

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2053

By: Hardin of the House

and

Howard of the Senate

3
4
5
6
7
8 [water and water rights - permits to take and use
9 groundwater - protests - appeals - sanctions -
10 emergency]

11
12
13 AUTHOR: Add the following House Coauthors: Fetgatter, West (Josh)
and Sims

14 AUTHOR: Add the following Senate Coauthor: Woods

15
16 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

17
18 "An act relating to water and water rights; amending
19 82 O.S. 2021, Section 1020.9, which relates to
20 approval of application; allowing certain actions
during appeals; authorizing dismissal of certain
21 appeals; requiring certain finding; authorizing
sanctions; and declaring an emergency.

22
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 82 O.S. 2021, Section 1020.9, is
2 amended to read as follows:

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

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

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

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

14 d. the proposed use is likely to degrade or interfere
15 with springs or streams emanating in whole or in part
16 from water originating from a sensitive sole source
17 groundwater basin or subbasin as defined in Section ~~4~~
18 1020.9A of this ~~act~~ title.

19 2. The Board shall approve the application by issuing a regular
20 permit, if the Board finds 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~~ its 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 ~~4~~ 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 E. If the Board's final action to approve an application is
10 appealed, the applicant may take and use groundwater as set forth in
11 the approval of the permit while any appeals are pending with the
12 Board, in district court, or in the appellate courts.

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

24

1 SECTION 2. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.”

5
6 Passed the Senate the 25th day of April, 2023.

7
8 _____
9 Presiding Officer of the Senate

10 Passed the House of Representatives the ____ day of _____,
11 2023.

12
13 _____
14 Presiding Officer of the House
15 of Representatives

16
17
18
19
20
21
22
23
24

1 ENGROSSED HOUSE
2 BILL NO. 2053

By: Hardin of the House

and

Howard of the Senate

3
4
5
6
7 [water and water rights - permits to take and use
8 groundwater - protests - appeals - sanctions -
9 emergency]

10

11

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

13 SECTION 3. AMENDATORY 82 O.S. 2021, Section 1020.8, is
14 amended to read as follows:

15 Section 1020.8 A. Except as otherwise provided by Section
16 1020.10 of this title for limited quantity groundwater permits, upon
17 the filing of an application which complies with the provisions of
18 Chapter 11 of this title, and the rules promulgated by the Oklahoma
19 Water Resources Board pursuant thereto, the Board shall instruct the
20 applicant to provide notice thereof, at the applicant's expense, and
21 as required by the Board's rules. Such notice shall give all the
22 essential facts as to the proposed taking, among them being the
23 places of taking and of use, amount of water, the purpose for which
24 it is to be used, name and address of applicant, the hearing date,

1 time and place if a hearing is scheduled by the Board before
2 instructions to provide notice are given, and a thirty-day protest
3 period as well as the manner in which a protest to the application
4 may be made. At the time the Board provides notice of application
5 to the applicant, the Board shall publish on its website the
6 applications and instructions for public notice, including the draft
7 public notice prepared by the Board. The website publishing is in
8 addition to, and not in lieu of, the requirement for applicants to
9 publish notice in the newspaper. The time to protest shall run from
10 the date of the first newspaper publication.

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

20 C. A party protesting the application based solely on the
21 industry or entity applying to use the water is not an interested
22 party.

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

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

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

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

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

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

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

19 a. the lands owned or leased by the applicant overlie the
20 fresh groundwater basin or subbasin,

21 b. the use to which the applicant intends to put the
22 water is a beneficial use,

23 c. waste specified by Section 1020.15 of this title will
24 not occur. When determining whether waste will occur

1 pursuant to this subparagraph, if the activity for
2 which the applicant intends to use the water is
3 required to comply with rules and requirements of or
4 is within the jurisdictional areas of environmental
5 responsibility of the Department of Environmental
6 Quality or the State Department of Agriculture, Food,
7 and Forestry the Board shall be precluded from making
8 a determination whether waste by pollution pursuant to
9 paragraph 7 of subsection A of Section 1020.15 of this
10 title will occur as a result of such activity.

11 Determination that waste will or will not occur by the
12 Department of Environmental Quality or the State
13 Department of Agriculture, Food, and Forestry is
14 solely within the respective agency's jurisdiction and
15 may not be protested through the Oklahoma Water
16 Resources Board's hearing on the application nor may
17 an Oklahoma court order the Board to hold a hearing
18 over the determination of the Department of
19 Environmental Quality or the State Department of
20 Agriculture, Food, and Forestry. Each groundwater
21 protection agency, as such term is defined by Section
22 1-1-201 of Title 27A of the Oklahoma Statutes, shall
23 be responsible for developing and enforcing
24 groundwater protection practices to prevent

1 groundwater contamination from activities within their
2 respective jurisdictional areas of environmental
3 responsibility, and

4 d. the proposed use is not likely to degrade or interfere
5 with springs or streams emanating in whole or in part
6 from water originating from a sensitive sole source
7 groundwater basin as defined in Section ~~±~~ 1020.9 of
8 this ~~act~~ title.

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

18 C. If the lands dedicated to the application overlie two or
19 more groundwater basins and both basins have had maximum annual
20 yields determined, the amount to be authorized by the regular permit
21 shall be calculated on the basin having the greatest maximum annual
22 yield. If the lands dedicated to the application overlie two or
23 more groundwater basins or subbasins and the maximum annual yield
24 has been determined for at least one but not all the basins or

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

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

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

21 F. If all statutory requirements for groundwater permits are
22 fulfilled and the Board approves the application, appeals seeking to
23 prohibit the use of water based solely on the industry or entity
24 applying to use the water are considered to have no genuine issue as

1 to any material fact and shall be dismissed pursuant to Section 2056
2 of Title 12 of the Oklahoma Statutes. Further, such claims shall be
3 considered frivolous and the court may impose sanctions against the
4 appellant, the appellant's attorney, or both including requiring the
5 appellant or the appellant's attorney to reimburse the appellee for
6 reasonable costs and expenses such as reasonable attorney fees and
7 other expenses incurred as a result of the appeal.

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

12 Passed the House of Representatives the 22nd day of March, 2023.

13
14 _____
15 Presiding Officer of the House
16 of Representatives

17 Passed the Senate the ___ day of _____, 2023.

18
19 _____
20 Presiding Officer of the Senate

21
22
23
24