

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL

4 **By:**

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For An Act To Be Entitled

8 "AN ACT TO ENABLE DESIGNATION OF CRITICAL GROUND WATER USE
9 AREAS, TO ESTABLISH THE AUTHORITY FOR GROUND WATER
10 WITHDRAWALS THEREIN, TO ESTABLISH A MECHANISM FOR LOCAL
11 GROUND WATER MANAGEMENT; AND FOR OTHER PURPOSES."

12

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. SHORT TITLE. This Act shall be known as the "Arkansas
16 Ground Water Protection and Management Act."

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18 SECTION 2. DECLARATION OF POLICY. The State of Arkansas has an
19 abundance of good quality ground water. In some areas of the State, this
20 water is being mined such that in the future there may not be adequate
21 supplies of good quality ground water to meet our needs. In order to protect
22 ground water for the future, it is necessary to reduce ground water use. It
23 is most desirable that these reductions come from conservation or use of
24 surface water but in critical ground water areas it may become necessary to
25 limit ground water withdrawals through the use of water rights. Should the
26 regulatory provisions be implemented in the future, it is most desirable that
27 day-to-day water management be administered by local districts and every
28 effort shall be made by the Commission to delegate water management powers to
29 qualified local districts. All regulatory powers shall apply only in critical
30 ground water areas. Programs for water use reporting, education/information,
31 water conservation cost-sharing and the registration fees shall be
32 administered statewide.

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34 SECTION 3. DEFINITIONS. Unless the context clearly requires otherwise
35 the following definitions shall apply:

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2 (a) "Administrative Procedures Act" means the Arkansas Administrative
3 Procedures Act codified as A.C.A. 25-15-201 *et.seq.*

4 (b) "Aquifer" means a permeable, water bearing stratum of rock, sand,
5 or gravel.

6 (c) "Beneficial use" means the uses of water in such quantity as is
7 economical and efficient and which use is for a purpose and in a manner which
8 is reasonable, not wasteful, and is compatible with the public interest.

9 (d) "Commission" means the Arkansas Soil and Water Conservation
10 Commission created under A.C.A. 15-20-201 *et.seq.*

11 (e) "Conservation district" means conservation districts created under
12 the Conservation Districts Law, Title 14, Chapter 125 of the Arkansas Code of
13 1987 Annotated.

14 (f) "Critical Ground Water Area" is defined in the Arkansas Water Plan
15 developed by the Commission under its authority in Title 15 of Arkansas Code
16 of 1987 Annotated.

17 (g) "District" means conservation district or regional water district.

18 (h) "Domestic use" means the use of water for ordinary household
19 purposes including human consumption, washing, the watering of domestic
20 livestock, poultry and animals and the watering of home gardens for
21 consumption by the household.

22 (i) "Ground water" means water beneath the surface of the ground.

23 (j) "Person" means any natural person, partnership, firm, association,
24 cooperative, municipality, county, public or private corporation, and state or
25 local government agency.

26 (k) "Regional Water District" means a regional water distribution
27 district created under the Regional Water Distribution Act, Title 14, Chapter
28 116 of Arkansas Code of 1987 Annotated.

29 (l) "Water right" means the authority or permission issued by the
30 Commission under this act to use ground water within a critical ground water
31 area.

32 (m) "Water Year" means the twelve (12) month period beginning October
33 1 and ending the next September 30.

34 (n) "Well" means any hole dug, drilled or otherwise constructed in the
35 ground, for the purpose of withdrawing ground water. For the purpose of this

1 Act, a well also must have a potential flow rate of 50,000 gallons per day or
2 greater.

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4 SECTION 4. GROUND WATER PROTECTION. In order to protect the ground
5 water of the State, the Commission shall develop a comprehensive ground water
6 protection program. This shall contain as a minimum the following components
7 as the Commission deems necessary:

8 (a) Assessment and monitoring of the availability of ground water and
9 its quality;

10 (b) The classification of ground water and establishment of ground
11 water criteria and/or standards; and

12 (c) The management of ground water pursuant to this Act including the
13 issuance of water rights, protection of ground water quality, and
14 establishment of an education/information program.

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16 SECTION 5. DESIGNATION OF CRITICAL GROUND WATER AREAS. Before
17 designation of critical ground water areas the Commission shall describe the
18 proposed action, the reasons therefore, and the recommended boundaries.
19 Public hearings shall be held in accord with the Administrative Procedures Act
20 and shall be held in each county within the proposed critical area.

21

22 SECTION 6. EXCEPTIONS. The following provisions shall limit the
23 Commission's powers under this Act:

24 (a) There will be no reduction or limitation of the withdrawal of
25 ground water from existing wells for which a water right is grandfathered
26 under the provisions of Section 9(a)(1) of this Act unless affordable
27 alternative surface supplies are available, or can be made available.

