46-101. Irrigation District Act, how cited; irrigation districts; organization; grant of authority.

(1) Sections 46-101 to 46-1,163 shall be known and may be cited as the Irrigation District Act.

(2) Whenever a majority of the electors owning land or holding leasehold estates, or who are entrymen of government lands, in the manner and to the extent provided in the Irrigation District Act, in any district susceptible to one mode of irrigation from a common source and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the act, and when so organized, each district shall have the power conferred by law upon such irrigation district.

Source: Laws 1895, c. 70, § 1, p. 269; Laws 1903, c. 121, § 1, p. 615; Laws 1905, c. 165, § 1, p. 648; Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 187; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 361; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-101; Laws 2015, LB561, § 1.

Annotations

Irrigation districts organized hereunder are liable for seepage damages without regard to negligence under Article I, section 21, of the Constitution of Nebraska. Halstead v. Farmers Irr. Dist., 200 Neb. 314, 263 N.W.2d 475 (1978).

Provision of public power district law did not apply to irrigation districts. Baum v. County of Scotts Bluff, 172 Neb. 225, 109 N.W.2d 295 (1961).

Where plaintiff's land was never included in district his right to abandon use of irrigation water was not controlled by irrigation district act. Faught v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

An irrigation district organized under the laws of Nebraska and irrigating lands wholly within this state is subject to the irrigation laws of this state regardless of the fact that the district's headgates and diversion works may be in an adjoining state. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

Judgment of board as to matters submitted to it by statute cannot be collaterally attacked, but question whether land is under ditch already constructed of sufficient capacity to water same, is not left to adjudication of board. Sowerwine v. Central Irr. Dist., 85 Neb. 687, 124 N.W. 118 (1909); State v. Several Parcels of Land, 80 Neb. 424, 114 N.W. 283 (1907).

Irrigation district act sustained as constitutional. Irrigation districts are public rather than municipal corporations, and their officers are officers of

the state. Board of Directors of Alfalfa Irr. Dist. v. Collins, 46 Neb. 411, 64 N.W. 1086 (1895).

Irrigation district, organized after county board was induced to believe law was complied with, was de facto corporation and liable on warrants. Draver v. Greenshields & Everest Co., 29 F.2d 552 (8th Cir. 1928).

46-102. Terms, defined.

(1) For purposes of the Irrigation District Act:

(a) Elector means any resident of the State of Nebraska, owning not less than fifteen acres of land, or who is an entryman of government land, within any irrigation district or proposed irrigation district, or any resident of the State of Nebraska holding a leasehold estate in not less than forty acres of state land within such irrigation district for a period of not less than five years from the date at which such elector seeks to exercise the elective franchise; and

(b) Residence means (i) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, or (ii) the place where a person has his or her family domiciled even if he or she does business in another place.

(2) If an elector resides outside of the irrigation district, the elector shall be considered an elector in the division of the irrigation district in which his or her land is situated or, if the elector is the owner of land in more than one division of the irrigation district, the elector shall be considered an elector in the division of the district in which the majority of his or her land is situated.

(3) In the case of land owned or leased by joint tenants, each joint tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per joint tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(4) In the case of land owned or leased by tenants in common, each tenant who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per tenant is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(5) In the case of land owned or leased by a corporation, limited liability company, limited liability partnership, joint venture, or other legal entity which meets the minimum acreage requirements of subsection (1) of this section, the

entity shall designate a shareholder, member, or partner of the entity who is a resident of the State of Nebraska to act as the elector on behalf of the entity. The entity shall identify its elector-designee in writing to the secretary of the board of directors of the irrigation district not less than thirty days prior to an irrigation district election.

(6) In the case of land owned or leased under a life tenancy, each remainderman who is a resident of the State of Nebraska is an elector and entitled to vote if the total acreage owned or leased per remainderman is equal to or exceeds the minimum acreage requirements of subsection (1) of this section.

(7) In the case of land held by a buyer in possession pursuant to a land-purchase contract when the total acreage under the land-purchase contract meets the minimum acreage requirements of subsection (1) of this section and the buyer in possession is a resident of the State of Nebraska and is responsible for paying the real property taxes and the irrigation fees and assessments, the buyer in possession is the elector.

(8) In the case of land owned or leased by a trust which meets the minimum acreage requirements of subsection (1) of this section, the trustee shall designate a trustor, beneficiary, or trustee of the trust who is a resident of the State of Nebraska to act as the elector on behalf of the trust. The trust shall identify its elector-designee in writing to the secretary of the board of directors not less than thirty days prior to an irrigation district election.

(9) In the case of a pending estate of a deceased elector involving land which meets the minimum acreage requirements of subsection (1) of this section, the duly appointed personal representative of the estate who is a resident of the State of Nebraska shall act as the elector on behalf of the estate.

(10) Prior to formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage, the election commissioner or county clerk shall determine the party entitled to vote. In such cases, the determination of the election commissioner or county clerk shall be conclusive. After formation of an irrigation district, if two or more persons claim conflicting rights to vote on the same acreage or any other conflict arises regarding the qualification of an elector, the secretary of the board of directors of the irrigation district shall determine the party entitled to vote. The secretary's determination shall be conclusive. If a claim involves the secretary of the board, the board of election for the affected irrigation district precinct shall determine the party entitled to vote. In such cases, the determination of the board of election shall be conclusive.

Source: Laws 1913, c. 142, § 1, p. 343; R.S.1913, § 3457; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2857; C.S.1929, § 46-101; Laws 1937, c. 103, § 1, p. 362; C.S.Supp.,1941, § 46-101; R.S.1943, § 46-102; Laws 2015, LB561, § 2.

46-103. Irrigation district; how formed; petition.

A petition shall be filed with the county board, signed by a majority of the electors of the proposed district who shall own or hold leasehold estates in a majority of the whole number of acres belonging to or held by the electors of the proposed district, which petition shall set forth and particularly describe the boundaries of the district and shall pray that the same be organized under the provisions of sections 46-101 to 46-128.

Source: Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 558; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 191; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 355; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-103.

Annotations

The boundaries of the irrigation district must be sufficiently definite and certain to identify the land to be irrigated thereby. Baker v. Central Irr. Dist., 93 Neb. 460, 140 N.W. 765 (1913).

46-104. Petition; map; requirements.

The petitioners must accompany the petition with a map of the proposed district. The map shall show the location of the proposed canal or the works by means of which it is intended to irrigate the proposed district, and of all the canals situated within the boundaries of the proposed district; *Provided,* canals that only pass through such lands, and which do not in fact irrigate any of the same, need not be shown. If the water supply be from natural streams, the flow of such stream or streams shall be stated in cubic feet per second. If the water supply for the district is to be gathered by storage reservoirs, the map shall show the location of the proposed reservoirs and shall give their capacity in acre-feet. The map shall be drawn to a scale of two inches to the mile. Cross sections of the proposed canal, and all canals existing within the boundaries of the proposed district and shown on the map, and all proposed dams and embankments, shall be given in sufficient number to show the contemplated mode of construction, and the capacity shall be given in cubic feet per second of the proposed and such existing canals. Such cross sections shall be drawn to a scale of ten feet to the inch, and the map and cross sections shall be certified to by a competent irrigation engineer.

Source: Laws 1909, c. 155, § 1, p. 558; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 191; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 355; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-104.

46-105. Petition; bond; requirements.

The petitioners must accompany the petition with a good and sufficient bond, to be approved by the county board, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all costs in case such organization shall not be effected.

Source: Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 559; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-105.

46-106. Petition; notice of hearing; report by Director of Natural Resources.

The petition for the proposed district shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where the petition is presented, together with a notice stating the time of the meeting at which the petition will be presented. A copy of such petition and all maps and other papers filed with the petition shall be filed in the office of the Department of Natural Resources for at least four weeks before the date set for such hearing. The Director of Natural Resources shall examine such petition, maps, and other papers and, if he or she deems it necessary, shall further examine the proposed district, the works proposed to be purchased, or the location of the works to be constructed. The director shall prepare a report upon the matter in such form as he or she deems advisable and submit the report to the county board at the meeting set for the hearing of the petition.

Source: Laws 1895, c. 70, § 2, p. 270; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 559; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-106; Laws 2000, LB 900, § 86.

46-107. Petition and plan of irrigation; hearing before county board; finding; appeal to district court; procedure; bond.

At the time set for the hearing, the county board may amend such plan of irrigation as it may find advisable, and when it shall have determined to proceed with the matter, the board may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as it may find to be proper, and shall establish and define boundaries; *Provided,* the board shall, upon final hearing, make a specific finding

as to the territory within the proposed district, which is susceptible of irrigation by the same system of works applicable to the other lands in such proposed district, which finding shall be deemed a final order for purposes of review to the district court on appeal. Such appeal shall be taken by filing with the county clerk of the county wherein the land or any part of the land lies, a written notice of the appeal within ten days from the date of such specific finding. The interested party or parties appealing shall give a bond to be approved by the clerk of the district court, conditioned to pay all costs of the proceedings on appeal, should the decision of the county board be sustained, and shall within thirty days file a transcript of the proceedings had upon such specific finding with the clerk of the district court, where the matter shall be tried and determined de novo.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 356; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-107.

Annotations

Order of county board establishing boundaries of districts is conclusive, at least in collateral attack on question whether land will be benefited by irrigation, but otherwise on question if such lands cannot from some source be irrigated. Sowerwine v. Central Irr. District, 85 Neb. 687, 124 N.W. 118 (1909); Andrews v. Lillian Irr. Dist., 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-108. District; lands included; lands irrigated by pumping.

Upon specific findings as to inclusion of any land in the proposed district, to which objection shall have been made, it shall be the duty of the county clerk to notify the objector, his agent or attorney, in writing, of the fact that such specific finding shall have been made, within three days after the finding shall have been made, nor shall any land which will not, in the judgment of the board, be benefited by irrigation by such system be included in such district; *Provided,* any persons whose lands are susceptible of irrigation from the same source, shall, upon application of the owner to the board, be entitled to have such lands included in such district. The person, firm, corporation or municipal corporation whose land, within any proposed district, is provided with water by pumping, whether from well, lake or stream, shall not be included therein except upon written application of the owner or owners of such land; *Provided,* that one thousand gallons per minute of water shall exempt one hundred and sixty acres, and lesser or greater amounts of water shall exempt in proportion.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 616; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p.

192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-108.

Annotations

Land may not be included in an irrigation district that is provided with water by pump for its irrigation. Smith v. Frenchman-Cambridge Irr. Dist., 155 Neb. 270, 51 N.W.2d 376 (1952).

46-109. District; divisions; directors; number; election; terms.

(1) Except as otherwise provided in subsections (2) and (3) of this section, the county board shall make an order dividing the irrigation district into three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and one director shall be elected for each division.

(2) After formation of an irrigation district, in districts comprising over twenty-five thousand acres, the electors thereof may determine by a majority vote to increase the number of directors in any multiple of three up to nine, whereupon the district may be divided into as many divisions as there are directors agreed upon. One-third of the number of directors so elected shall retire each year, and the order of their retirement may be agreed upon by the directors of the district, and successors shall be elected in the manner provided for the election of directors in other districts. The election for the increased number of directors shall be called upon a petition signed by twenty percent of the electors of the district presented to the then board of directors.

(3) After formation of an irrigation district, in districts comprising less than fifteen thousand acres, upon the majority vote of the board of directors, the question of whether the divisions in the irrigation district may be eliminated and the subsequent election of the directors conducted on an at-large basis may be submitted to the electors. The divisions in the district shall be eliminated and the directors elected on an at-large basis only upon the affirmative vote of two-thirds of the electors of the district.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 192; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-109; Laws 1972, LB 1509, § 1; Laws 2015, LB561, § 3.

46-110. District; organization and officers; election; notice; voters; eligibility.

(1) After dividing the proposed irrigation district into divisions, the county board shall give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the Irrigation District Act. Such notice shall describe the boundaries as established and shall designate a name for such proposed district. The notice shall be published for at least three weeks prior to such election in a newspaper of general circulation in the county; and if any portion of such proposed district lies within another county or counties, then the notice shall be published in a newspaper of general circulation within each of such counties. The notice shall include the contents of the ballots to be cast and the date, time, place, and manner of the election, with instructions and deadlines to request and cast a ballot by mail. The ballot shall contain the words Irrigation district ..... Yes, or Irrigation district ..... No, or words equivalent thereto; and also the names of persons to be voted for to fill various elective offices prescribed in the Irrigation District Act.

(2) No person shall be entitled to vote at any election held under the Irrigation District Act unless he or she is qualified as an elector as provided in section 46-102. For any election under the Irrigation District Act, status as an elector shall be established by a record date designated by the election commissioner or county clerk for initial organization of the irrigation district or designated by the secretary of the board of directors for all other elections. The record date shall not be more than thirty days prior to the election. After such record date, a person may be allowed to vote when such person establishes his or her status as an elector to the satisfaction of the election commissioner or county clerk for initial organization of the district or to the satisfaction of the secretary of the board of directors for all other elections. The determination of the election commissioner, county clerk, or secretary of the board of directors, as the case may be, shall be conclusive.

Source: Laws 1895, c. 70, § 2, p. 271; Laws 1903, c. 121, § 1, p. 617; Laws 1909, c. 155, § 1, p. 560; R.S.1913, § 3458; Laws 1917, c. 81, § 1, p. 193; C.S.1922, § 2858; C.S.1929, § 46-102; Laws 1933, c. 87, § 1, p. 357; C.S.Supp.,1941, § 46-102; R.S.1943, § 46-110; Laws 2015, LB561, § 4.

46-111. District; organization and officers; election; procedure; canvass of votes; order of board; filing; election precincts.

(1) Irrigation district elections shall be conducted in accordance with the Irrigation District Act.

(2) The county board shall meet on the second Monday next succeeding any irrigation district election or next succeeding the deadline for casting ballots in an irrigation district election by mail and canvass the votes cast at the election or by mail. If upon such canvass of the election for the formation of the district it appears that at least a majority of all votes cast are Irrigation district ..... Yes, the county

board shall by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style therefor designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices to be duly elected to such offices. The county board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county register of deeds of each county in which any portion of such lands are situated and shall also immediately forward a copy thereof to the clerk of the county board of each of the counties in which any portion of the district may lie; and no county board of any county, including any portion of such district, shall, after the date of the organization of such district, allow another district to be formed including any of the lands of such district, without the consent of the board of directors thereof. From and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices respectively until their successors are elected and qualified. For the purpose of the election for the formation of the district, the county board shall establish one or more election precincts in the proposed district, and define the boundary or boundaries thereof, which may thereafter be changed by the board of directors of such district.

Source: Laws 1895, c. 70, § 3, p. 272; R.S.1913, § 3459; Laws 1919, c. 111, § 1, p. 273; C.S.1922, § 2859; C.S.1929, § 46-103; R.S.1943, § 46-111; Laws 1951, c. 148, § 1, p. 595; Laws 2015, LB561, § 5.

Cross References

Election laws, generally, see Chapter 32.
Voting by mail, absentee voters, see sections 32-938 to 32-951.
Voting by mail, special election procedures, see sections 32-952 to 32-959.

46-112. District officers; election; terms.

The officers elected in compliance with section 46-110, upon qualifying as provided in section 46-113, shall hold their respective offices until the next general election for the irrigation district when their successors shall be elected. At such general election the member of the board of directors having the highest number of votes shall hold his or her respective office for a term of three years, the member of the board of directors having the next highest number of votes shall be declared to be elected for a term of two years, and the member of the board of directors having the least number of votes shall be elected for a term of one year. Each year thereafter, one member of the board of directors shall be elected for a term of three years. Each member of the board of directors shall be nominated and elected by a majority vote of the electors of the division in the irrigation district and shall be an elector of the division for which he or she is to serve as such director. If, after the

election, it appears that any two or more persons have an equal and the highest number of votes for the same office, the county board shall, in the presence of the candidates or their representatives, determine by lot which of the candidates shall be elected.

An automatic recount shall be held in accordance with sections 32-1119 to 32-1122. The regular election of the district shall be held on the first Tuesday in February.

Source: Laws 1905, c. 166, § 1, p. 649; Laws 1913, c. 142, § 2, p. 344; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 170; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 245; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 341; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-112; Laws 1979, LB 421, § 14; Laws 1994, LB 76, § 555; Laws 1995, LB 99, § 12.

46-113. Officers; oath; bond; district as federal fiscal agent; additional bond.

Within ten days after receiving his certificate of election, hereinafter provided for, each director shall take and subscribe the official oath, and each member of the board of directors shall execute an official bond in the sum of one thousand dollars, which bond shall be approved by the county judge of the county where such organization was effected, and after such approval all bonds shall be recorded in the office of the county recorder of such county; *Provided,* that in case any district organized hereunder is appointed fiscal agent of the United States or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any federal reclamation project, such treasurer and each such director shall execute a further additional official bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization; such additional bonds to be approved, recorded, and filed as herein provided for other official bonds, and any additional bonds may be sued upon by the United States or any person injured by the failure of such officer or the district to fully, promptly, and completely perform their respective duties. All official bonds herein provided for shall be in the form prescribed by law for official bonds for county officers except that the obligee named in the bond shall be the district.

Source: Laws 1895, c. 70, § 4, p. 273; Laws 1897, c. 86, § 1, p. 361; Laws 1903, c. 121, § 1, p. 618; Laws 1905, c. 166, § 1, p. 650; Laws 1913, c. 142, § 2, p. 344; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 171; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 245; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 341; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-113.

Cross References

Official bonds, form, filing, recording, and approval, see sections 11-101 to 11-122.

46-114. Directors; assumption of office; tenure.

The director elected shall assume the duties of his office the first Tuesday in March after his election; *Provided,* all incumbents shall hold their respective offices until their successors are elected and qualified, as provided in section 46-112.

Source: Laws 1905, c. 166, § 1, p. 650; Laws 1913, c. 142, § 2, p. 345; R.S.1913, § 3460; Laws 1915, c. 69, § 1, p. 172; C.S.1922, § 2860; Laws 1923, c. 97, § 1, p. 246; C.S.1929, § 46-104; Laws 1935, c. 106, § 1, p. 342; C.S.Supp.,1941, § 46-104; R.S.1943, § 46-114.

46-115. Subsequent elections; manner; notice.

(1) Fifteen days before any election which is not held by mail under the Irrigation District Act subsequent to the organization of the irrigation district, the secretary of the board of directors shall cause notice to be published in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include the date, time, place, and manner of holding the election. The secretary shall also post a general notice of the same in the office of the board, which shall be established and kept at some fixed place to be determined by the board, specifying the polling places, if any, of each precinct of the irrigation district.

(2) Each year the board of directors of an irrigation district shall determine whether to hold the subsequent regular election of the irrigation district by mail. The board of directors may determine to hold any other election by mail under the Irrigation District Act if the decision to hold the election by mail is made at least forty-five days prior to the date set for such election. The secretary of the board of directors shall, at least thirty days prior to the date set for the election, mail to the last-known post office address of each elector a ballot which lists the names of the candidates and gives instructions and the deadlines to return the ballot. The secretary shall publish notice of the election by mail in a newspaper of general circulation in each county in which the irrigation district lies. The notice shall include instructions and the deadlines for requesting a ballot and instructions and the deadlines for casting ballots by mail. The notice shall also include the time and place designated for processing and counting the ballots cast by mail.

(3) Prior to the time for posting the notices, the board of directors shall appoint three residents from each precinct, one clerk and two judges, who shall constitute a board of election for such precinct. If the board of directors fails to appoint a board

of election or the members appointed do not attend at the opening of the polls on the morning of election or at the time and place for processing and counting the ballots cast by mail, as the case may be, the electors of the precinct present at that hour may appoint the board. The board of directors must, in its order appointing the board of election, designate the hour and place in the precinct where the election must be held or the time and place for processing and counting the ballots cast by mail, as the case may be.

Source: Laws 1895, c. 70, § 5, p. 274; R.S.1913, § 3461; C.S.1922, § 2861; C.S.1929, § 46-105; R.S.1943, § 46-115; Laws 1951, c. 148, § 2, p. 596; Laws 2015, LB561, § 6.

Cross References

Voting by mail, absentee voters, see sections 32-938 to 32-951.
Voting by mail, special election procedures, see sections 32-952 to 32-959.

46-116. Election officers; powers and duties; hours of election.

(1) One of the judges shall be chairperson of the board of election and may (a) administer all oaths required in the progress of an election under the Irrigation District Act and (b) appoint judges and clerks, if during the progress of the election or processing and counting ballots cast by mail, as the case may be, any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election or the processing and counting of ballots cast by mail, as the case may be. Before opening the polls or processing and counting ballots cast by mail, each member of the board of election must take and subscribe to an oath to faithfully perform the duties imposed upon him or her by law. Any elector of the precinct may administer and certify such oath.

(2) For elections other than those conducted by mail, the polls must be opened at 8 a.m. on the morning of the election and be kept open until 6 p.m. of the same day, except that in districts embracing twelve thousand acres or less, the polls may, by direction of the board of directors, be opened at 1 p.m. and be kept open until 5:30 p.m. of the same day.

Source: Laws 1895, c. 70, § 6, p. 274; Laws 1913, c. 22, § 1, p. 94; R.S.1913, § 3462; C.S.1922, § 2862; C.S.1929, § 46-106; R.S.1943, § 46-116; Laws 2015, LB561, § 7.

46-117. Elections; return and canvass of vote.

(1) Elections under the Irrigation District Act, together with the ballots cast thereat, shall be certified by the boards of election for the precincts to the board of directors of the irrigation district within three days after the election or the deadline for casting ballots by mail.

(2) No lists, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election and canvass the returns. If at the time of meeting the returns from each precinct in the district in which the polls were opened or ballots were mailed have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all the returns have been received or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for and declaring the result thereof.

Source: Laws 1895, c. 70, § 7, p. 275; R.S.1913, § 3463; C.S.1922, § 2863; C.S.1929, § 46-107; R.S.1943, § 46-117; Laws 2015, LB561, § 8.

46-118. Elections; statement of result entered in board record; certificate of election; vacancies, how filled.

The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such results, which statement must show (1) the whole number of votes cast in the district and in each division of the district; (2) the names of the persons voted for; (3) the office to fill which each person was voted for; (4) the number of votes given in each precinct for each of such persons; and (5) the number of votes given in the district for each of such persons. The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the office of assessor or treasurer, the vacancy shall be filled by appointment by the board of directors. In case of a vacancy in the office of a member of the board of directors, the vacancy shall be filled by appointment by the two remaining members of the board and the district treasurer. An officer appointed as above provided shall hold his office until the next general election of the district and until his successor is elected and qualified.

Source: Laws 1895, c. 70, § 8, p. 275; R.S.1913, § 3464; Laws 1915, c. 67, § 1, p. 167; C.S.1922, § 2864; C.S.1929, § 46-108; R.S.1943, § 46-118.

46-119. Board; organization; officers; bonds; payment of premiums.

On the first Wednesday following their election, the board of directors shall meet and organize as a board, elect a president from their number and appoint a secretary, treasurer, and assessor. All such offices may be held by one person. When the offices of secretary and treasurer are held by one person he shall give a penal bond in the sum of not less than fifty percent of the general fund levy for the current year, but when the offices of secretary and treasurer are held by separate individuals, then the treasurer shall be required to give bond in the sum of not less than twenty percent of the levy for general fund purposes for the current year. The secretary shall be required to give a penal bond in a sum of not less than thirty percent of the general fund levy for the current year, but the board of directors may increase the amount of either or both of such bonds in such an amount as it may think necessary. All of such bonds shall be approved by the directors of the district; *Provided,* that the district shall pay the cost of such bonds.

Source: Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 565; Laws 1911, c. 158, § 1, p. 524; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 246; Laws 1927, c. 142, § 1, p. 385; C.S.1929, § 46-109; R.S.1943, § 46-119.

46-120. Board; general powers and duties.

The board shall have the power and it shall be its duty to manage and conduct the business affairs of the district, make and execute all necessary contracts, employ such agents, officers, and employees as may be required and prescribe their duties, establish equitable bylaws, rules and regulations for the distribution and use of water among the owners of such lands, and generally to perform all such acts as shall be necessary to fully carry out the purposes of sections 46-101 to 46-1,111. The bylaws, rules and regulations shall be printed in convenient form for distribution in the district.

Source: Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 565; Laws 1911, c. 158, § 1, p. 524; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 385; C.S.1929, § 46-109; R.S.1943, § 46-120.

Annotations

Valid contract made with irrigation company may, as between parties or their successors in interest, be enforced, subject to reasonable regulations, provided rights of other water users are not thereby unlawfully curtailed. Clague v. Tri-State Land Co., 84 Neb. 499, 121 N.W. 570 (1909).

Board may purchase or condemn all lands necessary for construction, use, maintenance, repair, and improvement of canals. Andrews v. Lillian Irr. Dist., 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. DeLaet v. Blue Creek Irr. Dist., 23 Neb. App. 106, 868 N.W.2d 483 (2015).

Right to contract for a supply of water was not limited by 1915 act requiring vote of electors in certain cases. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

Contract with irrigation district whereby United States managed and operated system, did not deprive district of right to determine amount of taxes to be levied. New York Trust Co. v. Farmers' Irr. District, 280 F. 785 (8th Cir. 1922).

46-120.01. Board; obligate lands; emergency repairs and replacement; limitation.

The board of directors of an irrigation district shall not obligate the lands of the district except for emergency and unforeseen damage, repairs, and replacement, in excess of five dollars per acre for districts irrigating more than sixty thousand acres per year without submitting the question to the electors of the district as defined in section 46-102. The election on such question shall be conducted in the same manner as other elections held under the provisions of Chapter 46, article 1.

Source: Laws 1967, c. 277, § 1, p. 746.

46-121. Annual meeting of water users; petition.

Upon petition signed by ten percent of the water users of any irrigation district and lodged with the president of such district or with any other officer during the absence or disability of the president for any cause, the president or other officer of such district shall call an annual meeting of the water users of the district upon notice given in the usual manner for elections therein, where reports of the

manager, secretary, and board of directors shall be made and the general policies of the irrigation district shall be discussed.

Source: Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-121.

46-122. Right to water delivery; duty of directors.

(1) It is hereby expressly provided that all water distributed for irrigation purposes shall attach to and follow the tract of land to which it is applied unless a change of location has been approved by the board of directors pursuant to sections 46-2,127 to 46-2,129 or by the Department of Natural Resources pursuant to section 46-294 or sections 46-2,122 to 46-2,126.

(2) The board of directors may by the adoption of appropriate bylaws provide for the suspension of water delivery to any land in such district upon which the irrigation taxes levied and assessed thereon shall remain due and unpaid for two years. It shall be the duty of the directors to make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and when necessary the board shall exercise its right of eminent domain to procure right-of-way for the laterals and shall make such rules in regard to the payment for such right-of-way as may be just and equitable.

(3) In times of reduced water supply, when the volume of water is not adequate to be beneficially used when equitably apportioned to all landowners in the district, the board may, after providing notice to landowners in a portion of the district and upon receiving no objections from the majority of such landowners, elect not to deliver water to that portion of the district. Such election shall not subject the district to liability under section 46-160 and shall not affect the rights of landowners in that portion of the district to water deliveries in the future. Any election to not deliver water to a portion of the district shall be made on a year-to-year basis, not to exceed ten years, and such election shall not subject any landowner to adjudication of his or her water right under section 46-229. The board may adjust the tolls or charges made to landowners within the district to reflect the decrease in supply to those landowners in the portion of the district not receiving water pursuant to such election by the board.

Source: Laws 1895, c. 70, § 9, p. 276; Laws 1909, c. 156, § 1, p. 566; Laws 1911, c. 158, § 1, p. 525; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 172; Laws 1917, c. 82, § 1, p. 194; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 247; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-122; Laws 1983, LB 21, § 1; Laws 1995, LB 99, § 13; Laws 2000, LB 900, § 87; Laws 2003, LB 619, § 3.

Annotations

By this section the Legislature intended that subirrigated lands having no use for water should not be charged with operating expense. Morrow v. Farmers Irr. Dist., 117 Neb. 424, 220 N.W. 680 (1928).

Provision of amendatory act of 1923 authorizing directors to impose burden upon landowners of constructing and maintaining laterals, etc., was unconstitutional. State ex rel. Campbell v. Gering Irr. Dist., 114 Neb. 329, 207 N.W. 525 (1926).

Mandamus is proper to compel district directors to provide landowners just share of water and supervise distribution. State ex rel. Clarke v. Gering Irr. Dist., 109 Neb. 642, 192 N.W. 212 (1923).

Landowners' causes of action against an irrigation district, seeking declaratory, injunctive, and mandamus relief to establish the district's obligations with respect to pipeline maintenance and delivery of water to lands along the pipeline, accrued when the landowners became members of the district, despite an argument that the district had a continuing obligation under the statute to maintain a means of delivery of water to the landowners' tracts; the landowners' causes of action were all based on the contention that the district had an obligation to maintain the pipeline and that the district had that obligation since inclusion of the landowners' lands into the district at the time the landowners became members of the district, and the landowners did not allege that any policies or obligations of the district had changed since that time. DeLaet v. Blue Creek Irr. Dist., 23 Neb. App. 106, 868 N.W.2d 483 (2015).

All appropriations for irrigation purposes since 1895 are inseparably appurtenant to specific land. United States v. Tilley, 124 F.2d 850 (8th Cir. 1941).

46-123. Right of eminent domain in others; preserved.

Sections 46-119 to 46-122 shall not be construed to deprive any person, persons, company or corporation entitled thereto, to exercise the right of eminent domain.

Source: Laws 1909, c. 156, § 1, p. 566; Laws 1911, c. 158, § 1, p. 526; R.S.1913, § 3465; Laws 1915, c. 69, § 2, p. 173; Laws 1917, c. 82, § 1, p. 195; C.S.1922, § 2865; Laws 1923, c. 97, § 2, p. 248; Laws 1927, c. 142, § 1, p. 386; C.S.1929, § 46-109; R.S.1943, § 46-123.

Cross References

For eminent domain proceedings, see sections 76-701 to 76-724.

46-124. Board of directors; meetings; quorum; open records.

The board of directors shall hold regular meetings in its office each month and such special meetings as may be required for the proper transaction of business. All special meetings shall be ordered by the president of the board. The order must be entered of record and notice thereof must be given to each member. The order must specify the business to be transacted, and no other than that specified shall be transacted at such special meeting. All meetings of the board must be publicized. Two members shall constitute a quorum for the transaction of business, and upon all questions requiring a vote there shall be a concurrence of at least two members. All records of the board must be open to the inspection of any elector during business hours, and the board shall cause to be published at the close of each regular or special meeting a brief statement of the proceedings thereof in one newspaper in general circulation in the district, if the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

Source: Laws 1895, c. 70, § 10, p. 276; Laws 1903, c. 121, § 1, p. 618; Laws 1905, c. 166, § 1, p. 650; Laws 1909, c. 157, § 1, p. 567; Laws 1911, c. 159, § 1, p. 527; Laws 1913, c. 226, § 1, p. 656; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 173; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-124; Laws 1975, LB 578, § 1.

Cross References

Legal rate for advertising notices, see section 33-141.

46-124.01. District; budget; public inspection.

An irrigation district organized under sections 46-101 to 46-128 shall maintain a current copy of its annual budget at its principal office for public inspection during business hours.

Source: Laws 1989, LB 502, § 2.

46-125. Surveys; acquisition of property; eminent domain; procedure; construction; powers of board.

The board, its agents, and employees shall have the right to enter upon any land within the district to make surveys, and may locate the line of any canal or canals and the necessary branches of such location. The board shall have the right to acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, canals, power plants of any kind or nature, and lands for reservoirs for the storage of water and all necessary appurtenances. The board shall have the right to acquire by purchase or condemnation any irrigation works, power plant, ditches, canals, or reservoirs already constructed for the use of the district. The

procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. In case of purchase, the bonds of the district hereinafter provided for may be used at their par value in payment. The board may also construct the necessary dams, reservoirs, and works for the collection of water for the district, and do any lawful act necessary to be done that sufficient water may be furnished to each landowner in the district for irrigation purposes.

Source: Laws 1895, c. 70, § 10, p. 277; Laws 1903, c. 121, § 1, p. 619; Laws 1905, c. 166, § 1, p. 651; Laws 1909, c. 157, § 1, p. 567; Laws 1911, c. 159, § 1, p. 528; Laws 1913, c. 226, § 1, p. 657; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 174; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-125; Laws 1951, c. 101, § 89, p. 485.

Cross References

For construction requirements and exclusions, see Safety of Dams and Reservoirs Act, see section 46-1601 et seq.

Annotations

Irrigation district may acquire fee simple title under eminent domain. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

Mandamus is proper to compel district directors to provide landowners just share of water and supervise distribution. State ex rel. Clarke v. Gering Irr. Dist., 109 Neb. 642, 192 N.W. 212 (1923).

Board may acquire by purchase or condemnation all lands necessary for construction, use, maintenance, repair and improvement of its canals. Andrews v. Lillian Irr. Dist., 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-126. Contracts with United States authorized; bonds; issuance; tax levy.

The board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal Reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety percent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on such bonds to be provided for by assessment and levy as in the case of other bonds of the district, and

regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy, assessment, or toll provided for in sections 46-134, 46-135, 46-152, and 46-1,137, an amount sufficient to meet each year all payments accruing under the terms of any such contract. If contract is made with the United States as in this section provided and bonds are not to be deposited with the United States in connection with such contract, bonds need not be issued, or, if required to raise funds in addition to the amount of such contract, shall be issued only in the amount needed in addition thereto.

Source: Laws 1915, c. 69, § 3, p. 174; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-126; Laws 1967, c. 280, § 1, p. 757.

Annotations

The power of an irrigation district to enter into a contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water was not limited by a requirement that the contract be approved by the voters of the district. Twin Loups Reclamation & Irr. District v. Blessing, 202 Neb. 513, 276 N.W.2d 185 (1979).

Board of directors of district may contract with the United States for delivery and distribution of water under the Federal Reclamation Act. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Purpose of law is to authorize irrigation districts to contract with the United States for the construction, maintenance, and operation of works to carry to and distribute water on lands of district. Livanis v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931).

Board of directors was authorized to contract with the United States for a supply of water without authorization by the voters of the district. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

46-127. District as fiscal agent of the United States; authority.

The board may accept on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of money for and on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the board shall have full power to do any and all things required by the federal statutes in connection therewith, and all things required by the rules and regulations established by any department of the federal government in regard thereto.

Source: Laws 1915, c. 69, § 3, p. 175; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-127.

46-128. Irrigation; declared a public use.

