



ENVIRONMENTAL
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State Wetland Protection

Status, Trends, & Model Approaches

*A 50-state study by the
Environmental Law Institute*

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U.S. Environmental Protection Agency*

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Appendix: State Profiles

Oklahoma

I. Overview

Estimates for the total wetland acreage in Oklahoma vary. The U.S. Fish and Wildlife Service calculated approximately 950,000 acres of lacustrine, riverine and palustrine wetlands; however, the total acreage of wetlands meeting jurisdictional criteria under the Clean Water Act is estimated to be 687,000.¹ Oklahoma protects its vast wetland resources primarily through the efforts of four agencies: the Oklahoma Department of Wildlife Conservation (ODWC), the Oklahoma Department of Environmental Quality (ODEQ), the Oklahoma Water Resources Board (OWRB), and the Oklahoma Conservation Commission (OCC). The state also operates the Oklahoma Wetlands Working Group, which includes all of the state agencies involved in wetlands protection, as well as local, federal, and tribal authorities. The Working Group meets on a quarterly basis to coordinate efforts to conserve, enhance, and restore the quantity and biological diversity of Oklahoma's wetland resources. The group is guided by the state's Comprehensive Wetlands Conservation Plan, as is much of the wetlands work in Oklahoma.²

II. Regulatory Programs

Wetlands definition and delineation

Oklahoma defines "waters of the state" as "all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof..."³ The Oklahoma Comprehensive Wetlands Conservation Plan further clarifies that wetlands are included within the state definition for waters, stating, "[b]ecause wetlands can be considered 'waters of the state,' they are afforded baseline protection by OWQS."⁴

The plan also endorses adoption of the U.E. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers ("Corps") definition of wetlands,⁵ but as of 2007, Oklahoma had not adopted a statutory or regulatory definition of wetlands.⁶

Oklahoma delineates wetlands in accordance with the criteria outlined in the U.S. Army Corps of Engineers' 1987 *Wetlands Delineation Manual*.⁷ This method is described in the Oklahoma Comprehensive Wetlands Conservation Plan.⁸

¹ OKLA. CONSERVATION COMM'N, OKLAHOMA'S COMPREHENSIVE WETLANDS CONSERVATION PLAN 16(1996), available at http://www.okcc.state.ok.us/Publications/OK_Comprehensive_Wetlands_Conservation_Plan.pdf.

² *Id.*; Personal communication with Chris DuBois, Wetland Programs Coordinator, Okla. Conservation Comm'n (Jan. 11, 2007).

³ OKLA. STAT. tit. 27A § 1-1-201(20).

⁴ OKLA. CONSERVATION COMM'N, *supra* note 1 at 20.

⁵ *Id.* at 10-11 ("Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.")

⁶ *Id.* at 2.

Organization of state agencies

Oklahoma protects wetlands primarily through the efforts of four agencies: Oklahoma Conservation Commission (OCC), Oklahoma Department of Environmental Quality (ODEQ), Oklahoma Department of Wildlife Conservation (ODWC), and Oklahoma Water Resources Board (OWRB).

Oklahoma Conservation Commission. The OCC is the lead agency for wetlands planning and strategy development and has one full-time equivalent (FTE) staff member dedicated to wetland issues. The OCC coordinates the Oklahoma Wetlands Working Group, which meets quarterly and includes all of the state agencies involved in wetlands protection, and local, federal, and tribal authorities. The group is guided by the state's Comprehensive Wetlands Conservation Plan, which was also developed by OCC.⁹ OCC wetlands activities are funded by multiple, continuing grants from EPA.¹⁰

Oklahoma Department of Environmental Quality. The ODEQ regulates wetlands by providing §401 water quality certification for federal permits or licenses that result in impacts to waters of the state, including §404 dredge and fill permits.

