

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1403

By: Humphrey of the House

and

Bullard of the Senate

COMMITTEE SUBSTITUTE

[water - directing Water Resources Board to develop
instream flow - promulgating rules - 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 1085.97 of Title 82, unless
there is created a duplication in numbering, reads as follows:

For the purposes of Section 2 of this act:

1. "Instream flow" means the amount and timing of water flows
required to maintain the functions and resilience of freshwater
stream systems and the needs of communities that depend on the
healthy ecosystems;

2. "Instream flow program" means an ongoing program in which a
treasured stream is monitored for compliance with instream flow

determinations and biological assessments are conducted to determine if adjustments to instream flows are needed;

3. "Stakeholder" means any state or local government entity, tribal government, business entity, school district, higher education institution, or individual or entity with an existing water permit holder affected by the instream flow study;

4. "Treasured stream" means a stream that is:

- a. habitat for a species listed as endangered or currently found in Oklahoma rivers east of I-35 by the state government,
- b. designated as an Oklahoma Scenic River, or
- c. designated as such by the Oklahoma Water Resources Board;

Treasured stream shall not include waters under the jurisdiction of the Grand River Dam Authority.

5. "Treasured stream committee" means a body of stakeholders tasked, for each treasured stream in their area, with determining what metrics should be included and what goals should be achieved by instream flows, reviewing data obtained from the instream flow program and suggesting improvements to the instream flow determination methodology and the instream flow program.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.98 of Title 82, unless there is created a duplication in numbering, reads as follows:

1 A. For the purpose of enabling the protection, conservation,
2 recreational use and economic development of water resources that
3 benefit all Oklahomans as established in Section 1086.1 of Title 82
4 of the Oklahoma Statutes, and to protect the rights of the citizens
5 of this state to use water for domestic use as established in
6 Section 105.2 of Title 82 of the Oklahoma Statutes, the Oklahoma
7 Water Resources Board is hereby authorized and empowered:

8 1. To determine the mean instream flow for each treasured
9 stream in conjunction with the metrics and methods listed in
10 subsection B of this section and decided upon by the treasured
11 stream committees described in subsection C of this section;

12 2. To accurately account for the amount of water available for
13 future permitting from each treasured stream by an amount equal to
14 its respective instream flow determination. Water previously
15 reserved for in-basin use shall not be used to satisfy a reduction
16 in the amount of water available for permitting due to instream flow
17 determinations;

18 3. To develop a process for petitioning the Board to designate
19 a Basin Stakeholder Committee for the purpose of conducting an
20 instream flow study on specific streams;

21 4. To adjust instream flows for each treasured stream as
22 additional data is gathered by the instream flow programs and
23 evaluated by the treasured stream committees;

1 5. To include instream flow determinations, the status of
2 instream flow programs and the recommendations of the treasured
3 stream committees in any updates to the Oklahoma Comprehensive Water
4 Plan. Nothing in this act waives, amends, negates, reduces,
5 defines, affects or detracts from the provisions of the State of
6 Oklahoma, Choctaw Nation of Oklahoma, Chickasaw Nation, City of
7 Oklahoma City Water Settlement August 2016 and any conformed
8 Settlement Agreement, the Amended Storage Contract Transfer
9 Agreement among City of Oklahoma City, Oklahoma City Water Utilities
10 Trust and State of Oklahoma Water Resources Board, Oklahoma Water
11 Resources Board Regular Permit No. 2007-17 or the Settlement Act
12 (Water Infrastructure Improvements for the Nation Act, Pub. Law 114-
13 322, Section 3608, 130 Stat. 1628, 1796-1814);

14 6. To designate voluntary, incentive based or conditional
15 mechanisms for implementing instream flow on a petitioned stream;

16 7. To allow those that hold regular permits, seasonal permits
17 or other water rights for stream water use in treasured streams to
18 voluntarily reallocate their permits, in full or in part, to
19 instream flows of the treasured stream to which the permit or right
20 applies, based on variations in flow;

