

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

# A Bill

**HOUSE BILL**

4 **By: Representatives O. Miller and Hogue**

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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 GROUND WATER RIGHTS; TO  
11 ESTABLISH FEES; TO ESTABLISH A MECHANISM FOR LOCAL GROUND  
12 WATER MANAGEMENT; AND OTHER PURPOSES."

13

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

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

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

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35 SECTION 3. DEFINITIONS. Unless the context clearly requires otherwise

1 the following definitions shall apply:

2 (a) "Administrative Procedure Act" means the Arkansas Administrative  
3 Procedure 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 governmental 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 the 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 1  
33 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 groundwater  
11 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.

15 (d) This program shall not be inconsistent with, nor shall it preempt  
16 or supersede, any regulatory authority currently or in the future vested with  
17 the Arkansas Department of Pollution Control and Ecology or the State Plant  
18 Board or the Arkansas Department of Health, provided however, that no permit  
19 or prior authorization from these agencies shall be required to implement the  
20 provisions of this Act.

21

22 SECTION 5. DESIGNATION OF CRITICAL GROUND WATER AREAS. Before  
23 designation of critical ground water areas the Commission shall describe the  
24 proposed action, the reasons therefore, and the recommended boundaries.  
25 Public hearings shall be held in accord with the Administrative Procedure Act  
26 and shall be held in each county within the proposed critical area.

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28 SECTION 6. EXCEPTIONS. The following provisions shall limit the  
29 Commission's powers under this act:

30 (a) There will be no reduction or limitation of the withdrawal of  
31 ground water from existing wells for which a water right is grandfathered  
32 under the provisions of Section 9(a)(1) unless alternative surface supplies  
33 are available, or can be made available at a cost to the person no greater  
34 than the operating cost of the person's wells within the critical area,  
35 including depreciation costs over the life of the well.

1 (b) There will be no reduction or limitation of the withdrawal of  
2 ground water from wells for which a water right has been issued under Section  
3 9 and for which the person holding the right can demonstrate:

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

8 (2) The implementation of a water conservation plan employing generally  
9 accepted water conservation practices approved by the Commission.

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

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

15 (e) Replacement wells:

16 (1) The owner of an existing well may construct a replacement well  
17 after abandoning the existing well. To transfer a water right to a  
18 replacement well the owner need only submit to the Commission notice of  
19 construction of a replacement well stating the location and ownership of the  
20 original and replacement wells and other relevant information required by the  
21 Commission.

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

24 (f) Marketers of bottled water and public water supply systems shall at  
25 no time be restricted in the place of use of ground water.

26

27 SECTION 7. GROUND WATER RIGHTS - INITIATION OF REGULATORY AUTHORITY  
28 WITHIN CRITICAL AREAS.

29 (a) When the Commission determines such action to be necessary within a  
30 critical area it will declare that water rights are required for water  
31 withdrawal. Before initiation of the regulatory program, the Commission shall  
32 describe the proposed action, the reasons therefor, and the recommended  
33 boundaries if they differ from the previous critical area designation. Public  
34 hearings shall be held in accord with the Administrative Procedure Act and  
35 shall be held in each county within the proposed critical area. After such

1 declaration, no person shall withdraw ground water from an existing well or  
2 construct a new well within the critical ground water area without first  
3 obtaining a water right. All determinations for the current water year shall  
4 have been made by March 1 of the preceding water year.

5 (b) There will be no reduction or limitation for a period of four (4)  
6 years of the withdrawal of ground water from wells constructed during the  
7 first year following initiation of the regulatory authority as provided under  
8 Section 7(a) and for which a water right is issued under the provisions of  
9 Section 9(a) (2).

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11 SECTION 8. GROUND WATER RIGHTS - PRIORITIES. In the issuance of ground  
12 water rights, the Commission shall give reasonable preference first to  
13 sustaining life, then to maintaining health, and finally to increasing wealth.

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15 SECTION 9. GROUND WATER RIGHTS - ISSUANCE.

16 (a) GRANDFATHERING EXISTING WELLS.

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

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

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

32 (4) Water rights issued pursuant to Section 9(a) shall be exempt from  
33 the public notice requirements described in Subsection (b).

34 (b) NEW GROUND WATER RIGHT APPLICATIONS. To obtain a water right,  
35 application must be made in a form satisfactory to the Commission. The

1 application shall contain information reasonably necessary to assist the  
2 Commission in making a determination as to issuance of a water right. In  
3 consideration of an application for water rights, the Commission may:

- 4 (1) grant the application;
- 5 (2) deny the application; or
- 6 (3) grant the application subject to necessary reductions or  
7 conditions.

