

# Regulating Water Use in Oklahoma

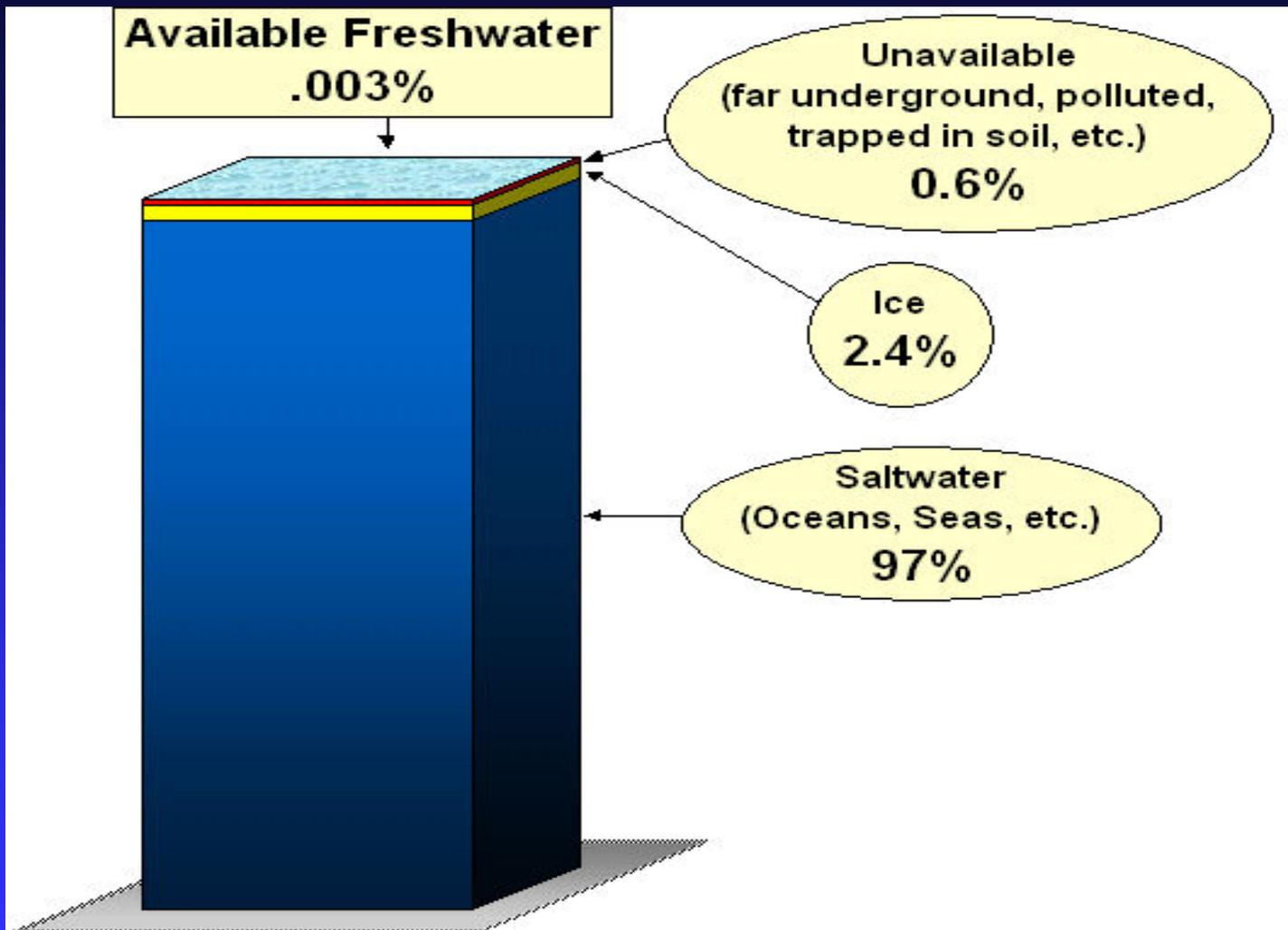


**Basic Oklahoma Water Law**  
**Oklahoma City, Oklahoma**  
**July 28, 2008**

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Oklahoma Water Resources Board

*The views expressed here have not been endorsed or approved by the Oklahoma Water Resources Board or the OWRB Executive Director, but represent only the views of the author.*

