

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2471

By: McCall

COMMITTEE SUBSTITUTE

An Act relating to mines and mining; defining terms; declaring purpose of certain moratorium; declaring moratorium on issuance of certain permits and amendments or revisions to permits; providing conditions for ending moratorium; providing certain exception to moratorium; allowing for the issuance of certain permits; authorizing Department of Environmental Quality, Department of Mines and the Oklahoma Water Resources Board to promulgate certain rules; providing for cooperation among certain entities; creating moratorium on issuance, allocation or recognition of certain use of water; providing for codification; and providing an effective date.

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 2-6-111 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section, "nonexempt mine" shall mean a mine, as defined in paragraph 2 of Section 723 of Title 45 of the Oklahoma Statutes, that overlies a sensitive sole source groundwater basin or subbasin and has not, as of November 1, 2019, engaged in

1 the permitted extraction of minerals from natural deposits at that
2 site; provided, regardless of whether a mine so located is engaged
3 in permitted mining activities as of the effective date of this
4 section, no mine that satisfies the criteria of paragraph 1 or 2 of
5 subsection C of Section 1020.2 of Title 82 of the Oklahoma Statutes
6 shall be considered nonexempt.

7 B. Due to the inadequacy of existing technical resources,
8 analytic tools and regulatory systems for purposes of the effective
9 implementation of statutes relating to the operation of mines that
10 may affect sensitive sole source groundwater basins or subbasins,
11 the Legislature hereby declares and establishes a moratorium on the
12 Department of Environmental Quality permitting of any discharge from
13 a nonexempt mine to streams fed or supported by water emanating from
14 sensitive sole source groundwater basins or subbasins.

15 C. The moratorium shall remain in effect until such time as:

16 1. The conditions of subsection C of Section 3 of this act have
17 been satisfied; and

18 2. The Department of Environmental Quality promulgates final
19 rules to provide for effective interagency consultation and
20 coordination of activities amongst the Department, the Oklahoma
21 Water Resources Board and the Department of Mines on all
22 administrative matters relating to the operation of mines that may
23 affect sensitive sole source groundwater basins or subbasins.

1 D. Notwithstanding the moratorium, the Department of
2 Environmental Quality may issue those permits or permit
3 modifications necessary to remedy identified compliance issues
4 pursuant to Title 27A of the Oklahoma Statutes for any mine lawfully
5 engaged in mining, as defined in paragraph 3 of Section 723 of Title
6 45 of the Oklahoma Statutes.

7 E. The Department of Environmental Quality is hereby authorized
8 and instructed to promulgate rules to implement the provisions of
9 this section.

10 F. The Department of Environmental Quality is hereby authorized
11 to cooperate with federal, tribal and any other agency in this state
12 in performing its responsibilities under this section.

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 950 of Title 45, unless there is
15 created a duplication in numbering, reads as follows:

16 A. For purposes of this section:

17 1. "Nonexempt mine" shall mean a mine, as defined in paragraph
18 2 of Section 723 of Title 45 of the Oklahoma Statutes, that overlies
19 a sensitive sole source groundwater basin or subbasin and has not,
20 as of November 1, 2019, engaged in the permitted extraction of
21 minerals from natural deposits at that site; provided, regardless of
22 whether a mine so located is engaged in permitted mining activities
23 as of the effective date of this section, no mine that satisfies the
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1 criteria of paragraph 1 or 2 of subsection C of Section 1020.2 of
2 Title 82 of the Oklahoma Statutes shall be considered nonexempt; and

3 2. "Exempt mine" shall mean a mine that is not a nonexempt
4 mine.

5 B. Due to the inadequacy of existing technical resources,
6 analytic tools and regulatory systems for purposes of the effective
7 implementation of statutes relating to the operation of mines that
8 may affect sensitive sole source groundwater basins or subbasins,
9 the Legislature hereby declares and establishes a moratorium on the
10 Oklahoma Department of Mines issuing, in relation to any location
11 within the outcrop of any sensitive sole source groundwater basin or
12 subbasin or in which groundwater emanating from any sensitive sole
13 source groundwater basin or subbasin may collect within a pit, as
14 defined in paragraph 12 of Section 723 of Title 45 of the Oklahoma
15 Statutes:

16 1. Any permit to any nonexempt mine pursuant to Section 724 of
17 Title 45 of the Oklahoma Statutes; or

18 2. Any amendment or revision, issued pursuant to subsection J
19 of Section 724 of Title 45 of the Oklahoma Statutes, to any existing
20 permit, if such amendment or revision would increase the number of
21 acres available under such permit for excavation of a pit, as that
22 term is defined at paragraph 12 of Section 723 of Title 45 of the
23 Oklahoma Statutes.

1 C. Notwithstanding the moratorium, nothing shall preclude the
2 Department of Mines from issuing an amendment or revision or other
3 authorization to implement phased bonding under a permit issued
4 prior to the effective date of this section.

