

SB 1719

THE STATE SENATE
Monday, February 27, 2006

Senate Bill No. 1719
As Amended

SENATE BILL NO. 1719 - By: GUMM and CRUTCHFIELD of the Senate and BILLY and ROAN of the House.

[waters and water rights - mining purposes - codification - emergency]

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 1020.9C of Title 82, unless there is created a duplication in numbering, reads as follows:

A. It shall be the public policy of this state to regulate the use of natural resources and the water of the State of Oklahoma, and the use of waters for mining purposes within sensitive sole source aquifers that are overlain by or are related to karst terrain. For the purposes of this act "a karst aquifer or terrain" shall mean irregular topography that is caused by a solution of limestone and other carbonate rock and that is characterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that, partially or completely, may capture surface streams.

B. The Oklahoma Water Resources Board shall not issue any permit to use water relating to mining within a karst aquifer or from karst terrain that is underlain by a sensitive sole source

1 aquifer until such time as the Board determines, pursuant to the
2 provisions of this section, that such use would not diminish or
3 reduce the natural flow of water from springs or streams emanating
4 from a sensitive sole source aquifer or involve the use of water
5 from a pit located in karst terrain that overlays a sensitive sole
6 source aquifer.

7 C. In the event the Board determines from evidence presented by
8 the applicant or any protestants or commentators that such use of
9 water for mining purposes would diminish or reduce the natural flow
10 of water from springs or streams emanating from a karst aquifer or
11 involve the use of water from a pit located in karst terrain, the
12 Board shall establish a zone of influence, which identifies the area
13 to be affected by the proposed permitted use. Any applicant who
14 desires to use groundwater for mining purposes, including water
15 trapped in a mine, shall provide the Board with the hydrogeologic
16 analysis of the likely effect on the zone of influence resulting
17 from the use of water at the proposed mine. The Board shall not
18 issue such permit until the party requesting the permit provides and
19 the Board approves a plan by which the permittee will replace the
20 water supply within the zone of influence that will be affected by
21 the permitted use.

1 D. In addition to any other requirements of the Board, the plan
2 to replace the water supply within the zone of influence affected by
3 the permitted use shall be considered as adequate if:

4 1. For an individual domestic water supply within the zone of
5 influence that is no longer capable of yielding water because of
6 declining water levels the permittee provides the affected property
7 owner, at no expense to the property owner, a new or retrofitted
8 well that is capable of meeting minimum yield requirements as
9 established by the Board; or

10 2. For a municipal, industrial, commercial, institutional, or
11 farming water supply within a zone of influence that is no longer
12 capable of yielding water because of declining water levels the
13 permittee provides for the affected property owner, at no expense to
14 the property owner, a new or retrofitted well or other alternative
15 water supply that is capable of yielding water equal to the volume
16 used or needed by the property owner before the disruption of water
17 supply;

18 The Board shall not require a permittee to replace lost water
19 supplies, as provided in this subsection, if the permittee
20 demonstrates to the Board by clear and convincing evidence that the
21 proximate cause of the loss of water supply is not the result of the
22 permitted use.

1 E. 1. Real or personal property within the zone of influence
2 found by the Board to have been damaged as a result of the permitted
3 use shall be considered to be repaired adequately by a permittee if
4 the permittee returns the damaged property to its condition before
5 the permitted use.

6 2. If the damaged real or personal property is not capable of
7 being restored to its pre-permitted use condition, the permittee
8 shall compensate the owner of the real or personal property
9 monetarily by the difference of the fair market value of the
10 property as the property would exist but for the permitted use and
11 the fair market value of the property as a result of the damage,
12 plus the value of the lost use of the property.

13 3. Upon a determination by the Board of responsibility, after
14 the permittee has received proper notice and an opportunity to
15 respond and provide information, a permittee may pay monetary
16 compensation to the affected property owner or repair any property
17 damage caused by the permitted use within the zone of influence.

