

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2153

102ND GENERAL ASSEMBLY

4344S.03C

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 640, RSMo, by adding thereto one new section relating to water exportation across state boundaries.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 640, RSMo, is amended by adding thereto
2 one new section, to be known as section 640.406, to read as
3 follows:

**640.406. 1. For the purposes of this section, the
2 following terms mean:**

3 (1) "Beneficial uses", water uses, which include but
4 are not limited to domestic, agricultural, industrial, and
5 other legitimate beneficial uses;

6 (2) "Department", the Missouri department of natural
7 resources;

8 (3) "Director", the director of the department of
9 natural resources;

10 (4) "End use", the final location for which the
11 exported water will be used, consumed, or applied for a
12 stated beneficial use;

13 (5) "Person", any individual, partnership,
14 copartnership, firm, company, public or private corporation,
15 association, joint stock company, trust, estate, political
16 subdivision, water district, or any agency, board,

17 department, or bureau of the federal or any state
18 government, or any other legal entity which is recognized by
19 law as the subject of rights and duties;

20 (6) "Water resources", any Missouri water source
21 occurring on the surface, in natural or artificial channels,
22 lakes, reservoirs, or impoundments, and in subsurface
23 aquifers which are available or which may be made available.

24 2. In order to protect the access, use, and enjoyment
25 of Missouri's water resources, it shall be unlawful for any
26 person to withdraw water from any water source for export
27 outside the state of Missouri unless such person holds a
28 water exportation permit issued by the department. A water
29 exportation permit shall not be required to withdraw water
30 from any water source for export outside of the state by a
31 public water system, as defined in section 640.102, where
32 the withdrawal and ultimate end use are within the same six-
33 digit hydrological unit code as defined by the United States
34 Geological Survey and within thirty miles of the state
35 border.

36 3. It shall be unlawful for any permit exempted from
37 the requirements of subsection 2 of this section to be used
38 for any purpose other than a beneficial use, specifically
39 where the withdrawal and ultimate end use of water are
40 within thirty miles of the state border.

41 4. During the review process of any permit required by
42 this section, the director shall determine from the
43 application for a water exportation permit and any
44 supporting materials whether the following conditions have
45 been met:

46 (1) There is water available in the amount specified
47 in the application to export for water use outside the state
48 of Missouri;

49 (2) The applicant has a present need for the water and
50 intends to put the water into beneficial use. In making the
51 determinations of need and beneficial use, the director
52 shall consider the availability of all water sources and
53 other relevant matters as the director deems appropriate,
54 and may consider the availability of groundwater as an
55 alternative source;

56 (3) The proposed use will not interfere with existing
57 in-state uses;

58 (4) The proposed use will not interfere with proposed
59 beneficial uses within the state, including recreational
60 use. In making this determination, the director shall
61 conduct a review pursuant to subsection 6 of this section;

62 (5) The water subject to the permit applications could
63 feasibly be transported to alleviate water shortages in the
64 state.

65 5. Within one hundred eighty days after the
66 department's receipt of a complete application, the director
67 shall issue a proposed decision to either approve the
68 application if the conditions in subsection 4 of this
69 section have been met or deny the application if the
70 conditions in subsection 4 of this section have not been met
71 and shall hold a thirty-day public comment period on the
72 proposed approval or denial. After the comment period, the
73 department shall respond to comments received and shall
74 either approve the application or deny the application if
75 the conditions in subsection 4 of this section have not been
76 met. If the department approves the application, it shall
77 send its findings to the clean water commission and Missouri
78 soil and water districts commission for review using the
79 criteria described in subsection 4 of this section. At the
80 next scheduled meeting, the clean water commission and

81 Missouri soil and water districts commission shall review
82 the department's findings. If the clean water commission
83 and Missouri soil and water districts commission agrees with
84 the department's decision that a permit should be issued,
85 the clean water commission and Missouri soil and water
86 districts commission shall send its decision back to the
87 department for the issuance of the permit. If the clean
88 water commission or Missouri soil and water districts
89 commission disagrees with the department's decision for the
90 issuance of the permit, the clean water commission and
91 Missouri soil and water districts commission shall send its
92 decision back to the department and the department shall
93 deny the application. Any permit issued pursuant to this
94 section shall state the time within which the water shall be
95 applied to beneficial use. Permits issued pursuant to this
96 section shall be issued for a period not to exceed three
97 years after the date of issuance.

98 (1) In the absence of appeal as provided under chapter
99 536, the decision of the director subject to approval or
100 disapproval of the clean water commission and Missouri soil
101 and water districts commission shall be final.

102 (2) Applications for renewal of a water export permit
103 shall be filed at least one hundred eighty days prior to the
104 expiration date of the existing permit, and the director
105 shall determine whether the conditions in subsection 4 of
106 this section are still satisfied. The director's decision
107 to renew the permit shall be subject to the clean water
108 commission's and Missouri soil and water districts
109 commission's review and approval or denial pursuant to this
110 subsection.

