

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 743

By: Schulz of the Senate

and

McCall of the House

COMMITTEE SUBSTITUTE

[oil and gas - Oil and Gas Produced Water Recycling
and Reuse Act - 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 155 of Title 52, unless there is
created a duplication in numbering, reads as follows:

Sections 1 through 6 of this this act shall be known and may be
cited as the "Oil and Gas Produced Water Recycling and Reuse Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 156 of Title 52, unless there is
created a duplication in numbering, reads as follows:

The Legislature finds that reduction of produced water injection
from oil and gas operations into disposal wells and the reclamation

1 and reuse of produced water for other purposes to be desired public
2 policy of this state to improve the health, safety and welfare of
3 its citizens. The Legislature further finds that the statutory
4 transfer of title of the produced water, and the constituent salts,
5 metals and other elements dissolved therein, from the surface estate
6 to the producer a necessary taking for a public purpose and public
7 use to implement this public policy pursuant to the Oklahoma
8 Constitution, Article 2, Section 24.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 157 of Title 52, unless there is
11 created a duplication in numbering, reads as follows:

12 As used in this act, the following words shall mean:

13 1. "Constituent elements" means salts, metals, elements and
14 other mineralized substances that are dissolved, entrained or
15 suspended in the produced water, but does not include skim oil or
16 hydraulic fracturing fluid;

17 2. "Hydraulic fracturing fluid" means fluids and hydraulic
18 fracturing additives injected into a wellbore by the operator during
19 the hydraulic fracturing, completion, recompletion or reworking
20 process;

21 3. "Hydraulic fracturing additives" means sand, chemicals and
22 other substances;

23 4. "Minerals" means the same as defined in Section 802 of Title
24 52 of the Oklahoma Statutes;

- 1 5. "Mineral estate" means the same as defined in Section 802 of
2 Title 52 of the Oklahoma Statutes;
- 3 6. "Mineral owner" means the same as defined in Section 802 of
4 Title 52 of the Oklahoma Statutes;
- 5 7. "Operator" means the same as defined in Section 802 of Title
6 52 of the Oklahoma Statutes;
- 7 8. "Produced water" means brine water or liquid waste water
8 which may contain constituent elements and hydraulic fracturing
9 fluid, that arises out of or is incidental to the drilling,
10 completion or production of oil or gas, but does not include skim
11 oil;
- 12 9. "Skim oil" means hydrocarbons, either in a gaseous or liquid
13 phase, that may be entrained or dissolved in, or produced with,
14 along with the produced water, which was not separated and saved at
15 the producing-well location;
- 16 10. "Surface estate" means the same as defined in Section 802
17 of Title 52 of the Oklahoma Statutes; and
- 18 11. "Surface owner" means a person owning the surface estate,
19 or portion of the surface estate which includes the ownership of the
20 produced water or constituent elements.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 158 of Title 52, unless there is
23 created a duplication in numbering, reads as follows:

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1 Transfer of the legal title to the produced water shall occur at
2 the instant the operator reduces the produced water to possession
3 and separates it from the produced oil and gas, with the operator
4 being liable to the surface owner for just compensation for the
5 value of the property taken pursuant to Oklahoma Constitution,
6 Article 2, Section 24 and as determined by Section 5 of this act.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 159 of Title 52, unless there is
9 created a duplication in numbering, reads as follows:

10 The determination of just compensation for the value of the
11 property taken pursuant to Section 4 of this act shall be determined
12 as follows:

13 1. The benefits to the surface owner and mineral owner are
14 deemed to exceed the value of the produced water and skim oil taken,
15 resulting in just compensation for the value of the property taken
16 to be zero dollars, and no further proceeding is necessary, and no
17 compensation to the surface owner or mineral owner is required when:

18 a. no skim oil is extracted and sold for commercial
19 purposes either by the operator or any other person,
20 and

21 b. no constituent elements dissolved within the produced
22 water are extracted and sold or used for commercial
23 purposes either by the operator or any other person,
24 and

1 c. the produced water:

2 (1) is not reclaimed for reuse by the operator or any
3 other person, but rather disposed of by the
4 operator or any other person as a waste product
5 to the production process, or

6 (2) is reclaimed for reuse by the operator or any
7 other person and the sales proceeds or fair
8 market value of the reclaimed produced water for
9 reuse does not exceed the cost of reclamation of
10 the produced water reduced by the cost of
11 disposal being avoided;

12 2. If skim oil is recovered, saved and sold for commercial
13 purposes at a produced water disposal facility, produced water
14 recycling facility or oil recovery reclaiming facility, either by
15 the operator or any other person, the facility operator shall
16 allocate the oil recovered, saved and sold therefrom to each source
17 thereof, based upon the barrels of produced water and oil received
18 from a particular source for the month, divided by the total barrels
19 of produced water and oil received by the facility for the month.
20 Utilizing this allocation, the facility operator shall file a report
21 with the Tax Commission, and pay the appropriate production taxes
22 thereon, reflecting the volume of oil recovered, saved and sold, and
23 the gross proceeds from sale thereof, allocated to each of the
24 sources, and shall provide a copy of said report to each operator of

