

Oklahoma Water Law



Types

Oklahoma water law covers three classes of water:

- Stream Water
- Groundwater
- And diffused surface water, sometimes called sheet water/flow because it runs over the surface of land before it flows into a definite stream.

Background

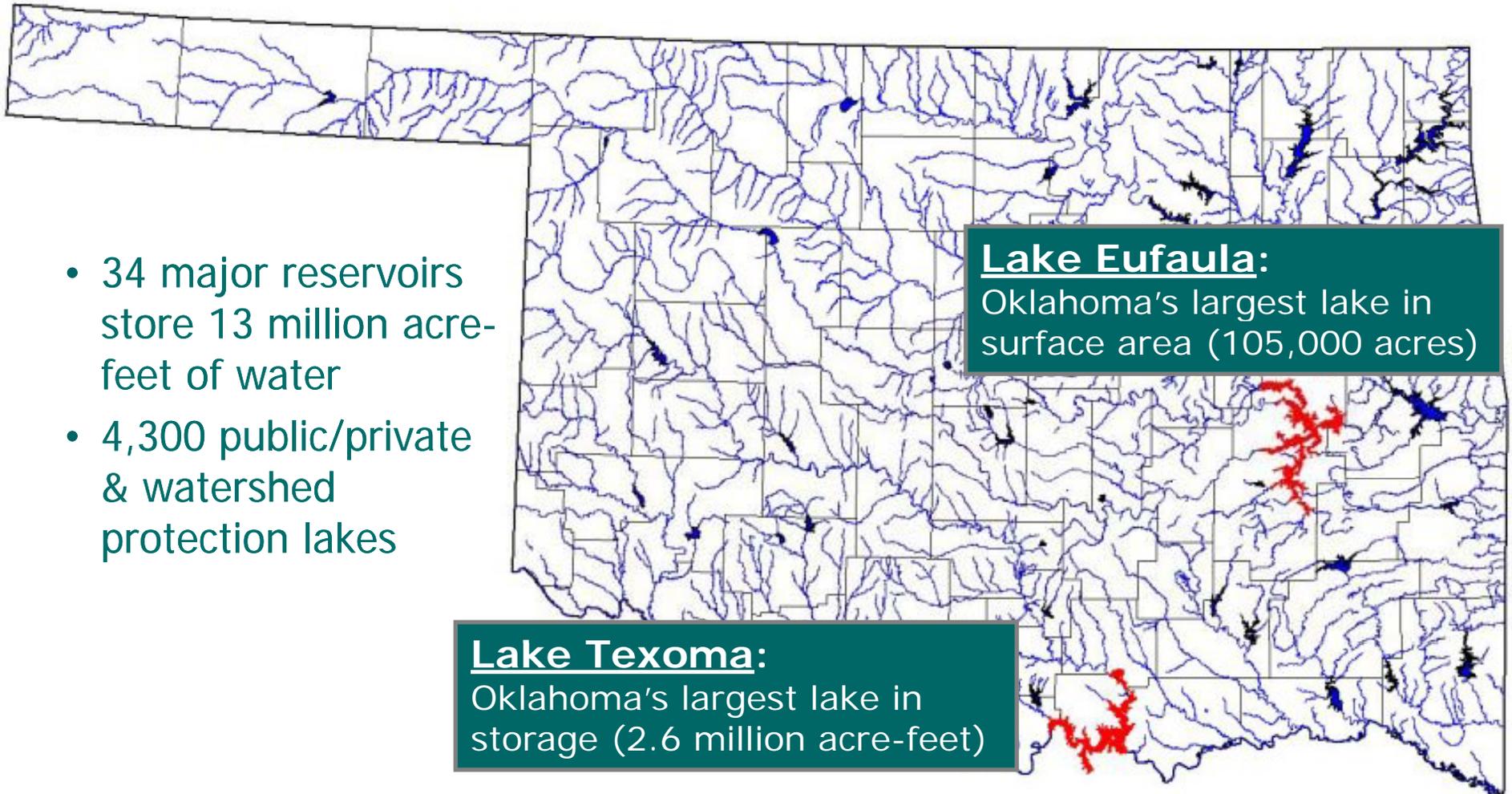
- Oklahoma has had laws on the books regarding who owns water since territorial days
- 1957 the Oklahoma Legislature created the Oklahoma Water Resources Board (OWRB) to manage the state's water resources
- OWRB issues permits for the use of stream and groundwater in Oklahoma

Question

- Do I need a water use permit from the OWRB?

