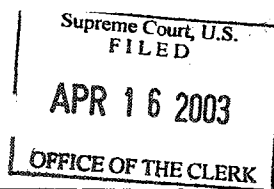


No. 126, Original



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In The  
Supreme Court of the United States

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STATE OF KANSAS,

*Plaintiff,*

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

*Defendants.*

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BEFORE THE HONORABLE VINCENT L. MCKUSICK  
SPECIAL MASTER

---

FINAL SETTLEMENT STIPULATION  
VOLUME 2 OF 5

December 15, 2002

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**APPENDIX E1**

**Nebraska Laws**

**46-201**

**Water for irrigation; declared natural want.**

Water for the purposes of irrigation in the State of Nebraska is hereby declared to be a natural want.

**Source:**

Laws 1895, c. 69, § 65, p. 268; R.S.1913, § 3369; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 1, p. 831; C.S.1922, § 8406; C.S.1929, § 46-501.

**46-202**

**Natural streams; unappropriated water; dedication to public use; appropriated water; further appropriation.**

(1) The water of every natural stream not heretofore appropriated within the State of Nebraska, including the Missouri River is hereby declared to be the property of the public and is dedicated to the use of the people of the state, subject to appropriation.

(2) The water of every natural stream within the State of Nebraska, including the Missouri River, appropriated for storage in a surface reservoir or for underground water storage, is hereby declared to be subject to further appropriation for recovery and beneficial use.

**Source:**

Laws 1895, c. 69, § 42, p. 260; R.S.1913, § 3370; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 2, p. 831; C.S.1922, § 8407; C.S.1929, § 46-502; R.S.1943, § 46-202; Laws 1963, c. 277, § 1, p. 833; Laws 1965, c. 271, § 1, p. 773; Laws 1980, LB 802, § 1; Laws 1983, LB 198, § 4.

**46-202.01**

**Repealed. Laws 1965, c. 271, s. 3.**

**46-203**

**First appropriators; declared first in right.**

As between appropriators, the one first in time is first in right.

**Source:**

Laws 1889, c. 68, § 7, p. 504; R.S.1913, § 3371; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 3, p. 832; C.S.1922, § 8408; C.S.1929, § 46-503.

**46-204**

**Natural streams; priority of appropriations; first in time, first in right; preference from nature of use.**

The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purposes, but when the waters of any natural stream are not sufficient for the use of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.

**Source:**

Laws 1895, c. 69, § 43, p. 260; R.S.1913, § 3372; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 4, p. 832; C.S.1922, § 8409; C.S.1929, § 46-504; R.S.1943, § 46-204; Laws 1963, c. 277, § 2, p. 833; Laws 1965, c. 271, § 2, p. 773; Laws 1981, LB 252, § 1.

**46-205**

**First appropriators; date of priority.**

The priority of an appropriation shall date from the filing of the application in the office of the Department of Natural Resources.

**Source:**

Laws 1895, c. 69, § 31, p. 254; R.S.1913, § 3373; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 5, p. 832; C.S.1922, § 8410; C.S.1929, § 46-505; R.S.1943, § 46-205; Laws 2000, LB 900, § 94.

**46-206**

**Appropriation; water to be returned to stream.**

The water appropriated from a river or stream shall not be turned or permitted to run into the waters or channel of any other river or stream than that from which it is taken or appropriated, unless such stream exceeds in width one hundred feet, in which event not more than seventy-five percent of the regular flow shall be taken and any such taking shall be subject to the provisions of section 46-289.

**Source:**

Laws 1889, c. 68, § 6, p. 504; Laws 1893, c. 40, § 3, p. 378; R.S.1913, § 3376; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 8, p. 832; C.S.1922, § 8413; C.S.1929, § 46-508; R.S.1943, § 46-206; Laws 1981, LB 252, § 2.

**46-207**

**Appropriation; no land to be crossed by more than one ditch.**

No tract of land shall be crossed by more than one ditch, canal or lateral without the written consent and agreement of the owners thereof, if the first ditch, canal or lateral can be made to answer the purpose for which the second is desired or intended.



**Source:**

Laws 1889, c. 68, § 3, p. 504; R.S.1913, § 3377; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 9, p. 832; C.S.1922, § 8414; C.S.1929, § 46-509.

**46-208 Transferred to section 61-205.**

**46-209 Transferred to section 61-206.**

**46-210 Transferred to section 61-207.**

**46-211 Repealed. Laws 1984, LB 897, s. 5.**

**46-212 Transferred to section 61-208.**

**46-212.01 Transferred to section 61-209.**

**46-212.02 Repealed. Laws 2000, LB 900, s. 256.**

**46-213 Transferred to section 61-211.**

**46-214 Repealed. Laws 1981, LB 545, s. 5**

**46-215 Transferred to section 61-212.**

**46-216 Transferred to section 61-213.**

**46-217 Transferred to section 61-214.**

**46-218 Transferred to section 61-215.**

**46-219 Transferred to section 61-216.**

**46-220 Repealed. Laws 1953, c. 157, s. 3.**

**46-221 Repealed. Laws 1953, c. 157, s. 3.**

**46-222 Repealed. Laws 1987, LB 140, s. 15.**

**46-223 Repealed. Laws 1987, LB 140, s. 15.**

**46-224 Repealed. Laws 1987, LB 140, s. 15.**

**46-225 Repealed. Laws 1953, c. 157, s. 3.**

**46-226 Determination of priority and amount of appropriation; duty of department.**

The department shall make proper arrangements for the determination of priorities of right to use the public waters of the state and determine the same. The method of determining the priority and amount of appropriation shall be fixed by the department.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 7, p. 835; C.S.1922, § 8426; C.S.1929, § 81-6307; R.S.1943, § 46-226; Laws 2000, LB 900, § 95.

**46-226.01**

**Application for recognition of incidental underground water storage; procedure.**

Any person having an approved perfected appropriation may file with the department an application for recognition of incidental underground water storage associated with such appropriation on a form prescribed and furnished by the department without cost. Upon receipt of an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department.

**Source:**

Laws 1983, LB 198, § 5; Laws 1985, LB 488, § 2.

**46-226.02**

**Application; director; approval; conditions.**

1) The director may approve an application filed pursuant to section 46-226.01 or 46-297 subject to the following conditions:

(a) The rate, quantity, or time of surface water diversion shall not be increased from that approved for the appropriation at the time the application is filed;

(b) If the water stored or to be stored underground will be used for irrigation purposes, the director may approve the service of additional amounts of land or different lands not identified to be served with facilities included under the original appropriation, if the director determines that the change is in the public interest, and that any interference with the rights of senior appropriators as a result of such change is unavoidable and not material;

(c) The priority date shall remain the same as that of the original appropriation; and

(d) When the application is for recognition of incidental underground water storage, such stored water is being withdrawn or is otherwise being used for beneficial purposes.

(2) For an application filed pursuant to section 46-226.01, the burden shall be on the applicant to prove that underground water storage has occurred.

(3) The director may grant the application in a modified or reduced form, if required by the public interest, and may impose such other reasonable conditions as deemed appropriate to protect the public interest.

(4) The director's order of approval shall specify:

(a) The source of the water stored or to be stored underground;

(b) The underground water storage method; and

(c) A description of the area served or to be served by the water stored underground.

**Source:**

Laws 1983, LB 198, § 6; Laws 1985, LB 488, § 3; Laws 1995, LB 350, § 2.

**46-226.03**

**Terms, defined.**

For purposes of sections 46-226 to 46-243:

(1) Department means the Department of Natural Resources;

(2) Director means the Director of Natural Resources;

(3) Incidental underground water storage has the same meaning as in section 46-296;

(4) Induced ground water recharge means the process by which ground water withdrawn from wells near a natural stream is replaced by surface water flowing in the stream?

(5) Intentional underground water storage has the same meaning as in section 46-296;

(6) Public water supplier means a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes;

(7) Underground water storage has the same meaning as in section 46-296; and

(8) Well means a well, subsurface collector, or other artificial opening or excavation in the ground from which

ground water flows under natural pressure or is artificially withdrawn.

**Source:**

Laws 1993, LB 301, § 1; Laws 2000, LB 900, § 96.

**46-227**

**Water in streams; measurement; duty of department.**

The department shall measure or cause to be measured the quantity of water flowing in the several streams of the state, shall make a record thereof in the office of the department, and shall from time to time make such additional measurements as may be necessary, in considering applications for water appropriations and such controversies as may arise regarding the distribution of water.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 8, p. 835; C.S.1922, § 8427; C.S.1929, § 81-6308; R.S.1943, § 46-227; Laws 2000, LB 900, § 97.

**46-228**

**Flowing water; standards of measurement.**

The standard of measurement for flowing water, both for determining the flow of water in natural streams and for the purpose of distributing it therefrom when appropriations have been made for direct flow, shall be one cubic foot per second of time. The standard of measurement of the volume of water shall be one acre-foot, equivalent to forty-three thousand five hundred sixty cubic feet, and when water is stored in any natural or artificial reservoir, this standard shall be used for determining the capacity of storage reservoirs, the amount stored, and the amount used therefrom, except that for public water supplier

appropriations, the standard of measurement may be in terms of gallons.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 21, p. 843; C.S.1922, § 8440; C.S.1929, § 81-6321; R.S.1943, § 46-228; Laws 1993, LB 301, § 2.

**46-229**

**Appropriations; beneficial or useful purpose required; termination; hearing.**

All appropriations for water must be for some beneficial or useful purpose and, except as provided in sections 46-290 to 46-294 and 46-2,122 to 46-2,125, when the appropriator or his or her successor in interest ceases to use it for such purpose for more than three consecutive years, the right may be terminated only by the director following a hearing pursuant to sections 46-229.02 to 46-229.05.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 835; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(1), p. 520; Laws 1983, LB 380, § 1; Laws 1984, LB 818, § 1; Laws 1993, LB 302, § 2; Laws 1995, LB 99, § 14; Laws 2000, LB 900, § 98.

**46-229.01**

**Department; examine condition of ditches.**

The department shall, as often as necessary, examine into the condition of all ditches constructed or partially constructed within the state and shall compile information concerning the condition of every water appropriation and all ditches and canals and other works constructed or partially constructed thereunder.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(2), p. 520; Laws 2000, LB 900, § 99.

**46-229.02**

**Adjudication of water rights; abandonment; notice; hearing; forfeiture; cancellation.**

If it shall appear that any water appropriation has not been used for some beneficial or useful purpose or having been so used at one time has ceased to be used for such purpose for more than three consecutive years, the department shall appoint a place and time of hearing, shall serve notice upon the owners of such water appropriation or such ditch, canal, or other diverting works to show cause by such time and at such place why the water appropriation owned by such person should not be declared forfeited and annulled because such water appropriation had not been used for more than three consecutive years prior to receiving such notice, and shall also serve such notice upon the landowners under such water appropriation, ditch, or canal. The notice shall contain a copy of section 46-229.04 and a department telephone number which any person may call for information regarding sufficient cause for nonuse. A water appropriation may be canceled by the department without complying with sections 46-229.01 to 46-229.04 if the owner of such appropriation fails to comply with any of the conditions of approval in the permit.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(3), p. 521; Laws 1963, c. 278, § 1, p. 834; Laws 1983, LB 380, § 2; Laws 1984, LB 1000, § 1.

**46-229.03**

**Adjudication of water rights; notice; contents; service.**

(1) The notice shall contain the date and place of hearing, a description of the water appropriation, the number thereof upon the books and records of the department, the date of priority, the point of diversion, and a description of the lands which are located under such water appropriation. It shall call upon all persons interested in such water appropriation to show cause why all or part of the same should not be canceled and annulled. The notice shall be served personally or by registered or certified mail at least thirty days before the date of hearing upon those owning or controlling the water appropriation and the ditch, canal, or reservoir for the purpose of using or storing water for any purpose if they are known to the department to be the owners thereof and maintain an office within the State of Nebraska.

(2) If the persons named in subsection (1) of this section do not maintain an office within the State of Nebraska, then such notice shall be served by the publication in some legal newspaper published or of general circulation in the county in which the place of diversion of such water appropriation is located, once a week for three consecutive weeks prior to the date of hearing.

(3) Except as provided in subsection (4) of this section, a copy of such notice shall be personally served or sent by either registered or certified mail to all other persons appearing from the records of the county clerk or register of deeds to be landowners under such appropriation.

(4) Landowners whose property under such appropriation is located within the corporate limits of a city or village shall be served by the publication of such notice in



a legal newspaper published or of general circulation in the county in which the city or village is located. The notice shall be published once a week for three consecutive weeks prior to the date of hearing.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 836; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(4), p. 521; Laws 1957, c. 242, § 39, p. 852; Laws 1973, LB 186, § 5; Laws 1980, LB 648, § 1; Laws 1986, LB 960, § 32; Laws 1987, LB 140, § 3.

**46-229.04**

**Adjudication of water rights; hearing; decision; non-use; considerations; consolidation of proceedings; when.**

(1) At such hearing the verified field investigation report of an employee of the department shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no one appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If someone interested appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than three consecutive years, the same shall be declared canceled and annulled unless the department finds that there has been sufficient cause for such nonuse as provided for in subsection (3) of this section.

(2) If it is determined that such water has not been put to beneficial use or has ceased to be used for such purpose for more than ten consecutive years, the water right shall be declared canceled and annulled, except that for any water appropriation or part of a water appropriation on

any tract of land under separate ownership, sufficient cause for nonuse shall be deemed to exist even if the period of nonuse was for more than ten consecutive years if the landowner used the available water supply on only part of the land under the water appropriation because of an inadequate water supply.

(3) If the period of nonuse did not exceed ten consecutive years, sufficient cause shall be deemed to exist if such nonuse was a result of one or more of the following:

(a) The land subject to the appropriation was placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal or state program;

(b) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(c) The available water supply was inadequate to enable the owner to use the water for a beneficial or useful purpose;

(d) Use of the water was unnecessary because of climatic conditions;

(e) Circumstances were such that a prudent person, following the dictates of good husbandry, would not have been expected to use the water;

(f) The works, diversions, or other facilities essential to use of the water were destroyed by a cause not within the control of the owner of the appropriation, and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;

(g) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis; or

(h) Legal proceedings prevented or restricted use of the water. The department may specify by rule and regulation other circumstances which shall be deemed to constitute sufficient cause.

(4) If at the time of the hearing there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 837; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(5), p. 521; Laws 1973, LB 186, § 6; Laws 1983, LB 380, § 3; Laws 1987, LB 140, § 4; Laws 1987, LB 356, § 1; Laws 1995, LB 350, § 3; Laws 2000, LB 900, § 100.

**46-229.05**

**Adjudication of water rights; appeal.**

An appeal may be taken from the decision of the department upon such hearing as provided by section 61-207.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 837; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(6), p. 522; Laws 1991, LB 732, § 106; Laws 2000, LB 900, § 101.

**46-229.06**

**Repealed. Laws 1998, LB 895, s. 1.**

**46-230**

**Adjudication of water rights; record; duty of landowner to furnish address; notice.**

As the adjudication of a stream progresses and as each claim is finally adjudicated, the director shall make and cause to be entered of record in his or her office an order determining and establishing the priorities of right to use the water of such stream, the amount of the appropriation of the persons claiming water from such stream and the character of use for which each appropriation is found to have been made, and the address of the owner of each water appropriation. It shall be the duty of every owner of an appropriation to give notice to the department of its address and any change of its address or of the name of the owner of the appropriation. Notification shall be in such form and shall include such evidence of ownership as the director may by regulation require. Upon receipt of such notice, the department shall update its records. The department shall not collect a fee for the filing of the notice.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 10, p. 837; C.S.1922, § 8429; C.S.1929, § 81-6310; Laws 1941, c. 29, § 11, p. 137; C.S.Supp.,1941, § 81-6310; R.S.1943, § 46-230; Laws 1973, LB 186, § 7; Laws 1979, LB 204, § 1; Laws 2000, LB 900, § 102; Laws 2001, LB 667, § 2; Laws 2002, LB 458, § 1. Effective date July 20, 2002.

**46-231**

**Amount and priority of appropriation; determination; limitation of amount; storage water.**

Each appropriation shall be determined in its priority and amount by the time at which it is made and the amount of water which the works are constructed to carry. An appropriator shall at no time be entitled to the use of more than he or she can beneficially use for the purposes for which the appropriation has been made, and the amount of any appropriation made by means of enlargement of the distributing works shall be determined in like manner.

An allotment from the natural flow of streams for irrigation shall not exceed one cubic foot per second of time for each seventy acres of land and shall not exceed three acre-feet in the aggregate during one calendar year for each acre of land for which such appropriation has been made, and an allotment shall not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops. Such limitations do not apply to storage waters or to water appropriations transferred pursuant to sections 46-2,122 to 46-2,125 and 46-2,127 to 46-2,129.

When storage water is being used in addition to the natural flow, the person in charge of the ditch or canal shall, upon his or her request and within twenty-four hours thereof, be notified in writing by the user of such storage waters of the time of withdrawal from natural streams to be distributed according to law.

When an appropriation is for irrigation purposes and the amount is so small that a proper distribution and application is impractical, as much water as the applicant can use without waste may be allotted for a limited time

so fixed by the department as to give each appropriator his or her just share without violating other rights, so long as (1) the volume of water used in a twenty-four-hour period does not exceed the amount of water that would otherwise have been allowed at the approved fixed continuous rate for a twenty-four-hour period or (2) the volume of water used in a seven-day, Monday-through-Sunday period does not exceed the amount of water that would otherwise have been allowed at the approved fixed continuous rate for a seven-day period. The department shall determine schedules among appropriators to assure that other rights are not violated.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 11, p. 837; C.S.1922, § 8430; Laws 1929, c. 133, § 1, p. 486; C.S.1929, § 81-6311; R.S.1943, § 46-231; Laws 1987, LB 140, § 5; Laws 1993, LB 789, § 1; Laws 1995, LB 99, § 15; Laws 2000, LB 900, § 103.

**46-232**

**Repealed. Laws 1955, c. 183, s. 6.**

**46-233**

**Application to appropriate water; time of making; contents; procedure; priority date; notice; hearing; temporary permit; emergency use.**

(1) The United States and every person intending to appropriate any of the public waters of the State of Nebraska shall, before (a) commencing the construction, enlargement, or extension of any works for such purpose, (b) performing any work in connection with such construction, enlargement, or extension, or (c) taking any water from any constructed works, make an application to the department for a permit to make such appropriation. A permit may be obtained to appropriate public waters for

intentional underground water storage and recovery of such water. A public water supplier may make application to appropriate public waters for induced ground water recharge.

(2) The application shall be upon a form prescribed and furnished by the department without cost to an applicant. Such application shall set forth (a) the name and post office address of the applicant, (b) the source from which such appropriation shall be made, (c) the amount of the appropriation desired, as nearly as it may be estimated, (d) the location of any proposed work in connection with the appropriation, (e) the estimated time required for its completion, which estimated time shall include the period required for the construction of ditches, pumps, and other features or devices, (f) the time estimated at which the application of the water for the beneficial purposes shall be made, which time shall be limited to a reasonable time following the estimated time of completion of the work when prosecuted with diligence, (g) the purpose for which water is to be applied and (i) if for induced ground water recharge by a public water supplier, a statement of the times of the year when and location along a stream where flows for induced ground water recharge are proposed and (ii) if for irrigation, a description of the land to be irrigated by the water and the amount, and (h) such facts and supporting documentation as are required by the department which shall include, but not be limited to, the depth of all wells, the extent of the underlying aquifer, the expected rate of recharge, the minimum flow or flows necessary to sustain the well field throughout the reach identified, and the period of time that a well field would continue to meet minimal essential needs of the public water supplier when there is no flow as those factors

relate to and are part of an evaluation of pertinent hydrologic relationships.

A public water supplier making application for induced ground water recharge may submit with its application a statement of the amount of induced ground water recharge water which the public water supplier presently uses as well as the amount of induced ground water recharge water it anticipates using in the next twenty-five-year period. Such statement shall also quantify the total amount of water the public water supplier presently uses from the well field as well as the total amount of water it anticipates using from the well field in the next twenty-five-year period.

(3) Upon receipt of an application containing the information set forth in this section, the department shall (a) make a record of the receipt of the application, (b) cause the application to be recorded in its office, and (c) make a careful examination of the application to ascertain whether it sets forth all the facts necessary to enable the department to determine the nature and amount of the proposed appropriation. If such an examination shows the application in any way defective, it shall be returned to the applicant for correction, with a statement of the correction required, within ninety days after its receipt. Ninety days shall be allowed for the refiling of the application, and in default of such refiling, the application shall stand dismissed. Except as provided in subsection (4) of this section, if so filed and corrected as required within such time, the application shall, upon being accepted and allowed, take priority as of the date of the original filing, subject to compliance with the future provisions of the law and the rules and regulations thereunder. During the pendency of any application or upon its approval, the



department, upon proper authorization and request of the applicant, may assign the application a later priority date.

(4) For public water supplier wells in existence on September 9, 1993, the priority date assigned to an application for induced ground water recharge made by a public water supplier shall be:

(a) June 27, 1963, for water supply wells and facilities constructed and placed in service on or before June 27, 1963;

(b) January 1, 1970, for water supply wells and facilities constructed and placed in service on or after June 28, 1963, and on or before December 31, 1969;

(c) January 1, 1980, for water supply wells and facilities constructed and placed in service on or after January 1, 1970, and on or before December 31, 1979;

(d) January 1, 1990, for water supply wells and facilities constructed and placed in service on or after January 1, 1980, and on or before December 31, 1989; and

(e) January 1, 1993, for water supply wells and facilities constructed and placed in service on or after January 1, 1990, and on or before September 9, 1993.

(5) Prior to taking action on an application for induced ground water recharge, the director shall publish notice of such application at the applicant's expense at least once each week for three consecutive weeks in a newspaper of general circulation in the area of the stream segment and also in a newspaper of statewide circulation. The notice shall state that any person having an interest

may, in writing, object to the application. Any such objection shall be filed with the department within two weeks after the final publication of the notice.

(6) After the director has accepted the application made under subsection (2) of this section as a completed application and published notice as required under subsection (5) of this section, the director shall, if he or she determines that a hearing is necessary, set a time and place for a public hearing on the application. The hearing shall be held within reasonable proximity to the area in which the wells are or would be located. At the hearing the applicant shall present all hydrological data and other evidence supporting its application. All interested parties shall be allowed to testify and present evidence relative to the application.

(7) An unapproved application pending on August 26, 1983, may be amended to include appropriation for intentional underground water storage and recovery of such water.

(8) Application may be made to the department for a temporary permit to appropriate water. The same standards for granting a permanent appropriation shall apply for granting such temporary permit except when the temporary permit is for road construction or other public use construction and the amount of water requested is less than ten acre-feet in total volume. For temporary permits for public-use construction, the applicant shall include on the application the location of the diversion, the location of use, a description of the project, the amount of water requested, and the person to contact. Temporary permits for public-use construction and for less than ten acre-feet in total volume may be granted without any determination

of unappropriated water and shall be considered to be in the public interest. The requirement of filing a map or plans with the application for a temporary permit may be waived at the discretion of the director. In granting a temporary permit, the director shall specify a date on which the right to appropriate water under the permit shall expire. Under no circumstances shall such date be longer than one calendar year after the date the temporary permit was granted. Temporary permits shall be administered during times of shortage based on priority. The right to appropriate water shall automatically terminate on the date specified by the director on the temporary permit without further action by the department.

(9) Water may be diverted from any stream, reservoir, or canal by any fire department or emergency response services for the purpose of extinguishing a fire in progress in an emergency without obtaining a permit from the department. The installation of a dry well for this purpose is allowed without the prior permission of the department, but the department shall be informed of any such installation, its location, and the party responsible for its installation and maintenance within thirty days after the installation.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 16, p. 841; C.S.1922, § 8435; C.S.1929, § 81-6316; R.S.1943, § 46-233; Laws 1955, c. 138, § 1, p. 513; Laws 1957, c. 198, § 1, p. 696; Laws 1983, LB 198, § 7; Laws 1993, LB 301, § 3; Laws 1993, LB 789, § 2; Laws 2000, LB 900, § 104; Laws 2001, LB 129, § 3.

**46-233.01**

**Permit to appropriate water for use in another state; application; considerations; determination.**

(1) Application may be made to the department for a permit to appropriate any of the public surface waters of the State of Nebraska to be diverted or stored in Nebraska for use in any other state.

(2) In determining whether to grant such application, the director shall consider the following factors:

(a) Whether unappropriated water exists in the source of supply named in the application;

(b) Whether such application and appropriation when perfected are not otherwise detrimental to the public welfare;

(c) Whether denial of the application is demanded by the public interest; and

(d) Whether the proposed use is a beneficial use of water.

(3) When determining whether denial of such application is demanded by the public interest, the director shall consider the following factors:

(a) The economic, environmental, and other benefits of the proposed use;

(b) Any adverse economic, environmental, and other impacts of the proposed use;

(c) Any current beneficial uses being made of the unappropriated water;

(d) The economic, environmental, and other benefits of not allowing the appropriation and preserving the water supply for beneficial uses within the state;

(e) Alternative sources of water supply available to the applicant; and

(f) Any other factors consistent with the purposes of this section that the director deems relevant to protecting the interests of the state and its citizens.

The application shall be deemed in the public interest if the overall benefits to Nebraska are greater than the adverse impacts to Nebraska. 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.

**Source:**

Laws 1953, c. 161, § 1, p. 504; Laws 1987, LB 146, § 4; Laws 2000, LB 900, § 105.

**46-233.02**

**Appropriation of water for use in another state; laws governing; rights of appropriators.**

Such applications and all rights thereunder shall be governed by the provisions of the Constitution and statutes of Nebraska as now existing or hereafter amended. Appropriators under the provisions of sections 46-233.01 and 46-233.02 shall have no greater rights than those under appropriations for use within the State of Nebraska.

