An Act

ENROLLED SENATE
BILL NO. 597

By: Bingman, Brecheen and Fields of the Senate

and

Thomsen, Ownbey, Hilliard, Roan, Roberts (Dustin), Hardin, Farley, Moore, Billy, Kirby, Wesselhoft, Sherrer and Hoskin of the House

An Act relating to waters and water rights; amending 82 O.S. 2001, Section 1020.2, which relates to water policy; stating application of policy to certain mines; requiring the Oklahoma Water Resources Board to promulgate rules relating to water in certain mines; requiring coordination with Oklahoma Department of Mines; stating requirements for rules; requiring certain plans to be subject to the Oklahoma Open Records Act; requiring rules relating to augmentation of certain waters in certain mining operations; requiring certain mine operators to implement monitoring plan reporting pit water use; requiring plan and quarterly reports to be filed with Oklahoma Water Resources Board by certain dates; stating requirements for reports; requiring reports to be subject to the Oklahoma Open Records Act; stating exemption; stating penalty for noncompliance; providing exemption from certain requirements and penalty for noncompliance; stating procedures for certain exempt mines; defining terms; stating certain augmentation of waters pursuant to certain plan are considered a beneficial use and not penalized against certain permitted usage; stating exception; and declaring an emergency.

SUBJECT: Groundwater

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1020.2, is amended to read as follows:

Section 1020.2. A. It is hereby declared to be the public policy of this state, in the interest of the agricultural stability, domestic, municipal, industrial and other beneficial uses, general economy, health and welfare of the state and its citizens, to utilize the ground water resources of the state, and for that purpose to provide reasonable regulations for the allocation for reasonable use based on hydrologic surveys of fresh ground water basins or subbasins to determine a restriction on the production, based upon the acres overlying the ground water basin or subbasin.

B. The provisions of ~~this act~~ Section 1020.1 et seq. of this title shall not apply to the taking, using or disposal of salt water associated with the exploration, production or recovery of oil and gas ~~or~~. The provisions of this act shall not apply to the taking, using or disposal of water trapped in producing mines outside of a sensitive sole source groundwater basin or subbasin.

C. Except as provided for in subsection E of this section, the provisions of this act shall not apply to the taking, using or disposal of water trapped in producing mines:

1. That overlie a sensitive sole source groundwater basin or subbasin and have been permitted by the Oklahoma Department of Mines as of August 1, 2011;

2. That overlie a sensitive sole source groundwater basin or subbasin for which an initial application for a permit shall have been filed with the Oklahoma Department of Mines as of August 1, 2011; or

3. That overlie a sensitive sole source groundwater basin or subbasin and for which a permit revision is approved by the Oklahoma Department of Mines.

Provided that the use of mine pit water, pursuant to a site-specific water management and conservation plan prepared in consultation with the Oklahoma Water Resources Board, by mines that are exempted from this act by the terms of this subsection and in furtherance of mine operations and associated manufacturing and commercial activities on the mine site, shall be considered as permitted beneficial uses for all purposes under the laws of the state.

D. 1. Except with respect to the mines exempted from the terms of this act under subsections B and C of this section, the Oklahoma Water Resources Board, in coordination with the Oklahoma Department of Mines, shall promulgate rules for the taking, using or disposal of water collecting in producing mine pits and emanating from a sensitive sole source groundwater basin or subbasin.

2. The rules promulgated by the Oklahoma Water Resources Board shall require, subject to a de minimis exemption to be promulgated therein, the development by the mine operator of provisions relating to the augmentation (a beneficial use) of stream flow or groundwater, and of site-specific water management and conservation plans, which plans shall establish threshold hydrologic monitoring, management and mitigation requirements that are based on relevant hydrologic surveys and investigations of the sensitive sole source groundwater basin or subbasin. Such plans submitted to the Oklahoma Water Resources Board shall be subject to the provisions of the Oklahoma Open Records Act.

3. The rules promulgated by the Oklahoma Water Resources Board shall contain provisions relating to augmentation of stream flow or groundwater, or both, to offset consumptive use of groundwater collecting in the producing mine pit that emanates from a sensitive sole source groundwater basin or subbasin in amounts greater than the equal proportionate share of the maximum annual yield of the groundwater basin or subbasin established by the Oklahoma Water Resources Board that may be allocated to the owner or operator of the producing mine based on groundwater rights owned or leased by the owner or operator.

