

MAY 17 2011 *ef*

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

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May 16, 2011

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 597

By: Bingman et al of the Senate and Thomsen et al of the House

Title: Water rights; exceptions; groundwater law. Emergency.

Together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recedes from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES:

Bingman
Bingman
Branan
Branan
Simpson
Simpson

Brecheen
Brecheen
Paddack
Paddack
Burrage

HOUSE CONFEREES:

Conference Committee on Public Safety, Judiciary and Military Affairs

ADOPTED & PASSED
Senate Action _____

MAY 18 2011
Date _____

House Action _____ Date _____

epc

HOUSE CONFEREES

Jordan Fred Jordan

Martin (Steve) _____

McCullough McCullough

Moore J. H. Moore

Morrisette Richard Morrisette

Roan Paul D. Roan

Roberts
(Dustin) D. Roberts

Schwartz Clay Schwartz

Sherrer Ben Sherrer

Sullivan Alan Sullivan

Tibbs Sue Tibbs

Wesselhoft Paul Wesselhoft

Williams Greg Williams

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 597

6 By: Bingman, Brecheen and
7 Fields of the Senate

8 and

9 Thomsen, Ownbey, Hilliard,
10 Roan, Roberts (Dustin),
11 Hardin, Farley, Moore and
12 Billy of the House

13 CONFERENCE COMMITTEE SUBSTITUTE

14 An Act relating to waters and water rights; amending
15 82 O.S. 2001, Section 1020.2, which relates to water
16 policy; stating application of policy to certain
17 mines; requiring the Oklahoma Water Resources Board
18 to promulgate rules relating to water in certain
19 mines; requiring coordination with Oklahoma
20 Department of Mines; stating requirements for rules;
21 requiring certain plans to be subject to the Oklahoma
22 Open Records Act; requiring rules relating to
23 augmentation of certain waters in certain mining
24 operations; requiring certain mine operators to
implement monitoring plan reporting pit water use;
requiring plan and quarterly reports to be filed with
Oklahoma Water Resources Board by certain dates;
stating requirements for reports; requiring reports
to be subject to the Oklahoma Open Records Act;
stating exemption; stating penalty for noncompliance;
providing exemption from certain requirements and
penalty for noncompliance; stating procedures for
certain exempt mines; defining terms; stating certain
augmentation of waters pursuant to certain plan are
considered a beneficial use and not penalized against
certain permitted usage; stating exception; and
declaring an emergency.

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

2 SECTION 1. AMENDATORY 82 O.S. 2001, Section 1020.2, is
3 amended to read as follows:

4 Section 1020.2. A. It is hereby declared to be the public
5 policy of this state, in the interest of the agricultural stability,
6 domestic, municipal, industrial and other beneficial uses, general
7 economy, health and welfare of the state and its citizens, to
8 utilize the ground water resources of the state, and for that
9 purpose to provide reasonable regulations for the allocation for
10 reasonable use based on hydrologic surveys of fresh ground water
11 basins or subbasins to determine a restriction on the production,
12 based upon the acres overlying the ground water basin or subbasin.

13 B. The provisions of ~~this act~~ Section 1020.1 et seq. of this
14 title shall not apply to the taking, using or disposal of salt water
15 associated with the exploration, production or recovery of oil and
16 gas ~~or~~. The provisions of this act shall not apply to the taking,
17 using or disposal of water trapped in producing mines outside of a
18 sensitive sole source groundwater basin or subbasin.

19 C. Except as provided for in subsection E of this section, the
20 provisions of this act shall not apply to the taking, using or
21 disposal of water trapped in producing mines:

22 1. That overlie a sensitive sole source groundwater basin or
23 subbasin and have been permitted by the Oklahoma Department of Mines
24 as of August 1, 2011;

1 2. That overlie a sensitive sole source groundwater basin or
2 subbasin for which an initial application for a permit shall have
3 been filed with the Oklahoma Department of Mines as of August 1,
4 2011; or

5 3. That overlie a sensitive sole source groundwater basin or
6 subbasin and for which a permit revision is approved by the Oklahoma
7 Department of Mines.

8 Provided that the use of mine pit water, pursuant to a site-
9 specific water management and conservation plan prepared in
10 consultation with the Oklahoma Water Resources Board, by mines that
11 are exempted from this act by the terms of this subsection and in
12 furtherance of mine operations and associated manufacturing and
13 commercial activities on the mine site, shall be considered as
14 permitted beneficial uses for all purposes under the laws of the
15 state.

16 D. 1. Except with respect to the mines exempted from the terms
17 of this act under subsections B and C of this section, the Oklahoma
18 Water Resources Board, in coordination with the Oklahoma Department
19 of Mines, shall promulgate rules for the taking, using or disposal
20 of water collecting in producing mine pits and emanating from a
21 sensitive sole source groundwater basin or subbasin.

22 2. The rules promulgated by the Oklahoma Water Resources Board
23 shall require, subject to a de minimis exemption to be promulgated
24 therein, the development by the mine operator of provisions relating

1 to the augmentation (a beneficial use) of stream flow or
2 groundwater, and of site-specific water management and conservation
3 plans, which plans shall establish threshold hydrologic monitoring,
4 management and mitigation requirements that are based on relevant
5 hydrologic surveys and investigations of the sensitive sole source
6 groundwater basin or subbasin. Such plans submitted to the Oklahoma
7 Water Resources Board shall be subject to the provisions of the
8 Oklahoma Open Records Act.