**Source:**

Laws 1953, c. 161, § 2, p. 505.

**46-234**

**Application for water; refusal; grounds; effect; necessity for consent; perfection of appropriation; time allowed.**

If there is no unappropriated water in the source of supply or if a prior appropriation has been perfected to water the same land to be watered by the applicant, the department may refuse such application. An application may also be refused (1) if existing facilities other than those owned or operated by the applicant are to be utilized and the applicant fails to show, by documentary evidence, agreements with the owner and operator of the facilities to allow the applicant to use such facilities or (2) when denial is demanded by the public interest. The party making such application shall not prosecute such work so long as such refusal continues in force. An application for appropriation shall not be exclusive of any of the lands included therein until the owner or owners of such land give consent to the same in proper form duly acknowledged. No application made or canal constructed, prior to the application of the water and the perfection of an appropriation therefor or the filing of the consent, shall prevent other applications from being allowed and other canals from being constructed to irrigate the same lands or any of them. In case of an application for an appropriation of water for the development of water power, the department shall promptly act upon such application and limit the time within which such appropriation shall be perfected to the period within which the proposed power project can be completed by uninterrupted and expeditious construction.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 18, p. 842; Laws 1921, c. 291, § 1, p. 941; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S.1943, § 46-234; Laws 1981, LB 252, § 3; Laws 1984, LB 672, § 1; Laws 2000, LB 900, § 106.

**46-235**

**Application for water; approval; date of priority; conditional or partial approval; hearing; director; powers and duties.**

(1) For applications other than those to appropriate public waters for induced ground water recharge, if there is unappropriated water in the source of supply named in the application, if such application and appropriation when perfected are not otherwise detrimental to the public welfare, and if denial of the application is not demanded by the public interest, the department shall approve the application and shall make a record in its office and return the application to the applicant, who shall on receipt thereof be authorized to proceed with the work and to take such measures as may be necessary to perfect such application into an appropriation. The priority of such application and appropriation when perfected shall date from the filing of the application in the office of the department, and the date of filing shall be regarded as the priority number thereof. The department may, upon examination of such application, approve it for a shorter period of time for perfecting the proposed appropriation or for a smaller amount of water or of land than applied for. The department may also impose such other reasonable conditions as it deems appropriate to protect the public interest. An applicant aggrieved by the action of the department shall, upon proper showing, be granted a hearing before the department, which hearing shall be conducted in accordance with the rules of procedure adopted by the

department, and a full and complete record shall be kept of all such proceedings. When a complete record of the case has been made up, the department shall render an opinion of facts and of law based upon the evidence before it.

(2)(a) An application for an induced ground water recharge appropriation for public water supplier wells constructed and placed in service before September 9, 1993, shall be approved by the director if he or she finds that:

(i) The appropriation is necessary to maintain the well or wells for the use or uses for which the appropriation has been requested;

(ii) The rate and timing of the flow is the amount reasonably necessary to maintain the well or wells for the uses for which the appropriation has been requested; and

(iii) The application is in the public interest and is not detrimental to the public welfare. There shall be a rebuttable presumption that wells which are the subject of an application pursuant to subdivision (2)(a) of this section are in the public interest and are not detrimental to the public welfare.

(b) The director may approve the application for a well or wells constructed before September 9, 1993, but may specifically deny the applicant the right to request regulation of junior appropriators if the director, at the time of approval, finds that the well or wells, at the time of their construction, were not located, designed, or constructed so as to take reasonable advantage of aquifer conditions in the area to minimize the frequency and amount of the demand for flows for induced ground water recharge. Thereafter a public water supplier holding an



approved application which has been denied the right to request regulation of junior appropriators may petition the director for a hearing to present evidence showing the director that the well or wells have been modified, relocated, or reconstructed to take reasonable advantage of the aquifer conditions in the area. If the director determines that the well or wells have been so modified, relocated, or reconstructed, the director shall cause to be modified the approval of the application to allow for the regulation of junior appropriators, subject to the restrictions or conditions applicable to public water suppliers.

(c) An application for an induced ground water recharge appropriation for public water supplier wells constructed and placed in service before September 9, 1993, shall not be subject to the requirements of sections 46-288 and 46-289.

(3) An application for an induced ground water recharge appropriation for public water supplier wells constructed or to be constructed on or after September 9, 1993, shall be approved by the director if he or she makes the findings required by subdivision (2)(a) of this section and further finds that:

(a) There is unappropriated water available for the appropriation; and

(b) The well or wells involved have been or will be located and constructed to take reasonable advantage of aquifer conditions in the area to minimize the frequency and amount of the demand for flows for induced ground water recharge.

(4)(a) The director may approve the application filed under subsection (2) or (3) of this section for a smaller

amount of water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the appropriation which the director deems necessary to protect the public interest. The director may grant an appropriation for specific months of the year if so demanded by the public interest. If the director approves the application, he or she shall issue a written order, which written order shall include the findings required by this section, the amount of the appropriation, and any conditions or limitations imposed under this section.

(b) In determining whether an application for an appropriation for induced ground water recharge is in the public interest, the director's considerations shall include, but not be limited to, the possible adverse effects on existing surface water or ground water users and the economic, social, and environmental value of such uses, including, but not limited to, irrigation, recreation, fish and wildlife, public water supply, induced ground water recharge for public water supply systems, and water quality maintenance.

(c) The stream segment and the determination of a reasonable and necessary amount of water required for induced ground water recharge purposes throughout the reach shall be defined specifically by the director in the order issued under this section.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 17, p. 842; C.S.1922, § 8436; C.S.1929, § 81-6317; R.S.1943, § 46-235; Laws 1981, LB 252, § 4; Laws 1987, LB 140, § 6; Laws 1993, LB 301, § 4; Laws 2000, LB 900, § 107.

**46-235.01**

**Public water supplier; appropriation for induced ground water recharge; hearing; evidence of beneficial use; priority date; vesting.**

A public water supplier which has received an appropriation for induced ground water recharge pursuant to section 46-235 may, from time to time and within twenty-five years after the priority assigned pursuant to section 46-233, petition the department for a hearing to present evidence showing that all or part of the original projection for additional water needs specified pursuant to subsection (2) of section 46-233 corresponds with the actual use. To the extent the public water supplier is making beneficial use of all or a portion of the water projected in the original application, the right to use such additional water shall vest and the priority date of such anticipated water use shall date back to the priority date assigned pursuant to section 46-233. A public water supplier may not request such a hearing at intervals of less than five years for each approved application.

**Source:**

Laws 1993, LB 301, § 5.

**46-235.02**

**Public water supplier; payment of compensation; when.**

(1) Just compensation shall be required if a public water supplier exercises a preference to the injury of a senior appropriator.

(2) Just compensation shall be provided by a public water supplier to any injured junior appropriator whose appropriation was perfected prior to September 9, 1993, if and to the extent such injury resulted from regulation of

junior appropriators requested by the public water supplier to provide water for any purpose other than domestic. Such compensation shall not be required to a junior appropriator if the regulation requested is to provide water for domestic purposes only. At the time any junior appropriator whose appropriation was perfected prior to September 9, 1993, is regulated at the request of a public water supplier, the department shall determine for each such appropriator the extent to which the regulation is for domestic purposes and the extent to which it is for other purposes.

(3) A cause of action for just compensation shall accrue at the time a junior appropriator is regulated by the department.

**Source:**

Laws 1993, LB 301, § 6; Laws 2000, LB 900, § 108.

**46-235.03**

**Public water suppliers; natural resources districts; powers.**

Natural resources districts shall have the authority to impose restrictions or controls on public water suppliers as specified in the Nebraska Ground Water Management and Protection Act. Such restrictions or controls may limit the withdrawal of ground water to a greater degree or extent than is otherwise permitted or allowed by a permit issued by the department.

**Source:**

Laws 1993, LB 301, § 7; Laws 2000, LB 900, § 109.

**46-235.04**

**Induced ground water recharge appropriations; administration; transfer of priority dates; procedure.**

(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 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 must be installed 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, single well

field means those contiguous tracts of land owned or leased by the applicant containing two or more water wells subject to induced recharge.

**Source:**

Laws 1993, LB 301, § 8; Laws 1995, LB 871, § 2; Laws 1997, LB 30, § 1; Laws 2000, LB 900, § 110.

**46-236**

**Application for water power; lease from state required; fee; renewal; cancellation; grounds.**

Within six months after the approval of an application for water power as provided for in section 46-234 and before placing water to any beneficial use, the applicant shall enter into a contract with the State of Nebraska, through the department, for leasing the use of all water so appropriated. Such lease shall be upon forms prepared by the department, and the time of such lease shall not run for a greater period than fifty years; and for the use of water for power purposes the applicant shall pay into the state treasury on or before January 1 each year fifteen dollars for each one hundred horsepower for all water so appropriated. Upon application of the lessee or its assigns, the department shall renew the lease so as to continue it and the water appropriation in full force and effect for an additional period of fifty years.

Upon the failure of the applicant to comply with any of the provisions of such lease and the failure to pay any of such fees, the department shall notify the lessee that the required fees have not been paid to the department or that the lessee is not otherwise in compliance with the provisions of the lease. If the lessee has not come into compliance with all provisions of the lease or has not paid to the department all required fees within fifteen calendar days

after the date of such notice, the department shall issue an order denying the applicant the right to divert or otherwise use the water appropriation for power production. The department shall rescind the order denying use of the water appropriation at such time as the lessee has come into compliance with all provisions of the lease and has paid all required fees to the department. If after forty-five calendar days from the date of issuance of the order the lessee is not in compliance with all provisions of the lease or required fees have not been paid to the department, such lease and water appropriation shall be canceled by the department.

**Source:**

Laws 1921, c. 291, § 1, p. 942; C.S.1922, § 8437; C.S.1929, § 81-6318; R.S.1943, § 46-236; Laws 1972, LB 1306, § 1; Laws 1987, LB 140, § 7; Laws 2000, LB 900, § 111.

**46-237**

**Map or plat; requirements; failure to furnish; effect.**

Within six months after approval and allowance of an application other than an application to appropriate public waters for induced ground water recharge, the applicant shall file in the office of the department a map or plat which shall conform to the rules and regulations of the department as to material, size, and coloring and be upon a scale of not less than two inches to the mile. Such map or plat shall show the source from which the proposed appropriation is to be taken and all proposed dams, dikes, reservoirs, canals, powerhouses, and other structures for the purpose of storing, conveying, or using water for any purpose whatsoever and their true courses or positions in connection with the boundary lines and corners of lands which they occupy. Land listed for irrigation shall be shown in government subdivisions or fractions thereof, as

the case may be, and no rights shall be deemed to have been acquired until the provisions of this section have been complied with. Failure to so comply shall work a forfeiture of the appropriation and all rights thereunder.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 19, p. 843; C.S.1922, § 8438; C.S.1929, § 81-6319; R.S.1943, § 46-237; Laws 1993, LB 301, § 9; Laws 2000, LB 900, § 112.

**46-238**

**Construction of project; time restrictions; failure to comply; forfeiture; extension of time for completion of work; appeal.**

(1) Within six months after the approval of any application for water for irrigation, power, or other useful purpose by the department, the person making such application shall commence the excavation or construction of the works in which it is intended to divert the water and the actual construction of any water power plant and reservoir or reservoirs for storage in connection therewith and shall vigorously, diligently, and uninterruptedly prosecute such work to completion unless temporarily interrupted by some unavoidable and natural cause. A failure to comply with this section shall work a forfeiture of the appropriation and all rights under the appropriation. The cost of promotion and engineering work shall not be considered a part of the cost of construction, and the progress of the construction work shall be such that one-tenth of the total work shall be completed within one year from the date of approval of the application. The construction of all work required in connection with the proposed project shall be prosecuted in the manner described in this section and with such a force as shall assure the average rate of constructional progress necessary to complete such work



or works within the time stipulated in the approval of such application, notwithstanding the ordinary delays and casualties that must be expected and provided against. A failure to carry on the construction of either an irrigation project or a water power project as outlined in this section shall work a forfeiture of the appropriation and all rights under the appropriation, and the department shall cancel such appropriation. The department shall have free access to all records, books, and papers of any irrigation or water power company, shall have the right to go upon the right-of-way and land of any such company, shall inspect the work to see that it is being done according to plans and specifications approved by the department, and shall also keep a record of the cost of construction work when deemed advisable for physical valuation purposes. (2) The department may extend, for reasonable lengths of time, the time for completion of works, the application of water to a beneficial use, or any of the other requirements for completing or perfecting an application for flow or storage rights as fixed in the approval of an application or otherwise for the appropriation of water. Such extension may be granted upon a petition to the department and the showing of reasonable cause. The department shall cause a notice of each petition received to be published at the petitioner's expense in at least one newspaper of general circulation in the county or counties of the appropriation once a week for three consecutive weeks. The department shall hold a hearing on the issue of extension on its own motion or if requested by any interested person. If a hearing is held, notice shall be given by certified mail to the applicant, to any person who requested a hearing, and to any person who requests notification of the hearing. The department may grant the extension in the absence of a hearing if no requests for a hearing are received. Any

interested person may be made a party to such action. Any party affected by the decision on the petition may appeal directly to the Court of Appeals. Subsequent extensions may be made in the same manner.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 13, p. 838; C.S.1922, § 8432; C.S.1929, § 81-6313; R.S.1943, § 46-238; Laws 1957, c. 198, § 2, p. 698; Laws 1979, LB 545, § 1; Laws 1980, LB 649, § 1; Laws 1987, LB 140, § 8; Laws 1991, LB 278, § 1; Laws 1991, LB 732, § 107; Laws 2000, LB 900, § 113.

**46-239**

**Repealed. Laws 1955, c. 183, s. 6.**

**46-240**

**Additional appropriation; conditions; application procedure.**

Whenever any person shall desire to divert any of the unappropriated waters of any natural lake or reservoir, or any person shall desire to recover any unappropriated water intentionally stored underground, for irrigation or any other beneficial purpose, for which water has already been appropriated, but for which in times of scarcity no water can be obtained from the appropriation already made therefor, such person may make application therefor and proceed as in cases of original application for appropriation.

An application for recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 28, p. 845; C.S.1922, § 8447; C.S.1929, § 81-6328; R.S.1943, § 46-240; Laws 1983, LB 198, § 8; Laws 1985, LB 488, § 4.

**46-240.01**

**Supplemental additional appropriations; agricultural appropriators; application.**

All appropriators of water for agricultural purposes of less than the statutory limit of direct flow from the public waters of this state within the drainage basin of the stream from which such waters originate shall be entitled to such additional appropriation or appropriations from the direct flow of such stream, within the statutory limits provided by law, as may be necessary and required for the production of crops in the practice of good husbandry. To accomplish such purpose, existing agricultural appropriators within the drainage basin having less than the statutory limit of direct flow shall, as a matter of right, be entitled upon application therefor to the approval and grant of such additional supplemental appropriation or appropriations from the direct flow of such stream as will not make the total appropriations, for the lands upon which such water is to be used, exceed the limits provided by law and as may be necessary and required for the production of crops upon such lands with the practice of good husbandry. Applications for such supplemental additional appropriations from the direct flow, upon the approval or granting thereof, shall have priority within the drainage basin as of the date such applications are filed in the office of the department.

**Source:**

Laws 1953, c. 160, § 1, p. 503; Laws 2000, LB 900, § 114.

**46-241**

**Application for water; storage reservoirs; facility for underground water storage; eminent domain; procedure; duties and liabilities of owner.**

(1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in sections 46-243 and 46-257, make an application to the department upon the prescribed form. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application, the applicant shall have the right to impound in such reservoir, or store in and recover from such underground water storage facility, all waters not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility shall not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water

storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with section 46-257, and the outlet works shall be installed in such a manner that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(3) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-241; Laws 1951, c. 101, § 91, p. 487; Laws 1955, c. 183, § 2, p. 515; Laws 1971, LB 823, § 1; Laws 1973, LB 186, § 8; Laws 1983, LB 198, § 9; Laws 1985, LB 103, § 2; Laws 1985, LB 488, § 5; Laws 1995, LB 309, § 1; Laws 2000, LB 900, § 115.

**46-242**

**Use of stored water; permit; application; conditions; limitations; procedure.**

(1) After the completion to the satisfaction of the department of a storage reservoir for which a permit has been obtained pursuant to section 46-241, any person proposing to apply to beneficial use the water stored shall file with the department an application for a permit particularly describing the use to which the water is to be applied and, if for irrigation, describing the land to be irrigated.

(2) Application may be made for a permit to appropriate water for the irrigation of land lying both upstream and downstream from a storage reservoir or intentional underground water storage facility. Under an approved application for a permit to appropriate water stored in a reservoir or facility for use on land upstream from such reservoir or facility, water may be diverted from the stream by the applicant and a compensating amount of water shall be released from the reservoir or facility for the use of downstream appropriators, but the rights of prior appropriators shall not be adversely affected by such exchange of water.

(3) The owner of a storage reservoir shall have a preferred right to make such application for a period of six months from the time limited for the completion of such reservoir. The date of the expiration of such period shall be endorsed upon the application when allowed. If an application is made by any other than such owner of a reservoir at any time, the same shall not be approved by the department until the applicant shows, by documentary evidence, sufficient interest in such storage reservoir to

entitle the applicant to enough water for the purpose set forth in the application.

(4) Application may be made for a permit to appropriate water from a storage reservoir, subject to subsection (3) of this section, or an intentional underground water storage facility, subject to subsection (3) of section 46-241, for instream use of water for recreation or fish and wildlife if the appropriation will not prejudice the rights of any prior appropriator for a beneficial use.

(5) An unapproved application for a permit pursuant to this section which is pending on August 26, 1983, may be amended to include use of stored water for intentional underground water storage.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 852; C.S.1922, § 8467; C.S.1929, § 46-617; R.S.1943, § 46-242; Laws 1955, c. 183, § 3, p. 516; Laws 1965, c. 272, § 1, p. 774; Laws 1983, LB 198, § 10; Laws 1991, LB 277, § 1; Laws 2000, LB 900, § 116.

**46-242.01**

**Repealed. Laws 1996, LB 890, s. 1.**

**46-242.02**

**Repealed. Laws 1996, LB 890, s. 1.**

**46-243**

**Application for water; reservoir intended for raising water level.**

A reservoir constructed for the purpose of holding water back and raising it in order that it may be applied to lands of a higher level or given a greater head for power, shall not be considered a storage reservoir, but such reservoir together with the diverting or impounding dam, must be described in an application for flowing water

when water is to be raised, in order to perfect the appropriation.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 17, p. 853; C.S.1922, § 8467; C.S.1929, § 46-617.

**46-244**

**Canals; declared works of internal improvement; laws applicable.**

Canals and other works constructed for irrigation or water power purposes, or both, are hereby declared to be works of internal improvement; and all laws applicable to works of internal improvement are hereby declared to be applicable to such canal and irrigation works.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 1, p. 846; C.S.1922, § 8451; C.S.1929, § 46-601.

**46-245**

**Irrigation canal, defined; laws applicable.**

Any canal constructed for the purpose of developing water power, or any other useful purpose, and from which water can be taken for irrigation, is hereby declared to be an irrigation canal and all laws relating to irrigation canals shall be deemed applicable thereto.

**Source:**

Laws 1893, c. 40, § 2, p. 378; R.S.1913, § 3375; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 7, p. 832; C.S.1922, § 8412; C.S.1929, § 46-507.



**46-246****Ditches, dams, or similar works; construction; right of eminent domain.**

All persons desirous of constructing a ditch, building a dam or dams for the purpose of storing water for irrigation, evaporation, and water power purposes, or conveying water to be applied to domestic, agricultural or any other beneficial use, or any dam, dike, reservoir, wasteway, subterranean gallery, filtering wells or other works for collecting, cleansing, filtering, retaining or storing water for any such use, or to enlarge any such ditch, conduit or waterworks, or to change the course thereof in any place, or to relocate the headgate or to change the point at which the water is to be taken into such canal or other waterworks, or to enlarge any ditch, canal or other works, or to construct any ditch, or to lay pipes or conduits for conveying or distributing water so collected or stored to the place of using the same, or to set, place or construct a wheel, pump, machine or apparatus for raising water out of any stream, lake, pond or well so that the same may flow or be conveyed to the place of using or storing the same, and who shall be unable to agree with the owner or claimant of any lands necessary to be taken for the site of any such works or any part thereof, touching the compensation and damages, shall be entitled to condemn the right-of-way over or through the lands of others, for any and all such purposes.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 2, p. 846; C.S.1922, § 8452; C.S.1929, § 46-602.

**46-247**

**Ditches, dams, or similar works; construction; eminent domain; procedure.**

In case of the refusal of the owner or claimant of any lands through which such ditch, canal, or other works are proposed to be made or constructed, to allow the passage thereof, the person desiring the right-of-way may acquire same through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 3, p. 847; C.S.1922, § 8453; C.S.1929, § 46-603; R.S.1943, § 46-247; Laws 1951, c. 101, § 92, p. 487.

**46-248**

**Right-of-way for irrigation laterals; condemnation; procedure.**

Whenever any person has acquired any rights to water for any lands owned by him, where, prior to the building of the laterals and the application of the water, any intervening canal, ditch, or lateral has been constructed, he shall have the right to construct laterals from such irrigation canal to the lands owned by him and to have such irrigation laterals across the lands and intervening canals to the land owned by him. If such intervening owner shall refuse to sell the right-of-way for such irrigation lateral, the owner shall have the right of eminent domain to condemn such right-of-way. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 4, p. 847;  
C.S.1922, § 8454; C.S.1929, § 46-604; R.S.1943, § 46-248;  
Laws 1951, c. 101, § 93, p. 488.

**46-249**

**Irrigation works constructed by authority of United States; right-of-way over public lands; grant; school lands excepted.**

There is hereby granted, over all the lands now or hereafter belonging to the State of Nebraska, except school lands held in trust by the Board of Educational Lands and Funds, a right-of-way for ditches, tunnels and telephone and transmission lines necessary to the construction and operation of any irrigation works constructed by authority of the United States; and in all conveyances such right-of-way shall be reserved.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 5, p. 847;  
C.S.1922, § 8455; C.S.1929, § 46-605; R.S.1943, § 46-249;  
Laws 1965, c. 273, § 1, p. 775.

**46-250**

**Places of diversion; storage sites; changes; procedure.**

The owner of any ditch, storage reservoir, storage capacity, or other device for appropriating water may, upon petition to the Department of Natural Resources, and upon its approval, change the point at which the water under any water appropriation of record is diverted from a natural stream or reservoir, change the line of any flume, ditch, or aqueduct, or change a storage site. No reclamation district or power appropriator may change the established return flow point without the approval of the department.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 6, p. 848; C.S.1922, § 8456; C.S.1929, § 46-606; Laws 1941, c. 91, § 1, p. 361; C.S.Supp.,1941, § 46-606; R.S.1943, § 46-250; Laws 1951, c. 150, § 1, p. 598; Laws 1953, c. 158, § 1, p. 496; Laws 2000, LB 900, § 117.

**46-251**

**Irrigation works; use of state lands and highways; grant; right-of-way; condemnation.**

All persons desirous of constructing any of the works provided for in sections 46-244 to 46-250 shall have the right to occupy state lands and obtain right-of-way over and across any highway in this state for such purpose without compensation, except public school lands. All bridges or crossings over such ditches, laterals and canals shall be constructed under the supervision of the Department of Roads, if on a state highway, and under the supervision of the county board or governing body of a municipality, if on a highway under the jurisdiction of such board or governing body. All such persons may obtain a right-of-way not to exceed sixteen feet in width, for a like purpose along, parallel to, and upon one side of any highway by condemnation proceedings where the same does not interfere with the proper drainage of such highway. In such cases the abutting landowner and the county may grant such right-of-way, or in case of their refusal notice shall be served upon them and proceedings had as in other cases. Not more than one such ditch or lateral shall be permitted along the side of the same highway.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 7, p. 848; C.S.1922, § 8457; C.S.1929, § 46-607; R.S.1943, § 46-251; Laws 1961, c. 227, § 2, p. 672.

**46-252**

**Conducting of water into or along natural channels; withdrawal; permit, when required; liability.**

(1) Any person may conduct, either from outside the state or from sources located in the state, quantities of water over and above those already present into or along any of the natural streams or channels of this state, for purposes of instream beneficial uses or withdrawal of some or all of such water for out-of-stream beneficial uses, at any point without regard to any prior appropriation of water from such stream, due allowance being made for losses in transit to be determined by the Department of Natural Resources. The department shall monitor movement of the water by measurements or other means and shall be responsible for assuring that such quantities are not subsequently diverted or withdrawn by others unless they are authorized to do so by the person conducting the water.

(2) Except as provided in subsections (3) and (4) of this section, before any person may conduct water into or along any of the natural streams or channels of the state, he or she shall first obtain a permit from the department. Application for the permit shall be made on forms provided by the department. Applications shall include plans and specifications detailing the intended times, amounts, and streamreach locations and such other information as required by the department. The water subject to such a permit shall be deemed appropriated for the use specified in the permit. Permitholders shall be liable for any damages resulting from the overflow of such stream or channel when water so conducted contributed to such overflow.

(3) Any person actually engaged in the construction or operation of any water power plant may, without filing

with the department and upon payment of all damages, use any such stream or channel for a tailrace or canal and may, whenever necessary, widen, deepen, or straighten the bed of any such stream. All damages resulting therefrom shall be determined in the manner set forth in sections 76-704 to 76-724.

(4) Any person holding a storage use permit pursuant to section 46-242 shall not be required to obtain the permit required by this section.

(5) Nothing in this section shall be construed to exempt a person from obtaining any other permits required by law.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 8, p. 848; C.S.1922, § 8458; C.S.1929, § 46-608; R.S.1943, § 46-252; Laws 1951, c. 101, § 94, p. 488; Laws 1955, c. 183, § 4, p. 516; Laws 1992, LB 49, § 1; Laws 2000, LB 900, § 118.

