



STATE OF OKLAHOMA  
OKLAHOMA SCENIC RIVERS COMMISSION

**MEETING DATE:** Tuesday, November 17, 2015  
**MEETING TIME:** 5:30 p.m.  
**MEETING PLACE:** Tahlequah Armory Municipal Center  
100 North Water Street  
(Located across the street on the Northeast corner of the Old Cherokee  
Capitol Square located in downtown Tahlequah)  
Tahlequah, Oklahoma 74464

**OKLAHOMA SCENIC RIVERS COMMISSION**  
**2015 RULEMAKING PUBLIC HEARING AND**  
**SPECIAL BUSINESS MEETING**  
**MINUTES**

**01. Meeting called to order.**

Vice-Chairman Needham called the meeting to order.

**02. Roll Call.**

**MEMBERS PRESENT**

Monte Bradford  
Randy Corp  
Michael Fuhr  
John Larson  
Riley Needham  
Trey Peyton  
David Pickle  
Steve Randall  
David Spears  
Rick Stubblefield

**MEMBERS ABSENT**

Jeff Bashaw  
Gerald Hilsher

**03. Introduction of Guests and Visitors.**

Mark Thomas, OPA; Sean Rowley, Tahlequah Daily Press; Jim Morrison; Joel Lamb; John Lamb; Kathy Tibbits; Kenney Pierce & Kathy Pierce; Jerry Hammons; Ken Rystedt; Earlene Rystedt; Gary Vandembos; L.D. Stephens & Joyce Blackwell, War Eagle Resort; Kevin & Barbara Kelley, Diamondhead Resort; Kathy Ryals; Jack and Austin Spears, Arrowhead Resort; Matt Grogan, Peyton's Place; Sonja Glory, Cherokee Nation; Sara Hill, Cherokee Nation; Nancy Garber, Save The Illinois River (STIR); Melissa Harris, Tour Tahlequah; Howard Tate, Illinois River Ranch; Ed Brocksmith, STIR; Mike Allen; Cheryl Allen, OSRC; Bill James, OSRC; Bobby Robertson, OSRC; Pam Hazen, War Eagle Resort; Denise Deason-Toyne, STIR; Matt Reynolds, NSU.

**04. Rulemaking 2015: Chapters 3, 10 and 15 of Oklahoma Scenic Rivers Commission (OSRC) Rules, as codified in Oklahoma Administrative Code 630: Scenic Rivers Commission.**

Notice of rulemaking was published in *The Oklahoma Register* on October 1, 2015. Those notices were also posted along with the text of the proposed rules and the rule impact statements on the OSRC website and emailed to interested persons on the OSRC email list on October 15, 2015.

The proposed rules came about primarily as the result of the public's demand that the OSRC do something to curtail escalating drunken behavior on the Illinois River.

The rulemaking notices provided a comment period of October 1 through 31, 2015, and for a rulemaking hearing as part of today's public meeting, in conformance with the Oklahoma Administrative Procedures Act. Sixteen written comments have been received, and as a result OSRC revised all three chapters.

**A. Permanent Amendments to Chapter 3. Election Procedures**

The proposed revisions to rules 630:3-1-2, 3-1-4, 3-1-7 and 3-1-16 would save the OSRC money by reducing the publication frequency while improving actual notice of elections by providing for additional, modern, electronic notice. As a result of public comment, OSRC retained one publication in a legal newspaper, and kept the electronic notice proposal.