The use of all water required for the irrigation of lands of any district formed under the provisions of sections 46-101 to 46-128, together with canals and ditches already constructed, the rights-of-way for canals and ditches, sites for reservoirs and pumping plants, and all other property required in fully carrying out the provisions of sections 46-101 to 46-1,111, is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

Source: Laws 1895, c. 70, § 10, p. 277; Laws 1903, c. 121, § 1, p. 619; Laws 1905, c. 166, § 1, p. 651; Laws 1909, c. 157, § 1, p. 568; Laws 1911, c. 159, § 1, p. 528; Laws 1913, c. 226, § 1, p. 657; R.S.1913, § 3466; Laws 1915, c. 69, § 3, p. 175; C.S.1922, § 2866; C.S.1929, § 46-110; R.S.1943, § 46-128.

Annotations

This section does no more than provide that land necessarily taken to benefit an irrigation district is taken for a public use, and whether the use for which property is taken is public or private in nature is a judicial question, not a legislative one. Chimney Rock Irr. Dist. v. Fawcus Springs Irr. Dist., 218 Neb. 777, 359 N.W.2d 100 (1984).

46-129. District property; title; conveyance in trust; procedure; election.

The legal title to all property acquired under the provisions of sections 46-101 to 46-1,111, or acquired through purchase at tax sale foreclosure, shall immediately and by operation of law vest in such irrigation district in its corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in said sections. The board is hereby authorized and empowered to hold, use and acquire, manage, occupy and possess such property, and may convey the same, in whole or in part, to the United States, in trust, or to any trustee, for any period not exceeding thirty years, when authorized to do so by the affirmative vote of a majority of the qualified electors voting on such proposition at any general or special election held in such district. Notice of such election shall be given by posting notice thereof in three public places in each of the election precincts in the district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors is kept, once each week for three successive weeks. Such notice shall specify the time and place of holding the election and shall contain a brief summary of the proposition involving the proposed conveyance. Such election

shall be held and the result thereof determined and declared in conformity with the provisions of law governing the election of officers in such district, as nearly as may be practicable. No informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. Where such conveyance is made pursuant to the terms and provisions of any contract entered into by the district, upon full compliance with the terms and provisions of such contract by the district the title to such property shall revert to the district; *Provided, however,* that the board of directors of any irrigation district may authorize the sale and conveyance of any property acquired through purchase at a tax foreclosure sale, to any other person, firm or corporation, by a resolution duly adopted by the board of directors of such district; *and provided further,* that where the property has been purchased by such district at a tax foreclosure sale, the consideration, for the sale and conveyance of such property by the district, shall not be less than the amount bid for it by such district at the tax foreclosure sale.

Source: Laws 1895, c. 70, § 11, p. 278; R.S.1913, § 3467; Laws 1917, c. 83, § 1, p. 196; C.S.1922, § 2867; C.S.1929, § 46-111; Laws 1937, c. 103, § 2, p. 362; C.S.Supp.,1941, § 46-111; Laws 1943, c. 110, § 1, p. 388; R.S.1943, § 46-129.

Cross References

Tax foreclosure sale, see Chapter 77, article 19.

Annotations

Notice of election by publication and posting was sufficient. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Landowner by adverse use of drainage ditch discharging water into irrigation canal for more than statutory period of ten years, may acquire from irrigation district an easement for that purpose. Central Irr. Dist. v. Gering Irr. Dist., 122 Neb. 199, 240 N.W. 289 (1932).

Contract with irrigation district, whereby United States managed and operated system, did not deprive district of right to determine amount of taxes to be levied. Operation was not exercise of state sovereignty. New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922).

46-130. Board of directors; acquisition of property; corporate powers.

The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of sections 46-101 to 46-1,111, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings,

suits at law or in equity, necessary or proper in order to fully carry out the provisions of said sections, or to enforce, maintain, protect or preserve any and all rights, privileges, and immunities created by said sections, or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the board may sue, appear and defend, in person or by attorneys, and in the name of such irrigation district.

Source: Laws 1895, c. 70, § 12, p. 278; R.S.1913, § 3468; C.S.1922, § 2868; C.S.1929, § 46-112; R.S.1943, § 46-130.

Annotations

Persons dealing with officers and agents of public corporation are required to act with reference to authority, limitations, and restrictions imposed by legislation authorizing organization and government thereof. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

46-131. District annual assessment; how prepared.

The assessor must, between March 1 and the third Monday in May in each year, assess all the real property in the district to the persons who own, claim, or have the possession or control thereof, at its full cash value, less the value of all improvements thereon. He shall also assess all leasehold estates in all lands belonging to the State of Nebraska, which are leased to any person, association, or corporation, to the person holding such lease, at the full cash value of such leasehold estate, less the value of all improvements thereon. He must prepare an assessment book with appropriate headings, in which must be listed all such property within the district, in which must be specified in separate columns under the appropriate heading (1) the name of the person to whom the property is assessed; and if the name is not known to the assessor, the property must be assessed to unknown owners; (2) land by township, range, section, or fractional section, and when such land is not a congressional division or subdivision, by metes or bounds or other description sufficient to identify it, giving an estimate of the number of acres, locality, and improvements thereon; (3) city and town lots, naming the city or town and the number and block according to the system of numbering in such city or town and the improvements thereon; (4) the cash value of real estate other than city or town lots; (5) the cash value of improvements on such real estate; (6) the cash value of city and town lots; (7) the cash value of improvements on real estate, assessed to persons other than the owners of such real estate; (8) the full value of all leasehold estates of persons leasing state lands; (9) the cash value of the improvements on state lands held under lease; (10) the full value of all property assessed; (11) the total value of all property after the equalization of the board of directors; and (12) such other things as the board of

directors may require from him; *Provided,* that city and town lots within any irrigation district, which are occupied and used exclusively for other than agricultural purposes, shall not be assessed or taxed by such irrigation district during the time such lots are so occupied and used. The assessment of any property in the name of the wrong person shall in no way invalidate the assessment thereof.

Source: Laws 1895, c. 70, § 16, p. 281; Laws 1897, c. 86, § 2, p. 361; Laws 1903, c. 121, § 1, p. 619; R.S.1913, § 3472; Laws 1917, c. 80, § 1, p. 188; C.S.1922, § 2382; C.S.1929, § 46-117; R.S.1943, § 46-131; Laws 1953, c. 156, § 1, p. 493; Laws 1957, c. 196, § 1, p. 693.

Annotations

Amendment in 1917 of this section, exempting from taxation city lots occupied and used for other than agricultural purposes was constitutional, but such lots were not relieved from liability for bonds previously issued. Erickson v. Nine Mile Irr. Dist., 109 Neb. 189, 190 N.W. 573 (1922).

In action by landowner to cancel tax, presumption is that proceedings were regular hereunder. Wight v. McGuigan, 94 Neb. 358, 143 N.W. 232 (1913).

46-132. Assessments; equalization; notice.

On or before May 15 in each year the assessor must complete his assessment book and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than ten or more than twenty days from the first publication of the notice; and in the meantime the assessment books must remain in the office of the secretary for the inspection of all persons interested.

Source: Laws 1895, c. 70, § 17, p. 282; Laws 1897, c. 86, § 3, p. 362; R.S.1913, § 3473; C.S.1922, § 2873; C.S.1929, § 46-118; R.S.1943, § 46-132.

46-133. Assessments; equalization; hearings; valuation; appeal; procedure.

Upon the day specified in the notice required by section 46-132 for the meeting of the board of directors which is hereby constituted a board of equalization for that purpose, it shall meet and continue in session from day to day, as long as may be necessary, not to exceed six days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before it; and the

board may change the valuation as may be just, but shall not raise the valuation of any land as assessed by the assessor without giving the owner of such land due notice to appear and show cause why such valuation should not be raised. The secretary of the board shall be present during its session and note the changes made in the valuation of property, and in the names of the persons whose property is assessed; and within ten days after the close of the session he or she shall have the total values, as finally equalized by the board, extended into columns and added. Appeals may be taken from any action of the irrigation board of equalization to the district court.

Source: Laws 1895, c. 70, § 18, p. 282; R.S.1913, § 3474; C.S.1922, § 2874; Laws 1929, c. 134, § 1, p. 487; C.S.1929, § 46-119; Laws 1931, c. 90, § 1, p. 251; C.S.Supp.,1941, § 46-119; R.S.1943, § 46-133; Laws 1995, LB 490, § 25; Laws 1997, LB 397, § 3.

46-134. Bond and United States contract fund; assessment; schedule of increased assessments.

The board shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 46-126 provided, which when collected, shall be called the bond and United States contract fund of ..... Irrigation District. At the expiration of ten years after the issuing of the bonds the board must increase such assessment for the ensuing years in a percentage of the whole amount of bonds outstanding, as follows: For the eleventh year, five percent; for the twelfth year, six percent; for the thirteenth year, seven percent; for the fourteenth year, eight percent; for the fifteenth year, nine percent; for the sixteenth year, ten percent; for the seventeenth year, eleven percent; for the eighteenth year, thirteen percent; for the nineteenth year, fifteen percent; and for the twentieth year, a percentage sufficient to pay off such bonds.

Source: Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 331; Laws 1901, c. 77, § 1, p. 467; Laws 1913, c. 142, § 3, p. 345; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 168; Laws 1915, c. 69, § 5, p. 175; Laws 1919, c. 110, § 1, p. 269; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-134.

Annotations

Where no obligation to the United States Government exists and annual interest is not involved, there is no authority to issue bonds under this section. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

Directors are authorized to levy taxes upon all real estate within the district for the purpose of creating a fund to pay for upkeep of ditch and incidental expense of the district. Wyman v. Searle, 88 Neb. 26, 128 N.W. 801 (1910).

46-135. General fund; assessment; records and tax lists.

If the board deems it necessary, it may at the same time levy an assessment for the care and maintenance of irrigation works already constructed and for the payment of salaries of officers and general expenses, which assessment shall be called the general fund of ..... Irrigation District. The secretary of the board must compute and enter in separate columns of the assessment books the respective sums of dollars and cents in each fund to be paid on the property therein enumerated, and shall certify to the county clerk of the county in which such land is located the amount of taxes in each fund levied upon each tract of land by the board. The county clerk shall enter the amount of each fund in separate columns of the tax list of his county. All tax lists when delivered to the county treasurer shall contain all taxes in each fund levied on each tract of land by the board of such irrigation district.

Source: Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 322; Laws 1901, c. 77, § 1, p. 468; Laws 1913, c. 142, § 3, p. 345; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 168; Laws 1915, c. 69, § 5, p. 176; Laws 1919, c. 110, § 1, p. 270; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-135.

Annotations

Record failed to disclose that an assessment was made for the purposes designated in this section. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-136. District taxes; collection; payment; medium; fee.

The general fund tax mentioned in section 46-135, shall be collected by the county treasurer at the same time, and in the same manner as all other taxes are collected in this state; *Provided, however,* such county treasurer shall receive in payment of the general fund tax, above mentioned, for the year in which such tax is levied, warrants drawn against such general fund, the same as so much lawful money of the United States, if such warrants do not exceed the amount of general fund tax which the person tendering the same owes; and he shall accept payment of the district bond fund tax and issue receipt therefor whenever the same may be tendered, and shall receive in payment of the district bond fund tax, for the year in

which such taxes were levied, interest coupons past due issued by such irrigation district the same as so much lawful money of the United States, if such interest coupons do not exceed the amount of the district bond fund which the person tendering the same owes. The county treasurer shall be entitled to a collection fee of one-half of one percent on all money collected, to be deducted from the bond interest fund of the district.

Source: Laws 1897, c. 86, § 4, p. 362; Laws 1899, c. 78, § 1, p. 332; Laws 1901, c. 77, § 1, p. 468; Laws 1913, c. 142, § 3, p. 346; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 176; Laws 1919, c. 110, § 1, p. 270; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-136.

Annotations

This section provides for the collection of taxes for the general fund of the irrigation district in the same manner as other taxes are collected. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-137. District taxes; disposition.

All such taxes collected or received for the district bond and general funds, either in money, interest coupons or warrants on the general fund, by the treasurer of any county other than the one in which the district was originally organized shall be remitted by him to the treasurer of the county in which the district was originally organized; such remittance to be made on the fifth day of every month. All such taxes collected or received for the general fund of a district by the treasurer of the county in which the district was originally organized shall be paid to the treasurer of such irrigation district, upon an order signed by the president and secretary of such district, and all warrants received in payment of general fund taxes may be turned over, as so much money, to the district treasurer on such orders.

Source: Laws 1897, c. 86, § 4, p. 363; Laws 1899, c. 78, § 1, p. 333; Laws 1901, c. 77, § 1, p. 469; Laws 1913, c. 142, § 3, p. 347; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 177; Laws 1919, c. 110, § 1, p. 271; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-137.

Annotations

This section provides for the disposition of the taxes raised in an irrigation district. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-138. Failure of district board to levy taxes; county board to act.

In case of the neglect or refusal of a board of directors of any irrigation district to cause an assessment and levy to be made as provided in sections 46-134 and 46-135, for the payment of principal and interest of outstanding bonds, and for all payments due or to become due the ensuing year to the United States, under any contract between the district and the United States, accompanying which the bonds of the district have not been deposited with the United States as in section 46-126 provided, and for expenses incurred in organizing such district, then the assessment of property made for county purposes, after the same shall have been adjusted by the county equalization board, shall be adopted and shall be the basis and assessment for the district, and the county board of the county in which the district was originally organized shall cause an assessment roll of such district to be prepared, and shall make the levy for the payment of the principal and interest on bonds and to meet all payments due or to become due the ensuing year to the United States under any contract between the district and the United States, accompanying which bonds of the district have been deposited with the United States as in section 46-126 provided, and expenses for organizing such district in the same manner and with like effect as if the same had been made by the board of directors; and the expense incident thereto shall be borne by such district. All such taxes collected and paid to the county treasurer shall be received by such treasurer in his official capacity, and he shall be responsible for the safekeeping, disbursement and payment thereof, the same as for other money collected by him as such treasurer. When requested in writing to do so by the secretary of any irrigation district, the county treasurer shall make weekly reports of all such irrigation district taxes collected by him for the district from which the request came, giving the amount collected for each fund, the interest collected and the legal description of the land on which such taxes were collected.

Source: Laws 1895, c. 70, § 19, p. 283; Laws 1897, c. 86, § 4, p. 363; Laws 1899, c. 78, § 1, p. 333; Laws 1901, c. 77, § 1, p. 469; Laws 1913, c. 142, § 3, p. 347; R.S.1913, § 3475; Laws 1915, c. 68, § 1, p. 169; Laws 1915, c. 69, § 5, p. 177; Laws 1919, c. 110, § 1, p. 271; C.S.1922, § 2875; C.S.1929, § 46-120; R.S.1943, § 46-138.

Annotations

This section does not give the county board of equalization authority to levy taxes for the payment of a judgment obtained against an irrigation district. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

46-139. Warrants; issuance by district; limit; past-due obligations; special levy; unused balances; disposition.

No irrigation district shall in any year issue warrants in excess of ninety percent of the levy for such year, except that in case of due and outstanding obligations against the district contracted prior to the year in which any levy is made, the district board shall have the power to make an additional levy not to exceed one and four-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district to create a special fund for the payment of past-due obligations. If the claims or obligations against any fund for any year are fully paid, the board shall have the power to transfer any unused balance to any fund for any preceding or succeeding year.

Source: Laws 1905, c. 166, § 1, p. 651; R.S.1913, § 3476; C.S.1922, § 2876; C.S.1929, § 46-121; R.S.1943, § 46-139; Laws 1953, c. 287, § 63, p. 967; Laws 1979, LB 187, § 168; Laws 1992, LB 719A, § 148.

Annotations

Warrants issued by officers of irrigation district prior to levy, when no funds exist, are void. Elliott v. Calamus Irr. Dist., 120 Neb. 714, 235 N.W. 95 (1931).

46-140. Assessments; land belonging to state; when due; lien; preference; enforcement.

All assessments on real property and assessments on leasehold estates on land belonging to the state shall be due and payable on January 1 next following the date of assessment thereof, and commencing on January 1 the same shall be a lien against the property assessed and shall draw interest at the rate of nine percent per annum from May 1 of the year following such assessment; and such lien is not removed until the assessments are paid or the property sold for the payment thereof. It shall be the duty of the county and township treasurers to collect such assessment in the same manner as other taxes against real estate are collected, and the revenue laws of the state for the collection and sale of land for such taxes are hereby made applicable to the collection of assessments under sections 46-131, 46-134, and 46-135, and taxes so collected shall constitute a sinking fund to be used for the payment of the bonds and the interest thereon. The leasehold estate of any lessee of lands belonging to the state may be sold for taxes assessed as herein provided against such leasehold estate in the same manner and form as provided by the revenue laws of this state for the collection and sale of lands for taxes; *Provided,* the lien for the bonds of any series shall be a preferred lien to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, shall be a preferred lien to that of

any issue of bonds or any series of any issue subsequent to the date of such contract.

Source: Laws 1895, c. 70, § 20, p. 284; Laws 1897, c. 86, § 5, p. 363; Laws 1903, c. 121, § 1, p. 620; R.S.1913, § 3477; Laws 1915, c. 69, § 6, p. 178; C.S.1922, § 2877; C.S.1929, § 46-122; Laws 1933, c. 136, § 28, p. 540; C.S.Supp.,1941, § 46-122; R.S.1943, § 46-140; Laws 1949, c. 157, § 1, p. 398.

Annotations

Special annual assessments regularly levied for the payment of irrigation bonds become a lien against real estate in said district on and after October 1 in the year in which they are made. County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

Irrigation district's lien by virtue of tax sale certificates, issued in its favor by county treasurer but not delivered or paid for, is not destroyed by failure to enforce within statutory period, and is entitled to priority over earlier mortgage. Flansburg v. Shumway, 117 Neb. 125, 219 N.W. 956 (1928).

Where irrigation district assessments were given priority over mortgage in foreclosure suit, parties stipulating district's organization was legal and assessment duly made could not afterwards challenge district's right to levy assessments. Flansburg v. Shumway, 117 Neb. 125, 219 N.W. 956 (1928).

46-141. Assessment; payment under protest; refund.

When any person against whose property such assessments have been made shall pay such assessment under protest as provided by the general revenue law of this state, the board of directors of any irrigation district organized under the provisions of sections 46-101 to 46-128 may pass upon and make orders disposing of money paid under protest to the county treasurer in the county or counties in which such lands are situated in the same form and manner as provided by law, and such proceedings shall be had as in such revenue law provided insofar as the same applies; *Provided, however,* no taxes or assessments shall be ordered refunded unless the person complaining shall file in the office of the secretary of such district a copy of his tax receipt, showing the same paid under protest, together with a sworn affidavit in writing showing one of the following reasons why such tax or assessments should be refunded: (1) That the land upon which such tax or assessment was levied is not within the boundaries of the district for which the lands were taxed, or assessed; (2) that the title to the lands is in the State of Nebraska; (3) that the lands could not be benefited by irrigation either by reason of subirrigation or by reason of being city and town lots and occupied and used exclusively for other than agricultural or grazing purposes, or that the lands are

nonsusceptible of irrigation from the canal of the district; *Provided,* that where unentered and unpatented lands, the title to which is in the United States, are included in any irrigation district pursuant to the provisions of the Act of Congress, entitled An Act to promote the reclamation of arid lands, approved August 11, 1916, and acts amendatory thereto, shall not be subject to the provisions of this section, but shall be subject to taxation as provided by such Acts of Congress.

Source: Laws 1903, c. 121, § 1, p. 621; R.S.1913, § 3478; Laws 1917, c. 80, § 1, p. 189; C.S.1922, § 2878; C.S.1929, § 46-123; R.S.1943, § 46-141.

Annotations

Compliance with this section is required in order to recover back taxes paid on nonirrigable land. Birdwood Irr. Dist. v. Brodbeck, 148 Neb. 824, 29 N.W.2d 621 (1947).

Subirrigated lands in district, not benefited by irrigation, are not taxable. Morrow v. Farmers Irr. Dist., 117 Neb. 424, 220 N.W. 680 (1928).

Amendment in 1917 of this section, exempting city lots, etc., from taxation, was constitutional. Erickson v. Nine Mile Irr. Dist., 109 Neb. 189, 190 N.W. 573 (1922).

46-142. District bonds; payment by county treasurer; redemption; investment of funds.

Upon the presentation of the coupons and bonds due at the office of the treasurer of the county in which the district was originally organized, it shall be his or her duty to pay the same from the bond funds. Whenever, after ten years from the issuance of the bonds, the sinking fund shall amount to the sum of ten thousand dollars, the board of directors may direct the county treasurer in which the district was originally organized to pay such an amount of the bonds not due as the money of the fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least three weeks in some daily newspaper in each of the cities hereinbefore named, and in any newspaper which the board may deem advisable, for sealed proposals for the redemption of the bonds. Such proposals shall be opened by the board in open meeting, at the time named in the notice, and the lowest bid for the bonds must be accepted. No bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of the bonds shall desire to have the same redeemed, as herein provided, the money shall be invested by the treasurer of the county in which the district was originally organized, under the direction of the board of directors of the district, in United States bonds, or the

bonds or warrants of the state, which shall be kept in the bond fund, and may be used to redeem the district bonds whenever the holders thereof may desire.

Source: Laws 1895, c. 70, § 21, p. 284; Laws 1901, c. 77, § 2, p. 470; Laws 1903, c. 122, § 2, p. 624; R.S.1913, § 3479; C.S.1922, § 2879; Laws 1925, c. 131, § 1, p. 345; C.S.1929, § 46-124; R.S.1943, § 46-142; Laws 1996, LB 299, § 22.

46-143. District bonds; payment by district treasurer; additional bonds required.

The board of directors may at any time elect to have the bonds and coupons of the district paid by the district treasurer instead of the county treasurer, and in that case, they shall, after passing a resolution to that effect, furnish the county treasurer with a copy of the resolution, duly certified by the district secretary. Upon receiving the resolution, it shall be the duty of the county treasurer to pay to the district treasurer from time to time, upon order of the board of directors of the district, any money in his hands belonging to the bond fund of the district, whether collected from principal or interest of such bonds, and upon such payment, the county treasurer shall be relieved from any further liability in regard to funds so paid over. The district treasurer, in such cases, shall give additional bond in double the amount of money which the board of directors estimate will come into his possession under sections 46-142 and 46-143 in any semiannual period. Upon the giving of such bond, it shall be the duty of the district treasurer to pay the bonds and coupons when due, and he shall have all the duties and rights given to the county treasurer by said sections in regard to payment of bonds and coupons, and investment funds.

Source: Laws 1925, c. 131, § 1, p. 346; C.S.1929, § 46-124; R.S.1943, § 46-143.

Annotations

It is the duty of the treasurer of the district, when funds are available, to pay bonds and coupons then due upon presentment, irrespective of date of registration. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-144. Special assessment; warrants; election; notice; rate of assessment; disposition of proceeds.

The board of directors may at any time, when in its judgment it may be advisable, call a special election and submit to the qualified electors of the district

the question whether or not a special assessment shall be levied for the purpose of raising money to be applied for any of the purposes provided for in sections 46-101 to 46-1,111, including the purpose of creating a construction fund to be financed by the issuance of warrants, the principal of which warrants shall be payable, in not to exceed twenty years, with interest paid annually thereon not to exceed ten percent per annum. Such warrants may not be issued in the aggregate to exceed ninety percent of the fund anticipated to be raised over the years by special assessment authorized in this section. Such election shall be called upon the notice prescribed and shall be held and the result thereof determined and declared in all respects in conformity with such sections. The notice of such election shall specify the aggregate amount of money proposed to be raised, the purpose for which it is intended to be raised, the number of years in which such special assessment will be made, and whether or not warrants as authorized in this section will be to finance the construction fund so that contracts may be let and the project completed before collection of the tax. The ballots shall contain the words Assessment ..... Yes, or Assessment ..... No. If a majority of the votes are Assessment ..... Yes, the board shall at the time of the annual levy thereunder levy an assessment sufficient to raise the amount paid. The rate of assessment shall be ascertained by deducting fifteen percent for anticipated delinquencies from the aggregate taxable value of the property in the district as it appears on the assessment roll for the current year and then dividing the sum by the remainder of such aggregate taxable value. The assessment so levied and computed shall be entered on the assessment roll and upon the tax list by the county clerk and collected at the same time and in the same manner as other assessments, and all revenue laws of this state for the collection and sale of land for taxes are hereby made applicable to the assessment provided for in this section. When collected such assessment shall be paid over by the county treasurer to the district treasurer for the purpose specified in the notice in such special election.

Source: Laws 1895, c. 70, § 28, p. 289; Laws 1897, c. 86, § 8, p. 365; R.S.1913, § 3486; C.S.1922, § 2886; C.S.1929, § 46-131; R.S.1943, § 46-144; Laws 1972, LB 1509, § 2; Laws 1979, LB 187, § 169; Laws 1981, LB 146, § 1; Laws 1992, LB 719A, § 149.

Cross References

Collection of taxes, see Chapter 77, article 17.
Delinquent taxes, sale of land, see Chapter 77, article 18.

46-145. Construction of works; notice; bond of contractor; bids; letting.

After adopting a plan of such canal or canals, storage reservoirs, and works, the board of directors shall give notice, by publication thereof not less than twenty days in one newspaper published in each of the counties composing the district,

provided a newspaper is published therein, and in such other newspapers as it may deem advisable, calling for bids for the construction of the work or any portion thereof, and if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening the proposals, which at the time and place shall be opened in public. As soon as convenient thereafter the board shall let such work, either in part or as a whole, to the lowest responsible bidder, or it may reject any or all bids and readvertise for proposals, or may proceed to construct the work under its own superintendence with the labor of the residents of the district. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board payable to such district for its use, to an amount equal to twenty-five percent of the contract price, for the faithful performance of the contract; *Provided, however,* in case twenty-five percent of the contract price shall exceed the sum of fifty thousand dollars, then such bond shall be in the sum of fifty thousand dollars. The work shall be done under the direction and to the satisfaction of the engineer and be approved by the board. The provisions of this section shall not apply in the case of any contract between the district and the United States.

Source: Laws 1895, c. 70, § 22, p. 285; Laws 1911, c. 161, § 1, p. 533; R.S.1913, § 3480; Laws 1915, c. 69, § 7, p. 179; C.S.1922, § 2880; C.S.1929, § 46-125; R.S.1943, § 46-145.

Cross References

For other provisions for letting of contracts, see Chapter 73.

Annotations

Provisions must be complied with before board is authorized to proceed with construction. Reasonable value of services, not exceeding contract price, can be recovered under authorized contract of directors, even though same is illegal, where district has received benefit. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

46-146. Claims against district; warrants; interest; payment; procedure.

No claim shall be paid by the district treasurer until the same shall have been allowed by the board of directors and only upon warrants signed by the president and countersigned by the secretary. If the district treasurer does not have sufficient money on hand to pay such warrant when presented for payment, he or she shall

endorse thereon not paid for want of funds and the date when presented over his or her signature. From the time of such presentation until paid such warrants shall draw interest payable when redeemed or annually at the discretion of the board of directors. Whenever there is no cash on hand in the district treasury for the payment of general fund warrants when presented, the board of directors may issue from time to time general fund warrants in denominations not greater than ten thousand dollars to the aggregate amount required. In no case shall such warrants be in an amount greater than ninety percent of the general fund levy for the current year. Such warrants shall be drawn on the general fund levy for the current year and be payable to the irrigation district. The board of directors may sell or discount the same to the best advantage possible, but not at a discount to exceed ten percent. The board shall deposit the proceeds of such sale in some local bank, capital stock financial institution, or qualifying mutual financial institution in the name of the district, subject to the check of the chairperson of such district, countersigned by the secretary, in payment of any claim or claims ordered paid out of such fund by the board of directors. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 197; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 250; Laws 1929, c. 131, § 1, p. 481; C.S.1929, § 46-126; R.S.1943, § 46-146; Laws 1969, c. 51, § 110, p. 341; Laws 1981, LB 146, § 2; Laws 1989, LB 33, § 26; Laws 2001, LB 362, § 30.

Annotations

In absence of levy, officers of irrigation district are without power to issue warrants. Elliott v. Calamus Irr. Dist., 120 Neb. 714, 235 N.W. 95 (1931).

Irrigation district, organized after county board was induced to believe that law was complied with, is corporation de facto, and liable on warrants. Draver v. Greenshields & Everest Co., 29 F.2d 552 (8th Cir. 1928).

46-147. Construction fund; deposit with county treasurer; when authorized; disbursement.

The board may draw from time to time from the construction fund, and deposit it in the county treasury of the county where the office of the board is situated, any sum in excess of the sum of twenty-five thousand dollars. The county treasurer is hereby authorized and required to receive and receipt for the same, and place the same to the credit of the district, and he shall be responsible upon his official bond for the safekeeping and disbursement of the same, as provided in sections 46-147

and 46-148. He shall pay out the same, or any part thereof, to the treasurer of the district only, and upon the order of the board, signed by the president and attested by the secretary.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 482; C.S.1929, § 46-126; R.S.1943, § 46-147.

46-148. County treasurer; reports to district board; contents.

The county treasurer shall report in writing on the second Monday in each month the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount of money paid out. The report shall be verified and filed with the secretary of the board.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 482; C.S.1929, § 46-126; R.S.1943, § 46-148.

46-149. District treasurer; reports to district board; contents; warrants; register; order of payment.

The district treasurer shall also report to the board in writing, on the first Monday of each month the amount of money in the district treasury, the amount of receipts for the month preceding and the amount of items and expenditures, and such report shall be verified and filed with the secretary of the board. The district treasurer shall keep a register in which he shall enter each warrant presented for payment showing the date and amount of such warrant, to whom payable, the date of the presentation for payment, the date of payment, and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer.

Source: Laws 1895, c. 70, § 23, p. 286; Laws 1897, c. 86, § 6, p. 364; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 483; C.S.1929, § 46-126; R.S.1943, § 46-149.

46-150. Warrants; form.

All warrants shall be drawn payable to the claimant or bearer, the same as county warrants, except as otherwise herein provided.

Source: Laws 1897, c. 86, § 6, p. 365; R.S.1913, § 3481; Laws 1917, c. 84, § 1, p. 198; C.S.1922, § 2881; Laws 1923, c. 97, § 3, p. 251; Laws 1929, c. 131, § 1, p. 483; C.S.1929, § 46-126; R.S.1943, § 46-150.

Cross References

For provisions as to interest on warrants, see section 45-106.

Annotations

Warrants issued by officers of irrigation district prior to levy and when no fund exists are void. Elliott v. Calamus Irr. Dist., 120 Neb. 714, 235 N.W. 95 (1931).

46-151. Cost of construction; when payable in bonds; issuance of additional bonds; additional levy.

The cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act shall be wholly paid out of the construction fund, or in the bonds of the irrigation district at their par value, after having first advertised the same for sale as provided in section 46-1,100, and having received no bids therefor of ninety-five percent or upwards of their face value. In case such bonds or the money raised by their sale is insufficient for the purposes for which the bonds were issued, additional bonds may be issued, after submission of the question at a general or special election to the electors of the district. In case of the issuance of additional bonds, the lien for taxes for the payment of the interest and principal of such issue shall be a subsequent lien to any prior bond issue. However, the provisions of this section shall not apply where the cost and expense of purchasing and acquiring property and constructing the works and improvements provided for in the Irrigation District Act are covered by contract between the district and the United States. In lieu of the issuance of additional bonds, the board of directors may provide for the completion of the irrigation system of the district by the levy of an assessment therefor in the same manner in which levy of an assessment is made for the other purposes provided in the Irrigation District Act.

Source: Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 131; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 179; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-151; Laws 2015, LB561, § 9.

Annotations

Expense of engineer for survey and plans is preliminary and payable out of construction fund. Willow Springs Irr. Dist. v. Wilson, 74 Neb. 269, 104 N.W. 165 (1905).

Construction fund must be provided before indebtedness incurred for construction. Lincoln & Dawson County Irr. Dist. v. McNeal, 60 Neb. 613, 83 N.W. 847 (1900).

Amendment of 1899 was valid. Baltes v. Farmers Irr. Dist., 60 Neb. 310, 83 N.W. 83 (1900).

46-152. Cost of organization, operation, and improvements; how paid; tolls; assessments; borrowing.

For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of such portions of such canal and works as are completed and in use, including salaries of officers and employees, or repayment of any contract for construction by and between the United States of America and any irrigation district as provided in section 46-126, the board may either fix rates of tolls and charges, and collect the same from all persons using such canal for irrigation or other purposes, or may provide for the payment of such expenditures by a levy of assessments therefor, or by both tolls and assessments; if by the latter method, such levy shall be made upon the completion and equalization of the assessment roll; and the board shall have the same powers and functions for the purposes of such levy as are now possessed by boards of supervisors in this state, and such assessment shall be collected as provided in section 46-136. If, after the annual assessment for the current year, the funds provided are for some unusual or unforeseen cause insufficient for the proper maintenance and operation of the district, the board of directors shall have the power to borrow additional funds needed, to an amount not to exceed fifty cents per acre for the land embraced in the district, pledging credit of the district for the payment of the same, and shall include in the estimate for the levy for the ensuing year for the general fund the amount so borrowed, and provide for the payment of the same.

Source: Laws 1895, c. 70, § 24, p. 287; Laws 1899, c. 78, § 2, p. 334; Laws 1913, c. 37, § 1, p. 132; R.S.1913, § 3482; Laws 1915, c. 69, § 8, p. 180; C.S.1922, § 2882; C.S.1929, § 46-127; R.S.1943, § 46-152; Laws 1967, c. 280, § 2, p. 758.

46-153. Construction across streams, highways, railroads, and ditches; right-of-way over state lands; state water and water rights.

The board of directors shall have the power to construct such works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or

flume which the route of such canal or canals may intersect or cross, in such manner as to afford security for life and property; but the board shall restore the same, when so crossed or intersected, to its former state as nearly as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness. Every company whose railroad shall be intersected or crossed by such works shall unite with the board in forming such intersections and crossings, and grant the privilege aforesaid; and if such railroad company and such board, or the owners and controllers of the property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of the crossings, the same shall be ascertained and determined in all respects as is provided in respect to the taking of land. The right-of-way is hereby given, dedicated, and set apart, to locate, construct and maintain such works over and through any of the lands which are or may be the property of the state; and also there is given, dedicated, and set apart for the use and purposes aforesaid, all water and water rights belonging to this state within the district.

Source: Laws 1895, c. 70, § 25, p. 287; R.S.1913, § 3483; C.S.1922, § 2883; C.S.1929, § 46-128; R.S.1943, § 46-153.

