

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1403

By: Humphrey

4
5
6 AS INTRODUCED

7 An Act relating to water; defining terms; directing
8 Oklahoma Water Resources Board to determine instream
9 flows for certain rivers; directing permits be based
10 on flow determinations; directing instream flow
11 adjustments from gathered data; requiring data
12 collected be provided in updates to certain water
13 plan; allowing for voluntary water permit
14 reallocation; authorizing cooperation with certain
15 agencies and entities concerning instream flow;
16 authorizing promulgation of rules; authorizing
17 ability to contract; authorizing for reception of
18 available grants and aid; authorizing the expenditure
19 of funds and exercise of powers of the Board;
20 directing Board to gather certain stream-related
21 data; providing for the formation of Treasured Stream
22 Committees; stating purpose of committees; providing
23 for formation of subcommittees; providing duties and
24 responsibilities of committees and subcommittees;
providing for codification; and providing an
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 1. "Treasured stream" means a stream that is:
2 a. habitat for a species listed as threatened or
3 endangered by the federal or state government,
4 b. designated as an Oklahoma Scenic River, or
5 c. designated as such by the Oklahoma Water Resources
6 Board;

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

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

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

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

23 A. For the purpose of effectuating the protection, conservation
24 and economic development of water resources that benefit all

1 Oklahomans as established in Section 1086.1 of Title 82 of the
2 Oklahoma Statutes, and to protect the rights of individuals to use
3 water for domestic use as established in Section 105.2 of Title 82
4 of the Oklahoma Statutes, the Oklahoma Water Resources Board is
5 hereby authorized, empowered and directed:

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

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

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

23 4. To include instream flow determinations, the status of
24 instream flow programs and the recommendations of the treasured

1 stream committees in updates to the Oklahoma Comprehensive Water
2 Plan;

3 5. To allow those that hold regular, seasonal permits or other
4 water rights for stream water use in treasured streams to
5 voluntarily reallocate their permits, in full or in part, to
6 instream flows of the treasured stream to which the permit or right
7 applies;

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

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

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

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

1 10. To expend income and funds of the Board in the exercise of
2 any or all of the powers granted to the Board under the provisions
3 of this act.

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

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

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

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

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

23

24

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

4 6. Quantify the potential future demands for domestic use of
5 stream water.

6 C. Two treasured stream committees shall be formed, one for
7 Northeastern Oklahoma and another for Southeastern Oklahoma. Each
8 committee shall be comprised of one member from the Oklahoma Water
9 Resources Board, the Oklahoma Department of Wildlife Conservation,
10 Oklahoma Forestry Services, the University of Oklahoma, Oklahoma
11 State University, the University of Tulsa, the Oklahoma Scenic
12 Rivers Commission, a local tribal nation, and three stakeholders
13 that reside in a treasured stream basin. Additional membership may
14 be made available to federal natural resource agencies that wish to
15 participate.

16 1. The purpose of the committees is to provide guidance for the
17 completion of instream flow determinations, identify what metrics
18 are to be measured and which biological assessments are to be made
19 by each instream flow program and monitor their progress and
20 recommend changes to instream flow determinations as necessary. The
21 committees shall meet at least annually and may meet more often as
22 necessary and agreed upon by the committees.

23 2. Subcommittees:
24

- 1 a. each treasured stream committee shall have a three-
2 member subcommittee comprised of the Executive
3 Directors of the Oklahoma Water Resources Board, the
4 Oklahoma Department of Wildlife Conservation, and a
5 committee member from the University of Oklahoma or
6 Oklahoma State University, or their designees,
7 b. the representative from the Board shall serve as
8 chairperson of the subcommittee from November 1, 2019,
9 to November 1, 2020, and
10 c. thereafter, the chair shall be rotated annually, as
11 agreed upon by the committee.