21 8. To cooperate with all relevant state and federal
22 institutions, agencies, departments and boards, officers and
23 existing water permit holders to satisfy instream flow
24 determinations, including periodic releases of stored water; and all

1 state institutions, agencies, departments, boards and officers are
2 hereby authorized and directed to cooperate with the Board;

3 8. To adopt such rules as may be necessary to accomplish the
4 purposes of this act;

5 9. To make and enter into all contracts and agreements
6 necessary or incidental to the performance of its duties and the
7 execution of its powers under this act;

8 10. To receive and accept from the State of Oklahoma or the
9 United States of America or any agency or instrumentality thereof
10 grants of funds and to receive and accept aid or contributions from
11 any source of either money, property, labor or other things of value
12 to be held, used and applied only for the purposes for which such
13 grants and contributions may be made; and

14 11. To expend income and funds of the Board in the exercise of
15 any or all of the powers granted to the Board under the provisions
16 of this act.

17 B. For the purpose of effectuating the protection, conservation
18 and economic development of water resources of treasured streams as
19 established by this act, the Oklahoma Water Resources Board shall
20 conduct instream flow studies that:

21 1. Identify and record information related to, but not limited
22 to, the daily regimes of temperature, instream flow rate and water
23 quality needed to protect and conserve the fish and wildlife
24 propagation and recreation of the treasured stream;

1 2. Incorporate all flow data obtained before and after
2 construction of any reservoirs and diversion structures that have
3 affected the natural flow regime of the treasured stream, and
4 consider the potential effects of flow rate, temperature of water
5 released from reservoirs on downstream fish and wildlife propagation
6 and recreation;

7 3. Incorporate how weather and climate scenarios may affect
8 future instream flows, fish and wildlife propagation and recreation;

9 4. Identify when recreational activities occur on the stream,
10 their economic impact and the quantity, quality and timing of stream
11 flows needed to sustain such activities; and

12 6. Quantify the potential future demands for domestic use of
13 stream water.

14 C. Two treasured stream committees shall be formed by the
15 Board, one for Northeastern Oklahoma and another for Southeastern
16 Oklahoma. Each committee shall be comprised of one member from the
17 Oklahoma Water Resources Board, the Oklahoma Department of Wildlife
18 Conservation, United States Geological Survey, United States Fish
19 and Wildlife Service, and any other relevant federal agencies, the
20 University of Oklahoma, Oklahoma State University, the University of
21 Tulsa, the Grand River Dam Authority Scenic Rivers Operations, a
22 tribal nation located in the relevant area, and three additional
23 stakeholders, as defined in this act. The Governor shall appoint
24 two (2) members from a non-governmental conservation organization to

1 the committee; one member shall be from an organization east of I-35
2 and one member shall be from an organization west of I-35.

3 1. The purpose of the committees is to provide recommendations
4 for the completion of instream flow determinations, identify what
5 metrics are to be measured and which biological assessments are to
6 be made by each instream flow program and monitor their progress and
7 recommend changes to instream flow determinations as necessary. The
8 committees shall meet at least annually and may meet more often as
9 necessary and agreed upon by the committees.

10 2. Subcommittees:

- 11 a. each treasured stream committee shall have a three-
12 member subcommittee comprised of the Executive
13 Directors of the Oklahoma Water Resources Board, the
14 Oklahoma Department of Wildlife Conservation, and a
15 committee member from the University of Oklahoma or
16 Oklahoma State University, or their designees,
17 b. the representative from the Board shall serve as
18 chairperson of the subcommittee from November 1, 2019,
19 to November 1, 2020, and
20 c. thereafter, the chair shall be rotated annually, as
21 agreed upon by the committee;