Annotations

Irrigation canal may cross another stream. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Grant by the Legislature of right-of-way over public school lands is an unconstitutional interference with the control of public school lands vested in the Board of Educational Lands and Funds. State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist., 143 Neb. 153, 8 N.W.2d 841 (1943).

Public power districts are governed by the statute relating to irrigation districts as to their appropriation, crossing, and use of highways. Wright v. Loup River Public Power Dist., 133 Neb. 715, 277 N.W. 53 (1938).

46-154. Directors; salaries and expenses; officers, employees, attorneys, and agents; compensation.

The board of directors shall provide a payment for each director of not to exceed seventy dollars per day for each day that a director attends meetings of the board or is engaged in matters concerning the district, but not to exceed two thousand eight hundred dollars per annum. Each director shall also be paid necessary traveling expenses actually incurred while engaged in the performance of his or her duties, including mileage at the rate provided in section 81-1176. The board shall fix the compensation to be paid to the other officers named in sections 46-101 to 46-1,111, including the secretary, the assessor, and the treasurer to be

paid out of the treasury of the district. The board may also employ a chief engineer, an attorney, and such other agents, assistants, and employees as may be necessary and provide for their compensation.

Source: Laws 1895, c. 70, § 26, p. 288; Laws 1897, c. 86, § 7, p. 365; R.S.1913, § 3484; C.S.1922, § 2884; C.S.1929, § 46-129; R.S.1943, § 46-154; Laws 1951, c. 149, § 1, p. 597; Laws 1961, c. 226, § 1, p. 670; Laws 1979, LB 282, § 1; Laws 1981, LB 204, § 75; Laws 2000, LB 901, § 2.

46-155. Director or officer; interest in contract prohibited; accepting gratuity or bribe; penalty; forfeiture of office.

No director or any officer named in sections 46-101 to 46-1,111 shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom, nor shall receive any bonds, gratuity or bribe. For any violation of this provision, such officer shall be guilty of a Class IV felony, and conviction thereof shall work a forfeiture of his office.

Source: Laws 1895, c. 70, § 27, p. 288; R.S.1913, § 3485; C.S.1922, § 2885; C.S.1929, § 46-130; R.S.1943, § 46-155; Laws 1977, LB 40, § 255.

46-156. Limitation on debts and liabilities; eminent domain; procedure; contracts with United States.

(1) The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of sections 46-101 to 46-1,111, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

(2) Any irrigation district organized under the provisions of sections 46-101 to 46-128 shall have power to and it shall be its duty to provide for the proper drainage of any and all lands embraced within its limits which are or have been subirrigated by reason of the lawful use of water from its canal by the owner or lessee of the lands subirrigated or from any cause not the fault or by the consent of such owner or lessee. For such purpose such district shall have all the authority herein granted for levying special assessments or otherwise providing funds necessary to properly drain such lands, entering upon lands for the purpose of making surveys, exercising the right of eminent domain, contracting for the construction of necessary ditches, and further shall have the right to extend such drainage ditches outside of the limits of such district for the purpose of conducting the drainage water to other lands upon which the same may be lawfully used or to return the same to the stream from which its canal is taken. The procedure to

condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The powers herein granted shall include the power to enter into a contract with the United States to carry out and effectuate all proper drainage of the district or any part thereof, and any such contract shall be treated for all intents and purposes as if made under section 46-126.

Source: Laws 1895, c. 70, § 29, p. 290; Laws 1911, c. 162, § 1, p. 535; R.S.1913, § 3487; Laws 1915, c. 69, § 9, p. 181; C.S.1922, § 2887; C.S.1929, § 46-132; R.S.1943, § 46-156; Laws 1951, c. 101, § 90, p. 486.

Annotations

The power of an irrigation district to enter into a contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water was not limited by a requirement that the contract be approved by the voters of the district. Twin Loups Reclamation & Irr. District v. Blessing, 202 Neb. 513, 276 N.W.2d 185 (1979).

Provisions of this section are not applicable to public power and irrigation districts organized under Chapter 70. Halligan v. Elander, 147 Neb. 709, 25 N.W.2d 13 (1946).

This section, with others mentioned, shows intent to limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and requiring that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

Remedy provided herein for drainage of lands within an irrigation district is exclusive. Omaha Life Ins. Co. v. Gering & Ft. Laramie Irr. Dist., 123 Neb. 761, 244 N.W. 296 (1932).

Power and irrigation district is not limited to irrigation alone but extends to drainage even beyond district boundaries. Central Irr. Dist. v. Gering Irr. Dist., 122 Neb. 199, 240 N.W. 289 (1932).

Lessee of land involved may require district to drain all subirrigated lands in district. Livanis v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931).

Irrigation district is not absolutely required hereby to drain all nearby lands seeped by percolating subterranean water, and remedy provided by this section for drainage of such lands is exclusive. Spurrier v. Mitchell Irr. Dist., 119 Neb. 401, 229 N.W. 273, 74 A.L.R. 884 (1930).

Subirrigated lands and waters referred to in this section are those which are part of the irrigation system, and liability of district is limited to damages caused by its own waters. State ex rel. Read v. Farmers Irr. Dist., 116 Neb. 373, 217 N.W. 607 (1928).

This section is a legislative recognition of the general right of an appropriator to recapture and reuse seepage waters. United States v. Tilley, 124 F.2d 850 (8th Cir. 1941).

46-157. Apportionment of water; duty of water commissioners.

In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion in a just and equitable proportion, a certain amount of such water upon certain or alternate weekly days to different localities as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all. The water commissioners shall consist of the chairman of the board of directors of each of the districts affected.

Source: Laws 1895, c. 70, § 30, p. 290; R.S.1913, § 3488; C.S.1922, § 2888; C.S.1929, § 46-133; R.S.1943, § 46-157.

46-158. High water; duty of board; automatic measuring devices; interchange of water.

It shall be the duty of the board of directors to keep the water flowing through the ditches and canals under its control to the full capacity of such ditches and canals in times of high water when the same can be beneficially applied to the lands thereunder and does not interfere with the rights of other appropriators, except that upon the filing of a petition in the office of the board of directors of any irrigation district, signed by a majority of the landowners who are electors therein, requesting that rules and regulations be adopted by the board permitting and providing for any of the following specific orders or changes in the method of operating its canal, it shall become the duty of such board to immediately provide for the adoption and enforcement of the same, namely, (1) that an automatic measuring device be placed in or near the headgate or any main diverting gate of the main canal, in order that a continuous record shall be kept by such district of the amount of water received into the canal for the use of the lands in such district, (2) that automatic measuring devices be placed in the headgates or all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres or more, for the purpose of determining at all times the amount of water going to or being received upon any and all such tracts of land, and that the person having charge of the canal shall keep a separate and correct record of the amount of water delivered through each of such headgates at all times and shall file the same in the office of the board of directors for public

inspection, and (3) that a system be provided for the interchange of water from one tract of land to another at the option of the owner or lessee of any lands within such district at any time, and further provide that rules made by the board or the person having charge of such canals for delivering water in alternate sections of a canal or ditch shall not interfere with this right.

Source: Laws 1895, c. 70, § 31, p. 290; Laws 1911, c. 163, § 1, p. 536; R.S.1913, § 3489; C.S.1922, § 2889; C.S.1929, § 46-134; R.S.1943, § 46-158; Laws 1987, LB 140, § 1.

46-159. Prior acts not repealed; diversion of water without compensation prohibited.

None of the provisions of sections 46-101 to 46-1,111, shall be construed as repealing or in any way modifying the provisions of any other law relating to the subject of irrigation or water commissioners. Nothing in said sections contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor under the laws of this state authorizing the taking of private property for public use.

Source: Laws 1895, c. 70, § 32, p. 290; R.S.1913, § 3490; C.S.1922, § 2890; C.S.1929, § 46-135; R.S.1943, § 46-159.

46-160. Irrigation district; liability for failure to deliver water; conditions; limitation.

Every irrigation district within the State of Nebraska shall be liable in damages for negligence in delivering or failure to deliver water to the users from its canal to the same extent as private persons and corporations; *Provided, however,* such districts shall not be liable as herein provided, unless the party suffering such damages by reason of such negligence or failure shall, within thirty days after such negligent acts are committed, or such districts shall fail to deliver water, serve a notice in writing on the chairman of the board of directors of such district, setting forth particularly the acts committed or the omissions of duties to be performed on the part of the district, which it is claimed to constitute such negligence or omission and that he expects to hold such district liable for whatever damages may result; *provided further,* such action shall be brought within one year from the time the cause has accrued.

Source: Laws 1911, c. 164, § 1, p. 538; R.S.1913, § 3526; C.S.1922, § 2926; C.S.1929, § 46-171; R.S.1943, § 46-160.

Annotations

Action grounded on negligence for failure to deliver water was barred. Cover v. Platte Valley Public Power & Irr. Dist., 156 Neb. 644, 57 N.W.2d 275 (1953).

Requirement of written notice to district does not apply to damages arising from the invasion of contract right to a specific quantity of the natural flow of water in a river. Ledingham v. Farmers Irr. Dist., 135 Neb. 276, 281 N.W. 20 (1938).

Irrigation district, being liable hereunder for failure to deliver water to landowner entitled thereto, is not liable for injury resulting from lawful application of water to land by owners. Spurrier v. Mitchell Irr. Dist., 119 Neb. 401, 229 N.W. 273, 74 A.L.R. 884 (1930).

Notice required by this section is in time, if filed within thirty days from time district had reasonable opportunity to make repair and negligently fails to do so, or, without reasonable excuse, signifies it will not be made. Six v. Bridgeport Irr. Dist., 105 Neb. 254, 179 N.W. 1014 (1920).

46-161. District boundaries; changes; inclusion of lands; petition; contents.

The holder or holders of title or evidence of title representing one-half or more of any body of contiguous lands, adjacent to the boundary of an irrigation district and which taken together constitute one tract of land, may file with the board of directors of such district a petition in writing, praying that the boundaries of such district be changed to include their lands. The petition shall describe the boundaries of the parcel or tract of land and shall also describe the boundaries of the several parcels respectively owned by the petitioners, if the petitioners are the owners of distinct parcels, but such description need not be more particular than required when such lands are entered by the county assessor in the assessment book. Such petition shall contain the consent of the petitioners to the inclusion in such district of the parcels or tracts of land described in the petition and of which the petition alleges that they are respectively the owners and shall be acknowledged in the same manner that conveyances of land are required to be acknowledged.

Source: Laws 1895, c. 70, § 34, p. 291; R.S.1913, § 3492; Laws 1921, c. 273, § 1, p. 901; C.S.1922, § 2892; C.S.1929, § 46-137; R.S.1943, § 46-161; Laws 1999, LB 103, § 1.

Cross References

Acknowledgment of deeds, see sections 76-211 and 76-216 to 76-236.
Assessment book, description of lands, see section 77-1613.

46-162. Inclusion of lands; notice; advance cost of proceeding, by whom paid.

The secretary of the board of directors shall cause notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issuance of bonds are required by section 46-194 to be published. The notice shall state the filing of such petition and the names of the petitioner, a description of the lands mentioned in the petition, and the prayers of the petition; and it shall notify all persons interested, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause, in writing, if any they have, why the change in the boundaries of the district as proposed in the petition should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under sections 46-161 to 46-173.

Source: Laws 1895, c. 70, § 35, p. 291; R.S.1913, § 3493; C.S.1922, § 2893; C.S.1929, § 46-138; R.S.1943, § 46-162.

46-163. Inclusion of lands; hearing; assent of parties; when implied.

The board of directors, at the time and place mentioned in the notice, or at such other time or times to which the hearing of the petition may be adjourned shall proceed to hear the petition, and all the objections thereto, presented in writing by any person, showing cause as aforesaid, why the proposed change of the boundaries of the district should not be made. The failure of any person interested in the district or in the matter of the proposed change of its boundaries, to show cause in writing as aforesaid, shall be deemed and taken as an assent on his part to the change of the boundaries of the district, as prayed for in the petition, or to such a change thereof as will include a part of the lands. The filing of such petition with the board as aforesaid shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of the boundaries that they may include the whole or any portion of the lands described in the petition.

Source: Laws 1895, c. 70, § 36, p. 292; R.S.1913, § 3494; C.S.1922, § 2894; C.S.1929, § 46-139; R.S.1943, § 46-163.

46-164. Inclusion of lands; payment of share of original cost to new district; when required.

The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally

pay to such district such respective sums, as nearly as the same can be estimated, the several amounts to be determined by the board, as such petitioners or their grantors would have been required to pay to such district as assessments had such lands been included in such district at the time the same was originally formed.

Source: Laws 1895, c. 70, § 37, p. 293; R.S.1913, § 3495; C.S.1922, § 2895; C.S.1929, § 46-140; R.S.1943, § 46-164.

46-165. Inclusion of lands; action of board; order; contents.

The board of directors, if it deems it is not for the best interest of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. If it deems it is for the best interest of the district that the boundaries of the district be changed and if no person interested in the proposed change of its boundaries shows cause in writing why the proposed change should not be made or if, having shown cause, such person withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in the petition, or some part thereof. The order shall describe the boundaries of the included lands and it shall clearly show the change in the boundaries of the district.

Source: Laws 1895, c. 70, § 38, p. 293; R.S.1913, § 3496; C.S.1922, § 2896; C.S.1929, § 46-141; R.S.1943, § 46-165; Laws 1955, c. 182, § 1, p. 512.

46-166. Inclusion of lands; objection made; action of board.

If any person interested in the district, or the proposed change of its boundaries shall show cause as aforesaid why such boundaries should not be changed, and shall not withdraw the same, and if the board of directors deems it for the best interest of the district that the boundaries thereof be so changed as to include therein the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board is of the opinion should be included within the boundaries of the district when changed.

Source: Laws 1895, c. 70, § 39, p. 293; R.S.1913, § 3497; C.S.1922, § 2897; C.S.1929, § 46-142; R.S.1943, § 46-166.

46-167. Inclusion of lands; objection made; election required; notice; assent of Secretary of the Interior; when required.

Upon the adoption of the resolution mentioned in section 46-166, the board shall order that an election be held within the district to determine whether the boundaries of the district shall be changed as mentioned in the resolution, and shall fix the time at which such election shall be held, and cause notice thereof to be given and posted and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted in the manner prescribed by section 46-194 in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at the election shall have the words For change of boundary, or Against change of boundary, or words equivalent thereto. The notice of election shall describe the boundaries in such manner and terms that it can be readily traced; *Provided,* that in case contract has been made between the district and the United States as provided in section 46-126 or 46-156, no change shall be made in the boundaries of the district and the board shall make no order changing the boundaries of the district until the Secretary of the Interior shall assent thereto in writing and such assent be filed with the board of directors.

Source: Laws 1895, c. 70, § 40, p. 294; R.S.1913, § 3498; Laws 1915, c. 69, § 10, p. 181; C.S.1922, § 2898; C.S.1929, § 46-143; R.S.1943, § 46-167.

46-168. Inclusion of lands; result of vote; duty of board.

If at such election a majority of all the votes cast at the election shall be against such change of the boundaries of the district, the board shall order that the petition be denied, and shall proceed no further in that matter. If a majority of such votes be in favor of such change of the boundaries of the district, the board shall thereupon order the boundaries of the district to be changed in accordance with the resolutions adopted by the board.

Source: Laws 1895, c. 70, § 41, p. 294; R.S.1913, § 3499; C.S.1922, § 2899; C.S.1929, § 46-144; R.S.1943, § 46-168; Laws 1955, c. 182, § 2, p. 513.

46-169. Changed boundaries; copy of order filed in recorder's office; effect.

Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district, and thereupon the district shall be and remain an irrigation district as fully and to every intent and purpose as if the lands which are included in the district by the change of the

boundaries, as aforesaid, had been included therein at the original organization of the district.

Source: Laws 1895, c. 70, § 42, p. 295; R.S.1913, § 3500; C.S.1922, § 2900; C.S.1929, § 46-145; R.S.1943, § 46-169.

Cross References

Original boundaries, filing of order, see section 46-111.

46-170. Changed boundaries; record; certified copy as evidence.

Upon the filing of the copies of the order, as mentioned in section 46-169, the secretary shall record in the minutes of the board the petition aforesaid; and the minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

Source: Laws 1895, c. 70, § 43, p. 295; R.S.1913, § 3501; C.S.1922, § 2901; C.S.1929, § 46-146; R.S.1943, § 46-170.

46-171. Inclusion of lands; guardians, executors, and administrators; when authorized to sign petitions.

A guardian, executor or an administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition mentioned in section 46-161, and may show cause, as mentioned in section 46-166 why the boundaries of the district should not be changed.

Source: Laws 1895, c. 70, § 44, p. 295; R.S.1913, § 3502; C.S.1922, § 2902; C.S.1929, § 46-147; R.S.1943, § 46-171.

46-172. Inclusion of new land in district; redivision required; election precincts.

In case of the inclusion of any land within any district by proceedings under section 46-161 the board of directors must, at least thirty days prior to the next succeeding general election, make an order redividing such district into three divisions, as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall thereafter be elected by each division. For the purpose of elections the board of directors shall establish one or more

election precincts in the districts and define the boundary or boundaries thereof, which may thereafter be changed from time to time as the board may deem necessary.

Source: Laws 1895, c. 70, § 45, p. 295; R.S.1913, § 3503; Laws 1919, c. 111, § 2, p. 274; C.S.1922, § 2903; C.S.1929, § 46-148; R.S.1943, § 46-172.

46-173. District boundaries; changes; exclusion of lands; effect.

The boundaries of any irrigation district organized under the provisions of sections 46-101 to 46-128 may be changed and tracts of land included within the boundaries of such district, at or after its organization under the provisions of said sections, may be excluded therefrom in the manner prescribed in sections 46-174 to 46-184; but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization, or its rights in or to property, or any of its rights or privileges, of whatever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made or had not any land been excluded from the district.

Source: Laws 1895, c. 70, § 46, p. 296; R.S.1913, § 3491; C.S.1922, § 2891; C.S.1929, § 46-136; R.S.1943, § 46-173.

Annotations

Equity will not interfere to separate nonirrigable lands from irrigation district in absence of showing that plaintiffs have sought to avail themselves of statutory method herein provided. Andrews v. Lillian Irr. Dist., 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-174. Exclusion of lands; petition; form; contents.

The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district may file with the board of directors of the district a petition praying that such tracts and any other tracts contiguous thereto may be excluded and taken from the district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district and also the lands of each of such petitioners which are included within such boundaries, but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case

of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance.

Source: Laws 1895, c. 70, § 47, p. 296; R.S.1913, § 3504; Laws 1921, c. 272, § 1, p. 900; C.S.1922, § 2904; C.S.1929, § 46-149; R.S.1943, § 46-174; Laws 1999, LB 103, § 2.

Cross References

Acknowledgment of deeds, see sections 76-211 and 76-216 to 76-236.
Assessment book, description of lands, see section 77-1613.

Annotations

This section does not preclude owner of land not benefited by irrigation from paying tax under protest and filing claim for refund, instead of moving to exclude such land from district, as remedy hereunder is not exclusive. Morrow v. Farmers Irr. Dist., 117 Neb. 424, 220 N.W. 680 (1928).

After district is duly organized, statutory procedure herein prescribed for detaching lands, other than nonirrigable, is exclusive. Sowerwine v. Central Irr. Dist., 85 Neb. 687, 124 N.W. 118 (1909); Andrews v. Lillian Irr. Dist., 66 Neb. 458, 92 N.W. 612 (1902), 97 N.W. 336 (1903).

46-175. Exclusion of lands; notice; form; contents.

The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lies within another county or counties, then the notice shall be so published in a newspaper published within each of such counties, or if no newspaper is published therein, then by posting such notice for the same time in at least three public places in the district, and in case of the posting of the notices, one of such notices must be posted on the lands proposed to be excluded. The notice shall state the filing of such petition, the names of the petitioners, description of the lands mentioned in such petition, and the prayer of the petition, and it shall notify all persons interested in, or that may be affected by such change of the boundaries of the district, to appear at the office of the board at a time named in the notice, and show cause in writing, if any they have, why the change in the boundaries of such district, as proposed in such petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be at the regular meeting of the board next after the expiration of the time for the publication of the notice.

Source: Laws 1895, c. 70, § 48, p. 297; R.S.1913, § 3505; C.S.1922, § 2905; C.S.1929, § 46-150; R.S.1943, § 46-175.

46-176. Exclusion of lands; hearing; assent of parties; when implied; nonirrigable lands.

The board of directors, at the time or times to which the hearing of such petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by the persons, showing cause as aforesaid, why the prayer of such petition should not be granted. The failure of any person interested in the district to show cause in writing why the tract or tracts of land mentioned in the petition should not be excluded from such district shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from the district; and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof; *Provided,* in no case shall any land be held by any district or taxed for irrigation purposes which cannot from any natural cause be irrigated thereby.

Source: Laws 1895, c. 70, § 49, p. 297; R.S.1913, § 3506; C.S.1922, § 2906; C.S.1929, § 46-151; R.S.1943, § 46-176.

Annotations

A determination that land cannot from any natural cause be irrigated requires an examination of the intrinsic characteristics of the land and cannot be based on external factors. Crouse v. Pioneer Irr. Dist., 272 Neb. 276, 719 N.W.2d 722 (2006).

Whether land cannot from any natural cause be irrigated must be determined from the facts in each case. Smith v. Frenchman-Cambridge Irr. Dist., 155 Neb. 270, 51 N.W.2d 376 (1952).

The question of nonirrigability of lands from natural causes can be raised in proceedings to foreclose tax sale certificate. Birdwood Irr. Dist. v. Brodbeck, 148 Neb. 824, 29 N.W.2d 621 (1947).

Government subdivision or other well-defined tract ought not to be included in irrigation district if, for natural causes, it is incapable of irrigation. Wight v. McGuigan, 94 Neb. 358, 143 N.W. 232 (1913).

Where party proceeds to have land detached, in order to defeat jurisdiction of board, it must be proved and found by court that land is nonirrigable, or exempted by statute. Sowerwine v. Central Irr. Dist., 85 Neb. 687, 124 N.W. 118 (1909).

46-177. Exclusion of lands; action of board.

The board of directors, if it deems it not for the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district, shall order that the petition be denied; but if it deems it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district shows cause in writing why the lands or some portion thereof should not be excluded from the district, or if having shown cause withdraws the same, and also, if there are no outstanding bonds of the district and no contract between the district and the United States, then the board may order that the lands mentioned in the petition or some defined portion thereof, be excluded from the district.

Source: Laws 1895, c. 70, § 50, p. 298; R.S.1913, § 3507; Laws 1915, c. 69, § 11, p. 182; C.S.1922, § 2907; C.S.1929, § 46-152; R.S.1943, § 46-177.

46-178. Exclusion of lands; assent of bondholders and Secretary of the Interior required, when; order of exclusion.

If there are outstanding bonds of the district or if the district shall have entered into a contract with the United States, as provided in section 46-126 or 46-156, then the board may adopt a resolution to the effect that the board deems it to the best interests of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district. The resolution shall describe such lands so that the boundaries thereof can be readily traced. The holders of such outstanding bonds may give their assent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district and in case a contract has been made with the United States, as aforesaid, the Secretary of the Interior may assent to such change. The assent may be acknowledged by the several holders of such bonds in the same manner and form as are required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as an acknowledgment of such conveyance, except the assent of the Secretary of the Interior need not be acknowledged. The assent must be filed with the board and must be recorded in the minutes of the board; and such minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the assent; but if such assent of the bondholders and, in case of contract with the United States such assent of the Secretary of the Interior, is not filed, the board shall deny and dismiss the petition.

Source: Laws 1895, c. 70, § 51, p. 298; R.S.1913, § 3508; Laws 1915, c. 69, § 12, p. 182; C.S.1922, § 2908; C.S.1929, § 46-153; R.S.1943, § 46-178.

Cross References

Acknowledgment of deeds, see sections 76-211 and 76-216 to 76-236.

Annotations

Legislature has recognized principle that lands subject to irrigation bonds when issued could not afterwards be exempted from liability therefor, by exclusion from district, without impairing obligation of contract. Erickson v. Nine Mile Irr. Dist., 109 Neb. 189, 190 N.W. 573 (1922).

46-179. Exclusion of lands; objection made; action of board; election required; notice; procedure.

If the assent of the holders of the bonds is filed and entered of record as provided in section 46-178, and if there are objections presented by any person showing cause which have not been withdrawn, then the board of directors may order an election to be held in the irrigation district to determine whether an order shall be made excluding such lands from the district as mentioned in the resolution. The notice of such election shall describe the boundaries of all the lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper of general circulation within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lies within another county or counties, then such notice shall be so published in a newspaper of general circulation in each of such counties. Such notice shall require the electors to cast ballots which shall contain the words For exclusion, or Against exclusion, or words equivalent thereto. Such election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1895, c. 70, § 52, p. 299; R.S.1913, § 3509; C.S.1922, § 2909; C.S.1929, § 46-154; R.S.1943, § 46-179; Laws 2015, LB561, § 10.

Cross References

For election laws, see Chapter 32.

46-180. Exclusion of lands; result of vote; order of board.

If at such election a majority of all votes cast shall be against the exclusion of the lands from the district, the board shall deny and dismiss the petition and proceed no further in the matter, but if a majority of such votes shall be in favor of the exclusion of the lands from the district the board shall thereupon order that the

lands mentioned in the resolution be excluded from the district. The order shall describe the boundaries of the district, should the exclusion of the lands from the district change the boundaries of the district, and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary.

Source: Laws 1895, c. 70, § 53, p. 300; R.S.1913, § 3510; C.S.1922, § 2910; C.S.1929, § 46-155; R.S.1943, § 46-180.

46-181. Exclusion of lands; copy of order filed with recorder; effect.

Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof certified by the president and secretary of the board shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district; and thereupon the district shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

Source: Laws 1895, c. 70, § 54, p. 300; R.S.1913, § 3511; C.S.1922, § 2911; C.S.1929, § 46-156; R.S.1943, § 46-181.

Cross References

Original boundaries, filing of order, see section 46-111.

46-182. Order of exclusion; vacancy in office of director; when created; how filled.

If the land excluded from any district shall embrace the greater portion of any division or divisions of such district, then the office of director for such division shall become and be vacant at the expiration of ten days from the final order of the board excluding the lands, and such vacancies shall be filled by appointment by the county board of the county where the office of such board is situated from the district at large. A director appointed as above provided shall hold his office until the next regular election for the district, and until his successor is elected and qualified.

Source: Laws 1895, c. 70, § 55, p. 300; R.S.1913, § 3512; C.S.1922, § 2912; C.S.1929, § 46-157; R.S.1943, § 46-182.

46-183. Exclusion of lands; redivision required; election precincts.

At least thirty days before the next general election of such district, the board of directors thereof shall make an order dividing such district into three divisions as nearly equal in size as practicable, which shall be numbered first, second and third, and one director shall be elected by each division. For the purpose of election in such district the board of directors shall establish one or more election precincts, and define the boundary or boundaries thereof, which precincts may be changed from time to time, as the board of directors may deem necessary.

Source: Laws 1895, c. 70, § 56, p. 301; R.S.1913, § 3513; Laws 1919, c. 111, § 3, p. 274; C.S.1922, § 2913; C.S.1929, § 46-158; R.S.1943, § 46-183.

46-184. Exclusion of lands; assessments; refund; when allowed; procedure.

In case of the exclusion of any lands under the provisions of sections 46-173 to 46-183, there shall be refunded to any and all persons who have paid any assessment or assessments to such district, or any land so excluded, any sum or sums so paid. Such payments shall be made in the same manner as other claims against such district, and from such fund or funds as the board of directors may designate; *Provided,* where such parties have realized benefits from the organization and operation of the district, the value of such benefits shall be deducted from the assessments paid in by such parties, and the balance, if any, refunded.

Source: Laws 1895, c. 70, § 58, p. 301; R.S.1913, § 3514; C.S.1922, § 2914; C.S.1929, § 46-159; R.S.1943, § 46-184.

46-185. Discontinuance of district; petition; special election; notice; procedure.

Whenever a majority of the assessment payers, representing a majority of the number of acres of irrigable land within any irrigation district, petition the board of directors to call a special election for the purpose of submitting to the electors of such irrigation district a proposition to vote on the discontinuance of such irrigation district and a settlement of its bonded and other indebtedness, the board of directors shall call an election, setting forth the object of the same, and cause a notice of such election to be published in some newspaper of general circulation in each of the counties in which the district is located, for a period of thirty days prior to such election, setting forth the time and place for holding such election in each of the voting precincts in the district, and shall also cause a written or printed notice of such election to be posted in some conspicuous place in each of the voting precincts. The board of directors shall provide ballots to be used at such election on which shall be written or printed the words For discontinuance ..... Yes,

and For discontinuance ..... No. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1897, c. 91, §§ 1, 2, p. 372; Laws 1903, c. 123, § 1, p. 625; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-185; Laws 2015, LB561, § 11.

46-186. Discontinuance of district; result of election; resubmission; sale of property; appointment of appraisers; notice of sale.

If a majority of the votes shall be For discontinuance ..... No, there shall not be another election upon the question of a discontinuance of the district during the year in which such election was held. If a majority of the votes are For discontinuance ..... Yes, then the board shall immediately notify all persons having claims against the district of the result of such election, and may proceed to adjust, settle and compromise any and all such claims, in whatever form the indebtedness of such district may be. For the purpose of raising money to pay any and all indebtedness of the district, such board may sell and dispose of the canal franchises and other property belonging to the district at not less than a valuation to be fixed by a board of three appraisers, one member of which shall be appointed by the board of directors of such district, and one shall be appointed by the county board of the county in which the district was originally organized, which two appraisers shall elect a third. The board of appraisers shall be sworn by the county clerk of the county, to appraise the canal franchises and other property of the district at their cash value; and as soon thereafter as practicable, the appraisers shall make an appraisement, and report in writing their appraisement of all the property owned by the district to the board of directors. The board shall advertise the property for sale at least four weeks in such a manner as in the judgment of the board shall be to the best interest of the district; and shall state in such advertisement a description of the property, and the time and place when bids in writing for the same shall be opened and considered, and bids orally received and considered.

Source: Laws 1897, c. 91, § 3, p. 372; Laws 1903, c. 123, § 1, p. 626; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-186.

46-187. Discontinuance of district; sale of property; opening of bids; sale by private negotiation.

At the time designated in such notice, or as soon thereafter as such board can meet, it shall open and consider all bids received for the purchase of the property and it shall have the power to reject any and all bids for such property which are not in the judgment of the board a fair and just consideration for the property. After bids are thus rejected by the board, it may by private negotiations with any person,

persons or corporation, sell and convey, by deed executed by such board, all of the property, for part cash and part in deferred payments, bearing the same interest as the bonded indebtedness of such district; and in case the district has no bonded indebtedness, the interest upon such deferred payments shall be such as may be agreed upon by the board and the purchaser, not exceeding the rate allowed by law.

Source: Laws 1903, c. 123, § 1, p. 627; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-187.

46-188. Discontinuance of district; sale of property; deferred payments lien on property sold; additional security.

Such deferred payments shall be a lien upon all of the property thus sold by the board which shall have the same force and effect as a mortgage against such property and may, when due, be foreclosed in the same manner provided by law for the foreclosure of mortgages. In addition to such lien, the board of directors may require the purchaser of the property to furnish the district with such additional security upon all deferred payments as in its judgment shall make such payments secure. All notes, bonds, mortgages and other securities shall be made out to and in the name of the irrigation district, and shall be, together with the money received by such sale, deposited with the county treasurer of the county in which the district was originally organized.

Source: Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-188.

Cross References

For action to foreclose mortgage, see sections 25-2137 to 25-2155.

46-189. Discontinuance of district; sale of property; action to collect purchase price; in whose name brought.

All suits at law or equity brought for the purpose of collecting such evidences of indebtedness, shall be brought in the name of such district by counsel employed by the district board; and in case the board shall be disorganized, such employment shall be by the board of such county.

Source: Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-189.

46-190. Discontinuance of district; assets of district used to pay debts; procedure; unused funds; distribution.

After a sale of the property and franchises of the district, the board of directors shall, with the amount realized from such sale, together with such other funds as such district may have, make settlement, payment, and redemption, if possible, of all outstanding bonded and other indebtedness of the district, but shall in no case pay more than the market value of such outstanding bonds with interest up to the time of payment. In cases when bonds not yet due cannot be redeemed by reason of the refusal of the owner thereof to surrender them before due, the board may invest the surplus money of the district, after paying all debts that can be paid, in state, county, or other safe bonds, bearing the same or greater rate of interest, if possible, than the district bonds thus outstanding, for the purpose of paying such outstanding bonds of the district when due. In case the amount realized from the sale of such district property, together with other money of the district, is insufficient for the payment of all the indebtedness of the district, assessments shall continue to be made against the lands included in the district in the manner provided by law for assessments to pay bonds and other indebtedness of irrigation districts until a sufficient amount is raised to fully pay all obligations of such district.

Any balance of funds remaining after the sale or disposition of all property belonging to the district and after all obligations and indebtedness of the district have been paid or discharged shall be distributed by the county treasurer to all assessment payers of the district of record as of the date of the filing in the office of the Department of Natural Resources of the report referred to in section 46-192. Such distribution shall be made pro rata in accordance with the number of acres of irrigable land owned within the district as of the date of the last assessment against such land for the district prior to the date of the filing of such report.

Source: Laws 1903, c. 123, § 1, p. 628; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-190; Laws 1979, LB 66, § 1; Laws 2000, LB 900, § 88.

Annotations

In tax sale foreclosure, property remains liable for payment of future assessments by irrigation district to discharge irrigation bonds. County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

46-191. Discontinuance of district; obligations incurred after April 8, 1903; subject to redemption upon discontinuance.

In all cases where bonds and other obligations of irrigation districts were issued after April 8, 1903, such bonds and obligations shall become subject to redemption by the board of directors of any irrigation district, as soon as the property and franchise of such district shall be sold after such district has elected to discontinue as a district, as herein provided.

Source: Laws 1903, c. 123, § 1, p. 629; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-191.

46-192. Discontinuance of district; final report by board; property rights; disposition; claims barred after one year.