**46-253**

**Ditches; changing line; flow maintained; liability.**

No owner of any ditch or canal shall change the line of the ditch or canal so as to interfere with the use of water by anyone, who, prior to the proposed change, had used water for irrigation purposes from such ditch or canal, and the owner of such ditch or canal shall keep the same in good repair so as to permit the water to flow in a quantity sufficient to furnish the statutory amount to the lands entitled thereto at all reasonable times. The majority of the water users under any ditch may designate such reasonable time for the use of water as such majority may determine upon, upon a written notice signed by such majority to the persons in control of such ditch or canal. The owners, or those in control, may limit the flow of

water in the canal in accordance with such notice, between April 1 and May 1, and October 1 and November 15. No ditch shall be closed between May 1 and October 1. For a failure to cause the water to flow as aforesaid, the owners, or those in control, of any such ditch or canal shall be liable to anyone for any damage resulting from such failure, unavoidable accidents and shortage in the source of supply excepted.

**Source:**

Laws 1895, c. 69, § 46, p. 261; R.S.1913, § 3436; Laws 1915, c. 65, § 1, p. 164; Laws 1919, c. 190, tit. VII, art. V, div. 3, § 9, p. 849; C.S.1922, § 8459; Laws 1925, c. 132, § 1, p. 347; Laws 1927, c. 143, § 1, p. 387; C.S.1929, § 46-609; Laws 1937, c. 104, § 1, p. 363; C.S.Supp.,1941, § 46-609.

**46-254**

**Interfering with waterworks; taking water without authority; penalty.**

Any person owning or in control of any ditch, reservoir, or other device for appropriating or using water who willfully opens, closes, changes, or interferes with any headgate or controlling gate, or by any method or means takes any water from any natural stream, reservoir, or other source, through any ditch or canal to any land or lands, or allows the same to be done, or uses or allows to be used any water upon any land or lands, or for any other purpose whatsoever, without authority from the Department of Natural Resources, or who stores water in or releases water from a reservoir other than in compliance with orders of the Director of Natural Resources or his or her representative, shall be guilty of a Class II misdemeanor. Each day that the water is allowed to run without authority from the department shall constitute a separate offense.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 10, p. 849; C.S.1922, § 8460; C.S.1929, § 46-610; R.S.1943, § 46-254; Laws 1973, LB 186, § 9; Laws 1977, LB 40, § 257; Laws 2000, LB 900, § 119.

**46-255**

**Ditches; construction through private property; bridges and gates.**

Any person, constructing a ditch or canal through the lands of another, having no interest in such ditch or canal, shall build such ditch or canal in a substantial manner so as to prevent damage to such land. In all cases where necessary for the free and convenient use of lands on both sides of the ditch or canal by the owner or owners of such lands, the owner or those in control of such ditch shall erect substantial and convenient bridges across such canal or ditch, and they shall erect and keep in order suitable gates at the point of entrance and exit of such ditch through any enclosed field.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 11, p. 850; C.S.1922, § 8461; C.S.1929, § 46-611.

**46-256**

**Persons controlling canals or reservoirs; headgates and measuring devices; failure to construct; construction by Department of Natural Resources.**

Persons owning or controlling any ditch, canal, or reservoir for the purpose of storing or using water for any purpose shall, upon thirty days' notice by the Department of Natural Resources, construct and maintain at the point of diversion a substantial headgate, of a design approved by the department, so built that it may be closed, or partially closed and fastened at any stage with lock or



seal. They shall also construct a device for measuring and apportioning the water appropriated, which device shall be of a design approved by the department and built at the most practical point to be selected and fixed by it. If they neglect or refuse, for a period of ten days, to construct such headgate and measuring device, the department shall refuse to allow any water to be delivered to or used by or through any such ditch, canal, or reservoir or any other contrivance or device for appropriating, using, or storing water, and the department may construct bars, dams, or other obstructions to prevent such delivery or use.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 26, p. 844; C.S.1922, § 8445; C.S.1929, § 81-6326; R.S.1943, § 46-256; Laws 2000, LB 900, § 120.

**46-257**

**Dam or lagoon construction; submit plans; low-hazard dams; exception; violation; penalties.**

(1)(a) Except as provided in subsections (2) and (3) of this section, any person intending to construct a dam for any purpose, including, but not limited to, providing a reservoir for temporary or permanent storage of surface water, well water, human waste effluent, and mine tailings and sediments, shall submit plans, drawings, and specifications of the same to the Department of Natural Resources and at the same time submit an application to comply with section 46-241, when applicable, before beginning construction. No dam shall be constructed until the required plans, drawings, and specifications have been approved by the department.

(b) An applicant for a permit for a livestock waste control facility required by the Department of Environmental Quality in conjunction with the Department of

Natural Resources to obtain approval for any dam or lagoon under section 54-2412 shall submit plans, drawings, and specifications to the Department of Natural Resources and obtain approval before beginning construction. The Department of Natural Resources shall approve or deny the dam or lagoon within sixty days after the request is made.

(2) Any person intending to construct a low-hazard dam, as defined in the rules and regulations of the department, less than twenty-five feet high, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam, with a water storage impounding capacity of less than fifteen acre-feet, measured below the crest of the lowest open outlet or overflow, and with a total storage capacity, including surcharge storage through any emergency spillway, below the top of the dam of less than fifty acre-feet, shall be exempt from subsection (1) of this section and also shall be exempt from subsection (1) of section 46-241 as long as there will be no diversion or withdrawal of water from the reservoir.

(3) Any person intending to construct on a dry watercourse a low-hazard dam, as defined in the rules and regulations of the department, less than twenty-five feet high, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam, for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section and also shall be exempt from subsection (1) of section 46-241 if surface water runoff, except incidental runoff from the upstream area, is adequately diverted around the structure and is not permitted to enter the reservoir area and if the total storage capacity

below the top of the dam is less than fifty acre-feet. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm must be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(4) Subsections (2) and (3) of this section do not waive any requirements of the Department of Environmental Quality.

(5) Whenever the Director of Natural Resources determines that a dam or lagoon has been constructed in violation of subsection (1) of this section, he or she may order the immediate removal of such dam or lagoon and if necessary may institute legal proceedings to obtain compliance with such order.

(6) Any person constructing a dam or lagoon without having complied with subsection (1) of this section shall be guilty of a Class V misdemeanor, and every day such dam or lagoon is maintained shall be considered a separate offense.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 2, § 27, p. 845; C.S.1922, § 8446; C.S.1929, § 81-6327; Laws 1941, c. 182, § 1, p. 713; C.S.Supp.,1941, § 81-6327; R.S.1943, § 46-257; Laws 1961, c. 228, § 1, p. 675; Laws 1971, LB 823, § 2; Laws 1973, LB 186, § 10; Laws 1977, LB 40, § 258; Laws 1979, LB 45, § 1; Laws 1985, LB 103, § 3; Laws 1995, LB

309, § 2; Laws 1998, LB 1209, § 16; Laws 2000, LB 900, § 121.

**46-258**

**Ditches; maintenance; outlets; headgates; duties of owner.**

Any owner or person in control of any ditch for irrigation purposes shall have the ditch in order to receive water from the source of supply on or before April 15 of each year, shall construct necessary outlets in the banks for the delivery of water to all persons who are entitled to the same, and shall maintain a substantial headgate and measuring box or weir at the head of each lateral, which shall be constructed in accordance with plans and specifications approved by the Department of Natural Resources. A multiplicity of outlets shall be avoided. The outlet shall be at the most convenient and practicable point consistent with the protection and safety of the ditch and the efficient distribution of water among the various claimants thereof.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 12, p. 850; C.S.1922, § 8462; C.S.1929, § 46-612; R.S.1943, § 46-258; Laws 2000, LB 900, § 122.

**46-259**

**Running water in rivers and ravines; right to use.**

The right to the use of running water flowing in any river or stream or down any canyon or ravine may be acquired by appropriation by any person.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 13, p. 850; C.S.1922, § 8463; C.S.1929, § 46-613.

**46-260**

**Repealed. Laws 1987, LB 140, s. 15.**

**46-261**

**Lands to be irrigated; appropriations transferred; information filed with Department of Natural Resources; recording gauges; failure to install; effect.**

(1) The Department of Natural Resources may require an appropriator or his or her agent to furnish the department, by April 1 in any year, a list of all lands to be irrigated, the acreage of each tract, and the names of the owners, controllers, or officers for every ditch, reservoir, or other device for appropriating, diverting, carrying, or distributing water to be used as a basis for the distribution of water until April 1 of the following year, and if so ordered such a list shall be furnished by the appropriator or his or her agent to the department.

(2) By April 1, any district or company which has transferred an appropriation pursuant to sections 46-2,127 to 46-2,129 in the previous calendar year shall provide the department:

(a) A legal description and map of the tracts of land receiving and transferring an appropriation of water, or portion thereof, within the district or company;

(b) The water appropriation permit number under sections 46-233 to 46-235 and the priority date of the water appropriation;

(c) A statement on whether objections were filed, whether a hearing was held, and how consent was given;

(d) The effective date of the transfer of the appropriation; and

(e) A statement summarizing the water use on the receiving and transferring tracts of land.

(3) The department may require the owner or controller of any canal or ditch to install an approved recording gauge at one or more specific locations to record the amount of water used. The department shall not furnish any water to be delivered to or used by or through any ditch, reservoir, or other contrivance for the appropriation, use, or storage of water until this section has been complied with. The department may construct bars or dams to prevent such delivery or use.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 15, p. 851; C.S.1922, § 8465; C.S.1929, § 46-615; R.S.1943, § 46-261; Laws 1979, LB 245, § 1; Laws 1981, LB 114, § 1; Laws 1995, LB 94, § 1; Laws 1995, LB 99, § 16; Laws 2000, LB 900, § 123.

**46-262**

**Duties of persons taking water; noncompliance; liability.**

No person shall accept more water from any ditch, canal or reservoir than he is justly entitled to. On finding that he is receiving more water either through his headgates or by means of leaks, or by any other means, than he is entitled to receive he shall immediately take steps to prevent the same. If he knowingly permits such excess water to come upon his land, and fails to promptly notify the owner of such ditch, canal or reservoir, he shall be liable in damages to any person who shall be injured thereby.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 16, p. 851; C.S.1922, § 8466; C.S.1929, § 46-616.

**46-263**

**Water; neglecting and preventing delivery; penalty.**

Any person having charge of a ditch or canal used for irrigation purposes, who shall neglect or refuse to deliver water as herein provided, or any person or persons who shall prevent or interfere with the proper delivery of water to the person or persons having the right thereto, shall be guilty of a Class III misdemeanor.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 18, p. 853; C.S.1922, § 8468; C.S.1929, § 46-618; R.S.1943, § 46-263; Laws 1977, LB 40, § 259; Laws 1987, LB 140, § 9.

**46-263.01**

**Water; molesting or damaging measuring device; penalty.**

Any person, or persons, who shall molest, tamper with, break into or damage in any way any device used for the measuring and recording of the water flowing in any stream, canal or reservoir in this state shall be guilty of a Class II misdemeanor.

**Source:**

Laws 1947, c. 172, § 3, p. 522; Laws 1969, c. 385, § 1, p. 1353; Laws 1977, LB 40, § 260.

**46-263.02**

**Water; molesting or damaging measuring device; apprehension and conviction; reward.**

The Department of Natural Resources is hereby authorized and empowered to offer and pay out of the fees collected by the department rewards of not to exceed twenty-five dollars in any case for the apprehension and conviction of any person or persons violating the provisions of section 46-263.01.

**Source:**

Laws 1947, c. 172, § 4, p. 522; Laws 2000, LB 900, § 124.

**46-264**

**Repealed. Laws 1973, LB 88, s. 1.**

**46-265**

**Embankments; maintenance; return of unused water; duties of owner.**

The owner or owners of any irrigation ditch or canal shall carefully maintain the embankments thereof so as to prevent waste therefrom, and shall return the unused water from such ditch or canal with as little waste thereof as possible to the stream from which such water was taken, or to the Missouri River.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 20, p. 854; C.S.1922, § 8470; C.S.1929, § 46-620.

**46-266**

**Irrigation water; overflow on roads; duty of owner to prevent; violation; penalty.**

No owner of any water power or irrigation ditch, canal or lateral shall so construct, maintain or operate the same as to permit any water to escape therefrom upon any public road or highway. No person in the application of water in the irrigation of lands shall permit the same to escape from such lands and to flow upon any public road or highway. Any person violating any of the provisions of this section shall be guilty of a Class V misdemeanor. Each day water is permitted to flow or escape upon any public road or highway in violation of the foregoing prohibitions shall be deemed a separate and distinct offense. The overseer of highways or other officer in charge of road work in the area in which a violation occurs shall make



complaint therefor, but no other person shall be precluded from making complaint.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 21, p. 854; C.S.1922, § 8471; C.S.1929, § 46-621; R.S.1943, § 46-266; Laws 1959, c. 181, § 14, p. 660; Laws 1977, LB 40, § 261.

**46-267**

**Repealed. Laws 2001, LB 170, s. 30; Laws 2001, LB 173, s. 22.**

**46-268**

**Contract for use of water; record; rights of grantee unimpaired by foreclosure of liens.**

Whenever any person, association or corporation owning any irrigation ditch or canal enters into a contract with a landowner to carry water to any tract of land having a water appropriation, such carriage contract shall be recorded in the county where such land is situated in the same manner and under the same conditions as deeds for real estate. Such contract, from the date of the recording thereof, shall be binding upon the grantor, his, their or its successors or assigns, and all persons claiming any interest in such ditch or canal. No foreclosure or other proceedings to subject the property of the owner of such ditch or canal to the satisfaction of any lien or claim shall in any manner impair the right of such grantee, his heirs, administrators or assigns, to the use of the water from such ditch or canal in the quantity and manner provided in his deed or contract.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 23, p. 855; C.S.1922, § 8473; C.S.1929, § 46-623; R.S.1943, § 46-268; Laws 1947, c. 172, § 2, p. 522.

**46-269**

**Mutual irrigation companies; recognized; bylaws; when lawful.**

Any corporation or association organized under the laws of this state for the purpose of constructing and operating canals, reservoirs, and other works for irrigation purposes, and deriving no revenue from their operation, shall be termed a mutual irrigation company, and any bylaws adopted by such company, not in conflict herewith, shall be deemed lawful and so recognized by the courts of this state; PROVIDED, such bylaws do not impair the rights of one shareholder over another.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 24, p. 855; C.S.1922, § 8474; C.S.1929, § 46-624.

**46-270**

**Irrigation projects; how financed.**

Any corporation or association organized under the law of this state for the purpose of constructing and operating canals, reservoirs, and other works for irrigation and water power purposes shall have power to borrow money, to issue bonds, and to mortgage its property and franchises in the same manner as railroad corporations.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 25, p. 855; Laws 1921, c. 271, § 1, p. 900; C.S.1922, § 8475; C.S.1929, § 46-625; R.S.1943, § 46-270; Laws 2000, LB 900, § 125; Laws 2001, LB 420, § 31.

**46-271**

**Corporations or associations; construction or operation of canals or reservoirs; assessments of stock; when authorized; how enforced.**

Any corporation or association organized under the laws of this state for the purpose of constructing or operating canals, reservoirs or other works for irrigation purposes may, through its board of directors or trustees, assess the shares, stock, or interest of the stockholders thereof for the purpose of obtaining funds to defray the necessary running expenses. Any assessments levied under this section shall become and be a lien upon the stock or interest so assessed. Such assessments shall, if not paid, become delinquent at the expiration of sixty days, and the stock or interest may be sold at public sale to satisfy such lien. Notice of such sale shall be published for three consecutive weeks prior thereto, in some newspaper published and of general circulation in the county where the office of the company is located. Upon the date mentioned in the advertisement, or upon the date to which the sale may have been adjourned, such stock or interest, or so much thereof as may be necessary to satisfy such lien and costs, shall be sold to the highest bidder for cash.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 26, p. 855; C.S.1922, § 8476; C.S.1929, § 46-626; R.S.1943, § 46-271; Laws 1996, LB 299, § 23.

**46-272**

**Water users' associations organized under reclamation act of the United States; stock subscriptions; how recorded; fees.**

The county clerk is hereby authorized to accept from water users' associations, organized in conformity with the

requirements of the United States under the reclamation act, books containing printed copies of their articles of incorporation and forms of subscription to stock, and to use such books for recording the stock subscriptions of such associations. The charges for the recording thereof shall be made on the basis of the number of words actually written therein.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 29, p. 857; C.S.1922, § 8479; C.S.1929, § 46-629.

**46-273**

**Water; United States may furnish to individuals; conditions and requirements.**

The United States of America is hereby authorized, in conformity to the laws of the State of Nebraska, to appropriate, develop, and store any unappropriated flood or unused waters, in connection with any project constructed by the United States pursuant to the provisions of an Act of Congress approved June 17, 1902, being An Act providing for the reclamation of arid lands (32 Stat. L. 388), and all acts amendatory thereof and supplemental thereto. When the officers of the United States Bureau of Reclamation determine that any water so developed or stored is in excess of the needs of the project as then completed or is flood or unused water, the United States may contract to furnish such developed, stored, flood, or unused water, under the terms and conditions imposed by Act of Congress and the rules and regulations of the United States, to any person who may have theretofore been granted a permit to appropriate a portion of the normal flow of any stream, if the water so appropriated shall, during some portion of the year, be found insufficient for the needs of the land to which it is appurtenant. The United States and

every person entering into a contract as herein provided shall have the right to conduct such water into and along any of the natural streams of the state, but not so as to raise the waters thereof above the ordinary high water mark, and may take out the same again at any point desired, without regard to the prior rights of others to water from the same stream; but due allowance shall be made for losses in transit, the amount of such allowance to be determined by the Department of Natural Resources. The department shall supervise and enforce the distribution of such water so delivered with like authority and under the same provisions as in the case of general appropriators.

**Source:**

Laws 1919, c. 190, tit. VII, art. V, div. 3, § 28, p. 856; C.S.1922, § 8478; C.S.1929, § 46-628; R.S.1943, § 46-273; Laws 1955, c. 183, § 5, p. 517; Laws 1987, LB 140, § 10; Laws 2000, LB 900, § 126.

**46-274**

**Repealed. Laws 1963, c. 425, art. VIII, s. 2.**

**46-275**

**Repealed. Laws 1963, c. 425, art. VIII, s. 2.**

**46-276**

**Repealed. Laws 1963, c. 425, art. VIII, s. 2.**

**46-277**

**Dams; inspection; notice to repair; completion; powers and duties of Department of Natural Resources; powers and duties of Director of Natural Resources.**

The owner or operator of any dam and appurtenant works which has or will have a storage capacity of fifty acre-feet or more below the top of the dam, including surcharge storage through any emergency spillway, or will be twenty-five feet in height or more, measured from the

natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam and is constructed for impounding or diversion of water or the containment of waste effluent, sediments, or other materials, shall keep such dam and appurtenant works in a state of repair to be approved by the Department of Natural Resources. The Director of Natural Resources shall determine the safety inspection requirements, frequency of inspections, and reporting details on the inspections of the dams based on the hazard classification and actual conditions of each dam. The owner or operator shall provide the department access to such dams at all reasonable times. When an inspection reveals a structure in an unsafe condition, the director shall give notice to the owner to place such dam and appurtenant works in such state of repair as will meet the approval of the director. The repair shall be completed in not more than ninety days or such reasonable time as may be determined by the director. Such notice shall be in writing and shall be served in the same manner as court summonses are served.

**Source:**

Laws 1931, c. 45, § 1, p. 143; C.S.Supp.,1941, § 81-6332; R.S.1943, § 46-277; Laws 1973, LB 186, § 11; Laws 1979, LB 544, § 1; Laws 1995, LB 309, § 3; Laws 2000, LB 900, § 127.

**46-278**

**Dams; failure to repair; penalty.**

Any owner or owners of such dam who neglect or refuse to repair such dam within three months after receiving written notice from the Director of Natural Resources so to do, shall be guilty of a Class V misdemeanor, and every day that such owner or owners neglect or refuse to repair such dam after the expiration of three

months from date of receiving notice so to do shall be considered a separate offense.

**Source:**

Laws 1931, c. 45, § 2, p. 143; C.S.Supp.,1941, § 81-6333; R.S.1943, § 46-278; Laws 1977, LB 40, § 262; Laws 2000, LB 900, § 128.

**46-279**

**Repealed. Laws 1987, LB 140, s. 15.**

**46-280**

**Repealed. Laws 1987, LB 140, s. 15.**

**46-281**

**Artesian water; waste prohibited.**

It shall be unlawful for any owner or owners, lessee or lessees, occupier or occupiers, foreman or superintendent of any farm, town lot or other real estate in the State of Nebraska, where artesian water has been found or may be found hereafter, to allow the water from wells or other borings or drillings on any farm, town lot, or other real estate in Nebraska to flow out and run to waste in any manner to exceed what will flow or run through a pipe one-half of one inch in diameter, except where the water is first used for irrigation, or to create power for milling or other mechanical purposes.

**Source:**

Laws 1897, c. 84, § 1, p. 358; R.S.1913, § 3527; C.S.1922, § 2927; C.S.1929, § 46-172.

**46-282**

**Artesian water; waste; penalty.**

Any person or persons who own, occupy or have control of any farm, town lot or other real estate in the State of Nebraska, who fail or refuse to close or shut off any wastage of artesian water to the amount that section

46-281 allows on any farm, town lot or other real estate which they own, occupy or have control of, after being notified in writing by any person having the benefit of such mutual artesian water supply, within forty-eight hours after such notification, shall be subject to arrest, and shall be guilty of a Class V misdemeanor; and if such wastage be not abated within twenty-four hours after such arrest and conviction, it shall be a second offense against the provisions of section 46-281 and be subject to the same fine as for the first offense. Every like offense or neglect of each twenty-four hours thereafter shall be considered an additional offense against the provisions of section 46-281.

**Source:**

Laws 1897, c. 84, § 2, p. 358; R.S.1913, § 3528; C.S.1922, § 2928; C.S.1929, § 46-173; R.S.1943, § 46-282; Laws 1977, LB 40, § 264.

**46-283**

**Legislative findings.**

The Legislature hereby finds and declares that the practice of reusing ground water from irrigation water reuse pits on irrigated land contributes to the efficient use and conservation of the state's water resources and that such reuse may be more feasible when done from irrigation water reuse pits located within natural streams.

**Source:**

Laws 1980, LB 908, § 1.

**46-284**

**Definitions, sections found.**

For purposes of sections 46-283 to 46-287, unless the context otherwise requires, the definitions found in sections 46-285 and 46-286 shall be used.



**Source:**

Laws 1980, LB 908, § 2.

**46-285**

**Irrigation water reuse pit, defined.**

Irrigation water reuse pit shall mean an excavation constructed to capture, for reuse, runoff resulting from ground water irrigation or a structure designed for the purpose of water impoundment which is used for this same purpose so long as the capacity of the facility does not exceed fifteen acre-feet.

**Source:**

Laws 1980, LB 908, § 3.

**46-286**

**Headwater segment of a natural stream, defined.**

Headwater segment of a natural stream shall mean that portion of a natural stream near its origin which exhibits a natural configuration in the land surface and serves to concentrate and give direction to overland flow. Such portion of a natural stream shall have a flow of such intermittent occurrence as to afford usage by normal tillage or grazing practices.

**Source:**

Laws 1980, LB 908, § 4.

**46-287**

**Irrigation water reuse pit; reusing ground water; exempt from certain provisions.**

Notwithstanding any other provision of law, any person intending to or in the process of reusing ground water from an irrigation water reuse pit located within a headwater segment of a natural stream shall be exempt from the provisions of Chapter 46, article 2, which would

otherwise apply to such pits, and from the provisions of section 46-637.

**Source:**

Laws 1980, LB 908, § 5.

**46-288**

**Interbasin transfers; terms, defined.**

For purposes of this section and section 46-289, unless the context otherwise requires:

(1) Basin of origin shall mean the river basin in which the point or proposed point of diversion of water is located;

(2) Beneficial use shall include, but not be limited to, reasonable and efficient use of water for domestic, municipal, agricultural, industrial, commercial, power production, subirrigation, fish and wildlife, ground water recharge, interstate compact, water quality maintenance, or recreational purposes. Nothing in this subdivision shall be construed to affect the preferences for use of surface water as provided in section 46-204;

(3) Interbasin transfer shall mean the diversion of water in one river basin and the transportation of such water to another river basin for storage or utilization for a beneficial use; and

(4) River basin shall mean any of the following natural hydrologic basins of the state as shown on maps located in the Department of Natural Resources: (a) The White River and Hat Creek basin; (b) the Niobrara River basin; (c) the Platte River basin, including the North Platte and South Platte River basins, except that for purposes of transfer between the North and South Platte River basins each shall be considered a separate river basin; (d) the Loup River

basin; (e) the Elkhorn River basin; (f) the Republican River basin; (g) the Little Blue River basin; (h) the Big Blue River basin; (i) the Nemaha River basin; and (j) the Missouri tributaries basin.

**Source:**

Laws 1981, LB 252, § 5; Laws 1993, LB 789, § 3; Laws 2000, LB 900, § 129.

**46-289**

**Legislative findings; interbasin transfers; application for water; factors considered; order issued.**

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 therefor recognizes the need to delineate factors for consideration by the Director of Natural 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 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.

**Source:**

Laws 1981, LB 252, § 6; Laws 1986, LB 309, § 2; Laws 2000, LB 900, § 130.

**46-290**

**Water appropriation; intrabasin transfer; application for approval.**

Except as provided in sections 46-2,120 to 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to Chapter 46 who desires to transfer the use of such water appropriation to a different location within the same river basin than that specified in the permit shall apply for approval of such change to the Department of Natural Resources.

