

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/18/05

A Bill

HOUSE BILL 2749

5 By: Representative Mahony
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS GROUNDWATER
10 PROTECTION AND MANAGEMENT ACT; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13 AN ACT TO AMEND THE ARKANSAS GROUNDWATER
14 PROTECTION AND MANAGEMENT ACT.
15
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 15-22-903 is amended to read as follows:

21 As used in this subchapter:

22 (1) "Administrative Procedure Act" means the Arkansas
23 Administrative Procedure Act, § 25-15-201 et seq.;

24 (2) "Aquifer" means a ~~permeable, water-bearing stratum of rock,~~
25 ~~sand, or gravel~~ saturated permeable geologic unit that can transmit
26 significant quantities of water under ordinary hydraulic gradients;

27 (3) "Beneficial use" means the use of water in such quantity as
28 is economical and efficient and which use is for a purpose and in a manner
29 which is reasonable, not wasteful, and is compatible with the public
30 interest;

31 (4) "Commission" means the Arkansas Soil and Water Conservation
32 Commission created under § 15-20-201;

33 (5) "Conservation district" means conservation districts created
34 under the Conservation Districts Law, § 14-125-101 et seq.;

35 (6) "Critical groundwater area" is defined in the Arkansas Water
36 Plan developed by the commission under its authority in § 15-22-503;



1 (7) "District" means a conservation district or regional water
2 district;

3 (8) "Domestic use" means the use of water for ordinary household
4 purposes, including human consumption, washing, the watering of domestic
5 livestock, poultry, and animals, and the watering of home gardens for
6 consumption by the household;

7 (9) "Groundwater" means water beneath the surface of the ground;

8 (10) "Person" means any natural person, partnership, firm,
9 association, cooperative, municipality, county, public or private
10 corporation, and state or local governmental agency;

11 (11) "Regional water district" means a regional water
12 distribution district created under the Regional Water Distribution District
13 Act, § 14-116-101 et seq.;

14 (12) "Sustainable yield" means the volume of groundwater that
15 may be developed or used without substantially exceeding natural recharge or
16 causing unacceptable environmental, economic, or social consequences;

17 ~~(12)~~(13) "Sustaining aquifer" means any aquifer excluding the
18 state's alluvial aquifers that is used as a significant source for water
19 supply including, but not limited to, the Cockfield, Sparta, Memphis, Cane
20 River, Carrizo, Wilcox, Nacatoch, Roubidoux, and Gunter aquifers;

21 ~~(13)~~(14) "Water right" means the authority or permission issued
22 by the commission under this subchapter to use groundwater within a critical
23 groundwater area;

24 ~~(14)~~(15) "Water year" means the twelve-month period beginning
25 October 1 and ending the next September 30; and

26 ~~(15)~~(A)~~(16)~~(A) "Well" means any hole dug, drilled, or otherwise
27 constructed in the ground for the purpose of withdrawing groundwater.

28 (B) For the purpose of this subchapter, a well also must
29 have a potential flow rate of fifty thousand (50,000) gallons per day or
30 greater.

31
32 SECTION 2. Arkansas Code § 15-22-904 is amended to read as follows:
33 15-22-904. Powers of the commission.

34 (a) The Arkansas Soil and Water Conservation Commission shall have all
35 powers necessary to effectuate this subchapter, including the power to:

36 (1) Promulgate rules and regulations for groundwater

1 classification and aquifer use, determination of sustainable yield, well
2 spacing, issuance of groundwater rights within critical groundwater areas,
3 and assessment of fees;

4 (2) Issue subpoenas for any witness to require attendance and
5 testimony and production of relevant books, papers, or other records in any
6 proceeding before the commission;

7 (3) Administer an oath to any witness in any hearing,
8 investigation, or proceeding before the commission;

9 (4) At reasonable times, enter upon property for purposes of
10 conducting investigations, studies, or enforcing this subchapter;

11 (5) Reduce or suspend notice and hearing requirements under this
12 subchapter in times of an emergency;

13 (6) Issue orders to implement or enforce any of the provisions
14 of this subchapter or regulations under this subchapter;

15 (7) Delegate any and all powers under this subchapter to the
16 Executive Director of the Arkansas Soil and Water Conservation Commission or
17 his or her designee;

18 (8) Delegate any powers under this subchapter to districts
19 within a critical groundwater area;

20 (9) Provide technical assistance and establish guidelines which
21 shall be followed by districts which have been granted powers under this
22 subchapter;

23 (10) Resolve disputes between, approve regulations of, and hear
24 appeals from decisions of districts to which the commission has delegated
25 powers; and

26 (11) Provide cost share assistance from the Arkansas Water
27 Development Fund not to exceed forty percent (40%) to persons for the
28 installation of approved water conservation and development practices.

