

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1219

By: Fields

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5  
6 AS INTRODUCED

7 An Act relating to waters and water rights; amending  
8 82 O.S. 2011, Section 1020.2, which relates to water  
9 policy; declaring certain plan of storage and use of  
10 water in certain aquifers to be of beneficial use and  
11 not waste; requiring the Oklahoma Water Resources  
12 Board to promulgate rules permitting use of certain  
13 water; stating requirements for permits; declaring  
14 use of aquifer water to be in addition to authorized  
15 domestic use; requiring permit to specify location of  
16 wells and terms and conditions; and providing an  
17 effective date.

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

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

21 Section 1020.2. A. It is hereby declared to be the public  
22 policy of this state, in the interest of the agricultural stability,  
23 domestic, municipal, industrial and other beneficial uses, general  
24 economy, health and welfare of the state and its citizens, to  
utilize the ground water resources of the state, and for that  
purpose to provide reasonable regulations for the allocation for  
reasonable use based on hydrologic surveys of fresh ground water

1 basins or subbasins to determine a restriction on the production,  
2 based upon the acres overlying the ground water basin or subbasin.

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

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

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

15 2. That overlie a sensitive sole source groundwater basin or  
16 subbasin for which an initial application for a permit shall have  
17 been filed with the Oklahoma Department of Mines as of August 1,  
18 2011; or

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

22 Provided that the use of mine pit water, pursuant to a site-  
23 specific water management and conservation plan prepared in  
24 consultation with the Oklahoma Water Resources Board, by mines that

1 are exempted from this act by the terms of this subsection and in  
2 furtherance of mine operations and associated manufacturing and  
3 commercial activities on the mine site, shall be considered as  
4 permitted beneficial uses for all purposes under the laws of the  
5 state.

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

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

23 3. The rules promulgated by the Oklahoma Water Resources Board  
24 shall contain provisions relating to augmentation of stream flow or

1 groundwater, or both, to offset consumptive use of groundwater  
2 collecting in the producing mine pit that emanates from a sensitive  
3 sole source groundwater basin or subbasin in amounts greater than  
4 the equal proportionate share of the maximum annual yield of the  
5 groundwater basin or subbasin established by the Oklahoma Water  
6 Resources Board that may be allocated to the owner or operator of  
7 the producing mine based on groundwater rights owned or leased by  
8 the owner or operator.

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

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

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

1 consumptive use of groundwater in amounts greater than the  
2 equivalent equal proportionate share either is:

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

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

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

1 F. For purposes of this section, "consumptive use" or  
2 "consumptively used" means diversion of water from a mine pit that  
3 is not returned to the groundwater basin or subbasin, or to a mine  
4 pit or holding basin, or to a definite stream, or to the land  
5 surface from which surface runoff flows into a mine pit. The term  
6 "consumptive use" includes the estimated moisture content driven off  
7 or carried away with the mined material transported off the mining  
8 site, plus the amount of evaporation from the mine pit that exceeds  
9 the amount of direct precipitation and surface runoff into the mine  
10 pit, plus any amounts for other proposed beneficial uses off the  
11 mining site.

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

1 consumptive use of surface water or the surface water is used for  
2 stream augmentation.

3 H. 1. The storage and recovery of water from an aquifer,  
4 pursuant to a site-specific aquifer storage and recovery plan  
5 approved by the Oklahoma Water Resources Board, shall be considered  
6 a beneficial use and not waste. Except as provided in this  
7 subsection and Section 1020.15, the provisions of this act shall not  
8 apply to the taking and use of water stored in an aquifer pursuant  
9 to such a plan.

10 2. The Oklahoma Water Resources Board shall promulgate and  
11 implement rules for the taking and use of water stored in an aquifer  
12 pursuant to a site-specific aquifer storage and recovery plan,  
13 including the issuance of permits for the taking and use of such  
14 water, and for the approval of such site-specific aquifer storage  
15 and recovery plans. Rules related to the approval of site-specific  
16 aquifer storage and recovery plans shall mandate, in addition to  
17 requirements necessary to demonstrate that the requested amount of  
18 stored water is available for recovery, the spacing of wells  
19 necessary to ensure that the storage and recovery of water permitted  
20 under this subsection shall not interfere with any domestic or  
21 permitted groundwater use in the basin.

22 3. A permit to take and use water stored in an aquifer pursuant  
23 to a site-specific aquifer storage and recovery plan shall only be  
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1 granted if substantive evidence accompanying the application  
2 demonstrates:

- 3       a. the Oklahoma Water Resources Board has approved the  
4       site-specific aquifer storage and recovery plan,  
5       b. the applicant has legal access to the water stored in  
6       the aquifer pursuant to the plan,  
7       c. the applicant or its successor in interest stored or  
8       caused to be stored said water pursuant to and in  
9       compliance with any required authorization issued by  
10       the Oklahoma Department of Environmental Quality that  
11       is intended to protect water quality, and  
12       d. the stored water is available for use in the applied  
13       for amount during the period covered by, and in the  
14       manner described in, the proposed permit.

15       4. Any permitted use of water stored in an aquifer under this  
16       subsection is in addition to any domestic use authorized under  
17       Section 1020.3 of this title or any other use authorized pursuant to  
18       a permit issued under Section 1020.11 of this title.

19       5. Any permit issued under this subsection shall specify the  
20       location of the permitted well or wells and other terms and  
21       conditions as specified by the Board, including, but not limited to,  
22       the rate of withdrawal, the level of perforating and the level of  
23       sealing the well.

SECTION 2. This act shall become effective November 1, 2016.

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