

1 ENGROSSED HOUSE
2 BILL NO. 1403

By: Humphrey of the House

and

Silk of the Senate

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7 [water - directing Oklahoma Water Resources Board
8 to determine instream flows for certain rivers -
9 authorizing promulgation of rules - effective
10 date]

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1085.97 of Title 82, unless
17 there is created a duplication in numbering, reads as follows:

18 For the purposes of Section 2 of this act:

19 1. "Treasured stream" means a stream that is:

- 20 a. habitat for a species listed as threatened or
21 endangered by the federal or state government,
22 b. designated as an Oklahoma Scenic River, or
23 c. designated as such by the Oklahoma Water Resources
24 Board;

1 2. "Instream flow" means an in-basin reserve amount of water
2 whose quality and flow regime protects and conserves fish and
3 wildlife propagation and recreation;

4 3. "Instream flow program" means an ongoing program in which a
5 treasured stream is monitored for compliance with instream flow
6 determinations and biological assessments are conducted to determine
7 if adjustments to instream flows are needed; and

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

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

17 A. For the purpose of effectuating the protection, conservation
18 and economic development of water resources that benefit all
19 Oklahomans as established in Section 1086.1 of Title 82 of the
20 Oklahoma Statutes, and to protect the rights of individuals to use
21 water for domestic use as established in Section 105.2 of Title 82
22 of the Oklahoma Statutes, the Oklahoma Water Resources Board is
23 hereby authorized, empowered and directed:

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1 1. To determine instream flows for each treasured stream in
2 conjunction with the metrics and methods listed in subsection B of
3 this section and decided upon by the treasured stream committees as
4 described in subsection C of this section;

5 2. To reduce the amount of water available for permitting from
6 each treasured stream by an amount equal to its respective instream
7 flow determination. Water previously reserved for in-basin use
8 shall not be used to satisfy a reduction in the amount of water
9 available for permitting due to instream flow determinations. In
10 the case that the Board determines that there is not enough
11 unallocated water available in the treasured stream to allocate to
12 instream flows, the Board shall cease the allocation of water for
13 non-instream flow purposes in the treasured stream until after an
14 allocation that satisfies the instream flow determination is met;

15 3. To adjust instream flows for each treasured stream as
16 additional data is gathered by the instream flow programs and
17 evaluated by the treasured stream committees;

18 4. To include instream flow determinations, the status of
19 instream flow programs and the recommendations of the treasured
20 stream committees in updates to the Oklahoma Comprehensive Water
21 Plan;

22 5. To allow those that hold regular, seasonal permits or other
23 water rights for stream water use in treasured streams to
24 voluntarily reallocate their permits, in full or in part, to

1 instream flows of the treasured stream to which the permit or right
2 applies;

3 6. To cooperate with all state and federal institutions,
4 agencies, departments, boards and officers and existing water permit
5 holders to satisfy instream flow determinations, including periodic
6 releases of stored water; and all state institutions, agencies,
7 departments, boards and officers are hereby authorized and directed
8 to cooperate with the Board;

9 7. To adopt such rules as may be necessary to effectuate the
10 purposes of this act;

11 8. To make and enter into all contracts and agreements
12 necessary or incidental to the performance of its duties and the
13 execution of its powers under this act;

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

20 10. To expend income and funds of the Board in the exercise of
21 any or all of the powers granted to the Board under the provisions
22 of this act.

23 B. For the purpose of effectuating the protection, conservation
24 and economic development of water resources of treasured streams as

1 established by this act, the Oklahoma Water Resources Board shall
2 conduct instream flow studies that:

3 1. Identify and record information related to, but not limited
4 to, the daily regimes of temperature, flow rate and water quality
5 needed to protect and conserve the treasured stream's fish and
6 wildlife propagation and recreation at a spatial resolution of less
7 than 5km;

8 2. Incorporate all flow data obtained after construction of
9 reservoirs and/or diversion structures that have affected the
10 treasured stream's natural flow regime, and consider the potential
11 effects of flow rate, temperature and water quality of water
12 released from reservoirs on downstream fish and wildlife propagation
13 and recreation;

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

16 4. Account for gains and losses of water in streams that are
17 connected to groundwater;

18 5. Identify when recreational activities occur on the stream,
19 their economic impact and the quantity, quality and timing of stream
20 flows needed to sustain such activities; and

21 6. Quantify the potential future demands for domestic use of
22 stream water.