If you intend to use water for any purpose other than domestic use, Oklahoma law requires that you obtain a permit from the OWRB

Oklahoma's Water Resources

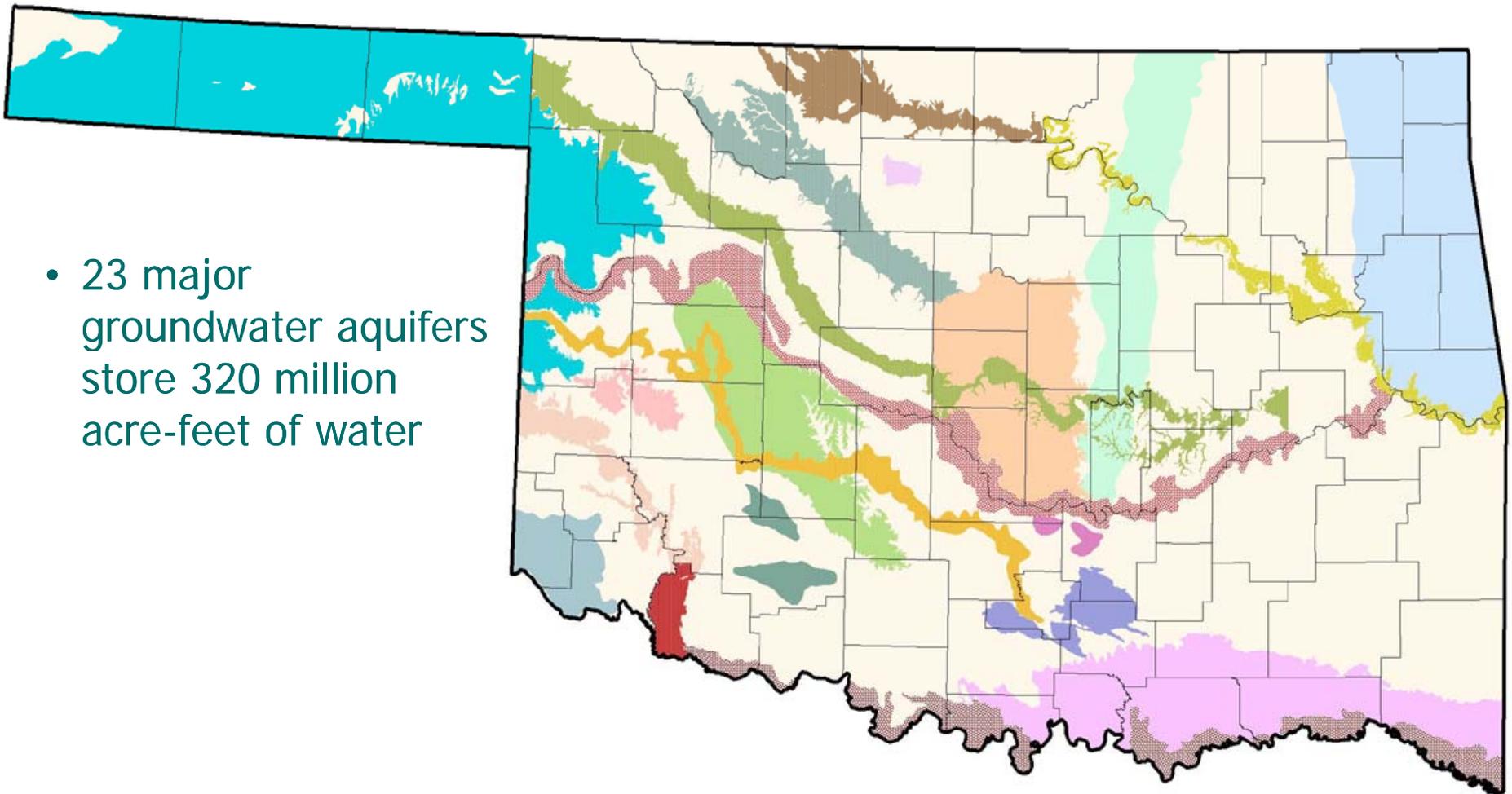


- 34 major reservoirs store 13 million acre-feet of water
- 4,300 public/private & watershed protection lakes

