

.As Engrossed: 1/15/91, 1/23/91, 1/30/91, 1/31/91

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

A BILL ACT 342 OF 1991
SENATE BILL 55

4 **By: Senators Gibson and Hoofman**

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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
36 the following definitions shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (n) "Well" means any hole dug, drilled or otherwise constructed in the
34 ground, for the purpose of withdrawing ground water. For the purpose of this
35 act, a well also must have a potential flow rate of 50,000 gallons per day or

1 greater.

2

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

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

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

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

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

20

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

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

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

35 (b) There will be no reduction or limitation of the withdrawal of

1 ground water from wells for which a water right has been issued under Section
2 9 and for which the person holding the right can demonstrate:

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

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

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

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

14 (e) Replacement wells:

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

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

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

25

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

28 (a) When the Commission determines such action to be necessary within a
29 critical area it will declare that water rights are required for water
30 withdrawal. Before initiation of the regulatory program, the Commission shall
31 describe the proposed action, the reasons therefor, and the recommended
32 boundaries if they differ from the previous critical area designation. Public
33 hearings shall be held in accord with the Administrative Procedure Act and
34 shall be held in each county within the proposed critical area. After such
35 declaration, no person shall withdraw ground water from an existing well or

1 construct a new well within the critical ground water area without first
2 obtaining a water right. All determinations for the current water year shall
3 have been made by March 1 of the preceding water year.

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

9

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

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14 SECTION 9. GROUND WATER RIGHTS - ISSUANCE.

15 (a) GRANDFATHERING EXISTING WELLS.

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

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

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

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

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

1 Commission in making a determination as to issuance of a water right. In
 2 consideration of an application for water rights, the Commission may:

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

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

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

14
 15 SECTION 10. GROUND WATER RIGHTS - GENERAL.

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

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

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

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

28 (e) Cancellation:

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

32 (2) A water right may be canceled for non-use or failure to put the
 33 water to a reasonable beneficial use within a reasonable period of time
 34 following the issuance of the water right if such non-use is for a reason
 35 other than implementation of conservation measures, crop rotation, conversion

1 to surface water sources or climatic conditions.

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

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

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

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

18

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

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

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

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

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

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

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

35 (g) Delegate any and all powers under this act to the Executive

1 Director of the Commission or his designee(s).

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

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

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

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

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

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

23

24 SECTION 13. FEES.

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

- 26 (1) The withdrawal of surface water in the amount of ten dollars
27 (\$10.00) per registered withdrawal point.
- 28 (2) The withdrawal of ground water in the amount of ten dollars
29 (\$10.00) per registered well.

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

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33 SECTION 14. DISPOSITION OF EARNINGS AND FEES. Fees, penalties, and
34 other funds collected under this act shall be deposited in the Arkansas Water
35 Development Fund, established by A.C.A. 15-22-507. Two thirds (2/3) of such

1 funds deposited shall be used for an education/information program and cost
2 sharing for water conservation and development. The remaining third (1/3) may
3 be used for the administration of this act and the Commission may transfer
4 those funds to the districts delegated authority under this act as it deems
5 necessary.

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

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

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

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

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

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27 /s/Gibson, et al

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APPROVED: 3-5-91

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