

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 83

By: Simpson

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6 AS INTRODUCED

7 An Act relating to waters and water rights; amending
8 82 O.S. 2011, Section 1020.2, which relates to use of
9 water for certain purposes; removing exemption for
10 certain mine pit water; requiring mining operators to
implement monitoring plans and file annual report by
certain date; modifying definition; and declaring an
emergency.

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

14 SECTION 1. AMENDATORY 82 O.S. 2011, Section 1020.2, is
15 amended to read as follows:

16 Section 1020.2. A. It is hereby declared to be the public
17 policy of this state, in the interest of the agricultural stability,
18 domestic, municipal, industrial and other beneficial uses, general
19 economy, health and welfare of the state and its citizens, to
20 utilize the ground water resources of the state, and for that
21 purpose to provide reasonable regulations for the allocation for
22 reasonable use based on hydrologic surveys of fresh ground water
23 basins or subbasins to determine a restriction on the production,
24 based upon the acres overlying the ground water basin or subbasin.

1 B. The provisions of Section 1020.1 et seq. of this title shall
2 not apply to the taking, using or disposal of salt water associated
3 with the exploration, production or recovery of oil and gas. The
4 provisions of this act shall not apply to the taking, using or
5 disposal of water trapped in producing mines outside of a sensitive
6 sole source groundwater basin or subbasin.

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

10 ~~1. That overlie a sensitive sole source groundwater basin or~~
11 ~~subbasin and have been permitted by the Oklahoma Department of Mines~~
12 ~~as of August 1, 2011;~~

13 ~~2. That overlie a sensitive sole source groundwater basin or~~
14 ~~subbasin for which an initial application for a permit shall have~~
15 ~~been filed with the Oklahoma Department of Mines as of August 1,~~
16 ~~2011; or~~

17 ~~3. That overlie a sensitive sole source groundwater basin or~~
18 ~~subbasin and for which a permit revision is approved by the Oklahoma~~
19 ~~Department of Mines.~~

20 ~~Provided that the use of mine pit water, pursuant to a site-~~
21 ~~specific water management and conservation plan prepared in~~
22 ~~consultation with the Oklahoma Water Resources Board, by mines that~~
23 ~~are exempted from this act by the terms of this subsection and in~~
24 ~~furtherance of mine operations and associated manufacturing and~~

1 ~~commercial activities on the mine site, shall be considered as~~
2 ~~permitted beneficial uses for all purposes under the laws of the~~
3 ~~state.~~

4 ~~D.~~ 1. ~~Except with respect to the mines exempted from the terms~~
5 ~~of this act under subsections B and C of this section, the The~~
6 Oklahoma Water Resources Board, in coordination with the Oklahoma
7 Department of Mines, shall promulgate rules for the taking, using or
8 disposal of water collecting in producing mine pits and emanating
9 from a sensitive sole source groundwater basin or subbasin.

10 2. The rules promulgated by the Oklahoma Water Resources Board
11 shall require, subject to a de minimis exemption to be promulgated
12 therein, the development by the mine operator of provisions relating
13 to the augmentation (a beneficial use) of stream flow or
14 groundwater, and of site-specific water management and conservation
15 plans, which plans shall establish threshold hydrologic monitoring,
16 management and mitigation requirements that are based on relevant
17 hydrologic surveys and investigations of the sensitive sole source
18 groundwater basin or subbasin. Such plans submitted to the Oklahoma
19 Water Resources Board shall be subject to the provisions of the
20 Oklahoma Open Records Act.

21 3. The rules promulgated by the Oklahoma Water Resources Board
22 shall contain provisions relating to augmentation of stream flow or
23 groundwater, or both, to offset consumptive use of groundwater
24 collecting in the producing mine pit that emanates from a sensitive

1 sole source groundwater basin or subbasin in amounts greater than
2 the equal proportionate share of the maximum annual yield of the
3 groundwater basin or subbasin established by the Oklahoma Water
4 Resources Board that may be allocated to the owner or operator of
5 the producing mine based on groundwater rights owned or leased by
6 the owner or operator.

7 ~~E. 1. D.~~ By no later than January 1, ~~2013~~ 2014, the operator
8 of a mine ~~that is exempted from this act by the provisions of~~
9 ~~subsection C of this section~~ shall adopt and implement a plan to
10 monitor and report to the Board the accumulation and disposition of
11 pit water during the previous calendar year. The operator shall
12 also file with the Board interim quarterly reports containing
13 information about the accumulation and disposition of pit water
14 during the previous quarter. The first interim quarterly report for
15 calendar year ~~2013~~ 2014 shall be sent to the Board by June 30, ~~2013~~
16 2014, and the annual report for the calendar year 2013 shall be sent
17 to the Board by March 31, ~~2014~~ 2015. Thereafter, the annual report
18 for each calendar year shall be sent to the Board by March 31st of
19 the following year. The monitoring plan will provide for the
20 measurement or reasonable estimation of groundwater and surface
21 water volumes, separately stated, entering the pit, of the water
22 diverted from the pit, of the disposition of the water from the pit,
23 and of the consumptive use, as defined in this section, of the mine
24 pit water by the mine operator. The reports received by the Board

