

WILL FUTURE WATER POLICY BE MADE WITHOUT MUNICIPAL INPUT?

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One of the most important ingredients for municipal growth is a reliable water supply. An essential factor for a reliable supply is stable water rights. Stable rights depend on water law that is clear and unambiguous.

Our current water law has been in place for four decades. Several of its fundamental principles have come under attack in the past few years. This has primarily taken the form of moratoriums, but also appears in hearings and even rulings at the Oklahoma Water Resources Board (OWRB). In addition, while the State of Oklahoma is in the first year of a four-year planning process to develop a water plan, 40 bills were introduced in the 2007 Legislature to rewrite different parts of the water law.

Drought and doubt regarding the direction of water law have caused water to become highly emotional. Unlike the other major water users, municipalities have not been able to join together to establish a unified position.

Cities and towns have fought each other in the legislature and in the courts. The results have not been favorable to long-term municipal interests. For the future, if municipalities cannot come together - to at least agree on what we are against – then future water policy will be made without us.

Is There Enough Water? The past few years have seen various attempts to move Oklahoma water from its location of origin to population centers in Central Oklahoma and Texas. Arguments seem to focus on the shortage of water. However, is it factually correct that there is a shortage of water within the State?

If there is truly a water shortage, then why is anyone talking about moving the water? If there is no shortage, then why not utilize it where it is needed? The argument has been made that this is particularly true if Texas needs the water bad enough to pay a great deal of money for it. This money could be spent by the State in building water infrastructure such as reservoirs, low water dams and the like to benefit all Oklahoma water users in all parts of the state.

The on-going state water plan intends to quantify water levels. However, this plan is due in 2011. Given the pressure building in the Legislature to change water law, will this be too late?

OML is taking steps to uncover the facts. It has joined with representatives of other large water users to produce a report from current data on availability of supply and projected needs. The report is due by mid-December – in time for the 2008 legislative session.

The Vocabulary of Water. Like most multi-faceted issues, discussions about water can sound like conversations in a foreign language. However, these are terms that

Oklahoma city and town officials must understand in order to participate in the political and judicial debates on the road forward. So, take a deep breath and read on . . .

Groundwater Rights. Current law states that groundwater is the private property of the owner of the land above the groundwater. However, state law regulates the rate of usage of groundwater to two acre feet unless the underground aquifer has been mapped by OWRB. Many Oklahoma municipalities particularly in Western Oklahoma have purchased land in order to obtain reliable groundwater rights for public water supply.

Streamwater Rights. Unlike groundwater, the people of the State of Oklahoma own the streamwater. The use of streamwater under current law is regulated via permits at the OWRB. The priority of streamwater rights is the “First in Time, First in Right” system. The first permit holder has priority over the second, who has priority over the third and so forth.

Surface Water Rights. This is also called “diffuse surface water”. It is water occurring on the surface but outside the banks of a stream. It is unregulated and is the property of the owner of the surface.

Acre Feet is how large quantities of water are measured. For example, an Acre Foot is the amount of water it takes to cover an acre of land with one foot of water. So, if your municipality takes ten acre feet it means the amount of water it takes to cover ten acres to the depth of one foot.

Conjunctive Use is the idea that groundwater and streamwater are hydrologically linked. Studies show that groundwater flows underground and then can appear on the surface and become streamwater. Likewise, streamwater can absorb into the ground and become groundwater. In other words, each can feed the other at various places as the water runs its course through Oklahoma.

In-Stream Flows is a term heard more and more in water discussions. In-stream flows is the notion that water in a stream should be regulated so that a certain water level is maintained at all or at least specified times. If the water level drops so that it threatens the mandated in-stream flow level, then both *current* streamwater and groundwater users will be ordered to reduce their usage to maintain the required levels.

Priority has a long history in Oklahoma’s water law. This is the idea that types of uses should be ranked as a matter of law with the result that the use deemed more valuable or beneficial gets priority for access to supply. The priority use may be agricultural, municipal, recreational or industrial. Or, the priority may be streamwater over groundwater or visa-versa.

Rate of Recharge is a term used to describe the rate at which ground water is replenished due to increased water accumulation in the underground aquifer from sources such as rain. Ground water use that exceeds the rate of recharge will result in increasingly lower groundwater levels.

