

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL 2471

By: McCall, Branham, Johns and  
6 Roberts (Dustin) of the  
7 House

8 and

9 McCortney of the Senate

10 COMMITTEE SUBSTITUTE

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

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

SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 2-6-111 of Title 27A, unless  
22 there is created a duplication in numbering, reads as follows:  
23

1       A. For purposes of this section, a "subject mine" shall mean a  
2 mine, as defined in paragraph 2 of Section 723 of Title 45 of the  
3 Oklahoma Statutes, proposed for a location overlying a sensitive  
4 sole source groundwater basin or subbasin, exclusive of any mine  
5 that meets at least one of the following conditions:

6       1. As of November 1, 2019, is engaged in the permitted  
7 extraction of minerals from natural deposits; or

8       2. Satisfies the criteria of paragraph 1 or 2 of subsection C  
9 of Section 1020.2 of Title 82 of the Oklahoma Statutes; or

10       3. Is not to be permitted to operate for a period of more than  
11 five (5) years, with no extensions or renewals; or

12       4. The operation of which will not result in more than five (5)  
13 acre-feet per year of groundwater emanating from a sensitive sole  
14 source groundwater basin or subbasin to infiltrate its pit, as that  
15 term is defined in paragraph 12 of Section 723 of Title 45 of the  
16 Oklahoma Statutes.

17       B. Due to the inadequacy of existing technical resources,  
18 analytic tools and regulatory systems for purposes of the effective  
19 implementation of statutes relating to the operation of mines that  
20 overlie a sensitive sole source groundwater basins or subbasins, the  
21 Legislature hereby declares and establishes a moratorium on the  
22 Department of Environmental Quality permitting of any discharge from  
23 a subject mine to streams fed or supported by water emanating from  
24 sensitive sole source groundwater basins or subbasins.

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

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

4 2. The Department of Environmental Quality promulgates final  
5 rules to provide for effective interagency consultation and  
6 coordination of activities among the Department, the Oklahoma Water  
7 Resources Board and the Department of Mines on all administrative  
8 matters relating to the operation of mines at locations that overlie  
9 a sensitive sole source groundwater basin or subbasin.

10 D. Notwithstanding the moratorium, the Department of  
11 Environmental Quality may issue any new permits, permit  
12 modifications, permit amendments, permit revisions or permit  
13 renewals necessary to maintain compliance or remedy identified  
14 compliance issues pursuant to Title 27A of the Oklahoma Statutes to  
15 operators of any mines lawfully engaged in mining, as defined in  
16 paragraph 3 of Section 723 of Title 45 of the Oklahoma Statutes.

17 E. The Department of Environmental Quality is hereby authorized  
18 and instructed to promulgate rules to implement the provisions of  
19 this section.

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

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

4 A. For purposes of this section, a "subject mine" shall mean a  
5 mine, as defined in paragraph 2 of Section 723 of Title 45 of the  
6 Oklahoma Statutes, proposed for a location overlying a sensitive  
7 sole source groundwater basin or subbasin, exclusive of any mine  
8 that meets at least one of the following conditions:

9 1. As of November 1, 2019, is engaged in the permitted  
10 extraction of minerals from natural deposits; or

11 2. Satisfies the criteria of paragraph 1 or 2 of subsection C  
12 of Section 1020.2 of Title 82 of the Oklahoma Statutes; or

13 3. Is not to be permitted to operate for a period of more than  
14 five (5) years, with no extensions or renewals; or

15 4. The operation of which will not result in more than five (5)  
16 acre-feet per year of groundwater emanating from a sensitive sole  
17 source groundwater basin or subbasin to infiltrate its pit, as that  
18 term is defined in paragraph 12 of Section 723 of Title 45 of the  
19 Oklahoma Statutes.

