

ARKANSAS NATURAL RESOURCES COMMISSION

**RULES FOR THE PROTECTION AND MANAGEMENT OF GROUND WATER
(2005)**

TITLE IV

TABLE OF CONTENTS

<u>SUBTITLE</u>	<u>PAGE</u>
I. GENERAL	
401.1. PURPOSE	1
401.2. ENABLING AND PERTINENT LEGISLATION	1
401.3. DEFINITIONS	1
401.4. POWERS OF THE COMMISSION	2
II. GROUND WATER USE REGISTRATION	
402.1. REQUIREMENT TO REGISTER	3
402.2. EXEMPTIONS	3
402.3. REPORT CONTENT	3
402.4. REPORT NO CHANGE IN WATER USE OR NO USE OF WATER	4
402.5. REVIEW OF FORM	4
402.6. FAILURE TO REGISTER	4
402.7. FEES	4
402.8. PENALTIES	4
402.9. APPEALS	5
III. CRITICAL GROUND WATER AREAS	
403.1. DESIGNATION	5
403.2. INITIATION OF REGULATION	6
IV. ISSUANCE OF GROUND WATER RIGHTS	
404.1. AUTHORITY	6
404.2. REGULATION	6
404.3. GRANDFATHERING EXISTING WELLS	7
404.4. NEW GROUND WATER RIGHTS APPLICATION	7
404.5. EXCEPTIONS	8
404.6. CANCELLATION	9
404.7. LIMITATIONS	9
V. COMPREHENSIVE GROUND WATER PROTECTION PROGRAM	
405.1. ASSESSMENT AND MONITORING	10
405.2. CLASSIFICATION OF GROUND WATER (RESERVED)	10

405.3. ESTABLISHMENT OF CRITERIA AND STANDARDS (RESERVED)	10
VI. ESTABLISHMENT OF AN EDUCATION/INFORMATION PROGRAM FOR WATER CONSERVATION 406.1. COMPONENTS	10
VI. METERING OF CERTAIN WITHDRAWALS 407.1 METERING	11

RULES FOR THE PROTECTION AND MANAGEMENT OF GROUND WATER

TITLE IV

SUBTITLE I. GENERAL

Section 401.1. PURPOSE.

The purpose of these rules is to establish a comprehensive ground water protection program that encourages the conservation of ground water while protecting the beneficial use of the aquifer for future generations.

Section 401.2. ENABLING AND PERTINENT LEGISLATION.

- A. Ark. Code Ann. §15-20-201 et seq., Arkansas Natural Resources Commission.
- B. Ark. Code Ann. §15-22-201 et seq., Allocation and Use, Generally.
- C. Ark. Code Ann. §15-22-301 et seq., Determination of Water Use Requirements.
- D. Ark. Code Ann. §15-22-501 et seq., Water Development Projects Generally.
- E. Ark. Code Ann. §15-22-901 et seq., Arkansas Ground Water Protection and Management Act.

Section 401.3. DEFINITIONS.

The following definitions shall apply to all parts of these rules:

- A. Abandoned Water Well: A well whose use has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical.
- B. Administrative Procedures Act: The Arkansas Administrative Procedures Act, Ark. Code Ann. §25-15-201 et seq.
- C. Aquifer: A permeable, water-bearing stratum of rock, sand, or gravel.
- D. Arkansas Water Plan: The comprehensive program developed by the Commission for the orderly development and management of the State's water and related land resources.
- E. Beneficial Use: 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.
- F. Commission: The Arkansas Natural Resources Commission as defined in Ark. Code Ann. §15-20-201 et seq.
- G. Conservation District: A district created under the Conservation Districts Law, Ark. Code Ann. §14-125-101, et seq.
- H. Critical Ground Water Area: An area judged by the Commission to have significant ground water depletion and/or degradation, as defined in Ark. Code Ann. §15-22-503.
- I. Director: The Executive Director of the Arkansas Natural Resources Commission, as defined in Ark. Code Ann. §15-20-201 et seq.
- J. District: Conservation district or regional water district.
- K. Domestic Use: 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.