Oklahoma Department of Wildlife Conservation. The ODWC reviews federal actions that may cause impacts to wetlands in the state, assists in coordinating wetlands mitigation, and acquires wetlands for protection through fee title acquisition. The agency employs one FTE staff person devoted to wetland issues. The ODWC is primarily funded by Oklahoma Duck Stamp program revenues, matched with Pittman-Robertson federal grant monies. The Duck Stamp program provides revenue of approximately \$325,000 annually.¹¹ Numerous other federal, state, and private conservation agencies regularly also supply matching funds.¹²

Oklahoma Water Resources Board. The OWRB is responsible for developing the state water quality standards, which apply to jurisdictional wetlands and streams. (*See III. Water Quality Standards.*) The agency also conducts some monitoring and assessment and restoration activities.

§401 certification

⁷ Corps of Engineers Wetlands Delineation Manual (1987), available at <http://el.ercd.usace.army.mil/elpubs/pdf/wlman87.pdf>.

⁸ OKLA. CONSERVATION COMM'N, *supra* note 1 at 10.

⁹ *Id.*; Personal communication with Chris DuBois, Wetland Programs Coordinator, Okla. Conservation Comm'n (Jan. 11, 2007).

¹⁰ Personal communication with Chris DuBois, Wetland Programs Coordinator, Okla. Conservation Comm'n (Jan. 11, 2007) (The estimated annual budget of the OCC wetlands program is approximately \$200,000).

¹¹ Personal communication with Alan Stacey, Wetland Program Coordinator, Okla. Dep't of Wildlife Conservation (Jan. 19, 2007).

¹² Personal communication with Alan Stacey, Wetland Program Coordinator, Okla. Dep't of Wildlife Conservation (Feb. 23, 2007).

The ODEQ reviews applications for §401 certification of both individual and nationwide §404 permits.¹³ The agency receives approximately 20 to 25 permit applications made under §404 each year, certifying the majority and issuing many with conditions (primarily mitigation requirements). According to ODEQ, only one certification request has been denied outright in six years.¹⁴

The certification process is uniform for all types of wetlands, and staff rely on best professional judgment to make decisions. The ODEQ has a memorandum of agreement with the Tulsa Corps District that establishes the §401 certification procedure. The Corps shares copies of applications with the ODEQ and the two agencies issue joint public notices. The ODEQ has 60 days to make its certification determination.¹⁵

Nationwide permits

The ODEQ denied certification for several nationwide permits (NWP) for any activities in the watersheds of Outstanding Resource Waters designated in Oklahoma's water quality standards.¹⁶ The state has also applied conditioned approval for NWP #16 (Discharges Associated with Upland Contained Disposal Areas).¹⁷ ODEQ denied certification for permits that do not apply within the State of Oklahoma.¹⁸ For the remaining Nationwide Permits, ODEQ granted certification with a number of conditions.¹⁹

Mitigation

Oklahoma has not adopted guidelines, policies, or legislation (beyond §404 requirements) concerning compensatory mitigation for permitted impacts to wetlands or streams, including banking and in-lieu-fee operations. However, the state is taking steps toward developing mitigation banks and is close to establishing a bank for the Oklahoma Department of

¹³ OKLA. ADMIN. CODE § 252:611-3-1.

¹⁴ Personal communication with Mark Derichsweler, Eng'g Manager, Water Quality Division, Okla. Dep't of Envtl. Quality (Feb. 2, 2007).

¹⁵ *Id.*

¹⁶ Letter from Mark Derichsweler, Eng'g Manager, Watershed Planning and Storm Water Permitting Section, Water Quality Division, to Regulatory Branch, U.S. Army Corps of Eng'rs (Jun. 23, 2003), *available at* <http://www.swt.usace.army.mil/permits/Documents%20-%20Nationwide%20Permits/odeq2.pdf> (stating that certification is denied for Nationwide Permits 7, 12, 14, 16, 17, 21, 29, 31, 39, 40, 42, 43 and 44 for all activities in the watersheds of Outstanding Resource Waters which are listed in Appendix A of Oklahoma's Water Quality Standards have been designated as Critical Resource Waters (CRW) by the District Engineer and are subject to NWP Special Condition 25.).