5 D. Notwithstanding the moratorium or any other provision of
6 law, the Department of Mines shall not require a permit for purposes
7 of road or railroad construction in relation to mining activities by
8 any mine.

9 E. The moratorium shall remain in effect until such time as:

10 1. The conditions of subsection C of Section 3 of this act have
11 been satisfied; and

12 2. The Department of Mines promulgates final rules to provide
13 for effective interagency consultation and coordination of
14 activities amongst the Department, the Oklahoma Water Resources
15 Board and the Department of Environmental Quality on all
16 administrative matters relating to the operation of mines that may
17 affect sensitive sole source groundwater basins or subbasins.

18 F. The Department of Mines is hereby authorized and instructed
19 to promulgate rules to implement the provisions of this section.

20 G. The Department of Mines is hereby authorized to cooperate
21 with federal, tribal and any other agency in this state in
22 performing its responsibilities under this section.
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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1020.9C of Title 82, unless
3 there is created a duplication in numbering, reads as follows:

4 A. For the purposes of this section, "nonexempt mine" shall
5 mean a mine, as defined in paragraph 2 of Section 723 of Title 45 of
6 the Oklahoma Statutes, that overlies a sensitive sole source
7 groundwater basin or subbasin and has not, as of November 1, 2019,
8 engaged in the permitted extraction of minerals from natural
9 deposits at that site; provided, regardless of whether a mine so
10 located is engaged in permitted mining activities as of the
11 effective date of this section, no mine that satisfies the criteria
12 of paragraph 1 or 2 of subsection C of Section 1020.2 of Title 82 of
13 the Oklahoma Statutes shall be considered nonexempt.

14 B. Due to the inadequacy of existing technical resources,
15 analytic tools and regulatory systems for purposes of the effective
16 implementation of statutes relating to the operation of mines that
17 may affect sensitive sole source groundwater basins or subbasins,
18 the Legislature hereby declares and establishes a moratorium on the
19 following actions:

20 1. The Oklahoma Water Resources Board shall not issue any
21 permit or other administrative authorization for the appropriation,
22 diversion, withdrawal or removal of water from or for the
23 dewatering, in part or in full, of a pit, as defined in paragraph 12
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1 of Section 723 of Title 45 of the Oklahoma Statutes, of a nonexempt
2 mine; and

3 2. The Board shall not issue, allocate or recognize, pursuant
4 to subsection D of Section 1020.2 of Title 82 of the Oklahoma
5 Statutes, Section 785:30-15-5 of the Oklahoma Administrative Code or
6 any other provision of law, any offset to the consumptive use of
7 water of a nonexempt mine where such offset is based on a claimed
8 augmentation of stream flow or groundwater.

9 C. The moratorium shall be in effect until such time as the
10 Board, working in coordination with the Oklahoma Department of
11 Environmental Quality, the Oklahoma Department of Mines, and East
12 Central University and in cooperation with federal and tribal
13 governmental agencies with interests in a subject sensitive sole
14 source groundwater basin or subbasin:

15 1. Completes the Enhanced Monitoring and Evaluation of
16 Hydrologic Trends for the Eastern Arbuckle-Simpson Aquifer, South-
17 Central Oklahoma and, based thereon, develops modeling and other
18 technical tools capable of accurately measuring and projecting, as a
19 matter both of incremental and cumulative effect, whether a proposed
20 withdrawal of groundwater from a sensitive sole source groundwater
21 basin or subbasin would degrade or interfere with springs and
22 streams emanating therefrom;

23 2. Promulgates final rules to integrate the use of such studies
24 and tools to administrative implementation of:

1 a. waste, degradation and interference analyses required
2 by subparagraphs c and d of paragraph 1 and
3 subparagraphs c and d of paragraph 2 of subsection A
4 of Section 1020.9 of Title 82 of the Oklahoma
5 Statutes,

6 b. uniform minimum standards and requirements for the
7 development of, and annual reporting regarding
8 compliance with, site-specific water management and
9 conservation plans pursuant to Section 1020.2 of Title
10 82 of the Oklahoma Statutes, with particular regard to
11 methodologies for calculating amounts claimed in
12 consumptive use of water and any claimed augmentation
13 of stream flow or groundwater, and

14 c. consultation, review and approval of such site-
15 specific water management and conservation plans, with
16 specific provisions for making such consultations,
17 reviews and approvals subjection to Article 2 of the
18 Oklahoma Administrative Procedures Act; and

19 3. Promulgates final rules to provide for effective interagency
20 consultation and coordination of activities amongst the Board, the
21 Oklahoma Department of Mines and the Department of Environmental
22 Quality on all administrative matters relating to the operation of
23 mines that may affect sensitive sole source groundwater basins or
24 subbasins.

1 D. The Board is hereby authorized and instructed to promulgate
2 rules to implement the provisions of this section.

3 E. The Board is hereby authorized to cooperate with federal,
4 tribal and any other agency in this state in performing its
5 responsibilities under this section.

6 SECTION 4. This act shall become effective November 1, 2019.

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