9 3. The rules promulgated by the Oklahoma Water Resources Board
10 shall contain provisions relating to augmentation of stream flow or
11 groundwater, or both, to offset consumptive use of groundwater
12 collecting in the producing mine pit that emanates from a sensitive
13 sole source groundwater basin or subbasin in amounts greater than
14 the equal proportionate share of the maximum annual yield of the
15 groundwater basin or subbasin established by the Oklahoma Water
16 Resources Board that may be allocated to the owner or operator of
17 the producing mine based on groundwater rights owned or leased by
18 the owner or operator.

19 E. 1. By no later than January 1, 2013, the operator of a mine
20 that is exempted from this act by the provisions of subsection C of
21 this section shall adopt and implement a plan to monitor and report
22 to the Board the accumulation and disposition of pit water during
23 the previous calendar year. The operator shall also file with the
24 Board interim quarterly reports containing information about the

1 accumulation and disposition of pit water during the previous
2 quarter. The first interim quarterly report for calendar year 2013
3 shall be sent to the Board by June 30, 2013, and the annual report
4 for the calendar year 2013 shall be sent to the Board by March 31,
5 2014. Thereafter, the annual report for each calendar year shall be
6 sent to the Board by March 31st of the following year. The
7 monitoring plan will provide for the measurement or reasonable
8 estimation of groundwater and surface water volumes, separately
9 stated, entering the pit, of the water diverted from the pit, of the
10 disposition of the water from the pit, and of the consumptive use,
11 as defined in this section, of the mine pit water by the mine
12 operator. The reports received by the Board will be subject to the
13 provisions of the Oklahoma Open Records Act. If an operator of a
14 mine that is exempted from this act by the provisions of subsection
15 C of this section fails to timely submit an interim quarterly report
16 or annual report, the exemption of subsection C shall no longer
17 apply to the mine and the rules promulgated pursuant to subsection D
18 of this section shall become applicable, provided that such rules
19 shall contain provisions to allow the operator to show cause why the
20 exemption contained in subsection C of this section should continue
21 to apply.

22 2. If, at any time after March 31, 2015, the amount of
23 groundwater from the pit (plus amounts of groundwater from permitted
24 wells, if any) consumptively used in the preceding twelve months by

1 the mine operator at a mine described in paragraph 1 of this
2 subsection exceeds the annual amount that is equivalent to the equal
3 proportionate share of the maximum annual yield of the groundwater
4 basin or subbasin that could be allocated to the owner or operator
5 of the producing mine based on groundwater rights owned or leased by
6 the owner or operator, then the exemption of subsection C of this
7 section shall no longer apply and the provisions of subsection D of
8 this section shall become applicable to the mine unless the mine
9 operator submits a site-specific water management and conservation
10 plan demonstrating, to the satisfaction of the Board, that such
11 consumptive use of groundwater in amounts greater than the
12 equivalent equal proportionate share either is:

- 13 a. offset by augmentation of stream water flow or
14 augmentation of groundwater by recharge, or
15 b. not likely to reduce the natural flow of springs or
16 streams emanating from a sensitive sole source
17 groundwater basin or subbasin, or
18 c. satisfied by the owner or operator acquiring
19 sufficient groundwater rights within ninety (90) days
20 of the reported exceedance.

21 The plan submitted to the Board will be subject to the provisions of
22 the Oklahoma Open Records Act. If the exemption of subsection C of
23 this section no longer applies, the rules promulgated by the
24 Oklahoma Water Resources Board pursuant to subsection D of this

1 section shall provide a period of at least ninety (90) days to come
2 into compliance.

3 3. If an operator of a mine that is exempt pursuant to
4 subsection C of this section operates in compliance with a site-
5 specific water management and conservation plan that complies with
6 rules promulgated by the Board pursuant to subsection D of this
7 section, the Board cannot otherwise require the operator of such
8 mine to take an action or refrain from taking an action that would
9 effectively prohibit any mining operation or practice that is
10 otherwise allowed by the Oklahoma Department of Mines.

11 F. For purposes of this section, "consumptive use" or
12 "consumptively used" means diversion of water from a mine pit that
13 is not returned to the groundwater basin or subbasin, or to a mine
14 pit or holding basin, or to a definite stream, or to the land
15 surface from which surface runoff flows into a mine pit. The term
16 "consumptive use" includes the estimated moisture content driven off
17 or carried away with the mined material transported off the mining
18 site, plus the amount of evaporation from the mine pit that exceeds
19 the amount of direct precipitation and surface runoff into the mine
20 pit, plus any amounts for other proposed beneficial uses off the
21 mining site.

22 G. Augmentation of stream flow or groundwater, pursuant to a
23 site-specific water management and conservation plan prepared in
24 consultation with the Oklahoma Water Resources Board, shall be

1 considered a beneficial use and not waste, and shall not count
2 against permitted surface water or groundwater usage, provided that
3 taking, using or disposal of water from a producing mine for stream
4 augmentation pursuant to a site-specific water management and
5 conservation plan prepared in consultation with the Oklahoma Water
6 Resources Board, may be claimed in annual water use reports as a
7 beneficial use for purposes of the maintenance of the right to use
8 surface water under any permit applicable to such mine. The mine
9 pit shall be considered a diversion point authorized by the surface
10 water use permit issued to the mine operator whenever there is
11 consumptive use of surface water or the surface water is used for
12 stream augmentation.

13 SECTION 2. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

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