

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3995

By: Wright

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6
7 AS INTRODUCED

8 An Act relating to waters and water rights; amending
9 82 O.S. 2011, Sections 105.1 and 1020.1, as amended
10 by Section 1, Chapter 261, O.S.L. 2018 (82 O.S. Supp.
11 2019, Section 1020.1), which relates to definitions;
12 defining terms; modifying definitions; amending 82
13 O.S. 2011, Section 1020.7, which relates to
14 applications for groundwater permitting; amending 82
15 O.S. 2011, Section 1020.8, as amended by Section 2,
16 Chapter 411, O.S.L. 2019 (82 O.S. Supp. 2019, Section
17 1020.8), which relates to decrees; requiring certain
18 written notice; providing for notice content;
19 reassigning certain duties; modifying certain rights;
20 providing certain procedures for hearing and
21 conclusion thereof; amending 82 O.S. 2011, Section
22 1020.9, which relates to approval of application;
23 assigning certain duties; amending 82 O.S. 2011,
24 Section 1085.12, which relates to executive director
qualifications; authorizing certain powers and
duties; and providing an effective date.

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

SECTION 1. AMENDATORY 82 O.S. 2011, Section 105.1, is
amended to read as follows:

Section 105.1 As used in Sections 105.2 through 105.32 of this
title:

1 1. "Board" means the Oklahoma Water Resources Board or the
2 Executive Director or designee as provided in Section 1085.12 of
3 this title;

4 2. "Definite stream" means a watercourse in a definite, natural
5 channel, with defined beds and banks, originating from a definite
6 source or sources of supply. The stream may flow intermittently or
7 at irregular intervals if that is characteristic of the sources of
8 supply in the area;

9 ~~2.~~ 3. "Domestic use" means the use of water by a natural
10 individual or by a family or household for household purposes, for
11 farm and domestic animals up to the normal grazing capacity of the
12 land and for the irrigation of land not exceeding a total of three
13 (3) acres in area for the growing of gardens, orchards and lawns,
14 and for such other purposes, specified by Board rules, for which de
15 minimis amounts are used;

16 ~~3.~~ 4. "Regular permit" means a permit granted by the Oklahoma
17 Water Resources Board authorizing the holder to appropriate water on
18 a year-round basis in an amount and from a source approved by the
19 Board;

20 ~~4.~~ 5. "Seasonal permit" means a permit granted by the Board
21 authorizing the holder of such permit to divert available water for
22 specified time periods during the calendar year;

23 ~~5.~~ 6. "Temporary permit" means a permit granted by the Board
24 authorizing the appropriation of water in an amount and from a

1 source approved by the Board which does not exceed a time period of
2 three (3) months, which does not vest in the holder any permanent
3 right and which may be canceled by the Board in accordance with its
4 terms;

5 ~~6.~~ 7. "Term permit" means a permit granted by the Board
6 authorizing the appropriation of water in an amount and from a
7 source approved by the Board for a term of years which does not vest
8 the holder with any permanent right and which expires upon
9 expiration of the term of the permit; and

10 ~~7.~~ 8. "Provisional temporary permit" means a nonrenewable permit
11 which may be summarily granted upon administrative approval by the
12 Board and which authorizes an appropriation of water in an amount
13 and from a source approved by the Board. A provisional temporary
14 permit shall not authorize an appropriation for a period of time
15 exceeding ninety (90) days, shall not vest in the holder any
16 permanent water right and shall be subject to cancellation by the
17 Board at any time within its term in accordance with its provisions.

18 SECTION 2. AMENDATORY 82 O.S. 2011, Section 1020.1, as
19 amended by Section 1, Chapter 261, O.S.L. 2018 (82 O.S. Supp. 2019,
20 Section 1020.1), is amended to read as follows:

21 Section 1020.1 As used in Section 1020.1 et seq. of this title:

22 1. ~~"Groundwater" means fresh water and marginal water under the~~
23 ~~surface of the earth regardless of the geologic structure in which~~
24 ~~it is standing or moving outside the cut bank of any definite stream~~

1 "Agency" means the Executive Director and staff of the Oklahoma
2 Water Resources Board;