# *Fresh Water*



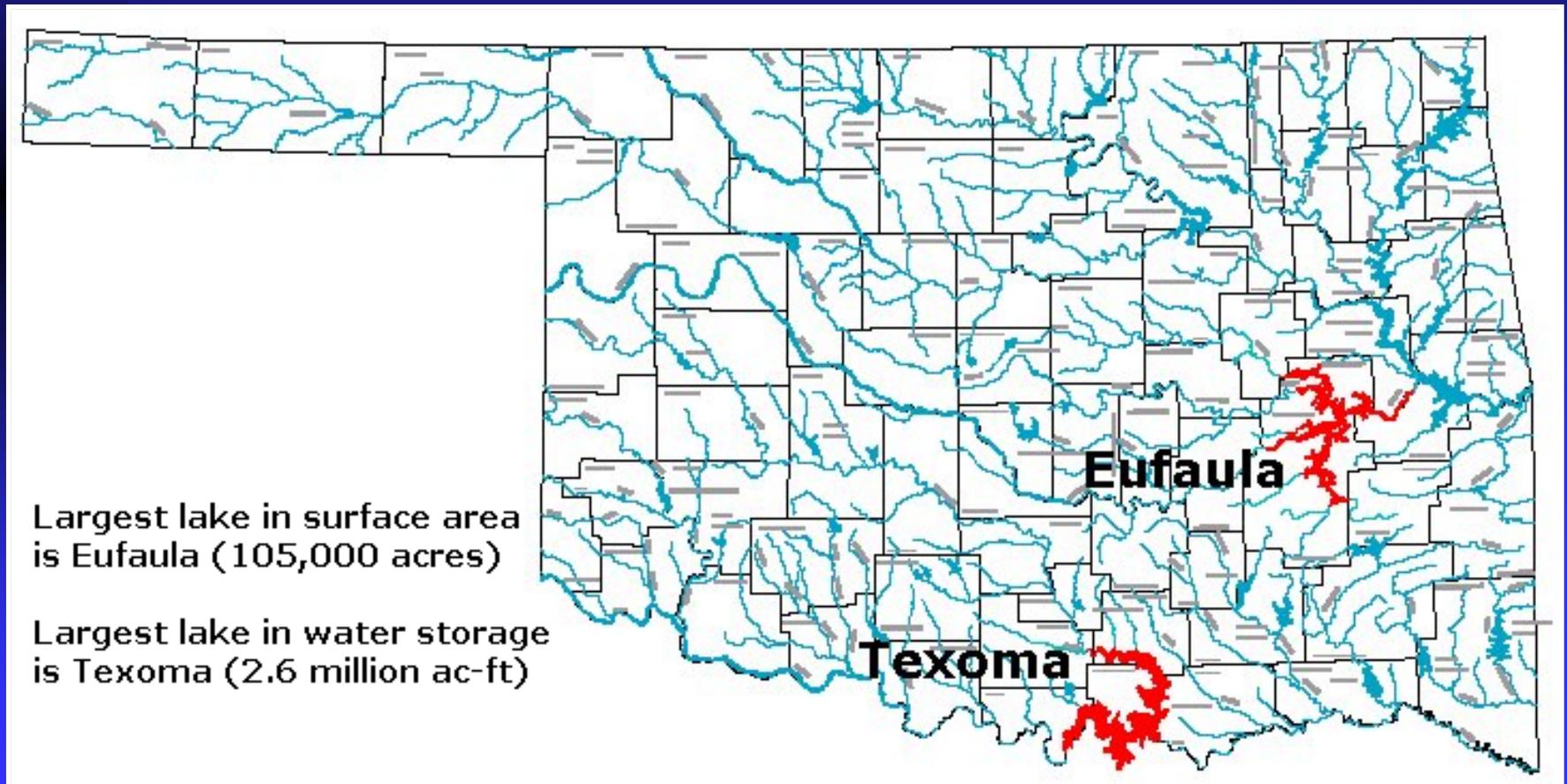
***The World's Water***

# Water Measurement Basics

- Acre-foot = 325,851 gallons
- MGD = million gallons per day
  - ◆ 1 mgd = approx. 3 a.f./day = 1120 af/yr
  - ◆ mgd is common public water supply measure as daily use and need is critical
- Avg. per person use approx. 140 gal. per day
- 1 a.f can supply 3 households per year
- 1 mgd can supply 3,360 households (10,000 pop)
- NYC annual use 1 maf = Panhandle annual irrigation use from water wells

