

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 1403

 By: Humphrey of the House

5 and

6 **Silk** of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to water; defining terms; directing
11 Oklahoma Water Resources Board to determine instream
12 flows for certain rivers; directing permits be based
13 on flow determinations; directing instream flow
14 adjustments from gathered data; requiring data
15 collected be provided in updates to certain water
16 plan; allowing for voluntary water permit
17 reallocation; authorizing cooperation with certain
18 agencies and entities concerning instream flow;
19 authorizing promulgation of rules; authorizing
20 ability to contract; authorizing for reception of
21 available grants and aid; authorizing the expenditure
22 of funds and exercise of powers of the Board;
23 directing Board to gather certain stream-related
24 data; providing for the formation of Treasured Stream
 Committees; stating purpose of committees; providing
 for formation of subcommittees; providing duties and
 responsibilities of committees and subcommittees;
 providing for codification; and providing an
 effective date.

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

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

4 For the purposes of Section 2 of this act:

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

- 6 a. habitat for a species listed as threatened or
- 7 endangered by the federal or state government,
- 8 b. designated as an Oklahoma Scenic River, or
- 9 c. designated as such by the Oklahoma Water Resources
- 10 Board;

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

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

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

24

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

4 A. For the purpose of effectuating the protection, conservation
5 and economic development of water resources that benefit all
6 Oklahomans as established in Section 1086.1 of Title 82 of the
7 Oklahoma Statutes, and to protect the rights of individuals to use
8 water for domestic use as established in Section 105.2 of Title 82
9 of the Oklahoma Statutes, the Oklahoma Water Resources Board is
10 hereby authorized, empowered and directed:

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

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

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

4 4. To include instream flow determinations, the status of
5 instream flow programs and the recommendations of the treasured
6 stream committees in updates to the Oklahoma Comprehensive Water
7 Plan;

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

13 6. To cooperate with all state and federal institutions,
14 agencies, departments, boards and officers and existing water permit
15 holders to satisfy instream flow determinations, including periodic
16 releases of stored water; and all state institutions, agencies,
17 departments, boards and officers are hereby authorized and directed
18 to cooperate with the Board;

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

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

24

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

7 10. To expend income and funds of the Board in the exercise of
8 any or all of the powers granted to the Board under the provisions
9 of this act.

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

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

19 2. Incorporate all flow data obtained after construction of
20 reservoirs and/or diversion structures that have affected the
21 treasured stream's natural flow regime, and consider the potential
22 effects of flow rate, temperature and water quality of water
23 released from reservoirs on downstream fish and wildlife propagation
24 and recreation;

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

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

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

8 6. Quantify the potential future demands for domestic use of
9 stream water.

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

20 1. The purpose of the committees is to provide guidance for the
21 completion of instream flow determinations, identify what metrics
22 are to be measured and which biological assessments are to be made
23 by each instream flow program and monitor their progress and
24 recommend changes to instream flow determinations as necessary. The

1 committees shall meet at least annually and may meet more often as
2 necessary and agreed upon by the committees.

3 2. Subcommittees:

4 a. each treasured stream committee shall have a three-
5 member subcommittee comprised of the Executive
6 Directors of the Oklahoma Water Resources Board, the
7 Oklahoma Department of Wildlife Conservation, and a
8 committee member from the University of Oklahoma or
9 Oklahoma State University, or their designees,

10 b. the representative from the Board shall serve as
11 chairperson of the subcommittee from November 1, 2019,
12 to November 1, 2020, and

13 c. thereafter, the chair shall be rotated annually, as
14 agreed upon by the committee.

15 3. Duties and responsibilities of the committees and
16 subcommittees:

17 a. the subcommittees shall approve a programmatic work
18 plan by December 31, 2019, which shall include the
19 following:

20 (1) a list of the priority streams for instream flow
21 determinations,

22 (2) identification of metrics, in addition to those
23 listed in subsection B of this section, to be
24

1 included in the determination of instream flow
2 for each treasured stream,

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

6 (4) assignment of responsibilities for obtaining any
7 additional data needed to determine instream
8 flows,

9 (5) the time frames in which additional data will be
10 obtained,

11 (6) the general methods used to obtain additional
12 data,

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

15 (8) the general methods and frequency of instream
16 flow program data collection,

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

1 cities, river authorities, water districts, other
2 political subdivisions of the state, universities and
3 federal water agencies to cooperate with and
4 participate in the conduct of these studies whenever
5 practicable,

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

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

21 e. the subcommittees shall ensure that a productive data
22 and information exchange is accomplished among the
23 agencies. Also, the parties hereto shall each agree
24 to promptly furnish, free of charge, any and all

1 correspondence, memorandums, study reports, contracts,
2 data and any other information relating to instream
3 flow studies that may hereafter be requested by any of
4 the parties hereto and which are not privileged and
5 confidential under law,

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

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

23 h. to assist the agencies in performing a scientifically
24 sound program, the committees shall appoint an

1 independent scientific advisory group to review and
2 comment on study methods and plans prepared by the
3 team. The number and composition of the scientific
4 advisory group shall be made at the discretion of the
5 committee and may vary from time to time,

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

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

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

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

20
21 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
22 dated 02/26/2019 - DO PASS, As Coauthored.