**1. Presentation – Ed Fite, Administrator**

- Administrator Fite began by introducing Sara Hill, Cabinet Secretary of Natural Resources for Cherokee Nation.
- Before advancing discussion of Chapter 3. Election Procedures, Administrator Fite gave an overview of the 2015 Rulemaking. He reported that 17 total written comments had been received by the OSRC. He summarized the Notice of Rulemaking Intent published on October 1, 2015, in *The Oklahoma Register* and the proposed rules amendments to Chapters 3, 10 & 15 of OSRC Rules as codified in the Oklahoma Administrative Code: 630 Scenic Rivers Commission. He explained a revised Notice of Rulemaking Intent, draft rule amendments language for Chapter 3, 10 and 15 along with Rule Impact Statements for each chapter was posted to the OSRC website on October 15, 2015. He further stated that copies of those revised documents were handed out to the public in attendance and they were presented/discussed by Commissioners at the October 20, 2015 Regular Business Meeting. He emphasized that the original text of the draft rules amendments were changed following a meeting at the State Capitol on September 28, 2015, with Legislative leadership, State Finance Director/Cabinet Secretary of State Finance and the Governor's office where state agencies were told to expect possible appropriations reductions in the last seven months of FY-2016 and it's a certainty in FY-2017, and all agencies were directed not to pursue any rulemaking that contained amendments for increasing fees nor submit requests for increased funding to make up those reductions. He re-emphasized the proposed rules amendments that are being considered and for which the public will provide oral comments at this meeting differ from what the OSRC had originally submitted on September 11, 2015, to the Governor's Office and Cabinet Secretary for Commerce and Tourism. He said the proposed "fees" rules amendments that were intended to help fund additional law enforcement had been completely removed from the 2015 Rulemaking. In concluding his remarks, Mr. Fite explained the rulemaking process is a lengthy process and that the OSRC must comply with requirements of the Oklahoma Procedures Act, noting that the agency had met the requisites. He said if the 2015 Rulemaking proceeded without any issues that the earliest date that the amendments would become effective would be July 1, 2016.
- After answering several questions, the Administrator reaffirmed that the OSRC did timely file with the Governor's office, Cabinet Secretary for Commerce and Tourism and Secretary of State-Office of Administrative Rules the required Notice of Rulemaking Intent and copies of the draft rules amendments language on September 11, 2015. He said those offices have since been provided

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copies of the revised documents. He said the final decision to remove the proposed “fees” from the 2015 Rulemaking was made on October 3, 2015 by Chairman Hilsher and him. Mr. Fite re-stated that the OSRC on October 15<sup>th</sup> posted to its website and electronically mailed an agenda to all interested individuals and organizations to make them aware of the October 20, 2015 Regular Business Meeting with an explanation contained therein that the proposed rules amendments language had been revised.

- Presentation related to Chapter 3. Election Procedures: Administrator Fite then referred to a PowerPoint that he projected onto a large screen for the public and Commissioners in attendance to follow along during his comments. He said that three written comments were received. He said the goal of the OSRC is transparency and that proposed amendments Chapter 3. Rules will increase the public's participation in future elections. He said the proposed amendments will reduce the legal notice publication requirement to once in newspapers yet increasing notification via OSRC website postings and electronic mailings and saves OSRC money. He said no adverse comments were received on Chapter 3. amendments. In conclusion, he again explained the rulemaking process.
- Administrator Fite then introduced Mark Thomas, Director for the OPA (Oklahoma Press Association). Mr. Thomas then rose to the podium and explained that he works with all the press in the state of Oklahoma. He said there are 198 news organizations he represents. He said that the proposed rules amendments are compliant with Title 25 O.S. Section 106. He offered that legal notices rates are set by the state and have not increased in 12 years. He summarized for Commissioners the requirements for legal notices in newspapers. He concluded stating he/OPA supported the adoption of the proposed rules amendments to Chapter 3. Election Procedures.
- Following Mr. Thomas, Mr. Fite briefly explained the existing codified Chapter 3. Rules and offered a voter registration form to everyone in attendance and emphasized that if they take a form and fill it out that it will not be valid for the December 1, 2015 OSRC Election as the current rule requires the form to be filed 24 days before the election. He continued by explaining the requirements for individuals to become a qualification voter in OSRC Elections.

**2. Rulemaking Hearing, comments and discussion – Public**

Vice-Chairman Needham opens the floor to discussion.