¹⁷ *Id.* (stating that for NWP 16 the discharge shall not contain a TSS concentration of greater than 45 mg/L daily maximum and shall maintain a pH between 6.5 and 9.0. The TSS daily max shall be monitored once a year during discharge. The limits and monitoring may be waived on a site-specific basis through implementation of a ODEQ approved set of BMPs).

¹⁸ *Id.* (NWP 24, 26, and 34).

¹⁹ *Id.* ((1) All spills of fuel or other pollutants in excess of five gallons shall be reported to the DEQ within 24 hours, to the pollution prevention hotline at 1-800-522-0206; 2) All fuelling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM); 3) Permittee shall provide access to the property for DEQ inspection purposes; 4) Any material and fuels used in the project shall be stored and/or stockpiled above the OHWM and shall be removed from a likely flood zone prior to any predicted flood; 5) If a stormwater discharge permit for construction activities is required once can be obtained from DEQ at (405) 702-8100.).

Transportation.²⁰ The OCC has also established a clearinghouse for landowners wanting to engage in wetlands restoration projects.²¹ Oklahoma does not participate on the state's Mitigation Banking Review Team.²²

Compliance and enforcement

Oklahoma has not adopted compliance or enforcement mechanisms relating to wetlands and defers to the U.S. Army Corps of Engineers on compliance and enforcement issues under Clean Water Act §§ 401/404.

III. Water Quality Standards

Oklahoma's water quality standards (WQS) do not identify antidegradation policies, designated uses, or criteria specific to wetlands.²³ In the absence of wetland-specific WQS, Oklahoma §401 certification decisions rely on surface water criteria and standards and antidegradation requirements. Wetlands are assigned the default uses for "unlisted" waterbodies: Agriculture; Industrial and Municipal Process and Cooling Water; Aesthetics; Warm Water Aquatic Community; Primary Body Contact Recreation.²⁴

IV. Monitoring and Assessment

The OCC, OWRB, and ODEQ are jointly responsible for monitoring and assessment of waters of the state, as well as implementation of the Comprehensive Wetlands Conservation Plan.²⁵ While no methodology has been officially adopted for monitoring and assessing wetlands, the OCC is developing standard operating procedures for monitoring depressional wetlands.²⁶ The agency also plans to develop probabilistic methodologies to determine wetland losses and gains using National Wetlands Inventory data as a baseline.²⁷

In 2006, Oklahoma's Blue Thumb volunteer water monitoring group completed a one-year pilot program for monitoring wetlands. Using the wetlands health assessment monitoring (WHAM)

²⁰ Guided by a memorandum of agreement written in 1996, signatories of the memorandum, the Tulsa District of the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, Natural Resources Conservation Service, Federal Highway Administration, Oklahoma Department of Transportation, Oklahoma's Office of the Secretary of the Environment, OCC, and the ODWC, along with the ODEQ and the Nature Conservancy, drafted a banking instrument, but the bank has yet to be finalized. DuBois, *supra* note 10.

²¹ Oklahoma Conservation Commission, *Wetland Registry for Landowners*, at http://www.okcc.state.ok.us/Wetlands/wetlands_registry.htm (last visited July 5, 2007).

²² DuBois, *supra* note 10.

²³ OKLA. ADMIN. CODE § 785:45-5-1 et seq., available at http://www.owrb.state.ok.us/util/rules/pdf_rul/Chap45.pdf; Derichsweiller, *supra* note 14.

²⁴ OKLA. ADMIN. CODE § 785:45-5-3(a); Mark Derichsweiller, Eng'g Manger, Okla. Dep't of Env'tl. Quality (Feb. 5, 2007).

²⁵ Okla. Stat. tit. 27A, §§ 1-3-101(F)(2), 1-3-101(F)(3).

