Environmental Federation of Oklahoma
Past, Present, Future: Groundwater

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Oklahoma Law – Foundational Statutes

• Groundwater as a private property right
  – Okla. Stat. Tit. 60 § 60

• Groundwater as subject to state regulation
  – OWRB
    – Okla. Stat. Tit. 82 §§ 1020.1 to 1020.22
      • Permits, except domestic use well
      • Maximum annual yield; equal proportionate share

• Oklahoma groundwater law is unique.
Arbuckle-Simpson Aquifer

• Sensitive sole source groundwater basin
  – Okla. Stat. Tit. 82 § 1020.9A
  – “… will ensure that any permit … will not reduce the nature flow of water from springs or streams emanating from said basis or subbasin.”
  – EPS at 0.20 a/f/y – in litigation

• Settlement Agreement – Groundwater Clauses
  – Art. 5.3.2: Arbuckle-Simpson Groundwater Basin
  – Art. 7.6 and Art. 7.8: Future Development of Groundwater Use by tribal nations – applied for, evaluated, processed and administered according to state groundwater law
  – Art. 8.2.2: Groundwater Use by Allottees – domestic use at 5 a/f/y and otherwise subject to state groundwater law.
Aquifer Storage and Recovery

• Water Rights – surface water to groundwater
  – OK Stat. Tit. 82 § 1020.2A Taking and Use of water from aquifers – Permits (adopted Laws 2016)
    • OWRB and ODEQ have not yet adopted regulations
  – Beneficial Use and Unappropriated Water
  – Think like a surface dam – storage rights versus use rights
  – Ownership of the water in the aquifer
    • Identification
    • Accounting
    • Metering
  – Groundwater permits once stored in order to use
Aquifer Storage and Recovery

• Water Quality
  – OWRB – groundwater quality standards
  – ODEQ and EPA
    • Safe Drinking Water Act
    • Clean Water Act
    • Okla. Stat. Tit. 82 § 1020.2A(c)(3) – ODEQ water quality authorization
  – Jurisdictional Issues – cooperation and coordination
  – Public Perception and Information
    • Natural Recharge – rainwater and seepage
    • Incidental Recharge – irrigation; lakes, ponds
    • Intentional Recharge – municipal treated water; flood excess water
    • Think municipal recycling
  – Geochemistry issues – chemical interactions between injected water and the aquifer formation chemistry
Aquifer Storage and Recovery

- Pore Space
  - Oklahoma landowner by Okla. Stat. Tit. 60 § 6 (2011) and case law (injection wells) appears to own the pore spaces in water aquifers
  - As private property
    - Valuation for purchase issues
    - Valuation for condemnation issue
    - Recall also Okla. Stat. Tit. 60 § 60.
  - Fugitive substances – migration and trespass
References

