

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

SENATE BILL 288

By: Gumm

AS INTRODUCED

An Act relating to the environment and natural resources; providing for legislative findings; establishing a moratorium on issuance of certain temporary permits for the use of groundwater; amending 82 O.S. 2001, Sections 1020.9, 1020.10 and 1020.11, which relate to certain groundwater permits; deleting provisions relating to certain groundwater permits; providing exceptions; providing for codification; and declaring an emergency.

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

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

A. The Legislature finds that:

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

2. The Oklahoma Water Resources Board has not promulgated any rules to assure that temporarily permitting uses of groundwater will protect groundwater quality to support the uses of the state's water quality; and

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

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

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

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

Section 1020.9 A. 1. Before the Oklahoma Water Resources Board takes final action on an application, the Board shall determine from the evidence presented, from the hydrologic surveys or reports and from other relevant data available to the Board and 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, and
- c. waste as specified by Section 1020.15 of this title will occur.

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, and

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

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

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

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

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

SECTION 3. 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. ~~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 4. AMENDATORY 82 O.S. 2001, Section 1020.11, is amended to read as follows:

Section 1020.11 A. Regular Permit. A regular permit is an authorization to put groundwater to beneficial use for other than domestic purposes. The regular permit 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 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. 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. 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 limitation as will assure a minimum twenty-year life for such basin or subbasin.~~

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

~~6. Special Permit. A special permit is an authorization by the Board in lieu of or in addition to a regular or temporary permit. The special permit is granted to put groundwater to a beneficial use~~

which shall require quantities of water in excess of that allocated under a regular or temporary permit. The water so authorized may be used only for the purpose designated in the permit. The permit shall be granted for a period not to exceed six (6) months and may be renewed three (3) times. Successive special permits shall not be granted for the same purpose. It 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.~~ C. 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.

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

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

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.