

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2053

By: Hardin of the House

and

**Howard** of the Senate

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10                                   COMMITTEE SUBSTITUTE

11                   An Act relating to water and water rights; amending  
12                   82 O.S. 2021, Sections 1020.8 and 1020.9, which  
13                   relate to applications for permits to take and use  
14                   groundwater; excluding certain parties from protests;  
15                   preventing protests on certain grounds; allowing  
16                   certain actions during appeals; authorizing dismissal  
17                   of certain appeals; requiring certain finding;  
18                   authorizing sanctions; and declaring an emergency.

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

20                   SECTION 1.           AMENDATORY           82 O.S. 2021, Section 1020.8, is  
21 amended to read as follows:

22                   Section 1020.8 A. Except as otherwise provided by Section  
23 1020.10 of this title for limited quantity groundwater permits, upon  
24 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

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

16 B. No hearing shall be had upon the application until proper  
17 notice shall have been given. Any interested party shall have the  
18 right to protest the application and present evidence and testimony  
19 in support of such protest. If the Board does not schedule a  
20 hearing on the application before instructing the applicant to  
21 provide notice, a hearing on the application shall be scheduled by  
22 the Board upon receipt of a protest which meets the requirements of  
23 the Board's rules and the Board shall notify the applicant and  
24 protestant of such hearing.

1        C. A party protesting the application based solely on the  
2 industry or entity applying to use the water is not an interested  
3 party.

4        SECTION 2.        AMENDATORY        82 O.S. 2021, Section 1020.9, is  
5 amended to read as follows:

6        Section 1020.9 A. 1. Before the Oklahoma Water Resources  
7 Board takes final action on an application, the Board shall  
8 determine from the evidence presented, from the hydrologic surveys  
9 or reports and from other relevant data available to the Board and  
10 applicant, whether:

11            a. the lands owned or leased by the applicant overlie a  
12 fresh groundwater basin or subbasin,

13            b. the use to which the applicant intends to put the  
14 water is a beneficial use,

15            c. waste as specified by Section 1020.15 of this title  
16 will occur, and

17            d. the proposed use is likely to degrade or interfere  
18 with springs or streams emanating in whole or in part  
19 from water originating from a sensitive sole source  
20 groundwater basin or subbasin as defined in Section ~~1~~  
21 1020.9A of this ~~act~~ title.

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

- 1 a. the lands owned or leased by the applicant overlie the  
2 fresh groundwater basin or subbasin,
- 3 b. the use to which the applicant intends to put the  
4 water is a beneficial use,
- 5 c. waste specified by Section 1020.15 of this title will  
6 not occur. When determining whether waste will occur  
7 pursuant to this subparagraph, if the activity for  
8 which the applicant intends to use the water is  
9 required to comply with rules and requirements of or  
10 is within the jurisdictional areas of environmental  
11 responsibility of the Department of Environmental  
12 Quality or the State Department of Agriculture, Food,  
13 and Forestry the Board shall be precluded from making  
14 a determination whether waste by pollution pursuant to  
15 paragraph 7 of subsection A of Section 1020.15 of this  
16 title will occur as a result of such activity.  
17 Determination that waste will or will not occur by the  
18 Department of Environmental Quality or the State  
19 Department of Agriculture, Food, and Forestry is  
20 solely within the respective agency's jurisdiction and  
21 may not be protested through the Oklahoma Water  
22 Resources Board's hearing on the application nor may  
23 an Oklahoma court order the Board to hold a hearing  
24 over the determination of the Department of

1           Environmental Quality or the State Department of  
2           Agriculture, Food, and Forestry. Each groundwater  
3           protection agency, as such term is defined by Section  
4           1-1-201 of Title 27A of the Oklahoma Statutes, shall  
5           be responsible for developing and enforcing  
6           groundwater protection practices to prevent  
7           groundwater contamination from activities within their  
8           respective jurisdictional areas of environmental  
9           responsibility, and

10          d. the proposed use is not likely to degrade or interfere  
11           with springs or streams emanating in whole or in part  
12           from water originating from a sensitive sole source  
13           groundwater basin as defined in Section ~~±~~ 1020.9 of  
14           this ~~act~~ title.

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

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

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

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1       E. If the Board's final action to approve an application is  
2 appealed, the applicant may take and use groundwater as is set forth  
3 under the permit while any appeals are pending with the Board, in  
4 district court, or in the appellate courts.

5       F. If all statutory requirements for groundwater permits are  
6 fulfilled and the Board approves the application, appeals seeking to  
7 prohibit the use of water based solely on the industry or entity  
8 applying to use the water are considered to have no genuine issue as  
9 to any material fact and shall be dismissed pursuant to Section 2056  
10 of Title 12 of the Oklahoma Statutes. Further, such claims shall be  
11 considered frivolous and the court may impose sanctions against the  
12 appellant, the appellant's attorney, or both including requiring the  
13 appellant or the appellant's attorney to reimburse the appellee for  
14 reasonable costs and expenses such as reasonable attorney fees and  
15 other expenses incurred as a result of the appeal.

16       SECTION 3. It being immediately necessary for the preservation  
17 of the public peace, health or safety, an emergency is hereby  
18 declared to exist, by reason whereof this act shall take effect and  
19 be in full force from and after its passage and approval.

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21 COMMITTEE REPORT BY: COMMITTEE ON AGRICULTURE, dated 02/15/2023 - DO  
22 PASS, As Amended and Coauthored.