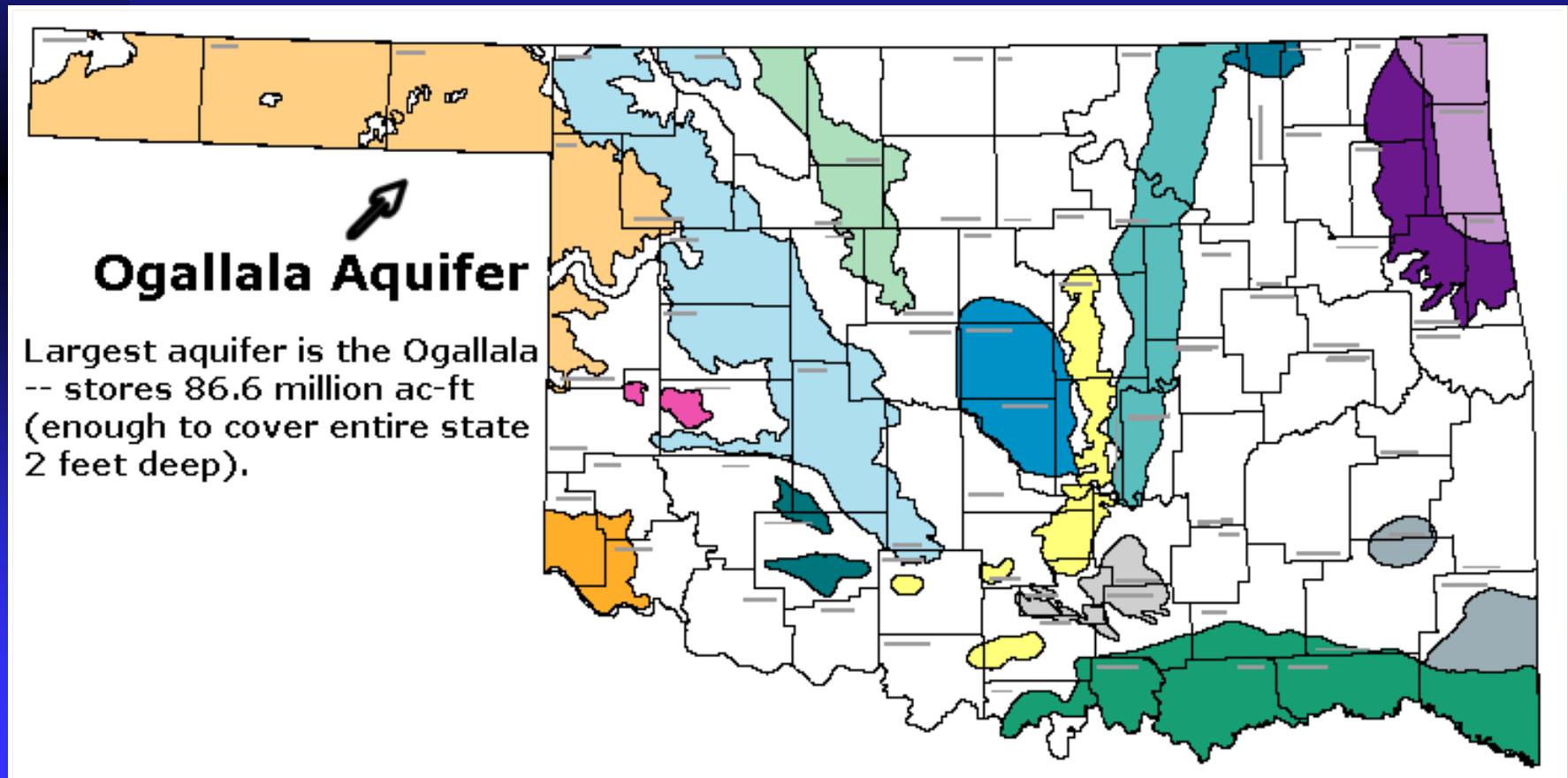
# *Oklahoma's Water Resources*

34 major reservoirs store 13 million acre-feet of water



# *Oklahoma's Water Resources*

320 million AF of groundwater (1/2 recoverable) in major basins



# Okla. Const. Article XVI, Section 3

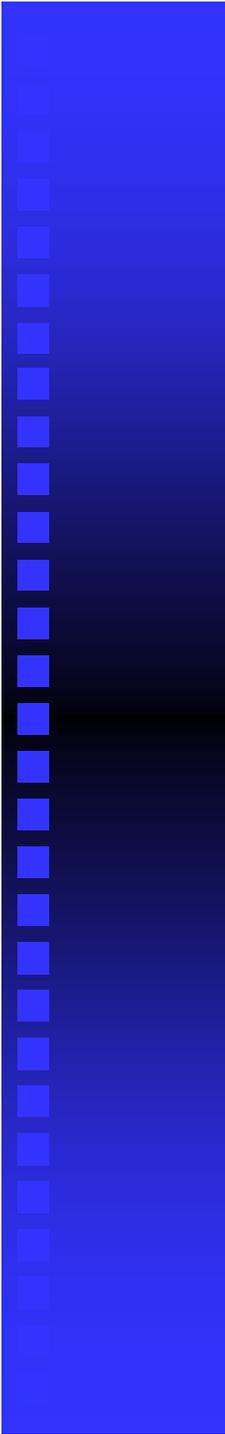
“The Legislature shall have power and shall provide for a system of levees, drains, and ditches and of irrigation . . . .”

# Ownership of Water – Property statute

- Owner of the land owns water standing thereon, or flowing over or under its surface but not forming a definite stream
- Water running in a definite stream is public water subject to appropriation for the benefit and welfare of the people of the State

# Ownership of Water – Property statute

- Diffused surface water – owned by owner of the land
- Water flowing in a “definite stream” – public water subject to appropriation
- Water flowing under surface but not in a definite stream (groundwater) – owned by owner of the land



# Stream Water Use Regulation

# Stream water use regulation

- Classic appropriation doctrine – don't have to own land on stream
- Fundamental elements:
  - ◆ Beneficial use shall be the basis, measure and limit
  - ◆ Priority in time gives the better right
- OWRB has plenary authority over unappropriated s/w
- Requirement to use – prevent speculative paper rights and obstacles to development

# Stream water use regulation

- Domestic use
  - ◆ Limited riparian right
  - ◆ Exempt from permit requirement
