

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 865

6 By: Silk

7 COMMITTEE SUBSTITUTE

8 An Act relating to water and water rights; amending
9 82 O.S. 2011, Section 105.1, which relates to stream
10 water use; adding definition of instream flow;
11 declaring purpose of act; authorizing Oklahoma Water
12 Resources Board to develop instream flow volume for
13 streams; prohibiting inconsistency with certain
14 annual yields; requiring Board to comply with certain
15 rulemaking process; requiring Board to notify certain
16 persons; establishing priority for instream flow;
17 authorizing issuance of term permit notwithstanding
18 instream flow in certain circumstances; authorizing
19 Board to promulgate rules; subjecting certain permits
20 to reduction or adjustment in certain conditions;
21 providing for codification; and providing an
22 effective date.

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

24 SECTION 1. AMENDATORY 82 O.S. 2011, Section 105.1, is
amended to read as follows:

Section 105.1. As used in Sections 105.2 through 105.32 of this
title:

1. "Definite stream" means a watercourse in a definite, natural
channel, with defined beds and banks, originating from a definite

1 source or sources of supply. The stream may flow intermittently or
2 at irregular intervals if that is characteristic of the sources of
3 supply in the area;

4 2. "Domestic use" means the use of water by a natural
5 individual or by a family or household for household purposes, for
6 farm and domestic animals up to the normal grazing capacity of the
7 land and for the irrigation of land not exceeding a total of three
8 (3) acres in area for the growing of gardens, orchards and lawns,
9 and for such other purposes, specified by Board rules, for which de
10 minimis amounts are used;

11 3. "Regular permit" means a permit granted by the Oklahoma
12 Water Resources Board authorizing the holder to appropriate water on
13 a year-round basis in an amount and from a source approved by the
14 Board;

15 4. "Seasonal permit" means a permit granted by the Board
16 authorizing the holder of such permit to divert available water for
17 specified time periods during the calendar year;

18 5. "Temporary permit" means a permit granted by the Board
19 authorizing the appropriation of water in an amount and from a
20 source approved by the Board which does not exceed a time period of
21 three (3) months, which does not vest in the holder any permanent
22 right and which may be canceled by the Board in accordance with its
23 terms;

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1 6. "Term permit" means a permit granted by the Board
2 authorizing the appropriation of water in an amount and from a
3 source approved by the Board for a term of years which does not vest
4 the holder with any permanent right and which expires upon
5 expiration of the term of the permit; ~~and~~

6 7. "Provisional temporary permit" means a nonrenewable permit
7 which may be summarily granted upon administrative approval by the
8 Board and which authorizes an appropriation of water in an amount
9 and from a source approved by the Board. A provisional temporary
10 permit shall not authorize an appropriation for a period of time
11 exceeding ninety (90) days, shall not vest in the holder any
12 permanent water right and shall be subject to cancellation by the
13 Board at any time within its term in accordance with its provisions;
14 and

15 8. "Instream flow" means the amount of water in a definite
16 stream that, during different seasons of the year, protects and
17 preserves fish and wildlife, tourism, recreation, aesthetics, tribal
18 ceremonies and water quality.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 105.34 of Title 82, unless there
21 is created a duplication in numbering, reads as follows:

22 The purpose of Sections 3 and 4 of this act is to provide for
23 the determination of the seasonal amounts of water that must remain
24 in certain streams, while preserving existing property and water

1 rights, to assure abundant fish and wildlife, healthy streams and
2 sufficient water levels to meet the needs of Oklahomans now and for
3 future generations.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 105.35 of Title 82, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Oklahoma Water Resources Board may develop or oversee
8 the development of an instream flow volume for definite streams, as
9 defined in paragraph 1 of Section 105.1 of Title 82 of the Oklahoma
10 Statutes, using suitable methodology to determine specific levels of
11 stream flow varying by seasons to protect a definite stream from
12 damage caused by excess withdrawals of future appropriations. No
13 instream flow shall be inconsistent with the annual yields of any
14 applicable interstate river compact.

15 B. After an instream flow has been developed pursuant to
16 subsection A of this section, the Board shall submit the information
17 to the rulemaking process of the Oklahoma Administrative Procedures
18 Act to be promulgated in the Oklahoma Water Quality Standards as a
19 water right. The Board shall notify other state environmental
20 agencies and tribal governments in the stream area. It shall
21 publish notice of rulemaking in the same manner as water right
22 applications.

23 C. Any instream flow that has been promulgated as a water right
24 shall become effective on the date of promulgation and shall

1 thereafter have priority against any future water rights, against
2 any subsequently-transferred water rights and against any previous
3 water rights that have been made contingent pursuant to Section 3 of
4 this act.

5 D. An applicant for a stream water permit to provide for a
6 public water supply may obtain one (1) term permit, as defined in
7 paragraph 6 of Section 105.1 of Title 82 of the Oklahoma Statutes,
8 for no longer than five (5) years, without being subject to the
9 contingent limits described in Section 3 of this act, or from an
10 instream flow that has been promulgated, in order to develop water
11 storage during high flow seasons to be available to protect water
12 supply during low flow seasons. After the expiration of the term
13 permit, the applicant and public water supplies shall be subject to
14 such contingent or instream flow limits.

15 E. The Board shall promulgate rules to implement the provisions
16 of this act.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 105.36 of Title 82, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Any stream water permit issued to take and use water from a
21 definite stream, after which there will remain.

22 1. Less than sixty percent (60%) of the annual flow of a Scenic
23 River; or
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1 2. Less than thirty percent (30%) of the annual flow of any
2 other definite stream east of Interstate 35; or

3 3. Less than ten percent (10%) of the annual flow of a definite
4 stream west of Interstate 35,
5 shall be subject to and junior to any future instream flow
6 appropriation that may be promulgated for that definite stream
7 pursuant to Section 3 of this act, and may have its volume or
8 pumping periodicity reduced or adjusted as necessary.

9 B. Any ground water permit issued for ground water that may
10 reasonably be expected to affect the base flow of a definite stream
11 shall be subject to reduction by any future instream flow
12 appropriation that may be promulgated for that definite stream
13 pursuant to Section 3 of this act.

14 SECTION 5. This act shall become effective November 1, 2019.

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