

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1131

By: Representative Mahony

For An Act To Be Entitled

"THE RIPARIAN PROTECTION AND GROUNDWATER PRESERVATION ACT."

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

SECTION 1. TITLE. This act may be known and cited as the "Riparian Protection and Groundwater Preservation Act".

SECTION 2. DECLARATION OF POLICY. (a) Recognizing that the surface waters of the state regulated by this act are the property of the people of the state and are held in public trust for the benefit of its people, it is declared that the people of the state as beneficiaries of this trust have the right to have the waters protected for their use.

(b) This act shall be liberally construed to obtain the optimum reasonable utilization, conservation and equitable distribution of the surface water of the state for the benefit of the state, for such purposes as domestic uses, fish and wildlife management uses, irrigation, power development, mining and industrial uses. However, provision shall be made for the following in-stream needs that are hereby declared to be in the public interest: protection and procreation of fish and wildlife; maintenance of proper ecological balance and scenic beauty; protection of water quality and the preservation and enhancement of waters of the state for navigation, public recreation, municipal uses and public water supply; and, promotion of interbasin transfers within the state that are not detrimental to the originating basin.

(c) Since waters in their natural state comprise an integrated hydrological unit, this act shall also be administered, so far as practical, to ensure reasonable conjunctive use between surface waters and groundwaters.

SECTION 3. DEFINITIONS. As used in this act unless the context

otherwise requires:

(1) "Consumptive use" means any extraction of surface waters or groundwaters which results in a substantial diminution in quantity or substantial impairment of quality of the surface waters or groundwaters;

(2) "Critical groundwater area" means a situation:

(A) For water table conditions, where water levels have been reduced so that fifty percent (50%) of the thickness of the formation, or less, is saturated or where the average declines of one (1) foot or more have occurred for the preceding five (5) years or where groundwater quality has been degraded, or trends indicate a probable future degradation, that would render the water unusable for a drinking water source or for the primary use of the aquifer; or

(B) For artesian conditions, where the potentiometric surface has declined below the top of the formation, or where the average annual declines of one (1) foot or more have occurred for the preceding five (5) years, or where the groundwater quality has been degraded, or trends indicate probable future degradation, that would render the water unusable for drinking water or for the primary use of the aquifer;

(3) "Diffused surface water" means water occurring upon the surface of the earth other than in contained water bodies;

(4) "Domestic use" means the use of water for ordinary household purposes including human consumption, washing, the watering of any household livestock, poultry, and animals and the watering of home gardens whose produce is used for consumption by the household;

(5) "Groundwater" means water beneath the surface of the ground, whether or not flowing through known and definite channels;

(6) "In-stream Flow" means the seasonally variable quantity of water needed to maintain aquatic and riparian ecosystems and accommodate other in-stream public needs;

(7) "Non-consumptive use" means the withdrawal of water for use in a manner that results in an approximately equal volume of water being returned to the same surface water body from which it was withdrawn;

(8) "Non-riparian owner" means the owner of land that is not immediately adjacent to surface water;

(9) "Person" means any natural person, partnership, firm, association, cooperative, trust, municipality, private or public corporation, this state,

or any other legal entity formed under the laws of this state, or combination thereof;

(10) "Public water supply" means a supply of water from any source which is treated or conditioned to the extent that it conforms to the quality standards of the state of Arkansas for human consumption and is regularly delivered to customers' premises through a water distribution system operated by a private or public entity whose customary business is the purveying of water;

(11) "Reasonable beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest;

(12) "Riparian owner" means the owner of land that is immediately adjacent to surface water;

(13) "Safe yield" means the amount of groundwater that is available on a dependable basis without lowering the water table or potentiometric surface to levels which may deplete or cause compression of the aquifer and destroy its usefulness;

(14) "State agency" means the Arkansas Soil and Water Conservation Commission;

(15) "Surface water" means water upon the surface of the earth in bounds created naturally or artificially, including, but not limited to, streams, rivers and other watercourses, lakes and reservoirs;

(16) "Water management district" means any district formed pursuant to this act; and

(17) "Well" means any artificial excavation constructed by any method which is intended or used for the extraction of ground water.

