

LEGISLATIVE BILL 871

Approved by the Governor June 1, 1995

Introduced by Elmer, 44; Bernard-Stevens, 42; Bohlke, 33; Bromm, 23; Coordsen, 32; Cudaback, 36; Dierks, 40; Fisher, 35; Hillman, 48; Jones, 43; Maurstad, 30; McKenzie, 34; Robak, 22; Schellpeper, 18; Schmitt, 41; Schrock, 38; Warner, 25; Wickersham, 49

AN ACT relating to water; to amend sections 46-235.04, 46-613, and 46-663, Reissue Revised Statutes of Nebraska, sections 13-515 and 46-1405, Revised Statutes Supplement, 1994, and section 46-602, Revised Statutes Supplement, 1994, as amended by section 1, Legislative Bill 145, Ninety-fourth Legislature, First Session, 1995; to change provisions relating to irrigation districts, water well priority dates and decommissioning, replacement water wells, ground water preferences, instream appropriations, and meters on water wells; to define terms; to state findings; to provide powers; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 13-515, Revised Statutes Supplement, 1994, is amended to read:

13-515. The Nebraska Budget Act shall not apply to any public power district or public power and irrigation district organized pursuant to Chapter 70, article 6, to any rural power district organized pursuant to Chapter 70, article 8, or to any agency created pursuant to sections 18-2426 to 18-2434, or to any district organized under sections 46-101 to 46-1163.

Sec. 2. Section 46-235.04, Reissue Revised Statutes of Nebraska, is amended to read:

46-235.04. (1) Induced ground water recharge appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations. Appropriations for induced ground water recharge may be canceled and annulled as provided in section 46-229.04.

(2) The Department of Water Resources may approve the transfer of priority dates among water wells, including replacement water wells, located within a single well field that are subject to an induced recharge appropriation, or are part of an application for such an appropriation, to improve the water well field's efficiency of operation with respect to river flow. The transfers shall be approved if the department finds that (a) the transfers would not increase the quantity of induced ground water recharge under the original priority date or application, (b) the amount of water withdrawn from water wells under the original priority date or application would not increase, (c) the quantity of streamflow needed to sustain well field operation under the original priority date would decrease, (d) the transfer would not impair the rights of other appropriators, and (e) the transfer is in the public interest in the same manner as provided in section 46-235. The department may assign multiple priority dates to a single water well that replaces two or more water wells which are abandoned. Replacement water wells installed pursuant to this subsection may be installed without regard to the geographical limitation found in the definition of replacement water well in section 46-602 if the replacement water well is located within the same well field as the abandoned water well. Notice shall be furnished and any hearing held as provided in sections 46-291 to 46-293. For purposes of this subsection, the term "single well field" shall mean those contiguous tracts of land owned or leased by the applicant containing two or more water wells subject to induced recharge.

Sec. 3. Section 46-602, Revised Statutes Supplement, 1994, as amended by section 1, Legislative Bill 145, Ninety-fourth Legislature, First Session, 1995, is amended to read:

46-602. (1) For each water well completed in this state on or after September 9, 1993, the water well contractor as defined in section 46-1213 constructing the water well and the owner of the water well shall complete the appropriate registration form after the completion of the water well. The registration form for all (a) water wells, excluding replacement water wells and excluding other than test holes and dewatering wells with intended use of ninety days or less, shall be filed with the Department of Water Resources by the owner within thirty days after completion of the water well and (b) replacement water wells shall be filed with the department at the same time as

the notice of abandonment of the water well being replaced as required by subsection (2) of this section. If no replacement water well is constructed at the time of abandonment but is constructed within the time provided in subsection (3) of this section, the registration form for such replacement water well shall be filed within thirty days after construction of such replacement water well. Registration shall be on a form provided by the Director of Water Resources. The form shall contain ~~(a)~~ (i) the name, address, and signature of the owner, ~~(b)~~ (ii) the legal description of the water well, ~~(c)~~ (iii) the date drilling commenced and the date construction was completed, ~~(d)~~ (iv) the intended use of the water well, ~~(e)~~ (v) the description and depth of geologic materials encountered, ~~(f)~~ (vi) the depth and diameter or dimension of the constructed water well and test hole, ~~(g)~~ (vii) the depth and diameter or dimension of the excavated hole if applicable, ~~(h)~~ (viii) the depth of the formation stabilizer or gravel pack and size of particles if used, ~~(i)~~ (ix) the depth and thickness of grout or other sealing materials if applicable, ~~(j)~~ (x) casing information, including length, inside diameter, wall thickness, and type of material if applicable, ~~(k)~~ (xi) the static water level, ~~(l)~~ (xii) the water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable, ~~(m)~~ (xiii) the yield of the water well in gallons per minute if applicable, ~~(n)~~ (xiv) the identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law, ~~(o)~~ (xv) the name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Licensing Act to any person, other than the owner of the water well, who constructed the water well, ~~(p)~~ (xvi) screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable, ~~(q)~~ (xvii) the signature of the water well contractor, ~~(r)~~ (xviii) when the newly constructed water well is a replacement water well, the registration number of the abandoned water well if applicable, and ~~(s)~~ (xix) such additional information conformable to the statement of purpose contained in section 46-601 as the director requires. A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well, and one registration form and detailed site plan shall be completed for each such series. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, one registration form shall be required which shall include a detailed site plan which shows the location of each such water well in the site and a log from each such water well. The Department of Water Resources shall be notified of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and shall include such evidence of ownership as the director by rule and regulation directs. The department shall use such notice to update the registration on file. The registration requirement in this subsection shall not apply to water wells constructed prior to September 9, 1993, unless previously required to be registered.