18 4. Notwithstanding the provisions of this subsection, the
19 permittee and the property owner may agree on monetary compensation
20 or other mitigation in lieu of restoration.

21 F. The Board shall provide opportunity for a contested case
22 hearing in accordance with the provisions of Section 1020.8 of Title
23 82 of the Oklahoma Statutes.

1 G. The Board shall promulgate rules to implement the provisions
2 of this act.

3 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1020.9, as
4 amended by Section 3, Chapter 365, O.S.L. 2003 (82 O.S. Supp. 2005,
5 Section 1020.9), is amended to read as follows:

6 Section 1020.9 A. 1. Before the Oklahoma Water Resources
7 Board takes final action on an application, the Board shall
8 determine from the evidence presented, from the hydrologic surveys
9 or reports and from other relevant data available to the Board and
10 applicant, whether:

- 11 a. the lands owned or leased by the applicant overlie a
12 fresh groundwater basin or subbasin,
- 13 b. the use to which the applicant intends to put the
14 water is a beneficial use,
- 15 c. waste as specified by Section 1020.15 of this title
16 will occur, ~~and~~
- 17 d. the proposed use is likely to degrade or interfere
18 with springs or streams emanating in whole or in part
19 from water originating from a sensitive sole source
20 groundwater basin or subbasin as defined in Section 1
21 of this act, and
- 22 e. the proposed use is likely to diminish or reduce the
23 natural flow of water from springs or streams

1 emanating from a sensitive sole source aquifer or
2 involve the use of water from a pit located in karst
3 terrain, or whether any proposed use of water that
4 would further such mining is likely to diminish or
5 reduce the natural flow of water from springs or
6 streams emanating from a sensitive sole source
7 aquifer, or if it is, that the permittee has complied
8 with the provisions of Section 1 of this act.

9 2. The Board shall approve the application by issuing a regular
10 permit, if the Board finds that:

- 11 a. the lands owned or leased by the applicant overlie the
12 fresh groundwater basin or subbasin,
13 b. the use to which the applicant intends to put the
14 water is a beneficial use,
15 c. waste specified by Section 1020.15 of this title will
16 not occur. When determining whether waste will occur
17 pursuant to this subparagraph, if the activity for
18 which the applicant intends to use the water is
19 required to comply with rules and requirements of or
20 is within the jurisdictional areas of environmental
21 responsibility of the Department of Environmental
22 Quality or the State Department of Agriculture, the
23 Board shall be precluded from making a determination

1 whether waste by pollution pursuant to paragraph 7 of
2 subsection A of Section 1020.15 of this title will
3 occur as a result of such activity. Each groundwater
4 protection agency, as such term is defined by Section
5 1-1-201 of Title 27A of the Oklahoma Statutes, shall
6 be responsible for developing and enforcing
7 groundwater protection practices to prevent
8 groundwater contamination from activities within their
9 respective jurisdictional areas of environmental
10 responsibility, ~~and~~

11 d. the proposed use is not likely to degrade or interfere
12 with springs or streams emanating in whole or in part
13 from water originating from a sensitive sole source
14 groundwater basin as defined in Section 1 of this
15 act~~;~~, and

16 e. the proposed use is not likely to diminish or reduce
17 the natural flow of water from springs or streams
18 emanating from a karst aquifer or involve the use of
19 water from a pit located in karst terrain, or if it
20 is, that the permittee has complied with the
21 provisions of Section 1 of this act.

22 B. Except as otherwise provided in subsection C of this

1 section, a regular permit shall allocate to the applicant the
2 proportionate part of the maximum annual yield of the basin or
3 subbasin. The proportionate part shall be that percentage of the
4 total annual yield of the basin or subbasin, previously determined
5 to be the maximum annual yield as provided in Section 1020.5 of this
6 title, which is equal to the percentage of the land overlying the
7 fresh groundwater basin or subbasin which the applicant owns or
8 leases and which is dedicated to the application.

