

1 ENGROSSED SENATE
2 BILL NO. 702

By: McCortney, Kidd, Bullard
and Simpson of the Senate

3 and

4 McCall and Branham of the
5 House

6
7 An act related to the environment; defining terms;
8 establishing moratorium on Department of
9 Environmental Quality, Department of Mines and
10 Oklahoma Water Resources Board; issuing certain
11 permits or certain other actions; establishing
12 requirements for ending moratoria; establishing
13 certain exception to moratoria; authorizing
14 Department of Environmental Quality to promulgate
15 rules; authorizing Department of Environmental
16 Quality to work with certain other entities;
17 prohibiting Department of Mines from requiring
18 certain permit for railroad or road construction;
19 authorizing Department of Mines to promulgate rules;
20 authorizing Department of Mines to work with certain
21 other entities; authorizing Oklahoma Water Resources
22 Board to promulgate rules; authorizing Oklahoma Water
23 Resources Board to work with certain other entities;
24 providing for codification; and providing an
effective date.

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

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

22 A. For purposes of this section, a "subject mine" shall mean a
23 mine, as defined in paragraph 2 of Section 723 of Title 45 of the
24 Oklahoma Statutes, proposed for a location overlying a sensitive

1 sole source groundwater basin or subbasin, exclusive of any mine
2 that:

3 1. As of November 1, 2019, is engaged in the permitted
4 extraction of minerals from natural deposits;

5 2. Satisfies the criteria of paragraph 1 or 2 of subsection C
6 of Section 1020.2 of Title 82 of the Oklahoma Statutes;

7 3. Is not to be permitted to operate for a period of more than
8 five (5) years, with no extensions or renewals; or

9 4. The operation of which will not result in more than five (5)
10 acre feet per year of groundwater emanating from a sensitive sole
11 source groundwater basin or subbasin to infiltrate its pit, as that
12 term is defined in paragraph 12 of section 723 of Title 45 of the
13 Oklahoma Statutes.

14 B. Due to the inadequacy of existing technical resources,
15 analytic tools and regulatory systems for purposes of the effective
16 implementation of statutes relating to the operation of mines that
17 may affect sensitive sole source groundwater basins or subbasins,
18 the Legislature hereby declares and establishes a moratorium on the
19 Department of Environmental Quality permitting of any discharge from
20 a subject mine to streams fed or supported by water emanating from
21 sensitive sole source groundwater basins or subbasins.

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

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

1 2. The Department of Environmental Quality promulgates final
2 rules to provide for effective interagency consultation and
3 coordination of activities amongst the Department, the Oklahoma
4 Water Resources Board and the Department of Mines on all
5 administrative matters relating to the operation of mines at
6 locations that overlie a sensitive sole source groundwater basin or
7 subbasin.

8 D. Notwithstanding the moratorium, the Department of
9 Environmental Quality may issue any permits, permit modifications,
10 permit amendments or permit renewals necessary to maintain
11 compliance or remedy identified compliance issues pursuant to Title
12 27A of the Oklahoma Statutes for any mine lawfully engaged in
13 mining, as that term is defined in paragraph 3 of Section 723 of
14 Title 45 of the Oklahoma Statutes.

15 E. The Department of Environmental Quality is hereby authorized
16 and instructed to promulgate rules to implement the provisions of
17 this section.

18 F. The Department of Environmental Quality is hereby authorized
19 to cooperate with federal, tribal and any other agencies in this
20 state in performing its responsibilities under this section.

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

24

1 A. For purposes of this section, a "subject mine" shall mean a
2 mine, as defined in paragraph 2 of Section 723 of Title 45 of the
3 Oklahoma Statutes, proposed for a location overlying a sensitive
4 sole source groundwater basin or subbasin, exclusive of any mine
5 that:

6 1. As of November 1, 2019, is engaged in the permitted
7 extraction of minerals from natural deposits;

8 2. Satisfies the criteria of paragraph 1 or 2 of subsection C
9 of Section 1020.2 of Title 82 of the Oklahoma Statutes

10 3. Is not to be permitted to operate for a period of more than
11 five (5) years, with no extensions or renewals; or

12 4. The operation of which will not result in more than five (5)
13 acre feet per year of groundwater emanating from a sensitive sole
14 source groundwater basin or subbasin to infiltrate its pit, as that
15 term is defined in paragraph 12 of section 723 of Title 45 of the
16 Oklahoma Statutes.

