

1 ENGROSSED SENATE  
2 BILL NO. 1875

By: Rader of the Senate

3 and

4 O'Donnell of the House

5  
6 [ Oil and Gas Produced Water and Waste Recycling and  
7 Reuse Act - water and waste - codification -  
8 effective date ]

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

10 SECTION 1. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 86.6 of Title 52, unless there  
12 is created a duplication in numbering, reads as follows:

13 This act shall be known and may be cited as the "Oil and Gas  
14 Produced Water and Waste Recycling and Reuse Act".

15 SECTION 2. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 86.7 of Title 52, unless there  
17 is created a duplication in numbering, reads as follows:

18 A. As used in this act:

19 1. "Commission" means the Oklahoma Corporation Commission;

20 2. "Constituent elements" means salts, metals, elements and

21 other mineralized substances that are naturally occurring and

22 dissolved, entrained or suspended in subterranean water in situ and

23 after extraction from the ground, suspended in the oil and gas

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1 produced water and waste or as part of the brine, as defined in  
2 paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes;

3 3. "Nonoperator" means persons, other than the operator,  
4 contributing to the cost and expense of drilling and completing or  
5 operating a well for the intended development and production of oil,  
6 gas or other hydrocarbons, regardless of whether the well is  
7 completed or produces any oil or gas;

8 4. "Oil and gas produced water and waste" means the fluid  
9 containing salt or other mineralized substances, hydraulic  
10 fracturing fluid, flowback water, formation water, injection water  
11 and any chemicals added downhole, associated with the drilling  
12 completion or production of an oil or gas well, incidental to or  
13 extracted from hydrocarbon-bearing strata during the drilling.  
14 Except as provided in Section 3 of this act, oil and gas produced  
15 water and waste, including its constituent elements, shall not be  
16 considered brine for purposes of the Oklahoma Brine Development Act;

17 5. "Operator" means the person authorized by the Corporation  
18 Commission to drill, complete and operate a well for the intended  
19 development and production of oil, gas or other hydrocarbons,  
20 regardless of whether the well is completed or produces any;

21 6. "Person" means any individual, partnership, corporation,  
22 limited liability company or any type of association;

1           7. "Recycled water" means oil and gas produced water and waste  
2 that has been reconditioned or treated by mechanical or chemical  
3 processes into a reusable form; and

4           8. "Treated constituents" means any chemical, compound or other  
5 byproduct naturally occurring in the subterranean water that is  
6 removed from oil and gas produced water and waste through  
7 reconditioning or treating of the fluid by mechanical or chemical  
8 processes.

9           B. The Legislature finds that oil and gas produced water and  
10 waste has minimal or no intrinsic value without substantial  
11 expenditures to process, treat or recycle the oil and gas produced  
12 water and waste and declares it desirable, necessary and in the  
13 public interest to designate the parties who shall own and be  
14 responsible for the handling, transfer and disposition of the oil  
15 and gas produced water and waste. The Legislature recognizes that  
16 it has imposed upon the operator of an oil and gas lease a duty to  
17 safely dispose of oil and gas produced water and waste, as defined  
18 in this act. It is further found to be in the public interest to  
19 foster, encourage and promote the development of methods and means  
20 to economically process, treat and recycle oil and gas produced  
21 water and waste for beneficial uses, including the commercial  
22 extraction of constituent elements from the oil and gas produced  
23 water and waste and to ensure appropriate disposal in accordance  
24 with Corporation Commission rules.

1 C. Prior to its extraction from the ground, subterranean water,  
2 including its constituent elements, is the property of the owner of  
3 the surface estate, as defined in paragraph 9 of Section 802 of  
4 Title 52 of the Oklahoma Statutes and shall be subject to the right  
5 of the mineral owner or the oil and gas lessee of the mineral owner,  
6 or both, to extract the subterranean water as part of the oil and  
7 gas produced water and waste as is reasonably necessary for, or  
8 incident to, the exploration, exploitation or extraction of  
9 hydrocarbons. Nothing contained in this act shall be construed to:

10 1. Prevent the owner of the surface estate from being  
11 considered the brine owner, as defined by paragraph 5 of Section 502  
12 of Title 17 of the Oklahoma Statutes, for purposes of Section 3 of  
13 this act or the Oklahoma Brine Development Act; or

14 2. Limit the ability of the owner or owners of the surface  
15 estate to enter into any legally binding contract with persons for  
16 the payment of money or other valuable consideration for the  
17 extraction of subterranean water, including the constituent elements  
18 contained therein, or brine, as defined in paragraph 4 of Section  
19 502 of Title 17 of the Oklahoma Statutes, from the property of the  
20 owner or owners. However, if said extraction of subterranean water  
21 or brine is to be done as part of oil and gas operations, the  
22 contract shall be entered into prior to the filing of the drilling  
23 permit of the oil and/or gas well. If the contract is entered into  
24 after the filing of the drilling permit of the oil and/or gas well,

1 the contract shall be with the operator, or with the consent of the  
2 operator, any other person or persons. The operator shall not  
3 withhold consent unreasonably. Any such contract and the use or  
4 disposal of oil and gas produced water and waste, shall be subject  
5 to the requirements and limitations set forth in Section 3 of this  
6 act and subject to any and all applicable governmental laws, rules  
7 and regulations and subordinate to any preexisting, legally binding,  
8 arms-length contracts relating to the use or disposal of oil and gas  
9 produced water and waste. Provided, however, that the contracts  
10 shall not result in additional costs or delays to the rights of the  
11 operator to extract subterranean water reasonably necessary for, or  
12 incident to, the exploration, exploitation or extraction of  
13 hydrocarbons. Evidence, in the form of an affidavit, of any  
14 contract entered into under the terms of this act may be filed in  
15 the office of the county clerk for the county in which the lands  
16 described in the contract are located. The affidavit shall set out  
17 the names and address of each party to the contract, the legal  
18 description of the lands covered by the contract and the effective  
19 date of the contract. Once filed, the affidavit shall serve as  
20 constructive notice of the contract under this act.

