

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/3/99 S3/5/99 H3/15/99

A Bill

Act 1050 of 1999
SENATE BILL 726

5 By: Senator Mahony
6 By: Representatives Sheppard, M. Smith, Dees
7

For An Act To Be Entitled

10 "AN ACT ADDRESSING THE SPARTA AQUIFER WATER CRISES IN
11 CERTAIN COUNTIES OF THE STATE OF ARKANSAS; AUTHORIZING
12 THE CREATION OF SPARTA AQUIFER CRITICAL GROUNDWATER
13 COUNTY CONSERVATION BOARDS; SETTING FORTH THE PURPOSES
14 AND POWERS OF SUCH BOARDS; AUTHORIZING THE ISSUANCE OF
15 REVENUE BONDS AND THE APPLICATION OF THE PROCEEDS OF
16 BONDS ISSUED BY COUNTIES AND MUNICIPALITIES; FIXING
17 WATER CONSERVATION FEES WITH RESPECT TO CERTAIN
18 REGISTERED AND SIGNIFICANT WATER USERS OF SPARTA
19 AQUIFER WATER; DECLARING AN EMERGENCY; QUALIFYING
20 INSTALLATION OF WATER METERS FOR INCOME TAX CREDIT;
21 AND FOR OTHER RELATED PURPOSES."

Subtitle

22
23 "THE SPARTA AQUIFER CRITICAL GROUNDWATER
24 COUNTIES REMEDIATION ACT ADDRESSES A
25 WATER CRISIS IN CERTAIN ARKANSAS COUNTIES
26 BY CREATING SPARTA AQUIFER CRITICAL
27 GROUNDWATER CONSERVATION BOARDS AND FIXING
28 WATER CONSERVATION FEES FOR USERS."
29

30
31
32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
33

34 SECTION 1. This act may be known and cited as the "Sparta Aquifer
35 Critical Groundwater Counties' Remediation Act."
36

1 SECTION 2. It has been found by the Arkansas General Assembly that
 2 certain counties in the State of Arkansas presently have critical water
 3 shortages in the Sparta aquifer where the potentiometric surface has dropped
 4 below the top of the Sparta formation in the critical groundwater area
 5 containing Union, Ouachita, Columbia, Calhoun, and Bradley counties, and that
 6 the potentiometric surface in the critical groundwater area containing
 7 Arkansas, Jefferson, Prairie, Pulaski, White, and Lonoke counties has not
 8 dropped below the top of the formation, and that the critical groundwater area
 9 designation covering Arkansas, Jefferson, Prairie, Pulaski, White, and Lonoke
 10 counties is presently being contested in the courts of our State, and that
 11 further because of the existing depletion of the groundwater from the Sparta
 12 aquifer which underlies such counties, that this crisis is, in some instances,
 13 aggravated by the unrestrained direct withdrawal of water from the aquifer and
 14 that this crisis is not adequately addressed by any existing law. It is the
 15 intent of this act to make available revenues and resources to address this
 16 crisis and to discourage the withdrawal of Sparta aquifer water by certain
 17 large water users in Union, Ouachita, Columbia, Calhoun, and Bradley counties
 18 of Arkansas.

19
 20 SECTION 3. As used in this act, unless the context otherwise requires:
 21 (1) "Aquifer water" means water removed from the Sparta aquifer;
 22 (2) "Acquire" means acquire by purchase, lease, devise, gift or other
 23 mode of acquisition, and by any method selected by a board;
 24 (3) "Commission" means the Arkansas Soil and Water Conservation
 25 Commission;
 26 (4) "Conservation fee" means any fee fixed pursuant to this act and
 27 levied upon any registered water user or significant water user;
 28 (5) "Construct" means construct, equip, install or otherwise develop by
 29 any means selected by a board;
 30 (6) "County" means any Arkansas county:
 31 (A) in which at least ninety percent (90%) of the reported
 32 groundwater usage from the Sparta aquifer is for municipal and industrial
 33 purposes on the date of the petition; and
 34 (B) which has been or is found and determined by the commission to
 35 be within a critical groundwater area, prior to July 1, 1998, within the
 36 meaning of Arkansas Code Title 15, Chapter 22, Subchapter 9;