- L. Formation: A distinctive, mappable, layer or series of layers of rock, clay, silt, sand, or gravel.
- M. Ground Water: Water beneath the surface of the ground.
- N. Person: Any natural person, partnership, firm, association, cooperative, municipality, county, public or private corporation, and any federal, state, or local governmental agency.
- O. Regional Water District: A regional water distribution district created under the Regional Water Distribution District Act, Ark. Code Ann. §14-116-101, et seq.
- P. Safe Yield of Ground Water: The amount of water that can be withdrawn from an aquifer on a continuing basis without causing serious depletion effects.
- Q. Sustaining Aquifer: any aquifer, excluding the state's alluvial aquifers, which is used as a significant source for water supply including, but not limited to the Cockfield, Sparta, Memphis, Cane River, Cariszzo, Wilcox, Nacatoch, Roubidoux, and Gunter aquifers.
- R. Water Right: The authority or permission issued by the Commission under this subchapter to use ground water within a critical ground water area.
- S. Water Year: A twelve (12) month period beginning on October 1 of any year and ending the next September 30.
- T. Well: Any hole dug, drilled, or otherwise constructed in the ground, for the purpose of withdrawing ground water. For the purpose of these Rules, a well also must have a potential flow rate of fifty thousand gallons per day (50,000 gpd) or greater.

Section 401.4. POWERS OF THE COMMISSION.

The Commission shall have all powers necessary to enforce the Arkansas Ground Water Protection and Management Act, Ark. Code Ann. §15-22-901 et seq., and to accomplish its purpose of establishing a comprehensive ground water protection program to conserve ground water and to protect water quality. These include the following powers:

- A. Promulgation of Rules: The Commission is authorized to adopt rules and regulations for ground water classification and aquifer use, well spacing, issuance of ground water rights within critical ground water areas, and assessment of fees.
- B. Delegation of Authority:
 - 1. The Commission may delegate any and all powers to the Executive Director or his designee(s).
 - 2. The Commission may delegate powers to qualified districts within a critical ground water area.
- C. Implementation and Enforcement: To implement and enforce this Act, the Commission is authorized to:
 - 1. Provide technical assistance and establish guidelines for the designated districts.
 - 2. Resolve disputes between, approve regulations of, and hear appeals from decisions of designated districts.
 - 3. Enter upon property to conduct studies or investigations, or to enforce this Act
 - 4. Issue orders to implement or enforce any of the provisions of this legislation in times of an emergency.

5. Issue subpoenas to witnesses to require attendance and testimony, and/or production of documents in any proceeding before the Commission.
6. Administer oaths to witnesses in any hearing, investigation, or proceeding before the Commission.
7. Provide qualified persons with cost-share assistance from the Arkansas Water Development Fund for up to 40% of the cost of installation of approved conservation and development practices.

SUBTITLE II. GROUND WATER USE REGISTRATION

Section 402.1. REQUIREMENT TO REGISTER.

- A. All persons who withdraw ground water, except as hereinafter exempted, shall report the withdrawal no later than March 1 for the prior water year.
- B. The reports shall be made on forms provided by the Commission and shall be made to the Commission.

Section 402.2. EXEMPTIONS.

The following withdrawals are exempt from the requirement of reporting:

- A. Water withdrawn from individual household wells used exclusively for domestic use.
- B. Water withdrawn from wells having a maximum potential flow rate of less than fifty thousand gallons per day.

Section 402.3. REPORT CONTENT.

The reports shall contain information requested on the attached (or revised) forms:

- A. For water used for agriculture:
 1. Number and size of wells.
 2. Name, address and phone number of water user.
 3. Crops, livestock, poultry, or fish type grown.
 4. Acreage:
 - (a) Irrigated.
 - (b) Aquacultured.
 5. Quantity of water used.
 6. Location:
 - (a) Of the wells, (including real estate tax bill Parcel Number).
 - (b) Of the water use.
- B. For water used for other than agriculture:
 1. Number, size, and location of wells.
 2. Name, address and phone number of water user.
 3. Use made of the water.
 4. Quantity of water used.
- C. Other information deemed necessary by the Commission.
- D. Name of water well contractor for new or replacement well.

Section 402.4. REPORT NO CHANGE IN WATER USE OR
NO USE OF WATER.

- A. After the initial registration report, persons whose water use remains unchanged from the prior water year need only report "no change" in water use.
- B. In the event that no water is withdrawn during any water year and the person has registered withdrawal in prior years, the person must submit a registration form showing no withdrawal to maintain his priority position.

Section 402.5. REVIEW OF FORM.

The Director shall annually review the form used in obtaining the information required in registering withdrawals of ground water and shall alter or amend such form as necessary to comply with laws of the State of Arkansas and rules of the Commission.

Section 402.6. FAILURE TO REGISTER.