Lake Eufaula:
Oklahoma's largest lake in surface area (105,000 acres)

Lake Texoma:
Oklahoma's largest lake in storage (2.6 million acre-feet)

Oklahoma's Water Resources



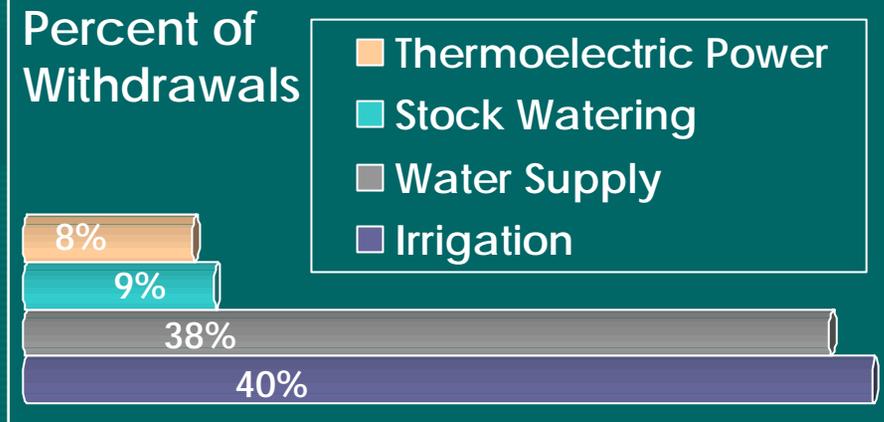
- 23 major groundwater aquifers store 320 million acre-feet of water

Oklahoma's Water Resources

- Annual Withdrawals (USGS, 2000):
 - State Total Water Use = 1,984,808 ac-ft
 - Surface Water = 1,118,298 ac-ft
 - Groundwater = 866,510 ac-ft
 - State Public Water Supply = 756,493 ac-ft
 - Texas County Irrigation (groundwater) = 283,998 ac-ft

• Irrigation accounts for 72% of groundwater withdrawals

• During a peak irrigation day (assuming 1,000 wells pumping at 1,000 gallons per minute), Texas County uses as much water as New York City during an average day



Stream Water Use Permitting in Oklahoma

- Stream water is water in a “definite stream”
- A “definite stream” is a watercourse in definite, natural channel, with defined beds and banks, originating from a definite source or sources of supply;
- A stream does not have to flow year round, if that is normal in that area. These types of streams are often called intermittent or irregular flow streams;
- Stream water includes water in rivers, creeks, lakes, and ponds.

Overview

Oklahoma Stream Water Law

Definitely a “definite stream”



Overview

Oklahoma Stream Water Law

- Under Oklahoma Law stream water is considered to be water that is owned by the public and is subject to appropriation by the OWRB
- An appropriation is a right to use water.
- If there is not enough water to satisfy all uses of the river, creek, lake or pond, the permit filing date determines who gets the water.
- “First in time, first in right”
 - first person to apply for the water right establishes a right superior to later appropriators
- Domestic use has highest priority
- Beneficial use is required to establish and maintain the right

Overview

Oklahoma Stream Water Law

Domestic Use of Water:

- For household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of 3 acres in area for the growing of gardens, orchards and lawns;
- For agriculture purposes;
- For fire protection;
- By non-household entities for drinking water purposes, restroom use, and the watering of lawns
- Not to exceed 5 acre-feet per year.