  - ◆ Cannot prevent the natural flow of stream or spring from which it commences
  - ◆ Can store up to two years domestic supply in bed of stream
  - ◆ Individual use for household, cattle watering, garden irrigation, de minimus

# Elements for S/W permit

- Unappropriated water available in amount applied for
- Present for future need
- Beneficial use – defined by rule: reasonable intelligence and reasonable diligence
- No interference w/domestic use and senior appropriators
- Area of origin protection

# After S/W permit issued

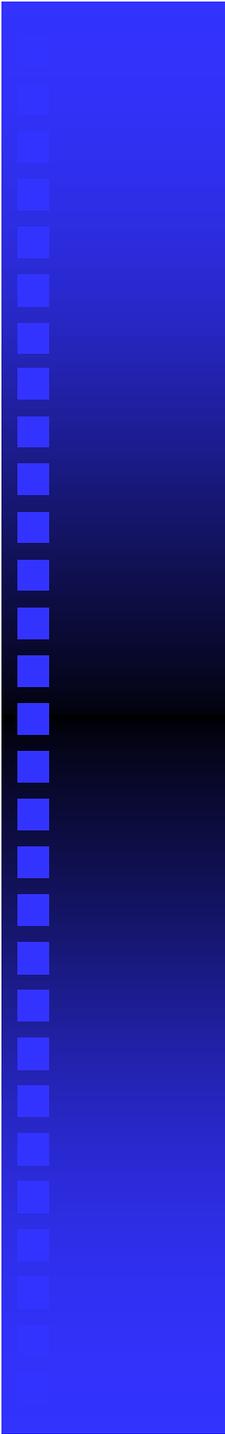
- More anti-speculation safeguards
  - ◆ Initiate construction w/i 2 years
  - ◆ Complete construction, inspect, reduce permit to capacity of works
  - ◆ First use - 7 years max.
  - ◆ Schedule of use – long term investment
  - ◆ Amount used vests – but continued use required once every 7 years
- Forfeiture – hearing, excuses for nonuse

# Transfers of S/W permit rights

- Right to use s/w for irrigation is appurtenant to the land, can't transfer apart from land
- But can change to other use, then transfer
  - ◆ Present or future need for new use?
- Changes require notice and hearing
- Change approvable if w/o detriment to existing rights
- Marketing – moratorium on out-of-state sale/export

# Enforcement of S/W rights

- Usually downstream “interference”
- Appropriators are prohibited from interfering w/domestic use
- All users must allow flow leaving property equivalent to flow entering - allows capture of diffused surface water
- OWRB enforcement, or private civil litigation

