

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 743

By: Schulz of the Senate

and

McCall of the House

8
9 COMMITTEE SUBSTITUTE

10 [oil and gas - Oil and Gas Produced Water Recycling

11 and Reuse Act - codification -

12 emergency]

13
14
15 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 155 of Title 52, unless there is
18 created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

23 3. "Hydraulic fracturing additives" means sand, chemicals and
24 other substances;

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

2 in the Oklahoma Statutes as Section 158 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

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

10 SECTION 5. NEW LAW A new section of law to be codified

11 in the Oklahoma Statutes as Section 159 of Title 52, unless there is
12 created a duplication in numbering, reads as follows:

13 The determination of just compensation for the value of the
14 property taken pursuant to Section 4 of this act shall be determined
15 as follows:

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

- 21 a. no skim oil is extracted and sold for commercial
22 purposes either by the operator or any other person,
23 and
24

1 b. no constituent elements dissolved within the produced
2 water are extracted and sold or used for commercial
3 purposes either by the operator or any other person,
4 and

5 c. the produced water:

6 (1) is not reclaimed for reuse by the operator or any
7 other person, but rather disposed of by the
8 operator or any other person as a waste product
9 to the production process, or

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

16 2. If skim oil is recovered, saved and sold for commercial
17 purposes at a produced water disposal facility, produced water
18 recycling facility or oil recovery reclaiming facility, either by
19 the operator or any other person, the facility operator shall
20 allocate the oil recovered, saved and sold therefrom to each source
21 thereof, based upon the barrels of produced water and oil received
22 from a particular source for the month, divided by the total barrels
23 of produced water and oil received by the facility for the month.
24 Utilizing this allocation, the facility operator shall file a report

1 with the Tax Commission, and pay the appropriate production taxes
2 thereon, reflecting the volume of oil recovered, saved and sold, and
3 the gross proceeds from sale thereof, allocated to each of the
4 sources, and shall provide a copy of said report to each operator of
5 the well or wells to which the oil was deemed by this subsection to
6 have been produced. The production and proceeds allocated to each
7 well pursuant to this subsection shall be considered production and
8 proceeds from the well or wells, subject to the Production Revenue
9 Standards Act;

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

15 a. the gross proceeds received by the operator or any
16 other person for the sale of the constituent element
17 or elements, or

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

21 4. If produced water is reclaimed for reuse or sale by the
22 operator or any other person, and the fair market value of the
23 reclaimed produced water exceeds the cost of reclamation of the
24 produced water reduced by the cost of disposal being avoided, just

1 compensation for the value of the reclaimed produced water shall be
2 accomplished by paying a royalty to the surface owner or owners on:

3 a. the proceeds received by the operator or any other
4 person, for the sale of the reclaimed produced water,
5 less the cost of reclamation of the produced water
6 reduced by the cost of disposal being avoided, or

7 b. the fair market value of the reclaimed produced water
8 not sold, but otherwise utilized for commercial
9 purposes by the operator or any other person, less the
10 cost of reclamation of produced water reduced by the
11 cost of disposal being avoided;

12 5. No just compensation shall be due the surface owner for any
13 hydraulic fracturing additives extracted from the produced water and
14 sold or used for commercial purposes by the operator or any other
15 person;

16 6. Unless otherwise provided for in a contract with the surface
17 owner or by order of the Corporation Commission pursuant to Section
18 508 of Title 17 of the Oklahoma Statutes, for the purpose of
19 calculating and paying just compensation in the form of royalties
20 pursuant to paragraphs 3 and 4 of this section:

21 a. the royalty percentage for the payment of royalties
22 shall be one-eighth (1/8th),

23 b. the facility operator shall allocate the volumes and
24 values of the constituent elements or reclaimed

1 produced water to each source of the produced water,
2 based upon the barrels of produced water received from
3 a particular source for the month, divided by the
4 total barrels of produced water received by the
5 facility for the month,

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

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

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

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

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

23 1. When produced water is transferred to a produced water
24 disposal facility, produced water recycling facility or oil recovery

1 reclaiming facility, who takes possession thereof for the purpose of
2 treating the produced water for a subsequent beneficial use, legal
3 title to the produced water shall be transferred to the facility
4 operator who received the produced water for the purpose of treating
5 the waste for subsequent beneficial use;

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

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

1 a consequence of the subsequent use of that reclaimed produced water
2 by the person to whom the reclaimed produced water is transferred or
3 by any another person; and

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

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

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16 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
17 dated 04/17/2017 - DO PASS, As Amended.
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