3 2. ~~"Domestic use" means the use of water by a natural~~
4 ~~individual or by a family or household for household purposes, for~~
5 ~~farm and domestic animals up to the normal grazing capacity of the~~
6 ~~land and for the irrigation of land not exceeding a total of three~~
7 ~~(3) acres in area for the growing of gardens, orchards and lawns,~~
8 ~~and for such other purposes, specified by Board rules, for which de~~
9 ~~minimis amounts are used~~ "Board" means the Oklahoma Water Resources
10 Board of Directors or the Executive Director or designee as provided
11 in Section 1085.12 of this title;

12 3. ~~"Major groundwater basin" shall mean a distinct underground~~
13 ~~body of water overlain by contiguous land and having substantially~~
14 ~~the same geological and hydrological characteristics and from which~~
15 ~~groundwater wells yield at least fifty (50) gallons per minute on~~
16 ~~the average basinwide if from a bedrock aquifer and at least one~~
17 ~~hundred fifty (150) gallons per minute on the average basinwide if~~
18 ~~from an alluvium or alluvium and terrace aquifer, or as otherwise~~
19 ~~designated by the Board~~ "Commercial drilling", "commercial plugging"
20 and "commercial installation" mean drilling or plugging and
21 installation as a business, trade or occupation for compensation;

22 4. ~~"Subbasin" means a subdivision of a major or minor~~
23 ~~groundwater basin overlain by contiguous land and having~~
24 ~~substantially the same geological and hydrological characteristics~~

1 ~~and yield capabilities~~ "Domestic use" means the use of water by a
2 natural individual or by a family or household for household
3 purposes, for farm and domestic animals up to the normal grazing
4 capacity of the land and for the irrigation of land not exceeding a
5 total of three (3) acres in area for the growing of gardens,
6 orchards and lawns, and for such other purposes, specified by Board
7 rules, for which de minimis amounts are used;

8 5. ~~"Board" means the Oklahoma Water Resources Board~~ "Fresh
9 water" means water which has less than five thousand (5,000) parts
10 per million total dissolved solids. For the purpose of Section
11 1020.1 et seq. of this title all other water is salt water;

12 6. ~~"Person" means any individual, firm, partnership,~~
13 ~~association, corporation, business trust, federal agency, state~~
14 ~~agency, the state or any political subdivision thereof,~~
15 ~~municipalities, and any other legal entities~~ "Groundwater" means
16 fresh water and marginal water under the surface of the earth
17 regardless of the geologic structure in which it is standing or
18 moving outside the cut bank of any definite stream;

19 7. ~~"Fresh water" means water which has less than five thousand~~
20 ~~(5,000) parts per million total dissolved solids. For the purpose~~
21 ~~of Section 1020.1 et seq. of this title all other water is salt~~
22 ~~water~~ "Major groundwater basin" shall mean a distinct underground
23 body of water overlain by contiguous land and having substantially
24 the same geological and hydrological characteristics and from which

1 groundwater wells yield at least fifty (50) gallons per minute on
2 the average basinwide if from a bedrock aquifer and at least one
3 hundred fifty (150) gallons per minute on the average basinwide if
4 from an alluvium or alluvium and terrace aquifer, or as otherwise
5 designated by the Board;

6 8. ~~"Commercial drilling", "commercial plugging" and "commercial~~
7 ~~installation" mean drilling or plugging and installation as a~~
8 ~~business, trade or occupation for compensation~~ "Marginal water"
9 means water which has at least five thousand (5,000) and less than
10 ten thousand (10,000) parts per million total dissolved solids;

11 9. "Minor groundwater basin" means a distinct underground body
12 of water overlain by contiguous land and having substantially the
13 same geological and hydrological characteristics and which is not a
14 major groundwater basin; ~~and~~

15 10. ~~"Marginal water" means water which has at least five~~
16 ~~thousand (5,000) and less than ten thousand (10,000) parts per~~
17 ~~million total dissolved solids~~ "Person" means any individual, firm,
18 partnership, association, corporation, business trust, federal
19 agency, state agency, the state or any political subdivision
20 thereof, municipalities, and any other legal entities;

21 11. "Subbasin" means a subdivision of a major or minor
22 groundwater basin overlain by contiguous land and having
23 substantially the same geological and hydrological characteristics
24 and yield capabilities; and

1 12. "Qualified protester" means an adjoining landowner within
2 the same basin that shares a border with the land and is within one
3 thousand six hundred twenty (1,620) feet of the well location in an
4 application.