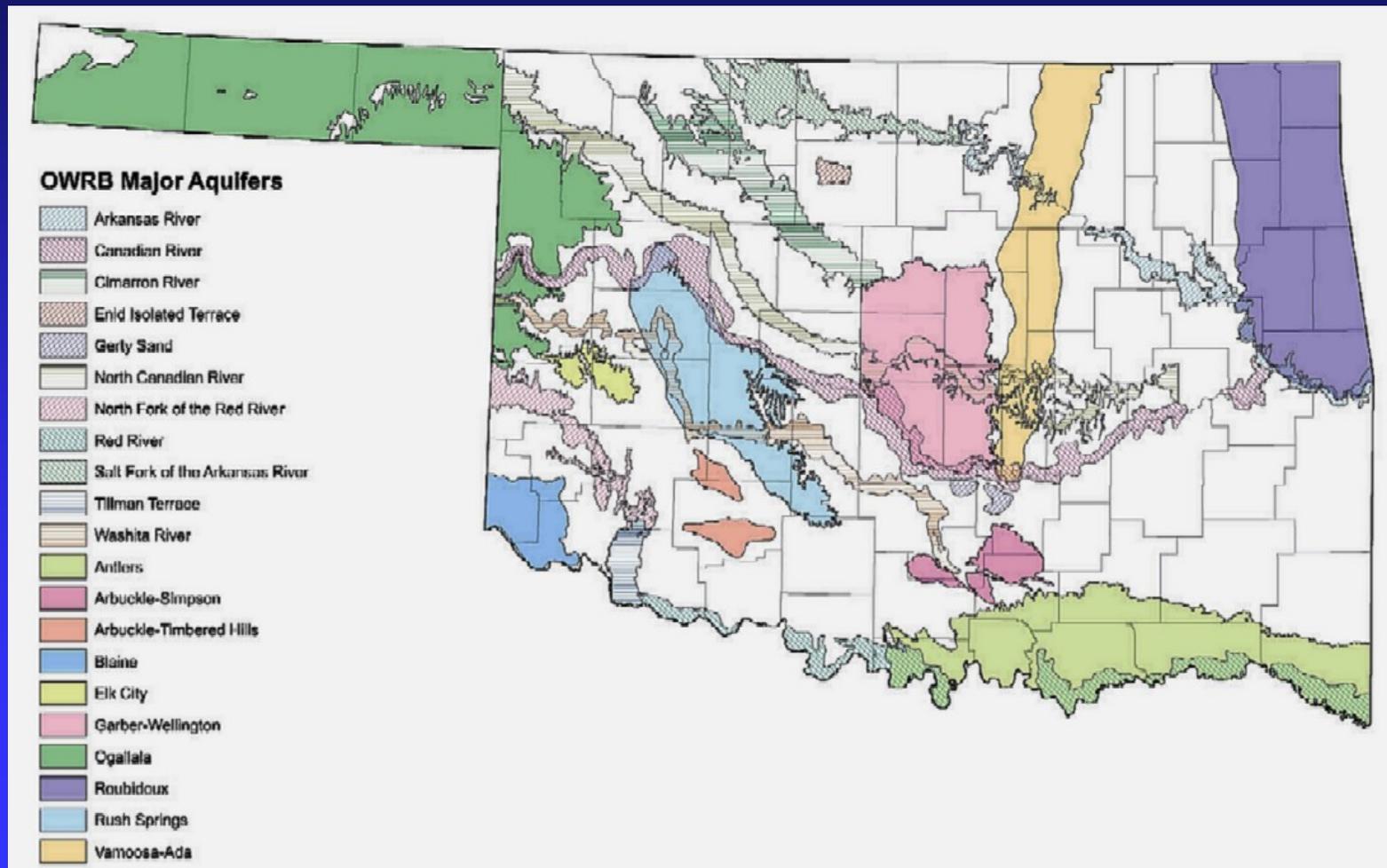


# Groundwater Use Regulation

# Groundwater Use Regulation

- Ownership statute – The use of groundwater is governed by the Oklahoma Groundwater Law
- Domestic use
  - ◆ Exempt from permit requirement
  - ◆ Cannot waste water
  - ◆ Individual use for household, cattle watering, garden irrigation, de minimus