**Source:**

Laws 1983, LB 21, § 2; Laws 1995, LB 99, § 17; Laws 2000, LB 900, § 131.

**46-291**

**Application for transfer; notice; contents.**

Upon receipt of an application filed under section 46-290, the Director of Natural Resources shall cause a notice of such application to be published at the applicant's expense at least once a week for three weeks in at least one newspaper of general circulation in each county containing lands on which the water appropriation is or is proposed to be located and a newspaper of general circulation in Nebraska. Such notice shall be published at least once a week for three consecutive weeks and shall contain a description of the water appropriation, the number assigned such permit in the records of the Department of Natural Resources, the date of priority, a description of the lands to which such water appropriation is proposed to be applied, and any other relevant information.

The notice shall state that any person may in writing object to and request a hearing on the application at any time prior to the elapse of two weeks from the date of final publication.

**Source:**

Laws 1983, LB 21, § 3; Laws 2000, LB 900, § 132.

**46-292**

**Application for transfer; hearing.**

The Department of Natural Resources may hold a hearing on an application filed under section 46-290 on its own motion and shall hold a hearing if requested by any person.

**Source:**

Laws 1983, LB 21, § 4; Laws 2000, LB 900, § 133.

**46-293**

**Hearing; how conducted.**

Any hearing held pursuant to section 46-292 shall be conducted in accordance with sections 61-206 and 61-207.

**Source:**

Laws 1983, LB 21, § 5; Laws 2000, LB 900, § 134.

**46-294**

**Application for transfer; approval; conditions; burden of proof.**

(1) The Director of Natural Resources shall approve an application filed pursuant to section 46-290 if:

(a) The requested change of location is within the same river basin, will not adversely affect any other water appropriator, and will not significantly adversely affect any riparian water user who files an objection in writing prior to the hearing;

(b) The requested change will use water from the same source of supply as the current use;

(c) The change of location will not diminish the supply of water otherwise available;

(d) The water will be applied to a use in the same preference category as the current use, as provided in section 46-204; and

(e) The requested change is in the public interest.

The applicant has the burden of proving that the change of location will comply with subdivisions (a) through (e) of this subsection, except that the burden is on

the riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order to prevent approval of an application.

(2) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest. An approved change of location shall retain the same priority date as that of the original water right. In approving an application, the director may (a) authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location or (b) authorize the overlying of water appropriations on the same lands as long as the limits provided in section 46-231 are not exceeded.

**Source:**

Laws 1983, LB 21, § 6; Laws 1984, LB 818, § 2; Laws 1993, LB 789, § 4; Laws 2000, LB 900, § 135.

**46-295**

**Legislative findings.**

The Legislature recognizes that, as a result of water project operations, surface water in some areas of the state has been, is, and will be in the future intentionally and incidentally stored in and withdrawn from underground strata. The Legislature acknowledges that rights to water intentionally or incidentally stored underground and rights to withdrawal of such water should be formally recognized and quantified and recognizes the propriety of all beneficiaries proportionately sharing, to the extent of potential benefit from intentional underground water storage, in the financial obligations necessary for construction, operation, and maintenance of water projects which cause intentional underground water storage.

The Legislature finds that uses of water for incidental and intentional underground water storage are beneficial uses of water which contribute to the recharge of Nebraska's aquifers and that comprehensive, conjunctive management of surface water and intentional or incidental underground water storage is essential for the continued economic prosperity and well-being of the state, serves the public interest by providing an element of certainty essential for investment in water resources development, and will improve Nebraska's standing in the event of interstate dispute.

To facilitate optimum beneficial use of water by the people of Nebraska, the Legislature recognizes the need for authorizing the recognition of incidental underground water storage, for authorizing intentional underground water storage, and for authorizing the levying and collection of fees and assessments on persons who withdraw or otherwise use or benefit from intentional underground water storage as provided in sections 46-299 to 46-2,106.

Nothing in sections 46-202, 46-226.01, 46-226.02, 46-233, 46-240, 46-241, 46-242, 46-295 to 46-2,106, 46-544, and 46-656.23 shall be construed to alter existing statutes regarding the relationship between naturally occurring surface and ground water.

**Source:**

Laws 1983, LB 198, § 1; Laws 1985, LB 488, § 6; Laws 1989, LB 45, § 2; Laws 1996, LB 108, § 4; Laws 2000, LB 900, § 136.

**46-296**

**Terms, defined.**

As used in sections 33-105, 46-202, and 46-295 to 46-2,106, unless the context otherwise requires:



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(1) Department means the Department of Natural Resources;

(2) Director means the Director of Natural Resources;

(3) Person means a natural person, partnership, limited liability company, association, corporation, municipality, or agency or political subdivision of the state or of the federal government;

(4) Underground water storage means the act of storing or recharging water in underground strata. Such water shall be known as water stored underground but does not include ground water as defined in section 46-656.07 which occurs naturally;

(5) Intentional underground water storage means underground water storage which is an intended purpose or result of a water project or use. Such storage may be accomplished by any lawful means such as injection wells, infiltration basins, canals, reservoirs, and other reasonable methods; and

(6) Incidental underground water storage means underground water storage which occurs as an indirect result, rather than an intended or planned purpose, of a water project or use and includes, but is not limited to, seepage from reservoirs, canals, and laterals, and deep percolation from irrigated lands.

**Source:**

Laws 1983, LB 198, § 2; Laws 1985, LB 488, § 7; Laws 1993, LB 121, § 277; Laws 1996, LB 108, § 5; Laws 2000, LB 900, § 137.

**46-297**

**Permit to appropriate water; modification to include underground water storage; procedure.**

Any person who has an approved, unperfected appropriation pursuant to Chapter 46, article 2, may apply to the department for a modification of such permit to include intentional underground water storage associated with the appropriation. The application shall be made on a form prescribed and furnished by the department without cost to the applicant. If the applicant is an individual, the application for a permit shall include the applicant's social security number. Upon receipt of such an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department, subject to section 46-226.02.

**Source:**

Laws 1983, LB 198, § 11; Laws 1997, LB 752, § 120.

**46-298**

**Repealed. Laws 1989, LB 45, s. 6.**

**46-299**

**Permittee; authorized to levy a fee or assessment; limitation.**

Any person who has obtained a permit for intentional underground water storage associated with a project not existing on August 26, 1983, and recovery of such water, pursuant to section 46-233, 46-240, 46-241, 46-242 or 46-297 may, subject to section 46-2,101, levy a fee or assessment against any person for the right or probable right to withdraw or otherwise use such stored water. Such fee or assessment may be levied against any land in connection with which such underground water storage has occurred or probably will occur, and may be varied based on the degree to which underground water storage has occurred

or will occur. No fee or assessment shall represent more than the fair market value of such recharge, except that a fee or assessment may include a sum sufficient to amortize the operation, maintenance, repair, and capital costs of the project, apportioned on the degree to which recharge has occurred or is likely to occur, and on the degree to which any surface water is delivered.

**Source:**

Laws 1983, LB 198, § 13.

**46-2,100**

**Fee or assessment; limitation.**

No fee or assessment may be levied pursuant to section 46-299 for withdrawals from wells with a capacity of less than one hundred gallons per minute which are solely for domestic purposes as defined in section 46-613.

**Source:**

Laws 1983, LB 198, § 14; Laws 1989, LB 45, § 3.

**46-2,101**

**Fee or assessment; application for approval; contents; fee schedule.**

(1) Any person intending to levy fees or assessments in accordance with section 46-299 or to modify such fees or assessments shall, prior to levying such fees, assessments, modified fees, or modified assessments, file with the department an application for approval of authority to levy such fees on a form prescribed and furnished by the department.

(2) Such an application shall include a fee schedule and the following information:

(a) The source of the water stored or to be stored underground;

- (b) The underground water storage method;
- (c) The relative amounts of water stored or to be stored underground and naturally occurring ground water;
- (d) The data or reference studies used by the applicant to determine the underground water storage;
- (e) A description of the areas served or to be served by the water stored underground;
- (f) The amount of surface water, if any, for which the applicant has an appropriation; and
- (g) The manner, use, and location of any such surface water appropriation.

The application shall be processed under the applicable rules and regulations of the department adopted and promulgated pursuant to section 61-206.

(3) An application shall be approved if the fees, assessments, modified fees, or modified assessments appear reasonable and comply with the requirements of section 46-299.

(4) The department shall review approved fee schedules every five years after approval to determine whether the fees should be increased, decreased, or eliminated, except that if the adopted schedules have been pledged to repayment of financing for the project, the department shall only review after repayment is completed.

**Source:**

Laws 1983, LB 198, § 15; Laws 1985, LB 488, § 9; Laws 1989, LB 45, § 4; Laws 2000, LB 900, § 138.

**46-2,102**

**Fee or assessment; lien.**

A fee or assessment levied pursuant to section 46-299 shall become a lien on the property benefited, or to be benefited, thirty days after the due date of such fee or assessment. The person levying the fee or assessment may collect such fee or assessment if it remains unpaid after thirty days after the due date by commencing an action in district court against the owner of the land benefited or to be benefited to foreclose the lien or to recover the amount due, except that no lien shall become effective until notice thereof is filed with the register of deeds in the county in which the benefited property is located and such lien shall relate back only to the date of filing.

**Source:**

Laws 1983, LB 198, § 16; Laws 1989, LB 45, § 5.

**46-2,103**

**Injunction; when issued.**

Any person who has obtained approval of fees or assessments pursuant to section 46-2,101, may commence an action to enjoin any person from withdrawing or otherwise using the stored water if the person has not entered into an agreement to pay fees or assessments for such stored water, or has failed and refused to pay a fee or assessment for a period of thirty days from and after the due date of the fee or assessment. No injunction may be obtained against withdrawals from wells with a capacity of less than one hundred gallons per minute which are solely for domestic uses as defined in section 46-613.

**Source:**

Laws 1983, LB 198, § 17.

**46-2,104**

**Director's order; not subject to collateral attack.**

If an action is commenced pursuant to section 46-2,102 or 46-2,103, an order of the director identifying water stored or to be stored underground, or approving fees or assessments, may not be collaterally attacked.

**Source:**

Laws 1983, LB 198, § 18.

**46-2,105**

**Appeal.**

Any person aggrieved by a decision made or an order issued by the director pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, 46-297, or 46-2,101 may appeal as provided in section 61-207.

**Source:**

Laws 1983, LB 198, § 19; Laws 2000, LB 900, § 139.

**46-2,106**

**Use of underground stored water; authorized.**

Any person may use water stored incidentally or intentionally underground for which the appropriate permits have not been obtained or for which approval of fees has not been obtained pursuant to section 46-2,101.

**Source:**

Laws 1983, LB 198, § 20.

**46-2,107**

**Legislative findings.**

The Legislature finds that the maintenance, conservation, management, storage, and timely release of the waters of the natural streams within the State of Nebraska are in the public interest and are practices essential to the well-being of present and future generations. In

furtherance of these practices, the public interest demands the recognition of instream uses for fish, recreation, and wildlife. The Legislature also finds that proposals for future water development should fully consider multiple uses, including instream flows whether from natural flow or from reservoir releases, and recognizes the positive impact of impoundments which can provide significant instream flow benefits.

**Source:**

Laws 1984, LB 1106, § 23.

**46-2,108**

**Appropriation of water for instream flows; terms, defined.**

(1) For purposes of sections 46-2,107 to 46-2,119, unless the context otherwise requires:

(a) Department means the Department of Natural Resources;

(b) Director means the Director of Natural Resources; and

(c) Instream appropriation means the undiverted application of the waters of a natural stream within or bordering upon the state for recreation or fish and wildlife purposes.

(2) An instream appropriation may be obtained only by the Game and Parks Commission or a natural resources district and only for that amount of water necessary for recreation or fish and wildlife. The instream use of water for recreation or fish and wildlife shall be considered a beneficial use of water.

**Source:**

Laws 1984, LB 1106, § 24; Laws 1985, LB 102, § 13; Laws 1997, LB 877, § 1; Laws 2000, LB 900, § 140.

**46-2,109**

**Streams with need for instream flows; identification; study.**

Each natural resources district and the Game and Parks Commission shall conduct studies to identify specific stream segments which the district or commission considers to have a critical need for instream flows. Such studies shall quantify the instream flow needs in the identified stream segments. Any district or the Game and Parks Commission may request the assistance of the Conservation and Survey Division of the University of Nebraska, the Game and Parks Commission, the Department of Environmental Quality, the Department of Natural Resources, or any other state agency in order to comply with this section.

**Source:**

Laws 1984, LB 1106, § 25; Laws 1985, LB 102, § 14; Laws 1993, LB 3, § 6; Laws 2000, LB 900, § 141.

**46-2,110**

**Permit to appropriate water for instream flows; application; requirements.**

Following notice and a public hearing, any natural resources district or the Game and Parks Commission may file with the director an application for a permit to appropriate water for instream flows in each stream segment identified pursuant to section 46-2,109. The application shall include the locations on the stream at which the need for instream flows begins and ends and the time of year when instream flows are most critical. The application



shall also provide a detailed description of the amount of water necessary to provide adequate instream flows.

**Source:**

Laws 1984, LB 1106, § 26; Laws 1985, LB 102, § 15; Laws 2000, LB 900, § 142.

**46-2,111**

**Permit to appropriate water for instream flows; director; powers and duties.**

(1) The Legislature finds that instream appropriations 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 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 June 2, 1995.

(2) The director 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.

**Source:**

Laws 1995, LB 871, § 5; Laws 2000, LB 900, § 143.

**46-2,112**

**Permit to appropriate water for instream flows; hearing; when; notice; director; powers.**

The director shall set a time and place for hearing every fifteen years from the date a permit to appropriate water for instream flows is granted. Notice of the hearing shall be given to the parties to the original application and shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The purpose of the hearing shall be to receive evidence regarding whether the water appropriated under the permit still provides the beneficial uses for which the permit was granted and whether the permit is still in the public interest. The hearing shall proceed under the rebuttable presumption that the appropriation continues to provide the beneficial uses for which the permit was granted and that the appropriation is in the public interest. After the hearing, the director may by order modify or cancel, in whole or in part, the instream appropriation.

**Source:**

Laws 1997, LB 877, § 2; Laws 2000, LB 900, § 144.

**46-2,113**

**Director; modify appropriation or application; when.**

It is in the state's and the public interest that the filing of the following classes of applications before the department demand that the director shall appropriately modify any existing or pending instream appropriation or application to not interfere with such application or the granting of such appropriation:

- (1) Applications for induced recharge to public water supply wells;
- (2) Applications for storage rights necessary for flood and sediment control projects which are dry or will not result in a net consumption of water exceeding two hundred acre-feet on an average annual basis;
- (3) Applications for transfer permits associated with natural flow, storage use, power generation, or hydro-power;
- (4) Applications for de minimis uses; or
- (5) Applications for industrial or manufacturing de minimis consumptive uses.

**Source:**

Laws 1997, LB 877, § 3; Laws 2000, LB 900, § 145.

**46-2,114**

**Proposed instream appropriation; additional studies; notice of application.**

Prior to taking action on an application for an instream appropriation, the director shall conduct any studies he or she deems necessary to evaluate the application and shall publish notice of such application at the applicant's expense at least once a week for three consecutive weeks in a newspaper of general circulation in the area of the stream segment and also in a newspaper of statewide circulation. The notice shall state that any person having an interest may in writing object to and request a hearing on the application. Any such objection and request for hearing shall be filed with the department within two weeks of final publication of the notice.

**Source:**

Laws 1984, LB 1106, § 30; Laws 1985, LB 102, § 16; Laws 1987, LB 140, § 11; Laws 1991, LB 278, § 2; Laws 2000, LB 900, § 146.

**46-2,115**

**Application for instream appropriation; approval; when.**

An application for an instream appropriation which is pending on or filed after January 1, 1997, shall be approved by the director if he or she finds that:

(1) In order to allow for future beneficial uses, there is unappropriated water available to provide the approved instream flow rate at least twenty percent of the time during the period requested;

(2) The appropriation is necessary to maintain the existing recreational uses or needs of existing fish and wildlife species;

(3) The appropriation will not interfere with any senior surface water appropriation;

(4) The rate and timing of the flow is the minimum necessary to maintain the existing recreational uses or needs of existing fish and wildlife species; and

(5) The application is in the public interest.

The application may be granted for a rate of flow that is less than that requested by the applicant or for a shorter period of time than requested by the applicant.

**Source:**

Laws 1984, LB 1106, § 31; Laws 1985, LB 102, § 17; Laws 1997, LB 877, § 4; Laws 2000, LB 900, § 147.

**46-2,116**

**Application for instream appropriation; public interest determination; factors.**

In determining whether an application for an instream appropriation is in the public interest, the director shall consider the following factors:

(1) The economic, social, and environmental value of the instream use or uses including, but not limited to, recreation, fish and wildlife, induced recharge for municipal water systems, and water quality maintenance; and

(2) The economic, social, and environmental value of reasonably foreseeable alternative out-of-stream uses of water that will be foregone or accorded junior status if the appropriation is granted.

**Source:**

Laws 1984, LB 1106, § 32; Laws 1985, LB 102, § 18; Laws 1991, LB 772, § 5.

**46-2,116.01**

**Application for instream appropriation; use of stored water; study.**

If the director determines that there is insufficient unappropriated natural flow available for an application for an instream appropriation and if the applicant consents, the department may conduct a study to determine whether the instream flow needs can be met through the use of stored water in new storage facilities. The study shall address the availability of storage sites, the estimated cost of providing any required storage, and such other findings and conclusions as the department deems appropriate.

**Source:**

Laws 1985, LB 102, § 19; Laws 1991, LB 772, § 6; Laws 2000, LB 900, § 148.

**46-2,116.02**

**Instream appropriation; use of stored water; funding.**

If the department determines that instream flow needs can be met through the use of stored water in new storage facilities after a study conducted under section 46-2,116.01, the applicant may request financial assistance for the construction of necessary storage facilities from the Nebraska Resources Development Fund. The cost of the project may be shared with any other users of the stored water.

**Source:**

Laws 1985, LB 102, § 20; Laws 1991, LB 772, § 7; Laws 2000, LB 900, § 149.

**46-2,117**

**Contested case hearing; mediation or nonbinding arbitration required; when; costs.**

The director shall not conduct a contested case hearing on an instream appropriation application filed after January 1, 1997, other than a hearing to address procedural matters, until such time as the parties have completed mediation or nonbinding arbitration. Mediation or nonbinding arbitration shall be deemed completed when the person retained to conduct the mediation or nonbinding arbitration has concluded further efforts would probably not result in resolution of major issues. The costs of mediation or nonbinding arbitration shall be shared by the parties.

**Source:**

Laws 1997, LB 877, § 5; Laws 2000, LB 900, § 150.

**46-2,118**

**Instream appropriation; limited to defined stream segment.**

(1) All water used to provide instream flows shall be applied only to that segment of the stream for which the appropriation is granted. The stream segment and the determination of a reasonable and necessary amount of water required for instream flow purposes shall be defined specifically by the director in the permit.

(2) After the water allowed for instream flows has passed through the defined stream segment, all rights to such water shall be deemed relinquished and the water shall be available for appropriation.

**Source:**

Laws 1984, LB 1106, § 34; Laws 2000, LB 900, § 151.

**46-2,119**

**Instream appropriations; manner of administration.**

Instream appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations, except that existing reservoirs shall not be required by the director to release impounded water for instream appropriations. Instream flow appropriations shall not be superior to existing storage rights as provided in section 46-241. Instream appropriations may be canceled as provided in section 46-229.04.

**Source:**

Laws 1984, LB 1106, § 35; Laws 1988, LB 953, § 1; Laws 2000, LB 900, § 152.

**46-2,120**

**District or company; notice to landowner; when required; terms, defined.**

(1) Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company using the procedure described in sections 46-2,121 to 46-2,129 and which is exempt from sections 84-1408 to 84-1414 shall provide notice by mail to each owner of land in the district or served by the company not less than seven days before any meeting or hearing under sections 46-2,121 to 46-2,129.

(2) For purposes of sections 46-2,120 to 46-2,130:

(a) Department means the Department of Natural Resources; and

(b) Director means the Director of Natural Resources.

**Source:**

Laws 1995, LB 99, § 1; Laws 2000, LB 900, § 153.

**46-2,121**

**District or company; hold appropriation; sections; how construed.**

Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company shall hold all water appropriations filed in the district's or company's name for the benefit of the owners of land to which the water appropriations are attached. Sections 46-2,120 to 46-2,129 shall not be construed to modify the rights of landowners to any water appropriation.

**Source:**

Laws 1995, LB 99, § 2.



**46-2,122**

**District or company; application for transfer and map; filing requirements; approval; conditions.**

(1) Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may file an application for transfer and a map with the department identifying all tracts of lands that have received water delivered by the district or company and beneficially applied to the tract in at least one of the preceding ten consecutive years. The application for transfer and map shall be prepared and filed in accordance with the rules and regulations of the department.

(2) Any tract of land within the boundaries of the district or served by the company may receive a water appropriation, or portion thereof, transferred from a tract or tracts of land currently under the appropriation on file with the department. The director shall grant the transfer if:

(a) The owner of the land to which the water appropriation is attached and the owner of the ditch, canal, or other diverting works subject to transfer consent in writing to the department to the transfer of the appropriation from the tract of land;

(b) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops;

(c) The water will be applied on the receiving tract to a use in the same preference category as the use on the transferring tract; and

(d) The aggregate water use within the district or company after transfer will not exceed the aggregate water appropriation held by the district or company for the benefit of the owners of land to which the water appropriations are attached.

**Source:**

Laws 1995, LB 99, § 3; Laws 2000, LB 900, § 154.

**46-2,123**

**Hearing on application and map.**

The department may hold a hearing on the application for transfer and map under section 46-2,122 if the department determines that a hearing is necessary to determine whether the application for transfer and map are in compliance with such section. The department shall hold a hearing on the application if requested by any owner of land within the district or served by the company. The hearing shall be conducted in accordance with section 61-206 and the rules and regulations of the department.

**Source:**

Laws 1995, LB 99, § 4; Laws 2000, LB 900, § 155.

**46-2,124**

**District or company; notice prior to meeting; requirements.**

Any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company intending to file an application for transfer and a map with the department under section 46-2,122 shall give notice prior to the

meeting at which the application and map will be approved for filing. Notice shall be given in the manner provided in section 46-2,128.

**Source:**

Laws 1995, LB 99, § 5; Laws 2000, LB 900, § 156.

**46-2,125**

**Order granting application and map; contents; appeal.**

After an investigation and hearing, if applicable, the director shall issue an order granting or denying the application for transfer and map under section 46-2,122. The director shall deny the application if the conditions in subsection (2) of such section are not met. An order granting or denying an application for transfer and map shall be in writing and shall specify the following:

- (1) The tracts of land retaining an appropriation;
- (2) The tracts of land receiving an appropriation; and
- (3) The tracts of land transferring an appropriation.

An appeal may be taken from the decision of the department on the application for transfer and map as provided in section 61-207.

**Source:**

Laws 1995, LB 99, § 6; Laws 2000, LB 900, § 157.

**46-2,126**

**Priority date.**

Any water appropriation transferred to a tract of land under sections 46-2,122 to 46-2,125 shall retain the original priority date for the water appropriation.

**Source:**

Laws 1995, LB 99, § 7.

**46-2,127**

**District or company; transfer of appropriation for agricultural purposes; when.**

After obtaining approval of an application for transfer and map pursuant to sections 46-2,122 to 46-2,126, the board of directors of any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may transfer an appropriation of water distributed for agricultural purposes from a tract or tracts of land within the district or served by the company to another tract or tracts of land within the boundaries of the district or served by the company if:

(1) The district or company finds that the transferring tract of land has received and had water, delivered by the district or company pursuant to a valid water appropriation, beneficially applied in (a) at least one of the preceding three consecutive years or (b) at least one of the preceding ten consecutive years if the district or company finds that there has been sufficient cause for nonuse in the same manner as provided in section 46-229.04;

(2) The owner of the land to which the water appropriation is attached consents in writing to the transfer of the appropriation from his or her tract of land;

(3) The water appropriation, or portion thereof, proposed to be transferred has not been transferred by the board of directors of the district or company in the previous four years;

(4) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops; and

(5) After the transfer, the aggregate water use within the district or company will not exceed the aggregate water appropriation held by the district or company for the benefit of owners of land to which the water appropriations are attached.

**Source:**

Laws 1995, LB 99, § 8.

**46-2,128**

**District or company; transfer of appropriation for agricultural purposes; published notice; contents.**

Commencing at least six weeks but not more than twelve weeks before transferring any water appropriations under section 46-2,127, the district or company shall cause notice of the proposed transfer to be published at least once a week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands on which the water appropriation is or is proposed to be applied. The district or company shall also provide the notice to the department. The notice shall contain:

(1) A description of the water appropriation to be transferred;

(2) The number assigned the water appropriation permit in the records of the department under sections 46-233 to 46-235;

(3) The priority date of the water appropriation;

(4) A description of the land to which the water appropriation is proposed to be applied;

(5) A statement that any owner of land within the district or served by the canal company may object to and request a hearing on the proposed transfer within seven calendar days after final publication; and

(6) Any other relevant information.

**Source:**

Laws 1995, LB 99, § 9; Laws 2000, LB 900, § 158.

**46-2,129**

**District or company; transfer of appropriation for agricultural purposes; hearing; notice; powers and duties; priority date.**

(1) The board of directors of the district or company, or the board's designee, may hold a hearing on a proposed transfer under section 46-2,127 and shall hold a hearing if requested by any owner of land within the district or served by the canal company. Notice of a hearing under this subsection shall be published at least seven calendar days prior to the hearing in at least one newspaper of general circulation in each county containing lands upon which the water appropriation is or is proposed to be applied. If the hearing is held by the board's designee, the board's designee shall make a written recommendation to the board within fifteen calendar days after the hearing. The board shall act upon the proposed transfer at the board's next regular or special meeting following receipt of the designee's recommendation.