1 (7) "Improvement plan" means a plan to carry out the construction and
2 acquisition of water facilities or to provide for the conservation of aquifer
3 water, or both;

4 (8) "Person" means any natural person, firm, association, corporation,
5 trust, partnership, governmental agency, state or political subdivision,
6 county, municipality or other legal entity;

7 (9) "Registered water user" means any person who, whether as owner,
8 lessee, operator or otherwise, operates one or more wells with a *minimum*
9 potential flow rate of fifty thousand (50,000) gallons or more of aquifer
10 water per day, including a board, and is required to register with the
11 commission under Arkansas Code §15-22-302. The withdrawal of water which is
12 expected to be returned to an aquifer by the user thereof does not cause a
13 person to be a registered water user;

14 (10) "Significant water user" means any person who, whether as owner,
15 lessee, operator, or otherwise, operates one or more wells with a maximum flow
16 rate of less than fifty thousand (50,000) gallons of aquifer water per day,
17 including a board, and is determined by the board to be using aquifer water
18 for other than domestic purposes;

19 (11) "Revenues" means revenues derived from any source, including,
20 without limitation, the wholesale or retail sale of water and the
21 conservation fees;

22 (12) "Sparta Aquifer Critical Groundwater County Conservation Board" or
23 "Board" means any Sparta Aquifer Critical Groundwater Conservation County
24 Board established pursuant to this act; and

25 (13) "Water facilities" means any facilities for the withdrawal,
26 storage, transportation, treatment or distribution of water, together with any
27 properties, real, personal or mixed, tangible or intangible, related or
28 appropriate thereto.

29
30 SECTION 4. This act is complete in itself and shall be the sole
31 authority necessary to carry out the its purposes. This act shall be
32 construed liberally. The enumeration of any object, purpose, power or method
33 shall not be deemed to exclude like objects, purposes, powers or methods.

34
35 SECTION 5. (a) One hundred (100) or more qualified electors residing
36 within any county may petition the circuit court for the county to establish a

1 Sparta Aquifer Critical Groundwater County Conservation Board for the purposes
2 set forth in this act.

3 (b) A petition filed pursuant to this act shall contain:

4 (1) a brief and concise statement describing the water crisis
5 affecting such county;

6 (2) a brief and concise statement showing the necessity for
7 forming and operating the proposed board and describing the benefits to be
8 derived therefrom by the residents and property owners in the county;

9 (3) the proposed name for the board;

10 (4) a proposed improvement plan; and

11 (5) any other and additional information as may be appropriate
12 and useful, including without limitation, the proposed names of initial
13 members and their terms.

14
15 SECTION 6. (a) Upon the filing of the petition in the office of the
16 circuit clerk, the clerk shall prepare a certified copy of the petition and
17 transmit the certified copy to the commission within five (5) days after the
18 date of the filing of the petition.

19 (b) Upon receipt of the certified copy, the commission, if it has not
20 already done so, shall begin an investigation of the present and future
21 availability of aquifer water for the county. The commission shall, within
22 sixty (60) days after receipt of the certified copy of the petition, transmit
23 a written report of its findings to the clerk of the circuit court.

24 (c) The report of the commission shall include, but need not be limited
25 to:

26 (1) a finding as to whether the water shortage of the county, if
27 any, is such that it conforms to the definition of "county" in subdivision (6)
28 of Section 3 of this act;

29 (2) a finding as to whether the organization of the proposed
30 board serves to alleviate any such water shortage and would be conducive to
31 the purposes of this act; and

32 (3) a finding that an existing plan is in place, including
33 deadlines for progress, which is reasonably calculated to alleviate the
34 depletion of the Sparta aquifer and reduce the withdrawal of aquifer water to
35 levels below the safe yield in order to protect the Sparta aquifer for future
36 use;

1 (4) a finding that the proposed improvement plan, if implemented,
2 would or would not preserve the groundwater resource for future use; and

3 (5) any conditions or recommendations which the commission
4 regards as necessary to the organization of the board and the purposes and
5 powers of the board.

