

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1504

By: Roan

AS INTRODUCED

An Act relating to waters and water rights; amending 82 O.S. 2001, Section 1020.9, as amended by Section 3, Chapter 365, O.S.L. 2003 (82 O.S. Supp. 2004, Section 1020.9), which relates to approval of groundwater applications; requiring the Oklahoma Water Resources Board to hear evidence from certain presenters upon making certain determination; stating requirements for Board consideration; stating requirement for applicants to present certain burden of proof to Board; requiring Board to make certain determination based upon evidence presented; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1020.9, as amended by Section 3, Chapter 365, O.S.L. 2003 (82 O.S. Supp. 2004, 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, by the applicants, any protestors, any commenter, and from the any publicly available 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,
- 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 also consider any likely degradation or interference with springs or streams emanating in whole or in part from any groundwater basin in or partially in this state.

3. 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 Quality or the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry, 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, ~~and~~

- d. the proposed use is not 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 as defined in Section ± 1020.9A of this ~~act~~ title, and
- e. it has considered the potential of the application to degrade or interfere with springs or streams emanating in whole or in part from any groundwater basin in or partially in this state.

4. The applicants shall have the burden of proof regarding items identified in this subsection. If the Board determines from any protestor, commenter, or any publicly available hydrologic surveys or reports and from other relevant data available to the Board, through the presentation of credible geologic scientific opinion, that the proposed use is likely to degrade or interfere with springs or streams emanating in whole or in part from a groundwater basin, the applicants must present credible geologic opinion evidence that such degradation or interference with springs or streams is not likely to occur or the applicants shall have failed to meet their burden of proof to the Board. The Board shall determine from the evidence presented whether the proposed use is likely to degrade or interfere with springs or streams emanating in whole or in part from a groundwater basin.

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 2. 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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