21 D. 1. Subject to the requirements and limitations set forth in  
22 subsection C of this section and Section 3 of this act and unless  
23 otherwise provided by Corporation Commission order, an oil or gas  
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1 lease, brine lease, recycling agreement, surface use agreement,  
2 contract, bill of sale or another legally binding document:

3 a. the operator or operators, and the nonoperator or  
4 nonoperators, of an oil and/or gas well shall be the  
5 owner or owners of the oil and gas produced water and  
6 waste extracted from the ground through the borehole  
7 of the oil or gas well, and

8 b. the operator or operators, and the nonoperator or  
9 nonoperators, shall have the right to use, possess,  
10 handle, dispose of, transfer, sell, convey, transport,  
11 process, recycle, reuse or treat the produced water  
12 and waste and shall also have the exclusive right to  
13 obtain proceeds for any of the uses of the oil and gas  
14 produced water and waste or some portion thereof,  
15 including recycled water and treated constituents.

16 2. Subject to the requirements and limitations set forth in  
17 subsection C of this section and Section 3 of this act and unless  
18 otherwise provided by Corporation Commission order, oil or gas  
19 lease, brine lease, recycling agreement, surface use agreement,  
20 contract, bill of sale or another legally binding document, until  
21 there is a transfer to another person, the operator or operators,  
22 and the nonoperator or nonoperators, shall be responsible for the  
23 use, disposition, transfer, sale, conveyance, transport, recycling,  
24 reuse, treatment or disposal of the transferred oil and gas produced

1 water and waste, recycled water and treated constituents or any  
2 other byproducts.

3 3. Subject to the requirements and limitations set forth in  
4 subsection C of this section and Section 3 of this act and unless  
5 otherwise provided by Corporation Commission order, an oil or gas  
6 lease, brine lease, recycling agreement, surface use agreement,  
7 contract, bill of sale or another legally binding document:

8 a. when oil and gas produced water and waste is  
9 transferred to a person for the purpose of processing  
10 or treating for subsequent beneficial use, disposal or  
11 both, the transferred material, recycled water and  
12 treated constituents shall be the property of that  
13 person until such time that the person disposes of the  
14 produced water and waste in accordance with Commission  
15 rules or there is a transfer of the material to a  
16 subsequent person, and

17 b. transferred oil and gas produced water and waste shall  
18 be the property of such transferee and the transferees  
19 shall have control of and responsibility for the  
20 substance, including the right to use, possess,  
21 handle, dispose of, transfer, sell, convey, transport,  
22 process, recycle, reuse or treat the produced water  
23 and waste and to obtain proceeds for any uses of the  
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1 substance or any portion thereof, including recycled  
2 water and treated constituents.

3 E. Except as provided in paragraph 1 of subsection D of this  
4 section, a person is not liable in tort for consequences of  
5 subsequent use of recycled water or treated constituents if that  
6 person:

7 1. Processes oil and gas produced water and waste in order to  
8 produce recycled water or treated constituents that are generally  
9 considered in the oil and gas industry to be suitable for use in  
10 connection with drilling, completion or production operations of oil  
11 and gas or both; or

12 2. Transfers the recycled water or treated constituents, or  
13 both, to another person for use in connection with oil and gas  
14 drilling, completion or production operations.

15 This subsection shall not be construed to affect the liability  
16 of a person in possession of oil and gas produced water and waste,  
17 recycled water or treated constituents, or both, in an action  
18 brought by a person for damages for personal injury, death or  
19 property damage arising from a release of or exposure to any of  
20 these substances.

21 F. A person who acquires possession of oil and gas produced  
22 water and waste for the purpose of recycling it for subsequent  
23 beneficial use may dispose of the oil and gas produced water and  
24 waste, including recycled water, treated constituents or other



1 byproducts of the recycling process, in his or her permitted  
2 disposal well or wells, regardless of the source or prior ownership  
3 of the oil and gas produced water and waste. The disposal shall not  
4 require a commercial disposal well permit from the Corporation  
5 Commission but shall otherwise be subject to any other permit  
6 restrictions applicable to disposal wells.

7 SECTION 3. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 86.8 of Title 52, unless there  
9 is created a duplication in numbering, reads as follows:

10 Notwithstanding any other provision in this act, if oil and gas  
11 produced water and waste is utilized for the purpose of processing  
12 the produced water and waste by mechanical or chemical processes for  
13 the extraction of constituent elements for commercial purposes, the  
14 oil and gas produced water and waste shall be considered brine under  
15 the Oklahoma Brine Development Act. The operating activity and the  
16 ownership of the oil and gas produced water, including the  
17 constituent elements contained therein, including the entitlement to  
18 and sharing of proceeds from the extraction and sale of the  
19 constituent elements or effluent, shall be subject to the Oklahoma  
20 Brine Development Act and the operator or other person extracting or  
21 utilizing the oil and gas produced water and waste shall comply with  
22 the provisions of the act. The Oklahoma Brine Development Act shall  
23 not apply to oil and gas produced water and waste that is reused or  
24 recycled solely for the purpose of use in oil and gas operations.

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SECTION 4. This act shall become effective November 1, 2020.  
Passed the Senate the 12th day of March, 2020.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2020.

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Presiding Officer of the House  
of Representatives