111 6. The department shall promulgate rules regarding the
112 process of sending the department's findings to the Missouri

113 soil and water districts commission and the clean water
114 commission for review under this section. Any rule or
115 portion of a rule, as that term is defined in section
116 536.010, that is created under the authority delegated in
117 this section shall become effective only if it complies with
118 and is subject to all of the provisions of chapter 536 and,
119 if applicable, section 536.028. This section and chapter
120 536 are nonseverable and if any of the powers vested with
121 the general assembly pursuant to chapter 536 to review, to
122 delay the effective date, or to disapprove and annul a rule
123 are subsequently held unconstitutional, then the grant of
124 rulemaking authority and any rule proposed or adopted after
125 August 28, 2024, shall be invalid and void.

126 7. (1) Before granting water supply for access and
127 use outside the state of Missouri, the director shall
128 consider existing and proposed in-state uses in order to
129 guarantee that in-state users will have access to and use of
130 all of the water required to adequately supply for
131 beneficial uses.

132 (2) The director shall review the needs for water
133 supply export every three years to determine whether the
134 water supply continues to be adequate for municipal,
135 agricultural, industrial, domestic, and other beneficial
136 uses within the state.

137 8. Subsections 4 to 7 of this section are subject to
138 the most recent reports, data, and information in
139 consideration of each permit application, whether the
140 application is for an initial permit or renewal of an active
141 or expired permit.

142 9. The review conducted pursuant to subsection 4 of
143 this section shall not be used to reduce the quantity of

144 water authorized to be transferred pursuant to the active
145 life of permits issued prior to such review.

146 10. On the filing of an application to export water
147 outside the state, the applicant shall designate an agent in
148 the state of Missouri for service of process and to receive
149 other notices.

150 11. In the event of a conflict between the conditions
151 of use required in Missouri and conditions required in
152 another state, the water permit holder shall consent to
153 conditions imposed by the director.

154 12. A major water user, as defined in section 256.400,
155 may, at any time, request the director to reevaluate any
156 existing water exportation permit using the criteria under
157 subsections 4 and 7 of this section. The director shall
158 create a mechanism for a major water user to submit to him
159 or her such a request for reevaluation and shall provide to
160 the major water user his or her findings within sixty days
161 of the request for reevaluation. After reevaluating the
162 permit, the director shall impose additional conditions
163 necessary for the continued exportation of water outside the
164 state if the director determines that the existing permit is
165 negatively impacting the requesting major water user's
166 beneficial use of his or her water resources. The
167 director's decision to modify or to decline to modify the
168 conditions in an existing permit pursuant to this subsection
169 shall be subject to the clean water commission's and
170 Missouri soil and water districts commission's review and
171 approval or denial pursuant to subsection 5 of this section.

172 13. Nothing in this section shall preclude a person
173 from bringing any constitutional, statutory, or common law
174 claim to vindicate or otherwise defend the user's water
175 rights. A permit issued under this section shall not serve

176 as a defense to any claim brought against a water permit
177 holder for the infringement of water rights.

178 14. The time-limited, active life of the permit, not
179 to exceed three years, requires the director to determine
180 whether there has been a substantial or material change
181 relating to any matters set forth in subsections 3 to 5 of
182 this section in response to renewal applications requesting
183 a permit for authorization of the continued export of water
184 outside the state. The director may impose additional
185 conditions to address any such substantial or material
186 change or may deny the permit renewal application as
187 necessary to comply with this section based on any such
188 substantial or material changes. The director's decision to
189 renew the permit shall be subject to the requirements of
190 subsection 5 of this section.

191 15. If the attorney general receives a complaint that
192 provisions of this section have been violated, or, at the
193 request of the department, the attorney general may bring an
194 injunctive action or other appropriate action in the name of
195 the people of the state to enforce provisions of this
196 section. Suit may be brought in any county where the
197 defendant's principal place of business is located or where
198 the withdrawal of water occurred in violation of this
199 section.

200 16. Whenever a person applies for a water exportation
201 permit, the department of natural resources shall send a
202 written notice to the county commission of the county where
203 the water for exportation is located.

204 17. Whenever the United States Drought Monitor (USDM)
205 indicates a D2 level drought for any county for which an
206 export permit has been issued, the department of natural
207 resources shall reevaluate such export permit. If the USDM

208 indicates a D3 or worse drought condition in any county, the
209 department shall reevaluate all existing permits within the
210 state. Whenever a state of emergency is declared by the
211 governor under section 44.100 for all, or any part of the
212 state, based on drought conditions, the department may
213 reevaluate any existing water exportation permit. Any
214 reevaluation completed under this section shall use the
215 criteria under subsections 3 to 5 of this section. After
216 reevaluation of the permit is complete, the department shall
217 have the authority to impose additional conditions or revoke
218 the permit if necessary for the continued exportation of
219 water outside the state if the director determines that the
220 existing permit negatively impacts beneficial use of water
221 resources. The director's decision to modify, revoke, or
222 make no changes to the permit shall be subject to the clean
223 water commission's and Missouri soil and water districts
224 commission's review and approval or denial pursuant to
225 subsection 5 of this section.

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