28 (b) There will be no reduction or limitation of the withdrawal of
29 ground water from wells for which a water right has been issued under Section
30 9 of this Act and for which person holding the right can demonstrate:

31 (1) A reduction of twenty percent (20%) of his use of ground
32 water by either institution of water conservation measures and/or conversion
33 to surface supplies. The demonstrated reduction must be based on the use
34 reported in water year 1986 or later; or

35 (2) The implementation of a water conservation plan employing

1 generally accepted water conservation practices approved by the Commission.

2 (c) There will be no regulation of the withdrawal of ground water from
3 existing or proposed wells which have a maximum potential flow rate of less
4 than 50,000 gallons per day (gpd).

5 (d) There shall be no regulation of the withdrawals of ground water
6 from individual household wells used exclusively for domestic use.

7 (e) Replacement Wells:

8 (1) The owner of an existing well may construct a replacement
9 well after abandoning existing well. To transfer a water right to a
10 replacement well the owner need only submit to the Commission notice of
11 construction of a replacement well stating the location and ownership of the
12 original and replacement wells and other relevant information required by the
13 Commission.

14 (2) The original well must be converted to non-regulated use or
15 plugged in the manner prescribed by the Commission.

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17 SECTION 7. GROUND WATER RIGHTS - ISSUANCE.

18 (a) GRANDFATHERING EXISTING WELLS.

19 (1) Within one (1) year of initiation of the regulatory
20 authority as provided under Section 7 of this Act, the Commission shall, upon
21 application, issue to an applicant within the critical water use area, a water
22 right for existing wells equal to the average quantity of water withdrawn for
23 beneficial use and reported over the past three (3) water years. For wells
24 with reported use levels significantly below normal use levels, prior water
25 year use reports may be substituted in determining the three (3) year average
26 above.

27 (2) For new wells constructed during the first year of
28 initiation of the regulatory authority as provided under Section 7 of this
29 Act, the Commission shall upon application, issue to an applicant within the
30 critical water use area, a water right equal to the quantity of water
31 requested to be withdrawn for beneficial use.

32 (3) Failure to apply within this period shall create a
33 conclusive presumption of abandonment of use. If the landowner desires to
34 receive a water right, he must apply for a water right pursuant to Section
35 9(b) of this Act.

1 (4) Water rights issued pursuant to Section 9(a) of this Act
2 shall be exempt from the public notice requirements described in Subsection
3 (b) of this Section.

4 (b) NEW GROUND WATER RIGHT APPLICATIONS. To obtain a water right,
5 application must be made in a form satisfactory to the Commission. The
6 application shall contain information reasonably necessary to assist the
7 Commission in making a determination as to issuance of a water right. In
8 consideration of an application for water rights, the Commission may:

- 9 (1) grant the application;
- 10 (2) deny the application; or
- 11 (3) grant the application subject to necessary reductions or
12 conditions.

13 Upon receipt of application, the Commission shall cause to be published,
14 a notice of application for water rights in a newspaper with state wide
15 circulation. Persons who are or might be effected by issuance may request a
16 hearing before the Commission concerning the application within fifteen (15)
17 days of publication of notice.

18 (c) REVIEW AND MODIFICATION. Water rights issued under this section
19 shall be subject to review and modification by the Commission.

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21 SECTION 8. GROUND WATER RIGHTS - GENERAL.

22 (a) Purpose: Water rights are issued for beneficial uses.

23 (b) Duration: Water rights shall be limited to such period of time as
24 designated by the Commission. In determining that period of time the
25 Commission shall give consideration to the time required to reasonably
26 amortize the investments made by the water user for the use of water, as well
27 as the cost and useful life of the facility.

28 (c) Limitation of quantity: In the water right, the Commission may
29 limit annual withdrawals.

30 (d) Precedence: In the event that two (2) or more competing
31 applications specifying the same priority are made, preference shall be given
32 to a renewal application over an initial application. On all renewal
33 applications, consideration shall be given to reasonable beneficial use.

34 (e) Cancellation: (1) A water right may be canceled if water is used
35 for a purpose other than that for which the water right was issued. A water

1 user may apply for and may be granted an appropriate change in the use of the
2 water.

3 (2) A water right may be canceled for non-use or failure to put
4 the water to a reasonable beneficial use within a reasonable period of time
5 following the issuance of the water right if such non-use is for a reason
6 other than implementation of conservation measures, crop rotation, conversion
7 to surface water sources or climate conditions.

