

1 ENGROSSED SENATE
2 BILL NO. 18

By: Rader of the Senate

3 and

4 Sims of the House

5
6 An Act relating to Oil and Gas Produced Water and
7 Waste Recycling and Reuse Act; amending 52 O.S. 2021,
8 Section 86.7, as amended by Section 1, Chapter 31,
9 O.S.L. 2022 (52 O.S. Supp. 2022, Section 86.7), which
10 relates to definitions, purpose, and operator rights
11 and responsibilities; modifying definition; excluding
12 certain persons from liability; updating statutory
13 reference; and providing an effective date.

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

15 SECTION 1. AMENDATORY 52 O.S. 2021, Section 86.7, as
16 amended by Section 1, Chapter 31, O.S.L. 2022 (52 O.S. Supp. 2022,
17 Section 86.7), is amended to read as follows:

18 Section 86.7. A. As used in ~~this act~~ the Oil and Gas Produced
19 Water and Waste Recycling and Reuse Act:

20 1. "Commission" means the Oklahoma Corporation Commission;

21 2. "Constituent elements" means salts, metals, elements and
22 other mineralized substances that are naturally occurring and
23 dissolved, entrained or suspended in subterranean water in situ and
24 after extraction from the ground, suspended in the oil and gas
produced water and waste or as part of the brine, as defined in
paragraph 4 of Section 502 of Title 17 of the Oklahoma Statutes;

1 3. "Nonoperator" means persons, other than the operator,
2 contributing to the cost and expense of drilling and completing or
3 operating a well for the intended development and production of oil,
4 gas or other hydrocarbons, regardless of whether the well is
5 completed or produces any oil or gas;

6 4. "Oil and gas produced water and waste" means the fluid
7 containing salt or other mineralized substances, hydraulic
8 fracturing fluid, flowback water, formation water, injection water
9 and any chemicals added downhole, associated with the drilling
10 completion or production of an oil or gas well, incidental to or
11 extracted from hydrocarbon-bearing strata during the drilling.

12 Oil and gas produced water and waste shall also include hydrogen
13 sulfide and carbon oxides emissions produced as a byproduct of
14 natural gas production. Except as provided in Section 86.8 of this
15 title, oil and gas produced water and waste, including its
16 constituent elements, shall not be considered brine for purposes of
17 the Oklahoma Brine Development Act;

18 5. "Operator" means the person authorized by the Corporation
19 Commission to drill, complete and operate a well for the intended
20 development and production of oil, gas or other hydrocarbons,
21 regardless of whether the well is completed or produces any;

22 6. "Person" means any individual, partnership, corporation,
23 limited liability company or any type of association;

1 7. "Recycled water" means oil and gas produced water and waste
2 that has been reconditioned or treated by mechanical, chemical,
3 thermal, or any other commercially viable technological processes
4 available into a reusable form; and

5 8. "Treated constituents" means any chemical, compound or other
6 byproduct naturally occurring in the subterranean water that is
7 removed from oil and gas produced water and waste through
8 reconditioning or treating of the fluid by mechanical, chemical,
9 thermal, or any other commercially viable technological processes
10 available.

11 B. The Legislature finds that oil and gas produced water and
12 waste has minimal or no intrinsic value without substantial
13 expenditures to process, treat or recycle the oil and gas produced
14 water and waste and declares it desirable, necessary and in the
15 public interest to designate the parties who shall own and be
16 responsible for the handling, transfer and disposition of the oil
17 and gas produced water and waste. The Legislature recognizes that
18 it has imposed upon the operator of an oil and gas lease a duty to
19 safely dispose of oil and gas produced water and waste, as defined
20 in ~~this act~~ the Oil and Gas Produced Water and Waste Recycling and
21 Reuse Act. It is further found to be in the public interest to
22 foster, encourage and promote the development of methods and means
23 to economically process, treat and recycle oil and gas produced
24 water and waste for beneficial uses, including the commercial

1 extraction of constituent elements from the oil and gas produced
2 water and waste and to ensure appropriate disposal in accordance
3 with Corporation Commission rules.

4 C. Prior to its extraction from the ground, subterranean water,
5 including its constituent elements, is the property of the owner of
6 the surface estate, as defined in paragraph 9 of Section 802 of this
7 title and shall be subject to the right of the mineral owner or the
8 oil and gas lessee of the mineral owner, or both, to extract the
9 subterranean water as part of the oil and gas produced water and
10 waste as is reasonably necessary for, or incident to, the
11 exploration, exploitation or extraction of hydrocarbons. Nothing
12 contained in ~~this act~~ the Oil and Gas Produced Water and Waste
13 Recycling and Reuse Act shall be construed to:

14 1. Prevent the owner of the surface estate from being
15 considered the brine owner, as defined by paragraph 5 of Section 502
16 of Title 17 of the Oklahoma Statutes, for purposes of Section 86.8
17 of this title or the Oklahoma Brine Development Act; or

18 2. Limit the ability of the owner or owners of the surface
19 estate to enter into any legally binding contract with persons for
20 the payment of money or other valuable consideration for the
21 extraction of subterranean water, including the constituent elements
22 contained therein, or brine, as defined in paragraph 4 of Section
23 502 of Title 17 of the Oklahoma Statutes, from the property of the
24 owner or owners. However, if said extraction of subterranean water