(2) The board of directors may transfer the water appropriation at a regular or special meeting.

(3) Any water appropriation transferred to a tract of land under section 46-2,127 shall retain the original priority date for the water appropriation.

(4) All transfers shall be reported annually to the department pursuant to section 46-261.

**Source:**

Laws 1995, LB 99, § 10.

**46-2,130**

**Sections; how construed.**

Nothing in sections 46-2,120 to 46-2,129 shall be construed to limit or restrict the powers of the department with respect to adjudication of water rights.

**Source:**

Laws 1995, LB 99, § 11; Laws 2000, LB 900, § 159.

**46-2,131**

**Legislative findings.**

The Legislature finds that there are significant issues relating to the laws of Nebraska governing the management and use of Nebraska surface water and ground water. The issues to be examined are: (1) A review of Laws 1996, LB 108, to determine what, if any, changes are needed to adequately address Nebraska's conjunctive use management issues; (2) an evaluation of the utility of allowing temporary water transfers and, if deemed useful, development of draft legislation and procedures for authorizing and implementing a temporary water transfer law; (3) an evaluation of the utility of authorizing additional types of permanent water transfers and, if deemed useful, development of draft legislation and procedures for authorizing and implementing additional types of permanent water transfers; (4) a determination as to the

usefulness of water leasing or transfers and development of a potential water banking system that would facilitate the temporary or permanent transfer of water uses; and (5) a determination as to what other ways, if any, inequities between surface water users and ground water users need to be addressed and potential actions the state could take to address any such inequities. To address such issues, the Governor shall appoint a Water Policy Task Force as provided in section 46-2,132.

**Source:**

Laws 2002, LB 1003, § 1. Effective date July 20, 2002.

**46-2,132**

**Water Policy Task Force; members.**

(1) The members of the Water Policy Task Force shall include: (a) Twenty irrigators, with at least one irrigator from each of the state's thirteen river basins, giving consideration to maintaining a balance between surface water users and ground water users. Three irrigators shall be selected from the Republican River Basin, two irrigators shall be selected from the North Platte River Basin, two irrigators shall be selected from the middle Platte River Basin, two irrigators shall be selected from the Loup River Basin, two irrigators shall be selected from the Elkhorn River Basin, two irrigators shall be selected from the Big Blue River Basin, one irrigator shall be selected from the South Platte River Basin, one irrigator shall be selected from the lower Platte River Basin, one irrigator shall be selected from the Little Blue River Basin, one irrigator shall be selected from the Nemaha River Basin, one irrigator shall be selected from the Niobrara River Basin, one irrigator shall be selected from the White Hat River Basin, and one irrigator shall be selected from the Missouri tributaries basin; (b) three



representatives from differing agricultural organizations; (c) three representatives from differing environmental organizations; (d) two representatives from differing recreational organizations; (e) three representatives to represent the state at large; (f) five representatives suggested for the Governor's consideration by the Nebraska Association of Resources Districts; (g) four representatives suggested for the Governor's consideration by the Nebraska Power Association; (h) five representatives suggested for the Governor's consideration by the League of Nebraska Municipalities, with consideration given to maintaining a balance between larger and smaller municipalities; and (i) such other members as the Governor deems appropriate to provide the task force with adequate and balanced representation. The Governor shall notify the Legislature upon completion of the appointments.

(2) Additional members of the task force shall be: (a) One representative from the Department of Natural Resources to coordinate as appropriate with other state agencies; (b) one representative from the Attorney General's office; (c) the chairperson of the Natural Resources Committee of the Legislature; and (d) the vice chairperson of the Natural Resources Committee of the Legislature. Other members of the Legislature may participate as desired.

**Source:**

Laws 2002, LB 1003, § 2. Effective date July 20, 2002.

**46-2,133**

**Meeting facilitator.**

On behalf of the Water Policy Task Force, the Natural Resources Committee of the Legislature shall contract for

the services of a meeting facilitator and such other assistance as the task force deems necessary within the limits of the funds appropriated. Such contract shall have the approval of the Executive Board of the Legislative Council. In making its selection for facilitator, the Natural Resources Committee shall consult with the Attorney General's office and the Department of Natural Resources.

**Source:**

Laws 2002, LB 1003, § 3. Effective date July 20, 2002.

**46-2,134**

**Executive committee; duties.**

The Water Policy Task Force shall select an executive committee. The executive committee shall consist of three representatives from irrigation interests; one representative from an agricultural organization; one representative from an environmental organization; one representative from a recreational organization; one representative of the state at large; one representative of natural resources districts; one representative of the Nebraska Power Association; one representative of municipalities; one representative of the Department of Natural Resources; one representative of the Attorney General's office; and the chairperson and vice chairperson of the Natural Resources Committee of the Legislature. Each executive committee member shall be responsible for representing the rest of his or her interest group on the executive committee. The executive committee shall be responsible for developing the operating rules of the task force and for developing proposals and recommendations to be considered by the entire task force. The executive committee shall apply for a grant of a minimum of three hundred fifty thousand dollars from the Nebraska Environmental Trust Fund

prior to the application deadline of September 9, 2002, for grants to be awarded and funded in 2003.

**Source:**

Laws 2002, LB 1003, § 4. Effective date July 20, 2002.

**46-2,135**

**Meetings.**

The Water Policy Task Force shall meet at least four times each year to consider the proposals and recommendations of the executive committee and any other additional times as the executive committee determines to be necessary to accomplish the objectives established in section 46-2,131.

**Source:**

Laws 2002, LB 1003, § 5. Effective date July 20, 2002.

**46-2,136**

**Duties.**

The Water Policy Task Force shall discuss the issues described in section 46-2,131 and such related issues as it deems appropriate, shall identify options for resolution of such issues, and shall make recommendations to the Legislature and the Governor relating to any water policy changes the task force deems desirable.

The task force shall complete its work within eighteen months after the Governor notifies the Legislature that all members of the task force have been appointed and a meeting facilitator has been selected.

**Source:**

Laws 2002, LB 1003, § 6. Effective date July 20, 2002.

**46-2,137**

**Water Policy Task Force Cash Fund; created; use; investment.**

The Water Policy Task Force Cash Fund is created. The fund shall be administered by the Department of Natural Resources and expended at the direction of the Water Policy Task Force. The fund shall consist of funds appropriated by the Legislature, money received as gifts, grants, and donations, and transfers authorized under sections 2-1579 and 66-1519. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:**

Laws 2002, LB 1003, § 7. Effective date July 20, 2002.

**46-601**

**Ground water; declaration of policy.**

The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state. Complete information as to the occurrence and the use of ground water in the state is essential to the development of a sound ground water policy. The registration of all water wells in this state should be required.

**Source:**

Laws 1957, c. 200, § 1, p. 702; Laws 1967, c. 281, § 1, p. 760; Laws 1993, LB 131, § 1.

**46-601.01**

**Terms, defined.**

For purposes of Chapter 46, article 6:

(1) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. Water well does not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

**Source:**

Laws 1993, LB 131, § 2; Laws 1999, LB 92, § 1.

**46-602**

**Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required; abandonment.**

(1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a

form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by section 46-1224 shall be the source of funds for any required fee to a contractor which provides the on-line services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2) If the newly constructed water well is a replacement water well, the registration number of the water well it replaces, if applicable, and the date the original water well was or will be decommissioned shall be included on the registration form. For purposes of this section, replacement water well means a water well which (a) replaces an abandoned water well within three years after the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be abandoned within one year after such construction and (b) is constructed to provide water to the same tract of land served by the water well being replaced. No water well shall be registered as a replacement water well until the department has received a properly completed notice of abandonment for the water well being replaced.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a

detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) 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. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) 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, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environmental Quality.

(6) The department shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The water well contractor or pump installation contractor responsible therefor shall notify the department on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. A water well owner shall notify the department on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-656.07, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act. Upon proper decommissioning of any water well, written notice of 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.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1)



through (5) of this section for registration of a new water well as is possible at the time of registration.

**Source:**

Laws 1957, c. 200, § 2, p. 702; Laws 1961, c. 230, § 1, p. 683; Laws 1967, c. 281, § 2, p. 760; Laws 1975, LB 577, § 20; Laws 1979, LB 204, § 2; Laws 1980, LB 643, § 1; Laws 1981, LB 246, § 1; Laws 1983, LB 23, § 1; Laws 1986, LB 886, § 1; Laws 1986, LB 310, § 42; Laws 1993, LB 131, § 3; Laws 1994, LB 981, § 6; Laws 1995, LB 145, § 1; Laws 1995, LB 871, § 3; Laws 1997, LB 30, § 2; Laws 1999, LB 92, § 2; Laws 2000, LB 900, § 170; Laws 2001, LB 667, § 3; Laws 2002, LB 458, § 2. Effective date July 20, 2002.

**46-602.01**

**Water well in management area; duties; prohibited acts; penalty.**

Prior to commencing construction of or installation of a pump in a water well in a management area, a water well contractor as defined in section 46-1213 or a pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

**Source:**

Laws 1981, LB 325, § 3; Laws 1993, LB 131, § 4; Laws 2001, LB 667, § 4.

**46-603**

**Repealed. Laws 1993, LB 131, s. 65.**

**46-604**

**Registration form; copies; disposition.**

The Director of Natural Resources shall retain the registration form required by section 46-602 and shall make a copy available to the natural resources district within which the water well is located, to the owner of the water well, and to the water well contractor as defined in section 46-1213.

**Source:**

Laws 1957, c. 200, § 4, p. 703; Laws 1961, c. 227, § 4, p. 673; Laws 1961, c. 230, § 3, p. 685; Laws 1986, LB 886, § 3; Laws 1993, LB 131, § 5; Laws 2000, LB 900, § 171; Laws 2001, LB 667, § 5.

**46-605**

**Repealed. Laws 1986, LB 886, s. 6.**

**46-606**

**Water wells; registration fees; disposition.**

(1) The Director of Natural Resources shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each water well registered under section 46-602 except as provided in subsections (2) through (5) of this section.

(2) For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each of the first ten such water wells registered under section 46-602, and for

each group of ten or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224.

(3) For 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, the director shall collect in advance a fee of thirty dollars for each such series and the fee required by section 46-1224.

(4) For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each of the first five such water wells registered under section 46-602, and for each group of five or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224. However, if such water wells are a part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected as if only one water well was being registered and the fee required by section 46-1224 shall be collected.

(5)(a) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, the director shall collect in advance a registration fee of thirty dollars and the fee required by section 46-1224 for each of the first two such wells registered under section 46-602.

(b) Any additional water wells which are part of a series registered under this subsection shall not be subject to a new well registration fee.

(6) The director shall remit the fees collected to the State Treasurer for credit to the appropriate fund. From the registration fees required by subsections (1) through (5) of this section, the State Treasurer shall credit to the Department of Natural Resources Cash Fund one-half the amount determined by the Department of Natural Resources to be necessary to pay for the costs of notices filed pursuant to section 46-230, the costs of water resources update notices required by section 76-2,124, and the costs for making corrections to water well registration data authorized by subsections (6) and (7) of section 46-602 and shall credit the remainder of the registration fees required by subsections (1) through (5) of this section to the Water Well Decommissioning Fund. From the fees required by section 46-1224, the State Treasurer shall credit to the Department of Natural Resources Cash Fund one-half the amount determined by the Department of Natural Resources to be necessary to pay for the costs of the notices filed pursuant to section 46-230, the costs of water resources update notices required by section 76-2,124, and the costs for making corrections to water well registration data authorized by subsections (6) and (7) of section 46-602 and shall credit the remainder of the fees required by section 46-1224 to the Water Well Standards and Contractors' Licensing Fund. This subsection terminates on December 31, 2004.

**Source:**

Laws 1957, c. 200, § 6, p. 703; Laws 1986, LB 886, § 4; Laws 1986, LB 310, § 43; Laws 1993, LB 131, § 6; Laws 1994, LB 981, § 7; Laws 1999, LB 92, § 3; Laws 2000, LB 900, § 172; Laws 2001, LB 667, § 6; Laws 2002, LB 458, § 3. Effective date July 20, 2002.

**46-607**

**Repealed. Laws 1993, LB 131, s. 65.**

**46-608**

**Ground water; conservation; declaration of policy.**

The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state, that the drilling of irrigation water wells in the state without regard to spacing is detrimental to the public welfare, and that the spacing of irrigation water wells should be regulated.

**Source:**

Laws 1957, c. 201, § 1, p. 704; Laws 1993, LB 131, § 7.

**46-609**

**Irrigation water wells; spacing; requirements; exceptions.**

(1) No irrigation water well shall be drilled upon any land in this state within six hundred feet of any registered irrigation water well except (a) any water well the water from which is used solely for domestic, culinary, stock use on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres, (b) as provided in section 46-610, and (c) that any irrigation water well which replaces an irrigation water well drilled prior to September 20, 1957, and which is less than six hundred feet from a registered

irrigation water well shall be drilled within fifty feet of the old water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of thirty days after completion of such water well.

**Source:**

Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8.

**46-610**

**Irrigation water wells; special permit to drill without regard to spacing; application; fee.**

(1) Any person may apply to the Director of Natural Resources for a special permit to drill an irrigation water well without regard to the spacing requirements of section 46-609 and shall pay a fee to the Department of Natural Resources of twelve dollars and fifty cents, which fee shall be remitted to the State Treasurer for credit to the General Fund. Such application shall be in such form as the director directs and shall contain a statement of the proposed location of the irrigation water well, the reason for seeking such special permit, the legal description of the land to be irrigated by the irrigation water well, the number of acres to be irrigated, the proposed size of the irrigation water well, the estimated capacity of the irrigation water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and the name of the person who is actually going to construct the irrigation water well.

(2) A separate application, like that provided for in subsection (1) of this section, shall be submitted for each irrigation water well for which a special permit is sought.

When considering the approval or rejection of any application, the director shall consider the size, shape, and irrigation needs of the property for which such special permit is sought, the known ground water supply, the effect on the ground water supply and the surrounding land of the irrigation water well for which such special permit is sought, any waiver or agreement allowing the new irrigation water well by the owner of any registered irrigation water well less than six hundred feet from the location of the proposed new irrigation water well, and such other information as may be available. Such application may be approved or disapproved in whole or in part or may be approved with conditions, and the special permit shall be issued or refused accordingly.

**Source:**

Laws 1957, c. 201, § 3, p. 705; Laws 1993, LB 131, § 9; Laws 2000, LB 900, § 173.

**46-611**

**Irrigation water wells; spacing requirements not applicable; when.**

The prohibitions of section 46-609 shall not apply to the location of more than one irrigation water well by a landowner on his or her own farm, so long as each such irrigation water well is at least six hundred feet from any other irrigation water well located on a neighboring farm under separate ownership.

**Source:**

Laws 1957, c. 201, § 4, p. 705; Laws 1993, LB 131, § 10.

**46-612**

**Repealed. Laws 1993, LB 131, s. 65.**

**46-612.01**

**Transferred to section 46-1127.**

**46-613**

**Ground water; declaration of policy; preference in use.**

Preference in the use of 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.

**Source:**

Laws 1957, c. 199, § 1, p. 701; Laws 1963, c. 279, § 1, p. 835; Laws 1995, LB 871, § 4.

**46-613.01**

**Ground water; transfer to another state; permit; Department of Natural Resources; conditions.**

The Legislature recognizes and declares that the maintenance of an adequate source of ground water within this state is essential to the social stability of the state and the health, safety, and welfare of its citizens and that reasonable restrictions on the transportation of ground



water from this state are a proper exercise of the police powers of the state. The need for such restrictions, which protect the health, safety, and general welfare of the citizens of this state, is hereby declared a matter of legislative determination.

Any person, firm, city, village, municipal corporation, or other entity intending to withdraw ground water from any water well located in the State of Nebraska and transport it for use in another state shall apply to the Department of Natural Resources for a permit to do so. In determining whether to grant such permit, the Director of Natural Resources shall consider:

- (1) Whether the proposed use is a beneficial use of ground water;
- (2) The availability to the applicant of alternative sources of surface or ground water;
- (3) Any negative effect of the proposed withdrawal on surface or ground water supplies needed to meet reasonable future demands for water in the area of the proposed withdrawal; and
- (4) Any other factors consistent with the purposes of this section that the director deems relevant to protect the interests of the state and its citizens.

Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn. The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the district or the department.

The director may include such reasonable conditions on the proposed use as he or she deems necessary to carry out the purposes of this section.

**Source:**

Laws 1967, c. 281, § 5, p. 761; Laws 1969, c. 9, § 69, p. 144; Laws 1984, LB 1060, § 1; Laws 1993, LB 131, § 11; Laws 2000, LB 900, § 174.

**46-613.02**

**Violation; penalty; false information; enforcement.**

Any person violating any provision of sections 46-601 to 46-613.01 or furnishing false information under such sections shall be guilty of a Class IV misdemeanor. The Department of Natural Resources may enforce such sections by instituting proceedings, actions, and prosecutions.

**Source:**

Laws 1978, LB 688, § 1; Laws 1984, LB 1060, § 2; Laws 1993, LB 131, § 12; Laws 2000, LB 900, § 175.

**46-614**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-614.01**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-615**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-616**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-617**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-617.01**

**Repealed. Laws 1998, LB 896, s. 11.**

- 46-618**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-619**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-620**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-621**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-622**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-623**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-624**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-625**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-626**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-627**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-628**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-629**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-630**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-631**  
**Repealed. Laws 1998, LB 896, s. 11.**
- 46-632**  
**Repealed. Laws 1998, LB 896, s. 11.**

**46-633**

**Conservation district; dissolution; funds; disposition.**

Upon dissolution of a ground water conservation district, the funds on hand or to be collected shall be remitted by the treasurer of the district to the county treasurer of the county in which the main office is located, and the county treasurer shall credit such funds to the general fund of the county.

**Source:**

Laws 1959, c. 221, § 20, p. 780; Laws 1967, c. 282, § 12, p. 768; Laws 1997, LB 78, § 1.

**46-634**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-634.01**

**Ground water conservation districts; dissolved; assets distributed; sections; termination date.**

Within ninety days after January 1, 1997, all ground water conservation districts created under the Ground Water Conservation Act of Nebraska and in existence on such date shall be dissolved and the assets distributed as provided in section 46-633. Sections 46-614 to 46-632 and 46-634 shall terminate on April 1, 1997.

**Source:**

Laws 1978, LB 411, § 1; Laws 1981, LB 81, § 3; Laws 1981, LB 204, § 77; Laws 1986, LB 124, § 2; Laws 1987, LB 148, § 5; Laws 1991, LB 137, § 1; Laws 1993, LB 36, § 1; Laws 1997, LB 78, § 2.

**46-635**

**Ground water, defined.**

Ground water is that water which occurs or moves, seeps, filters, or percolates through the ground under the surface of the land.

**Source:**

Laws 1963, c. 274, § 1, p. 827.

**46-635.01**

**Water well, defined.**

For purposes of sections 46-636 and 46-637, water well shall have the same meaning as in section 46-601.01.

**Source:**

Laws 1993, LB 131, § 15.

**46-636**

**Pumping for irrigation purposes; Legislature; finding.**

The Legislature finds that the pumping of water for irrigation purposes from water wells located within fifty feet of the bank of a channel of any natural stream may have a direct effect on the surface flow of such stream.

**Source:**

Laws 1963, c. 275, § 1, p. 828; Laws 1993, LB 131, § 16; Laws 2001, LB 667, § 7.

**46-637**

**Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.**

The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. If the applicant is an individual, the application for a permit shall include the

applicant's social security number. In approving or disapproving applications for such permits, the Director of Natural Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream. This section does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

**Source:**

Laws 1963, c. 275, § 2, p. 828; Laws 1993, LB 131, § 17; Laws 1997, LB 30, § 3; Laws 1997, LB 752, § 121; Laws 2000, LB 900, § 176; Laws 2001, LB 667, § 8.

**46-638**

**Terms, defined; permits to public water suppliers; director; powers.**

(1) The Director of Natural Resources may grant and administer permits to public water suppliers: (a) To locate, develop, and maintain ground water supplies through water wells or other means and to transport water into the area to be served; and (b) to continue existing use of ground water and the transportation of ground water into the area served.

(2) For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act and sections 46-651 to 46-655, (a) public water supplier shall mean a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district,

irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes and (b) water well shall have the same meaning as in section 46-601.01.

**Source:**

Laws 1963, c. 276, § 1, p. 829; Laws 1980, LB 643, § 2; Laws 1993, LB 131, § 18; Laws 2000, LB 900, § 177.

**46-639**

**Application for permit; contents; fee.**

An applicant which desires to avail itself of the Municipal and Rural Domestic Ground Water Transfers Permit Act shall make application in writing to the Director of Natural Resources for a permit. The application shall include (1) a statement of the amount of water for which a permit is desired together with an exhibit of maps showing the location of all water wells and (2) such other information as the director deems necessary or desirable. The application shall be accompanied by a fee in the amount of fifty dollars for the first five million gallons per day and an additional twenty dollars for each additional increment of five million gallons per day requested. The fee shall be based on the amounts of water requested on a daily average basis.

**Source:**

Laws 1963, c. 276, § 2, p. 829; Laws 1993, LB 131, § 19; Laws 2000, LB 900, § 178.

**46-640**

**Notice of application; publication; objections; hearing.**

Upon receipt of an application filed under section 46-639, the Director of Natural Resources shall cause a notice of such application to be published at the applicant's

expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing lands on which the water well field or any part of such water well field is or is proposed to be located. The notice shall contain a description of the lands upon which such water well field is or is proposed to be located, the amount of water requested, the number of water wells constructed or proposed, and any other relevant information. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections specifically stating the grounds for each objection within two weeks after the date of final publication in the office of the director.

**Source:**

Laws 1963, c. 276, § 3, p. 829; Laws 1986, LB 960, § 33; Laws 1987, LB 140, § 12; Laws 1991, LB 278, § 3; Laws 1993, LB 131, § 20; Laws 2000, LB 900, § 179.

**46-641**

**Application; hearing, when.**

The Department of Natural Resources may hold a hearing on an application filed under section 46-639 on its own motion and shall hold a hearing on such an application if requested by any person pursuant to section 46-640.

**Source:**

Laws 1963, c. 276, § 4, p. 830; Laws 1987, LB 140, § 13; Laws 2000, LB 900, § 180.

**46-642**

**Granting of permit; conditions; priority date.**

If the Director of Natural Resources finds that the withdrawal and transportation of ground water requested by the applicant are reasonable, are not contrary to the conservation and beneficial use of ground water, and are



not otherwise detrimental to the public welfare, he or she shall grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The permit so granted shall have a priority date as of the time when the application is filed with the director.

**Source:**

Laws 1963, c. 276, § 5, p. 830; Laws 1967, c. 284, § 1, p. 772; Laws 1987, LB 140, § 14; Laws 2000, LB 900, § 181.

**46-643**

**Repealed. Laws 1987, LB 140, s. 15.**

**46-644**

**Permits; duration; revocation; procedure.**

Permits granted by the Director of Natural Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it appears that the holder of a permit granted under the act has not used water for a beneficial purpose and in accordance with the terms of the permit for more than three years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

**Source:**

Laws 1963, c. 276, § 7, p. 831; Laws 2000, LB 900, § 182.

**46-645**

**Recharging ground water reservoirs; permits.**

The Director of Natural Resources may grant to any public water supplier permits to store excess, unused, and unappropriated water for recharging ground water reservoirs. The procedure to be followed in granting permits to utilize excess, unused, and unappropriated water for recharging ground water reservoirs shall, so far as applicable, be the same as that required for granting permits for the use of ground water as provided in the Municipal and Rural Domestic Ground Water Transfers Permit Act.

**Source:**

Laws 1963, c. 276, § 8, p. 831; Laws 1980, LB 643, § 3; Laws 2000, LB 900, § 183.

**46-646**

**Orders or decisions; review.**

Any person who feels aggrieved by any order or decision in connection with the granting or denial, in whole or in part, of an application for a permit or in connection with the revocation or modification of a permit may institute proceedings in the Court of Appeals in the manner provided for in section 61-207.

**Source:**

Laws 1963, c. 276, § 9, p. 831; Laws 1991, LB 732, § 109; Laws 2000, LB 900, § 184.

**46-647**

**Right to recover damages; power of eminent domain; not limited.**

Nothing in sections 46-638 to 46-650 shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his or her land or to any water rights

appurtenant thereto; nor shall sections 46-638 to 46-650 limit rights of condemnation which public water suppliers have under the laws of the State of Nebraska.

**Source:**

Laws 1963, c. 276, § 10, p. 831; Laws 1980, LB 643, § 4.

**46-648**

**Permittee; preference in use of ground water.**

The use of ground water pursuant to a permit granted by the Director of Natural Resources under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be subject to and governed by section 46-613.

**Source:**

Laws 1963, c. 276, § 11, p. 832; Laws 2000, LB 900, § 185.

**46-649**

**Director of Natural Resources; rules and regulations.**

The Director of Natural Resources may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Municipal and Rural Domestic Ground Water Transfers Permit Act.

**Source:**

Laws 1963, c. 276, § 12, p. 832; Laws 2000, LB 900, § 186.

**46-650**

**Act, how cited.**

Sections 46-638 to 46-650 shall be known and cited as the Municipal and Rural Domestic Ground Water Transfers Permit Act.

**Source:**

Laws 1963, c. 276, § 14, p. 832; Laws 1980, LB 643, § 5.

**46-651**

**Spacing of water wells; distance.**

(1) Except as provided in section 46-653 or 46-654, (a) no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) no irrigation water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well. Such prohibitions shall not apply to water wells owned by the same person.

(2) The well-spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of only thirty days following completion of such water well.