SECTION 4. SCOPE. (a) The following water may be used without obtaining a guarantee of use under this act:

(1) privately and publicly owned impoundments of diffused surface water containing no more than one hundred (100) acre feet;

(2) off stream storage of water withdrawn under a guarantee of use or exempted water regardless of quantity;

(3) springs on privately owned land;

(4) existing State and municipal impoundments of surface water;

(5) surface water subject to existing contracts between regional water districts and the federal government for storage in federal impoundments.

(b) The following uses of water shall not require a guarantee of use under this act:

(1) waste water treatment facilities, impoundments, injection wells, groundwater monitoring and treatment wells and such other facilities as may be required or permitted by the Arkansas Department of Pollution Control and Ecology or the United States Environmental Protection Agency in accordance with applicable state and federal laws;

(2) exploratory mining or oil, gas and brine drilling;

(3) state or private road construction or fire protection activities;

(4) nonconsumptive uses of water returned to the place of origin.

SECTION 5. Arkansas Code 15-20-202 is hereby amended to read as follows:

"15-20-202. Members. (a) (1) The Arkansas Soil and Water Conservation Commission shall consist of nine (9) members who are residents and electors of this state, to be appointed by the Governor and with the advice and consent of the Senate.

(2) On July 1, 1989, the Arkansas Soil and Water Conservation Commission shall be increased in membership by the appointment of an additional two (2) members, residents and electors of this state, by the Governor and confirmed by the Senate. The terms of these two (2) additional members shall expire eight (8) years after their commencement and at that time the commission's membership shall decrease to nine (9) members and remain at that number thereafter. The Governor shall make the appointments of these additional members of the commission from the membership of the following organizations:

(A) the Arkansas Audubon Society;

(B) the Arkansas Canoe Club;

(C) the Arkansas Conservation Coalition;

(D) the Arkansas Department of Pollution Control and Ecology;

(E) the Arkansas Department of Parks and Tourism;

(F) the Arkansas Game and Fish Commission;

(G) the Arkansas Public Policy Panel;

- (H) the Arkansas Wildlife Federation;
- (I) Common Cause of Arkansas;
- (J) the Land Stewardship Project;
- (K) the League of Women Voters of Arkansas;
- (L) the Natural Heritage Commission;
- (M) the Ozark Society; and
- (N) the Sierra Club, Arkansas chapter.

Any vacancies occurring in these two (2) additional commission terms shall be filled with a member of the represented organizations and shall be appointed to fill out the remainder of the member's term. After the completion of the two (2) additional commission terms provided for by this subdivision, the members serving in those positions may be reappointed to serve on the commission.

(b) At least two (2) members shall reside in each congressional district as the district exists on August 1, 1985.

(c) For each member appointed to a regular term, the term of office shall commence on January 15 following the expiration date of the prior term and shall end on January 14 of the seventh year following the year in which such regular term commenced.

(d) Any vacancies arising in the membership of the commission for any reason other than expiration of the regular terms for which such members were appointed shall be filled by appointment by the Governor, and to be thereafter effective until the expiration of those terms, subject, however, to the confirmation of the Senate when it is next in session.

(e) Before entering upon his duties, each member of the commission shall take and subscribe, and file in the office of the Secretary of State, an oath to support the Constitution of the United States and the Constitution of the State of Arkansas, and to faithfully perform the duties of the office upon which he is about to enter.

(f) Members of the commission shall receive no pay for their services, but with respect to attendance at each regular or special meeting of the commission, shall be entitled, as reimbursement for expenses of whatever nature incurred, compensation at the same rate authorized by law or state travel regulations for state employees, for each day, or part thereof, that the commission is in session."