Overview

Oklahoma Stream Water Law

Five Points of Stream Water Law looked at by the OWRB for permitting purposes:

- unappropriated water is available in amount applied for
- there is a present or future need for the water
- the use is beneficial
- use will not interfere with domestic or existing uses
- use will not interfere with uses within stream system of origin

Overview

Oklahoma Stream Water Law

- Beneficial use is basis and limit
- Avoid speculation in Stream Water Rights (before permit is issued)
- OWRB Application pointers:
 - Specify use in application
 - Present or future need
 - Out of stream system use must protect reasonably foreseeable future use in stream system (50-year)

Overview

Oklahoma Stream Water Law

- Avoiding speculation (after permit issued):
 - Commence project (within 2 years);
 - Completion of works;
 - Forfeiture use-it-or-lose-it (7-year default):
 - requires full use of the annually authorized amount within 7 years of permit issuance and at least once in any continuous 7-year period thereafter;
 - Schedule of Use (exception for large projects) allows phased-in use over a specified period of time (lose if fail to keep schedule).

Stream Water Calculations

- Is there water available at the proposed diversion point in the amount needed?
 - Calculations based on average annual runoff over the watershed above proposed diversion point. (ArcInfo Watershed Model)
 - All appropriations, estimated domestic uses (6 acre-feet per 160 acres of drainage), and reservoir dependable yields are subtracted out.
- Will the proposed diversion interfere with downstream domestic uses and prior appropriations?
 - All downstream appropriations and domestic uses on the stream from the proposed diversion point to the next major tributary are subtracted off of the determined flow at the diversion point.
 - Additional drainage below the diversion point may be looked at if needed to determine if interference is likely to occur.

Stream Water Calculations

- Is there available water within the stream system?
 - Available water in the stream system in question is determined using the Estimated Available Water from either the “Hydrologic Investigation of the Arkansas River Basin”, January 1998, or the “Hydrologic Investigation of the Red River Basin”, July 1998 minus all appropriations in the stream system and reservoir dependable yields.

Water Use Permitting in Oklahoma

- “Groundwater” is defined as fresh water under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut banks of any definite stream
- Domestic/household uses exempt

Water Use Permitting in Oklahoma

- ~2,700 stream water use permits on file (OWRB):
 - appropriate 2.4 million ac-ft/year
- ~10,500 groundwater permits:
 - allocate 3.2 million ac-ft/year

	<u>Authorized</u>	<u>Annual Use</u>
Tulsa	= 324,778 ac-ft/yr	139,000 ac-ft
Oklahoma City	= 215,463 ac-ft/yr	136,000 ac-ft

Overview

Oklahoma Groundwater Law

- Prior to 1973, Oklahoma Groundwater Law regulated use of groundwater by the prior appropriation system, like use of stream water is regulated currently
- However in 1973 the law changed from “first in time, first in right” rule to an allocation system
- The allocation system ties ownership of groundwater to surface land ownership so that the amount of water allocated to each landowner is determined by the number of acres of land overlying the basin they own

Overview

Oklahoma Groundwater Law

Groundwater is considered private property that belongs to the overlying surface owner, although it is subject to reasonable regulation by the OWRB.

- Groundwater is private property like oil, gas, coal, and other minerals
- No priority in use (even for domestic users)
- However a permit is required for non-domestic use of the water, but domestic users are prohibited from wasting groundwater pumped from a well

Overview

Oklahoma Groundwater Law

If groundwater use is a private property right, why is it regulated?

- The State Legislature has determined that reasonable regulation of groundwater is required to preserve at least the minimum life of state groundwater supplies and ensure that landowners receive their designated share of water.

Overview

Oklahoma Groundwater Law

The amount of groundwater apportioned is based upon the amount of land owned, generally two acre-feet of water per acre of land:

- slightly more or less in basins where detailed hydrologic surveys have been conducted