A. Any person who fails to timely register ground water withdrawals as required by law and these rules shall, in addition to registration fees, pay reporting fees for late registration as follows:

- | | |
|---|----------------|
| 1. Failure to register by March 1: | Written notice |
| 2. Failure to register by April 1: | \$25.00 fee |
| 3. Failure to register by June 30: | \$50.00 fee |
| 4. Failure to register by September 30: | \$100.00 fee |

B. Conservation districts shall not accept late registration without payment of all applicable fees.

C. Late registration penalties are to be assessed per registrant, not per well.

D. The Commission, by its Executive Director, may assess fees as provided by Ark. Code Ann. § 15-22-302 if it is determined that a registrant continues to fail to register following September 30.

E. The maximum annual penalty per registrant is \$500 whether for ground or surface water use or both.

F. The Commission will not impose monetary penalties without proof that the late registrant has received notice of the registration requirement.

G. Pursuant to Ark. Code Ann. § 15-22-911(e)(3), a water right may be cancelled for failure to report water use for two (2) consecutive years under Ark. Code Ann. § 15-22-302 or failure to pay the fee as set out in Ark. Code Ann. § 15-22-913 for two (2) consecutive years.

Section 402.7. FEES.

A. Assessment: An annual fee of ten dollars (\$10.00) will be assessed per registered well, payable at the time of water use reporting, no later than March 1st following the reporting water year. A delinquency in paying annual fees will constitute failure to register for the prior water year and will be subject to penalties of Section 402.6.

B. Collection:

- 1. The Commission may delegate the responsibility for collecting annual fees to the Executive Director or his designee(s).

2. The Commission may delegate the responsibility for collecting annual fees to qualified petitioning entities.
- C. Disposition: All monies collected from fees and penalties will be deposited in the Arkansas Water Development Fund to be used pursuant to Ark. Code Ann. §15-20-207.
1. Two-thirds of such funds shall be used for an information/education program and cost-share assistance for water conservation and development, as provided in Section 401.4C(7).
 2. One-third of such funds may be used for the administration of the Commission's water management programs.

Section 402.8. PENALTIES.

At the direction of the Commission, the Attorney General shall bring suit against any person violating any provision of these regulations pursuant to Ark. Code Ann. §15-22-204.

Section 402.9. APPEALS.

Any person aggrieved by decisions and actions of the Commission under this legislation may appeal pursuant to the Administrative Procedures Act.

SUBTITLE III. CRITICAL GROUND WATER AREAS

Section 403.1. DESIGNATION.

Using all pertinent data, an analysis will be made to determine those areas that have developed, or trends indicate they may develop, significant ground water depletion or degradation. Designating an area indicates that limitation of withdrawals through the use of water rights may be necessary in order to maximize the present and continued beneficial use of the area's remaining ground water resources.

- A. Indicators to be used in an analysis leading to a recommendation of a critical ground water area will consist of, but not be restricted to, the following parameters:
1. Water Quantity:
 - (a) For water table conditions (unconfined aquifer): Average declines of one (1) foot or more have occurred annually for a minimum of five (5) years and/or water levels have been reduced such that fifty percent (50%) or less of the formation is saturated.
 - (b) For artesian conditions (confined aquifer): Average declines of one (1) foot or more have occurred annually for a minimum of five (5) years and/or the potentiometric surface is at or below the top of the formation.
 2. Water Quality: Ground water quality has been degraded or trends indicate probable future degradation that would render the water unusable for the beneficial uses of the aquifer.
 3. Projections/Hydrologic Boundaries: Consideration will be given to a safe yield of ground water pumping strategy for the aquifer including the utilization of a ground-water flow model, the natural hydrologic boundaries of the aquifer, and projected water-level declines.
- B. A report shall be prepared based on the indicators in Section 403.1 A as well as specific geologic and hydrologic characteristics of the area judged by Commission staff to

warrant inclusion. The report shall contain a map showing recommended boundaries and the explanation of proposed action.

C. A public hearing will then be conducted within each county of the proposed area in accordance with the Administrative Procedure Act.

D. After consideration of all evidence, public comments, and recommendations of Commission staff, the Commission may issue an order designating the critical ground water areas and the boundaries thereof.

Section 403.2. INITIATION OF REGULATION.

Regulation in a designated critical ground water area will be initiated and monitored through the following procedures:

A. When an aquifer assessment does not indicate satisfactory progress, Commission staff will prepare a report detailing the conditions and recommend that regulation be implemented.

B. Before initiation of regulation of the area, the Commission shall describe the proposed action, the reasons therefore, and the recommended boundaries, if they differ from the previous critical area designation.

