

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 702

6 By: McCortney and Kidd of the
7 Senate

8 and

9 McCall of the House

10 COMMITTEE SUBSTITUTE

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

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

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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