22 3. Duties and responsibilities of the committees and
23 subcommittees:
24

- 1 a. the subcommittees shall approve a programmatic work
2 plan by December 31, 2019, which shall include the
3 following:
- 4 (1) a list of recommended priority streams for
5 instream flow determinations,
 - 6 (2) recommended metrics, in addition to those listed
7 in subsection B of this section, to be included
8 in the determination of instream flow for each
9 treasured stream,
 - 10 (3) recommendation of additional data that needs to
11 be collected to determine instream flows for each
12 treasured stream, if any,
 - 13 (4) assignment of responsibilities for obtaining any
14 additional data needed to determine instream
15 flows,
 - 16 (5) the time frames in which additional data will be
17 obtained,
 - 18 (6) the general methods used to obtain additional
19 data,
 - 20 (7) recommended metrics to be monitored by each
21 instream flow program after instream flows are
22 determined, and
- 23
24

1 (8) recommendations regarding general methods and
2 frequency of instream flow program data
3 collection,

4 b. the subcommittees shall ensure that resources of
5 relevant agencies are utilized effectively and
6 efficiently to accomplish additional data collection.
7 To assist the subcommittees, each involved agency
8 shall also designate lead staff to equally share
9 oversight of the data collection, to maximize inhouse
10 capabilities of personnel and equipment and to
11 minimize costs to the state. The committees shall
12 also consider inviting cities, river authorities,
13 water districts, other political subdivisions of the
14 state, universities and federal water agencies to
15 cooperate with and participate in the conduct of these
16 studies whenever practicable,

17 c. the subcommittees shall establish an interagency
18 science team composed of staff scientists and
19 engineers assigned to work on the data collection by
20 the agencies and their cooperators. The team shall
21 assist the committees by drafting study plans and
22 scope of work, by supervising and facilitating
23 contracts and by conducting and reporting on the
24 priority studies identified in the work plan,

- d. for all contracts by any agency for work to be performed in furtherance of the work plan, the team shall draft the plans and scope of work and provide recommendations for contract facilitation prior to the agency's presentation of the contract to its board, commission or other agency official possessing the authority to approve such contracts,
- e. the subcommittees shall ensure that a productive data and information exchange is accomplished among the agencies. Also, the parties hereto shall each agree to promptly furnish, free of charge, any and all correspondence, memorandums, study reports, contracts, data and any other information relating to instream flow studies that may hereafter be requested by any of the parties hereto and which are not privileged and confidential under law,
- f. the subcommittees shall, after establishing a quorum, attempt to reach unanimous agreement on all decisions made in exercising its duties and responsibilities under this agreement. In the event of the failure of the subcommittees to reach a unanimous agreement on a decision, a simple majority of the assembled members may approve the decision as to not frustrate or deter the intent, direction or purpose of this agreement or

1 the duties and responsibilities of the subcommittees
2 as defined hereunder,

3 g. the subcommittees shall attempt to resolve technical
4 disputes by seeking consensus from the interagency
5 science team. The subcommittees may direct team
6 members to meet specifically for the purpose of
7 resolving professional differences in order to reach a
8 compromised solution and to report that solution back
9 to the subcommittees,

10 h. to assist the agencies in performing a scientifically
11 sound program, the committees shall appoint an
12 independent scientific advisory group to review and
13 comment on study methods and plans prepared by the
14 team. The number and composition of the scientific
15 advisory group shall be made at the discretion of the
16 committee and may vary from time to time,

17 i. the subcommittees may also resolve interagency
18 disputes by seeking the advice of their governing
19 bodies, and

20 j. nothing in this section shall preclude any of the
21 involved agencies from executing interagency
22 contracts, operating agreements, establishing other
23 committees, or otherwise utilizing available resources
24 to achieve specific statutorily assigned

responsibilities regarding instream flow
determinations.

D. Nothing in this section shall be construed as affecting or
intending to affect existing water permits, rights or the
transferability of such.

E. Nothing in this section shall be construed as violating
prior riparian rights.

SECTION 3. This act shall become effective November 1, 2019.

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