- Ms. Kathy Tibbits rose to the podium, introduced herself as a candidate for the upcoming Adair County Representative Election and asked a question about 630:3-1-7 specifically related to requisites for voting in elections. Administrator Fite answered explaining to qualify to vote in commission elections; an individual must be an Oklahoma registered voter who must reside, own real property and/or own a residential structure within 660 feet of a scenic river, as specified at Title 82 O.S. Section 1461. To qualify, each registered voter must sign an OSRC affidavit for voter-qualification in person or by mail with the OSRC at least 24 days before election commences.
- He further explained once qualified, by submitting a ballot, those voters certify that they remain eligible to vote on election day and at any time may also update their contact information and email addresses for future notifications.
- There were no further questions or comments voiced.

**3. Additional comments and discussion – OSRC Board of Commissioners**

No questions or comments voiced.

**4. Discussion and possible action by the OSRC Board of Commissioners, which may include revisions and a roll call, vote on permanent adoption.**

No questions or comments voiced.

Commissioner Corp made the motion to adopt and Commissioner Fuhr seconded the motion.

**The Vote Follows:**

Bashaw	Absent	Needham	Aye
Bradford	Aye	Peyton	Aye
Corp	Aye	Pickle	Aye
Fuhr	Aye	Randall	Aye
Hilsher	Absent	Spears	Aye
Larson	Aye	Stubblefield	Aye

Motion approved 10-Aye, 2-Absent vote.

After recording the vote on the motion, Administrator Fite stated that the adopted Chapter 3. Election Procedures amendments would not be applicable for the December 1, 2015 OSRC Election and the earliest date for they'd become effective is July 1, 2016. He reminded everyone in attendance that the proposed amendments will not be finally adopted and take effect unless and until they have been reviewed and approved by the Legislature and the Governor and published in *The Oklahoma Register* in accordance with the procedures set forth in the Oklahoma Procedures Act.

**B. Permanent Amendments to Chapter 10. Licensing and Use Permits**

This proposal began with a recommendation to restrict the amount of 3.2 beers that could be carried in flotation devices and consumed in public access areas, in response to public demands. OSRC proposed new fees to finance the increased enforcement necessary to accompany the restrictions. Upon being told that the Oklahoma Legislature would not approve fee increases in 2016, OSRC revised the proposed rulemaking in order to reduce costs. OSRC changed the alcohol restriction to simply prohibit what is essentially "hard alcohol" on the scenic rivers and in public access areas at all times. OSRC believes this change is a good step toward alleviating public concerns and easier to enforce. OSRC also will require the commercial flotation device operations to modify their public warning signs, and require those that use public access areas to launch and retrieve their flotation devices to help police litter at those areas.

As a result of public comment OSRC withdrew the original proposal to reduce the number of commercial flotation device licenses issued annually, and OSRC simplified the reporting proposal. The proposed amendments are to rules 630:10-1-5, 10-1-6, 10-1-7, 10-1-9 and 10-2-4. There is also a new Subchapter 3 for boater safety, which includes the alcoholic beverage restriction and also requires all children less than 13 years of age to wear life jackets while floating on the river.

**1. Presentation – Ed Fite, Administrator**

- The Administrator referred to the PowerPoint calling attention to Chapter 10. Summary of Written Comments. He said that there were 2 written comments received supporting the proposed amendments and 15 comments that didn't. He said the legislature tanked the OSRC ability to increase fees. He then gave a summary of the written comments (See attached Matrix of Chapter 10. Written Comments).
- He then referred to those slides containing the proposed Chapter 10. Rules amendments noting on each slide that any language which is underlined is new wording being added and that any text that has a ~~strike through~~ is being removed. He then read through and reviewed all proposed Chapter 10. Rules amendments/changes.
- Mr. Fite summarized specific to 630:10-1-5. Commercial licensing procedures, requirements, and annual use fees.