SECTION 6. POWERS AND DUTIES OF THE ARKANSAS SOIL AND WATER CONSERVATION COMMISSION. (a) The state agency may review and revise any policy, rule or regulation of a water management district. Such review may be initiated at any time either by the state agency or by an interested person aggrieved by such policy, rule, regulation, or order by filing a request for such review with the State agency and deliver a copy to the water management district. Review by the state agency shall not effect the effectiveness of the policy, rule, regulation or order. A request for review to the state agency shall not be a precondition for the seeking of judicial review as otherwise provided.

(b) The state agency shall formulate allocation guidelines establishing priorities for the beneficial use of surface and groundwater. The allocation guidelines shall give reasonable preference first to sustaining life, second to maintaining health, and finally to increasing wealth. The allocations shall reserve the water required for domestic and municipal-domestic use, federal water rights and for minimum stream flow and shall then give preference in the following order for water uses and water diversions:

- (1) Priority of water uses:
 - (A) agriculture;
 - (B) industry;
 - (C) hydropower;
 - (D) recreation.
- (2) Priority of water diversions:
 - (A) riparian;
 - (B) non-riparian intrabasin transfer;
 - (C) non-riparian interbasin transfer;
 - (D) out of state transfer.

Before establishing minimum in-stream flows, the state agency shall seek recommendations from interested state agencies and the public.

(c) The state agency shall have the following additional powers and duties to:

- (1) Issue guarantees of use when the place of diversion is not situated within a water management district.
- (2) Condition the issuance of guarantees of use for the purpose of conducting investigations and studies, or enforcing any provisions of this act.
- (3) Identify, by continuous study, critical surface water areas,

critical groundwater areas, and areas which are likely to become critical surface water areas or critical groundwater areas, or both.

(4) Allocate surface water and groundwater to water management districts.

(5) Regulate withdrawal of surface water and groundwater during temporary shortages.

(6) Establish guidelines which may be followed by water management districts in allocating and regulating surface water and groundwater.

(7) Exercise the power of eminent domain for interbasin and intrabasin transfers under the procedures used by levee and drainage districts for eminent domain found in Arkansas Code 18-15-1001 et seq.

(8) Establish and collect guarantees of use fees.

(9) Consult and advise all users of water resources and guarantee of use applicants as to the availability of water resources and the most practical methods of water diversion, development, conservation and utilization.

(10) Resolve disputes between and hear appeals from decisions of water management districts.

(11) Provide technical assistance to water management districts.

(12) Carry out topographic surveys, research and investigations into all aspects of water use or quality, including a survey and inventory of Arkansas waters.

(13) Cooperate with other state agencies, water management districts, county, municipal, or other local governments, federal agencies, legislative bodies, or agencies of other states, interstate compact commissions, governments and agencies in coordinating the use of their facilities and participate in an exchange of ideas, knowledge, and data with such organizations and agencies.

(14) Enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations and studies, or enforcing any provisions of this act, being liable, however, for resulting damage.

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

(16) Issue temporary guarantees of use in emergency situations.

(17) Not be required to prepare an environmental impact statement

if an environmental impact statement has been prepared by a federal agency.

SECTION 7. SURFACE WATER MANAGEMENT. (a) Guarantees of use.

(1) No person shall make any withdrawal, diversion, impoundment or consumptive use of surface water after May 1, 1994 without obtaining a guarantee of use except as exempted herein.

(2) No guarantee of use shall be necessary for a user using less than one (1) acre foot of water per year

(3) In order to obtain a guarantee of use, the applicant shall establish that the proposed use of water:

(A) is a reasonable and beneficial use; and

(B) will not interfere with any presently existing legal use of water.

(4) (A) The state agency may issue a guarantee of use to a user to authorize the transportation of excess surface water to non-riparians of such surface water for their use.