E. 1. By no later than January 1, 2013, the operator of a mine that is exempted from this act by the provisions of subsection C of this section shall adopt and implement a plan to monitor and report

to the Board the accumulation and disposition of pit water during the previous calendar year. The operator shall also file with the Board interim quarterly reports containing information about the accumulation and disposition of pit water during the previous quarter. The first interim quarterly report for calendar year 2013 shall be sent to the Board by June 30, 2013, and the annual report for the calendar year 2013 shall be sent to the Board by March 31, 2014. Thereafter, the annual report for each calendar year shall be sent to the Board by March 31st of the following year. The monitoring plan will provide for the measurement or reasonable estimation of groundwater and surface water volumes, separately stated, entering the pit, of the water diverted from the pit, of the disposition of the water from the pit, and of the consumptive use, as defined in this section, of the mine pit water by the mine operator. The reports received by the Board will be subject to the provisions of the Oklahoma Open Records Act. If an operator of a mine that is exempted from this act by the provisions of subsection C of this section fails to timely submit an interim quarterly report or annual report, the exemption of subsection C shall no longer apply to the mine and the rules promulgated pursuant to subsection D of this section shall become applicable, provided that such rules shall contain provisions to allow the operator to show cause why the exemption contained in subsection C of this section should continue to apply.

2. If, at any time after March 31, 2015, the amount of groundwater from the pit (plus amounts of groundwater from permitted wells, if any) consumptively used in the preceding twelve months by the mine operator at a mine described in paragraph 1 of this subsection exceeds the annual amount that is equivalent to the equal proportionate share of the maximum annual yield of the groundwater basin or subbasin that could be allocated to the owner or operator of the producing mine based on groundwater rights owned or leased by the owner or operator, then the exemption of subsection C of this section shall no longer apply and the provisions of subsection D of this section shall become applicable to the mine unless the mine operator submits a site-specific water management and conservation plan demonstrating, to the satisfaction of the Board, that such consumptive use of groundwater in amounts greater than the equivalent equal proportionate share either is:

a. offset by augmentation of stream water flow or augmentation of groundwater by recharge, or

b. not likely to reduce the natural flow of springs or streams emanating from a sensitive sole source groundwater basin or subbasin, or

c. satisfied by the owner or operator acquiring sufficient groundwater rights within ninety (90) days of the reported exceedance.

The plan submitted to the Board will be subject to the provisions of the Oklahoma Open Records Act. If the exemption of subsection C of this section no longer applies, the rules promulgated by the Oklahoma Water Resources Board pursuant to subsection D of this section shall provide a period of at least ninety (90) days to come into compliance.

3. If an operator of a mine that is exempt pursuant to subsection C of this section operates in compliance with a site-specific water management and conservation plan that complies with rules promulgated by the Board pursuant to subsection D of this section, the Board cannot otherwise require the operator of such mine to take an action or refrain from taking an action that would effectively prohibit any mining operation or practice that is otherwise allowed by the Oklahoma Department of Mines.

F. For purposes of this section, "consumptive use" or "consumptively used" means diversion of water from a mine pit that is not returned to the groundwater basin or subbasin, or to a mine pit or holding basin, or to a definite stream, or to the land surface from which surface runoff flows into a mine pit. The term "consumptive use" includes the estimated moisture content driven off or carried away with the mined material transported off the mining site, plus the amount of evaporation from the mine pit that exceeds the amount of direct precipitation and surface runoff into the mine pit, plus any amounts for other proposed beneficial uses off the mining site.

G. Augmentation of stream flow or groundwater, pursuant to a site-specific water management and conservation plan prepared in consultation with the Oklahoma Water Resources Board, shall be

considered a beneficial use and not waste, and shall not count against permitted surface water or groundwater usage, provided that taking, using or disposal of water from a producing mine for stream augmentation pursuant to a site-specific water management and conservation plan prepared in consultation with the Oklahoma Water Resources Board, may be claimed in annual water use reports as a beneficial use for purposes of the maintenance of the right to use surface water under any permit applicable to such mine. The mine pit shall be considered a diversion point authorized by the surface water use permit issued to the mine operator whenever there is consumptive use of surface water or the surface water is used for stream augmentation.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 18th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of May, 2011.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 20th

day of May, 20 11,

at 11:32 o'clock AM.

By: Jessie R. Rogers

Approved by the Governor of the State of Oklahoma the 26th day of

May, 20 11, at 2:04 o'clock PM.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

26th day of May, 20 11,

at 6:01 o'clock P.M.

By: Michelle R. Day