6 (d) If the commission makes a finding that an existing plan is in place
7 to preserve the actual groundwater use under subdivision (c)(3) of this
8 section, then the petition shall be held in abeyance and the commission shall
9 continuously monitor the plan's progress. However, upon petition of any
10 twenty (20) persons alleging insufficient progress in the plan, the commission
11 shall conduct a hearing in the county and examine the previous findings.

12
13 SECTION 7. (a) Within thirty (30) days after the report of the
14 commission has been filed in the office of the circuit clerk, the petition
15 shall be presented to the judge of the circuit court, either in term or
16 vacation, and the court shall thereupon enter its order:

17 (1) setting a hearing upon the petition for a day certain; and

18 (2) directing the clerk of the court to give notice of the
19 hearing by publication for two (2) consecutive weeks in some newspaper or
20 newspapers having a general circulation in the county.

21 (b) The notice shall contain:

22 (1) a concise statement describing the purpose of the hearing;

23 (2) a concise statement of the findings and conclusions of the
24 commission;

25 (3) a warning to all persons residing or owning property within
26 the county to appear upon the date and at the time and place of the hearing to
27 show cause, if any exists, why the petition should not be granted.

28 (c) Upon the date and at the time and place named in the notice, the
29 circuit court shall meet and hear all persons who wish to appear and advocate
30 or resist the establishment of the board.

31 (d) If the court, after being satisfied as to the sufficiency of the
32 petition and the proceedings thereon, find it to be in the best interests of
33 the persons residing or owning land within the county that the board be
34 established under the terms of this act, the court shall enter its order
35 establishing the board, subject to the terms and provisions of this act, and
36 designating a name for the board.

1
2 SECTION 8. (a) The board shall be composed of one (1) qualified
3 elector residing in each justice of the peace district in the county.

4 (b) The initial members of the board shall be appointed by the circuit
5 court, at the time of establishment of the board, or within a reasonable time
6 thereafter. The court shall fix the terms of the initial members of the board
7 in a manner that the terms of the board members shall expire on December 31 of
8 the year of each general election, and each two (2) years thereafter. The
9 membership of the initial board shall be divided into two (2), four (4) and
10 six (6) year terms in order to set up the every two-year rotation.

11
12 SECTION 9. (a) Other than the initial members of the board, members of
13 the board shall be elected, for terms of six (6) years, by the qualified
14 electors residing in the respective justice of the peace districts included in
15 the county.

16 (b) Nominations for members of the board shall be upon petitions signed
17 by at least ten (10) qualified electors residing in the justice of the peace
18 district from which the member is to be elected. The petition shall be filed
19 with the county board of election commissioners at least sixty (60) days prior
20 to the general election.

21 (c) Election of members shall be held as a part of the general election
22 and under the laws governing the general election.

23 (d) Any member shall be qualified to succeed himself or herself.

24 (e) Any member of the board shall serve until his or her successor is
25 elected and qualified.

26 (f) In the event of an increase or decrease in the number of justice of
27 the peace districts in a county, the circuit court shall, upon petition signed
28 and filed with the circuit clerk by twenty (20) or more qualified electors
29 residing in the county, enter its order making appropriate modifications in
30 the composition of the board.

31
32 SECTION 10. (a) Each member of the board shall take the oath of office
33 required by Article 19, Section 20, of the Arkansas Constitution and shall
34 also swear that he or she will not directly or indirectly be interested in any
35 contract made by the board.

36 (b) All oaths of members of the board shall be executed in writing and

1 shall be filed in the office of the circuit clerk for the county.

2 (c) Any member failing to take the oath within thirty (30) days after
3 his or her appointment or election shall be deemed to have declined the office
4 and his or her place shall be filled as other vacancies.