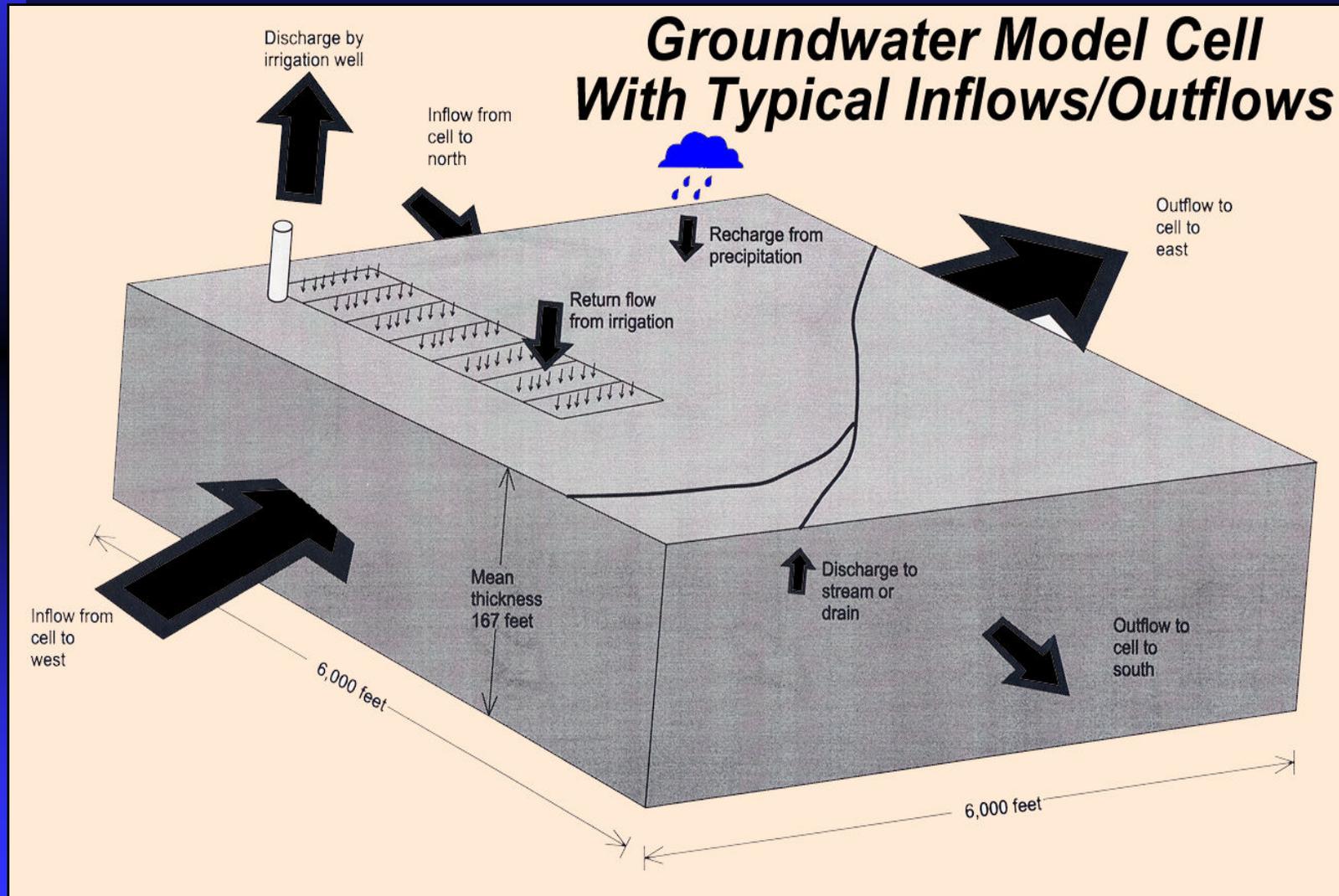
# Groundwater Use Regulation aka Acres x Two Law



# Groundwater Use Regulation

- Allocation law based on surface acres
  - ◆ Recognition of ownership
  - ◆ Mining, not safe annual yield
- Sort of like correlative rights in common pool
  - ◆ Reasonableness

# Maximum Annual Yield, Modeling and Mining



# Maximum Annual Yield

- Water in storage - aquifer volume
- Acres of land overlying (aerial extent)
- Water in – percolation, losing streams
- Water out – gaining streams, assume full prior right use
- Exclude known salt water
- Computer modeling for max yield – conservative, but theoretical mining