- Commissioner Larson asked if there was a way to add to the rules a penalizing action for those who do not participate. Mr. Fite responded saying the proposed amendments do not contain a provision to “penalize” but that it will be a part of the commercial flotation device operations annual licensing requirements. He said that if the amendment is adopted and operations don’t comply that they would be subject to an administrative hearing that could result in loss of licensing. He noted the amendment would increase from 7 to 8 the number of requisites within OSRC Rules that the float operators would have to meet.
- Mr. Fite summarized specific to 630:10-1-6. Suspend or revoke license. No questions or comments voiced.
- Mr. Fite summarized specific to 630:10-1-7. Limitation on licensing of flotation devices. No questions or comments voiced.
- Mr. Fite summarized specific to 630:10-1-9 Non-commercial fee procedures. No questions or comments voiced.
- Mr. Fite summarized Chapter 10. Subchapter 2. Public Access Areas. No questions and comments voiced.
- Mr. Fite summarized Chapter 10. Subchapter 3. Boater Safety. He specifically called attention to 630:10-3-1, saying anyone age 13 years of age and younger must wear a life jacket while floating.
- He said that in 630:10-3-2 nothing has changed in the proposed rules amendments language from what was presented to the public and discussed by Commissioners at the October 20, 2015 Regular Business Meeting.
- Ms. Ryals, seated in the audience asked if OSRC should include “drugs” as a prohibited substance in the proposed rules amendments language. Commissioner Larson offered that her suggestion would have to be added into another rules section. OSRC Ranger Captain Bill James responded stating Title 63 O.S. already bans the use of drugs statewide.

## **2. Rulemaking Hearing, Comments and Discussion – Public**

Vice-Chairman Needham opened the floor to the public for a brief discussion.

- Jack Spears, Arrowhead Resort, seated in the audience referred to proposed rules amendment 630:10-1-5(h)(8) language and that most anyone could review the required reports and discern what commercial flotation device operation turned in what data. Mr. Spears said there is no way to make the reporting anonymous. He said concerning the proposed limitation for Commercial Float Area 2 raft limitations it is more complex now for his operation to utilize their licensing since the public’s demands for canoes, kayaks and rafts varies on a weekly basis throughout the float season.
- Kevin Kelley, Diamondhead Resort, also seated in the audience referred to the proposed rules amendment 630:10-1-5(h)(8) language, asking since OSRC is trying to track the commercial flotation device operators’ numbers is anyone tracking the private floaters numbers. He said he doesn’t have time to the run numbers and it would require him to hire addition staff. He also discussed his concerns related to the increase of privately-owned non-commercial flotation devices floating on the river.
- Jack Spears, Arrowhead Resort, also seated in the audience suggested that if the proposed rules amendment 630:10-1-5(h)(8) were to be implemented that tracking the numbers should be given to an independent source and not the OSRC.
- Ms. Melissa Harris, Director of Tour Tahlequah, rose to the podium and offered to be the repository for commercial flotation device operations to report the information. Mr. Spears responded saying that it was a good opportunity that he would support.