C. Registered users will be notified of the Commission's intent to implement regulation and intent to issue them a water right for allocation of ground water beginning on a specified date.

D. After notice is given, a public hearing will be conducted within each county of the area in accordance with the Administrative Procedures Act.

E. After consideration of all evidence, public comments, and recommendations of Commission staff, the Commission may issue an order implementing regulation of withdrawals within designated critical ground water areas.

F. After an order by the Commission implementing regulation, no person shall withdraw ground water from an existing well or construct a new well within the critical ground water area without first obtaining a water right.

SUBTITLE IV. ISSUANCE OF GROUND WATER RIGHTS

Section 404.1. AUTHORITY.

The Commission is authorized, by Ark. Code Ann. §15-22-901, to issue ground water rights for beneficial uses, giving preference first to sustaining life, then to maintaining health, and finally to increasing wealth.

Section 404.2. REGULATION.

After the Commission determines that regulation is necessary within a critical area, and after it declares that water rights are required for water withdrawal, the following procedures will be observed.

A. Registered users of ground water within the critical ground water area will be individually evaluated for issuance of a water right, unless exempted from regulation under Section 404.5.

- B. The Commission will issue water rights to registered users after review, considering exemption status or other options under these rules and regulations. Reporting and monitoring procedures will be defined and appropriate forms provided.
- C. A periodic review of all wells within the designated critical ground water area will be conducted by the Commission to determine reporting compliance. Any person using ground water without having registered, or any person deliberately reporting incorrect usage, will be charged as provided in Sections 402.6-402.8.
- D. All determinations for the current water year shall have been made by March 1 of the preceding water year.

Section 404.3. GRANDFATHERING EXISTING WELLS.

- A. Within one (1) year of initiation of the regulatory authority, the Commission shall, upon application, 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. 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 above.
- B. For new wells constructed during the first year of initiation of the regulatory authority as provided in Section 404.2, the Commission shall, upon application, issue to an applicant within the critical water use area, a water right equal to the quantity of water necessary for beneficial use.
- C. Failure to apply within this first year of initiation of regulation of authority shall create a conclusive presumption of abandonment of use.
- D. Water rights issued under Section 404.3 shall be exempt from the public notice requirements.

Section 404.4. NEW GROUND WATER RIGHTS APPLICATION.

- A. An application for a water right permit shall be on a form furnished by the Commission and shall be filed with the Commission. The applicant shall disclose:
 - 1. Name, address and phone number of water user.
 - 2. Number, location, and size of proposed wells, (including real estate tax bill Parcel Number).
 - 3. The quantity of water to be withdrawn for direct use.
 - 4. The quantity of water to be stored away from the point of withdrawal.
 - 5. The total amount of water to be withdrawn.
 - 6. The proposed time or times of withdrawal.
 - 7. The purpose for which the water is to be withdrawn.
 - (a) Water used for agriculture:
 - (1) Crops, livestock, poultry, or fish type grown.
 - (2) Acreage or number:
 - (i) Irrigated.
 - (ii) Aquacultured.
 - (iii) Livestock or poultry.
 - (3) Quantity of water to be used.
 - (4) Attached maps clearly depicting:

- (i) Accurate description of property with houses, impoundments, and lands irrigated.
 - (ii) Location of the wells.
 - (b) Water used for all other purposes:
 - (1) Proposed use made of the water.
 - (2) Proposed quantity of water to be used.
 - (3) Attached maps clearly depicting:
 - (i) Location of use.
 - (ii) Location of the wells, (including real estate tax bill Parcel Number).
- 8. The proposed conservation plan.
- 9. A description of the availability of alternative water supplies.
- B. Upon receipt of the application, the Commission shall publish a notice of application for water rights in a newspaper with statewide circulation.
- C. The Commission may, in considering an application for water rights:
 - 1. grant the application;
 - 2. deny the application; or
 - 3. grant the application subject to necessary reductions or conditions.
- D. 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.
- E. Water rights issued under this section shall be subject to review and modification by the Commission.

Section 404.5. EXCEPTIONS.