9 C. If the lands dedicated to the application overlie two or
10 more groundwater basins and both basins have had maximum annual
11 yields determined, the amount to be authorized by the regular permit
12 shall be calculated on the basin having the greatest maximum annual
13 yield. If the lands dedicated to the application overlie two or
14 more groundwater basins or subbasins and the maximum annual yield
15 has been determined for at least one but not all the basins or
16 subbasins, a temporary permit may be issued to the applicant if the
17 applicant demonstrates by substantial competent evidence that the
18 water to be withdrawn by the temporary permit will not be taken from
19 a basin or subbasin for which the maximum annual yield has been
20 determined. If the land overlies two or more groundwater basins or
21 subbasins and the maximum annual yield has not been determined for
22 any of the basins or subbasins, more than one temporary permit may
23 be issued for the land if the applicant demonstrates by substantial

1 competent evidence from which basin the water will be withdrawn for
2 each of the permits.

3 D. The permit shall specify the location of the permitted well
4 or wells and other terms and conditions as specified by the Board,
5 including, but not limited to, the rate of withdrawal, the level of
6 perforating and the level of sealing the well. A regular permit
7 shall not be granted for less than the remaining life of the basin
8 or subbasin as previously determined by the Board.

9 SECTION 3. AMENDATORY 82 O.S. 2001, Section 1020.2, is
10 amended to read as follows:

11 Section 1020.2 It is hereby declared to be the public policy of
12 this state, in the interest of the agricultural stability, domestic,
13 municipal, industrial and other beneficial uses, general economy,
14 health and welfare of the state and its citizens, to utilize the
15 ground water resources of the state, and for that purpose to provide
16 reasonable regulations for the allocation for reasonable use based
17 on hydrologic surveys of fresh ground water basins or subbasins to
18 determine a restriction on the production, based upon the acres
19 overlying the ground water basin or subbasin. The provisions of
20 this act shall not apply to the taking, using or disposal of salt
21 water associated with the exploration, production or recovery of oil
22 and gas or to the taking, using or disposal of water trapped in
23 producing mines, except as provided in Section 1 of this act.

1 SECTION 4. AMENDATORY 45 O.S. 2001, Section 724, as last
2 amended by Section 1, Chapter 221, O.S.L. 2005 (45 O.S. Supp. 2005,
3 Section 724), is amended to read as follows:

4 Section 724. A. It shall be unlawful for any operator to
5 engage in any mining operations in this state without first
6 obtaining a permit from the Department of Mines for each separate
7 mining operation. The Department shall determine what constitutes a
8 separate mining operation by rules promulgated under the Mining
9 Lands Reclamation Act.

10 B. 1. Any operator desiring to engage in surface mining shall
11 make written application to the Department for a permit.
12 Application for such permit shall be made upon a form furnished by
13 the Department. The form shall contain a description of the tract
14 or tracts of land and the estimated number of acres to be affected
15 by surface mining by the operator. The description shall include
16 the section, township, range and county in which the land is located
17 and shall otherwise describe the land with sufficient certainty so
18 that it may be located and distinguished from other lands.

19 2. Transmission lines shall be plotted on a location map
20 submitted with the application. A statement that the operator has
21 the right and power by legal estate owned to mine by surface mining
22 the land so described shall be included with the application.

1 C. 1. Any operator desiring to engage in underground mining
2 shall make written application to the Department for a permit.
3 Application for such permit shall be made upon a form furnished by
4 the Department. The form shall contain a description of the tract
5 or tracts of land to be used as refuse disposal areas. The
6 description shall include the section, township, range and county in
7 which the land is located and shall otherwise describe the land with
8 sufficient certainty so that it may be located and distinguished
9 from other lands.

10 2. A statement that the applicant has the right and power by
11 legal estate owned to use the land so described as a refuse disposal
12 area shall be included with the application.