29 (b) If the executive director finds that compliance with the rules
30 established by the commission to govern application for a water right will
31 result in undue hardship, an exemption from any one (1) or more requirements
32 of the rules may be granted by the executive director to the extent that the
33 exemption can be granted without impairing the intent and purpose of this
34 subchapter.

35
36 SECTION 3. Arkansas Code § 15-22-905 is amended to read as follows:

1 15-22-905. Powers of commission - Limitations.

2 The following provisions shall limit the Arkansas Soil and Water
3 Conservation Commission's powers under this subchapter:

4 (1)(A) There will be no reduction or limitation of the
5 withdrawal of groundwater from existing wells in an alluvial aquifer for
6 which a water right is grandfathered under the provisions of § 15-22-
7 910(a)(1) unless alternative surface supplies are available or can be made
8 available at a cost to the person no greater than the operating cost of the
9 person's wells within the critical area, including depreciation costs over
10 the life of the well.

11 (B) There shall be no reduction or limitation of the
12 withdrawal of groundwater from existing wells in a sustaining aquifer for
13 which a water right is grandfathered under the provisions of § 15-22-
14 910(a)(1) unless alternative surface supplies are available;

15 ~~(2)(A)~~ In an alluvial aquifer, there will be no reduction or
16 limitation of the withdrawal of groundwater from wells for which a water
17 right has been issued under § 15-22-910 and for which the person holding the
18 right can demonstrate:

19 ~~(i)(A)~~ *A reduction of twenty percent (20%) of his or her*
20 *use of groundwater to the sustainable yield by either institution of water*
21 *conservation measures or conversion to surface supplies. ~~The demonstrated~~*
22 *~~reduction must be based on the use reported in water year 1986 or later; or~~*
23 *and*

24 ~~(ii)(B)~~ The implementation of a water conservation plan
25 employing generally accepted water conservation practices approved by the
26 commission.

27 ~~(B)~~ *In sustaining aquifers, the commission may consider*
28 *voluntary reductions, water use efficiencies, and implementation of water*
29 *conservation measures in determining limitations or reduction of withdrawals;*

30 (3) There will be no regulation of the withdrawal of groundwater
31 from existing or proposed wells which have a maximum potential flow rate of
32 less than fifty thousand (50,000) gallons per day;

33 (4) There shall be no regulation of the withdrawals of
34 groundwater from individual household wells used exclusively for domestic
35 use;

36 (5) Replacement Wells:

1 (A)(i) The owner of an existing well ~~may construct~~
2 grandfathered under § 15-22-910 shall make application for a replacement well
3 after abandoning the existing well.

4 (ii) To transfer a water right to a replacement well
5 the owner ~~need only~~ shall submit to the commission ~~notice of an application~~
6 for construction of a replacement well stating the location and ownership of
7 the original and replacement wells and other relevant information required by
8 the commission.

9 (B) The original well must be converted to a nonregulated
10 use or plugged in the manner prescribed by the commission; and

11 (6) Marketers of bottled water and public water supply systems
12 shall at no time be restricted in the place of use of groundwater.

13
14 SECTION 4. Arkansas Code § 15-22-906 is amended to read as follows:

15 15-22-906. Groundwater protection program.

16 (a) In order to protect the groundwater of the state, the Arkansas
17 Soil and Water Conservation Commission shall develop a comprehensive
18 groundwater protection program.

19 (b) This shall contain, as a minimum, the following components as the
20 commission deems necessary:

21 (1) Assessment and monitoring of the availability of groundwater
22 and its quality;

23 (2) The classification of groundwater and establishment of
24 groundwater criteria and standards; and

25 (3) The management of groundwater pursuant to this subchapter,
26 including the issuance of water rights, protection of groundwater quality,
27 and establishment of an education and information program.

28 ~~(c)(1) This program shall not be inconsistent with nor shall it~~
29 ~~preempt or supersede any regulatory authority currently or in the future~~
30 ~~vested with the Arkansas Department of Environmental Quality, the State Plant~~
31 ~~Board, or the Department of Health.~~

32 ~~(2) However, no permit or prior authorization from these~~
33 ~~agencies shall be required to implement the provisions of this subchapter.~~

34
35 SECTION 5. Arkansas Code § 15-22-909 is amended to read as follows:

36 15-22-909. Groundwater rights - Initiation of regulatory authority

1 within critical areas.

2 (a)~~(1)~~ When the Arkansas Soil and Water Conservation Commission
3 determines such action to be necessary within a critical area, it will
4 declare that water rights are required for water withdrawal.

5 ~~(2)~~(b) Before initiation of the regulatory program, the commission
6 shall describe the proposed action, the reasons therefor, and the recommended
7 boundaries if they differ from the previous critical area designation.

8 ~~(3)~~(c) Public hearings shall be held in accord with the Arkansas
9 Administrative Procedure Act, § 25-15-201 et seq., and shall be held in each
10 county within the proposed critical area.

11 ~~(4)~~(d) After such a declaration, no person shall withdraw groundwater
12 from an existing well or construct a new well within the critical groundwater
13 area without first obtaining a water right.

