

Arkansas Water Plan 2014 Update

Appendix A Arkansas Groundwater Protection and Management Act

Arkansas Groundwater Protection and Management Act

15-22-901. Title.

This subchapter shall be known as the "Arkansas Groundwater Protection and Management Act".

HISTORY: Acts 1991, No. 154, § 1; 1991, No. 342, § 1.

15-22-902. Purpose.

The State of Arkansas has an abundance of good quality groundwater. In some areas of the state, this water is being mined such that in the future there may not be adequate supplies of good quality groundwater to meet our needs. In order to protect groundwater for the future, it is necessary to reduce groundwater use. It is most desirable that these reductions come from conservation or use of surface water, but in critical groundwater areas it may become necessary to limit groundwater withdrawals through the use of water rights. Should the regulatory provisions be implemented in the future, it is most desirable that day-to-day water management be administered by local districts, and every effort shall be made by the Arkansas Natural Resources Commission to delegate water management powers to qualified local districts. All regulatory powers shall apply only in critical groundwater areas. Programs for water use reporting, education and information, water conservation cost-sharing, and the registration fees shall be administered statewide.

HISTORY: Acts 1991, No. 154, § 2; 1991, No. 342, § 2.

15-22-903. Definitions.

As used in this subchapter:

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

(2) "Aquifer" means a permeable, water-bearing stratum of rock, sand, or gravel;

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

(4) "Commission" means the Arkansas Natural Resources Commission created under § 15-20-201;

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Acts 1991, No. 154, § 3; 1991, No. 342, § 3; 2001, No. 1426, § 1.

15-22-904. Powers of the commission.

The Arkansas Natural Resources Commission shall have all powers necessary to effectuate this subchapter, including the power to:

(1) Promulgate rules and regulations for groundwater classification and aquifer use, well spacing, issuance of groundwater rights within critical groundwater areas, and assessment of fees;

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

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

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

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

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

(7) Delegate any and all powers under this subchapter to the Executive Director of the Arkansas Natural Resources Commission or his or her designee;

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

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

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

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

HISTORY: Acts 1991, No. 154, § 11; 1991, No. 342, § 11.

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

The following provisions shall limit the Arkansas Natural Resources Commission's powers under this subchapter:

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

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

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

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

(ii) The implementation of a water conservation plan employing generally accepted water conservation practices approved by the commission.

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

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

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

(5) Replacement Wells: (A) (i) The owner of an existing well may construct a replacement well after abandoning the existing well.

(ii) To transfer a water right to a replacement well the owner need only submit to the commission notice of construction of a replacement well stating the location and ownership of the original and replacement wells and other relevant information required by the commission.

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

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

HISTORY: Acts 1991, No. 154, § 6; 1991, No. 342, § 6; 2001, No. 1426, §§ 2, 3.

15-22-906. Groundwater protection program.

(a) In order to protect the groundwater of the state, the Arkansas Natural Resources Commission shall develop a comprehensive groundwater protection program.

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

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

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

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

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

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

HISTORY: Acts 1991, No. 154, § 4; 1991, No. 342, § 4; 1999, No. 1164, § 132.

15-22-907. Water conservation education and information program.

(a) The Arkansas Natural Resources Commission or its designee shall develop and implement an education and information program to encourage water conservation by increasing the public's awareness of the need for and techniques available for conservation.

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

- (1) Technology transfer;
- (2) Training;
- (3) Technical assistance;
- (4) Research; and
- (5) Demonstration projects.

HISTORY: Acts 1991, No. 154, § 12; 1991, No. 342, § 12.

15-22-908. Designation of critical areas.

(a) Before designation of critical groundwater areas, the Arkansas Natural Resources Commission shall describe the proposed action, the reasons therefore, and the recommended boundaries.

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

HISTORY: Acts 1991, No. 154, § 5; 1991, No. 342, § 5.

15-22-909. Groundwater rights -- Initiation of regulatory authority within critical areas.

(a) (1) When the Arkansas Natural Resources Commission determines such action to be necessary within a critical area, it will declare that water rights are required for water withdrawal.

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

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

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

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

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

HISTORY: Acts 1991, No. 154, § 7; 1991, No. 342, § 7; 2001, No. 1426, § 7.

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

(a) Grandfathering Existing Wells.

