

1 **SENATE FLOOR VERSION**

2 February 21, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 702

By: McCortney, Kidd and Bullard
of the Senate

and

McCall of the House

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9 **[environment - moratorium - permits and amendments
10 or revisions to permits - Department of Environmental
11 Quality, Department of Mines and Oklahoma Water
12 Resources Board - codification - effective date]**

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

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

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

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

1 the Legislature hereby declares and establishes a moratorium on the
2 Department of Environmental Quality permitting of any discharge from
3 a non-exempt mine to streams fed or supported by water emanating
4 from sensitive sole source groundwater basins or subbasins.

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

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

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

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

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

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

4 A. For purposes of this section:

5 1. "Non-exempt mine" shall mean a mine, as defined in paragraph
6 2 of Section 723 of Title 45 of the Oklahoma Statutes, which is not
7 considered exempt pursuant to subsection C of Section 1020.2 of
8 Title 82 of the Oklahoma Statutes.

9 2. "Exempt mine" shall mean a mine, as defined in paragraph 2
10 of Section 723 of Title 45 of the Oklahoma Statutes, permitted by
11 the Oklahoma Department of Mines on or after February 1, 2019, and
12 considered exempt pursuant to paragraphs 1 and 2 of subsection C of
13 Section 1020.2 of Title 82 of the 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 Oklahoma Department of Mines issuing:

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

22 2. Any amendment or revision, issued pursuant to subsection J
23 of Section 724 of Title 45 of the Oklahoma Statutes, to an existing
24 permit if such permit, amendment or revision relates to proposed

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

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 of Mines promulgates final rules to provide
15 for effective interagency consultation and coordination of
16 activities amongst the Department, the Oklahoma Water Resources
17 Board and the Department of Environmental Quality on all
18 administrative matters relating to the operation of mines that may
19 affect sensitive sole source groundwater basins or subbasins.

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

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

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

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

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

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

- 20 a. within the outcrop of any sensitive sole source
21 groundwater basins or subbasins, or
22 b. such that groundwater emanating from any sensitive
23 sole source groundwater basins or subbasins collects
24 within the pit;

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
4 or any other provision of law, any offset to the consumptive use of
5 water of a non-exempt mine where such offset is based on a claimed
6 augmentation of stream flow or groundwater.

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

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

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

22 a. waste, degradation and interference analyses required
23 by subparagraphs c and d of paragraph 1 and
24 subparagraphs c and d of paragraph 2 of subsection A

1 of Section 1020.9 of Title 82 of the Oklahoma
2 Statutes,

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

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

16 3. Promulgates final rules to provide for effective interagency
17 consultation and coordination of activities amongst the Board, the
18 Oklahoma Department of Mines and the Department of Environmental
19 Quality on all administrative matters relating to the operation of
20 mines that may affect sensitive sole source groundwater basins or
21 subbasins.

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
6 February 21, 2019 - DO PASS AS AMENDED
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