5 SECTION 3. AMENDATORY 82 O.S. 2011, Section 1020.7, is
6 amended to read as follows:

7 Section 1020.7 Any person intending to use groundwater shall
8 make application to the ~~Board~~ Agency, as defined by Section 1020.1
9 of this title for an appropriate permit as provided in Section
10 1020.11 of this title before commencing any drilling for such
11 purposes and before taking water from any completed well heretofore
12 drilled. Such application to take and use groundwater shall be on a
13 form provided by the ~~Board~~ Agency and pursuant to the rules and
14 regulations established by the Oklahoma Water Resources Board. The
15 application heretofore filed with the ~~Board~~ Agency shall be used in
16 granting permits for existing wells and the ~~Board~~ Agency shall
17 publish the notice of the ~~hearing~~ application thereon.

18 SECTION 4. AMENDATORY 82 O.S. 2011, Section 1020.8, as
19 amended by Section 2, Chapter 411, O.S.L. 2019 (82 O.S. Supp. 2019,
20 Section 1020.8), is amended to read as follows:

21 Section 1020.8 A. Except as otherwise provided by Section
22 1020.10 of this title for limited quantity groundwater permits, upon
23 the filing of an application which complies with the provisions of
24 Chapter 11 of this title, and the rules promulgated by the Oklahoma

1 Water Resources Board pursuant thereto, the Board staff shall
2 instruct the applicant to provide notice thereof, at the applicant's
3 expense, and as required by the Board's rules. Such notice shall
4 give all the essential facts as to the proposed taking, among them
5 being the places of taking and of use, amount of water, the purpose
6 for which it is to be used, name and address of applicant, the
7 hearing date, time and place if a hearing is scheduled by the Board
8 before instructions to provide notice are given, and a thirty-day
9 protest period as well as the manner in which a protest to the
10 application may be made. At the time the Board provides notice of
11 application to the applicant, the Board shall publish on its website
12 the applications and instructions for public notice, including the
13 draft public notice prepared by the Board. The website publishing
14 is in addition to, and not in lieu of, the requirement for
15 applicants to publish notice in the newspaper. The time to protest
16 shall run from the date of the first newspaper publication.

17 B. Each protest shall be submitted in writing to the Board and
18 the applicant and shall contain the following information:

19 1. The name and address of the protestant, and the location of
20 any groundwater wells owned or operated by the protestant within one
21 thousand three hundred twenty (1,320) feet of the well locations
22 described in the application;

23 2. A statement of specific allegations showing that the
24 application as noticed does not comply with the provisions of

1 Section 1020.9 of this title and may have a direct, substantial and
2 immediate effect upon a legally protected interest of the interested
3 party; and

4 3. The relief sought by the interested party.

5 C. No hearing shall be had upon the application until proper
6 notice shall have been given. Any interested party shall have the
7 right to ~~protest the application and~~ present evidence and testimony
8 in support of such protest. If the Board does not schedule a
9 hearing on the application before instructing the applicant to
10 provide notice, a hearing on the application shall be scheduled by
11 the Board upon receipt of a protest which meets the requirements of
12 the Board's rules and the Board shall notify the applicant and
13 ~~protestant~~ interested party of such hearing. Any administrative
14 hearing held pursuant to the provisions of this subsection shall
15 comply with the Administrative Procedures Act and rules promulgated
16 by the Board.

17 D. If no written protest to the application is filed within the
18 thirty-day time period, the application shall be considered
19 complete. After a determination that the requirements in Section
20 1020.9 of this title have been met, the Executive Director shall
21 have thirty (30) days thereafter to issue the permit.

22 SECTION 5. AMENDATORY 82 O.S. 2011, Section 1020.9, is
23 amended to read as follows:

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1 Section 1020.9 A. 1. Before the Executive Director of the
2 Oklahoma Water Resources Board or the Board takes final action on an
3 application, the ~~Board~~ Agency, as defined by Section 1020.1 of this
4 title, shall determine from the evidence presented, from the
5 hydrologic surveys or reports and from other relevant data available
6 to the ~~Board~~ Agency and applicant, whether:

7 a. the lands owned or leased by the applicant overlie a
8 fresh groundwater basin or subbasin,

9 b. the use to which the applicant intends to put the
10 water is a beneficial use,

11 c. waste as specified by Section 1020.15 of this title
12 will occur, and

13 d. the proposed use is likely to degrade or interfere
14 with springs or streams emanating in whole or in part
15 from water originating from a sensitive sole source
16 groundwater basin or subbasin as defined in Section ~~1~~
17 1020.9A of this ~~act~~ title.