23 C. Two treasured stream committees shall be formed, one for
24 Northeastern Oklahoma and another for Southeastern Oklahoma. Each

1 committee shall be comprised of one member from the Oklahoma Water
2 Resources Board, the Oklahoma Department of Wildlife Conservation,
3 Oklahoma Forestry Services, the University of Oklahoma, Oklahoma
4 State University, the University of Tulsa, the Oklahoma Scenic
5 Rivers Commission, a local tribal nation, and three stakeholders
6 that reside in a treasured stream basin. Additional membership may
7 be made available to federal natural resource agencies that wish to
8 participate.

9 1. The purpose of the committees is to provide guidance for the
10 completion of instream flow determinations, identify what metrics
11 are to be measured and which biological assessments are to be made
12 by each instream flow program and monitor their progress and
13 recommend changes to instream flow determinations as necessary. The
14 committees shall meet at least annually and may meet more often as
15 necessary and agreed upon by the committees.

16 2. Subcommittees:

17 a. each treasured stream committee shall have a three-
18 member subcommittee comprised of the Executive
19 Directors of the Oklahoma Water Resources Board, the
20 Oklahoma Department of Wildlife Conservation, and a
21 committee member from the University of Oklahoma or
22 Oklahoma State University, or their designees,
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1 b. the representative from the Board shall serve as
2 chairperson of the subcommittee from November 1, 2019,
3 to November 1, 2020, and

4 c. thereafter, the chair shall be rotated annually, as
5 agreed upon by the committee.

6 3. Duties and responsibilities of the committees and
7 subcommittees:

8 a. the subcommittees shall approve a programmatic work
9 plan by December 31, 2019, which shall include the
10 following:

11 (1) a list of the priority streams for instream flow
12 determinations,

13 (2) identification of metrics, in addition to those
14 listed in subsection B of this section, to be
15 included in the determination of instream flow
16 for each treasured stream,

17 (3) identification of additional data that needs to
18 be collected to determine instream flows for each
19 treasured stream, if any,

20 (4) assignment of responsibilities for obtaining any
21 additional data needed to determine instream
22 flows,

23 (5) the time frames in which additional data will be
24 obtained,

1 (6) the general methods used to obtain additional
2 data,

3 (7) the metrics to be monitored by each instream flow
4 program after instream flows are determined, and

5 (8) the general methods and frequency of instream
6 flow program data collection,

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

20 c. the subcommittees shall establish an interagency
21 science team composed of staff scientists and
22 engineers assigned to work on the data collection by
23 the agencies and their cooperators. The team shall
24 assist the committees by drafting study plans and

1 scope of work, by supervising and facilitating
2 contracts and by conducting and reporting on the
3 priority studies identified in the work plan,

4 d. for all contracts by any agency for work to be
5 performed in furtherance of the work plan, the team
6 shall draft the plans and scope of work and provide
7 recommendations for contract facilitation prior to the
8 agency's presentation of the contract to its board,
9 commission or other agency official possessing the
10 authority to approve such contracts,

11 e. the subcommittees shall ensure that a productive data
12 and information exchange is accomplished among the
13 agencies. Also, the parties hereto shall each agree
14 to promptly furnish, free of charge, any and all
15 correspondence, memorandums, study reports, contracts,
16 data and any other information relating to instream
17 flow studies that may hereafter be requested by any of
18 the parties hereto and which are not privileged and
19 confidential under law,

20 f. the subcommittees shall attempt to reach unanimous
21 agreement on all decisions made in exercising its
22 duties and responsibilities under this agreement. In
23 the event of the failure of the subcommittees to reach
24 a unanimous agreement on a decision, a simple majority

1 of the assembled members may approve the decision as
2 to not frustrate or deter the intent, direction or
3 purpose of this agreement or the duties and
4 responsibilities of the subcommittees as defined
5 hereunder,

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

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

20 i. the subcommittees may also resolve interagency
21 disputes by seeking the advice of their governing
22 bodies, and

23 j. nothing in this section shall preclude any of the
24 involved agencies from executing interagency