- Administrator Fite responded to Mr. Kelley and Mr. Spears' comments related to tracking the number of commercial and privately-owned non-commercial flotation devices. He provided a historic perspective dating back to 2008, the last year that both commercial and privately-owned non-commercial flotation device users were assessed \$1.00 per person per trip user fee. He referenced Senate Bill #1381 that changed the OSRC fees structure in 2009 saying that all user fees were terminated in their entirety and that since there has been confusion among the public using privately-owned non-commercial flotation devices as to whether a user fee is required. He said when the private user fee was reinstated in 2010, it was changed from a per person to a per flotation device user fee and that it has taken several years to re-educate the public of its requisite and that majority of the public using privately-owned non-commercial flotation devices are more than willing to pay the user fees. Mr. Fite stated many of the private floaters in lieu of the \$1 daily user fee are opting to purchase the \$10 annual privately-owned non-commercial user fee decals.
- Commissioner Randall said he was hoping to have a number for privately-owned non-commercial user fees issued to compare. Mr. Fite answered saying the OSRC has an accounting of those numbers since 2010. Mr. Fite opined in the off-season there are more privately-owned non-commercial flotation devices floated than commercial devices. On the other hand, during the peak season he suggested that the privately-owned flotation devices account for 5-10% of the flotation devices floated on the river.
- Commissioner Peyton said that privately-owned non-commercial flotation devices utilizing his business doubled to 5-18% during the peak season. Mr. Fite observed for Commissioners that Peyton's Place Resort is one of just a few commercial flotation device operations that cater to those with privately-owned flotation devices wishing to access/float the river.
- Ms. Harris, Director of Tour Tahlequah, spoke from the audience saying the proposed reporting would provide information that is vital to her as tourism director. She suggested that college intern(s) could be utilized to collect information related to floaters. Ms. Harris also offered to assist the OSRC with preparation grants applications.
- Jack Spears, Arrowhead Resort, seated in the audience said he wouldn't object to turning over his information to Ms. Harris and said he can't speak for everyone. He emphasized to Commissioners that his operation pushes the selling of privately-owned non-commercial flotation device user fee permits.
- L.D. Stephens, War Eagle Resort, seated in the audience said that he doesn't mind submitting a report on the number of people, but to specifically narrow it down to each vessel would be hard to do on a daily basis.
- Ms. Harris, Director of Tour Tahlequah said if she knew what the numbers were on weekdays and weekends it would help Tour Tahlequah to target marketing dollars for promotion of the Tahlequah Area.
- OSRC Ranger Captain Bill James, who is 32-year veteran of Oklahoma Highway Patrol, also provided a brief overview of a program that OHP utilized to collect similar information.
- Following Ms. Harris' comments, Administrator Fite suggested given the discussion that Commissioners should table consideration of all proposed Chapter 10. Rules amendments until the December 15, 2015 Regular Business Meeting to afford them an opportunity to digest the public's comments.
- Commissioner Randall responded saying it seemed clear to him there was consensus on all but two of the proposed Chapter 10. Rules amendments. He instead recommended that Commissioners go forward to vote on the adoption of Chapter 10. amendments excepting 630:10-1-5. Commercial licensing procedures, Section (h)(8) and 630:10-1-7. Limitation on licensing of flotation devices, Section (h). He said the two sections excepted could be considered at the next OSRC meeting on December 15, 2015 or a subsequent meeting.

**3. Additional comments and discussion – OSRC Board of Commissioners**

No questions or comments voiced.

**4. Discussion and possible action by the OSRC Board of Commissioners, which may include revisions and a roll call, vote on the permanent adoption.**

Commissioner Randall made the motion to adopt and Commissioner Bradford seconded the motion.

**The Vote Follows:**

Bashaw	Absent	Needham	Aye
Bradford	Aye	Peyton	Aye
Corp	Aye	Pickle	Abstain
Fuhr	Aye	Randall	Aye
Hilsher	Absent	Spears	Aye
Larson	Aye	Stubblefield	Aye

Motion approved 9-Aye, 1-Abstain and 1-Absent vote.

**C. Permanent Amendments to Chapter 15. Protection of Natural Resources**

The proposed revisions to rules 630:15-1-7, 15-1-14 and 15-1-15 are mostly clarifications. However, the ice chest restriction is revised down from 50-quart to a 48-quart capacity, and as a result of public comment OSRC now proposes that all ice chests shall be secured to prevent the spilling of their contents.

**1. Presentation – Ed Fite, Administrator**

- The Administrator referred to the PowerPoint calling attention to Chapter 15. Summary of Written Comments. He said there had been one written comment received opposed to the 630:15-1-14. Ice chest restrictions.
- Mr. Fite summarized specific to 630:15-1-7. Glass and Styrofoam Certain containers prohibited. No questions or comments voiced.
- Mr. Fite summarized specific to 630:15-1-14. Ice Chest restrictions. No questions or comments voiced.
- Mr. Fite summarized specific to 630:15-1-15. Tying flotation devices prohibited. No questions or comments voiced.

**2. Rulemaking Hearing, Comments and Discussion – Public**

- A question was asked if violations are still a misdemeanor. Mr. Fite responded “yes” saying that a violation of any of the OSRC rules, except procedural matters, upon conviction is a misdemeanor.
- Jack Spears, Arrowhead Resort, seated in the audience said that since the rule prohibiting the tying of flotation devices together has been publicized and enforced that the number of his business’ life jackets being destroyed has decreased.
- Kevin Kelley, Diamondhead Resort, seated in the audience said his operation has posted likened signage in the business warning floaters not to tie flotation devices together.
- L.D. Stephens, War Eagle Resort, also seated said that his operation has similar signage posted that includes the dollar amount assessed for violations. He says the sign and stepped up enforcement by rangers has reduced the number of destroyed life jackets at his operation.

