

CS for SB 288

1 THE STATE SENATE
2 Tuesday, February 11, 2003

3 Committee Substitute for
4 Senate Bill No. 288

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 288 - By: GUMM and
6 CRUTCHFIELD of the Senate and ROAN of the House.

7 [environment and natural resources - establishing a
8 moratorium on issuance of certain temporary permits for the
9 use of groundwater -
10 emergency]

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

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-1-202.1 of Title 27A, unless
14 there is created a duplication in numbering, reads as follows:

15 A. The Legislature finds that:

16 1. Subsection D of Section 1-1-202 of Title 27A of the Oklahoma
17 Statutes provides that each groundwater protection agency shall
18 promulgate such rules, and issue such permits, policies, directives
19 or any other requirements, as necessary to assure that activities
20 within their respective jurisdictional areas of environmental
21 responsibility protect groundwater quality to support the uses of
22 the state's water quality;

23 2. The Oklahoma Water Resources Board has not promulgated any
24 rules to assure that temporarily permitting uses of groundwater will

1 protect groundwater quality to support the uses of the state's water
2 quality; and

3 3. That a moratorium is necessary on the issuance of temporary
4 permits to protect the health, safety, welfare and public trust of
5 the people of Oklahoma.

6 B. 1. A moratorium is hereby established on the issuance of
7 any temporary permit for the use of groundwater in the State of
8 Oklahoma until such time as the Oklahoma Water Resources Board
9 promulgates rules to assure that temporarily permitting the uses of
10 groundwater will protect groundwater quality to support the uses of
11 the state's water quality, including but not limited to, uses of
12 surface and other waters within the state.

13 2. To protect the groundwater and surface and other waters
14 within the state from degradation, the moratorium is hereby applied
15 to all pending and future temporary permit applications, but shall
16 not eliminate or interfere with any rights granted to any person or
17 other entity under a temporary permit application that has been
18 approved prior to the passage of this act.

19 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1020.9, is
20 amended to read as follows:

21 Section 1020.9 A. 1. Before the Oklahoma Water Resources
22 Board takes final action on an application, the Board shall
23 determine from the evidence presented, from the hydrologic surveys

1 or reports and from other relevant data available to the Board and
2 applicant, whether:

- 3 a. the lands owned or leased by the applicant overlie a
4 fresh groundwater basin or subbasin,
- 5 b. the use to which the applicant intends to put the
6 water is a beneficial use, and
- 7 c. waste as specified by Section 1020.15 of this title
8 will occur.

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

- 11 a. the lands owned or leased by the applicant overlie the
12 fresh groundwater basin or subbasin,
- 13 b. the use to which the applicant intends to put the
14 water is a beneficial use, and
- 15 c. waste specified by Section 1020.15 of this title will
16 not occur. When determining whether waste will occur
17 pursuant to this subparagraph, if the activity for
18 which the applicant intends to use the water is
19 required to comply with rules and requirements of or
20 is within the jurisdictional areas of environmental
21 responsibility of the Department of Environmental
22 Quality or the State Department of Agriculture, the
23 Board shall be precluded from making a determination

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

11 B. Except as otherwise provided in subsection C of this
12 section, a regular permit shall allocate to the applicant the
13 proportionate part of the maximum annual yield of the basin or
14 subbasin. The proportionate part shall be that percentage of the
15 total annual yield of the basin or subbasin, previously determined
16 to be the maximum annual yield as provided in Section 1020.5 of this
17 title, which is equal to the percentage of the land overlying the
18 fresh groundwater basin or subbasin which the applicant owns or
19 leases and which is dedicated to the application.

20 C. If the lands dedicated to the application overlie two or
21 more groundwater basins and both basins have had maximum annual
22 yields determined, the amount to be authorized by the regular permit
23 shall be calculated on the basin having the greatest maximum annual

1 yield. ~~If the lands dedicated to the application overlie two or~~
2 ~~more groundwater basins or subbasins and the maximum annual yield~~
3 ~~has been determined for at least one but not all the basins or~~
4 ~~subbasins, a temporary permit may be issued to the applicant if the~~
5 ~~applicant demonstrates by substantial competent evidence that the~~
6 ~~water to be withdrawn by the temporary permit will not be taken from~~
7 ~~a basin or subbasin for which the maximum annual yield has been~~
8 ~~determined. If the land overlies two or more groundwater basins or~~
9 ~~subbasins and the maximum annual yield has not been determined for~~
10 ~~any of the basins or subbasins, more than one temporary permit may~~
11 ~~be issued for the land if the applicant demonstrates by substantial~~
12 ~~competent evidence from which basin the water will be withdrawn for~~
13 ~~each of the permits.~~

14 D. The permit shall specify the location of the permitted well
15 or wells and other terms and conditions as specified by the Board,
16 including but not limited to the rate of withdrawal, the level of
17 perforating and the level of sealing the well. A regular permit
18 shall not be granted for less than the remaining life of the basin
19 or subbasin as previously determined by the Board.