(B) "Excess surface water" means twenty-five percent (25%) of that amount of water available on an average annual basis from any watershed above that amount, as determined by the state agency, required to satisfy all of the following:

(i) Existing riparian rights as of June 28, 1985;

(ii) The water needs of federal water projects existing on June 28, 1985;

(iii) The firm yield of all reservoirs in existence on June 28, 1985;

(iv) Maintenance of in-stream flows for fish and wildlife, water quality, and aquifer recharge requirements;

(v) Future water needs of the basin of origin as projected in the state water plan developed pursuant to Arkansas Code 15-20-207 and 15-22-501 et seq.

(C) All applications for guarantees of use for transfer of water to non-riparians shall be evaluated by the state agency in terms of the reasonableness of the proposed non-riparian use, including but not limited to:

(i) The availability at reasonable cost of alternative sources of water for the proposed use;

(ii) The environmental impact of the proposed transfer;

and

(iii) The nature and extent of the impact of the transfer on other water uses.

(D) The state agency may, as a condition of granting the transfer authority, require the applicants to contract for the transportation of a specific quantity of water, for a specific period, at a reasonable price to users within the immediate vicinity of the proposed route of transportation. The term "reasonable price" means only the cost of transportation of the water, not the water itself.

(b) Riparian owners, existing users, and others.

(1) Riparian owners using water at any time within three (3) years prior to October 1, 1988 and each non-riparian owner using water periodically during a period of seven (7) years immediately preceding October 1, 1988 shall be entitled to a guarantee of use upon application and compliance with subsection (c) of this section.

(2) Upon application filed prior to July 2, 1990, riparian owners not included within subdivision (b) (1) of this section shall be entitled to a guarantee of use under subsection (c) of this section, if such use does not interfere with any preexisting water user described in subdivision (b) (1).

(3) Non-riparian owners using water periodically but for a period of less than seven (7) years prior to October 1, 1988, but not included in subdivision (b) (1) of this section, shall be entitled to a guarantee of use upon application and compliance with subsection (c) of this section if such use does not interfere with any preexisting water user or applicant described in subdivisions (b) (1) and (b) (2) of this section.

(4) Applications for guarantee of use under subdivision (b) (1) of this section shall be made prior to July 31, 1992. Failure to comply within this period shall create a conclusive presumption of abandonment of the use, and if the user desires to revive the use, application must be made for a guarantee of use under subsection (a) of this section.

(5) Application by all others not designated hereinabove.

(c) Applications for a guarantee of use. The application for a guarantee of use shall contain the following:

- (1) name and address of applicant;
- (2) date of filing;
- (3) quantity of water in gallons or acre feet, as required by the

state agency;

- (4) source of water;
- (5) use of water;
- (6) legal description of place of use;
- (7) location of point of diversion; and
- (8) other information the state agency or district may require.

(d) Notice and Hearing.

(1) Upon receipt of the application, the state agency or the water management district shall give notice by publication of the proposed application once a week for two consecutive weeks in a newspaper of general circulation in the county wherein the proposed diversion is to take place. The notice may include notice of a public hearing on the application. The notice shall describe with reasonable definiteness the name and address of the applicant, source of water, quantity of water, proposed use of the water, and the point of diversion. The cost of such notice shall be borne by the applicant.

(2) Upon expiration of twenty (20) days after the second publication of the notice provided above, the agency or district may grant the permit unless a hearing is requested by interested parties, the state agency or water management district. If a hearing is requested, notice of such hearing shall be published once weekly for two (2) consecutive weeks in a newspaper with general circulation in the county wherein the proposed diversion is to take place with such hearing to occur no sooner than twenty (20) days after the date of the second publication of the hearing notice. The cost of such notice shall be borne by the applicant.

(3) The hearing shall be conducted in accordance with the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq.

(e) Duration. The guarantee of use shall be limited to the period of time established by the state agency. In determining that period the agency shall give consideration to the time required to reasonably amortize the investment made by the guaranteed user for the use of the water, as well as the cost and useful life of the facility.

(f) Renewal. In the event that two or more competing applications specifying the same priority pursuant to subsection (b) of this section are made, preference shall be given to a renewal application over an initial application. On all renewal applications, consideration shall be given to

reasonable and beneficial use.

