

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 702

By: McCortney and Kidd of the  
Senate

6 and

7 McCall of the House

8  
9 COMMITTEE SUBSTITUTE

10 An Act relating to the environment; defining terms;  
11 declaring purpose of certain moratorium; declaring  
12 moratorium on issuance of certain permits and  
13 amendments or revisions to permits; providing  
14 conditions for ending moratorium; providing certain  
15 exception to moratorium; authorizing Department of  
16 Environmental Quality, Department of Mines and  
17 Oklahoma Water Resources Board to promulgate certain  
18 rules rules; authorizing departments to work together  
19 and with certain other entities; creating moratorium  
20 on issuance, allocation or recognition of certain use  
21 of water; providing for codification and providing an  
22 effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2-6-111 of Title 27A, unless  
there is created a duplication in numbering, reads as follows:

A. For purposes of this section, "non-exempt mine" shall mean a  
mine, as defined in paragraph 2 of Section 723 of Title 45 of the

1 Oklahoma Statutes, which is not considered exempt pursuant to  
2 subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes.

3 B. Due to the inadequacy of existing technical resources,  
4 analytic tools and regulatory systems for purposes of the effective  
5 implementation of statutes relating to the operation of mines that  
6 may affect sensitive sole source groundwater basins or subbasins,  
7 the Legislature hereby declares and establishes a moratorium on the  
8 Department of Environmental Quality permitting of any discharge from  
9 a non-exempt mine to streams fed or supported by water emanating  
10 from sensitive sole source groundwater basins or subbasins.

11 C. The moratorium shall remain in effect until such time as:

12 1. The conditions of subsection C of Section 3 of this act have  
13 been satisfied; and

14 2. The Department promulgates final rules to provide for  
15 effective interagency consultation and coordination of activities  
16 amongst the Department, the Oklahoma Water Resources Board and the  
17 Oklahoma Department of Mines on all administrative matters relating  
18 to the operation of mines that may affect sensitive sole source  
19 groundwater basins or subbasins. Notwithstanding the moratorium,  
20 the Department may issue those permits or permit modifications  
21 necessary to remedy identified compliance issues pursuant to Title  
22 27A of the Oklahoma Statutes for any mine lawfully engaged in  
23 mining, as defined in paragraph 3 of Section 723 of Title 45 of the  
24 Oklahoma Statutes.

1 D. The Department is hereby authorized and instructed to  
2 promulgate rules to implement the provisions of this section.

3 E. The Department is hereby authorized to cooperate with  
4 federal, tribal and any other agency in this state in performing its  
5 responsibilities under this section.

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 950 of Title 45, unless there is  
8 created a duplication in numbering, reads as follows:

9 A. For purposes of this section:

10 1. "Non-exempt mine" shall mean a mine, as defined in paragraph  
11 2 of Section 723 of Title 45 of the Oklahoma Statutes, which is not  
12 considered exempt pursuant to subsection C of Section 1020.2 of  
13 Title 82 of the Oklahoma Statutes.

14 2. "Exempt mine" shall mean a mine, as defined in paragraph 2  
15 of Section 723 of Title 45 of the Oklahoma Statutes, permitted by  
16 the Oklahoma Department of Mines on or after February 1, 2019, and  
17 considered exempt pursuant to paragraphs 1 and 2 of subsection C of  
18 Section 1020.2 of Title 82 of the Oklahoma Statutes.

19 B. Due to the inadequacy of existing technical resources,  
20 analytic tools and regulatory systems for purposes of the effective  
21 implementation of statutes relating to the operation of mines that  
22 may affect sensitive sole source groundwater basins or subbasins,  
23 the Legislature hereby declares and establishes a moratorium on the  
24 Oklahoma Department of Mines issuing:

1           1. Any permit to any non-exempt mine pursuant to Section 724 of  
2 Title 45 of the Oklahoma Statutes; or

3           2. Any amendment or revision, issued pursuant to subsection J  
4 of Section 724 of Title 45 of the Oklahoma Statutes, to an existing  
5 permit if such permit, amendment or revision relates to proposed  
6 mining for any location within the outcrop of any sensitive sole  
7 source groundwater basin or subbasin or in which groundwater  
8 emanating from any sensitive sole source groundwater basin or  
9 subbasin may collect within a pit, as defined in paragraph 12 of  
10 Section 723 of Title 45 of the Oklahoma Statutes. Notwithstanding  
11 the moratorium, the Department may amend or revise a permit  
12 authorizing mining activity, pursuant to subsection J of Section 724  
13 of Title 45 of the Oklahoma Statutes, by an exempt mine without  
14 regard to location if such amendment or revision would not authorize  
15 any lateral expansion of the pit of the exempted mine.