20 SECTION 3. AMENDATORY 82 O.S. 2001, Section 1020.10, is
21 amended to read as follows:

22 Section 1020.10 A. The procedures provided for in this chapter
23 for the granting of regular permits shall be applicable to the

1 granting of ~~temporary or~~ special permits except that the
2 determination of the maximum annual yield shall not be a condition
3 precedent. ~~Provided a provisional temporary permit for water may~~
4 ~~immediately be granted upon administrative approval by the Oklahoma~~
5 ~~Water Resources Board. This permit will not be effective for a~~
6 ~~period of more than ninety (90) days.~~

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

15 SECTION 4. AMENDATORY 82 O.S. 2001, Section 1020.11, is
16 amended to read as follows:

17 Section 1020.11 A. Regular Permit. A regular permit is an
18 authorization to put groundwater to beneficial use for other than
19 domestic purposes. The regular permit shall be granted only after
20 completion of the hydrologic survey and determination of the maximum
21 annual yield for the appropriate basin or subbasin. It can be
22 revoked or canceled only as provided in Sections 1020.12 and 1020.15
23 of this title.

1 B. ~~Temporary Permit.~~

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

6 2. ~~Except as otherwise provided by this subsection, unless~~
7 ~~requested by a majority of the surface owners of the land or by the~~
8 ~~applicant, the water allocated by a temporary permit shall not be~~
9 ~~less than two (2) acre-feet annually for each acre of land owned or~~
10 ~~leased by the applicant in the basin or subbasin. If the applicant~~
11 ~~presents clear and convincing evidence that allocations in excess of~~
12 ~~two (2) acre-feet annually for each acre of land overlying the basin~~
13 ~~or subbasin will not exhaust the water thereunder in less than~~
14 ~~twenty (20) years, then the Board may issue temporary permits in~~
15 ~~such basin or subbasin in such amounts in excess of said limitation~~
16 ~~as will assure a minimum twenty-year life for such basin or~~
17 ~~subbasin.~~

18 3. ~~A temporary permit must be revalidated annually during its~~
19 ~~term. The permit shall lapse at expiration of its term or upon the~~
20 ~~issuance of a regular permit, whichever shall occur first. It is~~
21 ~~subject to revocation or cancellation as provided in Sections~~
22 ~~1020.12 and 1020.15 of this title. For temporary permit~~
23 ~~revalidation purposes, water use report forms shall be mailed by the~~

1 ~~Board to each temporary permit holder. Timely return of the~~
2 ~~completed, signed, and dated water use report form to the Board~~
3 ~~shall automatically revalidate a temporary groundwater permit if the~~
4 ~~revalidation is not protested and if the water use report form does~~
5 ~~not show or reflect any permit-water use violations.~~

6 ~~4. If the revalidation of a permit is protested, the Board~~
7 ~~shall immediately set a date for hearing and notify the applicant~~
8 ~~and each protestant of the time and place of the hearing. At the~~
9 ~~hearing, any interested person may appear and present evidence and~~
10 ~~argument in support of or in opposition to the protest and~~
11 ~~revalidation. At the hearing on the revalidation protest, matters~~
12 ~~previously presented or considered and adjudicated shall not be~~
13 ~~subject to reconsideration or readjudication. The protest issues~~
14 ~~which may be entertained shall be limited to matters not previously~~
15 ~~determined, including but not limited to: a material or substantial~~
16 ~~change in conditions since issuance of the permit; evidence of the~~
17 ~~applicant's noncompliance with any of the terms, provisions, or~~
18 ~~conditions of the permit; or subsequent violations of the Oklahoma~~
19 ~~Groundwater Law, or Board rules and regulations.~~

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

1 ~~E.~~ Special Permit. A special permit is an authorization by the
2 Board in lieu of or in addition to a regular or temporary permit.
3 The special permit is granted to put groundwater to a beneficial use
4 which shall require quantities of water in excess of that allocated
5 under a regular or temporary permit. The water so authorized may be
6 used only for the purpose designated in the permit. The permit
7 shall be granted for a period not to exceed six (6) months and may
8 be renewed three (3) times. Successive special permits shall not be
9 granted for the same purpose. It is subject to revocation or
10 cancellation upon failure to use the water for the purpose granted
11 or as provided in Sections 1020.12 and 1020.15 of this title.

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

17 D. 1. A moratorium is hereby established on the issuance of
18 any temporary permit for the use of groundwater in the State of
19 Oklahoma until such time as the Oklahoma Water Resources Board
20 promulgates rules to assure that temporarily permitting the uses of
21 groundwater will protect groundwater quality to support the uses of
22 the state's water quality including, but not limited to, uses of
23 surface and other waters within the state.

1 2. No pending or future temporary permit application for use of
2 water outside a county that is underlaid in whole or in part by the
3 basin or subbasin shall be granted unless the Board finds that:

4 a. such allocation will not interfere with a temporary
5 permitted or domestic use within the basin or
6 subbasin, and

7 b. removing the water from the basin will not interfere
8 with the groundwater recharge of the basin.

9 Temporary permits granted prior to the effective date of this
10 act shall not be affected by the requirements of paragraph 2 of this
11 subsection.

12 SECTION 5. It being immediately necessary for the preservation
13 of the public peace, health and safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

16 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, ENVIRONMENT &
17 COMMUNICATIONS, dated 2-6-03 - DO PASS, As Amended and Coauthored.