(g) Cancellation for improper use. A guarantee of use may be canceled for use of water for a purpose other than that for which the guarantee of use was issued.

(h) Cancellation for non-use. A guarantee of use may be canceled for non-use or failure to obtain the ability to use the water within a reasonable period of time.

(i) Off-tract use of allocated water. The place of use described in the guarantee of use is the only land on which the allocated water may be used; provided, however, the agency or district may in times of emergency authorize the use of the allocated water on land other than that described in the guarantee of use. A guaranteed user acquiring or leasing additional land, contiguous or noncontiguous, shall upon application be allowed to amend the guarantee of use so as to encompass such land. Provided however, that marketers of bottled water, irrigation districts and public water supply systems shall at no time be restricted to the place of use described in their guarantees of use.

(j) Marketability of allocated water. Water allocated by guarantee of use may not be conveyed or otherwise marketed or transferred separate from the land for which the guarantee of use has been granted. Provided, however, that marketers of bottled water, irrigation districts and public water supply systems shall at no time be restricted in the conveyance, marketing or transferring of water.

SECTION 8. GROUNDWATER MANAGEMENT.

(a) Critical groundwater areas.

(1) The state agency shall declare and delineate critical groundwater areas;

(2) The declaration of critical groundwater areas shall be made pursuant to the following procedure:

(A) An investigation shall determine if the safe yield has been, is being or may be exceeded;

(B) Notice is given, under procedures in Section 7, of proposed action, including recommended boundaries for any critical groundwater areas that may be proposed;

(C) One or more public hearings shall be conducted within the

geographic area and provide for public participation in hearings;

(D) A determination of critical groundwater areas is made.

(b) Regulation of critical groundwater areas.

(1) Guarantees of use.

(A) Beginning April 1, 1993, all wells existing or proposed which have a maximum potential flow rate of more than fifty thousand (50,000) gallons per day, except wells used or intended to be used solely for domestic use, located within the critical groundwater area shall have a guarantee of use by the state agency or water management district.

(i) Guarantees of use may be denied or, if the benefit of the proposed use exceeds the harm, issued.

(ii) All wells, however, existing as of the date of the declaration of the critical groundwater area or to be drilled to replace existing wells shall be entitled, upon application and compliance with subdivision(b) (1) (B) of this section, to a guarantee of use;

(iii) Application for a guarantee of use under subdivision (b) (1) (A) (ii) above, shall be made within a period of one year from the effective date of the declaration of the critical groundwater area. Failure to comply within this period shall create a conclusive presumption of abandonment of the use, and the user if he desires to revive the use shall apply for a guarantee of use under subdivision (b) (1) (B) of this section. The state agency by regular mail notify all water users identified the groundwater report last preceding the date of declaration of the critical groundwater area.

(iv) Any well to be drilled to replace any well guaranteed of use under subdivision (b) (1) (A) (ii) of this section shall also be entitled, upon application and compliance with subdivision (b) (1) (B) to a guarantee of use on the condition that the well abandoned is converted to a non-regulated use or plugged in the manner prescribed by the state agency.

(B) Application for a guarantee of use. An application for a guarantee of use shall contain the following:

(i) name and address of applicant;

(ii) date of filing;

(iii) legal description of land on which the well is or will be located;

(iv) the approximate location and depth of the well;

- (v) intended water use;
- (vi) inside diameter of the casing;
- (vii) approximate average daily withdrawal of water;
- (viii) maximum potential flow rate of the well;
- (ix) other information requested by state agency.

(C) Notice and Hearing. The notice for hearings and the hearings required by this section shall be conducted under the following procedures:

(i) Upon receipt of the application, written notice of the application for the proposed well shall be given to all owners of land that is immediately adjacent to the tract on which the proposed well is to be located. Notice of the application shall also be given by publication once weekly for two (2) consecutive weeks in a newspaper of general circulation in the county wherein the proposed well is to be drilled. The cost of such notice shall be borne by the applicant. The notice shall describe with reasonable definiteness the following: name and address of the applicant; legal description of land on which the well is to be drilled; proposed location and depth of the well; intended water use; inside diameter of the casing; approximate average withdrawal of water; and, the maximum potential flow rate of the well.