8 (3) A water right may be canceled for failure to report water
9 use for two (2) consecutive years under A.C.A. 15-22-302 or failure to pay fee
10 as set out in Section 13 of this Act for two (2) consecutive years.

11 (f) Off-tract use of water: The place of use described in the water
12 right is the only realty on which the allocated water may be used except as
13 provided in Section 6(e) of this Act. However, the Commission may, in times
14 of emergency, authorize the use of the allocated water on realty other than
15 that described in the water right. A water right recipient acquiring or
16 leasing additional realty, contiguous or noncontiguous, upon application shall
17 be entitled to an amended water right so as to encompass such realty.

18 (g) Water rights attach to and run with the land: A water right may
19 not be conveyed or otherwise marketed or transferred separate from the realty
20 described in the water right.

21 (h) Automatically transferred: Water rights shall be an incident of
22 surface ownership of the realty and shall, upon notice to the Commission, be
23 transferred to the new landowner.

24

25 SECTION 9. POWERS OF THE COMMISSION. The Commission shall have all
26 powers necessary to effectuate this Act including the power to:

27 (a) Promulgate rules and regulations for ground water classification
28 and aquifer use, well spacing, issuance of ground water rights within critical
29 ground water areas, and assessment of fees.

30 (b) Issue subpoenas for any witness to require attendance and
31 testimony, production of relevant books, papers or other records in any
32 proceeding before the Commission.

33 (c) Administer an oath to any witness in any hearing, investigation,
34 or proceeding before the Commission.

35 (d) At reasonable times, enter upon property for purposes of

1 conducting investigations, studies, or enforcing this Act.

2 (e) Reduce or suspend notice and hearing requirement under this Act in
3 times of an emergency.

4 (f) Issue orders to implement or enforce any of the provisions under
5 this Act or regulations hereunder.

6 (g) Delegate any and all powers under this Act to the Executive
7 Director of the Commission or his designee(s).

8 (h) Delegate any powers under this Act to districts within a critical
9 ground water area.

10 (i) Provide technical assistance and establish guidelines which shall
11 be followed by districts which have been granted powers hereunder.

12 (j) Resolve disputes between, approve regulations of, and hear appeals
13 from decisions of districts to which the Commission has developed powers.

14 (k) Provide cost-share assistance from the Arkansas Water Development
15 Fund not to exceed forty percent (40%) to persons for the installation of
16 approved water conservation and development practices.

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18 SECTION 10. ESTABLISHMENT OF EDUCATION/INFORMATION PROGRAM FOR WATER
19 CONSERVATION. The Commission or its designee shall develop and implement an
20 education/information program to encourage water conservation by increasing
21 the public's awareness of the need for and techniques available for
22 conservation. This shall include as a minimum the following components as the
23 Commission deems necessary:

24 (a) Technology transfer;

25 (b) Training;

26 (c) Technical assistance;

27 (d) Research; and

28 (e) Demonstration projects.

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30 SECTION 11. FEES. (a) The Commission shall assess annual fees for:

31 (1) The withdrawal of surface water in the amount of ten dollars
32 (\$10.00) per registered withdrawal point.

33 (2) The withdrawal of ground water in the amount of ten dollars
34 (\$10.00) per registered well.

35 (b) The fee shall be payable at the time of Water Use Reporting

1 pursuant to A.C.A. 15-22-302 and A.C.A. 15-22-215.

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3 SECTION 12. DISPOSITION OF EARNINGS AND FEES. Fees, penalties, and
4 other funds collected under this Act shall be deposited in the Arkansas Water
5 Development Fund, established by A.C.A. 15-22-507. Two thirds (2/3) of such
6 funds deposited shall be used for an education/information program and cost
7 sharing for water conservation and development. The remaining one third (1/3)
8 may be used for the administration of this Act and the Commission may transfer
9 those funds to the districts delegated authority under this Act as it deems
10 necessary.

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12 SECTION 13. APPEALS. Any person aggrieved by decisions and actions
13 under this Act by the Commission may appeal pursuant to the Administrative
14 Procedures Act.

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16 SECTION 14. EFFECTIVE DATE. This act shall become effective on October
17 1, 1991.

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19 SECTION 15. CODE. All provisions of this Act of a general and
20 permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the
21 Arkansas Code Revision Commission shall incorporate the same in the Code.

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23 SECTION 16. SEVERABILITY. If any provision of this Act or the
24 application thereof to any person or circumstance is held invalid, such
25 invalidity shall not affect other provisions or applications of the Act which
26 can be given effect without the invalid provision or application, and to this
27 end the provisions of this Act are declared to be severable.

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29 SECTION 17. GENERAL REPEALER. All laws and parts of laws in conflict
30 with this Act are hereby repealed.