The following are exceptions to the Commission's powers in critical ground water areas:

- A. There will be no reduction or limitation of the withdrawal of ground water from existing wells in an alluvial aquifer for which a water right is grandfathered under the provisions of Section 404.3A 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 ground water from existing wells in a sustaining aquifer for which a water right is grandfathered under the provisions of Section 404.3 unless alternative surface supplies are available.
- C. There will be no reduction or limitation for a period of four (4) years of the withdrawal of ground water 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 Section 404.3.
- D. There will be no reduction or limitation of the withdrawal of ground water from wells for which a water right has been issued under Section 404.3 and for which the person holding the right can demonstrate:
 - 1. A reduction of twenty percent (20%) of his use of ground water 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

2. The implementation of a water conservation plan employing generally accepted water conservation practices approved by the Commission regardless of the date of implementation.
- E. There will be no regulation of the withdrawal of ground water from existing or proposed wells which have a maximum potential flow rate of less than fifty thousand gallons per day (50,000 gpd).
- F. There shall be no regulation of the withdrawals of ground water from individual household wells used exclusively for domestic use.
- G. Replacement wells:
1. The owner of an existing well may construct a replacement well after abandoning the existing well. 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;
 2. The original well must be converted to a nonregulated use or abandoned in the manner prescribed by the Arkansas Water Well Construction Commission under Section 15.2 Arkansas Water Well Construction Code Rules and Regulations (Revised July 1988);
- H. Marketers of bottled water and public water supply systems shall at no time be restricted in the place of use of ground water; and,
- I. New wells constructed during the first year of initiation of regulatory authority:
1. The Commission shall, upon application, issue to the applicant within the critical water use area, a water right equal to the quantity of water requested to be withdrawn for beneficial use.
 2. There will be no reduction or limitation for a period of four (4) years of the withdrawal of ground water from wells constructed during the first year following initiation of the regulatory authority as provided under Section 403.3 and for which a water right is issued under the provisions of Section 404.5G.

Section 404.6 CANCELLATION.

Water rights may be cancelled for the following reasons:

- A. If water is used for a purpose other than that for which the water right was issued. A water user may apply for and may be granted an appropriate change in the use of water.
- B. For non-use 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 non-use is for a reason other than implementation of conservation measures, crop rotation, conversion to surface water sources or climatic conditions.
- C. For failure to report water use for two (2) consecutive years under Ark. Code Ann. §15-22-302 or failure to pay the fee as set out in Section 402.7 for two (2) consecutive years.

Section 404.7 LIMITATIONS.

The Commission shall limit water rights in the following manner:

- A. Duration: In determining time limitations for water rights, the Commission shall consider the time required to amortize the water user's investment, as well as the cost and useful life of the facility.

- B. Quantity: The Commission may limit annual withdrawals.
- C. Precedence: In the event two (2) or more competing applications specifying the same priority are made, preference shall be given to a renewal application over an initial application. On all renewal applications, consideration shall be given to a reasonable beneficial use.
- D. Off-tract use of water: The allocated water may be used only on the described realty, except as provided in Section 404.5F, or as the Commission authorizes in times of emergency. Upon application, a water right recipient acquiring or leasing additional contiguous or non-contiguous realty shall be entitled to an amended water right so as to encompass such realty.
- E. Water rights 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.
- F. Automatic transferal: Water rights shall be an incident of surface ownership of the realty and shall, upon notice to the Commission, be transferred to the new owner.

SUBTITLE V. COMPREHENSIVE GROUND WATER PROTECTION PROGRAM

Section 405.1. ASSESSMENT AND MONITORING.

Critical Ground Water Area Assessment: After a critical ground water area has been designated by the Commission, a biennial assessment of the aquifer shall be made by the Commission staff to determine water quality trends and progress toward a safe yield condition of the aquifer.

Section 405.2. CLASSIFICATION OF GROUND WATER. [RESERVED]

Section 405.3. ESTABLISHMENT OF CRITERIA AND STANDARDS. **(RESERVED)**

SUBTITLE VI. ESTABLISHMENT OF AN EDUCATION/INFORMATION PROGRAM FOR WATER CONSERVATION.

The Commission is authorized to develop and implement an education/information program to encourage water conservation by increasing the public's awareness of the need for and techniques available for conservation.

Section 406.1. COMPONENTS.

The program shall include the following components as a minimum:

- A. Technology Transfer;
- B. Training;
- C. Technical Assistance;
- D. Research; and
- E. Demonstration Projects.

SUBTITLE VII. METERING OF CERTAIN WITHDRAWALS.

Section 407.1 METERING.

- A. Any well constructed after September 30, 2001, to withdraw ground water from a sustaining aquifer shall be equipped with a properly functioning water measuring or metering device acceptable to the Commission.
- B. After September 30, 2006, any well withdrawing ground water 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 device shall be used when completing annual water use reports.