(ii) Upon expiration of twenty (20) days after the second publication of the notice, the guarantee of use may be granted unless a hearing is requested and if so, notice of such hearing shall be in accordance with Section 8 procedures.

(iii) The hearing shall be in accordance with the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq.

(2) Well spacing and regulation of withdrawals. Beginning April 1, 1993, the state agency or water management district may limit the density of wells and the time and amount of withdrawals of water in critical groundwater areas.

SECTION 9. ALLOCATION AND REGULATION OF SURFACE WATER AND GROUNDWATER BY WATER MANAGEMENT DISTRICTS.

(a) Creation by the state agency. The state agency may create a water management district pursuant to the following procedures:

- (1) The geographic area shall be designated by the state agency as

a critical surface water area or critical groundwater area, or both.

(2) Public notice, under the procedures prescribed by Section 7, of the preliminary determination of the boundaries of the district.

(3) One or more public hearings under Section 7 procedures on the noticed matters within the geographic area.

(4) Publication, according to Section 7 procedures, of the state agency's final determination and actions, including the geographic boundaries of any water management district established. Water management district boundaries shall be established so as to follow voting precinct boundaries.

(b) Creation by petition of interested citizens. The state agency shall create a water management district pursuant to the following procedures:

(1) Petition by fifteen (15) owners of real property situated within the proposed district.

(2) Public notice, under Section 7 procedures, of the proposed action, including the geographic boundaries of the proposed district.

(3) Determination by the state agency that: (A) the efficient and optimum allocation of surface water will be furthered by the formation of the water management district; or (b) a critical surface water area or a critical groundwater area, or both, exist.

(4) Public notice, under Section 7 procedures, of the agency's determinations, including the geographic boundaries of the proposed water management district. Water management district boundaries shall be established so as to follow voting precinct boundaries.

(c) Subsequent Modification of Boundaries of Water Management Districts. The state agency may enlarge, diminish or otherwise adjust the boundaries of any water management district pursuant to the following procedures:

(1) Petition by the board of directors of the water management district, or

(2) Upon initial determination by the state agency that the proposed boundary change will further the efficient and optimum allocation of surface water or will further the efficient and optimum regulation of groundwater or is necessary to follow voting precinct boundaries within the affected geographic area and if such determination is made the agency shall hold one or more public hearings under Section 7 procedures within the affected geographic area.

(3) Public notice, under Section 7 procedures of the proposed

boundary change, including the revised geographic boundaries of the water management district.

(4) Upon final determination by the state agency that the change in the water management district's boundaries will further the efficient and optimum allocation of surface water or will further the efficient and optimum regulation of groundwater or is necessary to follow voting precinct boundaries within the affected area.

(5) Publication, under Section 7 procedures, of state agency's final determination and actions, including the revised geographic boundaries of the water management district.

(d) Dissolution or combination of water management districts. The state agency may dissolve or combine any water management district or districts pursuant to the following procedures:

(1) Petition by the board of directors of the water management district or districts or upon initial determination by the state agency that the dissolution or combination will be in the public interest, and

(2) Public notice, under Section 7 procedures, of the proposed action, and

(3) If upon initial determination by the state agency that dissolution or combination will be in the public interest, the agency shall hold one or more public hearings within the geographic area which provide for public participation, and

(4) Final determination and notice thereof, under Section 7 procedures, by the state agency that the dissolution or combination will be in the public interest.

SECTION 10. BOARD OF DIRECTORS OF WATER MANAGEMENT DISTRICT. (a) Each county or part of a county situated within a district shall be entitled to a number of representatives on the board of directors as determined by the state agency which number is substantially equal to the area's proportionate share of population within the district. All water management districts shall have at least three directors.