**Source:**

Laws 1965, c. 270, § 1, p. 771; Laws 1979, LB 201, § 1; Laws 1980, LB 643, § 6; Laws 1981, LB 246, § 2; Laws 1993, LB 131, § 21.

**46-652**

**Repealed. Laws 1981, LB 246, s. 4.**

**46-653**

**Special permit to drill without regard to spacing; application; contents; fee.**

Any person may apply to the Director of Natural Resources for a special permit to drill a water well without regard to the spacing requirements of section 46-651. Such

application shall be on a form prescribed and furnished by the director and shall contain a statement of the precise location of the proposed water well, facts justifying the request for such special permit, the proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and the name of the person who is actually going to drill the water well. A separate application shall be submitted for each water well for which a special permit is sought, and each application shall be accompanied by a fee of twelve dollars and fifty cents which shall be remitted to the State Treasurer for credit to the General Fund. When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for special permit, the known ground water supply, and such other pertinent information as may be available. Such application may be approved or disapproved in whole or in part and the special permit issued or refused accordingly.

**Source:**

Laws 1965, c. 270, § 3, p. 771; Laws 1993, LB 131, § 22; Laws 2000, LB 900, § 187.

**46-654**

**Public water supplier; protections applicable; procedure.**

(1) Any public water supplier having a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act is hereby granted the protection of sections 46-651 to 46-655 for all water wells for which a permit has been or in the future is granted by the Department of Natural Resources under such act.

(2) If in its application for a permit pursuant to such act a public water supplier requests the protection of the

spacing requirements of section 46-651 for test holes and water wells under construction and if the permit is granted, the Director of Natural Resources shall identify in the permit the area to which the spacing protection will apply and the spacing protection of section 46-651 shall then apply to such area for a period of one year from the date the permit is granted. The director shall notify, by certified or registered mail, owners and occupiers of land affected by the granting of such spacing protection, according to information supplied by the applicant. Costs of providing such notice shall be borne by the applicant. Owners or occupiers of land not receiving the notice required by this subsection shall not be bound by the spacing requirements until the applicant's water wells are completed. Such protection may be extended by the director, by a similar procedure, upon application by the public water supplier and good cause shown, for additional one-year periods.

**Source:**

Laws 1965, c. 270, § 4, p. 772; Laws 1980, LB 643, § 8; Laws 1987, LB 93, § 14; Laws 1993, LB 131, § 23; Laws 2000, LB 900, § 188.

**46-655**

**Violations; injunction.**

Any violation of the provisions of sections 46-651 to 46-655 may be enjoined in an action brought in the district court of the county in which such violation or any attempted or threatened violation occurs.

**Source:**

Laws 1965, c. 270, § 5, p. 772.

**46-656**

**Transferred to section 46-656.02.**

**46-656.01**

**Act, how cited.**

Sections 46-656.01 to 46-656.67 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

**Source:**

Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7.

**46-656.02**

**Declaration of intent and purpose.**

The Legislature finds that ground water is one of the most valuable natural resources in the state and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient for all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environmental Quality provided in Chapter 81, article 15.

**Source:**

Laws 1975, LB 577, § 1; Laws 1981, LB 146, § 4; Laws 1982, LB 375, § 1; Laws 1983, LB 378, § 1; Laws 1984, LB 1071, § 1; Laws 1986, LB 894, § 20; Laws 1993, LB 3, § 7; R.S.1943, (1993), § 46-656; Laws 1996, LB 108, § 8.

**46-656.03**

**Management area; legislative findings.**

The Legislature also finds that:

(1) The levels of nitrate nitrogen and other contaminants in ground water in certain areas of the state are increasing;



(2) Long-term solutions should be implemented and efforts should be made to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards;

(3) Agriculture has been very productive and should continue to be an important industry to the State of Nebraska;

(4) Natural resources districts have the legal authority to regulate certain activities and, as local entities, are the preferred regulators of activities which may contribute to ground water contamination in both urban and rural areas;

(5) The Department of Environmental Quality should be given authority to regulate sources of contamination when necessary to prevent serious deterioration of ground water quality;

(6) The powers given to districts and the Department of Environmental Quality should be used to stabilize, reduce, and prevent the increase or spread of ground water contamination; and

(7) There is a need to provide for the orderly management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as management areas.

**Source:**

Laws 1986, LB 894, § 1; Laws 1993, LB 3, § 14; R.S.1943, (1993), § 46-674.02; Laws 1996, LB 108, § 9.

**46-656.04**

**Management area; sections, how construed.**

Nothing in sections 46-656.35 to 46-656.48 shall be construed to limit the powers of the Department of Health and Human Services Regulation and Licensure provided in the Nebraska Safe Drinking Water Act.

**Source:**

Laws 1986, LB 894, § 19; R.S.1943, (1993), § 46-674.20; Laws 1996, LB 108, § 10; Laws 1996, LB 1044, § 261.

**46-656.05**

**Legislative findings.**

The Legislature further finds:

(1) The management, conservation, and beneficial use of hydrologically connected ground water and surface water are essential to the continued economic prosperity and well-being of the state, including the present and future development of agriculture in the state;

(2) Hydrologically connected ground water and surface water may need to be managed differently from unconnected ground water and surface water in order to permit equity among water users and to optimize the beneficial use of interrelated ground water and surface water supplies;

(3) Natural resources districts already have significant legal authority to regulate activities which contribute to declines in ground water levels and to nonpoint source contamination of ground water and are the preferred entities to regulate, through ground water management areas, ground water related activities which are contributing to or are, in the reasonably foreseeable future, likely to contribute to conflicts between ground water users and

surface water appropriators or which may be necessary in order to resolve disputes over interstate compacts or decrees, or to carry out the provisions of other formal state contracts or agreements;

(4) The Department of Natural Resources is responsible for regulation of surface water resources and local surface water project sponsors are responsible for much of the structured irrigation utilizing surface water supplies, and these entities should be responsible for regulation of surface water related activities which contribute to such conflicts or provide opportunities for such dispute resolution;

(5) The department, following review and concurrence of need by the Interrelated Water Review Committee of the Nebraska Natural Resources Commission, should also be given authority to regulate ground water related activities to mitigate or eliminate disputes over interstate compacts or decrees or difficulties in carrying out the provisions of other formal state contracts or agreements if natural resources districts do not utilize their ground water management authority in a reasonable manner to prevent or minimize such disputes or difficulties; and

(6) All involved natural resources districts, the department, and surface water project sponsors should cooperate and collaborate on the identification and implementation of management solutions to such conflicts or provide opportunities for mitigation or elimination of such disputes or difficulties.

**Source:**

Laws 1996, LB 108, § 11; Laws 2000, LB 900, § 189.

**46-656.06**

**Conflicts between ground and surface water use; legislative intent.**

The Legislature recognizes that ground water use or surface water use in one natural resources district may have adverse effects on water supplies in another district or in an adjoining state. The Legislature intends and expects that each natural resources district within which water use is causing external impacts will accept responsibility for ground water management in accordance with the Nebraska Ground Water Management and Protection Act in the same manner and to the same extent as if the conflicts between ground water use and surface water use were contained within the district.

**Source:**

Laws 1996, LB 108, § 12.

**46-656.07**

**Terms, defined.**

For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Nebraska Ground Water Management and Protection Act, and sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

(1) Person shall mean a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States;

(2) Ground water shall mean that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Contamination or contamination of ground water shall mean nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(4) District shall mean a natural resources district operating pursuant to Chapter 2, article 32;

(5) Illegal water well shall mean (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(6) To commence construction of a water well shall mean the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;

(7) Management area shall mean any area so designated by a district pursuant to section 46-656.20, by the Director of Environmental Quality pursuant to section 46-656.39, or by the Director of Natural Resources pursuant to section 46-656.52. Management area shall include a control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan shall mean a ground water management plan developed by a district and submitted to

the Director of Natural Resources for review pursuant to sections 46-656.12 to 46-656.15;

(9) Ground water reservoir life goal shall mean the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;

(10) Board shall mean the board of directors of a district;

(11) Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the district and that is actually capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of the allocation;

(12) Acre-inch shall mean the amount of water necessary to cover an acre of land one inch deep;

(13) Subirrigation or subirrigated land shall mean the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(14) Best management practices shall mean schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs;

(15) Point source shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete

fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(16) Allocation shall mean the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

(17) Rotation shall mean a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

(18) Water well shall have the same meaning as in section 46-601.01; and

(19) Surface water project sponsor shall mean an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6.

**Source:**

Laws 1975, LB 577, § 2; Laws 1980, LB 643, § 9; Laws 1981, LB 146, § 5; Laws 1981, LB 325, § 1; Laws 1982, LB 375, § 2; Laws 1983, LB 378, § 2; Laws 1984, LB 1071, § 2; Laws 1986, LB 886, § 5; Laws 1986, LB 894, § 21; Laws 1991, LB 51, § 1; Laws 1993, LB 3, § 8; Laws 1993, LB 121, § 279; Laws 1993, LB 131, § 24; Laws 1993, LB 439, § 1; Laws 1993, LB 789, § 5; R.S.1943, (1993), § 46-657; Laws 1996, LB 108, § 13; Laws 2000, LB 900, § 190; Laws 2001, LB 135, § 1.

**46-656.08**

**Natural resources district; powers; enumerated.**

Regardless of whether or not any portion of a district has been designated as a management 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;

(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

(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.

**Source:**

Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14.

**46-656.09**

**Natural resources district; management area; rules and regulations; public hearing required; notice.**

Before any rule or regulation is adopted pursuant to section 46-656.08, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-656.19.

**Source:**

Laws 1980, LB 643, § 12; R.S.1943, (1993), § 46-663.01; Laws 1996, LB 108, § 15.

**46-656.10**

**Natural resources district; cease and desist order; violation; penalty.**

Any violation of a cease and desist order issued by a district pursuant to section 46-656.08 shall be a Class IV misdemeanor.

**Source:**

Laws 1981, LB 146, § 8; R.S.Supp.,1981, § 46-674.01; Laws 1984, LB 1071, § 16; R.S.1943, (1993), § 46-663.02; Laws 1996, LB 108, § 16.

**46-656.11**

**Action to control or prevent runoff of water; natural resources district; rules and regulations; power to issue cease and desist orders; notice; hearing.**

(1) In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation.

(2) Each district shall adopt, following public hearing, notice of which shall be given in the manner provided in section 46-656.19, rules and regulations necessary to control or prohibit surface runoff of water derived from ground water irrigation. Such rules and regulations shall prescribe (a) standards and criteria delineating what constitutes the inefficient or improper runoff of ground water used in irrigation, (b) procedures to prevent, control, and abate such runoff, (c) measures for the construction, modification, extension, or operation of remedial measures to prevent, control, or abate runoff of ground water used in irrigation, and (d) procedures for the enforcement of this section.

(3) Each district may, upon ten days' notice to the person affected, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, issue cease and desist orders to enforce any of the provisions of this section or rules and regulations issued pursuant to this section.

**Source:**

Laws 1975, LB 577, § 9; Laws 1978, LB 217, § 1; R.S.1943, (1993), § 46-664; Laws 1996, LB 108, § 17.

**46-656.12**

**Ground water management plan; preparation required; contents; management area designation; when.**

Each district shall prepare a ground water management plan based upon the best available information and submit such plan to the Director of Natural Resources for review and approval.

The plan shall include, but not be limited to, the identification to the extent possible of:

- (1) Ground water supplies within the district including transmissivity, saturated thickness maps, and other ground water reservoir information, if available;
- (2) Local recharge characteristics and rates from any sources, if available;
- (3) Average annual precipitation and the variations within the district;
- (4) Crop water needs within the district;
- (5) Current ground water data-collection programs;
- (6) Past, present, and potential ground water use within the district;
- (7) Ground water quality concerns within the district;
- (8) Proposed water conservation and supply augmentation programs for the district;
- (9) The availability of supplemental water supplies, including the opportunity for ground water recharge;

(10) The opportunity to integrate and coordinate the use of water from different sources of supply;

(11) Ground water management objectives, including a proposed ground water reservoir life goal for the district. For management plans adopted or revised after July 19, 1996, the ground water management objectives may include any proposed integrated management objectives for hydrologically connected ground water and surface water supplies;

(12) Existing subirrigation uses within the district;

(13) The relative economic value of different uses of ground water proposed or existing within the district; and

(14) The geographic and stratigraphic boundaries of any proposed management area.

If the expenses incurred by a district preparing a ground water management plan exceed twenty-five percent of the district's current budget, the district may make application to the Nebraska Resources Development Fund for assistance.

If a control area, management area, or special ground water quality protection area has been designated in a district prior to July 19, 1996, the area shall be designated a management area but the district shall not be required to adopt or amend its existing rules, regulations, action plan, or ground water management plan, due to that change in designation, for the geographical area of the district included in such control area, management area, or special ground water quality protection area. A district may change references from control area or special ground water quality protection area to management area without holding a public hearing. Before taking any action

described in the remainder of this section, a district shall hold a public hearing within the district. Notice of the hearing shall be given as provided in section 46-656.19. If the changes made by Laws 1996, LB 108, require substantive changes to the district's rules, regulations, or plans, the district shall enact appropriate amendments to such rules, regulations, or plans. A district in which a special ground water quality protection area was designated prior to July 19, 1996, shall insure compliance with section 46-656.29. A district in which a control area, management area, or special ground water quality protection area was designated prior to July 19, 1996, may adopt any of the controls permitted by section 46-656.25.

**Source:**

Laws 1982, LB 375, § 3; Laws 1983, LB 378, § 3; Laws 1984, LB 1106, § 37; R.S.1943, (1993), § 46-673.01; Laws 1996, LB 108, § 18; Laws 2000, LB 900, § 191.

**46-656.13**

**Ground water management plan preparation; district; solicit and utilize information.**

During preparation of a ground water management plan, the district shall actively solicit public comments and opinions and shall utilize and draw upon existing research, data, studies, or any other information which has been compiled by or is in the possession of state or federal agencies, natural resources districts, or any other subdivision of the state. State agencies, districts, and other subdivisions shall furnish information or data upon the request of any district preparing such a plan. A district shall not be required to initiate new studies or data-collection efforts or to develop computer models in order to prepare a plan.

**Source:**

Laws 1982, LB 375, § 4; R.S.1943, (1993), § 46-673.02; Laws 1996, LB 108, § 19.

**46-656.14**

**Ground water management plan; director; review; duties.**

The Director of Natural Resources shall review any ground water management plan submitted by a district to ensure that the best available studies, data, and information, whether previously existing or newly initiated, were utilized and considered and that such plan is supported by and is a reasonable application of such information. If a management area is proposed and the primary purpose of the proposed management area is protection of water quality, the director shall consult with the Department of Environmental Quality regarding approval or denial of the management plan. The director shall consult with the Conservation and Survey Division of the University of Nebraska and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her specific findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

**Source:**

Laws 1982, LB 375, § 5; Laws 1986, LB 894, § 27; Laws 1993, LB 3, § 12; R.S.1943, (1993), § 46-673.03; Laws 1996, LB 108, § 20; Laws 2000, LB 900, § 192.

**46-656.15**

**Ground water management plan; disapproved by director; district; duties.**

If the Director of Natural Resources disapproves a ground water management plan, the district which

submitted the plan shall, in order to establish a management area, submit to the director either the original or a revised plan with an explanation of how the original or revised plan addresses the issues raised by the director in his or her reasons for disapproval. Once a district has submitted an explanation pursuant to this section, such district may proceed to schedule a hearing pursuant to section 46-656.19.

**Source:**

Laws 1982, LB 375, § 6; R.S.1943, (1993), § 46-673.04; Laws 1996, LB 108, § 21; Laws 2000, LB 900, § 193.

**46-656.16**

**Amendment of ground water management plan; contents; exception; modification.**

Prior to January 1, 1996, each district shall amend its ground water management plan to identify to the extent possible the levels and sources of ground water contamination within the district, ground water quality goals, long-term solutions necessary to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards, and practices recommended to stabilize, reduce, and prevent the occurrence, increase, or spread of ground water contamination. Notwithstanding the restrictions provided in section 46-656.22, each district may modify its plan to include (1) any agreements between the district and state or federal agencies entered into as part of the review process conducted pursuant to section 46-656.14 and (2) any conditions imposed by the Director of Natural Resources during such review process. If a special ground water quality protection area has been designated in a district as of September 6, 1991, or if the study required by

section 46-656.36 or 46-656.50 recommends the designation of a management area, the district shall not be required to amend its plan for the geographical area encompassed by the special protection or management area.

**Source:**

Laws 1991, LB 51, § 7; Laws 1994, LB 480, § 26; Laws 1994, LB 1017, § 1; R.S.Supp.,1994, § 46-673.14; Laws 1996, LB 108, § 22; Laws 2000, LB 900, § 194.

**46-656.17**

**District; failure to have or amend ground water management plan; effect on funding.**

(1) Any district which fails to comply with section 46-656.16 shall be ineligible to receive for fiscal year 1996-97 any funds appropriated pursuant to sections 77-27,136 and 77-27,137.02.

(2) Any district which fails to have an approved ground water management plan pursuant to sections 46-656.12 to 46-656.16 by January 1, 1996, shall become eligible to receive funds enumerated in subsection (1) of this section for any subsequent fiscal year if the district has an approved ground water management plan pursuant to sections 46-656.12 to 46-656.16 by the March 1 immediately preceding the start of such fiscal year.

**Source:**

Laws 1994, LB 480, § 28; R.S.Supp.,1994, § 46-673.15; Laws 1996, LB 108, § 23.

**46-656.18**

**District; implementation of ground water management plan; duty.**

Each district shall, on or before January 1, 1997, begin implementation of an approved ground water



management plan pursuant to sections 46-656.12 to 46-656.16 which specifically addresses ground water quality.

**Source:**

Laws 1994, LB 480, § 29; R.S.Supp.,1994, § 46-673.16; Laws 1996, LB 108, § 24.

**46-656.19**

**Management area; establishment; when; hearing; notice; procedure.**

Prior to proceeding toward establishing a management area, a management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of section 46-656.15. If necessary to determine whether a management area should be designated, the district may initiate new studies and data-collection efforts and develop computer models. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area.

Notice of the hearing shall be published at the expense of the district in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of the contents of the plan and of the area which will be considered for inclusion in the management area and a general description of all controls proposed for adoption or amendment by the district and shall identify all locations where a copy of the full text of the proposed controls may be obtained. The

full text of all controls shall be available to the public upon request not later than the date of first publication.

All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the Department of Natural Resources and, if the primary purpose of the proposed management area is protection of water quality, of the Department of Environmental Quality and shall include the results of any studies or investigations conducted by the district.

**Source:**

Laws 1982, LB 375, § 7; Laws 1986, LB 894, § 28; Laws 1991, LB 51, § 2; Laws 1993, LB 3, § 13; R.S.1943, (1993), § 46-673.05; Laws 1996, LB 108, § 25; Laws 1997, LB 188, § 1; Laws 2000, LB 900, § 195.

**46-656.20**

**Management area; designated; district; order; contents; duties; controls.**

Within ninety days after the hearing the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect.

If the district determines that a management area shall be established, the district shall by order designate the area as a management area and adopt one or more controls authorized by section 46-656.25 to be utilized within the area in order to achieve the ground water management objectives specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the

ability of the district to implement and carry out local ground water management.

The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

**Source:**

Laws 1982, LB 375, § 8; R.S.1943, (1993), § 46-673.06; Laws 1996, LB 108, § 26.

**46-656.21**

**Order; publication; effective; when.**

The district shall cause a copy of any order adopted pursuant to section 46-656.20 to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than seven days prior to the date set for the effective date of the order. The publication shall provide a general description of the text of all controls adopted or amended by the district and shall identify all locations where a copy of the full text of the proposed controls may be obtained. The full text of all controls adopted shall be available to the public upon request at least thirty days prior to the effective date of the controls.

Such order shall become effective on the date specified by the district.

**Source:**

Laws 1982, LB 375, § 9; Laws 1986, LB 894, § 29; R.S.1943, (1993), § 46-673.07; Laws 1996, LB 108, § 27; Laws 1997, LB 188, § 2.

**46-656.22**

**Management plan; ground water management objectives; management area; modifications; dissolution; procedure.**

Modification of a district's ground water management plan or ground water management objectives may be accomplished utilizing the procedure established for the initial adoption of the plan. Modification of the boundaries of a district-designated management area or dissolution of such an area shall be in accordance with the procedures established in sections 46-656.19 to 46-656.21. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Modification of controls also may be accomplished using the procedure in such sections.

**Source:**

Laws 1982, LB 375, § 15; Laws 1991, LB 51, § 6; R.S.1943, (1993), § 46-673.13; Laws 1996, LB 108, § 28.

**46-656.23**

**Natural resources district; consult underground water storage permitholders; when.**

A district shall, prior to adopting or amending any rules and regulations for a management area, consult with any holders of permits for intentional or incidental underground water storage and recovery issued pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, or 46-297.

**Source:**

Laws 1983, LB 198, § 22; R.S.1943, (1993), § 46-666.01; Laws 1996, LB 108, § 29.

**46-656.24**

**Repealed. Laws 1998, LB 896, s. 11.**

**46-656.25**

**Management area; controls authorized; procedure.**

(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) It may determine the permissible total withdrawal of ground water for each day, month, or year and allocate such withdrawal among the ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-656.26;

(f) It may limit or prevent the expansion of irrigated acres;

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) It may provide educational requirements, including mandatory educational requirements, designed to protect water quality or to stabilize or reduce the incidence

of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated. This subdivision may be implemented whenever the district determines the impact on surface water supplies or the depletion or contamination of the ground water supply in the management area or any portion of the management area cannot be protected through implementation of reasonable controls specified in subdivisions (1)(a) through (1)(j) of this section; and

(l) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-656.26 and 46-656.27, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or will improve the administration of the area.

(3) Upon request by the district, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, the provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells constructed on or after the designation date or any other later date or dates established by the district.

(c) For a management area in a basin or part of a basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) The district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(k) of this section in its management plan,



but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-656.19, regarding the controls before implementing them.

(8) Whenever a management area designated under section 46-656.39 or 46-656.52 encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and sections 46-656.26 and 46-656.27 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected. Whenever management areas designated by two or more districts adjoin each other, the districts are encouraged to exercise the responsibilities and authorities jointly and uniformly by agreement of the respective boards.

(9) For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators under the Nebraska Ground Water Management and Protection Act does not include holders of instream flow appropriations under sections 46-2,107 to 46-2,119.

**Source:**

Laws 1975, LB 577, § 11; Laws 1978, LB 217, § 2; Laws 1979, LB 26, § 4; Laws 1980, LB 643, § 13; Laws 1981, LB 146, § 9; Laws 1982, LB 375, § 19; Laws 1983, LB 506, § 1; Laws 1983, LB 23, § 7; Laws 1984, LB 1071, § 8; Laws 1986, LB 894, § 25; Laws 1993, LB 131, § 30; R.S.1943, (1993), § 46-666; Laws 1996, LB 108, § 31; Laws 1997, LB 877, § 6; Laws 2000, LB 900, § 196; Laws 2001, LB 135, § 2; Laws 2001, LB 667, § 9.

**46-656.26**

**Ground water allocation; limitations and conditions.**

(1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the

permissible withdrawal of ground water shall be allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section 46-656.25. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) If annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

**Source:**

Laws 1982, LB 375, § 12; Laws 1991, LB 51, § 5; Laws 1993, LB 439, § 3; R.S.1943, (1993), § 46-673.10; Laws 1996, LB 108, § 32; Laws 2001, LB 135, § 3.

**46-656.27**

**District; review controls.**

A district may review any allocation, rotation, or reduction control imposed in a management area and shall adjust allocations, rotations, or reductions to accommodate new or additional uses or otherwise reflect findings of such review, consistent with the ground water management objectives. Such review shall consider new development or additional ground water uses within the area, more accurate data or information that was not available at the

time of the allocation, rotation, or reduction order, the availability of supplemental water supplies, any changes in ground water recharge, and such other factors as the district deems appropriate.

**Source:**

Laws 1982, LB 375, § 13; Laws 1993, LB 439, § 4; R.S.1943, (1993), § 46-673.11; Laws 1996, LB 108, § 33; Laws 2001, LB 135, § 4.

**46-656.28**

**Joint action plan for integrated management of ground and surface water; preparation; when; procedure; factors; notice; hearing; determination; order; publication; modification; water use monitored; temporary suspension of drilling; variance.**

(1) If a district on its own motion or following a request by a surface water appropriator, surface water project sponsor, ground water user, the Department of Natural Resources, or another state agency has reason to believe that a management area should be designated for integrated management of hydrologically connected ground water and surface water or that controls in a management area should be adopted to include such integrated management, the district may utilize the procedures established in sections 46-656.19 to 46-656.21 or may request that the affected appropriators, the affected surface water project sponsors, and the Department of Natural Resources consult with the district and that studies and a hearing be held on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water.

(2) If, following a request from a district and as a result of information available to the Department of

Natural Resources and following preliminary investigation, the Director of Natural Resources makes a preliminary determination that there is a reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to (a) conflicts between ground water users and surface water appropriators, (b) disputes over interstate compacts or decrees, or (c) difficulties fulfilling the provisions of other formal state contracts or agreements, the department shall, in cooperation with any appropriate state agency and district, conduct or coordinate any necessary studies to determine the cause of such conflicts, disputes, or difficulties and the extent of the area affected. Such studies shall be prioritized and completed within a reasonable time following such preliminary determination. The department shall issue a written report of such preliminary findings within ninety days after the completion of any such studies. The department shall consider all relevant portions of the ground water management plan developed by the district pursuant to sections 46-656.12 to 46-656.16 during the study required by this section.