13 D. Each application for a permit under subsections B and C of
14 this section shall be accompanied by a plan of reclamation of the
15 affected land that meets the requirements of the Mining Lands
16 Reclamation Act. The application shall set forth the proposed use
17 to be made of the affected land, the grading to be accomplished, the
18 type of revegetation, and shall include the approximate time of
19 grading and initial revegetation effort.

20 E. Each application for a permit under subsections B and C of
21 this section shall be accompanied by the bond or security meeting
22 the requirements of Section 728 of this title, or proof that such
23 bond or security is still in effect, and a fee of One Hundred

1 Seventy-five Dollars (\$175.00) for each permit year, payable at the
2 rate of One Hundred Seventy-five Dollars (\$175.00) per year on the
3 anniversary date of the year in which the permit or permit renewal
4 was issued. All application fees shall be submitted to the State
5 Treasurer, who shall deposit them in the Department of Mines
6 Revolving Fund.

7 F. 1. Upon the receipt of such application, bond or security
8 and fee due from the operator, and a permit from the Oklahoma Water
9 Resources Board, if necessary pursuant to the provisions of Section
10 1 of this act, the Department may issue a permit to the applicant
11 which shall entitle the applicant to engage in mining on the land
12 therein described in accordance with the rules promulgated by the
13 Department, for the life expectancy of the operation unless the
14 operator is in violation of any state statute or rule of the
15 Department in which case the Department shall take appropriate
16 action against the operator.

17 2. All applications for renewal of existing permits shall be
18 filed prior to the expiration of the existing permit in accordance
19 with the rules promulgated by the Department.

20 3. No permit shall be issued except upon proper application and
21 public hearing, if requested.

22 G. 1. a. Upon filing the application with the Department, the
23 applicant shall place an advertisement in a newspaper

1 of general circulation in the vicinity of the mining
2 operation, containing such information as is required
3 by the Department, at least once a week for four (4)
4 consecutive weeks.

5 b. The advertisement shall contain, at a minimum, the
6 following:

7 (1) the name and business address of the applicant,

8 (2) a description which clearly shows or describes

9 the precise location and boundaries of the

10 proposed permit area and is sufficient to enable

11 local residents to readily identify the proposed

12 permit area. It may include towns, bodies of

13 water, local landmarks, and any other information

14 which would identify the location,

15 (3) the location where a copy of the application is

16 available for public inspection,

17 (4) the name and address of the Department where

18 written comments, objections, or requests for

19 informal conferences on the application may be

20 submitted pursuant to subsection P of this

21 section,

22 (5) if an applicant seeks a permit to mine which

23 includes relocation or closing of a public road,

1 a copy of the county resolution pertaining to the
2 affected county road, and
3 (6) such other information as is required by the
4 Department.

5 2. Any property owner or resident of an occupied dwelling who
6 may be adversely affected located within one (1) mile of the mining
7 operation shall have the right to protest the issuance of a permit
8 and request a public hearing.

9 3. The Department shall notify the surface owners of any
10 hearings in connection with applications or permits in the same
11 manner as the operator is notified.

12 4. Such protests must be received by the Department within
13 fourteen (14) days after the date of publication of the newspaper
14 advertisement. If a public hearing is requested, the Department
15 shall then hold an informal hearing in the vicinity of the proposed
16 mining.

17 5. Upon completion of findings after the hearing, the
18 Department shall determine whether to issue or deny the permit, and
19 shall notify all parties of its decision.

20 6. Any decision regarding the issuance of a permit under this
21 section shall be appealable when entered, as provided in the
22 Administrative Procedures Act.

1 H. Each application for a new operation shall contain, where
2 applicable, a list of all other licenses and permits needed by the
3 applicant to conduct the proposed mining operation. This list shall
4 identify each license and permit by:

5 1. Type of permit or license;

6 2. Name and address of issuing authority;

7 3. Identification number or a copy of the application for
8 permits or licenses or, if issued a copy of the permit or license;
9 and

10 4. If a decision has been made, the date of approval or
11 disapproval by each issuing authority.