(b) The state agency shall initially appoint the members of the board of directors to serve until the next general election. Thereafter, all such members shall be elected at the general elections by the electors of the county or part of the county within the district. Persons elected to the

board of directors shall be elected for two (2) year terms. Candidates for election to the board shall file for election according to the procedures outlined for independent candidates for district offices in Arkansas Code 7-7-103.

(c) The board of directors shall convene at such time and place within this state as it shall decide and shall meet at least once annually.

SECTION 11. DUTIES AND POWERS OF WATER MANAGEMENT DISTRICTS. The water management district shall exercise such general supervisory authority over surface water or groundwater within the district including, but not limited to:

- (1) Issuing guarantees of use pursuant to Sections 7 and 8.
- (2) Allocating surface waters and regulating groundwaters.
- (3) Establishing and collecting user and guarantee of use fees and, to promote the utilization of alternative water resources, levying surcharges on surface water or groundwater in areas where temporary or permanent shortages exist or may occur provided that the fees shall be reasonably related to the cost of operating the district. Fees and surcharges shall be subject to approval of the state agency.
- (4) Consulting and advising all users of water resources and guarantee of use applicants as to the availability of water resources and the most practical methods of water diversion, development, conservation and utilization.
- (5) Cooperate with state agencies, other water management districts, county, municipal, or other local governments, federal agencies, legislative bodies, or agencies of other states, interstate compact commissions, governments and agencies in coordinating the use of their facilities and participate in an exchange of ideas, knowledge, and data with such organizations and agencies.
- (6) Receive monies from any source and expend the same as necessary to implement this act.
- (7) Enter at any reasonable time upon any property other than dwelling places for the purpose of conducting investigations and studies, or enforcing any provisions of this act, being liable, however, for resulting damage.
- (8) Issue orders to implement or enforce any authority granted by this act.

(9) Issue temporary guarantees of use within its boundaries in emergency situations.

SECTION 12. Water management districts and their officers and employees, shall not be subject to the "Arkansas Purchasing Law", Arkansas Code 19-11-201 et seq., the "General Accounting and Budgetary Procedures Law", Chapter 4 of Title 19 of the Arkansas Code of 1987 Annotated, the "Regular Salary Procedures and Restrictions Act", Arkansas Code 21-5-101, or any other fiscal control law of this state. Furthermore, the officers and employees of water management districts shall not be eligible to participate in the Public Employees Retirement System established under Chapter 3 of Title 24 of the Arkansas Code of 1987 Annotated, nor the State Employees Insurance Program established under Arkansas Code 21-5-401 et seq. The "Freedom of Information Act", Arkansas Code 25-19-101 et seq., and the Arkansas Administrative Procedure Act", Arkansas Code 25-15-201 et seq. shall be applicable to water management districts.

SECTION 13. ENFORCEMENT. (a) The state agency and water management districts shall enforce their regulations and orders by any or all of the following:

- (1) revocation or modification of guarantees of use;
- (2) suit for injunction or for damages, or
- (3) civil penalty not to exceed one thousand dollars (\$1,000.00).

(b) Any person who violates any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment not to exceed six (6) months, or a fine not to exceed one thousand dollars (\$1,000.00), or both. For a continuing offense, each day during which the offense is committed may be considered a separate violation.

(c) Any person who is injured through the violation by any person of any rule, regulation, order or guarantee of use issued pursuant to this act may bring an action for damages including reasonable attorney fees.

(d) No provision of this act shall bar the right of any injured person to seek other legal or equitable relief against a water user for actions in violation of this act.

SECTION 14. APPEALS PROCESS. Any person aggrieved by decisions and

actions under this act by the Arkansas Soil and Water Conservation Commission shall appeal to the appropriate circuit court pursuant to the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq., provided that such appeal shall be to the Court of Appeals instead of the circuit court in the event the Arkansas Supreme Court grants such right of direct appeal.

SECTION 15. SEVERABILITY. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

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

SECTION 17. REPEALER. All laws and parts of laws in conflict with this act are hereby repealed.