14 ~~(5)~~(e) All determinations for the current water year shall have been
15 made by March 1 of the preceding water year.

16 ~~(b) There will be no reduction or limitation for a period of four (4)~~
17 ~~years of the withdrawal of groundwater from an existing well or a well~~
18 ~~constructed during the first year following initiation of the regulatory~~
19 ~~authority and for which a water right is issued under the provisions of § 15-~~
20 ~~22-910(a).~~

21

22 SECTION 6. Arkansas Code § 15-22-910 is amended to read as follows:

23 15-22-910. Groundwater rights - Issuance.

24 (a) Grandfathering Existing Wells.

25 (1)~~(A)~~ Within one (1) year of initiation of the regulatory
26 authority as provided under § 15-22-909, the Arkansas Soil and Water
27 Conservation Commission, upon application, shall issue to an applicant within
28 the critical water use area a water right for existing wells ~~equal to the~~
29 ~~average quantity of water withdrawn for beneficial use over the past three~~
30 ~~(3) water years~~ based on sustainable yield determination.

31 ~~(B) For wells with reported use levels significantly below~~
32 ~~normal use levels, prior water year use reports may be used to determine the~~
33 ~~three year average in subdivision (a)(1)(A) of this section.~~

34 ~~(2) For new wells constructed during the first year of~~
35 ~~initiation of the regulatory authority as provided under § 15-22-909, the~~
36 ~~commission, upon application, shall issue to an applicant within the critical~~

1 ~~water use area a water right equal to the quantity of water necessary for~~
2 ~~beneficial use.~~

3 ~~(3)(A)(2)(A)~~ Failure to apply within this period shall create a
4 conclusive presumption of abandonment of use.

5 (B) If the landowner desires to receive a water right, he
6 or she must apply for a water right pursuant to subsection (b) of this
7 section.

8 ~~(4)(3)~~ Water rights issued pursuant to subsection (a) of this
9 section shall be exempt from the public notice requirements described in
10 subsection (b) of this section.

11 (b) New Groundwater Rights Applications.

12 (1) To obtain a water right, application must be made in a form
13 satisfactory to the commission.

14 (2) The application shall contain information reasonably
15 necessary to assist the commission in making a determination as to issuance
16 of a water right.

17 (3) Upon receipt of the application, the commission shall cause
18 to be published a notice of application for water rights in a newspaper with
19 statewide circulation.

20 (4) In consideration of an application for water rights, the
21 commission may:

22 (A) Grant the application;

23 (B) Deny the application; or

24 (C) Grant the application subject to necessary reductions
25 or conditions.

26 (5) Persons who are or might be affected by issuance may request
27 a hearing before the commission concerning the application within fifteen
28 (15) days of publication of notice.

29 (c) Priorities.

30 (1) In the issuance of groundwater rights, the commission shall
31 give reasonable preference first to sustaining life, then to maintaining
32 health, and finally to increasing wealth.

33 (2) The commission shall consider sustainable yield calculation
34 when determining the amount of a water right.

35 (d) Review and Modification. Water rights issued under this section
36 shall be subject to review and modification by the commission.

1 (e) Alternative Water Supplies. In determining the issuance of water
2 rights, the commission shall consider the availability or lack of
3 availability of alternative water supplies.
4

5 SECTION 7. Arkansas Code § 15-22-911(f), concerning off-tract use of
6 water, is amended to read as follows:

7 (f) Off-tract Use of Water.

8 (1)(A) The place of use described in the water right is the only
9 realty on which the allocated water may be used, except as provided in ~~§ 15-~~
10 ~~22-905(5)~~ § 15-22-905(6).

11 (B) However, the commission, in times of emergency, may authorize the
12 use of the allocated water on realty other than that described in the water
13 right.
14

15 SECTION 8. Arkansas Code § 15-22-915 is amended to read as follows:
16 15-22-915. Metering of certain withdrawals.

17 (a) Any well constructed after September 30, 2001, to withdraw
18 groundwater from a sustaining aquifer shall be equipped with a properly
19 functioning water measuring or metering device acceptable to the Arkansas
20 Soil and Water Conservation Commission.

21 (b) Any well constructed within a critical groundwater area after
22 September 30, 2008, shall be equipped with a properly functioning water
23 measuring or metering device acceptable to the commission.

24 ~~(b)(c)~~ (c) After September 30, 2006, any well withdrawing groundwater from
25 a sustaining aquifer shall be equipped with a properly functioning water
26 measuring or metering device acceptable to the commission.

27 (d) After September 30, 2012, any well withdrawing groundwater within a
28 critical groundwater area shall be equipped with a properly functioning water
29 measuring device acceptable to the commission.

30 ~~(e)(e)~~ (e) Data gathered by the metering shall be used when completing the
31 annual water use reports as provided in § 15-22-302.
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33 /s/ Mahony
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