(2) Whenever a water well becomes an illegal water well as defined in section 46-1207.01, the owner of the water well shall decommission the water well by completely filling and sealing the water well cavity in accordance with the rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act. The method specified in such rules and regulations for filling and sealing water well cavities shall be designed to eliminate any safety hazard created by illegal water wells and to prevent deterioration in the quality of the underlying ground water. Written notice of any such abandonment shall be provided by the owner to the department within sixty days. The department shall not collect a fee for the filing of the notice.

(3) For purposes of this section, replacement water well means a water well which (a) replaces an abandoned water well within three years of the last operation of the abandoned water well and (b) is constructed to provide water to the same tract of land as the abandoned water well being replaced.

(4) For purposes of water well registration under this section, registration fees shall be collected as provided in sections 46-606 and 46-1224.

Sec. 4. Section 46-613, Reissue Revised Statutes of Nebraska, is amended to read:

46-613. Preference in the use of underground ground water shall be given to those using the water for domestic purposes. They shall have

preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, (1) domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations and (2) agricultural purposes shall include, but not be limited to, aquaculture as defined in section 2-3804.01.

Sec. 5. (1) The Legislature finds that instream appropriations, as defined in section 46-2,108, for recreation, fish, and wildlife should consider preferences among different uses and that all appropriations should consider the possible legal relationship between surface water and ground water. Thus the Legislature finds that, since such issues have not been fully considered, the Director of Water Resources shall not grant any permit to appropriate water, except as specified in subsection (2) of this section, before January 1, 1997, for any application pending on or filed after the operative date of this section.

(2) The Director of Water Resources may grant applications for (a) appropriations for flood control or sediment control structures which will not make or cause to be made any consumptive use of the impounded water, (b) applications for temporary appropriations for public construction that are five cubic feet per second or less, or (c) applications by public water suppliers for induced ground water recharge appropriations pursuant to sections 46-233 to 46-238.

Sec. 6. Section 46-663, Reissue Revised Statutes of Nebraska, is amended to read:

46-663. Regardless of whether or not any portion of a district has been designated as a control area, management area, or special ground water quality protection area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(1) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(2) Require such reports from ground water users as may be necessary;

(3) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(4) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

~~(4)~~ (5) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

~~(5)~~ (6) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Sec. 7. Section 46-1405, Revised Statutes Supplement, 1994, is amended to read:

46-1405. ~~(1)~~ Any natural resources district cost-sharing program for decommissioning illegal water wells may qualify for funding pursuant to section 46-1404 if the program:

~~(a)~~ (1) Applies only to water wells properly decommissioned by licensed water well contractors and pump installation contractors;

~~(b)~~ (2) Applies to all water wells in the district;

~~(c)~~ (3) Is available for at least thirty water wells per year; and

~~(d)~~ (4) Provides at least seventy-five percent of the costs of decommissioning, up to a maximum of three hundred dollars for all water wells other than hand-dug water wells which shall be eligible for up to a maximum of seven hundred dollars.

(2) As part of the application for cost sharing, the applicant shall provide the district with a copy of the notice required by section 46-602 which includes a notarized affidavit of the person decommissioning the water well. The affiant shall verify that the water well was decommissioned in accordance with state law, standards, rules, and regulations and using the materials described in the notice. Any person filing a false affidavit shall be guilty of making a false statement under oath or equivalent affirmation

~~pursuant to section 28-915.01.~~

Sec. 8. Sections 3 and 9 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 9. Original section 46-602, Revised Statutes Supplement, 1994, as amended by section 1, Legislative Bill 145, Ninety-fourth Legislature, First Session, 1995, is repealed.

Sec. 10. Original sections 46-235.04, 46-613, and 46-663, Reissue Revised Statutes of Nebraska, and sections 13-515 and 46-1405, Revised Statutes Supplement, 1994, are repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.