12 An existing operation which does not have on file a list of the
13 applicable licenses or permits with the Department on the date of
14 enactment of this act shall not be out of compliance with the
15 provisions of this section. Any renewal of an existing permit or
16 expansion or amendment to an existing operation upon time of
17 application shall submit a copy of all approved licenses and permits
18 issued by other agencies or jurisdictions.

19 Identifications of all permits and licenses shall include local
20 government agencies with jurisdiction over or an interest in the
21 area of the proposed mining operation including, but not limited to,
22 planning agencies, water and sewer authorities; and all state and
23 federal government agencies with authority to issue permits and

1 licenses applicable to the proposed mining operation, including all
2 state environmental agencies, U.S. Army Corps of Engineers, U.S.
3 Department of Agriculture Soil Conservation Service district office,
4 and federal fish and wildlife agencies.

5 I. An operator desiring to have such operator's permit amended
6 to cover additional land may file an amended application with the
7 Department. Upon receipt of the amended application, and such
8 additional bond as may be required under the provisions of the
9 Mining Lands Reclamation Act, the Department shall issue an
10 amendment to the original permit covering the additional land
11 described in the amended application, without the payment of any
12 additional fee.

13 J. An operator may withdraw any land covered by a permit,
14 deleting affected land therefrom, by notifying the Department, in
15 which case the penalty of the bond or security filed by such
16 operator pursuant to the provisions of the Mining Lands Reclamation
17 Act shall be reduced proportionately.

18 K. Permits issued to an operator may be transferable to another
19 operator, provided the new operator can demonstrate to the
20 Department, prior to the transfer of ownership, that conditions and
21 obligations required for the permit will be met and the new operator
22 has submitted a performance bond or other guarantee, or has obtained
23 the bond coverage of the original permittee.

1 L. The perimeter of the permit area shall be clearly marked by
2 durable and recognizable markers or by other means approved by the
3 Department.

4 M. The Department shall determine the blasting distance to
5 transmission lines by rule.

6 N. 1. If any mining operations where blasting is required
7 occur within the limits of a municipality with a population in
8 excess of three hundred thousand (300,000) according to the latest
9 Federal Decennial Census or within the limits of a municipality
10 within a county with a population in excess of three hundred
11 thousand (300,000) according to the latest Federal Decennial Census,
12 the application for a permit pursuant to subsections B and C of this
13 section shall be accompanied by proof that the operator is in full
14 compliance with all applicable regulations of the municipality.
15 Certified copies of any required municipal permits and any other
16 required written municipal approvals shall be attached to the
17 application. No mining permit shall be issued by the Department
18 unless the applicant first complies with the requirements of this
19 subsection.

20 2. The provisions of paragraph 1 of this subsection shall not
21 apply to existing permitted operations, revisions or amendments
22 thereto, or any application on file with the Department prior to the
23 effective date of this act. In addition, the provisions of

1 paragraph 1 of this subsection shall not apply to any future
2 operation on property directly adjacent to property on which a
3 permitted operation is located, provided that the operation is
4 permitted and the adjacent property is owned or leased by the
5 operator on the effective date of this act. For purposes of this
6 subsection, properties separated by a public road shall be
7 considered to be adjacent.

8 O. Within a reasonable time, as established by the Department,
9 written comments or objections on permit or bond release
10 applications may be submitted to the Department by public entities
11 including but not limited to the local soil conservation district,
12 with respect to the effects of the proposed mining operations on the
13 environment.

14 P. Any person having an interest in or who is or may be
15 adversely affected by the decision on a permit or bond release
16 application, or any federal, state or local agency, shall have the
17 right to request in writing that the Department hold an informal
18 conference on the application. The Department shall hold the
19 informal conference within a reasonable time following the receipt
20 of the written request at a location in the vicinity of the proposed
21 or active surface mining or reclamation operation.

22 SECTION 5. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated
4 2-23-06 - DO PASS, As Amended and Coauthored.