²⁶ DuBois, *supra* note 10.

²⁷ *Id.*

program, 20 volunteers monitored 8 sites.²⁸ Oklahoma also has a Water Watch (OWW) program, run by the OWRB. OWW collects water quality data, including wetlands data, which are used for decisions made under Clean Water Act §303 decisions.²⁹ The program began in 1992 and involves approximately 100 volunteers who monitor 80 sites across the state. The five primary goals of the OWW are to: (1) collect environmental data to determine baseline water quality conditions for Oklahoma's water resources, (2) identify current or potential water quality problems, (3) determine water quality trends, (4) promote citizen participation in protecting, managing, and restoring our water resources, and (5) educate the public on basic ecological concepts associated with Oklahoma's water resources.³⁰

V. Restoration

Many state agencies conduct activities related to wetlands restoration. In coordination with the ODWC and with support from EPA, OWRB operates an Aquatic Revegetation Program, part of the larger Lakes and Special Studies Program.³¹ The ODWC also initiates restoration projects based on funding opportunities, including the acquisition and restoration of public lands wetlands. ODWC monitors and manages of these wetlands for migratory birds and other wildlife annually.³² The agency also collaborates with the U.S. Department of Agriculture (USDA) through several farm bill programs which benefit wetlands resources on private lands. The OCC provides technical assistance and other incentives to landowners implementing management practices that conserve, enhance, and restore wetlands on private property on a case-by-case basis, in advancement of another objective of the plan.³³ The state constructs treatment wetlands on a project-by-project basis.³⁴

Oklahoma agencies are also: advancing the objectives of developing information/education programs on Oklahoma's wetlands resources; identifying and prioritizing unique or scarce wetlands types and sites for acquisition or special protection; identifying wetlands sites for restoration and enhancement; and identifying and developing funding sources to accomplish this work. They are also taking steps toward establishing a comprehensive, statewide wetland mapping program and researching and developing techniques for protecting, enhancing, and constructing wetlands for pollutant control and/or mitigation.³⁵ Developed techniques will be implemented to maximize beneficial uses of wetlands pollutant removal and mitigation techniques.³⁶

²⁸ *Id.*

²⁹ Oklahoma Water Watch, at <http://www.owrb.state.ok.us/quality/monitoring/watch/wwatch.php>; personal communication with Derek Smithee, Water Quality Div. Chief, Water Res. Bd. (Jan. 5, 2007).

³⁰ Oklahoma Water Watch, at <http://www.owrb.state.ok.us/quality/monitoring/watch/wwatch.php>.

³¹ Personal communication with Derek Smithee, Water Quality Div. Chief, Water Res. Bd. (Jan. 5, 2007).

³² Stacey, *supra* note 11.

³³ DuBois, *supra* note 10; see OKLA. CONSERVATION COMM'N, *supra* note 1 at 8.

³⁴ DuBois, *supra* note 10.

³⁵ OKLA. CONSERVATION COMM'N, *supra* note 1 (to promote the coordination of wetlands management in OK through discussion, information exchange, cooperation and the sharing of resources).

³⁶ DuBois, *supra* note 10; OKLA. CONSERVATION COMM'N, *supra* note 1 at 8.

VI. Public-Private Partnerships

The ODWC partners with private landowners on restoring wildlife habitat through the USDA's Wildlife Habitat Improvement Program (WHIP).³⁷ Through WHIP, landowners enter into 10-year contracts with ODWC for approved projects to develop, preserve, restore and manage wildlife habitat on private lands.³⁸ The Department shares part of the cost of habitat improvement work, up to 75 percent but not to exceed \$5,000 per landowner per year. In exchange, the landowner agrees to maintain the habitat for a period of ten years. Types of projects include, but are not limited to, wetland restoration and enhancement, fencing of existing and restored wetlands, the creation of small openings in stands of timber, removal of invasive species, establishment of firebreaks, and tree plantings. The program encourages short-term habitat improvements like food plots and disking, but cannot support them with cost sharing.³⁹

