

1 CONFERENCE COMMITTEE
2 SUBSTITUTE
3 FOR ENGROSSED HOUSE
4 BILL NO. 2053

By: Hardin, Fetgatter, West
(Josh), and Sims of the
House

and

Howard and Woods of the
Senate

8 CONFERENCE COMMITTEE SUBSTITUTE

9 An Act relating to water and water rights; amending
10 82 O.S. 2021, Section 1020.9, which relates to
11 applications for permits to take and use
12 groundwater; allowing certain actions during
13 appeals; requiring certain proof for injunctive
relief; limiting injunctive relief; authorizing
dismissal of certain appeals; requiring certain
finding; authorizing sanctions; and declaring an
emergency.

14
15
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

1 a. the lands owned or leased by the applicant overlie a
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 as specified by Section 1020.15 of this title
6 will occur, and

7 d. the proposed use is likely to degrade or interfere
8 with springs or streams emanating in whole or in part
9 from water originating from a sensitive sole source
10 groundwater basin or subbasin as defined in Section ~~4~~
11 1020.9A of this ~~act~~ title.

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

14 a. the lands owned or leased by the applicant overlie the
15 fresh groundwater basin or subbasin,

16 b. the use to which the applicant intends to put the
17 water is a beneficial use,

18 c. waste specified by Section 1020.15 of this title will
19 not occur. When determining whether waste will occur
20 pursuant to this subparagraph, if the activity for
21 which the applicant intends to use the water is
22 required to comply with rules and requirements of or
23 is within the jurisdictional areas of environmental
24 responsibility of the Department of Environmental

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

13 d. the proposed use is not 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 as defined in Section ~~4~~ 1020.9A of
17 this ~~act~~ title.

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

1 fresh groundwater basin or subbasin which the applicant owns or
2 leases and which is dedicated to the application.

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

20 D. The permit shall specify the location of the permitted well
21 or wells and other terms and conditions as specified by the Board,
22 including, but not limited to, the rate of withdrawal, the level of
23 perforating and the level of sealing the well. A regular permit
24

1 shall not be granted for less than the remaining life of the basin
2 or subbasin as previously determined by the Board.

3 E. Except for applications for use of groundwater from sole
4 source aquifers, if the Board's final action to approve an
5 application is appealed, the applicant may take and use groundwater
6 as is set forth under the permit while any appeals are pending with
7 the Board, in district court, or in the appellate courts. For a
8 court to enjoin the approved use of groundwater pending appeal,
9 appellants must show a high likelihood of success on the merits,
10 that there is clear and convincing evidence that they will suffer
11 irreparable harm, that the balance of the equities tips
12 significantly in their favor, and that the order is clearly in the
13 public interest. Any preliminary injunctive relief must be narrowly
14 drawn, extend no further than necessary to correct the harm the
15 court finds requires preliminary relief, and be the least intrusive
16 means necessary to correct that harm. For sole source aquifers, if
17 the Board's final action to approve an application is appealed, a
18 district court may enjoin the approved use of groundwater pending
19 appeal by appellants showing any one of the following:

20 1. Appellants must show a high likelihood of success on the
21 merit;

22 2. That there is clear and convincing evidence that they will
23 suffer irreparable harm;
24

1 3. That the balance of the equities tips significantly in their
2 favor; or

3 4. That the order is clearly in the public interest.

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

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

19
20 59-1-8353 AQH 05/11/23
21
22
23
24