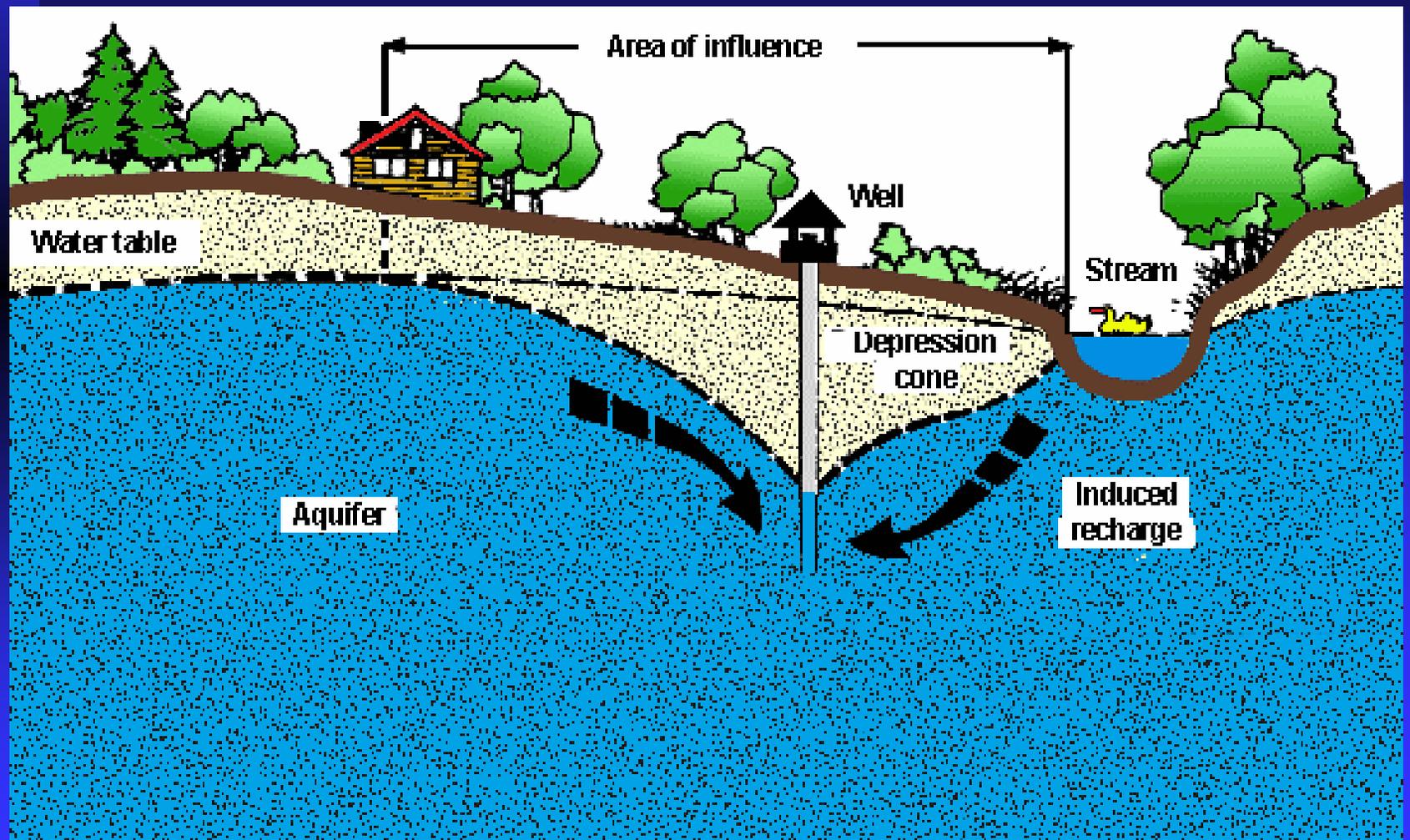
# Groundwater Permit process

- “Regular” permit
  - ◆ Basins w/MAY
  - ◆ Up to MAY per acre amount
  - ◆ Well spacing and location exceptions
- “Temporary” permit
  - ◆ No MAY completed
  - ◆ Up to Legislative allocation of 2 af/ac