5 (d) Any vacancy on the board shall be filled by appointment of the
6 board for a term to last until December 31 following the next general
7 election, at which time the vacancy shall be filled by election from the
8 appropriate district for the unexpired term of the position that became
9 vacant. Should there not be time for a candidate to qualify for the next
10 general election, the appointment shall be until December 31 of the next
11 following general election.

12
13 SECTION 11. (a) The members of the board shall receive no compensation
14 but shall be entitled to reimbursement for out-of-pocket expenses by the
15 procedure and in the amounts provided for employees of the State of Arkansas
16 under Arkansas Code § 25-16-902.

17 (b) Members of the board shall be immune from liability for acts and
18 omissions within the scope of their duties as board members, save in cases of
19 gross negligence or wanton misconduct.

20 (c) boards shall be authorized to acquire liability insurance for the
21 benefit and protection of members of the board and, save in cases of gross
22 negligence or wanton misconduct, to reimburse members of the board in the
23 event of liability.

24 (d) Promptly upon their appointment, the members of the board shall meet
25 and organize and shall elect a president, vice president and secretary-
26 treasurer and shall adopt bylaws which shall govern their proceedings.

27 (e) Regular meetings of the board shall be held not less frequently
28 than quarterly, as determined by the board, at the office of the board. All
29 meetings are subject to the open meetings and public meetings requirements of
30 the Arkansas Freedom of Information Act, beginning at Arkansas Code § 25-19-
31 101.

32 (f)(1) Special meetings of the board may be held at any time upon
33 waiver of notice by all members or may be called by the president or by any
34 two members at any time provided that notice, signed by the person or persons
35 calling any special meeting, shall be mailed to each member of the board at
36 least seven (7) days prior to the time fixed for the special meeting.

1 (2) Emergency special meetings of the board may be held on the
2 call of the president or vice president, in the president's absence, provided
3 a written notice is delivered by a member of the board or designated agent
4 whose name is set out in the notice to each member of the board at least three
5 working days prior to the time fixed for the emergency special meeting.

6 (g) A majority of the members of the board shall constitute a quorum
7 for the transaction of business. In the absence of any of the elected
8 officers of the board, a quorum at any meeting may select a member to act as
9 presiding officer.

10
11 SECTION 12. (a) Each board shall have the power to:

12 (1) sue and be sued, complain and defend, in the name of the board;

13 (2) adopt a seal which may be altered at its pleasure, and use it as it
14 determines;

15 (3) acquire, construct and develop any water facilities;

16 (4) withdraw, store, transport, treat and distribute water and engage
17 in activities related or appropriate thereto;

18 (5) acquire, own, lease and operate any lands, buildings, fixtures,
19 equipment, personalty, and other properties, real, personal or mixed, tangible
20 or intangible, as may be appropriate to its powers and the purposes of this
21 act;

22 (6) sell and issue its bonds secured by and payable from its revenues
23 and enter into such trust indentures and other documents and undertakings as
24 may be appropriate thereto, which bonds shall be payable over a period of not
25 to exceed forty (40) years and shall bear interest at an interest rate or
26 rates not to exceed that set forth in Amendment 65 to the Arkansas
27 Constitution, shall be sold for such price and by such method as shall be
28 determined by the board, and which bonds, and interest thereon, shall be
29 exempt from all state, county and municipal taxes;

30 (7) apply the proceeds of revenue bonds and sales and use tax bonds
31 issued by the county and municipalities within the county for the acquisition,
32 construction and development of water facilities, as may be agreed to by the
33 county and such municipalities;

34 (8) have and exercise the power of eminent domain for the purpose of
35 acquiring lands, rights-of-way and other properties necessary in the
36 construction or operation of any water facilities in the manner now provided

1 by the condemnation laws of this state for acquiring private property for
2 public use;

3 (9) accept gifts or grants of money, services, franchises, rights,
4 privileges, licenses, rights-of-way, easements, or other property, real,
5 personal or mixed, tangible or intangible;