18 2. The Executive Director or the Board shall approve the
19 application by issuing a regular permit, if the ~~Board~~ Agency finds
20 that:

21 a. the lands owned or leased by the applicant overlie the
22 fresh groundwater basin or subbasin,

23 b. the use to which the applicant intends to put the
24 water is a beneficial use,

- 1 c. waste specified by Section 1020.15 of this title will
2 not occur. When determining whether waste will occur
3 pursuant to this subparagraph, if the activity for
4 which the applicant intends to use the water is
5 required to comply with rules and requirements of or
6 is within the jurisdictional areas of environmental
7 responsibility of the Department of Environmental
8 Quality or the ~~State~~ Oklahoma Department of
9 Agriculture, Food, and Forestry, the Board shall be
10 precluded from making a determination whether waste by
11 pollution pursuant to paragraph 7 of subsection A of
12 Section 1020.15 of this title will occur as a result
13 of such activity. Each groundwater protection agency,
14 as such term is defined by Section 1-1-201 of Title
15 27A of the Oklahoma Statutes, shall be responsible for
16 developing and enforcing groundwater protection
17 practices to prevent groundwater contamination from
18 activities within their respective jurisdictional
19 areas of environmental responsibility, and
- 20 d. the proposed use is not likely to degrade or interfere
21 with springs or streams emanating in whole or in part
22 from water originating from a sensitive sole source
23 groundwater basin as defined in Section ~~±~~ 1020.9A of
24 this ~~act~~ title.

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

10 C. If the lands dedicated to the application overlie two or
11 more groundwater basins and both basins have had maximum annual
12 yields determined, the amount to be authorized by the regular permit
13 shall be calculated on the basin having the greatest maximum annual
14 yield. If the lands dedicated to the application overlie two or
15 more groundwater basins or subbasins and the maximum annual yield
16 has been determined for at least one but not all the basins or
17 subbasins, a temporary permit may be issued to the applicant if the
18 applicant demonstrates by substantial competent evidence that the
19 water to be withdrawn by the temporary permit will not be taken from
20 a basin or subbasin for which the maximum annual yield has been
21 determined. If the land overlies two or more groundwater basins or
22 subbasins and the maximum annual yield has not been determined for
23 any of the basins or subbasins, more than one temporary permit may
24 be issued for the land if the applicant demonstrates by substantial

1 competent evidence from which basin the water will be withdrawn for
2 each of the permits.

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

9 SECTION 6. AMENDATORY 82 O.S. 2011, Section 1085.12, is
10 amended to read as follows:

11 Section 1085.12 A. The Oklahoma Water Resources Board shall
12 appoint an Executive Director, who shall have had at least six (6)
13 years practical and administrative experience in water resource
14 management, and fix his duties and compensation. The Oklahoma Water
15 Resources Board is specifically authorized to delegate to such
16 Executive Director such of its powers and duties as it may deem
17 proper, including powers and duties involving the exercise of
18 official discretion. The authority hereby granted to the Oklahoma
19 Water Resources Board to delegate powers and duties to the Executive
20 Director shall extend to any powers and duties given or transferred
21 to the Oklahoma Water Resources Board under this act, or under any
22 other law conferring powers or imposing duties upon the Oklahoma
23 Water Resources Board, and shall also extend to any powers conferred
24 or duties imposed upon the Oklahoma Water Resources Board by any

1 future law, unless such future laws shall expressly negate the
2 authority to make such delegation. Any other part of this act, or
3 any other law granting authority to the Oklahoma Water Resources
4 Board to delegate any powers or duties, shall not be deemed to be a
5 limitation upon the authority conferred by this section. The
6 Executive Director shall exercise any such delegated powers and
7 perform such delegated duties, in accordance with any rules,
8 regulations or orders made by the Oklahoma Water Resources Board
9 which are applicable thereto. Provided, however, the Oklahoma Water
10 Resources Board shall not delegate to such director any power of
11 determining policy, the execution of any contract or the final
12 adjudication of any claims, applications or controversies, all of
13 which powers and duties shall be exercised solely by the Oklahoma
14 Water Resources Board.

15 B. In addition to the powers and duties specified in subsection
16 A of this section, the Executive Director shall have the power and
17 duty to issue temporary and regular permits that meet the
18 requirement Sections 105.12 and 1020.9 of this title and have not
19 been the subject of a protest from an interested party.

20 SECTION 7. This act shall become effective November 1, 2020.
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