1 the well or wells to which the oil was deemed by this subsection to
2 have been produced. The production and proceeds allocated to each
3 well pursuant to this subsection shall be considered production and
4 proceeds from the well or wells, subject to the Production Revenue
5 Standards Act;

6 3. If any constituent element dissolved within the produced
7 water is extracted and sold or used for commercial purposes, either
8 by the operator or any other person, just compensation for the value
9 of the constituent element or elements taken shall be accomplished
10 by paying a royalty to the surface owner or owners on:

11 a. the gross proceeds received by the operator or any
12 other person for the sale of the constituent element
13 or elements, or

14 b. the gross value of the constituent element or elements
15 not sold, but otherwise utilized for commercial
16 purposes by the operator or any other person;

17 4. If produced water is reclaimed for reuse or sale by the
18 operator or any other person, and the fair market value of the
19 reclaimed produced water exceeds the cost of reclamation of the
20 produced water reduced by the cost of disposal being avoided, just
21 compensation for the value of the reclaimed produced water shall be
22 accomplished by paying a royalty to the surface owner or owners on:

23 a. the proceeds received by the operator or any other
24 person, for the sale of the reclaimed produced water,

1 less the cost of reclamation of the produced water
2 reduced by the cost of disposal being avoided, or
3 b. the fair market value of the reclaimed produced water
4 not sold, but otherwise utilized for commercial
5 purposes by the operator or any other person, less the
6 cost of reclamation of produced water reduced by the
7 cost of disposal being avoided;

8 5. No just compensation shall be due the surface owner for any
9 hydraulic fracturing additives extracted from the produced water and
10 sold or used for commercial purposes by the operator or any other
11 person;

12 6. Unless otherwise provided for in a contract with the surface
13 owner or by order of the Corporation Commission pursuant to Section
14 508 of Title 17 of the Oklahoma Statutes, for the purpose of
15 calculating and paying just compensation in the form of royalties
16 pursuant to paragraphs 3 and 4 of this section:

- 17 a. the royalty percentage for the payment of royalties
18 shall be one-eighth (1/8th),
19 b. the facility operator shall allocate the volumes and
20 values of the constituent elements or reclaimed
21 produced water to each source of the produced water,
22 based upon the barrels of produced water received from
23 a particular source for the month, divided by the
24

1 total barrels of produced water received by the
2 facility for the month,

3 c. the unit shape and size for each source of the
4 produced water pursuant to paragraphs 3 and 4 of this
5 section shall be the same geographical area shape and
6 size as the unit for oil and gas development from
7 which the produced water was produced,

8 d. Surface owners within each unit shall share in the
9 royalty proceeds allocated to the unit in the
10 proportion that their acreage bears to total acreage
11 within the unit; and

12 7. The payment of royalties required pursuant to this Section
13 shall be paid in accordance with, and subject to, the provisions of
14 Section 517 of Title 17 of the Oklahoma Statutes.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 160 of Title 52, unless there is
17 created a duplication in numbering, reads as follows:

18 Unless otherwise expressly provided by a contract, bill of sale
19 or other legally binding document:

20 1. When produced water is transferred to a produced water
21 disposal facility, produced water recycling facility or oil recovery
22 reclaiming facility, who takes possession thereof for the purpose of
23 treating the produced water for a subsequent beneficial use, legal
24 title to the produced water shall be transferred to the facility

1 operator who received the produced water for the purpose of treating
2 the waste for subsequent beneficial use;

3 2. When the operator of a produced water disposal facility,
4 produced water recycling facility or oil recovery reclaiming
5 facility who took possession of produced water for the purpose of
6 treating the produced water for a subsequent beneficial use
7 transfers possession of the reclaimed produced water or extracted
8 constituent elements to another person for the purpose of subsequent
9 disposal, beneficial use or sale, legal title to the reclaimed
10 produced water or extracted constituent elements shall be
11 transferred to the person to receiving the reclaimed produce water
12 or extracted constituent elements;

13 3. An operator of a produced water disposal facility, produced
14 water recycling facility or oil recovery reclaiming facility who
15 takes possession of produced water and reclaims from that produced
16 water a product generally considered in the oil and gas industry to
17 be suitable for use in connection with the drilling for or
18 production of oil or gas, and transfers the reclaimed produced water
19 to another person with the contractual understanding that the
20 reclaimed produced water will be used in connection with the
21 drilling for or production of oil or gas, is not liable in tort for
22 a consequence of the subsequent use of that reclaimed produced water
23 by the person to whom the reclaimed produced water is transferred or
24 by any another person; and

1 4. Notwithstanding any other provision of this section, this
2 section does not affect the liability of the well operator or the
3 operator of a produced water disposal facility, produced water
4 recycling facility or oil recovery reclaiming facility, in an action
5 brought by a person for damages for personal injury, death or
6 property damage arising from exposure to the produced water or
7 extracted constituent elements.

8 SECTION 7. It being immediately necessary for the preservation
9 of the public peace, health or safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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