VII. Education and Outreach

The OCC's Conservation Education Program offers several programs with wetlands education and outreach components.⁴⁰ OCC offers *WOW! The Wonders of Wetlands* curriculum trainings for educators, statewide.⁴¹ The agency also cosponsors permanent wetland outdoor classroom facilities on school grounds or other public lands with local conservation districts. The Oklahoma Environmental Education Coordinating Committee hosts an annual water festival for 5th graders (H2O Oklahoma Water Festival) located in a different targeted watershed each year.⁴²

Project WET (Water Education for Teachers) is another major training program coordinated by the OCC, with sponsorship from OWRB and ODEQ.⁴³ Using the national curriculum,⁴⁴ the Oklahoma program trains educators of all kinds, including student teachers and informal educators such as naturalists and interpreters at parks and zoos. Agency staff also train students and landowners in the curriculum.⁴⁵

The Blue Thumb and Oklahoma Water Watch volunteer water quality monitoring programs described above also both have education components in addition to their hands-on components.⁴⁶

³⁷ Stacey, *supra* note 11.

³⁸ Oklahoma Department of Wildlife Conservation, *Wildlife Habitat Improvement Program*, at <http://www.wildlifedepartment.com/wildlifehabitat.htm> (last visited July 5, 2007).

³⁹ Stacey, *supra* note 11.

⁴⁰ Oklahoma Environmental Education Coordinating Committee, at http://www.ok.gov/okcc/Agency_Divisions/Conservation_Programs_Division/Conservation_Education/OKEECC_Members,_Projects_&_Programs.html.

⁴¹ Oklahoma Environmental Education Coordinating Committee, *Wow! The Wonders of Wetlands*, available at http://www.ok.gov/okcc/Agency_Divisions/Conservation_Programs_Division/Conservation_Education/WOW_Wonder_of_Wetlands.html.

⁴² Oklahoma Environmental Education Coordinating Committee, *supra* note 40.

⁴³ Personal communication with Karla Beatty, Educ. Coordinator, State Coordinator for Project Wet, Okla. Conservation Comm'n (Jan 22, 2007).

⁴⁴ Project Wet, at <http://www.projectwet.org/usa/> (last visited July 5, 2007).

⁴⁵ Beatty, *supra* note 43.

⁴⁶ Smithee, *supra* note 31.

VIII. Coordination with State and Federal Agencies

Oklahoma adopted its Comprehensive Wetlands Conservation Plan in 1996. Several of the Plan's objectives are being implemented, including formation of the Wetlands Working Group, which is composed of all state, federal, tribal, and local authorities involved in wetlands protection in the state. The group meets quarterly.⁴⁷

Steps also are being taken to integrate wetlands protection with other related resource issues on a watershed or hydrologic unit basis, in order to characterize wetlands resources more completely and identify critical functions, as well as to develop a classification system and water quality standards to identify and protect wetlands functions.⁴⁸

IX. Acronyms and Abbreviations

EPA – U.S. Environmental Protection Agency
FTE – Full-Time Equivalent
Corps – U.S. Army Corps of Engineers
NWP – Nationwide Permit
OCC – Oklahoma Conservation Commission
ODEQ – Oklahoma Department of Environmental Quality
ODWC – Oklahoma Department of Wildlife Conservation
OWRB – Oklahoma Water Resources Board
OWW – Oklahoma Water Watch
USDA – U.S. Department of Agriculture
WET – Water Education for Teachers
WHAM – Wetlands Health Assessment Monitoring
WQS – Water Quality Standards

⁴⁷ OKLA. CONSERVATION COMM'N, *supra* note 1 at 7 (to promote the coordination of wetlands management in OK through discussion, information exchange, cooperation and the sharing of resources).

⁴⁸ *Id.*