Major Water Users include municipal, agricultural, public utilities and industrial. Even though each municipality may not think of itself individually as a major user, public water supply is a force to be reckoned with. In 2007 OWRB reports that public water supply uses almost 60% of the permitted streamwater in the state (including lakes and

reservoirs) and 19 percent of groundwater. The total use for both streamwater and groundwater is 2.2 million acre feet – almost 37% of all water used in the State of Oklahoma!

SO, LET'S APPLY THE PRINCIPLES

Water Ideas that Won't Die. Several ideas have coalesced in water discussions over the past year to change existing water law. The goal appears to be to limit water use, both groundwater and stream water, by all users (municipal, agricultural, public utilities, industrial, etc). Elements of this change are:

1. Repeal or severely restrict the private ownership of groundwater and limit its use to a percentage of the rate of recharge;
2. Limit the use of streamwater by mandating in-stream flows;
3. Establish priorities: either in the form of uses, regions or conjunctive use.
4. Codify conjunctive use in favor of stream water.

If a Water Priority made it into Oklahoma Law would it Benefit Municipalities?

Perhaps. However, if any one of the principles above wins legislative (or judicial) approval, even with a municipal priority, cities and towns will be adversely affected. Also, we all need to understand that the legislature has already done the opposite!

In the 2003 Arbuckle-Simpson Moratorium on groundwater usage, only municipal use was forbidden. Under current law, if an agricultural or industrial use wanted the ground water, state law would not prohibit it.

What does it mean to give Streamwater a Priority over Groundwater? This is an element of conjunctive use. If pumping groundwater causes stream levels to drop, action must be taken to decrease water usage to regain the desired level. This means *existing* groundwater use would be ordered to be reduced or stopped in order to insure streamwater levels are maintained.

Is This Unheard Of? No. Streamwater has priority over groundwater right now in the Arbuckle-Simpson aquifer. This is due to 2003 legislation that established a moratorium on certain uses of groundwater from the aquifer. A part of the legislation that will survive the moratorium mandates that those seeking groundwater permits from a sensitive sole source groundwater basin or subbasin must show that additional groundwater usage will not adversely affect streamwater.

Wasn't There a Water Bill in the Last Ten Days of the 2007 Session? Yes. The bill was a surprise. It skipped the committee process, created a new moratorium on in-state and out-of-state use, went through three versions in a matter of days and once again split municipalities with some OML members in support and some in opposition.

There were several, sometimes conflicting, explanations of the originators' intentions. In other words, the bill, which did not pass, was somewhat mysterious.

Were There Some Important New Principles in the 2007 Bill? Yes. Two significant proposed additions to Oklahoma water law were:

1. Inserting a “public interest” standard in granting OWRB the authority to transfer a streamwater permit application. In other states where the “public interest” standard is followed, this additional discretionary authority to the state agency has slowed water development due to the protests of additional parties such as environmental or local recreational interests.

2. Placing water in a Trust with the State as the beneficiary from which the water would be sold, thus bypassing current law’s application process through OWRB. Instead of a statutorily defined method for obtaining a stream water permit, water supply would be allocated by contract containing conditions determined by a trust board. This is reminiscent of federal grant conditions. It would have brought a huge change in Oklahoma’s water law with unknown repercussions for future water development.

IS THERE A PLAN TO DEVELOP A MUNICIPAL CONCENSUS?

The Oklahoma Municipal Utility Providers (OMUP) created by OML a few years ago has been working for the past six months to study water law and lead the effort to develop a unified position. They expect to have a proposed position to be discussed in depth at the OML Water Summit on Friday, December 14, 2007.

OML wishes to thank the city and town officials who have given their time and expertise to this effort. Members of the 2007 OMUP Steering Committee are Owasso City Manager Rodney Ray (Chair), Woodward City Manager Alan Riffel (Vice-Chair), Okmulgee City Manager Bob Baxter, Hobart City Manager Wilt Brown, Marlow Administrator Janice Cain, Stillwater City Manager Dan Galloway, Elk City City Manager Guy Hylton, Norman Capital Project Engineer Bryan Mitchell, Nichols Hills City Manager David Poole, Poteau Mayor Jeff Shockley, Sayre City Manager Steve Tomberlin, Okmulgee City Attorney Mike Vanderburg, Lawton City Attorney John Vincent and Ada Councilman Darrell Nemecek.