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HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

ENGROSSED SENATE
BILL NO. 702

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

and

McCall and Branham of the
House

An act related to the environment; defining terms; establishing moratorium on Department of Environmental Quality, Department of Mines and Oklahoma Water Resources Board; issuing certain permits or certain other actions; establishing requirements for ending moratoria; establishing certain exception to moratoria; authorizing Department of Environmental Quality to promulgate rules; authorizing Department of Environmental Quality to work with certain other entities; prohibiting Department of Mines from requiring certain permit for railroad or road construction; authorizing Department of Mines to promulgate rules; authorizing Department of Mines to work with certain other entities; authorizing Oklahoma Water Resources Board to promulgate rules; authorizing Oklahoma Water Resources Board to work with certain other entities; providing for codification; and providing an effective date.

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

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

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

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

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

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

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

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

1 Department of Environmental Quality permitting of any discharge from
2 a subject mine to streams fed or supported by water emanating from
3 sensitive sole source groundwater basins or subbasins.

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

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

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

14 D. Notwithstanding the moratorium, the Department of
15 Environmental Quality may issue any permits, permit modifications,
16 permit amendments or permit renewals necessary to maintain
17 compliance or remedy identified compliance issues pursuant to Title
18 27A of the Oklahoma Statutes for any mine lawfully engaged in
19 mining, as that term is defined in paragraph 3 of Section 723 of
20 Title 45 of the Oklahoma Statutes.

21 E. The Department of Environmental Quality is hereby authorized
22 and instructed to promulgate rules to implement the provisions of
23 this section.

24

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

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

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

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

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

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

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

23 B. Due to the inadequacy of existing technical resources,
24 analytic tools and regulatory systems for purposes of the effective

1 implementation of statutes relating to the operation of mines that
2 may affect sensitive sole source groundwater basins or subbasins,
3 the Legislature hereby declares and establishes a moratorium on the
4 Oklahoma Department of Mines issuing, in relation to any location
5 overlying a sensitive sole source groundwater basin or subbasin or
6 in which groundwater emanating from any sensitive sole source
7 groundwater basin or subbasin may collect within a pit, as defined
8 in paragraph 12 of Section 723 of Title 45 of the Oklahoma Statutes:

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

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

20 C. Notwithstanding the moratorium, nothing shall preclude the
21 Department of Mines from issuing an amendment or revision or other
22 authorization to permit a change in mine ownership or to implement
23 bonding under a permit issued prior to the effective date of this
24 act, nor shall any permit amendment or revision issued pursuant to

1 this section be deemed to render the permitted mine a subject mine
2 for purposes of Titles 27A, 45, or 82 of the Oklahoma Statutes.

3 D. Notwithstanding the moratorium or any other provision of
4 law, the Department of Mines shall not require a permit for purposes
5 of road or railroad construction in relation to mining activities by
6 any mine.

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

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

10 2. The Department of Mines promulgates final rules to provide
11 for effective interagency consultation and coordination of
12 activities amongst the Department, the Oklahoma Water Resources
13 Board and the Department of Environmental Quality on all
14 administrative matters relating to the operation of mines at
15 locations that overlie a sensitive sole source groundwater basin or
16 subbasin.

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

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

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

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

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 Titles 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 following actions:

23 1. The Oklahoma Water Resources Board shall not issue any
24 permit or other administrative authorization for the appropriation,

1 diversion, withdrawal or removal of water from or for the
2 dewatering, in part or in full, of a pit, as that term is defined in
3 paragraph 12 of Section 723 of Title 45 of the Oklahoma Statutes, of
4 a subject mine; and

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

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

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

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 subjection to Article 2 of the
20 Oklahoma Administrative Procedures Act; and

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 at locations that overlie a sensitive sole source groundwater
2 basin or subbasin.

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 agencies 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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10 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
11 dated 04/09/2019 - DO PASS.

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