(3) If the director determines from any studies conducted pursuant to subsection (2) of this section or from information otherwise available that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to conflicts between ground water users and surface water appropriators, to disputes over interstate compacts or decrees, or to difficulties fulfilling the provisions of other formal state contracts or agreements and that conflicts between ground water users and surface water appropriators, disputes over interstate

compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements could be eliminated or reduced through the exercise of the authority granted by subsection (5) of this section, he or she shall, within thirty days after completion of the report required by subsection (2) of this section, consult with the affected surface water appropriators and district containing the area affected by such conflicts, disputes, or difficulties and fix a time and place for a public hearing to consider the report, hear any other relevant evidence, and secure testimony on whether a joint action plan should be prepared. The hearing shall be held within ninety days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the management area for which the district and director are considering in the preparation of a joint action plan.

(4) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services Regulation and Licensure, the Department of Environmental Quality, the affected surface water project sponsor or sponsors, and the appropriate surface water appropriators and district or districts may offer as evidence any information in their possession relevant to the purpose of the hearing. Within ninety days after the hearing or after any further studies

or investigations conducted by or on behalf of the director as he or she deems necessary, the district shall determine by order whether to proceed with developing a joint action plan for integrated management.

If the district determines that it should proceed and the district and the director determine that a joint action plan should be prepared, the district and the director shall develop a joint action plan to be utilized within the area in order to mitigate or eliminate conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements.

(5) The district's portion of the joint action plan developed under this section shall include one or more of the controls authorized by section 46-656.25 and shall be completed within one year after the date of the district's resolution to proceed. The portion of the joint action plan developed by the Department of Natural Resources shall be completed within one year after the date of the district's resolution to proceed and shall include one or more of the following measures concerning the use of surface water:

(a) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually;

(b) The prohibition or limitation of additional surface water appropriations;

(c) Requirements for surface water appropriators to apply or utilize reasonable conservation measures or best management practices consistent with the good husbandry and other requirements of section 46-231; or

(d) Other reasonable restrictions on surface water use that are consistent with the intent of section 46-656.05 and the requirements of section 46-231.

If the department determines that surface water appropriators should be required to apply or utilize reasonable conservation measures or best management practices, the department's portion of the joint action plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days unless extended by the department, to identify the conservation measures or best management practices to be applied or utilized and a schedule for such application and utilization.

(6) In developing their respective portions of the joint action plan authorized by subsection (5) of this section, the department and the district shall consider, but not be limited to considering, whether it reasonably appears that such action would mitigate or eliminate the condition which led to designation of the management area or the adoption of a joint action plan for the management area or will improve the administration of the management area.

(7) The district shall also determine that designation of a management area and adoption of a joint action plan would be in the public interest.

(8) Neither well registration dates nor appropriation dates shall be a factor in determining whether a management area shall be designated or a joint action plan prepared.

(9) In determining whether designating a management area or adopting a joint action plan would be in the public interest, the district shall consider (a) the impacts of the existing or projected diminution or degradation of water resources on (i) surface water appropriators, (ii) ground water users, (iii) public health and safety, (iv) social, economic, and environmental values in the affected area or areas, and (v) compliance with state laws, rules, or regulations, including, but not limited to, constitutional and statutory preferences in the use of water and interstate compacts or decrees, and (b) whether designation and implementation of a management area or adoption and implementation of a joint action plan would prevent or alleviate the impact of such diminution or degradation of water resources.

(10) Following completion of the district's and the director's portions of the joint action plan, the district, in order to establish a management area, shall fix a time and place for a public hearing to consider the joint action plan information and to hear any other relevant evidence. The hearing shall be held within sixty days after completion of the joint action plan and shall be located within or in reasonable proximity to the area proposed for designation as a management area.

Notice of the hearing shall be published at the expense of the district in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of the contents of the joint action plan and of the area which will be considered for inclusion in the management area and shall



provide the text of all controls proposed for adoption by the district and the department.

All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the department and shall include the results of any studies or investigations conducted by the district or the director.

(11) Within ninety days after the hearing the district shall determine by order whether a management area shall be designated.

If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt the joint action plan, to include one or more controls authorized by section 46-656.25 and subsection (5) of this section to be utilized within the area in order to mitigate or eliminate the conflicts, disputes, or difficulties described in subsection (9) of this section. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(12) The district shall cause a copy of any order adopted pursuant to subsection (11) of this section to be published once each week for three consecutive weeks in a

local newspaper published or of general circulation in the area involved. The last publication shall be not less than ten days prior to the effective date of the order. The order shall become effective on the date specified by the district but not later than ninety days after the date of establishment of the management area.

(13) Modification of a district's portion of a joint action plan may be accomplished utilizing the procedure established for the initial adoption of the joint action plan. Modification of the boundaries of a district-designated management area for integrated management or dissolution of such an area shall be in accordance with the procedures established in sections 46-656.19 to 46-656.21. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Modification of controls also may be accomplished using the procedure in such sections.

(14) Each district in which a joint action plan for a management area has been adopted shall, in cooperation with the surface water appropriators, any surface water project sponsors, and the department, establish a program to monitor use of hydrologically connected ground water and surface water resources in the area which is contributing to or is in the reasonably foreseeable future likely to contribute to conflicts between ground water users and surface water appropriators, to disputes over interstate compacts or decrees, or to difficulties fulfilling the provisions of other formal state contracts or agreements.

(15) For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators under the Nebraska Ground Water Management and Protection Act

does not include holders of instream flow appropriations under sections 46-2,107 to 46-2,119.

(16)(a) If a district, in accordance with subsection (1) of this section, has initiated the process for the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water, the district may adopt regulations to require a temporary suspension in the drilling of certain new wells in the district or portion of the district for which the preparation of the joint action plan is proposed. If such temporary suspension is imposed, it shall apply to all new wells in the geographic area involved except (i) test holes or dewatering wells with an intended use of ninety days or less, (ii) water wells designed and constructed to pump fifty gallons per minute or less, and (iii) water wells defined by the district to be replacement water wells. The regulations to impose such temporary suspension may be adopted only after a public hearing for which notice has been given as provided in section 46-656.19. Any such temporary suspension could be imposed initially for not to exceed three years, but could be extended thereafter on an annual basis for not to exceed two years if necessary to allow adoption and implementation of a management area and action plan in accordance with subsections (11) and (12) of this section.

(b) Any such temporary suspension shall be immediately rescinded for the applicable portion or portions of the geographic area involved if any of the following events occur: (i) The director determines, in accordance with subsection (2) or (3) of this section that there is no reason to believe that the conditions described in such subsections exist and that therefore no hearing is required on a question of whether a joint action plan should be prepared; (ii)

the district determines, pursuant to subsection (5), (6), (7), (8), or (9) of this section that it should not proceed to develop a joint action plan; (iii) the district determines pursuant to subsection (11) of this section that a management area should not be adopted; or (iv) an order adopted by the district pursuant to subsection (11) of this section becomes effective and designates the area or areas involved as a management area and adopts a joint action plan which includes one or more controls authorized by section 46-656.25.

(c) The district may grant a variance from the temporary suspension if it determines that construction of a new well is necessary to alleviate an emergency situation involving the provision of water for human consumption.

This subsection does not authorize the Department of Natural Resources to temporarily suspend drilling of water wells.

This subsection terminates on December 31, 2007.

**Source:**

Laws 1996, LB 108, § 34; Laws 1997, LB 30, § 4; Laws 1997, LB 307, § 104; Laws 1997, LB 877, § 7; Laws 2000, LB 900, § 197; Laws 2002, LB 458, § 4. Effective date July 20, 2002.

**46-656.29**

**Construct water well in a management area; permit required; application; form; fee; contents; late permit application; fee.**

(1) Any person who intends to construct a water well in a management area in this state on land which he or she owns or controls shall, before commencing construction, apply with the district in which the water well will be

located for a permit on forms provided by the district, except that (a) no permit shall be required for test holes or dewatering wells with an intended use of ninety days or less, (b) no permit shall be required for a single water well designed and constructed to pump fifty gallons per minute or less, and (c) a district may provide by rule and regulation that a permit need not be obtained for water wells defined by the district to be replacement water wells. A district may require a permit for a water well designed and constructed to pump fifty gallons per minute or less if such water well is commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity. A district may by rule and regulation require that a permit be obtained for each water well or for one or more categories of water wells designed and constructed to pump fifty gallons per minute or less, other than a water source required for human needs as it relates to health, fire control, and sanitation or used to water range livestock, in ground water management areas in which regulations have been imposed to control declining ground water levels. Forms shall be made available at each district in which a management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) A person shall apply for a permit under this section before he or she modifies a water well for which a permit was not required under subsection (1) of this

section into one for which a permit would otherwise be required under such subsection.

(3) The application shall be accompanied by a seventeen-dollar-and-fifty-cent filing fee payable to the district and shall contain (a) the name and post office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed water well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed water well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if the water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, (h) the registration number of the water well being replaced if applicable, and (i) such other information as the district requires.

(4) Any person who has failed or in the future fails to obtain a permit required by subsection (1) or (2) of this section shall make application for a late permit on forms provided by the district.

(5) The application for a late permit shall be accompanied by a two-hundred-fifty-dollar fee payable to the district and shall contain the same information required in subsection (3) of this section.

**Source:**

Laws 1975, LB 577, § 4; Laws 1980, LB 643, § 10; Laws 1981, LB 325, § 2; Laws 1982, LB 375, § 16; Laws 1983, LB 23, § 3; Laws 1984, LB 1071, § 3; Laws 1986, LB 894, § 23; Laws 1993, LB 131, § 25; Laws 1994, LB 981, § 8; Laws 1995, LB 145, § 2; R.S.Supp.,1994, § 46-659; Laws

1996, LB 108, § 35; Laws 1998, LB 1161, § 13; Laws 1999, LB 870, § 1.

**46-656.30**

**Permit; when denied; corrections allowed; fees nonrefundable.**

An application for a permit or late permit for a water well in a management area shall be denied only if the district in which the water well is to be located finds (1) that the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the district, (2) that the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes, or (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.

If the district finds that the application is incomplete or defective, it shall return the application for correction. If the correction is not made within sixty days, the application shall be canceled. All permits shall be issued with or without conditions attached or denied not later than thirty days after receipt by the district of a complete and properly prepared application.

A permit issued shall specify all regulations and controls adopted by a district relevant to the construction or utilization of the proposed water well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The district shall transmit one copy of each permit issued to the Director of Natural Resources.

**Source:**

Laws 1975, LB 577, § 5; Laws 1980, LB 643, § 11; Laws 1982, LB 375, § 17; Laws 1983, LB 23, § 4; Laws 1984, LB

1071, § 4; Laws 1993, LB 131, § 26; R.S.1943, (1993), § 46-660; Laws 1996, LB 108, § 36; Laws 2000, LB 900, § 198.

**46-656.31**

**Issuance of permit; no right to violate rules, regulations, or controls.**

The issuance by the district of a permit pursuant to section 46-656.30 or registration of a water well by the Director of Natural Resources pursuant to section 46-602 shall not vest in any person the right to violate any district rule, regulation, or control in effect on the date of issuance of the permit or the registration of the water well or to violate any rule, regulation, or control properly adopted after such date.

**Source:**

Laws 1975, LB 577, § 6; Laws 1983, LB 23, § 5; Laws 1984, LB 1071, § 5; Laws 1993, LB 131, § 27; R.S.1943, (1993), § 46-661; Laws 1996, LB 108, § 37; Laws 2000, LB 900, § 199.

**46-656.32**

**Issuance of permit; commence construction and complete water well within one year; failure; effect.**

When any permit is approved pursuant to section 46-656.30, the applicant shall commence construction as soon as possible after the date of approval and shall complete the construction and equip the water well prior to the date specified in the conditions of approval, which date shall be not more than one year after the date of approval, unless it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant fails to complete the project under the terms of the permit, the district may withdraw the permit.



**Source:**

Laws 1975, LB 577, § 7; Laws 1983, LB 23, § 6; Laws 1993, LB 131, § 28; R.S.1943, (1993), § 46-662; Laws 1996, LB 108, § 38.

**46-656.33**

**Director of Natural Resources; rules and regulations; Ground Water Management Fund; created; use; investment.**

All fees paid to the Director of Natural Resources in accordance with the terms of the Nebraska Ground Water Management and Protection Act shall be paid into the Ground Water Management Fund which is hereby created and which shall be administered by the director. Any money credited to the fund may be utilized by the director for payments of expenses incurred in the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:**

Laws 1975, LB 577, § 15; Laws 1984, LB 1071, § 12; Laws 1995, LB 7, § 42; R.S.Supp.,1995, § 46-670; Laws 1996, LB 108, § 39; Laws 2000, LB 900, § 200.

**46-656.34**

**Repealed. Laws 1996, LB 1114, s. 75.**

**46-656.35**

**Management area; reports required.**

Each state agency and political subdivision shall promptly report to the Department of Environmental Quality any information which indicates that contamination is occurring.

**Source:**

Laws 1986, LB 894, § 2; Laws 1993, LB 3, § 15; R.S.1943, (1993), § 46-674.03; Laws 1996, LB 108, § 41.

**46-656.36**

**Management area; Department of Environmental Quality; conduct study; when; report.**

If, as a result of information provided pursuant to section 46-656.35 or studies conducted by or otherwise available to the Department of Environmental Quality and following preliminary investigation, the Director of Environmental Quality makes a preliminary determination (1) that there is reason to believe that contamination of ground water is occurring or likely to occur in an area of the state in the reasonably foreseeable future and (2) that the natural resources district or districts in which the area is located have not designated a management area or have not implemented adequate controls to prevent such contamination from occurring, the department shall, in cooperation with any appropriate state agency and district, conduct a study to determine the source or sources of the contamination and the area affected by such contamination and shall issue a written report within one year of the initiation of the study. During the study, the department shall consider the relevant water quality portions of the management plan developed by each district pursuant to sections 46-656.12 to 46-656.16, whether the district has designated a management area encompassing the area studied, and whether the district has adopted any controls for the area.

**Source:**

Laws 1986, LB 894, § 3; Laws 1993, LB 3, § 16; R.S.1943, (1993), § 46-674.04; Laws 1996, LB 108, § 42.

**46-656.37**

**Management area; contamination; point source; Director of Environmental Quality; duties.**

If the Director of Environmental Quality determines from the study conducted pursuant to section 46-656.36 that one or more sources of contamination are point sources, he or she shall expeditiously use the procedures authorized in the Environmental Protection Act to stabilize or reduce the level and prevent the increase or spread of such contamination.

**Source:**

Laws 1986, LB 894, § 4; Laws 1993, LB 3, § 17; R.S.1943, (1993), § 46-674.05; Laws 1996, LB 108, § 43.

**46-656.38**

**Management area; contamination; not point source; Director of Environmental Quality; duties; hearing; notice.**

If the Director of Environmental Quality determines from the study conducted pursuant to section 46-656.36 that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environmental Quality shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-656.39 to 46-656.43.

If the Director of Environmental Quality determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section 46-656.36, consult with the district within whose boundaries the area affected by such contamination is

located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the management area.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services Regulation and Licensure, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Quality as he or she deems necessary, the director shall determine whether a management area shall be designated.

**Source:**

Laws 1986, LB 894, § 5; Laws 1991, LB 51, § 9; Laws 1993, LB 3, § 18; R.S.1943, (1993), § 46-674.06; Laws 1996, LB 108, § 44; Laws 1996, LB 1044, § 260; Laws 2000, LB 900, § 201.

**46-656.39**

**Management area; designation or modification of boundaries; adoption of action plan; considerations; procedures; order.**

(1) When determining whether to designate or modify the boundaries of a management area or to require a district which has established a management area, a purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director of Environmental Quality shall consider:

(a) Whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future;

(b) Whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water;

(c) Whether methods are available to stabilize or reduce the level of contamination;

(d) Whether, if a management area has been established which includes the affected area, the controls adopted by the district pursuant to section 46-656.25 as administered and enforced by the district are sufficient to address the ground water quality issues in the management area; and

(e) Administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environmental Quality determines that no such area should be established, he or she shall issue an order declaring that no management area shall be designated.

(3) If the Director of Environmental Quality determines that a management area shall be established, that the boundaries of an existing management area shall be modified, or that the district shall be required to adopt an action plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environmental Quality shall include the specific reasons for the creation of the management area or the requirement of such an action plan and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined or modified, the Director of Environmental Quality shall issue an order designating the area as a management area, specifying the modified boundaries of the management area, or requiring such an action plan. Such an order shall include a geographic and stratigraphic definition of the area.

**Source:**

Laws 1986, LB 894, § 6; Laws 1991, LB 51, § 10; Laws 1993, LB 3, § 19; R.S.1943, (1993), § 46-674.07; Laws 1996, LB 108, § 45.

**46-656.40**

**Management area; action plan; preparation by district; when; hearing; notice; publication.**

(1) Within one hundred eighty days after the designation of a management area or the requiring of an action plan for a management area, a purpose of which is protection of water quality, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a management area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district in reasonable proximity to the area to be affected. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas to be affected by the proposed action plan and shall provide the text of all controls proposed for adoption by the district.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the Department of Environmental Quality.

**Source:**

Laws 1986, LB 894, § 7; Laws 1991, LB 51, § 11; R.S.1943, (1993), § 46-674.08; Laws 1996, LB 108, § 46; Laws 2000, LB 900, § 202.

**46-656.41**

**Management area; action plan; contents.**

An action plan filed by a district pursuant to section 46-656.40 shall include the specifics of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level or prevent the increase or spread of ground water contamination. The action plan shall include one or more of the controls authorized by section 46-656.25.

**Source:**

Laws 1986, LB 894, § 8; Laws 1991, LB 51, § 12; R.S.1943, (1993), § 46-674.09; Laws 1996, LB 108, § 47.

**46-656.42**

**Management area; adoption or amendment of action plan; considerations; procedures.**

(1) In adopting or amending an action plan authorized by subsection (2) of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or the requirement of an action plan for a management area or will improve the administration of the area.

(2) The Director of Environmental Quality shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action



plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If the director denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days after denial of its original action plan to the director for approval subject to section 46-656.45.

**Source:**

Laws 1986, LB 894, § 9; Laws 1991, LB 51, § 13; Laws 1993, LB 3, § 20; R.S.1943, (1993), § 46-674.10; Laws 1996, LB 108, § 48.

**46-656.43**

**Management area; district publish control adopted.**

Following approval of the action plan by the Director of Environmental Quality, the district shall cause a copy of each control adopted pursuant to section 46-656.42 to be published once each week for three consecutive weeks in a newspaper published or of general circulation in the area involved, the last publication of which shall be not less than seven days prior to the date when such control becomes effective.

**Source:**

Laws 1986, LB 894, § 10; Laws 1993, LB 3, § 21; R.S.1943, (1993), § 46-674.11; Laws 1996, LB 108, § 49.

**46-656.44**

**Management area; district; duties.**

Each district in which a management area has been designated or an action plan for a management area has

been required pursuant to section 46-656.39 shall, in cooperation with the Department of Environmental Quality, establish a program to monitor the quality of the ground water in the area and shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

**Source:**

Laws 1986, LB 894, § 17; Laws 1991, LB 51, § 16; Laws 1993, LB 3, § 27; R.S.1943, (1993), § 46-674.18; Laws 1996, LB 108, § 50.

**46-656.45**

**Management area; director specify controls; when; powers and duties; hearing.**

(1) The power to specify controls authorized by section 46-656.25 shall vest in the Director of Environmental Quality if (a) at the end of one hundred eighty days following the designation of a management area or the requiring of an action plan for a management area pursuant to section 46-656.39, a district encompassed in whole or in part by the management area has not completed and adopted an action plan, (b) a district does not submit a revised action plan within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the director.

(2) If the power to specify controls in such a management area is vested in the Director of Environmental Quality, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior

to the adoption of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-656.40. The enforcement of controls adopted pursuant to this section shall be the responsibility of the Department of Environmental Quality.

**Source:**

Laws 1986, LB 894, § 11; Laws 1991, LB 51, § 14; Laws 1993, LB 3, § 22; R.S.1943, (1993), § 46-674.12; Laws 1996, LB 108, § 51.

**46-656.46**

**Management area; controls; duration; amendment of plan.**

The controls in the action plan approved by the Director of Environmental Quality pursuant to section 46-656.42 shall be exercised by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination. An action plan may be amended by the same method utilized in the adoption of the action plan.

**Source:**

Laws 1986, LB 894, § 12; Laws 1993, LB 3, § 23; R.S.1943, (1993), § 46-674.13; Laws 1996, LB 108, § 52.

**46-656.47**

**Management area; removal of designation or requirement of action plan; modification of boundaries; when.**

A district may petition the Director of Environmental Quality to remove the director's designation of the area as a management area or the requirement of an action plan for a management area or to modify the boundaries of a management area designated pursuant to section 46-656.39. If the director determines that the level of contamination in a management area has stabilized at or

been reduced to a level which is not detrimental to beneficial uses of ground water, he or she may remove the designation or action plan requirement or modify the boundaries of the management area.

**Source:**

Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14; Laws 1996, LB 108, § 53.

**46-656.48**

**Management area; Environmental Quality Council; adopt rules and regulations.**

The Environmental Quality Council shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties under sections 46-656.35 to 46-656.47.

**Source:**

Laws 1986, LB 894, § 15; Laws 1993, LB 3, § 26; R.S.1943, (1993), § 46-674.16; Laws 1996, LB 108, § 54.

**46-656.49**

**Disputes over interstate compacts or decrees; applicability of sections; report; contents.**

Until January 1, 1999, sections 46-656.50 to 46-656.60 shall apply only to river basins subject to interstate compacts involving three or more states. A report shall be prepared by the natural resources districts in such basin or basins and presented to the Natural Resources Committee of the Legislature before December 1, 1998. The report shall include, but not be limited to, a review of any activities resulting from and relating to sections 46-656.50 to 46-656.60 and recommendations for specific changes to such sections or to other sections in the Nebraska Ground

Water Management and Protection Act. On and after January 1, 1999, sections 46-656.50 to 46-656.60 shall apply to the entire state.

**Source:**

Laws 1996, LB 108, § 55.

**46-656.50**

**Disputes over interstate compacts or decrees; studies authorized; report.**

If, as a result of information available to the Department of Natural Resources or a request by a district and following preliminary investigation, the Director of Natural Resources makes a preliminary determination that there is reason to believe that (1) the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over interstate compacts or decrees or to difficulties fulfilling the provisions of other formal state contracts or agreements and (2) the natural resources district or districts in which such use is located have not designated a management area or have not implemented adequate controls to prevent such disputes or difficulties, the department shall, in cooperation with any appropriate state agency and natural resources district, coordinate any necessary studies to determine the cause of such disputes or difficulties and the extent of the area affected. Such studies shall be prioritized and completed within a reasonable time following such preliminary determination. The department shall issue a written report of such preliminary findings within ninety days after the completion of any such studies. The department shall consider the relevant water quantity portions of the ground water management plan developed by the district

pursuant to sections 46-656.12 to 46-656.16 during the study required by this section.

**Source:**

Laws 1996, LB 108, § 56; Laws 2000, LB 900, § 203.

**46-656.51**

**Disputes over interstate compacts or decrees; action plan authorized; when; hearing; procedure; notice; order.**

(1) If the Director of Natural Resources determines from any studies conducted pursuant to section 46-656.50, or from information otherwise available, that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over interstate compacts or decrees or to difficulties fulfilling the provisions of other formal state contracts or agreements and if a management area has been established which includes the affected area, the director shall decide whether to request the district which established the management area to adopt an action plan as provided in sections 46-656.53 to 46-656.57 in addition to the controls previously adopted by the district pursuant to section 46-656.25. The district may agree to that request and begin preparing an action plan under section 46-656.53 or may inform the director that it will not prepare an action plan unless the director requires the district to do so under subsection (2) of this section and section 46-656.52.

(2) If the director determines that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to disputes or difficulties described in subsection (1) of this section and that (a) a management area has not been established or (b) he or she

is considering whether to require the district to prepare an action plan for all or part of an established management area, he or she shall, within thirty days after completion of the report required by section 46-656.50, consult with the district containing the area affected by such disputes or situations and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether the district should be required to prepare an action plan. The hearing shall be held within ninety days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the management area for which the director is considering designation or requiring the preparation of an action plan.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services Regulation and Licensure, the Department of Environmental Quality, the affected surface water project sponsor or sponsors, the appropriate surface water appropriators, and the appropriate district or districts may offer as evidence any information in their possession relevant to the purpose of the hearing. Within thirty days after the hearing or after any studies or investigations conducted by or on behalf of the Director of Natural Resources as he or she deems

necessary, the director shall determine by order whether a management area shall be designated or an action plan required.

**Source:**

Laws 1996, LB 108, § 57; Laws 1997, LB 307, § 105; Laws 2000, LB 900, § 204.

**46-656.52**

**Disputes over interstate compacts or decrees; designation of management area or preparation of action plan; determination; Director of Natural Resources; powers and duties.**

(1) The Director of Natural Resources may designate a management area to allow the integrated management of hydrologically connected resources or require the district to prepare an action plan under sections 46-656.53 to 46-656.60 if the Department of Natural Resources determines:

(a) That the quantity of surface water resources is being substantially and adversely impacted or is likely to be substantially and adversely impacted in the foreseeable future because of the use of hydrologically connected ground water resources;

(b) That substantial and adverse impact is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over an interstate compact or decree or to difficulties fulfilling the provisions of other formal state contracts or agreements;

(c) That designating a management area or requiring preparation of an action plan would mitigate or eliminate the disputes over the interstate compact or decree or the difficulties in fulfilling the provisions of other formal state contracts or agreements; and



(d) That designating a management area or requiring preparation of an action plan would be in the public interest.