8 Upon receipt of application, the Commission shall cause to be published, a  
9 notice of application for water rights in a newspaper with statewide  
10 circulation. Persons who are or might be affected by issuance may request a  
11 hearing before the Commission concerning the application within fifteen (15)  
12 days of publication of notice.

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

15

16 SECTION 10. GROUND WATER RIGHTS - GENERAL.

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

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

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

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

29 (e) Cancellation:

30 (1) A water right may be canceled if water is used for a purpose other  
31 than that for which the water right was issued. A water user may apply for  
32 and may be granted an appropriate change in the use of the water.

33 (2) A water right may be canceled for non-use or failure to put the  
34 water to a reasonable beneficial use within a reasonable period of time  
35 following the issuance of the water right if such non-use is for a reason

1 other than implementation of conservation measures, crop rotation, conversion  
2 to surface water sources or climatic conditions.

3 (3) A water right may be canceled for failure to report water use for  
4 two (2) consecutive years under A.C.A. 15-22-302 or failure to pay the fee as  
5 set out in Section 13 for two (2) consecutive years.

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

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

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

19

20 SECTION 11. POWERS OF THE COMMISSION. The Commission shall have all  
21 powers necessary to effectuate this act including the power to:

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

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

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

30 (d) At reasonable times, enter upon property for purposes of conducting  
31 investigations, studies, or enforcing this act.

32 (e) Reduce or suspend notice and hearing requirements under this act in  
33 times of an emergency.

34 (f) Issue orders to implement or enforce any of the provisions of this  
35 act or regulations hereunder.

1 (g) Delegate any and all powers under this act to the Executive  
2 Director of the Commission or his designee(s).

3 (h) Delegate any powers under this act to districts within a critical  
4 ground water area.

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

7 (j) Resolve disputes between, approve regulations of, and hear appeals  
8 from decisions of districts to which the Commission has delegated powers.

9 (k) Provide cost-share assistance from the Arkansas Water Development  
10 Fund not to exceed 40% to persons for the installation of approved water  
11 conservation and development practices.

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13 SECTION 12. ESTABLISHMENT OF EDUCATION/INFORMATION PROGRAM FOR WATER  
14 CONSERVATION. The Commission or its designee shall develop and implement an  
15 education/information program to encourage water conservation by increasing  
16 the public's awareness of the need for and techniques available for  
17 conservation. This shall include as a minimum the following components as the  
18 Commission deems necessary:

- 19 (a) Technology transfer;
- 20 (b) Training;
- 21 (c) Technical assistance;
- 22 (d) Research; and
- 23 (e) Demonstration projects.

24

25 SECTION 13. FEES.

26 (a) The Commission shall assess annual fees for:

27 (1) The withdrawal of surface water in the amount of ten dollars  
28 (\$10.00) per registered withdrawal point.

29 (2) The withdrawal of ground water in the amount of ten dollars  
30 (\$10.00) per registered well.

31 (b) The fee shall be payable at the time of Water Use Reporting  
32 pursuant to A.C.A. 15-22-302 and A.C.A. 15-22-215.

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34 SECTION 14. DISPOSITION OF EARNINGS AND FEES. Fees, penalties, and  
35 other funds collected under this act shall be deposited in the Arkansas Water



1 Development Fund, established by A.C.A. 15-22-507. Two thirds (2/3) of such  
2 funds deposited shall be used for an education/information program and cost  
3 sharing for water conservation and development. The remaining third (1/3) may  
4 be used for the administration of this act and the Commission may transfer  
5 those funds to the districts delegated authority under this act as it deems  
6 necessary.

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8 SECTION 15. APPEALS. Any person aggrieved by decisions and actions  
9 under this act by the Commission may appeal pursuant to the Administrative  
10 Procedure Act.

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12 SECTION 16. EFFECTIVE DATE. This act shall become effective on October  
13 1, 1991.

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15 SECTION 17. All provisions of this act of a general and permanent  
16 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
17 Code Revision Commission shall incorporate the same in the Code.

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19 SECTION 18. If any provision of this act or the application thereof to  
20 any person or circumstance is held invalid, such invalidity shall not affect  
21 other provisions or applications of the act which can be given effect without  
22 the invalid provision or application, and to this end the provisions of this  
23 act are declared to be severable.

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25 SECTION 19. All laws and parts of laws in conflict with this act are  
26 hereby repealed.

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