After all the property of the district is disposed of as provided in sections 46-186 to 46-188, except for any balance of funds remaining after all of the obligations of such district have been paid, the directors of such district shall file in the office of the county clerk of each county in which such district is located, and in the office of the Department of Natural Resources, a report attested by the secretary of the board, stating that the district has disposed of its property and franchises, except for any balance of funds remaining, and has discontinued operation, which report shall be recorded in the miscellaneous record of such counties. Each easement and right-of-way, whether owned by the district in fee or otherwise, shall automatically be terminated and extinguished and such interest together with any canal or other structure shall become the property of the owner of the land upon which such easement, right-of-way, canal, or other structure is located or, if owned in fee by the district, shall become the property of the owner of the land adjacent thereto, upon the filing of the report with the department. If any person has any claim against such district which is not settled or disposed of at the time of the filing of such report and such person fails or neglects to bring suit upon such claim within one year after the time of the filing of such report, such claim or claims shall be forever barred as against such district as well as against all persons and property therein.

Source: Laws 1903, c. 123, § 1, p. 629; R.S.1913, § 3521; C.S.1922, § 2921; C.S.1929, § 46-166; R.S.1943, § 46-192; Laws 1979, LB 66, § 2; Laws 2000, LB 900, § 89.

46-193. Plan of operation; construction work; survey and estimate; report by Director of Natural Resources.

As soon as practicable after the organization of any such district, the board of directors shall, by a resolution entered on its record, formulate a general plan of its proposed operation in which it shall state (1) what constructed works or other property it proposes to purchase and the cost of purchasing the same and (2) what construction work it proposes to do and how it proposes to raise the funds for carrying out such plan. For the purpose of ascertaining the cost of any such construction work, the board shall cause such surveys, examinations, and plans to be made as will demonstrate the practicability of such plan and furnish the proper basis for an estimate of the costs of carrying out the same. All such surveys, examinations, maps, plans, and estimates shall be made under the direction of a

competent irrigation engineer and certified by the engineer. The board shall then submit a copy of the same to the Director of Natural Resources within ninety days thereafter, who shall file a report upon the same with the board, which report shall contain such matters as in the judgment of the director may be desirable.

Source: Laws 1909, c. 155, § 2, p. 561; Laws 1911, c. 160, § 1, p. 529; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-193; Laws 2000, LB 900, § 90.

Annotations

Refusal of district court to validate issue of bonds of irrigation district was sustained, because feasible plan of irrigation was not presented. Kinnan v. France, 113 Neb. 99, 202 N.W. 452 (1925).

District may employ engineer to survey and make plans. Such work is preliminary and paid out of construction fund. Willow Springs Irr. Dist. v. Wilson, 74 Neb. 269, 104 N.W. 165 (1905).

46-194. Plan of operation; construction work; bonds; issuance; special election; notice; procedure.

Upon receiving the report, the board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereupon call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by section 46-102, the question of whether or not the bonds of such district shall be issued and the amount so determined; *Provided,* such bonds shall not be issued for more than the actual estimated cost of such ditches, the purchase price of ditches, the cost of construction work, all as contained in its general plan of operation, as well as the first year's interest upon such bond issue. Notice of such election must be given by posting notice in three public places in each election precinct in the district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued, and the election must be held, and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of sections 46-111 to 46-118 governing the election of officers; *Provided,* no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election, the ballots shall contain the words, Bonds ..... Yes, or Bonds ..... No, or words equivalent thereto.

Source: Laws 1895, c. 70, § 13, p. 278; Laws 1903, c. 122, § 1, p. 622; Laws 1909, c. 155, § 2, p. 562; Laws 1911, c. 160, § 1, p. 529; R.S.1913, §

3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-194.

Cross References

Bonds of indebtedness:
Registration, see section 10-209.
Suit on, state made party, when, see section 25-21,201.

Annotations

No specific requirement is made as to the form of notice to be given to the electors. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Bonds issued hereunder are classed as construction bonds as distinguished from refinance bonds. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-195. Bonds; schedule of maturity.

If a majority of the votes cast are in favor of issuing such bonds, the board of directors shall immediately cause bonds in such amount to be issued. The bonds shall be payable in lawful money of the United States, as follows: At the expiration of eleven years not less than five percent of the bonds; at the expiration of twelve years, not less than six percent; at the expiration of thirteen years, not less than seven percent; at the expiration of fourteen years, not less than eight percent; at the expiration of fifteen years, not less than nine percent; at the expiration of sixteen years, not less than ten percent; at the expiration of seventeen years, not less than eleven percent; at the expiration of eighteen years, not less than thirteen percent; at the expiration of nineteen years, not less than fifteen percent; and for the twentieth year a percentage sufficient to pay off the bonds. Any such district may by a majority vote provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof in installments at the same ratio as above provided. The district may also, at its option, redeem any bonds issued at any time on or after five years from the date of issuance thereof.

Source: Laws 1895, c. 70, § 13, p. 279; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 562; Laws 1911, c. 160, § 1, p. 530; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-195; Laws 1947, c. 15, § 17, p. 92.

Cross References

Other provisions for payment of bonds, see section 10-126.

46-196. Bonds; interest; dates and place of payment.

Such bonds shall bear interest payable semiannually on the first day of January and July of each year. The principal and interest shall be payable at the office of the treasurer of the county in which the district originally organized.

Source: Laws 1895, c. 70, § 13, p. 280; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-196; Laws 1969, c. 51, § 111, p. 341.

46-197. Bonds; form; contents.

The bonds shall be each of the denomination of not less than one hundred dollars or more than five hundred dollars, negotiable in form, executed in the name of the district, and signed by the president and secretary, and the seal of the district shall be affixed thereto. They shall be numbered consecutively as issued and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the president and secretary. The bonds shall express on their face that they were issued by the authority of Chapter 46, article 1. Each bond shall be made payable at the given time for its entire amount, and the bonds shall be issued in series only, each series being payable at the expiration of a certain number of years.

Source: Laws 1895, c. 70, § 13, p. 280; Laws 1903, c. 122, § 1, p. 623; Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-197; Laws 1995, LB 589, § 9.

Annotations

Bonds issued in violation of requirement that they shall be signed by president and secretary and have seal affixed are void, and payment of interest does not ratify them. Paxton Irr. Dist. v. Conway, 94 Neb. 205, 142 N.W. 797 (1913).

46-198. Bonds; record; interest on coupons; special election; procedures.

The secretary shall keep a record of the bonds sold, their number, date of sale, the prices received, and the name of the purchaser. Such district, by a majority vote, may provide and authorize the payment of interest on any or all due and unpaid interest coupons attached to valid and outstanding bonds of such district heretofore or hereafter issued and sold, from the date of registration of such interest

coupons for payment or if previously registered, then from the date of such election to pay such interest, until paid. Such question may be submitted at any general or special election of the district by ballot, which shall generally describe the bonds to which such coupons are attached upon which such interest is to be paid, by number, series, and date of issue, and such ballots shall be in substantially the following form: For the payment of interest on coupons attached to bonds numbered ... series ... dated ... at ... percent per annum. Yes .... ( ), No ..... ( ). Such election shall be governed by the laws in force relating to bond elections in such districts, and if a majority of the ballots cast on such proposition shall be in favor thereof the board of directors shall declare the same adopted, and the funds to pay such interest shall be estimated and included in the levy for the bond fund of such irrigation district as provided by law. Thereafter, upon the presentation of any bond with coupons attached, or any detached coupons of such bonds, upon which interest is payable under the provisions of this section, the treasurer shall stamp or write on such coupons "bears interest at ... percent per annum from the registration for payment (or if previously registered for payment, then from date of election to pay interest).

.....

County Treasurer."

Payment of such coupon shall include the payment of the interest accruing under this section.

Source: Laws 1909, c. 155, § 2, p. 563; Laws 1911, c. 160, § 1, p. 531; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-198; Laws 1969, c. 51, § 112, p. 342.

46-199. Construction work; annual report by board of directors; duty of Director of Natural Resources.

At least as often as once a year after organization, the board of directors shall make a report to the Director of Natural Resources of the condition of the work of construction, as to capacity, stability, and permanency, whether or not the plan of irrigation formulated under section 46-193 is being successfully carried out, and whether or not, in the opinion of the board, the funds available will complete the proposed works. Upon the receipt of such report by the Director of Natural Resources, he or she shall make such suggestions and recommendations to such board of directors as he or she may deem advisable for the best interest of the district.

Source: Laws 1909, c. 155, § 2, p. 564; Laws 1911, c. 160, § 1, p. 532; R.S.1913, § 3469; C.S.1922, § 2869; C.S.1929, § 46-113; R.S.1943, § 46-199; Laws 2000, LB 900, § 91.

46-1,100. Bonds; sale; notice; procedure.

The board may sell such bonds from time to time in such quantities as may be necessary and most advantageous to raise the money for the construction of such canals and works, the acquisition of property and rights and otherwise to fully carry out the object and purposes of sections 46-101 to 46-1,111. Before making any sale, the board shall at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in each of the cities of Omaha and Lincoln, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; *Provided, however,* that if no bids have been received or submitted up to such time, the board may proceed to negotiate for the sale of the bonds, and may adjourn to some specific date, from time to time, or to convene at the call of the president, to consider such negotiations and all subsequent or new proposals, and may at such adjourned meeting, award the purchase of the bonds, or a portion thereof, to the highest responsible bidder submitting proposals thereat, or may reject all bids; *Provided, however,* that the board shall in no event sell any of the bonds for less than ninety percent of the face value thereof.

Source: Laws 1895, c. 70, § 14, p. 280; R.S.1913, § 3470; C.S.1922, § 2870; Laws 1923, c. 96, § 1, p. 243; C.S.1929, § 46-114; R.S.1943, § 46-1,100.

46-1,101. Bonds; how paid; assessments.

Such bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district and all the real property of the district shall be and remain liable to be assessed for such payments as herein provided, and for all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in section 46-126.

Source: Laws 1895, c. 70, § 15, p. 281; R.S.1913, § 3471; Laws 1915, c. 69, § 4, p. 175; C.S.1922, § 2871; C.S.1929, § 46-116; R.S.1943, § 46-1,101.

Annotations

All real property within district remains liable for annual assessments until bonds have been paid. County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

All real property within district is subject to taxation in favor of bondholders, notwithstanding subsequent legislation exempting city lots. Erickson v. Nine Mile Irr. Dist., 109 Neb. 189, 190 N.W. 573 (1922).

46-1,102. Bonds; issuance and sale; judicial approval required.

The board of directors of an irrigation district organized under the provisions of sections 46-101 to 46-128 shall, before issuing and before selling any bonds of such irrigation district, commence a special proceeding, in and by which the proceedings of the board and of the district providing for and authorizing the issue and sale of the bonds of the district shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.

Source: Laws 1895, c. 70, § 59, p. 302; Laws 1909, c. 159, § 1, p. 571; Laws 1913, c. 142, § 4, p. 347; R.S.1913, § 3515; C.S.1922, § 2915; C.S.1929, § 46-160; R.S.1943, § 46-1,102.

Annotations

Confirmation of issuance of bonds was a special proceeding in rem. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Provision of Reclamation Act for confirmation of validity of reclamation district was similar to the procedure provided by this and succeeding three sections. Nebraska Mid-State Reclamation Dist. v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

Proceeding under this section is in rem and cannot be collaterally attacked, but confirmation of exchange of bonds for property is not authorized. Wyman v. Searle, 88 Neb. 26, 128 N.W. 801 (1910).

46-1,103. Bonds; judicial approval; petition; contents.

The board of directors of the irrigation district or such holder or holders of any bond or bonds of the district shall file in the district court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying in effect, that the proceedings aforesaid may be examined, approved, and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of the bonds, and shall state generally that the irrigation district was

duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district or the election of the first board of directors.

Source: Laws 1895, c. 70, § 60, p. 302; Laws 1909, c. 159, § 1, p. 571; R.S.1913, § 3516; C.S.1922, § 2916; C.S.1929, § 46-161; R.S.1943, § 46-1,103.

46-1,104. Bonds; judicial approval; hearing; notice; form; contents.

The court shall fix the time for the hearing of the petition, and shall order the clerk of the court to give and publish a notice of the filing of the petition. The notice shall be given and published in the same manner and for the same length of time that the notice of a special election provided for by law to determine whether the bonds of the district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition and prayer of the petition, and that any person interested in the organization of the district, or in the proceedings for the issue or sale of the bonds, may, on or before the day fixed for the hearing of the petition, move to dismiss the petition or answer thereto. The petition may be referred to and described in the notice as the petition of ..... (giving its name), praying that the proceedings for the issue and sale of such bonds of such district may be examined, approved, and confirmed by the court.

Source: Laws 1895, c. 70, § 61, p. 302; Laws 1909, c. 159, § 1, p. 572; R.S.1913, § 3517; C.S.1922, § 2917; C.S.1929, § 46-162; R.S.1943, § 46-1,104.

46-1,105. Bonds; judicial approval; parties; motions and answers; rules applicable.

Any person interested in the district, or in the issue or sale of the bonds, may move to dismiss the petition or answer thereto. The provisions of the code of civil procedure respecting motions and answer to a complaint shall be applicable to motions and answer to the petition. The persons so filing motion and answering the petition shall be the defendants to the special proceeding, and the board of directors shall be the plaintiff. Every material statement of the petition not specially controverted by the answer must, for the purpose of such special proceeding, be taken as true; and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice provided by the code of civil procedure which are not inconsistent with the provisions of sections 46-101 to 46-1,111 are applicable to the special proceeding herein provided for.

Source: Laws 1895, c. 70, § 62, p. 303; R.S.1913, § 3518; C.S.1922, § 2918; C.S.1929, § 46-163; R.S.1943, § 46-1,105.

46-1,106. Bonds; judicial approval; determination of legality; procedure.

Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm or disapprove and disaffirm, each and all of the proceedings for the organization of such district under sections 46-101 to 46-128, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of the bonds and the order of the sale and the sale thereof. The court in inquiring into the regularity, legality, or correctness of such proceedings shall disregard an error, irregularity, or omission which does not affect the substantial rights of the parties to such special proceedings, and it may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner prescribed in section 46-1,104. The costs of the special proceedings may be allowed and apportioned between the parties in the discretion of the court. If the court shall determine the proceedings for the organization of the district legal and valid and the proceedings for the voting and issuing of the bonds legal and valid, the board of directors shall then prepare a written statement beginning with the filing of the petition for the organization of the district, and including all subsequent proceedings for the organization of the district and voting and issuing of the bonds, and ending with the decree of the court finding the proceedings for the organization of the district and the proceedings for the voting and issuing of the bonds legal and valid. The written statement shall be certified under oath by the board of directors of the district.

Source: Laws 1895, c. 70, § 63, p. 303; Laws 1913, c. 142, § 5, p. 348; R.S.1913, § 3519; Laws 1917, c. 8, § 1, p. 63; C.S.1922, § 2919; C.S.1929, § 46-164; Laws 1933, c. 141, § 2, p. 551; C.S.Supp.,1941, § 46-164; R.S.1943, § 46-1,106; Laws 2001, LB 420, § 30.

Annotations

Approval of contract with United States and approval of bonds were proper in one proceeding. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Refusal of district court to validate bonds of irrigation district was sustained where no feasible plan of irrigation was presented. Kinnan v. France, 113 Neb. 99, 202 N.W. 452 (1925).

46-1,107. Water supply from outside the state; power of district to acquire; contracts; bonds.

When any district organized under sections 46-101 to 46-128 shall find it necessary to procure and acquire the supply of water necessary for any or all ditches outside of the boundaries of this state, and from some adjoining state, then in such event it shall be lawful for such district to contract or bargain with any person, company or corporation legally existing within such state, outside of the boundaries of this state, for the required supply of such necessary water for the district within the state. The voting, issuance and sale of bonds in such district within the state for the payment of such rights and franchises of such persons, companies or corporations of such foreign state, for the use and benefit of such district within this state, shall be deemed valid and of full force and effect and have the same operation as though the same rights and franchises existed wholly within this state.

Source: Laws 1895, c. 70, § 64, p. 304; R.S.1913, § 3520; C.S.1922, § 2920; C.S.1929, § 46-165; R.S.1943, § 46-1,107.

46-1,108. Bonds; refunding; reissue.

The board of directors of any irrigation district in the State of Nebraska which has issued valid interest-bearing bonds that are outstanding and unpaid, may take up and pay off any such bonds whenever the same can be brought about by lawful means, by the issue and sale or the issue and exchange therefor of the bonds of such irrigation district; but bonds so to be issued shall not exceed the amount lawfully owing and unpaid upon the bond or bonds so sought to be taken up and paid. Bonds so issued shall not bear interest greater in rate or amount per annum than the bonds so sought to be taken up and paid.

Source: Laws 1909, c. 158, § 1, p. 569; R.S.1913, § 3522; C.S.1922, § 2922; C.S.1929, § 46-167; R.S.1943, § 46-1,108.

46-1,109. Bonds; refunding; conditions for issuance; procedure; notice; form; contents; action of board when no objections filed.

Whenever it is desired to issue bonds under section 46-1,108, the board of directors shall, by resolution entered in the minutes of its proceedings, direct public notice to be given, stating the amount of the indebtedness sought to be taken up and paid, the date it was voted, the rate of interest it bears, and that the same is sought to be taken up and paid off by the issuance and sale, or the issuance and exchange of bonds bearing interest at an equal or less rate and amount per annum, and stating the date on which and the place where any taxpayer of such irrigation district may file objections to such proposed action. Such notice shall be signed by

the president and secretary of the irrigation district, and shall be published for two weeks in some newspaper in general circulation in the district, or by posting the notice in three of the most public places in the district for at least fifteen days prior to such date. If after such publication and on the day for filing objections, no objections to such action by the board of directors are filed, then the board of directors may issue and sell, or exchange, as the case may be, the bonds authorized by section 46-1,108, not exceeding the amount stated in such notice, nor exceeding the amount of actual bonded indebtedness of the district then outstanding and unpaid, nor bearing interest greater in rate or amount, and thereby take up and pay off the bonds described in the notice.

Source: Laws 1909, c. 158, § 2, p. 569; R.S.1913, § 3523; C.S.1922, § 2923; C.S.1929, § 46-168; R.S.1943, § 46-1,109.

46-1,110. Bonds; refunding; hearing on objections; appeal.

If on the day appointed in such notice, any written objections be filed, the objection or objections shall be heard and decided by the board of directors, and from its decision an appeal may be taken to the district court, in the manner of appeals from the county board.

Source: Laws 1909, c. 158, § 3, p. 570; R.S.1913, § 3524; C.S.1922, § 2924; C.S.1929, § 46-169; R.S.1943, § 46-1,110.

46-1,111. Bonds; refunding; recitals required; delivery; payment; laws applicable.

The bonds so issued shall have recited therein the object of issue, the title of the article under which the issue was made, stating the issue to be made in pursuance thereof, and shall also state the number, date, and amount of the bonds for which it is substituted. Such new bonds shall not be delivered until the surrender of the bond or bonds so designated, and they shall be paid, and levy made and tax collected for their payment, in accordance with laws governing the bonds heretofore issued.

Source: Laws 1909, c. 158, § 4, p. 570; R.S.1913, § 3525; C.S.1922, § 2925; C.S.1929, § 46-170; R.S.1943, § 46-1,111.

46-1,112. Bonds; interest; extension of maturity; refunding; conditions; requirements.

Any irrigation district in this state having valid and unpaid bonds outstanding may by contract with the owners or holders thereof, or by other lawful means,

provide for the extension of the time of payment thereof for any period not exceeding forty years, and may provide for the payment annually or semiannually of any rate of interest and for the payment of both principal and interest as one sum in any desired percentage per annum. Such district may also provide for the payment or refunding of such bonds by the issue and sale or the issue and exchange therefor of bonds maturing in any period not exceeding forty years, in an amount equal to the principal debt and the total interest to accrue thereon during the term of the bond at any agreed rate, and may make such bonds payable in installments equal to two percent of the principal and interest each year for the first four years; four percent of the principal and interest each year for the next two years; and six percent of the principal and interest each year for the next fourteen years; or if the bond term be more than twenty years, then in substantially proportionate installments.

Source: Laws 1917, c. 190, § 1, p. 463; C.S.1922, § 2930; C.S.1929, § 46-175; R.S.1943, § 46-1,112; Laws 1969, c. 51, § 113, p. 343.

46-1,113. Bonds; extension of maturity; refunding; election required, when; procedure; laws applicable.

No bonds shall be issued or contract entered into under the provisions of section 46-1,112 unless the same shall be authorized by a majority vote of the electors of such district at any general or special election held in such district. Such election shall be held pursuant to resolution of the board of directors calling the same, and the provisions of law governing the holding of elections to vote bonds in irrigation districts are hereby made applicable to elections held under this section.

Source: Laws 1917, c. 190, § 2, p. 464; C.S.1922, § 2931; C.S.1929, § 46-176; R.S.1943, § 46-1,113.

46-1,114. Irrigation districts; grant of additional powers.

In addition to all other powers, an irrigation district shall have the powers granted in sections 46-1,115 to 46-1,126.

Source: Laws 1925, c. 128, § 1, p. 336; C.S.1929, § 46-178; R.S.1943, § 46-1,114.

Annotations

Refinancing bonds and coupons of irrigation district issued hereunder, when due and funds are available for that purpose on presentment, are payable by county treasurer in order of presentment by holder thereof. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-1,115. Bonds in discharge of judgments; power to issue; limit.

An irrigation district shall have power to issue bonds in consideration of the discharge of judgments held against it in an amount not exceeding by more than one thousand dollars the principal and interest of judgments so discharged.

Source: Laws 1925, c. 128, § 2, p. 336; C.S.1929, § 46-179; R.S.1943, § 46-1,115.

46-1,116. Bonds; issuance to procure surrender of outstanding bonds; power of district; limit.

An irrigation district shall have power to issue bonds in consideration of the surrender and cancellation of its outstanding bonds. If the bonds surrendered provide for the separate payment of principal and interest, the principal of the bonds to be issued shall not exceed by more than one thousand dollars the principal of the bonds surrendered. If the bonds surrendered provide for the payment of principal and interest combined in installments, the principal of the bonds issued shall not exceed by more than one thousand dollars the value of such installments discounted at the same rate per year as the annual interest rate of the bonds to be issued.

Source: Laws 1925, c. 128, § 3, p. 336; C.S.1929, § 46-180; R.S.1943, § 46-1,116.

46-1,117. Bonds; issuance to procure surrender of notes and warrants; power of district; limit.

An irrigation district shall have power to issue bonds in consideration of the surrender and cancellation of its outstanding notes and warrants in an amount not exceeding by more than one thousand dollars the principal and interest of the notes and warrants surrendered.

Source: Laws 1925, c. 128, § 4, p. 336; C.S.1929, § 46-181; R.S.1943, § 46-1,117.

46-1,118. Bonds; issuance for more than one purpose.

One issue of bonds may be for any or all the purposes mentioned in sections 46-1,115 to 46-1,117.

Source: Laws 1925, c. 128, § 5, p. 337; C.S.1929, § 46-182; R.S.1943, § 46-1,118.

46-1,119. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; maturity; interest; redemption.

The bonds issued in pursuance of sections 46-1,115 to 46-1,118 shall mature in not exceeding fifty years, shall bear interest, payable semiannually, and may be subject to redemption before maturity at par and accrued interest at the option of the district on such terms and subject to such limitations as may be provided, and shall be in such denominations and form, with or without interest coupons, and be executed in such manner as may be provided. In case default shall be made in the payment of interest, such interest shall bear interest at the same rate as the principal.

Source: Laws 1925, c. 128, § 6, p. 337; C.S.1929, § 46-183; R.S.1943, § 46-1,119; Laws 1969, c. 51, § 114, p. 343.

Annotations

Where holders of bonds or coupons present them when due for payment and payment is refused for want of funds, such presentment and demand does not entitle demandants to priority of payment over holders of bonds and coupons who subsequently present same for payment when funds are available. State ex rel. Brown v. Taylor, 125 Neb. 228, 249 N.W. 586 (1933).

46-1,120. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contract with holders, authorized; terms.

As part of the consideration for accepting new bonds in lieu of judgments, notes, warrants or bonds, and in order to induce the owners of judgments and holders of notes, warrants, and bonds to accept such new bonds, a district shall have power to make a contract with the holders of the new bonds, in the manner hereinafter provided, wherein and whereby the district may agree (1) to establish a special bond fund and to apply the money therein only to the payment of such indebtedness as may be provided, and to pay into the special bond fund such money and taxes, levied and to be levied, as may be provided, including unpaid taxes levied for general expenses of the district as well as taxes levied for the payment of bonds; (2) to levy taxes in such years and in such amounts for the special bond fund as may be provided, and to levy taxes to meet deficits due to the failure to collect taxes levied for or payable into the special bond fund and that the amount of such deficits and the amount of taxes to be levied therefor, shall be

computed in such manner as may be provided; and taxes agreed to be levied shall not be subject to any limitation of law as to the amount or rate thereof; and (3) to borrow money for the special bond fund on notes or otherwise against delinquent taxes in the fund, and to pay such loans in such manner as may be provided.

Source: Laws 1925, c. 128, § 7, p. 337; C.S.1929, § 46-184; R.S.1943, § 46-1,120.

46-1,121. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; powers to be exercised by resolution; contents.

In order to exercise the powers granted by sections 46-1,114 to 46-1,120 the board of directors shall adopt a resolution which shall (1) set forth the judgments to be discharged and the notes and warrants and bonds to be canceled for which bonds are to be issued; (2) authorize the issuance of bonds of the district in place of such judgments, bonds, notes and warrants, and determine the principal amount of the bonds authorized, their maturities, interest rate, interest payment dates, and in substance the terms of and limitations on the right of redemption thereof, if any, subject to the provisions of sections 46-1,114 to 46-1,126; (3) fix the date as of which settlement shall be made, and provide for such cash adjustments of principal and interest as may be necessary at the time of the actual delivery of the bonds; and (4) state the agreements, if any, to be made by the district as authorized by section 46-1,120.

Source: Laws 1925, c. 128, § 8, p. 338; C.S.1929, § 46-185; R.S.1943, § 46-1,121.

46-1,122. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; special election required; notice; form and contents; effect of affirmative vote.

The board of directors shall then call a special election. Notice of such election shall be given by posting notice in three public places in each election precinct in the district for at least twenty days and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election and that the purpose of the election is to decide for or against the approval of a resolution of the board of directors providing for the issuance of bonds, stating the principal amount, in place of existing indebtedness of the district. The election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of sections 46-109 to 46-115 governing the election of officers; *Provided,* no informalities in conducting such election shall invalidate

the same if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words Bond Resolution ..... Yes, and Bond Resolution ..... No, or words equivalent thereto. If a majority of the votes cast are Bond Resolution ..... Yes, the resolution adopted by the board of directors shall become effective, and the board shall then be authorized to pass such supplemental resolutions and do such acts and things not inconsistent with this section and the resolution as may be necessary or convenient to carry out the provisions of the resolution.

Source: Laws 1925, c. 128, § 9, p. 338; C.S.1929, § 46-186; R.S.1943, § 46-1,122.

46-1,123. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; procedure where less than all outstanding are offered.

In case within the time therefor set by the board of directors the amount of judgments proposed to be discharged and the amount of notes, warrants and bonds proposed to be surrendered shall not be offered for discharge or surrender, the board of directors may nevertheless accept the discharge of judgments and the surrender of the notes, warrants and bonds which may be offered, and may issue a proportionately less amount of the new bonds, selecting in their discretion which of the new bonds shall in that case be issued, so that the bonds issued will mature in such years as will best suit the needs of the district.

Source: Laws 1925, c. 128, § 10, p. 339; C.S.1929, § 46-187; R.S.1943, § 46-1,123.

46-1,124. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; resolution; contracts; effect.

Upon the discharge of the judgments and the surrender of the notes, warrants and bonds, and the issuance of the new bonds, the resolution approved by the electors shall constitute a contract with the holders of the bonds, and all facts therein recited shall conclusively be deemed to be true as against the district and in favor of the holders of the bonds. A recital in the bonds that they are issued in pursuance of sections 46-1,114 to 46-1,126 shall be conclusive evidence that such bonds are valid and the same shall be incontestable.

Source: Laws 1925, c. 128, § 11, p. 339; C.S.1929, § 46-188; R.S.1943, § 46-1,124.

46-1,125. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; contracts; duties of public officers.

After the making of a contract and the issuance of bonds as herein authorized in sections 46-1,114 to 46-1,126, it shall be the duty of all district and county officials, and such officials are hereby authorized and directed, to do and perform all such acts and things within the powers of their respective offices as may be necessary or convenient to cause the district to carry out and fully perform the obligations of such contract and bonds, including, among other things not specified, the levying and collecting of taxes, the disposition of the money of the district, the application and transfer of funds, the borrowing of money, and the payment of bonds and other obligations. In the absence of any provision of law specifying the officer by which and the manner in which any act or thing required by any such contract shall be done or performed the board of directors shall have full power and authority to determine the matter.

Source: Laws 1925, c. 128, § 12, p. 340; C.S.1929, § 46-189; R.S.1943, § 46-1,125.

46-1,126. Bonds issued to discharge judgments or procure surrender of bonds, notes, and warrants; rights of creditors not consenting.

Any contractual obligation entered into by a district in pursuance of sections 46-1,114 to 46-1,126 shall not impair the rights of any creditor of the district who does not consent thereto by accepting the bonds issued in pursuance of said sections, and in case the district shall default in the payment of any debt owing to any such creditor the rights and remedies of such creditor shall be the same as though the contractual obligations hereby authorized had not been entered into.

Source: Laws 1925, c. 128, § 13, p. 340; C.S.1929, § 46-190; R.S.1943, § 46-1,126.

46-1,127. Bonds; sinking fund; how provided.

The board of directors of any irrigation district in the State of Nebraska, if it considers it for the best interest of such district, shall have the power to provide a sinking fund with which to pay and retire outstanding bonds of the district. For the purpose of creating, establishing, and maintaining such fund, such board may levy a tax each year of not to exceed eighty-seven and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district as fixed by the district assessor. Following such levy, the board may by contract with the owners of such bonds pay and retire any bonds of the district and interest accrued thereon, whether such bonds are due and payable or not.

Source: Laws 1921, c. 283, § 1, p. 928; C.S.1922, § 2938; C.S.1929, § 46-196; R.S.1943, § 46-1,127; Laws 1953, c. 287, § 64, p. 968; Laws 1979, LB 187, § 170; Laws 1992, LB 719A, § 150.

46-1,128. Irrigation or drainage districts; sale of real estate; procedure.

An irrigation or drainage district which owns or hereafter may acquire the title to any real estate which is no longer needed by such irrigation or drainage district may sell and convey the same when authorized to do so by the affirmative vote of a majority of the qualified electors voting on such proposition at any general or special election held in such district, but nothing contained in sections 46-1,128 to 46-1,132 shall require any irrigation or drainage district which shall have more than five hundred qualified electors residing within it to comply with the requirements of sections 46-1,128 to 46-1,132. Such districts having more than five hundred qualified electors may sell and convey real estate which is no longer needed at public auction as hereafter provided in this section. Prior to any such sale, the real estate shall be appraised for sale purposes by a qualified appraiser who shall be appointed by the governing board of the district. Such real estate shall not be sold for less than the appraised value, which shall be the starting bid price at the public sale. Notice of such sale shall be given by publication three consecutive weeks in some legal newspaper published in the county where the real estate is located; *Provided,* sale at public auction or appraisal shall not be required if the sale is to be made to a governmental subdivision or the State of Nebraska, and in such instance only notice of the sale, as provided for in this section, shall be required.

Source: Laws 1921, c. 257, § 1, p. 870; C.S.1922, § 2933; C.S.1929, § 46-191; R.S.1943, § 46-1,128; Laws 1969, c. 384, § 1, p. 1352.

46-1,129. Sale of real estate; election; notice; form; contents.

Notice of such election shall be given by posting notice in three public places in each of the election precincts in the election district for at least twenty days and also by publication of such notice in a legal newspaper published or of general circulation in the county where the office of the board of directors is kept, once each week for three consecutive weeks. Such notice shall specify the time and place of holding the election in such district and shall contain a brief summary of the proposition involving the proposed conveyance.

Source: Laws 1921, c. 257, § 2, p. 870; C.S.1922, § 2934; C.S.1929, § 46-192; R.S.1943, § 46-1,129; Laws 1986, LB 960, § 31.

46-1,130. Sale of real estate; election; results; determination.

Such election shall be held and the results thereof determined and declared in conformity with the law governing the election of officers in such district as nearly

as may be practicable; *Provided,* that no irregularity in the conduct of such an election, due to an error or omission, shall invalidate the same if the election shall have been otherwise fairly conducted.

Source: Laws 1921, c. 257, § 3, p. 871; C.S.1922, § 2935; C.S.1929, § 46-193; R.S.1943, § 46-1,130.

46-1,131. Sale of real estate; notice.

At least thirty days' notice of the terms of sale, with description of property to be sold, shall be given by publication in some newspaper published in the county in which the office of the board of directors is located, or if no newspaper is published in the county then by posting in at least four public places within such district.

Source: Laws 1921, c. 257, § 4, p. 871; C.S.1922, § 2936; C.S.1929, § 46-194; R.S.1943, § 46-1,131.

46-1,132. Sale of real estate; bids; acceptance; conveyance; form.

The sale shall be by sealed bids. The directors may reject any and all bids and readvertise, if in their judgment it is for the best interest of the district. Upon approval of the sale, by a two-thirds vote of the board of directors of the district, the president of the board of directors shall in the name of the irrigation or drainage district execute and deliver a deed or contract to the purchaser, which deed or contract shall be attested by the secretary, and the seal of the irrigation or drainage district shall be affixed thereto.

Source: Laws 1921, c. 257, § 5, p. 871; C.S.1922, § 2937; C.S.1929, § 46-195; R.S.1943, § 46-1,132; Laws 1971, LB 653, § 4.

46-1,133. Irrigation districts; public lands; taxation; rights and obligations of entrymen.

Whenever irrigation districts incorporated in accordance with the laws of this state, whether heretofore or hereafter organized, shall include within the corporate boundaries public lands of the United States, whether entered or unentered, the board of directors is authorized to make such representations and assurances to the Secretary of the Interior as may be required in order to comply with the Act of Congress approved August 11, 1916, and entitled An act to promote reclamation of arid land, and related acts of Congress. Upon compliance therewith, the entrymen within such district shall be entitled to all the privileges of private landowners including the right to vote and to hold office, and with respect to irrigation districts

wherein irrigable public lands are located the terms electors and owners shall be so construed as to include entrymen of such public lands. The public lands of the district included as aforesaid shall be subject to irrigation district taxation in the same manner as the private lands of the district to the extent authorized by the aforesaid or other acts of Congress, and in accordance with the laws governing irrigation districts heretofore or hereafter enacted.