6 (10) make any and all contracts necessary or convenient for the
7 exercise of the powers granted in this act, including, without limitation,
8 contracts with other boards and with municipalities and counties;

9 (11) fix, regulate and collect rates, fees, rents and other charges for
10 water sold by the board and for the use of water facilities and for services
11 furnished by the board, any such rates to be just, reasonable and non-
12 discriminatory;

13 (12) conduct its affairs within and without this state;

14 (13) elect, appoint or employ officers, agents, attorneys, engineers
15 and such other personnel as it shall deem necessary, and to fix their
16 compensation, and to establish the use and application of its revenues;

17 (14) enter upon private premises for the purpose of carrying out the
18 terms of this Act, including a determination of the capacity of *the Sparta*
19 well, and for compliance with the Arkansas Department of Health rules and
20 regulations concerning the health and safety of the water systems;

21 (15) accept appropriations and grants from this State of Arkansas and
22 from the United States upon such terms and conditions as may be imposed by law
23 or regulation;

24 (16) require that anyone drilling a water well into *the Sparta* aquifer
25 designated critical by the commission shall file a copy of the report required
26 to be filed with the Water Well Construction Commission pursuant to Arkansas
27 Code 17-50-104 with the board;

28 (17) require monitoring of all wells determined to be operated as
29 registered water users or significant water users; and

30 (18) exercise all powers necessary and appropriate to accomplish the
31 improvement plan and such other powers as may be set forth in this act or as
32 may be necessary or appropriate to carry out its purposes and the purpose of
33 this act.

34 (b) Notwithstanding the powers conferred by this section, a board shall
35 comply with the laws of this state regarding the acquisition, storage,
36 transportation, distribution, treatment, or disposal of water.

1 (c) The board shall have the power, pursuant to appropriate agreement,
2 to expend and invest the proceeds of bonds and other obligations, whether
3 secured by revenues or taxes or otherwise, issued by the county or by any
4 municipality in the county.

5
6 SECTION 13. (a) Each board shall procure an annual financial audit to
7 be conducted following each board's fiscal year end.

8 (b) Each board shall choose and employ accountants, licensed and in
9 good standing with the Arkansas State Board of Public Accountancy, to conduct
10 these audits in accordance with Governmental Auditing and Reporting Standards
11 issued by the Comptroller General of the United States.

12 (c) Each audit report and accompanying comments and recommendations
13 shall be reviewed by the board and copies of each audit report shall be filed
14 with the commission and the Division of Legislative Audit. In addition, one
15 (1) copy of the audit report shall be kept for public inspection with the
16 books and records of the board and one (1) copy shall be filed with the clerk
17 of the circuit court where the petition was filed to create the board.

18
19 SECTION 14. (a) There is hereby levied and fixed upon each registered
20 water user and significant water user of aquifer water a conservation fee at
21 the following rates per 1000 gallons of aquifer water withdrawn:

22 (1) twenty-four cents (24¢) per one thousand (1000) gallons until
23 May 1, 2001; and

24 (2) thirty-six cents (36¢) per one thousand (1000) gallons
25 thereafter.

26 (b) Provided, the board shall have the power to reduce the conservation
27 fee upon issuance of its written findings to the effect that the conservation
28 fee as reduced will continue to discourage the withdrawal of aquifer water by
29 registered water user and significant water users.

30 (c) In like manner, the board may issue its written findings to the
31 effect that it is necessary that the conservation fee be raised, to discourage
32 withdrawal, and increase the fee to any level allowed hereby, whereupon the
33 conservation fee shall be raised to such level.

34
35 SECTION 15. (a) Each registered and significant water user shall
36 report monthly, on or before the fifteenth (15th) day of the month, to the

1 commission and to the board, on a form or forms prescribed by the commission,
2 the quantity of aquifer water which it withdrew during the preceding month on
3 a well-by-well basis. The board shall set the date on which the conservation
4 fee shall go into effect.