1 or brine is to be done as part of oil and gas operations, the
2 contract shall be entered into prior to the filing of the drilling
3 permit of the oil and/or gas well. If the contract is entered into
4 after the filing of the drilling permit of the oil and/or gas well,
5 the contract shall be with the operator, or with the consent of the
6 operator, any other person or persons. The operator shall not
7 withhold consent unreasonably. Any such contract and the use or
8 disposal of oil and gas produced water and waste, shall be subject
9 to the requirements and limitations set forth in Section 86.8 of
10 this title and subject to any and all applicable governmental laws,
11 rules and regulations and subordinate to any preexisting, legally
12 binding, arms-length contracts relating to the use or disposal of
13 oil and gas produced water and waste. Provided, however, that the
14 contracts shall not result in additional costs or delays to the
15 rights of the operator to extract subterranean water reasonably
16 necessary for, or incident to, the exploration, exploitation or
17 extraction of hydrocarbons. Evidence, in the form of an affidavit,
18 of any contract entered into under the terms of ~~this act~~ the Oil and
19 Gas Produced Water and Waste Recycling and Reuse Act may be filed in
20 the office of the county clerk for the county in which the lands
21 described in the contract are located. The affidavit shall set out
22 the names and address of each party to the contract, the legal
23 description of the lands covered by the contract and the effective
24 date of the contract. Once filed, the affidavit shall serve as

1 constructive notice of the contract under ~~this act~~ the Oil and Gas
2 Produced Water and Waste Recycling and Reuse Act.

3 D. 1. Subject to the requirements and limitations set forth in
4 subsection C of this section and Section 86.8 of this title and
5 unless otherwise provided by Corporation Commission order, an oil or
6 gas lease, brine lease, recycling agreement, surface use agreement,
7 contract, bill of sale or another legally binding document:

8 a. the operator or operators, and the nonoperator or
9 nonoperators, of an oil and/or gas well shall be the
10 owner or owners of the oil and gas produced water and
11 waste extracted from the ground through the borehole
12 of the oil or gas well, and

13 b. the operator or operators, and the nonoperator or
14 nonoperators, shall have the right to use, possess,
15 handle, dispose of, transfer, sell, convey, transport,
16 process, recycle, reuse or treat the produced water
17 and waste and shall also have the exclusive right to
18 obtain proceeds for any of the uses of the oil and gas
19 produced water and waste or some portion thereof,
20 including recycled water and treated constituents.

21 2. Subject to the requirements and limitations set forth in
22 subsection C of this section and Section 86.8 of this title and
23 unless otherwise provided by Corporation Commission order, oil or
24 gas lease, brine lease, recycling agreement, surface use agreement,

1 contract, bill of sale or another legally binding document, until
2 there is a transfer to another person, the operator or operators,
3 and the nonoperator or nonoperators, shall be responsible for the
4 use, disposition, transfer, sale, conveyance, transport, recycling,
5 reuse, treatment or disposal of the transferred oil and gas produced
6 water and waste, recycled water and treated constituents or any
7 other byproducts.

8 3. Subject to the requirements and limitations set forth in
9 subsection C of this section and Section 86.8 of this title and
10 unless otherwise provided by Corporation Commission order, an oil or
11 gas lease, brine lease, recycling agreement, surface use agreement,
12 contract, bill of sale or another legally binding document:

13 a. when oil and gas produced water and waste is
14 transferred to a person for the purpose of processing
15 or treating for subsequent beneficial use, disposal or
16 both, the transferred material, recycled water and
17 treated constituents shall be the property of that
18 person until such time that the person disposes of the
19 produced water and waste in accordance with Commission
20 rules or there is a transfer of the material to a
21 subsequent person, and

22 b. transferred oil and gas produced water and waste shall
23 be the property of such transferee and the transferees
24 shall have control of and responsibility for the

1 substance, including the right to use, possess,
2 handle, dispose of, transfer, sell, convey, transport,
3 process, recycle, reuse or treat the produced water
4 and waste and to obtain proceeds for any uses of the
5 substance or any portion thereof, including recycled
6 water and treated constituents.

7 E. Except as provided in paragraph 1 of subsection D of this
8 section, a person is not liable in tort for consequences of
9 subsequent use of recycled water or treated constituents if that
10 person:

11 1. Processes oil and gas produced water and waste in order to
12 produce recycled water or treated constituents that are generally
13 considered in the oil and gas industry to be suitable for use in
14 connection with drilling, completion or production operations of oil
15 and gas or both; ~~or~~

16 2. Transfers the recycled water or treated constituents, or
17 both, to another person for use in connection with oil and gas
18 drilling, completion or production operations; or

19 3. Captures or sequesters hydrogen sulfides and carbon oxides
20 in connection with natural gas production for the purpose of
21 protecting the environment.

22 This subsection shall not be construed to affect the liability
23 of a person in possession of oil and gas produced water and waste,
24 recycled water or treated constituents, or both, in an action

1 brought by a person for damages for personal injury, death or
2 property damage arising from a release of or exposure to any of
3 these substances.

4 F. A person who acquires possession of oil and gas produced
5 water and waste for the purpose of recycling it for subsequent
6 beneficial use may dispose of the oil and gas produced water and
7 waste, including recycled water, treated constituents or other
8 byproducts of the recycling process, in his or her permitted
9 disposal well or wells, regardless of the source or prior ownership
10 of the oil and gas produced water and waste. The disposal shall not
11 require a commercial disposal well permit from the Corporation
12 Commission but shall otherwise be subject to any other permit
13 restrictions applicable to disposal wells.

14 SECTION 2. This act shall become effective November 1, 2023.

15 Passed the Senate the 6th day of March, 2023.

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17 _____
18 Presiding Officer of the Senate

19 Passed the House of Representatives the ____ day of _____,
20 2023.

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22 _____
23 Presiding Officer of the House
24 of Representatives