**3. Additional comments and discussion – OSRC Board of Commissioners**

- Commissioner Spears asked a question about the proposed life jackets rule language. Captain Bill James answered his question.
- Commissioner Spears then asked about the ice chest limit, specific to the number of ice chests permitted in flotation devices. It was observed by several Commissioners that the proposed rules language did not specify the number of ice chests permitted, only the size.
- Ms. Joyce Blackwell, War Eagle Resort, approached the podium and provided an explanation of her operations' procedures utilized over the last 8-10 years to inform their customers about the rules for floating the Illinois River.
- Following her comments, Commissioner Randall reiterated the intent of the proposed ice chest restrictions rule amendment.
- Commissioner Fuhr then questioned the clarity of the language in the proposed ice chest restrictions rule amendment specific to "securing the contents from spilling."
- Mrs. Nancy Garber, retired director of media relations, seated in the audience spoke up stating in her opinion that the language in proposed 630:15-1-14 Ice chest restrictions rule amendments is very clear.
- Mr. Ed Brocksmith, Save the Illinois River, Inc., seated in the audience said in his opinion that the number of ice chests allowed in a flotation device should be addressed.
- Mr. Jack Spears, Arrowhead Resort said he liked the proposed 48 quart size amendment.

After the discussion concluded, it was agreed to by majority of the public attending the meeting that Commissioners should consider changing the proposed 630:15-1-14. Ice chest restrictions rule amendments to read: **To prevent littering, no person shall carry flotation device shall contain an ice chest that is does not capable of being have a secured lid to prevent spilling its contents or is larger than 50-quart 48-quart capacity on a scenic river.**

**4. Discussion and possible action by the OSRC Board of Commissioners, which may include revisions and a roll call, vote on the permanent adoption.**

Vice-Chairman Needham asks if there is a motion to approve the changes and adopt proposed Chapter 15. Rules amendments. Commissioner Corp made the motion to adopt with the noted change to 630:15-1-14. Ice chest restrictions. Commissioner Fuhr seconded the motion.

**The Vote Follows:**

Bashaw	Absent	Needham	Aye
Bradford	Aye	Peyton	Aye
Corp	Aye	Pickle	Aye
Fuhr	Aye	Randall	Aye
Hilsher	Absent	Spears	Aye
Larson	Aye	Stubblefield	Aye

Motion approved 10-Aye, 2 Absent vote.

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Following consideration of proposed Chapter 15. Rules amendments, L.D. Stephens, War Eagle Resort seated in the audience spoke up informing Commissioners he is working to enlist the entire Illinois River Commercial Flotation Device Operations Association into contributing a total \$5,750 to offset the purchase of a motorized kayak for rangers. He said he has noticed a marked improvement since the rangers have had a presence on the river.

**05. Adjournment.**

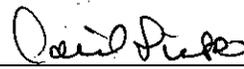
Vice-Chairman Needham calls for a motion to adjourn. Commissioner Randall made the motion. Commissioner Pickle seconded the motion.

**The Vote Follows:**

Bashaw	Absent	Needham	Aye
Bradford	Aye	Peyton	Aye
Corp	Aye	Pickle	Aye
Fuhr	Aye	Randall	Aye
Hilsher	Absent	Spears	Aye
Larson	Aye	Stubblefield	Aye

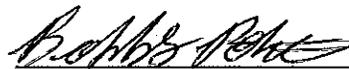
Motion passes 10-Aye, 2-Absent.

Passed and approved this 26 day of February, 2016.



David Pickle, Secretary

Subscribed and sworn to before me on this 26 day of February, 2016.



Signature of notary officer  
My Commission expires: April 10, 2016  
Commission #12003526