Overview

Oklahoma Groundwater Law

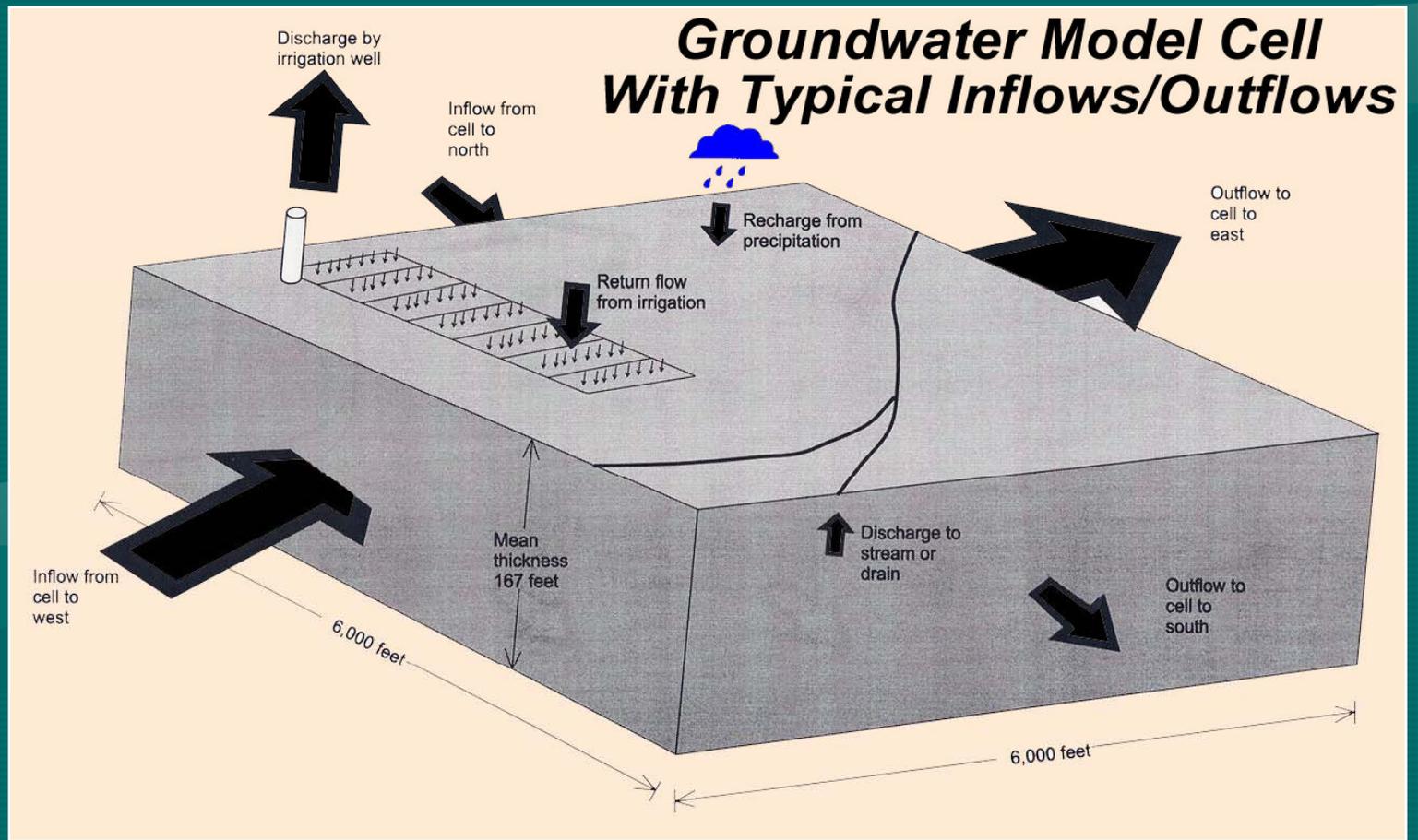
- The OWRB is required to determine that
 - The party requesting the permit owns or leases the land
 - The land lies atop a fresh groundwater basin or sub-basin
 - The use will be beneficial
 - Waste by either depletion or pollution will not occur

Groundwater Availability Determinations

- Groundwater:
 - Hydrologic Surveys
 - Major Basins:
 - Total Land Area Overlying the Basin
 - Amount of Water in Storage
 - Rate of Recharge and Discharge
 - Transmissivity of the Basin
 - Possibility of Pollution of the Basin from Natural Sources
 - Minor Basins:
 - Present and Reasonably Foreseeable Future Use In The Basin
 - Total Recharge and Total Discharge
 - Geographical Region
 - Other Factors (I.e., area of basin, transmissivity, storage)
 - Determination of Maximum Annual Yield

