An Act

ENROLLED HOUSE
BILL NO. 2053

By: Hardin, Fetgatter, Kerbs, Archer, Lowe (Dick), Caldwell (Trey), Moore, Burns, Newton, Grego, Patzkowsky, and Dobrinski of the House

and

Howard, Woods, Bergstrom, and Pederson of the Senate

An Act relating to water and water rights; amending 82 O.S. 2021, Section 1020.9, which relates to applications for permits to take and use groundwater; allowing certain actions during appeals; requiring certain proof for injunctive relief; limiting injunctive relief; authorizing dismissal of certain appeals; requiring certain finding; authorizing sanctions; and declaring an emergency.

SUBJECT: Water and water rights

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 2021, Section 1020.9, is amended to read as follows:

Section 1020.9 A. 1. Before the Oklahoma Water Resources Board takes final action on an application, the Board shall determine from the evidence presented, from the hydrologic surveys or reports and from other relevant data available to the Board and applicant, whether:

a. the lands owned or leased by the applicant overlie a fresh groundwater basin or subbasin,

b. the use to which the applicant intends to put the water is a beneficial use,

c. waste as specified by Section 1020.15 of this title will occur, and

d. the proposed use is likely to degrade or interfere with springs or streams emanating in whole or in part from water originating from a sensitive sole source groundwater basin or subbasin as defined in Section ~~1~~ 1020.9A of this ~~act~~ title.

2. The Board shall approve the application by issuing a regular permit, if the Board finds that:

a. the lands owned or leased by the applicant overlie the fresh groundwater basin or subbasin,

b. the use to which the applicant intends to put the water is a beneficial use,

c. waste specified by Section 1020.15 of this title will not occur. When determining whether waste will occur pursuant to this subparagraph, if the activity for which the applicant intends to use the water is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental Quality or the State Department of Agriculture, Food, and Forestry the Board shall be precluded from making a determination whether waste by pollution pursuant to paragraph 7 of subsection A of Section 1020.15 of this title will occur as a result of such activity. Each groundwater protection agency, as such term is defined by Section 1-1-201 of Title 27A of the Oklahoma Statutes, shall be responsible for developing and enforcing groundwater protection practices to prevent groundwater contamination from activities within their respective jurisdictional areas of environmental responsibility, and

d. the proposed use is not likely to degrade or interfere with springs or streams emanating in whole or in part from water originating from a sensitive sole source groundwater basin as defined in Section ~~1~~ 1020.9A of this ~~act~~ title.

B. Except as otherwise provided in subsection C of this section, a regular permit shall allocate to the applicant the proportionate part of the maximum annual yield of the basin or subbasin. The proportionate part shall be that percentage of the total annual yield of the basin or subbasin, previously determined to be the maximum annual yield as provided in Section 1020.5 of this title, which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which the applicant owns or leases and which is dedicated to the application.

C. If the lands dedicated to the application overlie two or more groundwater basins and both basins have had maximum annual yields determined, the amount to be authorized by the regular permit shall be calculated on the basin having the greatest maximum annual yield. If the lands dedicated to the application overlie two or more groundwater basins or subbasins and the maximum annual yield has been determined for at least one but not all the basins or subbasins, a temporary permit may be issued to the applicant if the applicant demonstrates by substantial competent evidence that the water to be withdrawn by the temporary permit will not be taken from a basin or subbasin for which the maximum annual yield has been determined. If the land overlies two or more groundwater basins or subbasins and the maximum annual yield has not been determined for any of the basins or subbasins, more than one temporary permit may be issued for the land if the applicant demonstrates by substantial competent evidence from which basin the water will be withdrawn for each of the permits.

D. The permit shall specify the location of the permitted well or wells and other terms and conditions as specified by the Board, including, but not limited to, the rate of withdrawal, the level of perforating and the level of sealing the well. A regular permit shall not be granted for less than the remaining life of the basin or subbasin as previously determined by the Board.

E. Except for applications for use of groundwater from sole source aquifers, if the Board's final action to approve an application is appealed, the applicant may take and use groundwater as is set forth under the permit while any appeals are pending with

the Board, in district court, or in the appellate courts. For a court to enjoin the approved use of groundwater pending appeal, appellants must show a high likelihood of success on the merits, that there is clear and convincing evidence that they will suffer irreparable harm, that the balance of the equities tips significantly in their favor, and that the order is clearly in the public interest. Any preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. For sole source aquifers, if the Board's final action to approve an application is appealed, a district court may enjoin the approved use of groundwater pending appeal by appellants showing any one of the following:

1. Appellants must show a high likelihood of success on the merit;

2. That there is clear and convincing evidence that they will suffer irreparable harm;

3. That the balance of the equities tips significantly in their favor; or

4. That the order is clearly in the public interest.

F. If all statutory requirements for groundwater permits are fulfilled and the Board approves the application, appeals seeking to prohibit the use of water based solely on the industry or entity applying to use the water are considered to have no genuine issue as to any material fact and shall be dismissed pursuant to Section 2056 of Title 12 of the Oklahoma Statutes. Further, if such claims are found to be frivolous, the court may impose sanctions against the appellant, the appellant's attorney, or both including requiring the appellant or the appellant's attorney to reimburse the appellee for reasonable costs and expenses such as reasonable attorney fees and other expenses incurred as a result of the appeal.

SECTION 2. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 22nd day of May, 2023.

Presiding Officer of the House
of Representatives

Passed the Senate the 25th day of May, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th

day of May, 20 23, at 10:34 o'clock A. M.

By: Sumer Curry

Approved by the Governor of the State of Oklahoma this 7th

day of June, 20 23, at 3:21 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 7th

day of June, 20 23, at 4:35 o'clock P. M.

By: Brian Bingman