16           C. The moratorium shall remain in effect until such time as:

17           1. The conditions of subsection C of Section 3 of this act have  
18 been satisfied; and

19           2. The Department of Mines promulgates final rules to provide  
20 for effective interagency consultation and coordination of  
21 activities amongst the Department, the Oklahoma Water Resources  
22 Board and the Department of Environmental Quality on all  
23 administrative matters relating to the operation of mines that may  
24 affect sensitive sole source groundwater basins or subbasins.

1 D. The Department is hereby authorized and instructed to  
2 promulgate rules to implement the provisions of this section.

3 E. The Department is hereby authorized to cooperate with  
4 federal, tribal and any other agency in this state in performing its  
5 responsibilities under this section.

6 SECTION 3. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1020.9C of Title 82, unless  
8 there is created a duplication in numbering, reads as follows:

9 A. For the purposes of this section, "non-exempt mine" shall  
10 mean a mine, as defined in paragraph 2 of Section 723 of Title 45 of  
11 the Oklahoma Statutes, which is not considered exempt pursuant to  
12 subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes.

13 B. Due to the inadequacy of existing technical resources,  
14 analytic tools and regulatory systems for purposes of the effective  
15 implementation of statutes relating to the operation of mines that  
16 may affect sensitive sole source groundwater basins or subbasins,  
17 the Legislature hereby declares and establishes a moratoria on the  
18 following actions:

19 1. The Oklahoma Water Resources Board shall not issue any  
20 permit or other administrative authorization for the appropriation,  
21 diversion, withdrawal or removal of water from or for the  
22 dewatering, in part or in full, of a pit, as defined in paragraph 12  
23 of Section 723 of Title 45 of the Oklahoma Statutes, of a non-exempt  
24 mine located:

- 1           a.    within the outcrop of any sensitive sole source  
2                    groundwater basins or subbasins, or  
3           b.    such that groundwater emanating from any sensitive  
4                    sole source groundwater basins or subbasins collects  
5                    within the pit;

6           2.    The Board shall not issue, allocate or recognize, pursuant  
7 to subsection D of Section 1020.2 of Title 82 of the Oklahoma  
8 Statutes, Section 785: 30-15-5 of the Oklahoma Administrative Code  
9 or any other provision of law, any offset to the consumptive use of  
10 water of a non-exempt mine where such offset is based on a claimed  
11 augmentation of stream flow or groundwater.

12           C.    The moratoria shall be in effect until such time as the  
13 Board, working in coordination with the Oklahoma Department of  
14 Environmental Quality and the Oklahoma Department of Mines, in  
15 cooperation with federal and tribal governmental agencies with  
16 interests in a subject sensitive sole source groundwater basin or  
17 subbasin:

18           1.    Completes hydrologic, hydrogeologic and other necessary  
19 studies and, based thereon, develops modeling and other technical  
20 tools capable of accurately measuring and projecting the likely  
21 impact, as a matter both of incremental and cumulative effect, the  
22 withdrawal of groundwater from a sensitive sole source groundwater  
23 basin or subbasin would have on the flows of springs and streams  
24 emanating therefrom; and

1        2. Promulgates final rules to integrate the use of such studies  
2 and tools to administrative implementation of:

3            a. waste, degradation and interference analyses required  
4                by subparagraphs c and d of paragraph 1 and  
5                subparagraphs c and d of paragraph 2 of subsection A  
6                of Section 1020.9 of Title 82 of the Oklahoma  
7                Statutes,

8            b. uniform minimum standards and requirements for the  
9                development of, and annual reporting regarding  
10               compliance with, site-specific water management and  
11               conservation plans pursuant to Section 1020.2 of Title  
12               82 of the Oklahoma Statutes, with particular regard to  
13               methodologies for calculating amounts claimed in  
14               consumptive use of water and any claimed augmentation  
15               of stream flow or groundwater, and

16           c. consultation, review and approval of such site-  
17               specific water management and conservation plans, with  
18               specific provisions for making such consultations,  
19               reviews and approvals subject to Article 2 of the  
20               Oklahoma Administrative Procedures Act.

21        3. Promulgates final rules to provide for effective interagency  
22 consultation and coordination of activities amongst the Board, the  
23 Oklahoma Department of Mines and the Department of Environmental  
24 Quality on all administrative matters relating to the operation of

1 mines that may affect sensitive sole source groundwater basins or  
2 subbasins.

3 D. The Board is hereby authorized and instructed to promulgate  
4 rules to implement the provisions of this section.

5 E. The Board is hereby authorized to cooperate with federal,  
6 tribal and any other agency in this state in performing its  
7 responsibilities under this section.

8 SECTION 4. This act shall become effective November 1, 2019.

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