Groundwater Availability Determinations

- Groundwater Flow Models



Water Use

Permitting Requirements

- Applications required (except for domestic use);
 - The permit and application process is a little more involved for groundwater use than for surface water use
- Notice of application (hearing if protested):
 - mail notice (groundwater process – to landowners within one-quarter mile of the proposed well-site);
 - publish notice in county newspaper or downstream county newspaper;
- All applications are approved/denied by the OWRB 9-member Board

Types of Water Usages and Preferences

Beneficial uses include

- Agriculture
- Irrigation
- Water supply
- Hydroelectric power generation
- Municipal
- Industrial
- Navigation
- Recreation
- Propagation of fish and wildlife

Types of Water Usages and Preferences

- There are no preferences among uses in Oklahoma law, except that stream water appropriations cannot interfere with domestic uses
- Therefore in extreme drought, all beneficial uses may be affected, and even public water suppliers cannot demand that water use for other purposes cease

Frequently Asked Questions

- **Question - I plan to build a pond on my land. Do I need a permit to use water from it?**
 - Surface water in Oklahoma is considered to be publicly owned and available to anyone who can demonstrate a need to use the water for a beneficial purpose and can show a right to access the water's source. As the state's designated steward of Oklahoma's water resources, the OWRB regulates water use to preserve supplies for future users. Because you own the land upon which your pond is located, you have access to the water and are entitled to use it without a permit for domestic purposes, such as watering livestock up to the normal grazing capacity of your land. However, if you use the water for specified agricultural, municipal, industrial, or related purposes, Oklahoma law requires that you [obtain a permit](#) from the OWRB.

Frequently Asked Questions

- *Question - Is construction of my pond subject to any state, federal, or local requirements?*
 - Generally, if your impoundment is greater than 25 feet in height and impounds 15 acre-feet or more of water storage or is greater than 6 feet in height and impounds 50 acre-feet or more, you must submit to the OWRB plans and specifications related to construction of the new dam. (Plans and specs are also required for modification to existing structures under OWRB jurisdiction.) However, if the pond is primarily for agricultural use and designed by an agricultural agency, the OWRB only requires filing of a notice of intent for construction. The OWRB strongly suggests that you contact an agency dam safety official early in the construction planning process.

River and Stream Bed Issues

- As a general rule, the ownership of the river bed of a non-navigable river belongs to the owners of the shores on two sides, divided by an imaginary line drawn through the middle of the river. An owner of land through which a non-navigable river flows is the owner of the river bed. The ownership right, however, is subject to the rights of the public to use the river as a public highway and the owner does not have exclusive fishing rights in the river.
- Furthermore, a landowner cannot assert ownership in water forming a definite stream. The landowner's rights in the stream are purely riparian. Riparian owners, however, may act to prevent physical trespass upon their property by fishermen and boaters seeking access to the public waters.

Incidental Contact

- The public has the right to fish from boats in non-navigable streams, but does not have the right to fix or fasten trotlines in a privately owned streambed. This leaves open many questions, including whether incidental contact with the bottom is allowed, whether portage is allowed, etc.
- An Oklahoma court will have to decide this at some time in the future.
 - Support for the view that incidents of navigation are permissible in non-navigable streams also can be drawn from *case law*, where the court cited with approval *Elder v. Delcour*, a Missouri case which held that permissible uses included uses incident to travel on the river, such as floating, fishing and wading, for business and pleasure.
 - One obstacle to favorable findings on these unanswered questions is the “from boats” language. The use of this language may imply that touching the bottom amounts to trespass. Alternatively, it may just be an effort by *the court* to highlight the difference between fishing with a pole and fishing by anchoring a trotline. Incidental contact from fishing with a pole can be distinguished from anchoring trotlines, due to the ephemeral nature of the former. Additionally, it would not be reasonable to condone and encourage the use of non-navigable streams without allowing for incidental contact with the bottom.

Fencing in Definite Stream

- An Oklahoma Attorney General's Opinion states that Oklahoma law prohibits fencing across a definite stream

Other Issues

- Water and property right disputes regarding shared ownership of a pond or lake
 - Theoretically separate properties
 - Many factors would have to be considered

Presentation Goals

- Basic understanding of Oklahoma Water Law
- Water law and corresponding property law is complicated
- Avoid giving legal advice

The End