12 3. Duties and responsibilities of the committees and
13 subcommittees:

- 14 a. the subcommittees shall approve a programmatic work
15 plan by December 31, 2019, which shall include the
16 following:
17 (1) a list of the priority streams for instream flow
18 determinations,
19 (2) identification of metrics, in addition to those
20 listed in subsection B of this section, to be
21 included in the determination of instream flow
22 for each treasured stream,
23
24

- 1 (3) identification of additional data that needs to
- 2 be collected to determine instream flows for each
- 3 treasured stream, if any,
- 4 (4) assignment of responsibilities for obtaining any
- 5 additional data needed to determine instream
- 6 flows,
- 7 (5) the time frames in which additional data will be
- 8 obtained,
- 9 (6) the general methods used to obtain additional
- 10 data,
- 11 (7) the metrics to be monitored by each instream flow
- 12 program after instream flows are determined, and
- 13 (8) the general methods and frequency of instream
- 14 flow program data collection,

15 b. the subcommittees shall ensure that resources of the
16 agencies are utilized effectively and efficiently to
17 accomplish additional data collection. To assist the
18 subcommittees, each involved agency shall also
19 designate lead staff to equally share oversight of the
20 data collection, to maximize inhouse capabilities of
21 personnel and equipment and to minimize costs to the
22 state. The committees shall also consider inviting
23 cities, river authorities, water districts, other
24 political subdivisions of the state, universities and

1 federal water agencies to cooperate with and
2 participate in the conduct of these studies whenever
3 practicable,

4 c. the subcommittees shall establish an interagency
5 science team composed of staff scientists and
6 engineers assigned to work on the data collection by
7 the agencies and their cooperators. The team shall
8 assist the committees by drafting study plans and
9 scope of work, by supervising and facilitating
10 contracts and by conducting and reporting on the
11 priority studies identified in the work plan,

12 d. for all contracts by any agency for work to be
13 performed in furtherance of the work plan, the team
14 shall draft the plans and scope of work and provide
15 recommendations for contract facilitation prior to the
16 agency's presentation of the contract to its board,
17 commission or other agency official possessing the
18 authority to approve such contracts,

19 e. the subcommittees shall ensure that a productive data
20 and information exchange is accomplished among the
21 agencies. Also, the parties hereto shall each agree
22 to promptly furnish, free of charge, any and all
23 correspondence, memorandums, study reports, contracts,
24 data and any other information relating to instream

1 flow studies that may hereafter be requested by any of
2 the parties hereto and which are not privileged and
3 confidential under law,

4 f. the subcommittees shall attempt to reach unanimous
5 agreement on all decisions made in exercising its
6 duties and responsibilities under this agreement. In
7 the event of the failure of the subcommittees to reach
8 a unanimous agreement on a decision, a simple majority
9 of the assembled members may approve the decision as
10 to not frustrate or deter the intent, direction or
11 purpose of this agreement or the duties and
12 responsibilities of the subcommittees as defined
13 hereunder,

14 g. the subcommittees shall attempt to resolve technical
15 disputes by seeking consensus from the interagency
16 science team. The subcommittees may direct team
17 members to meet specifically for the purpose of
18 resolving professional differences in order to reach a
19 compromised solution and to report that solution back
20 to the subcommittees,

21 h. to assist the agencies in performing a scientifically
22 sound program, the committees shall appoint an
23 independent scientific advisory group to review and
24 comment on study methods and plans prepared by the

1 team. The number and composition of the scientific
2 advisory group shall be made at the discretion of the
3 committee and may vary from time to time,

4 i. the subcommittees may also resolve interagency
5 disputes by seeking the advice of their governing
6 bodies, and

7 j. nothing in this section shall preclude any of the
8 involved agencies from executing interagency
9 contracts, operating agreements, establishing other
10 committees, or otherwise utilizing available resources
11 to achieve specific statutorily assigned
12 responsibilities regarding instream flow
13 determinations.

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

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

18
19 57-1-5675 JBH 01/14/19
20
21
22
23
24