

ENROLLED HOUSE
BILL NO. 1483

By: DeWitt, McMullen, Fields, Denney,
Sullivan, Tibbs and Nelson of the
House

and

Justice, Ivester, Marlatt, Brogdon,
Jolley, Sykes, Bass, Garrison, Ford,
Gumm, Laster, Lerblance, Schulz,
Bingman, Ballenger, Eason McIntyre,
Leftwich, Burrage, Rice, Sparks,
Easley, Johnson (Constance), Sweeden,
Wilson, Ellis, Paddock, Crutchfield,
Adelson, and Wyrick of the Senate

An Act relating to water and water rights; making statement of certain recognition; prohibiting issuance of certain permits by the Oklahoma Water Resources Board that would impair certain abilities and powers; making certain waters apportioned by an interstate compact subject to certain rights and powers of the state; prohibiting a permit authorizing certain use of certain water without legislative authorization; amending 82 O.S. 2001, Section 105.12, which relates to approval of applications for stream water use; adding certain requirement; listing additional matter the Oklahoma Water Resources Board shall consider for out-of-state water use; clarifying certain review restrictions; requiring out-of-state water use applicant to designate an agent in-state; requiring the applicant to consent to certain conditions if there is a conflict; making out-of-state water use permits subject to certain review by the Board; allowing additional conditions; providing for application of certain provisions to certain water use applications; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105.12A of Title 82, unless there is created a duplication in numbering, reads as follows:

A. The State of Oklahoma has long recognized the importance of the conservation and preservation of its public waters and the necessity to maintain adequate supplies for the present and future water requirements of the state and to protect the public welfare of its citizens, and has entered into interstate compacts for that purpose.

B. No permit issued by the Oklahoma Water Resources Board to use water outside the boundaries of the State of Oklahoma shall:

1. Impair the ability of the State of Oklahoma to meet its obligations under any interstate stream compact; or

2. Impair or affect the powers, rights, or obligations of the United States, or those claiming under its authority or law, in, over and to water apportioned by interstate compacts.

C. Water apportioned to the State of Oklahoma by an interstate compact is subject to the right and power of the State of Oklahoma to control, among other matters, the method of diversion of the water and the place of use.

D. No permit for the use of water out of state shall authorize use of water apportioned to the State of Oklahoma under an interstate compact unless specifically authorized by an act of the Oklahoma Legislature and thereafter as approved by it.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 105.12, is amended to read as follows:

Section 105.12 A. ~~Before~~ In order to protect the public welfare of the citizens of Oklahoma and before the Oklahoma Water Resources Board takes final action on the application, the Board shall determine from the evidence presented whether:

1. There is unappropriated water available in the amount applied for;

2. The applicant has a present or future need for the water and the use to which applicant intends to put the water is a beneficial use. In making this determination, the Board shall consider the availability of all stream water sources and ~~such~~ other relevant matters as the Board deems appropriate, and may consider the availability of groundwater as an alternative source;

3. The proposed use does not interfere with domestic or existing appropriative uses; ~~and~~

4. If the application is for the transportation of water for use outside the stream system wherein the water originates, the proposed use must not interfere with existing or proposed beneficial uses within the stream system and the needs of the water users therein. In making this determination, the Board shall utilize the review conducted pursuant to subsection B of this section; and

5. If the application is for use of water out of state, the Board shall, in addition to the criteria set forth in this subsection, also evaluate whether the water that is the subject of the application could feasibly be transported to alleviate water shortages in the State of Oklahoma.

If ~~so~~ the evidence is determined to be sufficient, and subject to subsection B of this section, the Board shall approve the application by issuing a permit to appropriate water. The permit shall state the time within which the water shall be applied to beneficial use. In the absence of appeal as provided by the Administrative Procedures Act, the decision of the Board shall be final.

B. 1. In the granting of water rights for the transportation of water for use outside the stream system wherein water originates, pending applications to use water within ~~such~~ the stream system shall first be considered in order to assure that applicants within ~~such~~ the stream system shall have all of the water required to adequately supply their beneficial uses.

2. The Board shall review the needs within ~~such~~ the area of origin every five (5) years to determine whether the water supply is adequate for municipal, industrial, domestic, and other beneficial uses.

C. The review conducted pursuant to paragraph 2 of subsection B of this section shall not be used to reduce the quantity of water

authorized to be used pursuant to permits issued prior to such review. Such permits, however, remain subject to loss, in whole or in part, due to nonuse, forfeiture or abandonment, pursuant to this title.

D. On the filing of an application or amendment to use water outside the state, the applicant shall designate an agent in the State of Oklahoma for service of process and to receive other notices.

E. In the event of a conflict between the conditions of use required in Oklahoma and conditions required in another state, the water right holder shall consent to conditions imposed by the Board.

F. Permits and amendments that authorize the use of water outside the state shall be subject to review by the Board at least every ten (10) years after the date of issuance to determine whether there has been a substantial or material change relating to any matters set forth in subsection A of this section. The Board may impose additional conditions as described by Board rules to address any such substantial or material change.

G. Notwithstanding the provisions of any other law that may be deemed inconsistent with this section, the Board shall promulgate rules and apply the provisions of Section 1 of this act and subsections A, B, D, E, and F of this section to applications for use of water for which no final adjudication has been made by the Oklahoma Water Resources Board before the effective date of this act.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 20th day of May, 2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2009.

Presiding Officer of the Senate