1 will be subject to the provisions of the Oklahoma Open Records Act.
2 ~~If an operator of a mine that is exempted from this act by the~~
3 ~~provisions of subsection C of this section fails to timely submit an~~
4 ~~interim quarterly report or annual report, the exemption of~~
5 ~~subsection C shall no longer apply to the mine and the rules~~
6 ~~promulgated pursuant to subsection D of this section shall become~~
7 ~~applicable, provided that such rules shall contain provisions to~~
8 ~~allow the operator to show cause why the exemption contained in~~
9 ~~subsection C of this section should continue to apply.~~

10 ~~2. If, at any time after March 31, 2015, the amount of~~
11 ~~groundwater from the pit (plus amounts of groundwater from permitted~~
12 ~~wells, if any) consumptively used in the preceding twelve months by~~
13 ~~the mine operator at a mine described in paragraph 1 of this~~
14 ~~subsection exceeds the annual amount that is equivalent to the equal~~
15 ~~proportionate share of the maximum annual yield of the groundwater~~
16 ~~basin or subbasin that could be allocated to the owner or operator~~
17 ~~of the producing mine based on groundwater rights owned or leased by~~
18 ~~the owner or operator, then the exemption of subsection C of this~~
19 ~~section shall no longer apply and the provisions of subsection D of~~
20 ~~this section shall become applicable to the mine unless the mine~~
21 ~~operator submits a site-specific water management and conservation~~
22 ~~plan demonstrating, to the satisfaction of the Board, that such~~
23 ~~consumptive use of groundwater in amounts greater than the~~
24 ~~equivalent equal proportionate share either is:~~

- 1 ~~a. offset by augmentation of stream water flow or~~
2 ~~augmentation of groundwater by recharge, or~~
3 ~~b. not likely to reduce the natural flow of springs or~~
4 ~~streams emanating from a sensitive sole source~~
5 ~~groundwater basin or subbasin, or~~
6 ~~c. satisfied by the owner or operator acquiring~~
7 ~~sufficient groundwater rights within ninety (90) days~~
8 ~~of the reported exceedance.~~

9 ~~The plan submitted to the Board will be subject to the provisions of~~
10 ~~the Oklahoma Open Records Act. If the exemption of subsection C of~~
11 ~~this section no longer applies, the rules promulgated by the~~
12 ~~Oklahoma Water Resources Board pursuant to subsection D of this~~
13 ~~section shall provide a period of at least ninety (90) days to come~~
14 ~~into compliance.~~

15 ~~3. If an operator of a mine that is exempt pursuant to~~
16 ~~subsection C of this section operates in compliance with a site-~~
17 ~~specific water management and conservation plan that complies with~~
18 ~~rules promulgated by the Board pursuant to subsection D of this~~
19 ~~section, the Board cannot otherwise require the operator of such~~
20 ~~mine to take an action or refrain from taking an action that would~~
21 ~~effectively prohibit any mining operation or practice that is~~
22 ~~otherwise allowed by the Oklahoma Department of Mines.~~

23 ~~F. E.~~ For purposes of this section, "consumptive use" or
24 "consumptively used" means diversion of ~~water~~ groundwater from a

1 ~~mine pit that is not returned to the groundwater basin or subbasin,~~
2 ~~or to a mine pit or holding basin, or to a definite stream, or to~~
3 ~~the land surface from which surface runoff flows into a mine pit.~~

4 The term "consumptive use" includes, but is not limited to, the
5 estimated moisture content driven off or carried away with the mined
6 material transported off the mining site, plus the amount of
7 evaporation from the mine pit that exceeds the amount of direct
8 precipitation and surface runoff into the mine pit, plus any amounts
9 for other proposed beneficial uses off the mining site.

10 G. F. Augmentation of stream flow or groundwater, pursuant to a
11 site-specific water management and conservation plan prepared in
12 consultation with the Oklahoma Water Resources Board, shall be
13 considered a beneficial use and not waste, and shall not count
14 against permitted surface water or groundwater usage, provided that
15 taking, using or disposal of water from a producing mine for stream
16 augmentation pursuant to a site-specific water management and
17 conservation plan prepared in consultation with the Oklahoma Water
18 Resources Board, may be claimed in annual water use reports as a
19 beneficial use for purposes of the maintenance of the right to use
20 surface water under any permit applicable to such mine. The mine
21 pit shall be considered a diversion point authorized by the surface
22 water use permit issued to the mine operator whenever there is
23 consumptive use of surface water or the surface water is used for
24 stream augmentation.

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

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