Source: Laws 1917, c. 195, § 1, p. 470; C.S.1922, § 2929; C.S.1929, § 46-174; R.S.1943, § 46-1,133.

46-1,134. Irrigation districts; excluded lands not taxable.

No irrigation district, company or corporation shall include within its district for purposes of levying taxes, bonds or assessments any land which has formerly been set out of the district, unless the owner of such lands shall consent to have his land thus reinstated in the district.

Source: Laws 1917, c. 197, § 1, p. 472; C.S.1922, § 2941; C.S.1929, § 46-199; R.S.1943, § 46-1,134.

46-1,135. Rights of grantees of subdivided lands.

Where land within an irrigation district, to which water has been delivered through adequate facilities provided by such irrigation district, is subdivided and transferred in part, the grantee or transferee shall have the right to use laterals and other existing facilities as against his grantor or assignor unless agreed otherwise, which agreement must be expressly stated in the deed of conveyance or transfer.

Source: Laws 1933, c. 89, § 1, p. 360; C.S.Supp.,1941, § 46-1,102; R.S.1943, § 46-1,135.

Annotations

"Facilities" under this section is limited to something built or constructed for the purpose of delivering irrigation water, and flooding over the land is not a facility within the meaning of the statute. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

Grantee of subdivided land previously irrigated by flooding from canal on portion of land retained by grantor or assignor held not entitled under this section to continue the flood irrigation from the canal. Where grantee's quarter had been irrigated from farm pond fed by lateral extending from canal on other quarter before property was subdivided, grantee held entitled under this section to continue use of lateral to irrigate his quarter. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

46-1,136. Subdivided lands; additional facilities; no obligation to furnish.

An irrigation district within which subdivided land is situated, shall not be required to build additional laterals or provide other facilities for the purpose of delivering water to such subdivided land, but shall only be required to deliver water for the irrigation of such subdivided land through the laterals or other facilities in existence before such transfer or subdivision was made.

Source: Laws 1933, c. 89, § 2, p. 360; C.S.Supp.,1941, § 46-1,103; R.S.1943, § 46-1,136.

Annotations

"Facilities" under this section is limited to something built or constructed for the purpose of delivering irrigation water, and flooding over the land is not a facility within the meaning of the statute. Hengen v. Hengen, 211 Neb. 276, 318 N.W.2d 269 (1982).

46-1,137. Tolls; collection authorized.

When the governing authority of any irrigation district of this state elects to collect funds for the operation and maintenance of irrigation works or repayment of contracts of construction by and between the United States of America and any irrigation district as provided in section 46-126, by the levy of tolls or charges against the lands in such district, such tolls and charges and the time of payment thereof shall be levied and fixed by the rules and regulations of such district; and the delivery of water to any parcel of land may be withheld during the time that the tolls and charges levied upon such parcel of land are delinquent and unpaid. Such tolls and charges shall be cumulative, and the delivery of water to any parcel of land may be withheld until all delinquent tolls and charges levied upon such parcel of land for the operation and maintenance of the irrigation works of such district are paid for past years as well as for the current year.

Source: Laws 1937, c. 106, § 1, p. 366; C.S.Supp.,1941, § 46-1,109; R.S.1943, § 46-1,137; Laws 1967, c. 280, § 3, p. 758.

46-1,138. Delinquent tolls; lien on real estate; manner of collection.

All such tolls and charges, due and delinquent according to the rules and regulations of such district, and unpaid on June 1 after becoming due and delinquent, may be by the governing authority of such district certified to the county clerk of such county in which are situated the lands against which such tolls

and charges have been levied; and when so certified such tolls and charges shall be entered upon the tax list and spread upon the tax roll the same as other general and irrigation taxes are levied and assessed upon real estate, and shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes on such land.

Source: Laws 1937, c. 106, § 2, p. 366; C.S.Supp.,1941, § 46-1,110; R.S.1943, § 46-1,138.

46-1,139. District funds; authorized depositories.

Any irrigation district treasurer may deposit the money received or held by him or her by virtue of his or her office in some state or national bank in the State of Nebraska, capital stock financial institution, or qualifying mutual financial institution. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 18, § 1, p. 93; C.S.Supp.,1941, § 46-1,104; R.S.1943, § 46-1,139; Laws 1989, LB 33, § 27; Laws 2001, LB 362, § 31.

46-1,140. District funds; depository designated; deposits subject to check or order.

Before such funds are deposited one or more banks, capital stock financial institutions, or qualifying mutual financial institutions shall be designated by the board of directors of the irrigation district whose funds are to be so deposited. All such deposits shall be subject to payment on check or order of the treasurer of the district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 18, § 2, p. 93; C.S.Supp.,1941, § 46-1,105; R.S.1943, § 46-1,140; Laws 1989, LB 33, § 28; Laws 2001, LB 362, § 32.

46-1,141. District funds; deposits; how secured.

The depository receiving the deposit of funds of the district is hereby authorized to secure the deposit of such funds by giving security pursuant to the Public Funds Deposit Security Act, by depository bond, corporate in character, or

by sufficient personal security when demanded by the board of directors of the district, such security to be approved by the board of directors of such irrigation district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 18, § 3, p. 94; C.S.Supp.,1941, § 46-1,106; R.S.1943, § 46-1,141; Laws 1989, LB 33, § 29; Laws 1999, LB 396, § 35; Laws 2001, LB 362, § 33.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

46-1,142. District funds; treasurer not liable, when.

No treasurer of any such district shall be liable upon his bond for loss on account of any deposit in a bank which has been designated as the depository under the provisions of sections 46-1,139 to 46-1,142, and the security given by such bank has been approved by the board of directors of such district.

Source: Laws 1935, c. 18, § 4, p. 94; C.S.Supp.,1941, § 46-1,107; R.S.1943, § 46-1,142.

46-1,143. Contract for water supply authorized.

The board of directors of any irrigation district organized under the laws of this state may enter into contracts for a supply of water for the irrigation of the lands within such irrigation district with any person, firm, association, corporation or the United States of America. The source of supply of such water may be either within or without the boundaries of the State of Nebraska, and the water supply may be either the entire supply of water for such district or to supplement an appropriation already made by such district.

Source: Laws 1915, c. 205, § 1, p. 441; C.S.1922, § 2944; C.S.1929, § 46-201; R.S.1943, § 46-1,143.

Annotations

Board of directors of irrigation district may contract with the United States for a supply of water. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Irrigation districts are authorized to contract with United States for water supply for irrigation of district lands. Livanis v. Northport Irr. Dist., 121

Neb. 777, 238 N.W. 757 (1931).

Act is complete in itself, and does not limit power of officers of district to contract with United States for supply of water under other statutory provisions. Bridgeport Irr. Dist. v. United States, 40 F.2d 827 (8th Cir. 1930).

46-1,144. Water supply; tax levy.

If the contract mentioned in section 46-1,143 provides for payment of the entire purchase price of such water supply within one year after the making of such contract, the board of directors of such irrigation district shall at the time of entering into such contract pass a resolution that a levy shall be made sufficient to raise such sum as is necessary to pay such purchase price, and the board of directors shall thereafter, and at the same time the levy of other taxes for the district is made, levy a tax against the taxable property of the district sufficient to raise and pay such sum.

Source: Laws 1915, c. 205, § 2, p. 441; C.S.1922, § 2945; C.S.1929, § 46-202; R.S.1943, § 46-1,144.

46-1,145. Contract for water supply; election required, when; notice; procedure; effect of affirmative vote.

If such contract provides for payments to be made extending for a period of more than one year from the date of making the contract, the board of directors of such irrigation district shall submit the contract to the electors of the district at any general election or at a special election called therefor for the approval or disapproval of the contract. The ballots at the election shall have printed thereon For approval of contract for water supply, and Against approval of contract for water supply. The notice of the election need not give the entire contract but shall be sufficient if it states in a general way the substance of the proposed contract. The election shall otherwise be conducted in accordance with sections 46-115 to 46-118. If a majority of the electors that vote on the proposition vote for approval of the contract, the board of directors shall enter into the contract and shall thereafter, at the time the other taxes of the district are levied, levy a tax on the taxable property of the district sufficient to pay the amount due and to become due on the contract before the next annual levy in the district.

Source: Laws 1915, c. 205, § 3, p. 442; C.S.1922, § 2946; C.S.1929, § 46-203; R.S.1943, § 46-1,145; Laws 2015, LB561, § 12.

Annotations

A contract for a supply of water which provides for payment to be made by an irrigation district for a period of more than one year from the date of making the contract must be approved by the legal voters of the district. Twin Loups Reclamation & Irr. District v. Blessing, 202 Neb. 513, 276 N.W.2d 185 (1979).

Where sale of existing irrigation works was contemplated, notice in general of substance of contract was sufficient. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

46-1,146. Water supply contracts and bonds; rescission; when authorized.

If any irrigation district shall have heretofore, or hereafter, purchased a water supply and issued bonds in payment of the same, or shall have purchased an irrigation system, which system included a contract for water supply and issued bonds in payment of the same, the directors of the district may arrange for the surrender and rescission of such contract for water supply upon surrender and cancellation of bonds in an amount equal to the bonds issued in payment for such water supply, and if the water supply was included in the purchase price of an irrigation system the board of directors may arrange for the surrender and rescission of the contract for such water supply on the surrender and cancellation of bonds in an amount equal to the part of the purchase price that was represented by the value of such contract for water supply, such amount to be determined by the directors of the irrigation district. Upon the surrender of such contract and cancellation of bonds as hereinbefore provided, the board of directors of such irrigation district may enter into a new contract for water supply as hereinbefore provided.

Source: Laws 1915, c. 205, § 4, p. 442; C.S.1922, § 2947; C.S.1929, § 46-204; R.S.1943, § 46-1,146.

46-1,147. Irrigation districts; acceptance of federal reclamation aid.

Any irrigation district is hereby authorized to be created and is empowered to cooperate with the United States under the Act of June 17, 1902 (32 Stat. 388), known as the Federal Reclamation Act and acts amendatory thereof and supplementary thereto, for the purposes of construction of irrigation works, including drainage works, or for the purchase, extension, operation or maintenance of irrigation works, including drainage works, or for the assumption as principal or guarantor of indebtedness to the United States on account of any district lands, and in that case the district shall levy and assess the several landowners entering lands under the reclamation laws or acquiring water rights thereunder in accordance with the reclamation law, public notices and orders issued thereunder and in accordance with existing contracts made between the individual landowners and the United

States and as may be contracted for between the district and the United States, and the district is hereby clothed with full taxing power to collect such sums under the revenue laws of the state as in the case of other irrigation districts; *Provided, however,* that any property acquired by the district may be conveyed to the United States insofar as the same may be needed by the United States for the construction, operation, and maintenance of works for the benefit of the district under any contract that may be entered into with the United States pursuant to this section.

Source: Laws 1917, c. 191, § 1, p. 464; C.S.1922, § 2939; C.S.1929, § 46-197; R.S.1943, § 46-1,147.

Annotations

An irrigation district may enter into a contract with the United States for a water supply. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Contract executed hereunder did not establish such relationship between parties as would impute negligence of the United States or its employees to the irrigation district. Livanis v. Northport Irr. Dist., 121 Neb. 777, 238 N.W. 757 (1931), affirming on rehearing, 120 Neb. 314, 232 N.W. 583 (1930).

Reclamation service has power to take over and operate irrigation system, to protect its claims, without acquiring title. New York Trust Co. v. Farmers' Irr. Dist., 280 F. 785 (8th Cir. 1922).

46-1,148. Payment of federal charges.

The contract provisions for the payment of construction charges to the United States and the bonds securing the payment of the same, if any be issued and deposited, may be of such denominations and may call for payment of such interest not exceeding six percent per annum, and may provide for such installments and for repayment of the principal at such times as may be required by the federal laws and as may be agreed upon between the board and the Secretary of the Interior. The contract indebtedness to the United States shall be a prior lien to any subsequent bond issue of the district.

Source: Laws 1917, c. 191, § 2, p. 465; C.S.1922, § 2940; C.S.1929, § 46-198; R.S.1943, § 46-1,148.

46-1,149. Bonds; contracts; acceptance of United States guarantee.

Any irrigation or drainage district, heretofore or hereafter organized under the laws of the State of Nebraska for irrigation or drainage purposes, is hereby

authorized and empowered to enter into contract with the United States of America whereby the bonds of the district are guaranteed by the United States or financial credit is extended by the United States to the district, and for the sale, purchase or use of any canal, ditch, reservoir, rights-of-way, irrigation or drainage systems or other property owned or to be acquired for the use of such district.

Source: Laws 1915, c. 207, § 1, p. 461; C.S.1922, § 2949; C.S.1929, § 46-206; R.S.1943, § 46-1,149.

46-1,150. Acceptance of act of Congress applicable to district.

Any irrigation or drainage district organized under the laws of Nebraska is hereby authorized to accept of the provisions of any Act of Congress of the United States applicable to such district and to obligate itself to comply with such laws, rules, and regulations as may be promulgated by any department of the United States in pursuance of such acts. Irrigation or drainage districts contracting with the United States under the provisions of sections 46-1,149 and 46-1,150 shall be governed in all matters by the laws of the state relating to irrigation or drainage districts as the case may be, except in such things as may be otherwise provided for such districts.

Source: Laws 1915, c. 207, § 2, p. 461; C.S.1922, § 2950; C.S.1929, § 46-207; R.S.1943, § 46-1,150.

46-1,151. Contracts with United States; judicial approval; proceedings authorized.

The board of directors of any irrigation district heretofore or hereafter organized may, in its discretion, before or after the making of any contract with the United States or others, the levying of any assessment or the taking of any particular steps or action, commence a special proceeding in the district court of the state, in and by which the proceedings of such board and of such district leading up to or including the making of any such contract, and the validity of any of the terms thereof, the levying of any assessment or the taking of any particular steps or action, shall be judicially examined, approved and confirmed, or disapproved and disaffirmed.

Source: Laws 1917, c. 192, § 1, p. 466; C.S.1922, § 2951; C.S.1929, § 46-208; R.S.1943, § 46-1,151.

Annotations

Judicial approval of contract with the United States could be obtained in special proceeding in rem. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102

N.W.2d 429 (1960).

Contracts with United States for supply of water for irrigation require judicial approval. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Action to confirm bonds is a special proceeding in rem. Frenchman-Cambridge Irr. Dist. v. Ferguson, 154 Neb. 20, 46 N.W.2d 692 (1951).

46-1,152. Contracts with United States; procedure for confirmation; powers of court.

The practice and procedure for the confirmation of any step or action provided for in section 46-1,151 shall be as nearly as possible in conformity with the practice and procedure provided for the confirmation before the issuance and sale of bonds of irrigation districts. The court may approve and confirm such proceedings in part and disapprove and declare illegal or invalid other and subsequent parts of the proceedings, and insofar as possible the court shall remedy and cure all defects in such proceedings.

Source: Laws 1917, c. 192, § 2, p. 466; C.S.1922, § 2952; C.S.1929, § 46-209; R.S.1943, § 46-1,152.

Annotations

Practice and procedure for approval of contract with United States is provided. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

46-1,153. Contracts with United States; borrowing money to meet obligations; powers of board.

The board of directors of any irrigation district in this state sustaining contractual relations with the United States shall have the power to borrow funds for the purpose of making any necessary payments thereon and to pledge the credit of the district for the payment of the same. The board of directors of any irrigation district in this state shall have the power to borrow funds to meet the necessities of any unforeseen or unusual conditions arising in the operation and maintenance of the irrigation system of such district and to pledge the credit of such district for the payment thereof. The total sum borrowed by any district under the provisions of this section shall at no time exceed two-thirds the amount of the general fund levy of such district for the preceding year. If the levy for the then current year shall be

insufficient to provide for the payment of the sum or sums so borrowed, then such payment shall be provided for in the levy for the year next ensuing.

Source: Laws 1917, c. 193, § 1, p. 467; C.S.1922, § 2953; C.S.1929, § 46-210; R.S.1943, § 46-1,153.

46-1,154. Districts organized at least one year; proceedings validated.

In all cases in which the county board of any county has purported to establish an irrigation district situated in whole or in part within such county, and such district has acted as an irrigation district for the period of at least one year prior to August 15, 1937, all acts and proceedings taken for the purpose of creating such district are hereby legalized, validated, and declared to be sufficient, and such irrigation district is hereby declared to be duly incorporated, and as such, said irrigation district under its corporate name shall have all the rights and privileges and be subject to all of the duties and obligations of a duly incorporated irrigation district.

Source: Laws 1937, c. 105, § 1, p. 365; C.S.Supp.,1941, § 46-1,108; R.S.1943, § 46-1,154.

46-1,155. Merger of districts; petition; plan; contents.

Any two or more irrigation districts may merge into one district if a petition for merger signed by a majority of the board of directors of each district or signed by a majority of the electors of each district is filed with the boards of directors of the districts to be merged. Such petition shall include a plan for the merger, which plan shall contain:

(1) A description of the proposed boundaries of the merged district and a list of lands;

(2) A summary of the reasons for the proposed merger;

(3) A summary of the terms on which the merger is to be made between the merged districts and such terms shall include a provision for three divisions as nearly equal in size as may be practicable, which shall be numbered first, second, and third, and two directors shall be elected from each division;

(4) The amount of outstanding indebtedness of each district and proposed disposition thereof;

(5) The equitable adjustment of all property, debts, and liabilities among the districts involved;

(6) The name of the proposed district; and

(7) Such other matters as the petitioners determine proper to be included.

A certified copy of the petition for merger shall be filed with the Department of Natural Resources and the department shall either approve or disapprove such petition within twenty days. The boards of directors of the districts shall not take further action without such approval.

Source: Laws 1972, LB 1509, § 3; Laws 2000, LB 900, § 92.

46-1,156. Merger of districts; outstanding bonds; consent of bondholders.

If there are outstanding bonds of an irrigation district proposing to merge, or if such a district shall have entered into a contract with the United States, as provided in section 46-126 or 46-156, then the board shall notify the holders of such outstanding bonds that a petition for merger has been filed and the holders of such outstanding bonds may give their assent in writing to the effect that they severally consent to any merger that may be approved by the district and in case of such contract with the United States, the Secretary of the Interior shall be notified that a merger of such district is proposed and the Secretary of the Interior may assent to such merger. The assents shall be filed with the boards of directors of the districts proposed to be merged and shall be recorded in the minutes of each board and such minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as an assent, but if such assent of the bondholders and, in the case of contract with the United States, such assent of the Secretary of the Interior is not filed, the board shall deny and dismiss the petition for merger.

Source: Laws 1972, LB 1509, § 4.

46-1,157. Merger of districts; approval by Department of Natural Resources.

When such plan has been approved by the Department of Natural Resources, it shall be designated as the final approved plan and shall be submitted to a vote as provided in section 46-1,158.

Source: Laws 1972, LB 1509, § 5; Laws 2000, LB 900, § 93.

46-1,158. Merger of districts; special election; notice.

Not less than thirty days nor more than sixty days after the designation of the plan as the final approved plan, the proposition of the adoption or rejection of such proposed plan of merger shall be submitted by the boards of directors at a special

election to all the electors of the irrigation districts which will be affected by the merger plan. Notice of such election shall be given by posting a notice in three public places in each election precinct in each district affected by the merger for at least twenty days, and also by publication of such notice in a newspaper of general circulation in the county where the office of the board of directors of each district affected by the merger is required to be kept once a week for three successive weeks.

Source: Laws 1972, LB 1509, § 6.

46-1,159. Merger of districts; election; notice; contents.

The election notice shall:

(1) State that the election has been called for the purpose of affording the electors an opportunity to approve or reject the plan of merger;

(2) Contain a description of the boundary of the proposed district;

(3) Contain a statement giving a summary of the reason for the proposed merger including a summary of the terms on which the merger is to be made, and the amount of outstanding indebtedness of each district;

(4) State the equitable adjustments of all property, debts and liabilities among the districts involved;

(5) State the name of the proposed district;

(6) Contain such other matters as are set out in the merger plan;

(7) Specify the time of holding the election; and

(8) Name the directors of the districts to be merged who shall constitute the first board of directors of the new district.

Source: Laws 1972, LB 1509, § 7.

46-1,160. Merger of districts; election; ballots; canvass; board of directors.

The board of directors of the irrigation districts to be merged shall provide ballots to be used at such election. The return of the election, together with the ballots cast thereat, shall be certified by the boards of election of such districts to the persons who will serve as the board of directors of the merged district if the merger is approved, within three days after the election or within three days after

the deadline to submit ballots by mail, as the case may be, which board shall, on or before the third day after the election, canvass such returns and declare the result of such election, which result shall be at once recorded by the secretary of the board of directors in the records of the district boards and certified to the county clerk. The election and the return thereof shall otherwise be conducted in accordance with sections 46-115 to 46-118.

Source: Laws 1972, LB 1509, § 8; Laws 2015, LB561, § 13.

46-1,161. Merger of districts; board of directors; term of office; election.

The directors serving on the boards of directors of such merging districts shall constitute the first board of directors of the new district if the merger is approved. Such board of directors shall determine a method of setting the terms of office, so that two directors' terms on the new board shall be for one year, two for two years and three for three years. Each year thereafter two directors shall be elected for a term of three years.

Source: Laws 1972, LB 1509, § 9.

46-1,162. Merger of districts; election; effect.

If at such election a majority of all votes cast at the election in each district are not in favor of such merger, the merger plan shall be defeated and shall not be placed in effect. If at such election a majority of all votes cast at the election in each district shall be in favor of such merger, the merger shall be effective immediately and the merged district shall assume all rights, assets and liabilities of the merged districts.

Source: Laws 1972, LB 1509, § 10.

46-1,163. Merger of districts; indebtedness; responsibility; succession to property.

Whenever two or more districts are involved in a merger plan, such districts shall continue to be responsible for any indebtedness incurred before the merger takes place unless a different arrangement is included in the plan voted upon by the electors; *Provided,* that when the voters approve such merger, the merged district shall succeed to all the property, contracts and obligations of all the districts so merged into it and shall assume all of their valid contracts and obligations.

Source: Laws 1972, LB 1509, § 11.

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; R.S.1943, § 46-201.

Annotations

The right of appropriation for irrigation purposes is limited to the waters of natural streams of the state, and does not extend to waters in artificial drainage ditches. Drainage Dist. No. 1 v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

State, in exercise of police power, may supervise and control the appropriation, diversion, and distribution of public waters of state, and impose that duty on administrative officers. State ex rel. Cary v. Cochran, 138 Neb. 163, 292 N.W. 239 (1940).

Under irrigation act of 1889, a water right for purposes of irrigation need not have been attached to any particular tract of land. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

Under this and other sections, legislative intent is shown to limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and requiring that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

Prior to existing statutes declaring water for irrigation to be natural want, and granting preference in use of water for agriculture, appropriation for power purposes was as favorably regarded as for irrigation. Kearney Water & E. P. Co. v. Alfalfa Irr. Dist., 97 Neb. 139, 149 N.W. 363 (1914).

In view of preference given by statute to use of water for agricultural purposes, irrigation companies will not be enjoined from diverting water from lower riparian mill owner, where petition fails to allege that appropriation was unlawful. Cline v. Stock, 71 Neb. 70, 98 N.W. 454 (1904), 102 N.W. 265 (1905).

Although use of water for irrigation is declared a natural want, right to so use it must be exercised reasonably under the circumstances of each case. Meng v. Coffee, 67 Neb. 500, 93 N.W. 713 (1903).

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.

Annotations

Under former law, the right to appropriate water for irrigation purposes was limited to waters of natural streams. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962).

The right of appropriation for irrigation purposes is limited to the waters of natural streams of the state, and does not extend to waters in artificial drainage ditches. Drainage Dist. No. 1 v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

This, and other sections, limit the location and construction of irrigation canals and ditches as well as the land irrigated by same to the basin containing the source of the water used, and require that all unused water shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

Right to use of water of natural stream acquired prior to 1895 was a vested property right which could not be taken away by legislative action. City of Fairbury v. Fairbury Mill & Elevator Co., 123 Neb. 588, 243 N.W. 774 (1932).

Right to appropriate public waters of streams of state for generating electric energy is taxable as franchise. Northern Nebraska Power Co. v.

Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

Legislature did not intend by the act, of which this section is part, to interfere with prior acquired rights, but to ascertain extent of prior appropriations, and make record of them, in order to carry out law respecting subsequent appropriations. Black Bros. Flour Mills v. Umphenour, 111 Neb. 218, 196 N.W. 123 (1923).

Riparian owners cannot appropriate water of running streams without consent of state. Kirk v. State Board of Irrigation, 90 Neb. 627, 134 N.W. 167 (1912).

The establishment of an administrative system for the regulation and determination of water rights is a legitimate exercise of the police power of the state. California-Oregon Power Co. v. Beaver Portland Cement Co., 73 F.2d 555 (9th Cir. 1934).

46-202.01. Repealed. Laws 1965, c. 271, § 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; R.S.1943, § 46-203.

Annotations

The right of appropriation for irrigation purposes is limited to the waters of natural streams of the state, and does not extend to waters in artificial drainage ditches. Drainage Dist. No. 1 v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131 (1941).

Senior appropriator is entitled to water as against an upstream junior appropriator, as long as water in usable quantities can be delivered to senior appropriator. State ex rel. Cary v. Cochran, 138 Neb. 163, 292 N.W. 239 (1940).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

While Nebraska was originally a riparian doctrine state, legislation was enacted adopting the principle of prior appropriation. Nebraska v. Wyoming, 325 U.S. 589 (1945).

United States cannot claim assignment to it of excess waters under an appropriation, as excess would inure to benefit of other appropriators prior

in time to United States. United States v. Tilley, 124 F.2d 850 (8th Cir. 1941).

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.

Annotations

1. Rights of riparian owners

2. Vested rights

3. Limitations on appropriation

4. Miscellaneous

1. Rights of riparian owners

Parties who have appropriated water for irrigation purposes, and continued such use for seven years, cannot be enjoined by lower riparian owner whose mill privilege may be injured thereby. He must sue for damages. Cline v. Stock, 71 Neb. 70, 98 N.W. 454 (1904), 102 N.W. 265 (1905).

Riparian owner, damaged by appropriation, may recover actual damages sustained. McCook Irr. & Water Power Co. v. Crews, 70 Neb. 109, 96 N.W. 996 (1903).

Common-law rule, in force except as modified by statute, only gives riparian owner right to water so far as consistent with like right of all other riparian owners. Civil law is not applicable. Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

Riparian owners are entitled, in absence of grant, license, or prescription, to natural flow of water. Plattsmouth Water Co. v. Smith, 57 Neb. 579, 78 N.W. 275 (1899).

2. Vested rights

An appropriator of water for power purposes under act of 1877 acquired a vested right which was not affected by enactment of this section in 1895, giving preference for agricultural purposes. Kearney Water & Electric Powers Co. v. Alfalfa Irr. Dist., 97 Neb. 779, 151 N.W. 319 (1915), 97 Neb. 139, 149 N.W. 363 (1914).

Completed appropriation of water for power under law of 1877 is vested right, and priority, if unchallenged, is not lost by failure to demand adjudication under law of 1895. Gearhart & Benson v. Frenchman Valley Irr. Dist., 97 Neb. 764, 151 N.W. 323 (1915).

Under unrevoked permit from state board, applicant who thereafter applies public waters to beneficial use, acquires vested right. Rasmussen v. Blust, 85 Neb. 198, 122 N.W. 862 (1909).

Where appropriator of water has acquired a vested right to use of water, he may enjoin upper riparian owner on stream from diverting and using the water for purposes not theretofore exercised. McCook Irr. & Power Water Co. v. Crews, 70 Neb. 109, 96 N.W. 996 (1903).

Riparian's right to flow of stream is a vested right, and part and parcel of the land, which legislation cannot abolish. Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

3. Limitations on appropriation

An appropriation of water, made prior to 1895, is not limited as to quantity except that it must be for some useful and beneficial purpose and within the limits of the capacity of the diversion works. Enterprise Irr. Dist. v. Willis, 135 Neb. 827, 284 N.W. 326 (1939).

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

4. Miscellaneous

Under former law, the right to appropriate water for irrigation purposes was limited to waters of natural streams. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962).

Under former law, Department of Roads and Irrigation was neither a necessary nor a proper party to a proceeding on appeal from an order or decision made by it. Cozad Ditch Co. v. Central Nebraska Public Power & Irr. Dist., 132 Neb. 547, 272 N.W. 560 (1937).

It is the duty of the state to see that the waters of its streams, used for irrigation purposes, will not be wasted and that prior appropriators shall be protected as against subsequent appropriators. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

Agreement to pay maintenance fees for water rights may be enforced. Farmers & Merchants Irr. Co. v. Brumbaugh, 81 Neb. 641, 116 N.W. 512 (1908).

Overflow waters of streams, which run in well-defined course and again unite with stream at lower point, are part of stream and not surface water. Brinegar v. Copass, 77 Neb. 241, 109 N.W. 173 (1906).

One seeking to acquire easement for ditch over another's land must maintain it continuously without material change of location for full statutory period. Dunn v. Thomas, 69 Neb. 683, 96 N.W. 142 (1903).

Reasonable use of water is largely question of fact, depending upon circumstances, but entire diversion, waste, or needless diminution is clearly unreasonable. Meng v. Coffee, 67 Neb. 500, 93 N.W. 713 (1903); Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

Domestic purposes, as here used, has reference to use of water for domestic purposes permitted to riparian owner by common law, and does not contemplate diversion of large quantities of water in canals or pipe lines. Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

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.

Annotations

Diversion of water from one watershed to another is permissible under sections 46-206 and 46-265, R.R.S.1943, so long as the stream from which it is diverted is more than one hundred feet wide and the diversion is not contrary to the public interest. Little Blue N.R.D. v. Lower Platte North N.R.D., 206 Neb. 535, 294 N.W.2d 598 (1980).

This section deals primarily with the limitation of the amount of water that may be taken from a stream more than one hundred feet in width. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

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; R.S.1943, § 46-207.

Annotations

No tract of land shall, without consent of owner, be burdened with two or more ditches for watering of same territory. Walker v. Anderson, 90 Neb. 119, 132 N.W. 937 (1911); Paxton & Hershey Irr. C. & L. Co. v. Farmers & Merchants Irr. & L. Co., 45 Neb. 884, 64 N.W. 343 (1895).

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, § 5.

46-212. Transferred to section 61-208.

46-212.01. Transferred to section 61-209.

46-212.02. Repealed. Laws 2000, LB 900, § 256.

46-213. Transferred to section 61-211.

46-214. Repealed. Laws 1981, LB 545, § 52.

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, § 3.

46-221. Repealed. Laws 1953, c. 157, § 3.

46-222. Repealed. Laws 1987, LB 140, § 15.

46-223. Repealed. Laws 1987, LB 140, § 15.

46-224. Repealed. Laws 1987, LB 140, § 15.

46-225. Repealed. Laws 1953, c. 157, § 3.

46-226. Determination of priority and amount of appropriation; duty of department; certain court orders; department; powers.

(1) 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.

(2)(a) The department is authorized to administer any riparian water right that has been validated and recognized in a court order from a court of lawful jurisdiction in the state.

(b) The only surface water appropriations that may be closed for a riparian water right are appropriations held by persons who were parties to the lawsuit validating the riparian water right or appropriations with a priority date subsequent to the date of the court order.

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; Laws 2009, LB184, § 1.

Annotations

The Department of Natural Resources regulates the appropriation of surface water and has statutory authority to determine the priority and amount of surface water appropriated. Koch v. Aupperle, 274 Neb. 52, 737 N.W.2d 869 (2007).

The Department of Natural Resources has no common-law or statutory duty to regulate the use of ground water in order to protect a party's surface water appropriations. In the absence of independent authority to regulate the use of ground water, the department has no legal duty to resolve conflicts between surface water appropriators and ground water users. Spear T Ranch v. Nebraska Dept. of Nat. Resources, 270 Neb. 130, 699 N.W.2d 379 (2005).

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

Method of determining priority and amount of appropriation is vested in the exclusive original jurisdiction of the Department of Water Resources. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Department has authority to determine whether or not appropriation has been lost by nonuser. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation could grant such appropriation for use of water of natural running stream as did not impair prior appropriations and rights to use water and could issue permits for improvements of streams, but could not determine damages or property rights involved. City of Fairbury v. Fairbury Mill & Elevator Co., 123 Neb. 588, 243 N.W. 774 (1932).

Powers of former State Board of Irrigation were quasi-judicial, and adjudications were final, unless appealed from. Enterprise Irr. Dist. v. Tri-State Land Co., 92 Neb. 121, 138 N.W. 171 (1912); Farmers Canal Co. v. Frank, 72 Neb. 136, 100 N.W. 286 (1904).

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; Laws 2004, LB 962, § 5.

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; procedure.

All appropriations for water must be for a 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 owner of an appropriation or his or her successor in interest ceases to use it for such purpose for more than five consecutive years, the right may be terminated only by the director 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; Laws 2004, LB 962, § 6.

Annotations

1. Beneficial use

2. Loss of appropriation

3. Miscellaneous

1. Beneficial use

Beneficial use requires, in the case of an appropriation for irrigation purposes, actual application of the water to the land for the purpose of irrigation. Hostetler v. State, 203 Neb. 776, 280 N.W.2d 75 (1979).

The diversion of some amount of water into the ditch a few days before suit is filed to cancel the water appropriation does not constitute a beneficial use within the meaning of this section. Hostetler v. State, 203 Neb. 776, 280 N.W.2d 75 (1979).

To constitute a beneficial use within the meaning of the appropriation statute the use must be one described in the appropriation. Hostetler v. State, 203 Neb. 776, 280 N.W.2d 75 (1979).

Under this section all appropriations for water must be for some beneficial or useful purpose, and when the appropriator or his successor in interest ceases to use it for such purpose the right ceases. Hostetler v. State, 203 Neb. 776, 280 N.W.2d 75 (1979).

2. Loss of appropriation

A completed appropriation of water for power purposes remains a valid appropriation to the full extent of its granted right unless restricted by a finding of abandonment or nonuser. Hickman v. Loup River P. P. Dist., 176 Neb. 416, 126 N.W.2d 404 (1964).

Appropriation may be lost either by abandonment or nonuser. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Evidence, in proceeding to forfeit appropriation of water for nonuser, supported judgment for contestee. State v. Delaware-Hickman Ditch Co., 114 Neb. 806, 210 N.W. 279 (1926).

3. Miscellaneous

This section has become the fixed policy of the state. State v. Birdwood Irr. Dist., 154 Neb. 52, 46 N.W.2d 884 (1951).