(1) (A) Within one (1) year of initiation of the regulatory authority as provided under § 15-22-909, the Arkansas Natural Resources Commission, upon application, shall issue to an applicant within the critical water use area a water right for existing wells equal to the average quantity of water withdrawn for beneficial use over the past three (3) water years.

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

(2) For new wells constructed during the first year of initiation of the regulatory authority as provided under § 15-22-909, the commission, upon application, shall issue to an applicant within the critical water use area a water right equal to the quantity of water necessary for beneficial use.

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

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

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

(b) New Groundwater Rights Applications. (1) To obtain a water right, application must be made in a form satisfactory to the commission.

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

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

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

(A) Grant the application;

(B) Deny the application; or

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

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

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

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

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

HISTORY: Acts 1991, No. 154, §§ 8, 9; 1991, No. 342, §§ 8, 9; 2001, No. 1426, §§ 4, 5.

15-22-911. Groundwater rights -- General provisions.

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

(b) Duration. (1) Water rights shall be limited to such period of time as designated by the Arkansas Natural Resources Commission.

(2) In determining that period of time, the commission shall give consideration to the time required to reasonably amortize the investments made by the water user for the use of water, as well as the cost and useful life of the facility.

(c) Limitation on Quantity. In the water right, the commission may limit annual withdrawals.

(d) Precedence. (1) In the event that two (2) or more competing applications specifying the same priority are made, preference shall be given to a renewal application over an initial application.

(2) On all renewal applications, consideration shall be given to reasonable beneficial use.

(e) Cancellation. (1) (A) A water right may be cancelled if water is used for a purpose other than that for which the water right was issued.

(B) A water user may apply for and may be granted an appropriate change in the use of the water.

(2) A water right may be cancelled for nonuse or failure to put the water to a reasonable beneficial use within a reasonable period of time following the issuance of the water right if the nonuse is for a reason other than implementation of conservation measures, crop rotation, conversion to surface water sources, or climatic conditions.

(3) A water right may be cancelled for failure to report water use for two (2) consecutive years under § 15-22-302 or failure to pay the fee as set out in § 15-22-913 for two (2) consecutive years.

(f) Off-tract Use of Water. (1) (A) The place of use described in the water right is the only realty on which the allocated water may be used, except as provided in § 15-22-905(5).

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

(2) A water right recipient acquiring or leasing additional realty, contiguous or non-contiguous, upon application shall be entitled to an amended water right so as to encompass that realty.

(g) Water Rights Attach to and Run with the Land. A water right may not be conveyed or otherwise marketed or transferred separate from the realty described in the water right.

(h) Automatically Transferred. Water rights shall be an incident of surface ownership of the realty and, upon notice to the commission, shall be transferred to the new landowner.

HISTORY: Acts 1991, No. 154, § 10; 1991, No. 342, § 10.

15-22-912. Appeals.

Any person aggrieved by decisions and actions under this subchapter by the Arkansas Natural Resources Commission may appeal pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 1991, No. 154, § 15; 1991, No. 342, § 15.

15-22-913. Fees.

(a) The Arkansas Natural Resources Commission shall assess annual fees for:

(1) The withdrawal of surface water in the amount of ten dollars (\$10.00) per registered withdrawal point; and

(2) The withdrawal of groundwater in the amount of ten dollars (\$10.00) per registered well.

(b) The fee shall be payable at the time of water use reporting pursuant to §§ 15-22-302 and 15-22-215.

HISTORY: Acts 1991, No. 154, § 13; 1991, No. 342, § 13.

15-22-914. Disposition of earnings and fees.

Fees, penalties, and other funds collected under this subchapter shall be deposited in the Arkansas Water Development Fund established by § 15-22-507. Two-thirds (2/3) of such funds deposited shall be used for an education and information program and cost sharing for water conservation and development. The remaining one-third (1/3) may be used for the administration of this subchapter, and the Arkansas Natural Resources Commission may transfer those funds to the districts delegated authority under this subchapter as it deems necessary.

HISTORY: Acts 1991, No. 154, § 14; 1991, No. 342, § 14.

15-22-915. Metering of certain withdrawals.

(a) Any well constructed after September 30, 2001, to withdraw groundwater from a sustaining aquifer shall be equipped with a properly functioning water measuring or metering device acceptable to the Arkansas Natural Resources Commission.

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

(c) Data gathered by the metering shall be used when completing the annual water use reports as provided in § 15-22-302.

HISTORY: Acts 2001, No. 1426, § 6.