20 B. Due to the inadequacy of existing technical resources,  
21 analytic tools and regulatory systems for purposes of the effective  
22 implementation of statutes relating to the operation of mines that  
23 overlies a sensitive sole source groundwater basins or subbasins,  
24 the Legislature hereby declares and establishes a moratorium on the

1 Department of Mines issuing, in relation to any location overlying a  
2 sensitive sole source groundwater basin or subbasin or in which  
3 groundwater emanating from any sensitive sole source groundwater  
4 basin or subbasin may collect within a pit, as defined in paragraph  
5 12 of Section 723 of Title 45 of the Oklahoma Statutes:

6 1. Any permit, pursuant to Section 724 of Title 45 of the  
7 Oklahoma Statutes, to any subject mine;

8 2. Any amendment or revision to any existing mining permit,  
9 that covers additional land which shall include extensions of  
10 boundaries shown in the initial permit, pursuant to subsection J of  
11 Section 724 of Title 45 of the Oklahoma Statutes, if such amendment  
12 or revision would increase the acreage under such permit for that  
13 mine location by more than one hundred percent (100%) or four  
14 hundred (400) acres, whichever is less, as compared to the acreage  
15 under permit for that mine location prior to the effective date of  
16 this act.

17 C. Notwithstanding the moratorium, nothing in paragraph 2 of  
18 subsection B of this section shall preclude the Department of Mines  
19 from issuing an amendment or revision to cover additional land,  
20 other changes to method or conduct of mining, reclamation operations  
21 contemplated by the original permit or other authorization to allow  
22 a change in mine ownership or to implement bonding under a permit  
23 issued prior to the effective date of this act, nor shall any permit  
24 amendment or revision issued pursuant to this section be deemed to

1 render the permitted mine a subject mine for purposes of Title 27A,  
2 45 or 82 of the Oklahoma Statutes.

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

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

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

10 2. The Department of Mines promulgates final rules to provide  
11 for effective interagency consultation and coordination of  
12 activities among the Department, the Oklahoma Water Resources Board  
13 and the Department of Environmental Quality on all administrative  
14 matters relating to the operation of mines at locations that overlie  
15 a sensitive sole source groundwater basin or subbasin.

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

18 G. The Department of Mines is hereby authorized to cooperate  
19 with federal, tribal and any other agencies in this state in  
20 performing its responsibilities under this section.

21 SECTION 3. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1020.9C of Title 82, unless  
23 there is created a duplication in numbering, reads as follows:

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1       A. For the purposes of this section, a "subject mine" shall  
2 mean a mine, as defined in paragraph 2 of Section 723 of Title 45 of  
3 the Oklahoma Statutes, that overlies a sensitive sole source  
4 groundwater basin or subbasin, exclusive of any mine that meets at  
5 least one of the following conditions:

6       1. As of November 1, 2019, was engaged in the permitted  
7 extraction of minerals from natural deposits; or

8       2. Satisfies the criteria of paragraph 1 or 2 of subsection C  
9 of Section 1020.2 of Title 82 of the Oklahoma Statutes; or

10      3. Is not to be permitted to operate for a period of more than  
11 five (5) years, with no extensions or renewals; or

12      4. The operation of which will not result in more than five (5)  
13 acre-feet per year of groundwater emanating from a sensitive sole  
14 source groundwater basin or subbasin to infiltrate its pit, as that  
15 term is defined in paragraph 12 of Section 723 of Title 45 of the  
16 Oklahoma Statutes.

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

23      1. The Oklahoma Water Resources Board shall not issue any  
24 permit or other administrative authorization for the appropriation,

1 diversion, withdrawal or removal of water from or for the  
2 dewatering, in part or in full, of a pit, as defined in paragraph 12  
3 of Section 723 of Title 45 of the Oklahoma Statutes, of a subject  
4 mine; and

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

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

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

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

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

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

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

21           3. Promulgates final rules to provide for effective interagency  
22 Department of Mines and the Department of Environmental Quality on  
23 all administrative matters relating to the operation of mines at  
24

1 | locations that overlie a sensitive sole source groundwater basin or  
2 | subbasin.

3 |       D. The Board is hereby authorized and instructed to promulgate  
4 | rules to implement the provisions of this section.

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

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

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