield shall be a withdrawal rate for all land overlying the basins that will perpetually protect temporary permitted and domestic uses within the basin.

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 of use, amount of water, the purpose for which it is to be used, including, if the permit is for a beneficial use outside a county that is underlaid in whole or in part by the basin or subbasin, name and address of applicant, 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 shall notify the applicant and protestant of such hearing.

SECTION 6. 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 except for the provisions of Section 1020.11 of this title. 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 7. 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 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.

b. 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~~ the limitation ~~as will assure a minimum twenty-year life for such basin or subbasin.~~

3. After July 1, 2003, a temporary permit shall not be issued for a beneficial use outside a county that is underlaid in whole or in part by a basin or subbasin unless the Board finds that:

- a. such allocation will not interfere with a temporary permitted or domestic use within the basin or subbasin, and
- b. removing the water from the basin will not interfere with the groundwater recharge of the basin.

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. If the Board finds that withdrawals of water under the temporary permit will not protect other temporary permitted or domestic water uses, the Board may reduce the amount of water that can be withdrawn under the temporary permit or the rate at which water can be withdrawn.

7. 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.

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 8. 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.

Passed the House of Representatives the 25th day of February, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2003.

Presiding Officer of the Senate