

LEGISLATIVE BILL 309

Approved by the Governor April 18, 1986

Introduced by Schmit, 23; Vickers, 38

AN ACT relating to ground water; to amend sections 46-289, 46-684, 46-687, and 46-690, Reissue Revised Statutes of Nebraska, 1943, and section 33-105, Revised Statutes Supplement, 1985; to change a provision relating to certain fees; to provide a fee; to change a provision relating to the approval of an application involving an interbasin transfer; to authorize the amendment of a permit involving industrial ground water; to change provisions relating to the revocation and enforcement of a permit; to change a penalty; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 33-105, Revised Statutes Supplement, 1985, be amended to read as follows:

33-105. There shall be paid to the Department of Water Resources in advance for the services of the Director of Water Resources by the party demanding or necessitating the service the following fees:

(1) For filing, recording, and examining each application for a storage reservoir, for the first five thousand acre-feet or fraction thereof, twenty-five dollars, and for each additional five thousand acre-feet or fraction thereof, ten dollars;

(2) For filing, recording, and examining each application for, or application for modification of permits to include, intentional or incidental underground water storage and recovery, five hundred dollars;

(3) For filing, recording, and examining each application for water for irrigation from a natural stream, for the first one thousand acres proposed for irrigation or fraction thereof, two hundred dollars, and for each additional thousand acres or fraction thereof, one hundred dollars;

(4) For filing, recording, and examining each application for water for irrigation from a storage reservoir, for the first one thousand acres proposed for

irrigation or fraction thereof, fifty dollars, and for each additional thousand acres or fraction thereof, twenty-five dollars;

(5) For filing, recording, and examining each application for water for power purposes, for each theoretical fifty horsepower or fraction thereof, five dollars;

(6) For filing, recording, and examining each application for withdrawal of ground water for industrial purposes, for the first ~~three~~ four thousand acre-feet or fraction thereof, one thousand five hundred dollars, and for each additional one thousand acre-feet or fraction thereof, seven hundred fifty dollars;

(7) For filing an application to amend a permit for withdrawal of ground water for industrial purposes, five hundred dollars.

(8) ~~(7)~~ For filing, recording, and examining each application for approval of authority to levy fees for withdrawing water stored incidentally underground, five hundred dollars;

(9) ~~(8)~~ For filing any petition, affidavit, other paper, or application for which no fee has been fixed, ten dollars;

(10) ~~(9)~~ For recording any deed or document pertaining to land covered in whole or in part by a water appropriation or any instrument other than an application, ten dollars;

(11) ~~(10)~~ For blueprint copy of any map or drawing or for other copy of drawings or photostatic copy of any record, a reasonable sum to be fixed by the department in an amount estimated to cover the actual cost of preparing such a reproduction;

(12) ~~(11)~~ For the examination of plans for any dam and reservoir or enlargement, one dollar for each foot in height of the dam; and, at the department's discretion, expenses incurred while visiting and examining the site; and

~~(12)~~ (13) For certificate and seal, one dollar.

The Director of Water Resources shall keep a record of all money thus received. At the end of each calendar month he or she shall pay the same to the State Treasurer for the use of the General Fund and take his or her receipt therefor and file the same with the records of his or her office.

Sec. 2. That section 46-289, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-289. The Legislature finds, recognizes,

and declares that the transfer of water to outside the boundaries of a river basin may have impacts on the water and other resources in the basin and that such impacts differ from those caused by uses of water within the same basin in part because any unused water will not be returned to the stream from which it is taken for further use in that river basin. The Legislature therefore recognizes the need to delineate factors for consideration by the Director of Water Resources when evaluating an application made pursuant to section 46-233 which involves an interbasin transfer of water in order to determine whether denial of such application is demanded by the public interest. Those considerations shall include, but not be limited to, the following factors:

- (1) The economic, environmental, and other benefits of the proposed interbasin transfer and use;
- (2) Any adverse impacts of the proposed interbasin transfer and use;
- (3) Any current beneficial uses being made of the unappropriated water in the basin of origin;
- (4) Any reasonably foreseeable future beneficial uses of the water in the basin of origin;
- (5) The economic, environmental, and other benefits of leaving the water in the basin of origin for current or future beneficial uses;
- (6) Alternative sources of water supply available to the applicant; and
- (7) Alternative sources of water available to the basin of origin for future beneficial uses.

~~The application shall be denied if the benefits to the state from granting the application do not outweigh the benefits to the state from denying the application.~~

The application shall be deemed in the public interest if the overall benefits to the state and the applicant's basin are greater than or equal to the adverse impacts to the state and the basin of origin. The director's order granting or denying an application shall specify the reasons for such action, including a discussion of the required factors for consideration, and shall document such decision by reference to the hearing record, if any, and to any other sources used by the director in making the decision.

Sec. 3. If during construction or operation a permit holder determines (1) that an additional amount of water is or will be required for the proposed use set forth in a permit issued pursuant to section 46-683 or (2) that there is a need to amend any condition set

forth in the permit, the permitholder may file an application to amend the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five per cent from the amounts approved in the original permit.

Sec. 4. That section 46-684, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-684. (1) A permit granted pursuant to section 46-683 shall be revoked, following a hearing conducted in the same manner as hearings conducted pursuant to section 46-680, -

(1) Be revoked if the director determines that the permitholder has failed to exercise the right to withdraw ground water within three years of the date specified in the permit, or for a period of three consecutive years thereafter, -

(2) Be revoked or suspended for a definite period of time if the director determines that the permitholder has withdrawn more ground water than the amount specified in the permit, or

(3) Be revoked or suspended for a definite period of time if the director determines that the permitholder has violated any of the conditions specified in the permit.

(2) If it appears to the director that a permitholder has withdrawn more ground water than the amount specified in the permit or has violated any of the conditions specified in the permit, the director shall give written notice to the permitholder of the alleged violation.

Within thirty days following receipt of such notice, the permitholder may:

(a) File an application to amend the permit as provided in section 3 of this act;

(b) Request a hearing before the director; or

(c) Take appropriate measures to comply with the permit.

If the permitholder fails to take action pursuant to subdivision (2)(a), (2)(b), or (2)(c) of this section, the director may issue an order requiring compliance with the permit and seek, if appropriate, a

court injunction prohibiting further violations of the permit.

If the permitholder requests a hearing, the director shall within thirty days schedule a hearing within or in reasonable proximity to the area where the wells are located. Within forty-five days following the hearing, the director shall issue an order containing specific findings of fact with reference to the alleged violation and directing the permitholder, if necessary, to cease and desist from further violations of the permit.

(3) Nothing in this section shall limit the penalty provisions of section 46-687.

Sec. 5. That section 46-687, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-687. Any person who withdraws or transfers ground water in violation of the ~~provisions of sections 46-675 to 46-690~~ Industrial Ground Water Regulatory Act shall be guilty of a Class ~~I~~ IV misdemeanor. Each day shall constitute a separate offense in cases of continued violation.

Sec. 6. That section 46-690, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-690. Sections 46-675 to 46-690 and section 3 of this act shall be known and may be cited as the Industrial Ground Water Regulatory Act. Any reference in such act to sections 46-675 to 46-690 shall be construed to include section 3 of this act.

Sec. 7. That original sections 46-289, 46-684, 46-687, and 46-690, Reissue Revised Statutes of Nebraska, 1943, and section 33-105, Revised Statutes Supplement, 1985, are repealed.