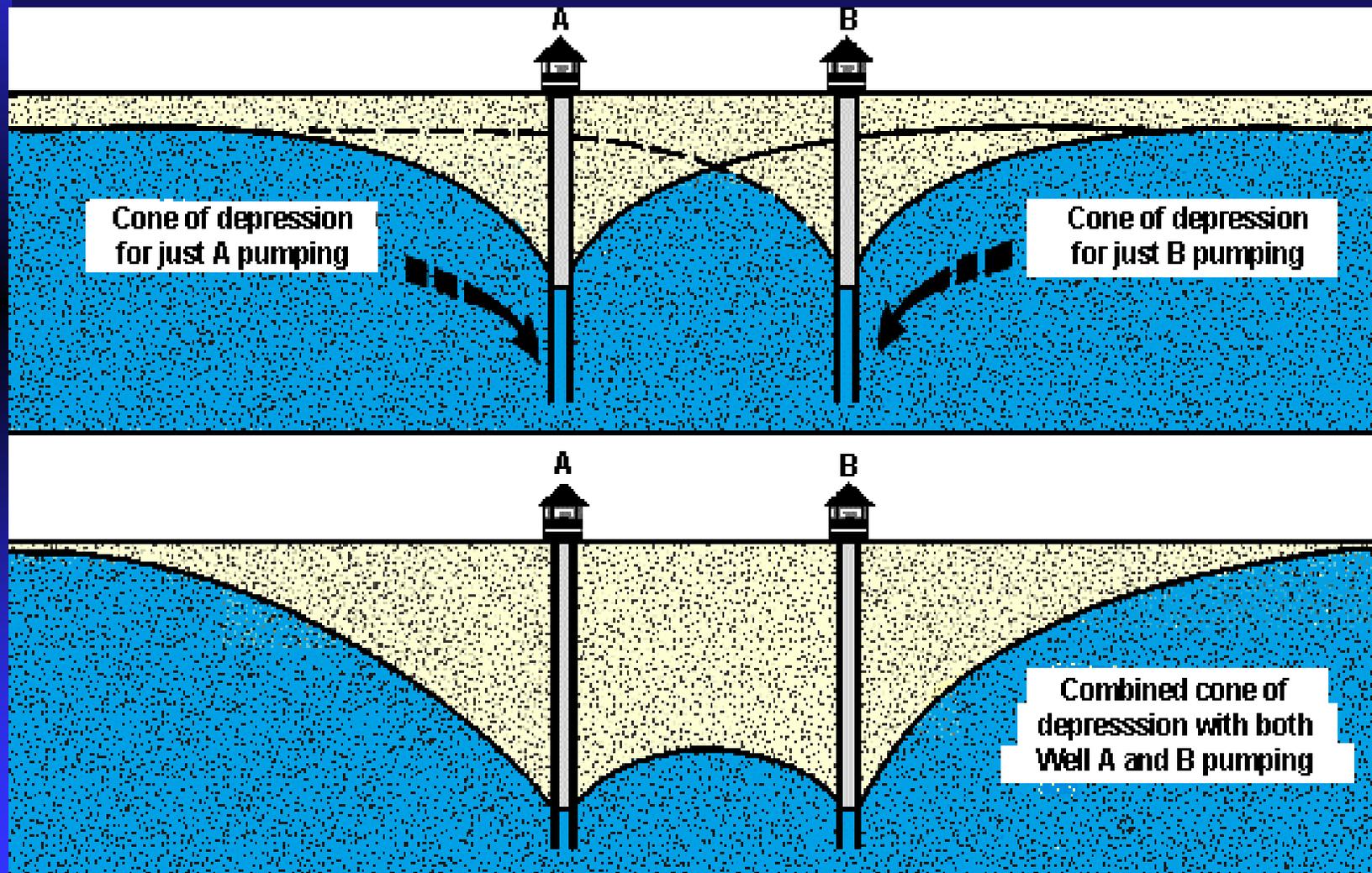
# Groundwater Permit process – requirements to approve permit

- Applicant owns or leases the land
- Land overlies a fresh g/w basin
- Use proposed is a beneficial use
- Waste as specified by law will not occur
- If pumping from sensitive sole source g/w basin, no interference or degradation of area springs and streams (SB 288)

# Interference – with surface water



# Interference – with other wells



# Other groundwater regulation

- Metering
- Well drillers and pump installer licensing
- Municipalities and platted lands
- Marketing – can use off premises
  - ◆ Change of ownership easy
  - ◆ Change of use notice and hearing
  - ◆ Moratorium on out-of-state sale/export

State of Oklahoma

OWWRB

WATER RESOURCES BOARD  
the water agency

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