5 (b) Any conservation fee shall be payable each month, with the report
6 provided for in subsection (a) of this section, to the county treasurer of the
7 county. Conservation fees shall be remitted to the board, by the county
8 treasurer, after deduction of an amount equal to one-quarter of one percent
9 (.25%) thereof for payment or reimbursement of administrative expenses, on or
10 before the first day of the month following the month in which received.

11 (c) All proceeds of the conservation fee shall be applied to defray the
12 costs of the Board for operation and maintenance of and debt service in
13 relation to the improvement plan including, but not limited to, the water
14 facilities and to serve the purposes of this act.

15 (d) Any conservation fees which are determined to be delinquent for
16 more than ninety (90) days shall constitute a lien on the real and personal
17 property of each delinquent registered and significant water user and may be
18 enforced against such property by an action in chancery court.

19
20 SECTION 16. (a)(1) Each registered water user shall install and
21 maintain, at its expense, a meter, in conformance with standards and
22 specifications issued by the commission, for the purpose of measuring and
23 recording the quantity of aquifer water drawn by the registered water user.

24 (2) Each significant water user shall maintain at its expense a
25 meter purchased and installed by the board.

26 (b) Each meter shall be accessible to agents of the commission and the
27 board during reasonable business hours.

28
29 SECTION 17. (a) Any registered water user or significant water user
30 which shall fail to report as set forth in Section 15 hereof shall be subject
31 to a administrative penalty at the rate of twice the conservation fee owed,
32 payable to the board.

33 (b) Any person who intentionally or willfully makes any false report
34 under the provisions of this act or who tampers with any meter required by
35 this act shall be guilty of a misdemeanor and upon conviction shall be fined
36 not less than one thousand dollars (\$1,000) nor more than five thousand

1 dollars (\$5,000).

2
3 SECTION 18. Arkansas Code § 26-51-1003(7), regarding the definition of
4 'projects' which are eligible for a income tax credit under the Water
5 Resources Conservation and Development Incentives Act, is amended to read as
6 follows:

7 "(7) 'Project' means:

8 (A) The construction, installation, or restoration of water
9 impoundment or water control structures of twenty (20) acre-feet or more
10 designed for the purpose of storing water to be used for agricultural
11 irrigation or industrial processing;

12 (B) The conversion from groundwater to surface water use by
13 agricultural, commercial industrial, or recreational water users;

14 (C) Agricultural land leveling resulting in water savings due to
15 the more efficient use of irrigation water for which tax credits are claimed;
16 ~~and~~

17 (D) The purchase and installation of water measuring or metering
18 devices used to determine the quantity of water used. Installation of such
19 devices shall be considered a conversion from groundwater to surface water for
20 tax credit purposes; and"

21
22 SECTION 19. The commission, and each board, is authorized to issue
23 rules and regulations and to conduct investigations for the purpose of
24 implementing and carrying out the terms of this act.

25
26 SECTION 20. All provisions of this act of a general and permanent
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
28 Code Revision Commission shall incorporate the same in the Code.

29
30 SECTION 21. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

35
36 SECTION 22. All laws and parts of laws in conflict with this act are

1 hereby repealed.

2

3 SECTION 23. EMERGENCY CLAUSE. It is hereby found and determined by the
4 Eighty Second Arkansas General Assembly that particular counties in this State
5 face critical water shortages due to depletion of Sparta aquifer water and
6 that these shortages are subject to remediation only by the immediate
7 conjunctive use of surface water and groundwater. This act would allow the
8 most critical counties to reduce the use of ground water and substitute
9 available surface water. Therefore, an emergency is declared to exist and
10 this act being immediately necessary for the preservation of the public peace,
11 health and safety shall become effective on the date of its approval by the
12 Governor. If the bill is neither approved nor vetoed by the Governor, it
13 shall become effective on the expiration of the period of time during which
14 the Governor may veto the bill. If the bill is vetoed by the Governor and the
15 veto is overridden, it shall become effective on the date the last house
16 overrides the veto.

17 /s/ Mahony, et al

20 APPROVED: 4/1/1999