17 B. Due to the inadequacy of existing technical resources,
18 analytic tools and regulatory systems for purposes of the effective
19 implementation of statutes relating to the operation of mines that
20 may affect sensitive sole source groundwater basins or subbasins,
21 the Legislature hereby declares and establishes a moratorium on the
22 Oklahoma Department of Mines issuing, in relation to any location
23 overlying a sensitive sole source groundwater basin or subbasin or
24 in which groundwater emanating from any sensitive sole source

1 groundwater basin or subbasin may collect within a pit, as defined
2 in paragraph 12 of Section 723 of Title 45 of the Oklahoma Statutes:

3 1. Any permit, pursuant to Section 724 of Title 45 of the
4 Oklahoma Statutes, to any subject mine; or

5 2. Any amendment or revision, pursuant to subsection J of
6 Section 724 of Title 45 of the Oklahoma Statutes, to any existing
7 mining permit if such amendment or revision would increase the
8 acreage under such permit for that mine location by more than one
9 hundred percent (100%) or four hundred (400) acres, whichever is
10 less, as compared to what was under permit for that mine location
11 prior to the effective date of this act; provided, however, on and
12 after November 1, 2030, there shall be no limitation on an increase
13 in acreage as specified in this paragraph.

14 C. Notwithstanding the moratorium, nothing shall preclude the
15 Department of Mines from issuing an amendment or revision or other
16 authorization to permit a change in mine ownership or to implement
17 bonding under a permit issued prior to the effective date of this
18 act, nor shall any permit amendment or revision issued pursuant to
19 this section be deemed to render the permitted mine a subject mine
20 for purposes of Titles 27A, 45, or 82 of the Oklahoma Statutes.

21 D. Notwithstanding the moratorium or any other provision of
22 law, the Department of Mines shall not require a permit for purposes
23 of road or railroad construction in relation to mining activities by
24 any mine.

1 E. The moratorium shall remain in effect until such time as:

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

4 2. The Department of Mines promulgates final rules to provide
5 for effective interagency consultation and coordination of
6 activities amongst the Department, the Oklahoma Water Resources
7 Board and the Department of Environmental Quality on all
8 administrative matters relating to the operation of mines at
9 locations that overlie a sensitive sole source groundwater basin or
10 subbasin.

11 F. The Department of Mines is hereby authorized and instructed
12 to promulgate rules to implement the provisions of this section.

13 G. The Department of Mines is hereby authorized to cooperate
14 with federal, tribal and any other agencies in this state in
15 performing its responsibilities under this section.

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

19 A. For the purposes of this section, a "subject mine" shall
20 mean a mine, as defined in paragraph 2 of Section 723 of Title 45 of
21 the Oklahoma Statutes, that overlies a sensitive sole source
22 groundwater basin or subbasin, exclusive of any mine that meets at
23 least one of the following conditions:

- 1 1. As of November 1, 2019, is engaged in the permitted
2 extraction of minerals from natural deposits;
- 3 2. Satisfies the criteria of paragraph 1 or 2 of subsection C
4 of Section 1020.2 of Titles 82 of the Oklahoma Statutes;
- 5 3. Is not to be permitted to operate for a period of more than
6 five (5) years, with no extensions or renewals; or
- 7 4. The operation of which will not result in more than five (5)
8 acre feet per year of groundwater emanating from a sensitive sole
9 source groundwater basin or subbasin to infiltrate its pit, as that
10 term is defined in paragraph 12 of Section 723 of Title 45 of the
11 Oklahoma Statutes.

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

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

24

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

7 C. The moratorium shall be in effect until such time as the
8 Board, working in coordination with the Oklahoma Department of
9 Environmental Quality, the Oklahoma Department of Mines and East
10 Central University, and in cooperation with federal and tribal
11 governmental agencies with interests in a subject sensitive sole
12 source groundwater basin or subbasin:

13 1. Completes the Enhanced Monitoring and Evaluation of
14 Hydrologic Trends for the Eastern Arbuckle-Simpson Aquifer, South-
15 Central Oklahoma and, based thereon, develops modeling and other
16 technical tools capable of accurately measuring and projecting, as a
17 matter both of incremental and cumulative effect, whether a proposed
18 withdrawal of groundwater from a sensitive sole source groundwater
19 basin or subbasin would degrade or interfere with springs and
20 streams emanating therefrom;

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

23 a. waste, degradation and interference analyses required
24 by subparagraphs c and d of paragraph 1 and

1 subparagraphs c and d of paragraph 2 of subsection A
2 of Section 1020.9 of Title 82 of the Oklahoma
3 Statutes,

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

12 c. consultation, review and approval of such site-
13 specific water management and conservation plans, with
14 specific provisions for making such consultations,
15 reviews and approvals subject to Article 2 of the
16 Oklahoma Administrative Procedures Act; and

17 3. Promulgates final rules to provide for effective interagency
18 consultation and coordination of activities amongst the Board, the
19 Oklahoma Department of Mines and the Department of Environmental
20 Quality on all administrative matters relating to the operation of
21 mines at locations that overlie a sensitive sole source groundwater
22 basin or subbasin.

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

1 E. The Board is hereby authorized to cooperate with federal,
2 tribal and any other agencies in this state in performing its
3 responsibilities under this section.

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

5 Passed the Senate the 13th day of March, 2019.

6

7

Presiding Officer of the Senate

8

9 Passed the House of Representatives the ____ day of _____,

10 2019.

11

12

Presiding Officer of the House
of Representatives

13

14

15

16

17

18

19

20

21

22

23

24