

1 **SENATE FLOOR VERSION**

2 February 28, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 865

6 By: Silk and Bullard

7 [water and water rights - stream water use -
8 instream flow - instream flow volume - rulemaking -
9 term permit - codification - effective date]

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

16 1. "Definite stream" means a watercourse in a definite, natural
17 channel, with defined beds and banks, originating from a definite
18 source or sources of supply. The stream may flow intermittently or
19 at irregular intervals if that is characteristic of the sources of
20 supply in the area;

21 2. "Domestic use" means the use of water by a natural
22 individual or by a family or household for household purposes, for
23 farm and domestic animals up to the normal grazing capacity of the
24 land and for the irrigation of land not exceeding a total of three

1 (3) acres in area for the growing of gardens, orchards and lawns,
2 and for such other purposes, specified by Board rules, for which de
3 minimis amounts are used;

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

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

11 5. "Temporary permit" means a permit granted by the Board
12 authorizing the appropriation of water in an amount and from a
13 source approved by the Board which does not exceed a time period of
14 three (3) months, which does not vest in the holder any permanent
15 right and which may be canceled by the Board in accordance with its
16 terms;

17 6. "Term permit" means a permit granted by the Board
18 authorizing the appropriation of water in an amount and from a
19 source approved by the Board for a term of years which does not vest
20 the holder with any permanent right and which expires upon
21 expiration of the term of the permit; ~~and~~

22 7. "Provisional temporary permit" means a nonrenewable permit
23 which may be summarily granted upon administrative approval by the
24 Board and which authorizes an appropriation of water in an amount

1 and from a source approved by the Board. A provisional temporary
2 permit shall not authorize an appropriation for a period of time
3 exceeding ninety (90) days, shall not vest in the holder any
4 permanent water right and shall be subject to cancellation by the
5 Board at any time within its term in accordance with its provisions;
6 and

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

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

14 The purpose of Sections 3 and 4 of this act is to provide for
15 the determination of the seasonal amounts of water that must remain
16 in certain streams, while preserving existing property and water
17 rights, to assure abundant fish and wildlife, healthy streams and
18 sufficient water levels to meet the needs of Oklahomans now and for
19 future generations.

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

23 A. The Oklahoma Water Resources Board may develop or oversee
24 the development of an instream flow volume for definite streams, as

1 defined in paragraph 1 of Section 105.1 of Title 82 of the Oklahoma
2 Statutes, using suitable methodology to determine specific levels of
3 stream flow varying by seasons to protect a definite stream from
4 damage caused by excess withdrawals of future appropriations. No
5 instream flow shall be inconsistent with the annual yields of any
6 applicable interstate river compact.

7 B. After an instream flow has been developed pursuant to
8 subsection A of this section, the Board shall submit the information
9 to the rulemaking process of the Oklahoma Administrative Procedures
10 Act to be promulgated in the Oklahoma Water Quality Standards as a
11 water right. The Board shall notify other state environmental
12 agencies and tribal governments in the stream area. It shall
13 publish notice of rulemaking in the same manner as water right
14 applications.

15 C. Any instream flow that has been promulgated as a water right
16 shall become effective on the date of promulgation and shall
17 thereafter have priority against any future water rights, against
18 any subsequently-transferred water rights and against any previous
19 water rights that have been made contingent pursuant to Section 3 of
20 this act.

21 D. An applicant for a stream water permit to provide for a
22 public water supply may obtain one (1) term permit, as defined in
23 paragraph 6 of Section 105.1 of Title 82 of the Oklahoma Statutes,
24 for no longer than five (5) years, without being subject to the

1 contingent limits described in Section 3 of this act, or from an
2 instream flow that has been promulgated, in order to develop water
3 storage during high flow seasons to be available to protect water
4 supply during low flow seasons. After the expiration of the term
5 permit, the applicant and public water supplies shall be subject to
6 such contingent or instream flow limits.

7 E. The Board shall promulgate rules to implement the provisions
8 of this act.

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

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

14 1. Less than sixty percent (60%) of the annual flow of a Scenic
15 River; or

16 2. Less than thirty percent (30%) of the annual flow of any
17 other definite stream east of Interstate 35; or

18 3. Less than ten percent (10%) of the annual flow of a definite
19 stream west of Interstate 35,

20 shall be subject to and junior to any future instream flow
21 appropriation that may be promulgated for that definite stream
22 pursuant to Section 3 of this act, and may have its volume or
23 pumping periodicity reduced or adjusted as necessary.

24

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
8 February 28, 2019 - DO PASS AS AMENDED
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