Under former law, provision empowering Department of Roads and Irrigation to cancel water appropriation, where water was not put to beneficial use, was not unconstitutional as violative of due process, or as giving department judicial powers. Dawson County Irr. Co. v. McMullen, 120 Neb. 245, 231 N.W. 840 (1930).

Under former law, appeal from decree refusing to cancel water rights may be taken to district court instead of directly to Supreme Court. State v. Oliver Bros., 119 Neb. 302, 228 N.W. 864 (1930).

Under former law, dismissal of proceeding by Department of Roads and Irrigation to cancel water rights did not bind other appropriators not parties. Kinnan v. France, 113 Neb. 99, 202 N.W. 452 (1925).

In determining priorities, former state board could recognize and determine existing conditions and limitations, but could not impose new. Enterprise Irr. Dist. v. Tri-State Land Co., 92 Neb. 121, 138 N.W. 171 (1912).

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. Appropriations; preliminary determination of nonuse; notice; order of cancellation; procedure.

(1) If, based upon the results of a field investigation or upon information, however obtained, the department makes preliminary determinations (a) that an appropriation has not been used, in whole or in part, for a beneficial or useful purpose or having been so used at one time has ceased to be used, in whole or in part, for such purpose for more than five consecutive years and (b) that the department knows of no reason that constitutes sufficient cause, as provided in section 46-229.04, for such nonuse or that such nonuse has continued beyond the additional time permitted because of the existence of any applicable sufficient cause, the department shall serve notice of such preliminary determinations upon the owner or owners of such appropriation and upon any other person who is an owner of the land under such appropriation. Such notice shall contain the information required by section 46-229.03, shall be provided in the manner required by such section, and shall be posted on the department's web site. Each owner of the appropriation and any owner of the land under such appropriation shall have thirty days after the mailing or last publication, as applicable, of such notice to notify the department, on a form provided by the department, that he or she contests the department's preliminary determination of nonuse or the department's preliminary determination of the absence of sufficient cause for such nonuse. Such notification shall indicate the reason or reasons the owner is contesting the department's preliminary determination and include any information the owner believes is relevant to the issues of nonuse or sufficient cause for such nonuse.

(2) If no owner of the appropriation or of the land under the appropriation provides notification to the department in accordance with subsection (1) of this section, the director may issue an order canceling the appropriation in whole or in part. The extent of such cancellation shall not exceed the extent described in the department's notice to the owner or owners in accordance with subsection (1) of this section. A copy of the order canceling the appropriation, or part thereof, shall be posted on the department's web site and shall be provided to the owner or owners of the appropriation and to any other owner of the land under the appropriation in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable. No cancellation under this subsection shall prohibit an irrigation district, a reclamation district, a public power and irrigation district, or a mutual irrigation company or canal company from asserting the rights provided by subsections (5) and (6) of section 46-229.04.

(3) If an owner of the appropriation provides notification to the department in accordance with subsection (1) of this section, the department shall review the owner's stated reasons for contesting the department's preliminary determination and any other information provided with the owner's notice. If the department determines that the owner has provided sufficient information for the department to conclude that the appropriation should not be canceled, in whole or in part, it shall inform the owners of the appropriation, and any other owners of the land under the appropriation, of such determination.

(4) If the department determines that an owner has provided sufficient information to support the conclusion that the appropriation should be canceled only in part and if (a) the owner or owners filing the notice of contest agree in writing to such cancellation in part and (b) such owner or owners are the only known owners of the appropriation and of the land under the appropriation, the director may issue an order canceling the appropriation to the extent agreed to by the owner or owners and shall provide a copy of such order to such owner or owners.

(5) If the department determines that subsections (2), (3), and (4) of this section do not apply, it shall schedule and conduct a hearing on the cancellation of the appropriation in whole or in part. Notice of the hearing shall be provided to the owner or owners who filed notices with the department pursuant to subsection (1) of this section, to any other owner of the appropriation known to the department, and to any other owner of the land under the appropriation. The notice shall be posted on the department's web site and shall be served or published, as applicable, in the manner provided in subsection (2), (3), or (4) of section 46-229.03, as applicable.

(6) Following a hearing conducted in accordance with subsection (5) of this section and subsection (1) of section 46-229.04, the director shall render a decision

by order. A copy of the order shall be provided to the owner or owners of the appropriation and to any other person who is an owner of the land under the appropriation. The copy of the order shall be posted on the department's web site and shall be served or published, as applicable, in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable, except that if publication is required, it shall be sufficient for the department to publish notice that an order has been issued. Any such published notice shall identify the land or lands involved and shall provide the address and telephone number that may be used to obtain a copy of the order.

(7) A water appropriation that has not been perfected pursuant to the terms of the permit 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, except that this subsection does not apply to appropriations to which subsection (2) of section 46-237 applies.

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; Laws 2004, LB 962, § 7; Laws 2006, LB 1226, § 7.

Annotations

Under former law, a notice of hearing on the adjudication of a water right that states the place and time of the hearing, names and describes the appropriation that is the subject of the hearing, states that the Department of Natural Resources' records indicate that the land approved for irrigation under the appropriation has not been irrigated for more than 3 consecutive years, states that the hearing will be held pursuant to sections 46-229 to 46-229.05, as amended, states that all interested persons shall appear at the hearing and show cause why the appropriation or part of the appropriation should not be canceled or annulled, states that the appropriation may be canceled if no one appears at the hearing, includes the address, post office box number, telephone number, and fax number of the Department of Natural Resources, and attaches copies of sections 46-229 to 46-229.05 provides adequate notice of the issues to be taken up at the hearing and contains the information required under this section. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Nonuse for over three years terminates the user's rights by statutory cancellation proceedings. Northport Irr. Dist. v. Jess, 215 Neb. 152, 337 N.W.2d 733 (1983).

The statutory forfeiture provisions of the section apply to vested rights in water appropriations established prior to April 4, 1895. In re Water Appropriation Nos. 442A, 461, 462, and 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

An unexcused nonuse of water appropriation rights by a predecessor in title binds the successor in title. Hostetler v. State, 203 Neb. 776, 280 N.W.2d 75 (1979).

Procedure for cancellation of water rights is not exclusive. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation could forfeit water right for nonuser for more than three years. State v. Birdwood Irr. Dist., 154 Neb. 52, 46 N.W.2d 884 (1951).

46-229.03. Appropriations; preliminary determination of nonuse; notice; contents; service.

(1) The notice provided by the department in accordance with subsection (1) or (5) of section 46-229.02 shall contain: (a) A description of the appropriation; (b) the number assigned to the appropriation by the department; (c) the date of priority; (d) the point of diversion; (e) if the notice is published, the section or sections of land which contain the lands located under such appropriation; (f) if the notice is served by personal service or by registered or certified mail, a description of the lands which are located under such appropriation, a description of the information used by the department to reach the preliminary determinations of nonuse, and a copy of section 46-229.04; (g) a description of the owner's options in response to the notice; (h) a department telephone number which any person may call during normal business hours for more information regarding the owner's rights and options, including what constitutes sufficient cause for nonuse; (i) a copy of the form that such owner may file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is mailed; (j) the location where the owner may obtain a form to file to contest such determination, if notice is provided in accordance with subsection (1) of section 46-229.02 and is published; and (k) if the notice is provided in accordance with subsection (5) of section 46-229.02, the date, time, and location of the hearing.

(2) For any owner whose name and address are known to the department or can be reasonably obtained by the department, the notice shall be served by personal service or by registered mail or certified mail. Any landowner's name or address shall be considered reasonably obtainable if that person is listed as an owner of the land involved, on the records of the county clerk or register of deeds for the county in which the land is located.

(3) For any owner whose name and address are not known to the department and cannot reasonably be obtained by the department, such notice shall be served by publication in a legal newspaper published or of general circulation in any county in which the place of diversion is located and in a legal newspaper published or of general circulation in each county containing land for which the

right to use water under the appropriation is subject to cancellation. Each such publication shall be once each week for three consecutive weeks.

(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 each week for three consecutive weeks.

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; Laws 2004, LB 962, § 8; Laws 2006, LB 1226, § 8.

Annotations

Notice of hearing on cancellation of water rights must be given to the party appearing of record to be the owner. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

This section does not fix the time in which an appropriator must put water to a beneficial use. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

46-229.04. Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.

(1) At a hearing held pursuant to section 46-229.03, the verified field investigation report of an employee of the department, or such other report or information that is relied upon by the department to reach the preliminary determination of nonuse, shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If an interested person 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 five consecutive years, the same shall be declared canceled and annulled unless the department finds that (a) there has been sufficient cause for such nonuse as provided for in subsection (2), (3), or (4) of this section or (b) subsection (5) or (6) of this section applies.

(2) Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if such nonuse was caused by the unavailability of water for that use. For a river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined by the department to be

fully appropriated pursuant to section 46-714, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented in the river basin, subbasin, or reach involved is likely to result in restoration of a usable water supply for the appropriation.

(3) Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:

(a) For any tract of land under separate ownership, the available supply was used but on only part of the land under the appropriation because of an inadequate water supply;

(b) The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full amount of the storage appropriation was needed to keep the reservoir full; or

(c) The appropriation is a storage-use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

(4) Sufficient cause for nonuse shall be deemed to exist for up to fifteen consecutive years if such nonuse was a result of one or more of the following:

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

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

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

(d) The works, diversions, or other facilities essential to use 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;

(e) 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;

(f) Legal proceedings prevented or restricted use of the water; or

(g) The land subject to the appropriation is under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal or state program or such land previously was under such a program but currently is not under such a program and there have been not more than five consecutive years of nonuse on that land since that land was last under that program.

The department may specify by rule and regulation other circumstances that shall be deemed to constitute sufficient cause for nonuse for up to fifteen years.

(5) When an appropriation is held in the name of an irrigation district, a reclamation district, a public power and irrigation district, a mutual irrigation company or canal company, or the United States Bureau of Reclamation and the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be terminated and notice of the termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The district or company holding such right shall have five years after the determination, or five years after an order of cancellation issued by the department following the filing of a voluntary relinquishment of the water appropriation that has been signed by the landowner and the appropriator of record, to assign the right to use that portion of the appropriation to other land within the district or the area served by the company, to file an application for a transfer in accordance with section 46-290, or to transfer the right in accordance with sections 46-2,127 to 46-2,129. The department shall issue its order of cancellation within sixty days after receipt of the voluntary relinquishment unless the relinquishment is conditioned by the landowner upon an action of a governmental agency. If the relinquishment contains such a provision, the department shall issue its order of cancellation within sixty days after receipt of notification that such action has been completed. The department shall be notified of any such assignment within thirty days after such assignment. If the district or company does not assign the right to use that portion of the appropriation to other land, does not file an application for a transfer within the five-year period, or does not notify the department within thirty days after any such assignment, that portion of the appropriation shall be canceled without further proceedings by the department and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any greater rate previously approved for such appropriation by the director in accordance with section 46-229.06.

(6) When it is determined by the director that an appropriation, for which the location of use has been temporarily transferred in accordance with sections 46-

290 to 46-294, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The right to reinitiate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinitiated at that location within such five-year period, the appropriation shall be subject to cancellation in accordance with sections 46-229 to 46-229.04.

(7) If at the time of a hearing conducted in accordance with subsection (1) of this section 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; Laws 2004, LB 962, § 9; Laws 2006, LB 1226, § 9; Laws 2007, LB701, § 15.

Annotations

In a determination of whether an appropriation should be canceled for nonuse, once it is established that the appropriation has not been used for more than 5 consecutive years, it is the burden of the interested party to present evidence that there was sufficient cause for nonuse. In re Appropriation A-7603, 291 Neb. 678, 868 N.W.2d 314 (2015).

Under former law, at a hearing pursuant to subsection (1) of this section, the presentation of prima facie evidence for the forfeiture and annulment of a water appropriation in the form of the verified field investigation report of an employee of the Department of Natural Resources shifts the burden to an interested party to present evidence that the water appropriation has been put to a beneficial use during the prior 3 consecutive years. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, evidence of beneficial use of a water appropriation more than 3 years prior to the hearing on the adjudication of the water right does not sustain the burden of an interested party after presentation of prima facie evidence for the forfeiture and annulment of the water appropriation. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, once it has been established that a water appropriation has not been used for more than 3 consecutive years, it is the burden of the interested party to present evidence that there was sufficient cause for nonuse. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, use of a water appropriation only when another water source is inadequate and 3 years prior to the hearing on the adjudication of the water appropriation does not establish sufficient cause for nonuse pursuant to subsection (3)(c) of this section. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

The statutory procedure set forth is not the only procedure for canceling water rights. When an application is made to transfer water rights which no longer exist because of nonuse, the director may cancel the rights in the transfer proceeding if the evidence shows that the rights have expired through nonuse. In re Applications T-61 and T-62, 232 Neb. 316, 440 N.W.2d 466 (1989).

This section does not violate constitutional notions of due process. In re Water Appropriation Nos. 442A, 461, 462, and 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

Reports of department engineers are prima facie evidence on issue of abandonment. State v. Birdwood Irr. Dist., 154 Neb. 52, 46 N.W.2d 884 (1951).

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.

Annotations

This section does not violate constitutional notions of due process. In re Water Appropriation Nos. 442A, 461, 462, and 485, 210 Neb. 161, 313 N.W.2d 271 (1981).

46-229.06. Appropriations; partial cancellation; rate of diversion; determination.

When a departmental proceeding that is conducted pursuant to sections 46-229 to 46-229.04 concerns the partial cancellation of an appropriation, the department may receive evidence on the question of whether, following such partial cancellation, a reduction in the rate of diversion to the maximum rate prescribed in section 46-231 would result in an authorized diversion rate less than the rate necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to the appropriation. If the director determines, based on

a preponderance of the evidence, that such rate would be less than the rate necessary, in the interests of good husbandry, for the production of crops, he or she may approve a diversion rate for the remaining portion of the appropriation greater than the maximum rate authorized by section 46-231. Such increased rate can be no greater than the rate authorized for the appropriation prior to the partial cancellation and no greater than the rate determined by the director to be necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to the appropriation.

Source: Laws 2004, LB 962, § 10.

46-230. Adjudication of water rights; record; duty of appropriation owner to furnish information; notice.

(1) 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.

(2) Whenever requested by the department, the owner of any appropriation not held by an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company shall provide the department with the name, address, and telephone number of each then-current owner of the appropriation and with the name, address, and telephone number of any tenant or other person who is authorized by the owner to receive opening and closing notices and other departmental communications relating to the appropriation. Each appropriation owner shall also notify the department any time there is a change in any of such names, addresses, or telephone numbers. Notice of ownership changes may be provided to the department in the manner provided in section 76-2,124 or in any other manner authorized by the department. If notice of an ownership change is provided other than in accordance with such section, the notice shall include such evidence of ownership as the director may require. Notice of all other changes may be provided in any manner authorized by the department. Upon receipt of any new information, the department shall update its records. The department shall not collect a fee for the filing of any such information or for updating its records.

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; Laws 2004, LB 962, § 11.

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.

Annotations

A user may not appropriate water without a valid permit specifically defining the source of the appropriation. Northport Irr. Dist. v. Jess, 215 Neb. 152, 337 N.W.2d 733 (1983).

Property rights in water for irrigation consist not alone in the amount of, but also in the priority of, the appropriation. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

Appropriator takes subject to rights of all prior appropriators, and cannot infringe upon their privileges. Farmers Canal Co. v. Frank, 72 Neb. 136, 100 N.W. 286 (1904); Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

46-232. Repealed. Laws 1955, c. 183, § 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.

Annotations

This section does not supplant the common-law standard of standing. Metropolitan Utilities Dist. v. Twin Platte NRD, 250 Neb. 442, 550 N.W.2d 907 (1996).

An application to divert water is only a request for permission to appropriate public waters of the state. In re Applications A-16027 et al., 242 Neb. 315, 495 N.W.2d 23 (1993).

An application for a water permit under this section is not required until actual construction work at the site is commenced. Winter v. Lower Elkhorn Nat. Resources Dist., 206 Neb. 70, 291 N.W.2d 245 (1980).

Requirements for appropriation of water for power purposes are met when appropriator has constructed power facilities and is ready and willing to deliver hydroelectric energy to users upon demand. Hickman v. Loup River P. P. Dist., 176 Neb. 416, 126 N.W.2d 404 (1964).

Approval of organization of district does not determine right to appropriation of water. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 416 (1960); Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 429 (1960).

The federal government has a right to appropriate flood and unused waters in connection with any irrigation project constructed by the United States. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Appropriated waters should be measured at the point of diversion. Loup River Public Power District v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

Property rights for irrigation purposes consist not alone in the amount of, but also in the priority of, the appropriation. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

Under former law, Department of Roads and Irrigation was given discretionary power in acting upon applications to so limit the grant that it would not be detrimental to public welfare. Kirk v. State Board of Irrigation, 90 Neb. 627, 134 N.W. 167 (1912).

Under former law, judgment of Department of Roads and Irrigation on matters within its jurisdiction could not be collaterally attacked, and earlier section was not applicable to case where land was under ditch already constructed of sufficient capacity to water same. State v. Several Parcels of Land, 80 Neb. 424, 114 N.W. 283 (1907).

Application which does not contain description of land nor describe location of canal is not good. Farmers Canal Co. v. Frank, 72 Neb. 136, 100 N.W. 286 (1904).

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.

Annotations

Subsection (1) of this section does not require that the director engage in a particular sequential consideration of the issues presented by an application. Central Platte NRD v. City of Fremont, 250 Neb. 252, 549 N.W.2d 112 (1996).

Approval of an application merely authorizes the successful applicant to take other measures to perfect the application into an appropriation. In re Applications A-16027 et al., 242 Neb. 315, 495 N.W.2d 23 (1993).

Because the word "may" in a statute will be given its ordinary, permissive, and discretionary meaning unless it can be shown that the intent of the drafters would be defeated by the application of such a meaning, the Department of Water Resources may decline to approve an appropriation of water which is significantly less than the application requests and may also impose such other reasonable conditions as it deems appropriate to protect the public interest. In re Application A-15738, 226 Neb. 146, 410 N.W.2d 101 (1987).

Order approving application for appropriation may be made subject to limitations and conditions. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Discretionary power of approval by department is conferred. Custer Public Power Dist. v. Loup River Public Power Dist., 162 Neb. 300, 75 N.W.2d 619 (1956).

Approval of application for an appropriation is an exercise of quasi-judicial power by the department. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

An appropriation of public waters may be allowed in an amount less than that applied for, and if the applicant is dissatisfied, he must appeal. Loup River Public Power District v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

The irrigation act of 1889 prescribed no method of making a claim of appropriation of water, except the construction of works in which to divert the water and diverting it into such works. The extent of the appropriation was measured by the appropriation claimed, but within the limits of the capacity of the diversion works. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

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.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

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 sections 46-229.02 to 46-229.05.

(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 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 and 46-292. 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; Laws 2004, LB 962, § 12.

46-236. Application for water power; lease from state required; fee; renewal; cancellation; grounds.

An application for appropriation of water for water power shall meet the requirements of section 46-234 and subsection (1) of section 46-235 to be approved. Within six months after the approval of an application for water power 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; Laws 2011, LB27, § 1.

Annotations

State may lease use of public waters for power purposes. Hickman v. Loup River P. P. Dist., 176 Neb. 416, 126 N.W.2d 404 (1964).

Applicant for use of water for power purposes may make lease with state. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

46-237. Map or plat; requirements; failure to furnish; effect.

(1) 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, coloring, and scale. 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. The lands to be irrigated shall be identified in the manner prescribed by the department. No rights shall be deemed to have been acquired until the provisions of this section have been complied with. Except as provided in subsection (2) of this section, failure to so comply shall work a forfeiture of the appropriation and all rights thereunder.

(2) For any appropriation with a priority date earlier than 1958 but for which either the appropriator has failed to comply with the requirements of subsection (1) of this section or a map or plat required by such subsection has been lost or destroyed through no fault of the appropriator, the lack of such compliance or of such map or plat shall not be the basis for a departmental adjudication or cancellation of the appropriation and the appropriation shall not be subject to legal challenge by any party on that basis.

(3) The department may notify any appropriator subject to subsection (2) of this section of the need to file a map or plat of lands under such appropriation. Unless the department grants an extension for good cause shown, the appropriator shall file the required map within three years after that notification and such map

shall conform to the rules and regulations of the department as to material, size, coloring, and scale. If the appropriator fails to comply, the department may deny the appropriator the right to divert or withdraw water subject to the appropriation until compliance has been achieved.

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; Laws 2004, LB 962, § 13.

Annotations

Filing of map was required as a step in completing appropriation of water. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Under former law, where application for appropriation was approved by Department of Roads and Irrigation, and filing of map, etc., was made within six months thereafter pursuant to earlier section, department had discretion to extend time to complete work, owing to abnormal conditions. In re Application of Babson, 105 Neb. 317, 180 N.W. 562 (1920).

46-238. Construction of project; time restrictions; failure to comply; forfeiture; extension of time for completion of work; appeal.

(1) Within twelve 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 commencing excavation or construction, 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; Laws 2009, LB209, § 1.

Annotations

Extension of completion date for construction of irrigation works was authorized when such extension was made necessary by some unavoidable and natural cause. Hickman v. Loup River P. P. Dist., 176 Neb. 416, 126 N.W.2d 404 (1964).

Where one appropriator was not barred by one-year time limitation and brought action, subsequent appropriators could appear and contest by petition in intervention. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

Extension of time to complete appropriation was ratified by legislative act. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 416 (1960); Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 429 (1960).

Time for construction of a project could be extended where temporarily interrupted by unavoidable cause. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

Property rights in water for irrigation consist not alone in the amount of, but also in the priority of, the appropriation. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

Under former law, adjudication of Department of Roads and Irrigation in proceeding to cancel water right, ordering that work be carried on under this section, was not binding upon other appropriators not parties. Kinnan v. France, 113 Neb. 99, 202 N.W. 452 (1925).

46-239. Repealed. Laws 1955, c. 183, § 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. 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; Laws 2011, LB31, § 1.

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 subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with the Safety of Dams and Reservoirs Act. 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 under this section and any approval required by the act, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water 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) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release from the reservoir to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock. This subsection does not exempt any person from the requirements of the Safety of Dams and Reservoirs Act or section 54-2425.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of the Safety of Dams and Reservoirs Act or section 46-233 or 54-2425.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) 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 does not have the right to store water in such reservoir or facility during the time that such water is required downstream 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 the Safety of Dams and Reservoirs Act, and the outlet works shall be installed so 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.

(6) 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; Laws 2003, LB 619, § 4; Laws 2004, LB 916, § 2; Laws 2004, LB 962, § 14; Laws 2005, LB 335, § 74; Laws 2014, LB1098, § 12.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

Annotations

There is no statutory or regulatory requirement that the design of a dam exempt from the permit requirement of subsection (1) of this section by virtue of its impoundment capacity must include a passthrough device. Koch v. Aupperle, 274 Neb. 52, 737 N.W.2d 869 (2007).

Pondage, captured by reservoir during nonirrigation season, or from waters during irrigation season which are not subject to appropriation, is entitled to be held by a public power district for use in operation and maintenance of its power works. Platte Valley Irr. Dist. v. Tilley, 142 Neb. 122, 5 N.W.2d 252 (1942).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. In re Platte Valley Public Power & Irr. Dist., 137 Neb. 313, 289 N.W. 383 (1939).

Legislature contemplated the payment for, and not abatement of, damage from seepage arising from construction of permanent reserves. Applegate v. Platte Valley Public Power & Irr. Dist., 136 Neb. 280, 285 N.W. 585 (1939).

Defendant district was entitled to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Public power and irrigation districts are not authorized to take private property for public use without just compensation. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

Right of eminent domain, provided for in this section, cannot be exercised where purpose of proposed condemnation is to take part of one person's land, against his will, as site for reservoir from which to irrigate land of another, for his sole benefit. Vetter v. Broadhurst, 100 Neb. 356, 160 N.W. 109 (1916).

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 a person other than the owner of a reservoir at any time, the application 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 (6) 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; Laws 2003, LB 619, § 5.

46-242.01. Repealed. Laws 1996, LB 890, § 1.

46-242.02. Repealed. Laws 1996, LB 890, § 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; R.S.1943, § 46-243.

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; R.S.1943, § 46-244.

Cross References

Drover of livestock, duty to prevent damages, see section 54-305.

Annotations

It is implied that all damages for taking or damaging of land must first be paid, and the fact that land is taken without institution of condemnation proceedings does not deprive owner of right to compensation. Dawson County Irr. Co. v. Stuart, 142 Neb. 428, 6 N.W.2d 602 (1942).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands, irrespective of boundary lines. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Individual does not have right of eminent domain for irrigation of his own land only. Onstott v. Airdale Ranch & Cattle Co., 129 Neb. 54, 260 N.W. 556 (1935).

Irrigation canals are works of internal improvement and persons constructing same have power of eminent domain. Crawford Co. v. Hathaway, 67 Neb. 325, 93 N.W. 781 (1903).

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; R.S.1943, § 46-245.

Annotations

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters

shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

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; R.S.1943, § 46-246.

Annotations

A public power and irrigation district is given the power of condemnation by procedure in the county where the lands are situated if the owners of land object to construction. State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist., 140 Neb. 471, 300 N.W. 379 (1941).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. In re Platte Valley Public Power & Irr. Dist., 137 Neb. 313, 289 N.W. 383 (1939).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Individual does not have right of eminent domain for irrigation of his own land. Onstott v. Airdale Ranch & Cattle Co., 129 Neb. 54, 260 N.W.

556 (1935).

Public power and irrigation districts are not authorized to take private property for public purposes without just compensation. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

Right of eminent domain conferred on corporations generating electrical energy by appropriation of public waters is valuable franchise right which may be taxed. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

Condemnation proceedings are maintainable for rights-of-way for irrigation or water power purposes. Blue River Power Co. v. Hronik, 112 Neb. 500, 199 N.W. 788 (1924).

General rule as to damages in condemnation proceedings applies to taking of land for right-of-way by irrigation district. Farmers Irr. Dist. v. Calkins, 104 Neb. 196, 176 N.W. 367 (1920).

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.

Annotations

Requirements of petition stated. Little v. Loup River Public Power Dist., 150 Neb. 864, 36 N.W.2d 261 (1949).

A public power and irrigation district is given the power of condemnation by procedure in the county where the lands are situated if the owners of land object to construction. State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist., 140 Neb. 471, 300 N.W. 379 (1941).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. In re Platte Valley Public Power & Irr. Dist., 137 Neb. 313, 289 N.W. 383 (1939).

When defect of misjoinder of parties appears on face of petition, it must be raised by special demurrer. Johnson v. Platte Valley Public Power & Irr.

Dist., 133 Neb. 97, 274 N.W. 386 (1937).

To confer jurisdiction, the petition in a condemnation proceeding must describe the lands to be crossed, the size of the ditch, canal, or works to be constructed, the quantity of the land to be taken, and the names of the parties interested. Platte Valley Public Power & Irr. Dist. v. Feltz, 132 Neb. 227, 271 N.W. 787 (1937).

Individual does not have right of eminent domain for irrigation of his own land. Onstott v. Airdale Ranch & Cattle Co., 129 Neb. 54, 260 N.W. 556 (1935).

Petition must, with substantial accuracy, describe lands to be crossed, size of works to be constructed, and quantity of land to be taken. Blue River Power Co. v. Hronik, 112 Neb. 500, 199 N.W. 788 (1924).

Right of eminent domain cannot be exercised for purely private purpose. Vetter v. Broadhurst, 100 Neb. 356, 160 N.W. 109 (1916).

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.

Cross References

School lands, defined, see section 79-1035.03.

Annotations

State could not grant to anyone, including the United States, a right-of-way over school lands without compensation. United States v. 78.61 Acres of Land in Dawes and Sioux Cos., 265 F.Supp. 564 (D. Neb. 1967).

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.

Annotations

Appropriator cannot change place of use of water, or extend ditch without permission of and subject to control of department. Farmers & Merchants Irr. Co. v. Gothenburg Water Power & Irr. Co., 73 Neb. 223, 102 N.W. 487 (1905).

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 Transportation, 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; Laws 2017, LB339, § 175.

Cross References

Bridge over drainage or irrigation ditch, construction, maintenance, and payment of costs, see section 39-805.

Annotations

Amendment of 1911 providing for acquisition of limited easement by irrigation district upon and along highway is not unconstitutional because of alleged defects in passage of act. County of Dawson v. South Side Irr. Co., 146 Neb. 512, 20 N.W.2d 387 (1945).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. In re Platte Valley Public Power & Irr. Dist., 137 Neb. 313, 289 N.W. 383 (1939).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Slight temporary deviations from year to year in the course of a lateral irrigation ditch across a field do not affect an easement therein where the lateral has followed substantially the same course for more than the statutory period of ten years. Clark v. Meeker Ditch Co., 131 Neb. 506, 268 N.W. 344 (1936).

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.

Annotations

Diversion of water through lands of others without their consent may be enjoined. Kuhlmann v. Platte Valley Irr. Dist., 166 Neb. 493, 89 N.W.2d 768 (1958).

Damages recoverable in a condemnation proceeding must be based upon the value of the land in the condition it was at the time of the condemnation. In re Platte Valley Public Power & Irr. Dist., 137 Neb. 313, 289 N.W. 383 (1939).

Natural stream can be used to conduct irrigation water, but user is liable for damages arising from such use, and, if damage is likely to continue, use may be enjoined. Hagadone v. Dawson County Irr. Co., 136 Neb. 258, 285 N.W. 600 (1939).

Defendant district was authorized to condemn right-of-way for transmission lines across plaintiffs' lands irrespective of boundary lines. Johnson v. Platte Valley Public Power & Irr. Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Diversion of waters across lands of another without compliance with statute was enjoined, though permission was granted by board of public works. Harris v. Steele, 110 Neb. 213, 193 N.W. 268 (1923).

In interest of good husbandry, flow of surface waters along natural depressions or drainways through farm lands may be accelerated and incidentally increased by artificial means. Steiner v. Steiner, 97 Neb. 449, 150 N.W. 205 (1914).

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; R.S.1943, § 46-253.

Annotations

Action to enjoin district from using waters of stream, brought after close of irrigation season, in county other than that where principal place of business of district is located, making parties defendant certain public officers whose terms expire before beginning of next irrigation season in order to confer jurisdiction in court, will be dismissed for want of jurisdiction. Platte Valley Irr. Dist. v. Bryan, 130 Neb. 657, 266 N.W. 73 (1936).

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.

Cross References

Drover of livestock, duty to prevent damages, see section 54-305.

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; R.S.1943, § 46-255.

Annotations

Mandamus is proper remedy to compel construction of bridge over canal where title to the canal remains in the United States, but the canal is controlled by the defendant. Nuss v. Pathfinder Irr. Dist., 214 Neb. 888, 336 N.W.2d 584 (1983).

Mandamus is proper remedy to compel construction of bridges over irrigation canal. Crawford v. Central Nebraska P. P. & I. Dist., 154 Neb. 832, 49 N.W.2d 682 (1951).

Mandamus will lie in county where land is located to compel public power and irrigation district to construct bridge across one of its canals. State ex rel. Johnson v. Central Nebraska Public Power & Irr. Dist., 140 Neb. 471, 300 N.W. 379 (1941).

Mandamus lies to compel owner of irrigation canal to erect bridge across canal whenever necessary for free and convenient use by owner of lands on both sides. State ex rel. Strever v. Dawson County Irr. Co., 102 Neb. 67, 165 N.W. 882 (1917).

Section applies whether owner owned property at time ditch or canal was built or subsequently acquired same by purchase. State ex rel. O'Shea v. Farmers Irr. Dist., 98 Neb. 239, 152 N.W. 372 (1915), affirmed by Farmers Irr. Dist. v. O'Shea, 244 U.S. 325 (1917).

Injunction is proper remedy for preventing one, without authority, from crossing canal with lateral for purpose of carrying water from another canal to his land. Castle Rock Irr. Canal & Water Power Co. v. Jurisch, 67 Neb. 377, 93 N.W. 690 (1903); Park v. Ackerman, 60 Neb. 405, 83 N.W. 173 (1900).

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.

Annotations

Installation of measuring device was properly required as a condition to allowance of appropriation of water. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Appropriated waters should be measured at the point of diversion. Loup River Public Power Dist. v. North Loup River Public Power & Irr. Dist., 142 Neb. 141, 5 N.W.2d 240 (1942).

46-257. Repealed. Laws 2005, LB 335, § 83.

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.

Annotations

This section does not affect the duty of irrigation district to furnish water, but only prescribes upon whom duty to construct outlets rests. State ex rel. Clarke v. Gering Irr. Dist., 109 Neb. 642, 192 N.W. 212 (1923).

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; R.S.1943, § 46-259.

Annotations

The right to appropriate water for irrigation purposes is limited to waters of natural streams. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962).

Under the irrigation act of 1889, a water right for purposes of irrigation need not have been attached to any particular tract of land. Vonburg v. Farmers Irr. Dist., 132 Neb. 12, 270 N.W. 835 (1937).

46-260. Repealed. Laws 1987, LB 140, § 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 or map 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 or map 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 list or 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.

(4) For any appropriation not held by an irrigation district, a reclamation district, a public power and irrigation district, or a mutual irrigation or canal company, the department may require the owner of an appropriation for irrigation purposes to provide the department with any or all of the following information relative to the use of water under the appropriation during the previous irrigation season: (a) A list or map of all lands irrigated; (b) the acreage of each tract irrigated; (c) the rate at which water was diverted; (d) the amount diverted; (e) for any lands under the appropriation that were not irrigated, any sufficient cause, as described in section 46-229.04, which the appropriator claims was the reason for such nonuse; and (f) any other information needed by the department to properly monitor and administer use of water under the appropriation. If the appropriator claims sufficient cause for nonuse, he or she shall also provide the department with any evidence the department requires as a condition for accepting such claimed cause as sufficient cause to excuse nonuse.

(5) The department may deny an appropriator the right to 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 if the appropriator is not in compliance with this section, with subsection (2) of section 46-230, or with any conditions of any permit, notice, or order of the department concerning the appropriation. The department may construct bars or dams or may install such other devices as are necessary 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; Laws 2004, LB 962, § 15.

Annotations

Filing of acreage reports did not establish use of water for irrigation purposes. Rogers v. Petsch, 174 Neb. 313, 117 N.W.2d 771 (1962).

It is the duty of the state to see that the waters of its streams used for irrigation purposes will not be wasted, and that prior appropriators will be protected as against subsequent appropriators. State ex rel. Sorensen v. Mitchell Irr. Dist., 129 Neb. 586, 262 N.W. 543 (1935).

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; R.S.1943, § 46-262.