(2) In determining whether designating a management area or requiring preparation of an action plan would be in the public interest, the director shall consider (a) the impacts of the existing or projected diminution or degradation of water resources on (i) surface water appropriators, (ii) ground water users, (iii) public health and safety, (iv) social, economic, and environmental values in the affected area or areas, and (v) compliance with state laws, rules, or regulations, including, but not limited to, constitutional and statutory preferences in the use of water and interstate compacts or decrees, and (b) whether designation and implementation of a management area or preparation and implementation of an action plan would mitigate or eliminate the impact of such diminution or degradation.

(3) Neither well registration dates nor appropriation dates shall be a factor in determining whether a management area shall be designated or a joint action plan prepared.

(4) If the director determines that a management area shall be established or that the district shall be required to adopt an action plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water and surface water management, control, and protection. The report by the director shall

include the specific reasons for the creation of the management area or the requirement of such an action plan and a full disclosure of the possible causes.

(5) When the boundaries of an area have been determined, the director shall issue an order designating the area as a management area or requiring such an action plan. Such an order shall include a geographic and stratigraphic definition of the area.

**Source:**

Laws 1996, LB 108, § 58; Laws 2000, LB 900, § 205.

**46-656.53**

**Disputes over interstate compacts or decrees; additional action plan required; when; hearing; notice; district; duties.**

(1) Within one year after the designation of a management area or the requiring of an action plan for a management area, the Department of Natural Resources, the surface water project sponsor or sponsors, and the district or districts within which the area is located shall, in consultation with each other, prepare an action plan designed to mitigate or eliminate the incidence of disputes over interstate compacts or decrees or of difficulties fulfilling the provisions of other formal state contracts or agreements. Whenever a management area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within sixty days after an action plan has been prepared, one or more public hearings on such plan shall be held by the district and the department in reasonable

proximity to the area or areas to be affected. Notice of each hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall include a general description of all areas to be affected by the proposed action plan, the text of all controls proposed for adoption by the district, and the text of any surface water regulations prepared by the department.

(3) Within sixty days after the last hearing, the district shall adopt and submit its portion of the action plan to the department.

**Source:**

Laws 1996, LB 108, § 59; Laws 2000, LB 900, § 206.

**46-656.54**

**Disputes over interstate compacts or decrees; additional action plan; contents.**

The district's portion of the action plan adopted under section 46-656.53 shall include one or more of the controls authorized by section 46-656.25. The portion of the action plan developed by the Department of Natural Resources shall include one or more of the following measures concerning the use of surface water:

(1) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually;

(2) The prohibition or limitation of additional surface water appropriations;

(3) Requirements for surface water appropriators to apply or utilize reasonable conservation measures or best

management practices consistent with the good husbandry and other requirements of section 46-231; or

(4) Other reasonable restrictions on surface water use that are consistent with the intent of section 46-656.05 and the requirements of section 46-231.

If the department determines that surface water appropriators should be required to apply or utilize reasonable conservation measures or best management practices, the department's portion of the plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days unless extended by the department, to identify the proposed conservation measures or best management practices to be applied or utilized and a schedule for such application and utilization.

**Source:**

Laws 1996, LB 108, § 60; Laws 2000, LB 900, § 207.

**46-656.55**

**Disputes over interstate compacts or decrees; district's portion of action plan; Director of Natural Resources; approve or deny; procedure.**

(1) In adopting or amending the respective portions of the action plan authorized by subsection (2) of this section, the Department of Natural Resources and the district shall consider, but not be limited to considering, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or the requirement of an action plan for the management area or will improve the administration of the area.

(2) The Director of Natural Resources shall approve or deny the adoption or amendment of the surface water project sponsor's conservation measures and the district's portion of the action plan within ninety days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section and the lawful exercise of the authority granted by the Nebraska Ground Water Management and Protection Act.

(3) If the director denies approval of the district's portion of an action plan, the order shall state the reasons for such denial. A district may, within ninety days after denial of its original action plan, submit a revised action plan to the director for approval subject to section 46-656.58.

**Source:**

Laws 1996, LB 108, § 61; Laws 2000, LB 900, § 208.

**46-656.56**

**Disputes over interstate compacts or decrees; district's portion of action plan; publication; when.**

Following approval of the district's portion of an action plan by the Director of Natural Resources, the district shall cause a copy of each control adopted pursuant to section 46-656.55 to be published once each week for three consecutive weeks in a newspaper published or of general circulation in the area involved. The last publication shall be not less than seven days before the date such control becomes effective.

**Source:**

Laws 1996, LB 108, § 62; Laws 2000, LB 900, § 209.

**46-656.57**

**Disputes over interstate compacts or decrees; water use monitored; when.**

Each district in which a management area has been designated or an action plan for a management area has been required pursuant to section 46-656.52 shall, in cooperation with the surface water project sponsors and the Department of Natural Resources, establish a program to monitor use of hydrologically connected ground water and surface water resources in the area which is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over interstate compacts or decrees or to difficulties fulfilling the provisions of other formal state contracts or agreements.

**Source:**

Laws 1996, LB 108, § 63; Laws 2000, LB 900, § 210.

**46-656.58**

**Disputes over interstate compacts or decrees; controls; duration; amendment authorized.**

The controls in the district's portion of an action plan approved by the Director of Natural Resources pursuant to section 46-656.55 shall be exercised by the district for the period of time necessary to reduce the use of hydrologically connected ground water and surface water resources in the area which is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over interstate compacts or decrees or to difficulties fulfilling the provisions of other formal state contracts or agreements. An action plan may be amended by the same method utilized in the adoption of the action plan.

**Source:**

Laws 1996, LB 108, § 64; Laws 2000, LB 900, § 211.

**46-656.59**

**Disputes over interstate compacts or decrees; removal of designation of management area or action plan; modification of boundaries of management area; director; powers.**

A district may petition the Director of Natural Resources to remove the designation of the area as a management area or the requirement of an action plan for a management area or to modify the boundaries of a management area designated pursuant to section 46-656.52. If the director determines that the use of hydrologically connected ground water and surface water resources in the area which is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over interstate compacts or decrees or to difficulties fulfilling the provisions of other formal state contracts or agreements in a management area has stabilized at a level which is no longer detrimental to the public interest, he or she may remove the designation or action plan requirement or modify the boundaries of the management area.

**Source:**

Laws 1996, LB 108, § 65; Laws 2000, LB 900, § 212.

**46-656.60**

**Disputes over interstate compacts or decrees; specification of controls vested in Director of Natural Resources; when; procedure.**

(1) If (a) at the end of twelve months following the designation of a management area or the requiring of an action plan for a management area pursuant to section 46-656.52, a district encompassed in whole or in part by such a management area has not completed and adopted its

portion of an action plan, (b) a district does not submit a revised action plan within ninety days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the Director of Natural Resources, the power to specify controls authorized in section 46-656.25 shall, subject to review and concurrence of need by the Interrelated Water Review Committee of the Nebraska Natural Resources Commission, vest in the director.

(2) If, following a review, the committee fails to concur with the need for vesting the power to specify controls in the director, the district may proceed with implementation of its portion of an action plan pursuant to sections 46-656.19 to 46-656.21.

(3) If the power to specify controls authorized in section 46-656.25 in such a management area is vested in the director, he or she shall within ninety days adopt and promulgate by rule and regulation such authorized controls as he or she deems necessary for carrying out the intent of section 46-656.55. He or she shall conduct one or more public hearings prior to the adoption of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-656.53. The enforcement of controls adopted pursuant to this section shall be the responsibility of the Department of Natural Resources.

**Source:**

Laws 1996, LB 108, § 66; Laws 2000, LB 900, § 213.

**46-656.61**

**Interrelated Water Review Committee of the Nebraska Natural Resources Commission; created; members; powers.**

The Interrelated Water Review Committee of the Nebraska Natural Resources Commission is created. The



committee shall consist of the Governor and two commission members selected by the commission. The two commission members selected by the commission shall be selected only after a request for a decision by a district or the Department of Natural Resources, and such members shall not reside or have an interest in real property in a district all or a portion of which is included in the current or proposed management area for integrated management of hydrologically connected ground water and surface water. The committee shall have the authority to determine which position will prevail when differences of opinion occur between districts and the department on the questions of the need for, or adequacy of, district action plans and whether the power to specify ground water controls shall vest in the Director of Natural Resources pursuant to section 46-656.60. The entity requesting a decision shall state in writing the differences of opinion and what decision the entity requests the committee to make.

**Source:**

Laws 1996, LB 108, § 67; Laws 2000, LB 900, § 214.

**46-656.62**

**Rules and regulations.**

The Director of Natural Resources shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties assigned to the director or the Department of Natural Resources by the Nebraska Ground Water Management and Protection Act.

**Source:**

Laws 1996, LB 108, § 68; Laws 2000, LB 900, § 215.

**46-656.63**

**Management area; violation; civil penalty.**

Any person who violates any of the provisions of sections 46-656.35 to 46-656.62 for which a penalty is not otherwise provided, other than the requirements imposed on a district, the Director of Natural Resources, or the Department of Natural Resources, shall be subject to a civil penalty of not more than five hundred dollars. Each day of continued violation shall constitute a separate offense.

**Source:**

Laws 1986, LB 894, § 16; R.S.1943, (1993), § 46-674.17; Laws 1996, LB 108, § 69; Laws 2000, LB 900, § 216.

**46-656.64**

**Hearings; subject to review.**

All hearings conducted pursuant to the Nebraska Ground Water Management and Protection Act shall be of record and available for review.

**Source:**

Laws 1975, LB 577, § 13; Laws 1984, LB 1071, § 10; R.S.1943, (1993), § 46-668; Laws 1996, LB 108, § 70.

**46-656.65**

**Administration of act; compliance with other laws.**

In the administration of the Nebraska Ground Water Management and Protection Act, all actions of the Director of Environmental Quality, the Director of Natural Resources, and the districts shall be consistent with the provisions of section 46-613.

**Source:**

Laws 1975, LB 577, § 16; Laws 1984, LB 1071, § 13; R.S.1943, (1993), § 46-671; Laws 1996, LB 108, § 71; Laws 2000, LB 900, § 217.

**46-656.66**

**Appeal; procedure.**

Any person aggrieved by any order of the district, the Director of Environmental Quality, or the Director of Natural Resources issued pursuant to the Nebraska Ground Water Management and Protection Act may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

**Source:**

Laws 1975, LB 577, § 14; Laws 1984, LB 1071, § 11; Laws 1988, LB 352, § 78; R.S.1943, (1993), § 46-669; Laws 1996, LB 108, § 72; Laws 2000, LB 900, § 218.

**46-656.67**

**Interrelated Water Management Fund; created; use; investment.**

The Interrelated Water Management Fund is created. The State Treasurer shall credit to the fund, for the purpose of conducting studies to determine the cause of current or potential conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts and agreements, such money as is specifically appropriated and such funds, fees, donations, gifts, or services or devises or bequests of real or personal property received by the Department of Natural Resources from any federal, state, public, or private source, to be used by the department for the purpose of funding studies as described in this section. The department may use its budget authority to request appropriations specifically for the purpose of funding studies described in this section. The department shall allocate money from the fund for use by the department, by any state agency, board, or commission, or by any political

subdivision of the state, by agreement, or by private organizations or firms as may be contracted with by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:**

Laws 1996, LB 108, § 73; Laws 2000, LB 900, § 219.

**46-675**

**Legislative findings and declarations.**

The Legislature finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users in situations where industrial users withdraw significant quantities of ground water from the aquifers of the state and in situations where such ground water is transferred from the water well site for use at another location.

**Source:**

Laws 1981, LB 56, § 1; Laws 1993, LB 131, § 33.

**46-676**

**Terms, defined.**

For purposes of the Industrial Ground Water Regulatory Act:

- (1) The definitions found in section 46-656.07 are used;
- (2) Department means the Department of Natural Resources; and
- (3) Director means the Director of Natural Resources.

**Source:**

Laws 1981, LB 56, § 2; Laws 1996, LB 108, § 74; Laws 2000, LB 900, § 220.

**46-677**

**Withdrawal of ground water for industrial purposes; permit required; when.**

(1) Except as provided in section 46-678.01, (a) any person who desires to withdraw and transfer ground water from aquifers located within the State of Nebraska for industrial purposes shall, prior to commencing construction of any water wells, obtain from the director a permit to authorize such withdrawal and transfer of such ground water and (b) any person who prior to April 23, 1993, has withdrawn ground water from aquifers located in the State of Nebraska for industrial purposes may file an application for a permit to authorize the transfer of such ground water at any time.

(2) For purposes of this section, industrial purposes includes manufacturing, commercial, and power generation uses of water and commercial use includes, but is not limited to, maintenance of the turf of a golf course.

**Source:**

Laws 1981, LB 56, § 3; Laws 1993, LB 131, § 34; Laws 1993, LB 789, § 6; Laws 2002, LB 458, § 5. Effective date July 20, 2002.

**46-678**

**Permit; application; contents.**

(1) Applications for permits required by section 46-677 shall be on forms provided by the director and shall contain:

(a) A statement of the amount of ground water which the applicant proposes to use;

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(b) A statement of the proposed use and whether the ground water will be transferred for use at a location other than the well site;

(c) A hydrologic evaluation of the impact of the proposed use on the surrounding area and on existing users;

(d) The date when the applicant expects to first use the ground water; and

(e) Such other relevant information as the director may deem necessary or desirable.

(2) Such applications shall be accompanied by an exhibit of maps showing the location, depth, and capacity of the proposed water wells.

**Source:**

Laws 1981, LB 56, § 4; Laws 1993, LB 131, § 35; Laws 1993, LB 789, § 7.

**46-678.01**

**Withdrawal and transfer of less than 150 acre-feet; notice; metering.**

Any person who desires to withdraw and transfer a total of less than one hundred fifty acre-feet of ground water per year from aquifers located in the State of Nebraska for industrial purposes to other property within the state which is owned or leased by such person shall provide written notice to the department and install a water meter or meters that meet the approval of the department. Such notice shall include the amount of the proposed transfer, the point of withdrawal, and the point of delivery and shall be published once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the point of withdrawal is

located. The withdrawal and transfer may be made without a permit so long as (1) the property which includes the point of withdrawal and the property which includes the point of delivery are owned or leased by the same person, (2) the water is used by such person, and (3) a total of less than one hundred fifty acre-feet of ground water per year is transferred from all sources to the property which includes the point of delivery.

**Source:**

Laws 1993, LB 789, § 8; Laws 2000, LB 900, § 221.

**46-679**

**Application; director; determination as to completeness.**

Within thirty days of the receipt of an application made under section 46-677, the director shall accept the application as a completed application or return the application to the applicant as an incomplete application. If the application is deemed to be incomplete, the director shall inform the applicant as to the deficiencies in the application.

**Source:**

Laws 1981, LB 56, § 5.

**46-680**

**Completed application; public hearing required.**

After the director has accepted the application made under section 46-677 as a completed application, the director shall set a time and place for a public hearing on the application. The hearing shall be held within or in reasonable proximity to the area in which the water wells would be located. The hearing shall be scheduled within ninety days after the application is accepted by the director.

**Source:**

Laws 1981, LB 56, § 6; Laws 1993, LB 131, § 36.

**46-681**

**Public hearing; evidence presented.**

At the hearing provided for in section 46-680, the applicant shall present all hydrological data and other evidence supporting its application. All interested parties shall be allowed to testify and present evidence relative to the application.

**Source:**

Laws 1981, LB 56, § 7.

**46-682**

**Applicant; agreement with other water users; filing.**

The applicant may negotiate with any user of water in order to obtain an agreement whereby the user waives any cause of action against the applicant for damages or injunctive or other relief for interference with such water use, in exchange for financial payment, substitute water, or other compensation. The applicant shall file copies of any such agreements with the director who shall consider the agreements in determining whether to grant or deny a permit. Nothing in this section shall be construed to limit any power of eminent domain possessed by an applicant.

**Source:**

Laws 1981, LB 56, § 8.

**46-683**

**Permit; issuance; consideration; conditions.**

(1) The director shall issue a written order containing specific findings of fact either granting or denying a permit. The director shall grant a permit only if he or she finds that the applicant's withdrawal and any transfer of



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ground water are in the public interest. In determining whether the withdrawal and transfer, if any, are in the public interest, the director's considerations shall include, but not be limited to:

(a) Possible adverse effects on existing surface or ground water users;

(b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;

(c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;

(d) The economic benefit of the applicant's proposed use;

(e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;

(f) Any waivers of liability from existing users filed with the director; and

(g) Other factors reasonably affecting the equity of granting the permit.

(2) The director may grant a permit for less water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the ground water withdrawals and on the manner of any transfer of ground water which the director deems necessary to protect existing users of water. The director

shall issue such written order within ninety days of the hearing.

**Source:**

Laws 1981, LB 56, § 9.

**46-683.01**

**Permit; application to amend; procedures; limitation.**

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 permit holder 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 percent from the amounts approved in the original permit.

**Source:**

Laws 1986, LB 309, § 3.

**46-684**

**Permit; revocation; procedure; violation of terms of permit; director; powers and duties.**

(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, if the director determines that the permit holder

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) If it appears to the director that a permit holder 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 permit holder of the alleged violation.

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

(a) File an application to amend the permit as provided in section 46-683.01;

(b) Request a hearing before the director; or

(c) Take appropriate measures to comply with the permit. If the permit holder 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 permit holder requests a hearing, the director shall within thirty days schedule a hearing within or in reasonable proximity to the area where the water 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 permit holder, 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.

**Source:**

Laws 1981, LB 56, § 10; Laws 1986, LB 309, § 4; Laws 1993, LB 131, § 37.

**46-685**

**Order or decision; appeal by affected person.**

Any affected person aggrieved by any order issued or final decision made by the director pursuant to the Industrial Ground Water Regulatory Act may appeal the order to the Court of Appeals. For purposes of this section, affected person means the applicant for a permit which is the subject of the director's order or final decision and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by the director's order or final decision.

**Source:**

Laws 1981, LB 56, § 11; Laws 1988, LB 352, § 80; Laws 2001, LB 129, § 4.

**46-686**

**Injured person; remedies available.**

Any owner of an estate or interest in or concerning land or water, except a person who has signed an agreement filed with the director pursuant to section 46-682, may bring an action for damages or injunctive or other relief for any injury done to his or her land or water rights by the holder of a permit issued pursuant to section 46-683. Nothing in sections 46-675 to 46-690 shall be construed as limiting the right to resort to other means of review, redress, or relief provided by law.

**Source:**

Laws 1981, LB 56, § 12.

**46-686.01**

**Withdrawal and transfer of less than 150 acre-feet; injured person; hearing; civil action; appeal; attorney's fees.**

The director shall have jurisdiction over any ground water withdrawal and transfer made under section 46-678.01. Any person using ground water at the time a notice to transfer is filed under such section whose wells thereafter suffer an unanticipated decline in ground water levels may petition the director for a hearing. Such petition shall specifically set forth the cause and extent of the ground water decline as well as the nature and extent of any injury resulting from that decline. If at such hearing the injured party presents evidence showing that the ground water levels declined as a result of such transfer and shows the nature and extent of any resulting injury, the director may issue an order terminating or conditioning the transfer to eliminate any further injury. If the injured party prevails and an order is issued pursuant to this section, the order shall provide that the person filing the notice of transfer shall pay the costs of the department and of the injured party, including reasonable attorney's fees. The injured party may maintain a civil action against the person filing the notice of transfer to recover the costs of a hydrologic evaluation. The order of the director may be appealed to the Court of Appeals.

**Source:**

Laws 1993, LB 789, § 9; Laws 2000, LB 900, § 222.

**46-687**

**Violation; penalty.**

Any person who withdraws or transfers ground water in violation of the Industrial Ground Water Regulatory Act shall be guilty of a Class IV misdemeanor. Each day shall

constitute a separate offense in cases of continued violation.

**Source:**

Laws 1981, LB 56, § 13; Laws 1986, LB 309, § 5.

**46-688**

**Director; rules and regulations.**

The director may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with sections 46-675 to 46-690. The director shall by regulation specify the contents and scope of the hydrologic evaluation required by section 46-678, taking into account the current state of hydrologic knowledge and techniques, and the factors for permit approval listed in section 46-683.

**Source:**

Laws 1981, LB 56, § 14.

**46-689**

**Permitholder; subject to control area regulations.**

Nothing in the Industrial Ground Water Regulatory Act shall be construed to exempt the holder of a permit issued pursuant to section 46-683 from any regulations adopted by a natural resources district pursuant to the Nebraska Ground Water Management and Protection Act for a control area designated before such permit has been granted.

**Source:**

Laws 1981, LB 56, § 15; Laws 1996, LB 108, § 75.

**46-690**

**Act, how cited.**

Sections 46-675 to 46-690 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 46-683.01.

**Source:**

Laws 1981, LB 56, § 16; Laws 1986, LB 309, § 6; Laws 1993, LB 789, § 10.

**46-691**

**Transfer off overlying land; when allowed; objection; procedure; natural resources district; powers and duties; Director of Natural Resources; duties.**

(1) Any person who withdraws ground water for agricultural purposes, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, from aquifers located within the State of Nebraska may transfer the use of the ground water off the overlying land if the ground water is put to a reasonable and beneficial use within the State of Nebraska and is used for an agricultural purpose, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, after transfer, and if such withdrawal, transfer, and use (a) will not significantly adversely affect any other water user, (b) is consistent with all applicable statutes and rules and regulations, and (c) is in the public interest. For purposes of this section, domestic has the same meaning as in section 46-613.

(2) Any affected party may object to the transfer of ground water by filing written objections, specifically stating the grounds for such objection, in the office of the natural resources district containing the land from which the ground water is withdrawn. Upon the filing of such objections or on its own initiative, the natural resources

district shall conduct a preliminary investigation to determine if the withdrawal, transfer, and use of ground water is consistent with the requirements of subsection (1) of this section. Following the preliminary investigation, if the district has reason to believe that the withdrawal, transfer, or use may not comply with any rule or regulation of the district, it may utilize its authority under the Nebraska Ground Water Management and Protection Act to prohibit such withdrawal, transfer, or use. If the district has reason to believe that the withdrawal, transfer, and use is consistent with all rules and regulations of the district but may not comply with one or more other requirements of subsection (1) of this section, the district shall request that the Department of Natural Resources hold a hearing on such transfer.

(3) At the hearing, all interested persons may appear and present testimony. Agencies or political subdivisions of this state and the appropriate natural resources districts shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing. After the hearing, if the Director of Natural Resources finds that the withdrawal, transfer, or use of ground water is contrary to the requirements of subsection (1) of this section, he or she shall issue a cease and desist order prohibiting the withdrawal and transfer.

(4) The director may adopt and promulgate rules and regulations to carry out this section.

**Source:**

Laws 1995, LB 251, § 1; Laws 2000, LB 900, § 223.



**46-691.01**

**Transfer off overlying land for domestic use; limitations; liability.**

Any person other than a public water supplier as defined in section 46-638 may transfer ground water off the overlying land for the purpose of domestic use of ground water required for human needs as it relates to health, fire control, and sanitation if (1) the location and use of the water well and any pipeline or other means of conveyance are authorized by easement or other adequate property interest on all land on which such water well and pipeline or other means of conveyance are located and (2) the capacity of the water well or series of water wells connected together for such purposes does not exceed fifty gallons per minute. Such person may be liable for damages for interference with the use of ground water by another person only if the withdrawal of ground water for such domestic use unreasonably causes harm to another person through the lowering of the water table or by reducing artesian pressure.

**Source:**

Laws 2001, LB 472, § 1.

**46-691.02**

**Transfer off overlying land for domestic use; applicability of section.**

Section 46-691.01 applies to all such transfers and uses of ground water before, on, and after September 1, 2001.

**Source:**

Laws 2001, LB 472, § 2.

**46-692**

**Wells; measuring devices; cost-share assistance.**

(1) For purposes of this section:

(a) Measuring device means any accurate method used to measure total volume of water pumped or diverted annually; and

(b) Well means a water well to be used for other than domestic purposes which is capable of pumping more than fifty gallons per minute and which is located in the alluvial aquifer of the Republican River Basin as determined and delineated on a map provided by the Department of Natural Resources.

(2) It is the intent of the Legislature to appropriate five hundred thousand dollars each year for FY1998-99, FY1999-00, and FY2000-01 for a cost-share program to install measuring devices on wells in the alluvial aquifer of the Republican River Basin and on surface water diversion works from the Republican River and its tributaries. The money shall be appropriated to a separate account within the Nebraska Soil and Water Conservation Fund for cost sharing on the purchase and installation of measuring devices if every natural resources district covering any portion of the alluvial aquifer of the Republican River Basin has established by October 1, 1998, a program requiring the installation of measuring devices on a minimum of ninety percent of active eligible wells by June 1, 2001, and adopts and promulgates rules and regulations within a reasonable time governing the program.

(3) To be eligible for cost-share assistance under this section, a surface water diversion works must have a valid

surface water appropriation and a well must meet the definition of a well in subsection (1) of this section and the measuring device shall be purchased, installed, and operational by June 1, 2001. If eligible for cost sharing under this section, fifty percent of the cost of purchase and installation of the measuring device, up to a maximum state share of six hundred dollars per well or diversion works, may be provided through the cost-share program.

(4) Any owner or operator of a well upon which cost-share funds are expended under this section shall be responsible for reporting water use to the natural resources district in which the well is located in a manner prescribed by the natural resources district. Any owner or operator of a surface water diversion works upon which cost-share funds are expended under this section shall be responsible for reporting water use to the Department of Natural Resources in a manner prescribed by the department.

(5) If the requirements of subsections (2) and (3) of this section have not been met by June 1, 2001, the natural resources district shall remit to the state an amount equal to the cost-share assistance provided to the natural resources district under such subsections. Any owner or operator of a well upon which cost-share funds are expended shall not be responsible for any repayment requirements under this section.

**Source:**

Laws 1998, LB 1161, § 1; Laws 2000, LB 900, § 224.