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.

Annotations

This section does not apply to persons who neglect or refuse to deliver water to those who have no right to the water. Weber v. North Loup River Pub. Power, 288 Neb. 959, 854 N.W.2d 263 (2014).

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, § 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; R.S.1943, § 46-265.

Annotations

Diversion of water from one watershed to another is permissible under sections 46-206 and 46-265, R.R.S.1943, so long as the stream from which it is diverted is more than one hundred feet wide and the diversion is not contrary to the public interest. Little Blue N.R.D. v. Lower Platte North N.R.D., 206 Neb. 535, 294 N.W.2d 598 (1980).

This section deals with the return to stream of unused water transported in irrigation ditches to prevent waste. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

Unused irrigation water must be returned to natural stream. Kuhlmann v. Platte Valley Irr. Dist., 166 Neb. 493, 89 N.W.2d 768 (1958).

This and other sections limit the location and construction of irrigation canals and ditches, as well as the land irrigated by same, to the basin containing the source of the water used, and require that all unused waters shall be returned to the stream from which diverted. Osterman v. Central Nebraska Public Power & Irr. Dist., 131 Neb. 356, 268 N.W. 334 (1936).

The right of an appropriator to recapture seepage waters is not impliedly denied by this section. United States v. Tilley, 124 F.2d 850 (8th Cir. 1941).

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, § 30; Laws 2001, LB 173, § 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.

Annotations

Purchaser of land is not personally liable for annual maintenance charge imposed by contract between his grantor and irrigation company. Faught v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

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; R.S.1943, § 46-269.

Annotations

Mutual canal company possesses only those powers expressly or impliedly granted. Thirty Mile Canal Co. v. Carskadon, 160 Neb. 496, 70 N.W.2d 432 (1955).

Stockholder in mutual irrigation company cannot compel company to furnish him water without payment of his share of maintenance fund. Swanger v. Porter, 87 Neb. 764, 128 N.W. 516 (1910).

Duty of those in charge to operate so as to obtain profit applies to mutual irrigation company. Robbins v. Winters Creek Canal Co., 109 F.2d 849 (8th Cir. 1940).

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.

Annotations

Landowner held not liable for increase in annual maintenance charge. Faught v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

Irrigation companies have right to mortgage property, and mortgage can be foreclosed without making water users parties to action. Almeria Irr. Canal Co. v. Tzschuck Canal Co., 67 Neb. 290, 93 N.W. 174 (1903).

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.

Annotations

Sale of stock is only method of collection of delinquent assessments. Thirty Mile Canal Co. v. Carskadon, 160 Neb. 496, 70 N.W.2d 432 (1955).

This section does not apply to annual maintenance charge against party not claiming any interest in canal or ditch. Faught v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

Legislature cannot amend or change the law so as to make stock bought and fully paid for assessable. Enterprise Ditch Co. v. Moffitt, 58 Neb. 642, 79 N.W. 560 (1899).

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; R.S.1943, § 46-272.

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.

Annotations

Contract restricting use of storage water by any one landowner to an amount sufficient to irrigate one hundred sixty acres was valid. Frenchman Valley Irr. Dist. v. Smith, 167 Neb. 78, 91 N.W.2d 415 (1958).

Injury to reclamation service, by taking seepage water which the United States had a contract to sell, may be enjoined. Ramshorn Ditch Co. v. United States, 269 F. 80 (8th Cir. 1920).

The scope of the appropriative rights in connection with a federal reclamation project are the same as those in connection with any irrigation canal, and includes the right to collect seepage waters from any parts of the lands and to reapply them upon any other lands within the project and under the appropriation. United States v. Tilley, 124 F.2d 850 (8th Cir. 1941).

46-274. Repealed. Laws 1963, c. 425, art. VIII, § 2.

46-275. Repealed. Laws 1963, c. 425, art. VIII, § 2.

46-276. Repealed. Laws 1963, c. 425, art. VIII, § 2.

46-277. Repealed. Laws 2005, LB 335, § 83.

46-278. Repealed. Laws 2005, LB 335, § 83.

46-279. Repealed. Laws 1987, LB 140, § 15.

46-280. Repealed. Laws 1987, LB 140, § 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; R.S.1943, § 46-281.

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 ephemeral natural streams.

Source: Laws 1980, LB 908, § 1; Laws 2008, LB798, § 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. Ephemeral natural stream, defined.

An ephemeral natural stream shall mean that portion of a natural stream in which water flows only after a precipitation event or when augmented by surface water runoff caused by the pumping of ground water for irrigation. The portion of a natural stream that is shown as an intermittent stream on the most recent United States Geological Survey topographic quadrangle map published prior to July 18, 2008, shall be considered an ephemeral natural stream unless the Department of Natural Resources has investigated the stream and determined that the stream or a reach of the stream is perennial or intermittent and subject to Chapter 46, article 2. The department's determination for the purposes of this section shall be adopted and promulgated in rule or regulation.

Source: Laws 1980, LB 908, § 4; Laws 2006, LB 508, § 1; Laws 2008, LB798, § 2.

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 an ephemeral 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; Laws 2008, LB798, § 3.

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.

Annotations

The provisions of this section are not applicable to instream flow applications. Central Platte NRD v. State of Wyoming, 245 Neb. 439, 513 N.W.2d 847 (1994).

This statute establishes a procedure to be followed in determining whether an appropriation application must be denied. Little Blue N.R.D. v. Lower Platte North N.R.D., 210 Neb. 862, 317 N.W.2d 726 (1982).

46-290. Appropriation; application to transfer or change; contents; approval.

(1)(a) Except as provided in this section and sections 46-2,120 to 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the use of such appropriation to a location other than the location specified in the permit, (ii) to change that appropriation to a different type of appropriation as provided in subsection (3) of this section, or (iii) to change the purpose for which the water is to be used under a natural-flow, storage, or storage-use appropriation to a purpose not at that time permitted under the appropriation shall apply for approval of such transfer or change to the Department of Natural Resources.

(b) The application for such approval shall contain (i) the number assigned to such appropriation by the department, (ii) the name and address of the present holder of the appropriation, (iii) if applicable, the name and address of the person or entity to whom the appropriation would be transferred or who will be the user of record after a change in the location of use, type of appropriation, or purpose of use under the appropriation, (iv) the legal description of the land to which the appropriation is now appurtenant, (v) the name and address of each holder of a

mortgage, trust deed, or other equivalent consensual security interest against the tract or tracts of land to which the appropriation is now appurtenant, (vi) if applicable, the legal description of the land to which the appropriation is proposed to be transferred, (vii) if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location, (viii) if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be transferred for the purpose of augmenting the flows in that stream reach, (ix) if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned to such other appropriation by the department, (x) the purpose of the current use, (xi) if a change in purpose of use is proposed, the proposed purpose of use, (xii) if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired, (xiii) if a proposed transfer or change is to be temporary in nature, the duration of the proposed transfer or change, and (xiv) such other information as the department by rule and regulation requires.

(2) If a proposed transfer or change is to be temporary in nature, a copy of the proposed agreement between the current appropriator and the person who is to be responsible for use of water under the appropriation while the transfer or change is in effect shall be submitted at the same time as the application.

(3) Regardless of whether a transfer or a change in the purpose of use is involved, the following changes in type of appropriation, if found by the Director of Natural Resources to be consistent with section 46-294, may be approved subject to the following:

(a) A natural-flow appropriation for direct out-of-stream use may be changed to a natural-flow appropriation for aboveground reservoir storage or for intentional underground water storage;

(b) A natural-flow appropriation for intentional underground water storage may be changed to a natural-flow appropriation for direct out-of-stream use or for aboveground reservoir storage;

(c) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an instream appropriation subject to sections 46-2,107 to 46-2,119 if the director determines that the resulting instream appropriation would be consistent with subdivisions (2), (3), and (4) of section 46-2,115;

(d) A natural-flow appropriation for direct out-of-stream use, for aboveground reservoir storage, or for intentional underground water storage may be changed to an appropriation for induced ground water recharge if the director determines that

the resulting appropriation for induced ground water recharge would be consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;

(e) An appropriation for the manufacturing of hydropower at a facility located on a natural stream channel may be permanently changed in full to an instream basin-management appropriation to be held jointly by the Game and Parks Commission and any natural resources district or combination of natural resources districts. The beneficial use of such change is to maintain the streamflow for fish, wildlife, and recreation that was available from the manufacturing of hydropower prior to the change. Such changed appropriation may also be utilized by the owners of the appropriation to assist in the implementation of an approved integrated management plan or plans developed pursuant to sections 46-714 to 46-718 for each natural resources district within the river basin. Any such change under this section shall be subject to review under sections 46-229 to 46-229.06 to ensure that the beneficial uses of the change of use are still being achieved; and

(f) The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 46-718 or 46-719 for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (f) shall not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713.

Whenever any change in type of appropriation is approved pursuant to this subsection and as long as that change remains in effect, the appropriation shall be subject to the statutes, rules, and regulations that apply to the type of appropriation to which the change has been made.

(4) The Legislature finds that induced ground water recharge appropriations issued pursuant to sections 46-233 and 46-235 and instream appropriations issued

pursuant to section 46-2,115 are specific to the location identified in the appropriation. Neither type of appropriation shall be transferred to a different location, changed to a different type of appropriation, or changed to permit a different purpose of use.

(5) In addition to any other purposes for which transfers and changes may be approved, such transfers and changes may be approved if the purpose is (a) to maintain or augment the flow in a specific stream reach for any instream use that the department has determined, through rules and regulations, to be a beneficial use or (b) to increase the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved.

For any transfer or change approved pursuant to subdivision (a) of this subsection, the department shall be provided with a report at least every five years while such transfer or change is in effect. The purpose of such report shall be to indicate whether the beneficial instream use for which the flow is maintained or augmented continues to exist. If the report indicates that it does not or if no report is filed within sixty days after the department's notice to the appropriator that the deadline for filing the report has passed, the department may cancel its approval of the transfer or change and such appropriation shall revert to the same location of use, type of appropriation, and purpose of use as prior to such approval.

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

(7) Unless an incidental underground water storage appropriation is changed as authorized by subdivision (3)(f) of this section or is transferred as authorized by subsection (6) of this section or subsection (1) of section 46-291, such appropriation shall be canceled or modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change of the direct-use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.

(8) Any appropriation for manufacturing of hydropower changed under subdivision (3)(e) of this section shall maintain the priority date and preference category of the original manufacturing appropriation and shall be subject to condemnation and subordination pursuant to sections 70-668 and 70-669. Any person holding a subordination agreement that was established prior to such

change of appropriation shall be entitled to enter into a new subordination agreement for terms consistent with the original subordination agreement at no additional cost. Any person having obtained a condemnation award that was established prior to such change of appropriation shall be entitled to the same benefits created by such award, and any obligations created by such award shall become the obligations of the new owner of the appropriation changed under this section.

Source: Laws 1983, LB 21, § 2; Laws 1995, LB 99, § 17; Laws 2000, LB 900, § 131; Laws 2004, LB 962, § 16; Laws 2006, LB 1226, § 10; Laws 2009, LB477, § 1; Laws 2016, LB1038, § 12.

46-291. Application; review; notice; contents; comments.

(1) Upon receipt of an application filed under section 46-290 for a transfer in the location of use of an appropriation, the Department of Natural Resources shall review it for compliance with this subsection. The Director of Natural Resources may approve the application without notice or hearing if he or she determines that: (a) The appropriation is used and will continue to be used exclusively for irrigation purposes; (b) the only lands involved in the proposed transfer are (i) lands within the quarter section of land to which the appropriation is appurtenant, (ii) lands within such quarter section of land and one or more quarter sections of land each of which is contiguous to the quarter section of land to which the appropriation is appurtenant, or (iii) lands within the boundaries or service area of and capable of service by the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (c) after the transfer, the total number of acres irrigated under the appropriation will be no greater than the number of acres that could legally be irrigated under the appropriation prior to the transfer; (d) all the land involved in the transfer is under the same ownership or is within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (e) the transfer will not result in a change in the point of diversion or the point of diversion will be changed but the change meets the following requirements: (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion will not move above or below a tributary stream or a constructed river return or a constructed drain; and (f) the transfer will not diminish the water supply available for or otherwise adversely affect any other surface water appropriator. If transfer of an appropriation with associated incidental underground water storage is approved in accordance with this subsection, the associated incidental underground water storage also may be transferred pursuant to this subsection as long as such transfer would continue to be consistent with the requirements of this subsection. If necessary, the boundaries of the incidental

underground water storage area may be modified to reflect any change in the location of that storage consistent with such a transfer. Transfers shall not be approved pursuant to this subsection until the department has adopted and promulgated rules and regulations establishing the criteria it will use to determine whether proposed transfers are consistent with subdivision (1)(f) of this section.

(2) If after reviewing an application filed under section 46-290 the director determines that it cannot be approved pursuant to subsection (1) of this section, he or she shall cause a notice of such application to be posted on the department's web site, to be sent by certified mail to each holder of a mortgage, trust deed, or other equivalent consensual security interest that is identified by the applicant pursuant to subdivision (1)(b)(v) of section 46-290 and to any entity owning facilities currently used or proposed to be used for purposes of diversion or delivery of water under the appropriation, and to be published at the applicant's expense at least once each week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands to which the appropriation is appurtenant and, if applicable, in at least one newspaper of general circulation in each county containing lands to which the appropriation is proposed to be transferred.

(3) The notice shall contain: (a) A description of the appropriation; (b) the number assigned to such appropriation in the records of the department; (c) the date of priority; (d) if applicable, a description of the land or stream reach to which such water appropriation is proposed to be transferred; (e) if applicable, the type of appropriation to which the appropriation is proposed to be changed; (f) if applicable, the proposed change in the purpose of use; (g) whether the proposed transfer or change is to be permanent or temporary and, if temporary, the duration of the proposed transfer or change; and (h) any other information the director deems relevant and essential to provide the interested public with adequate notice of the proposed transfer or change.

(4) The notice shall state (a) that any interested person may object to and request a hearing on the application by filing such objections in writing specifically stating the grounds for each objection and (b) that any such objection and request shall be filed in the office of the department within two weeks after the date of final publication of the notice.

(5) Within the time period allowed by this section for the filing of objections and requests for hearings, the county board of any county containing land to which the appropriation is appurtenant and, if applicable, the county board of any county containing land to which the appropriation is proposed to be transferred may provide the department with comments about the potential economic impacts of the proposed transfer or change in such county. The filing of any such comments by a county board shall not make the county a party in the application process, but such

comments shall be considered by the director in determining pursuant to section 46-294 whether the proposed transfer or change is in the public interest.

Source: Laws 1983, LB 21, § 3; Laws 2000, LB 900, § 132; Laws 2004, LB 962, § 17; Laws 2006, LB 1226, § 11; Laws 2008, LB798, § 4; Laws 2009, LB477, § 2.

46-292. Application; 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 a timely request therefor is filed by any interested person in accordance with section 46-291. Any such hearing shall be subject to section 61-206.

Source: Laws 1983, LB 21, § 4; Laws 2000, LB 900, § 133; Laws 2004, LB 962, § 18.

46-293. Application; review; Director of Natural Resources; powers.

(1) The Director of Natural Resources shall independently review each application subject to subsection (2) of section 46-291 to determine whether the requirements of section 46-294 will be met if the transfer or change is approved. The requirement of this subsection is not altered when there are objectors who have become parties to the proposed transfer or change, but if a hearing is called by the Department of Natural Resources on its own motion or as the result of a request therefor filed in accordance with subsection (4) of section 46-291, any evidence considered by the director in making such determinations shall be made a part of the record of the hearing as provided in section 84-914.

(2) Either on his or her own motion or in response to objections or comments received pursuant to subsection (4) or (5) of section 46-291, the director may require the applicant to provide additional information before a hearing will be scheduled or, if no hearing is to be held, before the application will receive further consideration. The information requested may include economic, social, or environmental impact analyses of the proposed transfer or change, information about the amount of water historically consumed under the appropriation, copies of any plans for mitigation of any anticipated adverse impacts that would result from the proposed transfer or change, and such other information as the director deems necessary in order to determine whether the proposed transfer or change is consistent with section 46-294.

Source: Laws 1983, LB 21, § 5; Laws 2000, LB 900, § 134; Laws 2004, LB 962, § 19.

46-294. Applications; approval; requirements; conditions; burden of proof.

(1) Except for applications approved in accordance with subsection (1) of section 46-291, the Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements:

(a) The application is complete and all other information requested pursuant to section 46-293 has been provided;

(b) The proposed use of water after the transfer or change will be a beneficial use of water;

(c)(i) Any requested transfer in the location of use is within the same river basin as defined in section 46-288 or (ii) the river basin from which the appropriation is to be transferred is tributary to the river basin to which the appropriation is to be transferred;

(d) Except as otherwise provided in subsection (4) of this section, the proposed transfer or change, alone or when combined with any new or increased use of any other source of water at the original location or within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company for the original or other purposes, will not diminish the supply of water available for or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing pursuant to section 46-291;

(e) The quantity of water that is transferred for diversion or other use at the new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred, except that this subdivision does not apply to (i) a transfer in the location of use if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change or (ii) a transfer or change in the purpose of use of a surface water irrigation appropriation as provided for in subsection (3), (5), or (6) of section 46-290 if the transfer or change in purpose will not diminish the supply of water available or otherwise adversely affect any other water appropriator, adversely affect Nebraska's ability to meet its obligations under a multistate agreement, or result in administration of the prior appropriation system by the Department of Natural Resources, which would not have otherwise occurred;

(f) The appropriation, prior to the transfer or change, is not subject to termination or cancellation pursuant to sections 46-229 to 46-229.04;

(g) If a proposed transfer or change is of an appropriation that has been used for irrigation and is in the name of an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company or is dependent upon any such district's or company's facilities for water delivery, such district or company has approved the transfer or change;

(h) If the proposed transfer or change is of a storage-use appropriation and if the owner of that appropriation is different from the owner of the associated storage appropriation, the owner of the storage appropriation has approved the transfer or change;

(i) If the proposed transfer or change is to be permanent, either (i) the purpose for which the water is to be used before the transfer or change is in the same preference category established by section 46-204 as the purpose for which the water is to be used after the transfer or change or (ii) the purpose for which the water is to be used before the transfer or change and the purpose for which the water is to be used after the transfer or change are both purposes for which no preferences are established by section 46-204;

(j) If the proposed transfer or change is to be temporary, it will be for a duration of no less than one year and, except as provided in section 46-294.02, no more than thirty years;

(k) The transfer or change will not be inconsistent with any applicable state or federal law and will not jeopardize the state's compliance with any applicable interstate water compact or decree or cause difficulty in fulfilling the provisions of any other formal state contract or agreement; and

(l) The proposed transfer or change is in the public interest. The director's considerations relative to the public interest shall include, but not be limited to, (i) the economic, social, and environmental impacts of the proposed transfer or change and (ii) whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change. The Department of Natural Resources shall adopt and promulgate rules and regulations to govern the director's determination of whether a proposed transfer or change is in the public interest.

(2) The applicant has the burden of proving that the proposed transfer or change will comply with subdivisions (1)(a) through (l) of this section, except that (a) the burden is on a 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 and (b) if both the current use and the proposed use after a transfer are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change,

there is a rebuttable presumption that the transfer will be consistent with subdivision (1)(d) of this section.

(3) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest, to ensure consistency with any of the other criteria in subsection (1) of this section, or to provide the department with information needed to properly and efficiently administer the appropriation while the transfer or change remains in effect. If necessary to prevent diminution of supply for any other appropriator, the conditions imposed by the director shall require that historic return flows be maintained or replaced in quantity, timing, and location. After approval of any such transfer or change, the appropriation shall be subject to all water use restrictions and requirements in effect at any new location of use and, if applicable, at any new diversion location. An appropriation for which a transfer or change has been approved shall retain the same priority date as that of the original appropriation. If an approved transfer or change is temporary, the location of use, purpose of use, or type of appropriation shall revert to the location of use, purpose of use, or type of appropriation prior to the transfer or change.

(4) In approving an application for a transfer, the director may also authorize the overlying of water appropriations on the same lands, except that if any such overlying of appropriations would result in either the authorized diversion rate or the authorized aggregate annual quantity that could be diverted to be greater than is otherwise permitted by section 46-231, the director shall limit the total diversion rate or aggregate annual quantity for the appropriations overlain to the rate or quantity that he or she determines is necessary, in the exercise of good husbandry, for the production of crops on the land involved. The director may also 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. An increase in the number of acres to be irrigated shall be approved only if (a) such an increase will not diminish the supply of water available to or otherwise adversely affect another water appropriator or (b) the transfer would not adversely affect the water supply for any river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or determined to be fully appropriated pursuant to section 46-714 and (i) the number of acres authorized under the appropriation when originally approved has not been increased previously, (ii) the increase in the number of acres irrigated will not exceed five percent of the number of acres being irrigated under the permit before the proposed transfer or a total of ten acres, whichever acreage is less, and (iii) all the use will be either on the quarter section to which the appropriation was appurtenant before the transfer or on an adjacent quarter section.

Source: Laws 1983, LB 21, § 6; Laws 1984, LB 818, § 2; Laws 1993, LB 789, § 4; Laws 2000, LB 900, § 135; Laws 2004, LB 962, § 20; Laws 2012, LB526, § 1.

46-294.01. Appropriation; temporary transfer; filings required.

Whenever a temporary transfer is approved in accordance with sections 46-290 to 46-294, the applicant shall, within sixty days after the order of approval of the Department of Natural Resources, cause copies of the following to be filed with the county clerk or register of deeds of the county in which the land subject to the appropriation prior to the transfer is located: (1) The permit by which the appropriation was established; (2) the agreement by which the temporary transfer is to be effected; and (3) the order of the Director of Natural Resources approving the temporary transfer. Whenever renewal of a temporary transfer is approved pursuant to section 46-294.02, the applicant shall, within sixty days after such approval, cause a copy of the order of the director approving such renewal to be filed with the county clerk or register of deeds of such county. Such documents shall be indexed to the land subject to the appropriation prior to the transfer. The applicant shall file with the department, within ninety days after the department's order of approval, proof of filing with the county clerk or register of deeds. Failure to file such proof of filing within such ninety-day time period shall be grounds for the director to negate any prior approval of the transfer or renewal.

Source: Laws 2004, LB 962, § 21; Laws 2006, LB 1226, § 12.

46-294.02. Appropriation; temporary transfer or change; renewal or extension.

A temporary transfer or a change in the type or purpose of use of an appropriation may be renewed or otherwise extended by the parties thereto at any time following the midpoint of the transfer or change term, but any such renewal or extension is subject to review and approval pursuant to sections 46-290 to 46-294. No renewal or extension shall cause the term of any such temporary transfer or change to exceed thirty years in duration from the date the renewal or extension is approved by the Director of Natural Resources.

Source: Laws 2004, LB 962, § 22.

46-294.03. Appropriation; temporary transfer or change; effect on classification and valuation.

For purposes of assessment pursuant to sections 77-1343 to 77-1363, neither the temporary transfer or change of an appropriation nor any resulting land-use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause the land to be reclassified to a lower value use or the

valuation of the land to be reduced, but the land may be reclassified to a higher value use and its valuation may be increased if a higher value use is made of the land while the temporary transfer or change is in effect. Land from which an appropriation has been permanently transferred shall be classified and valued for tax purposes in accordance with the use of the land after the transfer.

Source: Laws 2004, LB 962, § 23.

46-294.04. Appropriation; temporary transfer or change; effect on rights of condemnation.

During the time within which a temporary transfer or change in purpose of use of an appropriation is in effect, the appropriation may not be used to invoke any rights of condemnation that are based on preference of use, but such appropriation shall be subject to the exercise of such rights by owners of other appropriations that are for water uses superior to the pretransfer or prechange use of the water under the transferred or changed appropriation.

Source: Laws 2004, LB 962, § 24.

46-294.05. Rules and regulations.

The Director of Natural Resources may adopt and promulgate rules and regulations to carry out sections 46-290 to 46-294.04.

Source: Laws 2004, LB 962, § 25.

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 46-712 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; Laws 2004, LB 962, § 26.

46-296. Terms, defined.

For purposes of sections 33-105, 46-202, and 46-295 to 46-2,106, unless the context otherwise requires:

(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 46-706 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; Laws 2004, LB 962, § 27.

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. 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; Laws 2013, LB102, § 1.

46-298. Repealed. Laws 1989, LB 45, § 6.

46-299. Permittee; authorized to levy a fee or assessment; limitation.

Any person who has obtained a permit for intentional underground water storage 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; Laws 2008, LB798, § 5.

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.

Annotations

Sections 46-2,107 through 46-2,119, permitting instream flow appropriations, do not offend this provision or Neb. Const. art. XV, section 4, 5, or 6. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

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.

A permit to appropriate water for instream flows shall be subject to review every fifteen years after it is granted. Notice of a pending review 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 later than fourteen years and ten months after the permit was granted or after the date of the director's action following the last such review, whichever is later, and such notice shall be mailed to the appropriator of record and posted on the department's web site. The notice shall state that any interested person may file comments relating to the review of the instream appropriation or may request a hearing to present evidence relevant to such review. Any such comments or request for hearing shall be filed in the headquarters office of the department within six weeks after the date of final publication of the notice. The appropriator of record shall, within the six-week period, file written documentation of the continued use of the appropriation. If no requests for hearing are received and if the director is satisfied with the information provided by the appropriator of record that the appropriation continues to be beneficially used and is in the public interest, the director shall issue an order stating such findings. If requested by any interested person, or on his or her own motion based on the comments and information filed, the director shall schedule a hearing. If a hearing is held, 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; Laws 2004, LB 962, § 28; Laws 2006, LB 1226, § 13.

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 hydropower;

(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.

Annotations

To find that there is sufficient unappropriated water available under subsection (1) of this section, the director is not required to consider future ground water depletion. To find that there is sufficient unappropriated water available under subsection (1) of this section, the director must account for water which may be diverted by pending senior applications and approved-but-unconstructed senior applications. To find that there is sufficient unappropriated water available under subsection (1) of this section, the director must find that there is enough water that is not subject to beneficial use elsewhere. The director is permitted to base this finding on historical flow data. For a water supply to be "available" within the meaning of subsection (1) of this section, the water supply must be fairly dependable and continuous. In the context of an instream flow application to maintain existing wildlife habitats, "fairly dependable and continuous" means the flow regime which the species can bear. A party can show noninterference, under subsection (3) of this section, by showing that the sought-after appropriation will be (1) an undiverted application (2) of the waters of a

natural stream within or bordering upon the state (3) for recreation or fish and wildlife purposes. In order to provide a clear basis for an order granting or denying an instream flow application, the Director of Water Resources is required to discuss each of the elements listed in this section. However, the director is not required to include, as part of his public interest analysis, a discussion of forgone uses. Central Platte NRD v. State of Wyoming, 245 Neb. 439, 513 N.W.2d 847 (1994).

Subsection (2) of this section does not require a showing of an imminent threat to the use for which protection is sought, but requires a finding of a sufficient causal link between maintaining the flow and maintaining the use for which the flow is requested. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

When an instream flow application requests different flow rates at different locations along a single stream segment, the denial of the application as one location is to be viewed as a reduction in the requested rate of flow as authorized by this section. Any reduction in the length of the stream segment occasioned by such denial is but incidental to the flow reduction, and the director may define the stream segment under section 46-2,118(1) in such a way as to reflect the appropriations as granted. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

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.

Annotations

Subsection (1) of this section does not require that all the factors considered be reduced to economic terms. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

This section does not require the director to document his decision to the hearing record in determining whether an application for an instream

appropriation is in the public interest. In re Applications A-17004 et al., 1 Neb. App. 974, 512 N.W.2d 392 (1993).

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.

Annotations

When an instream flow application requests different flow rates at different locations along a single stream segment, the denial of the application as to one location is to be viewed as a reduction in the requested rate of flow as authorized by section 46-2,115. Any reduction in the length of the stream segment occasioned by such denial is but incidental to the flow reduction, and the director may define the stream segment under subsection (1) of this section in such a way as to reflect the appropriations as granted. In re Application A-16642, 236 Neb. 671, 463 N.W.2d 591 (1990).

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. Reservoirs shall not be required by the director to release, for the benefit of an instream appropriation, water previously impounded in accordance with section 46-241 or 46-243. Reservoirs with storage rights senior to an instream appropriation shall not be required to pass, for the benefit of that instream appropriation, inflows that could be stored by such reservoir if the instream appropriation were not in effect. Notwithstanding subsection (5) of section 46-241, a reservoir with storage rights senior to an instream appropriation also shall not be required to pass inflows for downstream direct irrigation if the appropriation for direct irrigation is junior to and would be denied water because of that instream appropriation. Instream appropriations may be canceled as provided in sections 46-229.02 to 46-229.05.

Source: Laws 1984, LB 1106, § 35; Laws 1988, LB 953, § 1; Laws 2000, LB 900, § 152; Laws 2004, LB 962, § 29.

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 the Open Meetings Act 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; Laws 2004, LB 821, § 12.

Cross References

Open Meetings Act, see section 84-1407.

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 appropriation, beneficially applied in at least one of the preceding five consecutive

years or 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; Laws 2004, LB 962, § 30.

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. Repealed. Laws 2011, LB 2, § 8.

46-2,132. Repealed. Laws 2011, LB 2, § 8.

46-2,133. Repealed. Laws 2011, LB 2, § 8.

46-2,134. Repealed. Laws 2011, LB 2, § 8.

46-2,135. Repealed. Laws 2011, LB 2, § 8.

46-2,136. Repealed. Laws 2011, LB 2, § 8.

46-2,137. Repealed. Laws 2011, LB 2, § 8.

46-2,138. Repealed. Laws 2011, LB 2, § 8.

46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environmental Quality, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 77 Federal Register 18652-18669, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 77 Federal Register 18652-18669, with populations greater than ten

thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1; Laws 2014, LB683, § 1.

46-2,140. Repealed. Laws 2015, LB 9, § 1.

46-2,141. Repealed. Laws 2015, LB 9, § 1.

46-301. Irrigation districts; establishment of electric light and power systems; powers.

Irrigation districts organized under the laws of Nebraska are hereby authorized and empowered to make application for and secure and hold appropriations of water for the purpose of generation of electric light and power in connection with any such appropriation of water. Any irrigation district now or hereafter organized under the laws of this state is hereby authorized, subject to the provisions of sections 46-301 to 46-315, to acquire, by purchase, lease or otherwise, construct, extend, improve, manage and operate, electric light and power plants, lines and systems, and all machinery, equipment and other property, real or personal, connected therewith or incident thereto; to manufacture, produce, generate and transmit, distribute, purchase or sell electrical energy for lighting, heating and power purposes; to adopt, use and employ in the generation and production of electrical energy, water power, steam power, and any other practicable means or method; to extend any such plant, lines and systems within and without the boundaries of the irrigation district; and to connect, interconnect and operate such electric light and power plants, lines, systems, and service with those of any other irrigation district or districts or with those of any one or more cities, villages, or public electric light and power districts of this state, or with those of the government of the United States.

Source: Laws 1931, c. 91, § 1, p. 252; C.S.Supp.,1941, § 46-701; R.S.1943, § 46-301.

46-302. Electric light and power system; construction or acquisition by resolution; procedure.

Whenever the board of directors of any irrigation district shall, by resolution, determine that it is to the interest, convenience, and welfare of the district that the district, under sections 46-301 to 46-315, purchase, construct, or otherwise acquire, operate, and maintain any electric light and power plant, lines, or systems, whether as an addition, extension, enlargement, alteration, or reconstruction of any site, irrigation works, or other property owned or controlled by the district, or as a plant, lines, or system independent of works or property already owned or controlled by the district, the board of directors shall thereupon prepare comprehensive written plans, statements, and reports setting out the nature, location, and description of the proposed plant, lines, and system, including method or methods of generation or acquisition, the location of transmission lines, the use of other sites, properties, and works already owned or controlled by the district, estimated costs of acquisition and construction, the method or means of financing the proposed plan and project, the amount of bonds, if any, proposed to be issued in connection therewith, and such other data as the Department of Natural Resources shall prescribe. The expense thereof may be authorized by any special meeting or at the annual meeting of such district. Such plans, statements, and reports, including a copy of such resolution, shall be duly certified by the board of directors and shall be thereupon submitted to the department for its examination as set forth in section 46-304.

Source: Laws 1931, c. 91, § 2, p. 253; C.S.Supp.,1941, § 46-702; R.S.1943, § 46-302; Laws 2000, LB 900, § 160.

46-303. Electric light and power system; construction or acquisition by petition; procedure.

In lieu of the resolution of the board of directors and the preparation and submission by the board of plans, reports, and statements as provided in section 46-302, a petition containing and setting forth the data and information required in such section concerning the proposed electric light and power plant, lines, and systems may be presented to the Department of Natural Resources, signed by not less than twenty percent of all the qualified electors of the district. Such petition shall declare that, in the opinion of the petitioners, it is to the interest, convenience, and welfare of the district that the district, under sections 46-301 to 46-315, adopt substantially the plan or method set out in the petition for the establishment, acquisition, and operation by the district of electric light and power plant, lines, and systems. The petition shall contain the affidavit of the person or persons who

circulated the same, certifying that each name signed thereto is the true signature of the person whose name it purports to be and that the person is a qualified elector of the district.

Source: Laws 1931, c. 91, § 3, p. 254; C.S.Supp.,1941, § 46-703; R.S.1943, § 46-303; Laws 2000, LB 900, § 161.

46-304. Electric light and power system; construction or acquisition; examination and report by Department of Natural Resources.

Upon receipt by the Department of Natural Resources of the plans, reports, and statements provided for in section 46-302 or of the petition provided for in section 46-303, the department shall examine the proposed plan and project, make an estimate of the probable cost thereof, and make such further examination and investigation concerning the same as the department shall deem necessary or advisable. If the department deems the proposed plan and project feasible and practicable, either as originally submitted or as changed and amended by the department, the department shall then file with the board of directors of the irrigation district concerned its report in the matter, which report shall include a complete explanation of the proposed project, the plans and maps showing location of the project, the estimated cost of the project, and the probable receipts from the sale of electric energy, and the certificate of the department that the project has been examined and deemed feasible and practicable by the department.

Source: Laws 1931, c. 91, § 4, p. 254; C.S.Supp.,1941, § 46-704; R.S.1943, § 46-304; Laws 2000, LB 900, § 162.

46-305. Electric light and power system; construction or acquisition; election required; procedure; vote required; effect of affirmative vote.

Upon the filing of the data and certificates with the board of directors of the district, the board of directors and the other proper officers of the district shall submit the proposed plan and project to the qualified electors of the district for their approval or rejection, at a general election or at a special election called for that purpose, the submission of proposition and all matters pertaining to such election to conform, including notice of election, as nearly as may be, and except as otherwise expressly provided in sections 46-301 to 46-315, to the provisions of law governing elections upon propositions for the issuance of bonds of the district. The report of the Department of Natural Resources and all other data and information on file with the board of directors or the officers of the district shall be subject to inspection at all reasonable business hours by any elector of the district, or other interested persons, for the entire period during which notice of the election shall be published. Such question and proposition shall be thus submitted by

ballots upon which shall appear, in a clear, fair, and concise manner, a statement of the nature and description of the proposed project, and, if such proposition includes the issuance of bonds of the district, there shall also appear upon the ballots a general description of such bonds, including principal amount, rate of interest and when payable, date of issuance, and date of maturity. At the bottom of the ballots substantially the following form shall appear:

FOR the adoption of the foregoing plan and project (and issuance of bonds of the district).

AGAINST the adoption of the foregoing plan and project (and the issuance of bonds of the district).

If a majority of the ballots cast on such proposition are in favor thereof, the board of directors shall declare the same adopted, and the board of directors of the district shall proceed forthwith to put such plan and project into effect, including the issuance of bonds of the district if included in the proposition submitted at the election, the levy and collection of taxes and assessments to pay such bonds and interest thereon, and the execution of all contracts proper or incident to the consummation of such plan and project.

Source: Laws 1931, c. 91, § 5, p. 254; C.S.Supp.,1941, § 46-705; R.S.1943, § 46-305; Laws 1971, LB 534, § 28; Laws 2000, LB 900, § 163.

Cross References

Issuance of bonds, election, see section 46-194.

46-306. General provisions of irrigation law applicable.

All general provisions of the law of this state pertaining to the acquisition, construction, management, control, and payment of the cost of property and works of irrigation districts, including the levy and collection of taxes and assessments, shall be applicable, as nearly as may be, and except as herein otherwise expressly provided, to any and all electric light and power plants, lines and systems, constructed, purchased or otherwise acquired and operated under the provisions of sections 46-301 to 46-315.

Source: Laws 1931, c. 91, § 6, p. 255; C.S.Supp.,1941, § 46-706; R.S.1943, § 46-306.

46-307. Operation of lines beyond district boundaries; powers of district; cost payable out of earnings.

Any irrigation district in this state which, pursuant to the authority conferred upon it by sections 46-301 to 46-315, shall own or operate, or hereafter acquire or establish any electric light and power plant, distribution system, or transmission lines, may extend and operate the same beyond its boundaries, and for that purpose is hereby authorized and empowered to construct, purchase, lease or otherwise acquire, and to maintain, improve, extend and operate electric light and power plants, distribution systems, and transmission lines outside the boundaries of such district, for such distance and over such territory within this state as may be deemed expedient. In the exercise of the powers granted by this section any such district by its board of directors may enter into contracts to furnish and sell electrical energy to any person, firm, association, public or private corporation, municipality or public electric light and power district. No such construction, purchase, lease, acquisition, improvement or extension of any such additional plant, distribution system, or transmission lines, however, shall be paid for except out of the net earnings and profits of one or more or all of the electric light and power plants, distribution systems, and transmission lines of such district. The provisions of this section shall be deemed cumulative and the authority herein granted shall not be limited or made inoperative by any other provision of law for the extension and financing of such plants, lines or systems.

Source: Laws 1931, c. 91, § 7, p. 256; C.S.Supp.,1941, § 46-707; R.S.1943, § 46-307.

46-308. Issuance of debentures pledging earnings; powers of district; judicial confirmation not required.

In lieu of the issuance of bonds or the levy of taxes or assessments as otherwise by law provided, and in lieu of any other lawful methods or means of providing for the payment of indebtedness, any irrigation district within this state shall have the power and authority, by and through its board of directors, to provide for or to secure the payment of the cost or expense of purchasing, constructing or otherwise acquiring, extending and improving any real or personal property necessary or useful in its operation of any electric light and power plant, distribution system, or transmission lines, by pledging, assigning, or otherwise hypothecating the net earnings or profits of such irrigation district derived, or to be derived, from the operation of such electric light and power plant, distribution system, or transmission lines, and to that end, to enter into such contracts and to issue such warrants or debentures as may be proper to carry out the provisions of this section. All earnings, profits, and revenue thus pledged, assigned or hypothecated shall be kept in separate funds to be expended for the specific purposes aforesaid, until such indebtedness shall have been fully paid. Warrants or debentures issued under the provisions of this section shall not be subject to the provisions of law requiring the judicial examination of the issuance and sale of bonds of the district.

Source: Laws 1931, c. 91, § 8, p. 256; C.S.Supp.,1941, § 46-708; R.S.1943, § 46-308.

46-309. Proposals in conflict with original project; vote of electors a condition precedent to adoption.

No power conferred upon the district under the provisions of sections 46-301 to 46-315 shall be exercised if in express conflict with the original plan or project submitted to the vote of the electors of the district under the provisions of sections 46-302 to 46-305, unless and until approved by the affirmative vote of a majority of the qualified electors of the district at any general election or at a special election called for the purpose. At such election the notice of the election, conduct of the election and canvass of votes shall so far as practicable conform to the foregoing provisions for elections held for the purpose of the initial establishment or acquisition, by the district, of electric light and power plant, lines or systems.

Source: Laws 1931, c. 91, § 9, p. 257; C.S.Supp.,1941, § 46-709; R.S.1943, § 46-309; Laws 1971, LB 534, § 29.

46-310. Rates and charges for electric current; rules and regulations of system.

Any irrigation district which shall acquire, establish and operate any electric light and power plant, lines or systems under the provisions of sections 46-301 to 46-315 shall have the power to fix and collect reasonable rates, fees, and charges for electric current, service, equipment, and physical connection sold or furnished to consumers, and to make and enforce reasonable rules and regulations for the operation and conduct of the entire electric light and power system of the district.

Source: Laws 1931, c. 91, § 10, p. 257; C.S.Supp.,1941, § 46-710; R.S.1943, § 46-310.

46-311. Sale, lease, or transfer; law applicable.

All provisions of law pertaining to any sale, lease or transfer of any electric light and power plant, distribution system or transmission lines by cities, villages, and public electric light and power districts to any private person, firm, association or corporation, shall be applicable, as nearly as may be, to irrigation districts which shall acquire, establish or own any such plant, lines or system.

Source: Laws 1931, c. 91, § 11, p. 258; C.S.Supp.,1941, § 46-711; R.S.1943, § 46-311.

46-312. Extension; pledged net proceeds inadequate; bonds; how issued.

If at any time after the initial acquisition or establishment by any irrigation district of an electric light and power plant, lines, or systems the Department of Natural Resources deems it to be practicable and expedient that additional plants, lines, or systems, or extensions or improvements of the existing electric light and power plant, lines, or systems, should be made by the district, and if the cost of such additions and extensions cannot be made or provided for by the application of unused funds derived from the operation of the existing electric light and power plant, lines, or systems or by the pledge or assignment of future net revenue as in sections 46-301 to 46-315, then the board of directors may, and on the petition of not less than twenty-five percent of the qualified electors of the district shall, submit to the electors of the district at any general election or at any special election called for the purpose, the question and proposition of making such improvements, additions, or extensions and the issuance of bonds of the district to pay the cost thereof. A statement of the department with reference to the expediency and feasibility of such proposed extension and addition shall be made by such department to the irrigation district whenever requested by the board of directors of such district. Such election shall be held and the result thereof determined and declared in conformity with the provisions of law governing elections upon the proposition of the issuance of bonds of the district. Complete plans and a description of the proposed additions, improvements, changes, or extensions shall be prepared and kept on file in the main office of the district or of the board of the district, subject to inspection by any elector or other interested person, at all reasonable business hours during the period of publication of notice of such election. The ballots at such election shall conform, as nearly as practicable, with the requirements of section 46-305.

Source: Laws 1931, c. 91, § 12, p. 258; C.S.Supp.,1941, § 46-712; R.S.1943, § 46-312; Laws 2000, LB 900, § 164.

46-313. Eminent domain; use of highways; construction and operation; general law applicable.

All general provisions of law applicable to electric light and power corporations and irrigation districts which pertain to the exercise of the power of eminent domain, the use and occupation of public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines shall be applicable, as nearly as may be, to irrigation districts in their exercise of the powers and functions, and in their performance of the duties conferred or imposed upon them under the provisions of sections 46-301 to 46-315.

Source: Laws 1931, c. 91, § 13, p. 259; C.S.Supp.,1941, § 46-713; R.S.1943, § 46-313.

Cross References

For eminent domain procedure, see Chapter 76, article 7.

46-314. Profits from sale of electricity; how used.

All net profits derived from the sale of electrical energy under the provisions of sections 46-301 to 46-315 shall belong to the irrigation district producing it, and may be used by such district to pay its operation and maintenance expense, its bonded indebtedness, if any, or other debts, or for improvements and additions.

Source: Laws 1931, c. 91, § 14, p. 259; C.S.Supp.,1941, § 46-714; R.S.1943, § 46-314.

46-315. Use of water for hydroelectric plant; rights of irrigation district.

Every irrigation district in this state shall have the exclusive right to make application to the Department of Natural Resources for the use of all water used for irrigation purposes and all return flow and seepage water from irrigated land in its district for the purpose of operating hydroelectric plants under sections 46-301 to 46-315.

Source: Laws 1931, c. 91, § 15, p. 259; C.S.Supp.,1941, § 46-715; R.S.1943, § 46-315; Laws 2000, LB 900, § 165.

46-401. Repealed. Laws 1961, c. 284, § 1.

46-402. Repealed. Laws 1961, c. 284, § 1.

46-403. Repealed. Laws 1961, c. 284, § 1.

46-404. Repealed. Laws 1961, c. 284, § 1.

46-405. Repealed. Laws 1961, c. 284, § 1.

46-406. Repealed. Laws 1961, c. 284, § 1.

46-407. Repealed. Laws 1961, c. 284, § 1.

46-501. Reclamation districts; declaration of purpose.

It is hereby declared that to provide for the conservation of the water resources of the State of Nebraska and for the greatest beneficial use of water within the state, the organization of reclamation districts and the construction of works as herein defined by such districts are a public use and will: (1) Be essentially for the public benefit and advantage of the people of the State of Nebraska; (2) indirectly benefit all industries of the state; (3) indirectly benefit the State of Nebraska in the increase of its taxable property valuation; (4) directly benefit municipalities by providing adequate supplies of water for domestic use; (5) directly benefit lands to be irrigated from works to be constructed; (6) directly benefit lands now under irrigation by stabilizing the flow of water in streams and by increasing flow and return flow of water to such streams by replenishing and maintaining subsurface supplies; and (7) promote the comfort, safety and welfare of the people of the State of Nebraska.

Source: Laws 1947, c. 173, § 1(1), p. 523.

Annotations

This and the succeeding section declare the public policy, use, benefits, and purpose of organization of reclamation districts. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-502. Reclamation districts; declaration of policy.

It is therefor declared to be the policy of the State of Nebraska to (1) control, make use of and apply to beneficial use all available waters of this state to a direct and supplemental use of such waters for domestic, manufacturing, irrigation, power and other beneficial uses, (2) obtain from water of the state the highest benefit for domestic uses and irrigation of lands in Nebraska, (3) cooperate with the United States under the federal reclamation laws now or hereinafter enacted and other agencies of the United States Government in the construction and financing of works in the State of Nebraska as herein defined and for the operation and maintenance thereof, and (4) promote the greater prosperity and general welfare of the people of the State of Nebraska by encouraging the organization of reclamation districts as provided in sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 1(2), p. 524.

46-503. Act, how cited.

Sections 46-501 to 46-573 may be known and cited as Reclamation Act, the districts created hereunder may be termed reclamation districts; and the bonds

which may be issued hereunder may be called reclamation district bonds, which designation may be engraved or printed on their face.

Source: Laws 1947, c. 173, § 2(1), p. 524.

Annotations

This and the eleven succeeding sections contain definition of terms used in Reclamation Act. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-504. Publication, defined.

Wherever the term publication is used in sections 46-501 to 46-573 and no manner specified therefor, it shall be taken to mean once a week three consecutive weeks in at least one newspaper of general circulation in each county wherein such publication is to be made. It shall not be necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days (excluding the day of the first publication), shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

Source: Laws 1947, c. 173, § 2(2), p. 524.

46-505. Person and public corporation, defined.

Wherever the term person is used in sections 46-501 to 46-573 and not otherwise specified, it shall be taken to mean a person, firm, partnership, limited liability company, association, or corporation other than a county, village, city, city and county, or other political subdivision. Similarly, the words public corporation shall be taken to mean counties, cities and counties, villages, cities, school districts, irrigation districts, water districts, park districts, public power districts, public power and irrigation districts, and all governmental agencies clothed with the power of levying or providing for the levy of general or special taxes or special assessments.

Source: Laws 1947, c. 173, § 2(3), p. 525; Laws 1993, LB 121, § 278.

46-506. Board, defined.

Wherever the word board is used in sections 46-501 to 46-573, and not otherwise specified, it shall be taken to mean the board of directors of the district

organized under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 2(4), p. 525.

46-507. Works, defined.

Wherever the term works is used in sections 46-501 to 46-573, it shall, unless otherwise specified, be held to mean dams, storage reservoirs, compensatory and replacement reservoirs, canals, conduits, pipelines, tunnels, power plants, transmission lines, drainage canals, pumping plants, and all works, facilities, improvements and property necessary or convenient for the supplying, controlling and disposing of water for domestic, irrigation, power, milling, manufacturing, mining, metallurgical and any and all other beneficial uses.

Source: Laws 1947, c. 173, § 2(5), p. 525; Laws 1951, c. 151, § 1, p. 599.

46-508. Court, defined.

Wherever the term court is used in sections 46-501 to 46-573, and not otherwise specified, it shall be taken to mean the district court sitting in any judicial district of the State of Nebraska, containing a portion or portions of lands contained in a reclamation district.

Source: Laws 1947, c. 173, § 2(6), p. 525.

46-509. Property, defined.

Wherever the term property is used in sections 46-501 to 46-573, it shall, unless otherwise specified, be held to mean real estate and personal property.

Source: Laws 1947, c. 173, § 2(7), p. 525.

46-510. Land or real estate, defined.

Wherever the terms land or real estate are used in sections 46-501 to 46-573, they shall, unless otherwise specified, be held to mean real estate, as the words real estate are defined by the laws of the State of Nebraska, and shall embrace all railroads, highways, electrical roads, street and interurban railroads, roads, streets, street improvements, telephone, telegraph, and transmission lines, gas, sewer and water systems, water rights, pipelines and rights-of-way of public service corporations and all other real property whether held for public or private use.

Source: Laws 1947, c. 173, § 2(8), p. 525.

46-511. Land or property, defined.

Wherever the terms land or property are used in sections 46-501 to 46-573 with reference to benefits, appraisals, assessments, or taxes, public corporations shall as political entities, according to benefits received, be considered as included in such reference in the same manner as land or property.

Source: Laws 1947, c. 173, § 2(9), p. 526.

46-512. Irrigable or irrigable lands, defined.

Wherever the terms irrigable or irrigable lands are used in sections 46-501 to 46-573 they shall be taken to mean privately owned agricultural lands outside the corporate limits of cities or villages, which can be benefited by the use of water for irrigation purposes and which would lie within any district established under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 2(10), p. 526.

46-513. Nonirrigable land, defined.

Wherever the term nonirrigable land is used in sections 46-501 to 46-573 it shall be taken to mean privately owned agricultural lands outside the corporate limits of cities or villages, which cannot be benefited by the use of water for irrigation purposes, and which would lie within any district established under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 2(11), p. 526.

46-514. Department, defined.

For purposes of the Reclamation Act, department means the Department of Natural Resources.

Source: Laws 1947, c. 173, § 2(12), p. 526; Laws 2000, LB 900, § 166.

46-515. Department of Natural Resources; jurisdiction; power; authority.

The department is hereby vested with jurisdiction, power and authority, when conditions stated in section 46-516 are found to exist, to establish reclamation districts for conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing and other beneficial uses as herein provided.

Source: Laws 1947, c. 173, § 3, p. 526.

Annotations

This and succeeding fourteen sections provide generally for the organization and establishment of reclamation districts as political corporate quasi-municipal subdivisions of the state. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-516. Petition; signers; contents.

Before any reclamation district is established under the Reclamation Act, a petition shall be filed in the office of the department signed by the owners of not less than thirty percent of the acreage of lands to be included in the district, exclusive of land in cities and villages, and each tract or tracts of land and the total acreage shall be listed opposite the name of the signer. A signing petitioner shall not be permitted after the filing of the petition to withdraw his or her name therefrom. No district shall be formed under the act unless the taxable valuation of land, together with improvements thereon, within the proposed district, exclusive of land and improvements thereon in cities and villages, is five million seven hundred twenty thousand dollars or more. The petition shall set forth:

(1) The proposed name of the district;

(2) That property within the proposed district will be benefited by the accomplishment of the purposes enumerated in section 46-515;

(3) A general description of the purpose of the contemplated improvement and of the territory to be included in the proposed district. The description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether the property is within the territory proposed to be organized as a district. The territory need not be contiguous if it is so situated that the organization of a single district of the territory described is calculated to promote one or more of the purposes enumerated in section 46-515;

(4) The taxable value of all irrigable land within the boundaries of the proposed district;

(5) A general description of the divisions of the district, the number of directors of the district proposed for each subdivision, and the names and addresses of the proposed members of the board of directors of the district. There shall be not less than five nor more than twenty-one directors named therein who shall serve until their successors are elected and qualified. In the petition the directors named shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors have been elected at the first general state election thereafter and have qualified, the members of the second group to hold office until their successors have been elected at the second general state election thereafter and have qualified, and the members of the third group until the members elected at the third general state election thereafter have qualified. After the name of each director, it shall be stated to which of the three groups he or she belongs; and

(6) A prayer for the organization of the district by the name proposed.

No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the department may at any time permit the petition to be amended to conform to the facts, to correct any errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the department the same as though filed with the first petition placed on file. In determining whether the requisite number of landowners have signed the petition, the department shall be governed by the names as they appear upon the tax roll which shall be prima facie evidence of such ownership.

Source: Laws 1947, c. 173, § 4, p. 527; Laws 1979, LB 187, § 171; Laws 1992, LB 719A, § 151; Laws 2000, LB 900, § 167.

46-517. Petition; bond; requirements.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed in the amount of two thousand dollars, with security approved by the department to pay all expenses connected with the proceedings in case the organization of the district be not effected. If at any time during the proceeding the department shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed at not less than ten days distant. Upon a failure of the petitioner to execute the same, the petition shall be dismissed.

Source: Laws 1947, c. 173, § 5, p. 528.

46-518. Petition; notice of hearing.

Immediately after the filing of such petition, the department shall (1) by order fix a place and time, not less than ninety days nor more than one hundred and twenty days after the petition is filed, for hearing thereon, (2) cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon, and (3) forthwith cause a copy of said notice to be mailed by either registered or certified mail to the county boards of each of the several counties having territory within the proposed district.

Source: Laws 1947, c. 173, § 6, p. 529; Laws 1957, c. 242, § 40, p. 853.

46-519. Protest petition; contents.

At any time after the filing of a petition for the organization of a reclamation district and not less than thirty days prior to the time fixed by the order of the department for the hearing upon said petition, and not thereafter, a petition may be filed in the office of the department wherein the proceeding for the creation of said district is pending, signed by not fewer than the owners of thirty percent of the acreage of lands in the district, exclusive of land in cities and villages, who have not signed the petition for creating the district, protesting the creation of the district. The protesting petition shall list each tract or tracts of land and the total acreage of each signer opposite his name.

Source: Laws 1947, c. 173, § 7(1), p. 529.

46-520. Protest petition; disqualification of signer.

Any person who signs a petition for creation of a district as the owner of any land shall be disqualified to sign a protest petition.

Source: Laws 1947, c. 173, § 7(2), p. 529.

46-521. Protest petition; when dismissed.

Upon the day set for the hearing upon the original petition, if it shall appear to the department from such evidence as may be adduced by any party in interest, that said protesting petition is not signed by the requisite number of owners of lands, the department shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in section 46-525.

Source: Laws 1947, c. 173, § 7(3), p. 529.

46-522. Protest petition; requisite number of signers; dismissal of original petition.

If the department shall find from the evidence that said protesting petition is signed by the requisite number of owners of lands, the department shall forthwith dismiss the original petition praying for the creation of the district. The finding of the department upon said question of the genuineness of the signatures, and all matters of law and fact incident to such determination shall be final and conclusive on all parties in interest whether appearing or not.

Source: Laws 1947, c. 173, § 7(4), p. 530.

46-523. Organization; objections.

Any owner of real property in said proposed district who did not individually sign a petition for the organization of a reclamation district and who desires to object to the organization and incorporation of said district may, on or before the date set for the cause to be heard, file objection to the organization and incorporation of the district.

Source: Laws 1947, c. 173, § 7(5), p. 530.

46-524. Objections; contents; hearing.

Such objection shall be limited to a denial of the statements in the petition. It shall be heard by the department without unnecessary delay.

Source: Laws 1947, c. 173, § 7(6), p. 530.

46-525. Hearing; decree; district established.

Upon the said hearing, if it shall appear that a petition for the organization of a reclamation district has been signed and presented, as provided in section 46-516, in conformity with sections 46-501 to 46-573, and that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided in section 46-521, the department shall, by order duly entered of record, adjudicate all questions of jurisdiction, declare the district organized and give it a corporate name, by which it shall thereafter be known in all proceedings. Thereupon the district shall be a political subdivision of the State of Nebraska and a body corporate with all the powers of a public or municipal corporation.

Source: Laws 1947, c. 173, § 7(7), p. 530.

46-526. Decree; contents; office of the district.

In such decree the department shall designate the place, prayed for in the petition, where the office or principal place of business of the district shall be located, which shall be within the corporate limits of the district. It may be changed by order of the department from time to time, upon the application of the board of directors of said district. The regular meetings of the board shall be held at such office or place of business, but for cause may be adjourned to any convenient place. The official records and files of the district shall be kept at the office so established.

Source: Laws 1947, c. 173, § 7(8), p. 530.

46-527. Petition; dismissal; appeal and writ of error denied.

If the department finds that no petition has been signed and presented in conformity with sections 46-501 to 46-573, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceeding. Nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar reclamation district, and the right to so renew such proceeding is hereby expressly granted and authorized.

Source: Laws 1947, c. 173, § 7(9), p. 531.

46-528. Decree; district established; appeal.

If an order is entered establishing the district, such order shall be deemed final. Any person, firm, or corporation owning real property within any reclamation district, created or established by virtue of the Reclamation Act, feeling himself or herself aggrieved by the establishment of such district, the determination of its boundaries, or the enclosure therein of any of his or her property may appeal the final order of the department adjudging such district to be duly incorporated. The appeal shall be in accordance with the Administrative Procedure Act, except that the appeal shall be to the district court of the county wherein the principal office of the reclamation district is located. If no appeal is taken within the time prescribed in the Administrative Procedure Act, the entry of such final order by the department shall finally and conclusively establish the regular organization of the

district against all persons, except the State of Nebraska in an action in the nature of a writ of quo warranto commenced by the Attorney General within three months after the decree declaring such district organized as herein provided and not otherwise. The organization of such districts shall not be directly or collaterally questioned in any suit, action, or proceeding, except as herein expressly authorized.

Source: Laws 1947, c. 173, § 7(10), p. 531; Laws 1988, LB 352, § 77.

Cross References

Administrative Procedure Act, see section 84-920.

46-529. Decree; filing; fees.

Within thirty days after the said district has been declared a corporation by the department, such department shall transmit to the Secretary of State and to the county clerk in each of the counties having lands in said district copies of the findings and the decree of the department incorporating said district. The same shall be filed in the office of the Secretary of State, in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations, and also be filed in the office of the county clerk of each county in which a part of the district is located where they shall become permanent records. The clerk in each county shall receive a fee of one dollar for filing and preserving the same. The Secretary of State shall receive for filing said copies such fees as now are or hereafter may be provided by law for like services in similar cases.

Source: Laws 1947, c. 173, § 8, p. 531.

46-530. Directors; appointment; election; take office, when; qualified electors; candidates.

Within thirty days after entering the final order establishing the district, the department shall enter an order appointing the board of directors named in the petition in accordance with subsection (5) of section 46-516. After the selection of the original board of directors of a district as provided for in subsection (5) of section 46-516, their successors shall be elected as provided in section 32-516. Elections shall be conducted as provided in the Election Act and shall take office on the first Thursday after the first Tuesday in January next succeeding their election. Qualified electors of the municipality or municipalities within the territory which composes the territory of a district shall be qualified electors of such district. A qualified elector of a subdivision may only cast his or her ballot for a director to be elected from such subdivision.

Source: Laws 1947, c. 173, § 9(1), p. 532; Laws 1975, LB 453, § 55; Laws 1994, LB 76, § 556; Laws 1995, LB 99, § 18.

Cross References

Election Act, see section 32-101.

Annotations

This and succeeding eleven sections provide for election of directors, and define the rights, general powers, and duties of the board of directors. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-531. Repealed. Laws 1994, LB 76, § 615.

46-532. Repealed. Laws 1994, LB 76, § 615.

46-533. Repealed. Laws 1994, LB 76, § 615.

46-534. Directors; vacancy; filled by board of directors.

In addition to the events listed in section 32-560, a vacancy on the board of directors shall exist in the event of (1) removal from any district of a director, (2) removal of a director from a subdivision in which he or she was a director, or (3) elimination or detachment from a district of the part thereof where a director or directors reside. In the event of a vacancy, such vacancy shall be filled by the board of directors. Such appointments shall be in writing and continue for the unexpired term and until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

Source: Laws 1947, c. 173, § 9(5), p. 533; Laws 1957, c. 124, § 20, p. 431; Laws 1994, LB 76, § 557.

46-535. Directors; bond required.

Each director shall furnish a corporate surety bond at the expense of the district in the sum of ten thousand dollars to be approved by the Secretary of State and filed in his office, conditioned for the faithful performance of his duties as such director.

Source: Laws 1947, c. 173, § 9(6), p. 533.

46-536. Directors; oath.

Each director before entering upon his official duties shall take and subscribe to an oath before an officer authorized to administer oaths, that he will support the Constitutions of the United States and the State of Nebraska, will honestly, faithfully and impartially perform the duties of his office and will not be interested directly or indirectly in any contract let by said district. The oath shall be filed in the office of the department in the original case.

Source: Laws 1947, c. 173, § 10(1), p. 534.

46-537. Directors; chairman; secretary; seal; records.

Upon taking the oath, the members of the board shall choose one of their number chairman of the board and president of the district and elect some suitable person secretary of the board and of the district, who may or may not be a member of the board. Such board shall adopt a seal and keep in a well-bound book a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to the inspection of all owners of property in the district, as well as to all other interested parties.

Source: Laws 1947, c. 173, § 10(2), p. 534.

46-538. Directors; compensation; expenses.

Each director shall receive from the board a per diem of not to exceed seventy dollars per day for each day that such director attends a board meeting or is engaged in matters concerning the district, but no director shall receive more than two thousand eight hundred dollars in any one year. Each director shall also be entitled to any necessary traveling expenses actually expended while engaged in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1947, c. 173, § 10(3), p. 534; Laws 1981, LB 204, § 76; Laws 2001, LB 409, § 1.

Cross References

Additional expenses, board may reimburse, Local Government Miscellaneous Expenditure Act, see section 13-2201.

46-539. Directors; quorum.

A majority of the directors shall constitute a quorum and concurrence of a majority of those in attendance, in any matter within their duties, shall be sufficient for its determination except as otherwise herein provided.

Source: Laws 1947, c. 173, § 11, p. 534.

46-540. Officers and employees; compensation; bond; duties.

The secretary shall (1) be custodian of the records of the district and of its corporate seal, (2) assist the board in such particulars as it may direct in the performance of its duties, (3) attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by sections 46-501 to 46-573, or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity, and (4) also serve as treasurer of the district unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer, an attorney, and such other agents and assistants as may be necessary and provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost or maintenance of the improvement. The chief engineer shall be superintendent of all the works and improvements. He shall make a full report to the board each year, or more often if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer, and such other agents or employees of the district as the board may direct, shall furnish corporate surety bonds, at the expense of the district, in such amount and form as may be fixed and approved by the board conditioned for the faithful performance of their respective duties.

Source: Laws 1947, c. 173, § 12, p. 534.

Cross References

Additional expenses, board may reimburse, Local Government Miscellaneous Expenditure Act, see section 13-2201.

46-541. Directors; general powers and duties; continuance of corporate existence; election; dissolution.

The board shall have power on behalf of the district:

(1) To have perpetual succession, except that all districts organized prior to January 1, 1950, which have not entered into a bona fide construction of their

works shall, within fifteen years following January 1, 1961, cause to be submitted to the qualified electors of the district the following question:

Shall the district be continued for an additional fifteen years?

.... Yes

.... No

The election shall be held in the same manner set out in section 46-564 relating to submission to qualified electors for the approval of bonded indebtedness.

In the event a majority of the qualified voters voting in such election vote yes, then such district shall be continued for an additional fifteen years. For all districts organized after January 1, 1950, and not having entered into a bona fide construction of their works before January 1, 1961, the directors shall, within fifteen years following January 1, 1961, cause to be submitted the same question to the qualified electors of the district. All districts organized after November 1, 1953, which have not entered into a bona fide construction of their works within fifteen years after the first day of July of the year of assessment of the taxable property of the district shall submit to the qualified electors of the district the question of whether the district shall be continued for an additional fifteen years. If a district has pending before the Congress of the United States a bill for the authorization or reauthorization of its project at the expiration of any one of such fifteen-year periods, the district shall be continued until such authorization or reauthorization is granted by the Congress of the United States and appropriations made for the actual construction of its work, which additional period shall not exceed ten years from the expiration of the fifteen-year period.

If at the end of the fifteen-year period, plus the additional ten-year period granted while its project is pending before the Congress of the United States for authorization or reauthorization and an appropriation for the actual construction of its works, no physical construction of any of its works has been started, then the same question shall again be submitted to the qualified electors. In the event a majority of the qualified voters voting in such election vote yes, then such district shall be continued for an additional fifteen years.

In the event of a failure to receive a majority affirmative vote of the voters voting in such election, the district shall be dissolved and the district shall submit to the department a full and complete audit by a public accountant showing the assets possessed by the district. Thereupon the department shall enter an order providing that within sixty days the assets of such district shall be liquidated, all rights granted by the department shall be canceled, and any assets on hand shall be divided as follows:

(a) All bills payable and all expenses of dissolution shall be deducted from the assets and paid; and

(b) The balance remaining shall be divided proportionately among the operating public school districts of the district in the proportion that the number of acres in each school district bears to the total number of acres of all of the school districts within the boundaries of the district. If the district is confined to one county, distribution shall be made by the county treasurer of such county. If the district extends into more than one county, the funds for disbursement to such school districts shall be paid to the county within which the schoolhouses are located for distribution to such school districts;

(2) To take by appropriation, grant, purchase, bequest, devise, or lease, and to hold and enjoy water rights and waterworks, and any and all real and personal property of any kind within or without the district necessary or convenient to the full exercise of its powers; to purchase, sell, lease, encumber, alienate, or otherwise dispose of waterworks and real and personal property; to enter into contracts for furnishing water service for use within the district; to acquire, construct, operate, control, and use any and all works, facilities, and means necessary or convenient to the exercise of its power, both within and without the district, for the purpose of providing for the use of such water within the district; and to do and perform any and all things necessary or convenient to the full exercise of the powers granted in this subdivision;

(3) To have and to exercise the power of eminent domain in addition to any other rights and powers conferred in this section upon any district organized under the Reclamation Act, for the purposes and after the manner provided for in sections 76-704 to 76-724, except that when any reclamation district exercises the power of eminent domain as to water being used for power purposes, it shall not include any other properties of any irrigation district, public power district, or public power and irrigation district organized and existing under the laws of the State of Nebraska;

(4) To construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands, which public lands are now or may hereafter become the property of the State of Nebraska, and to construct works and establish and maintain facilities across any stream of water or watercourse. The district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or village where such streets lie concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction. The district shall not be required to pay any license or permit fees or file any bonds. The district may be required to pay reasonable inspection fees;

(5) To contract with the government of the United States or any agency thereof for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating or reregulating basins, diversion works and canals, dams, power plants, drains, and all necessary works incident thereto, to acquire rights to the use of water from such works, and to enter into contracts for the use of water from such works by persons and corporations, public and private;

(6) To list in separate ownership the lands within the district which are susceptible of irrigation from the district sources, to enter into contracts to furnish water service to all such lands, and to levy assessments as hereinafter provided against the lands within the district to which water service is furnished on the basis of the value per acre-foot of water service furnished to the lands within the district. The board may divide the district into units and fix a different value per acre-foot of water in the respective units and in such case shall assess the lands within each unit upon the same basis of value per acre-foot of water service furnished to lands within such unit;

(7) To fix rates at which water service, not otherwise provided for in this section, may be furnished. Rates shall be equitable although not necessarily equal or uniform for like classes of service throughout the district;

(8) To adopt plans and specifications for the works for which the district was organized, which plans and specifications may at any time be changed or modified by the board. The plans shall include maps, profiles, and such other data and descriptions as may be necessary to set forth the location and character of the works, and a copy thereof shall be kept in the office of the district and open to public inspection. The plans and specifications and any changes shall be approved by the department in accordance with the statutes;

(9) To appropriate and otherwise acquire water rights within or without the state; to develop, store, and transport water; to provide, contract for, and furnish water service for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical use, and any and all other beneficial uses and to derive revenue and benefits therefrom; to fix the terms and rates therefor; to make and adopt plans for and to acquire, construct, operate, and maintain dams, reservoirs, canals, conduits, pipelines, tunnels, power plants, transmission lines, and any and all works, facilities, improvements, and property necessary or convenient therefor; and in the doing of all of such things to obligate itself and execute and perform such obligations according to the tenor thereof. The contracts for furnishing of water service for irrigation and domestic purposes shall only be made for use within the district. The board may transfer water appropriations within the district pursuant to sections 46-2,127 to 46-2,129;

(10) To invest any surplus money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the

payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate necessities of the district, in its own bonds or in treasury notes or bonds of the United States. The investment may be made by direct purchase of any issue of such bonds or treasury notes, or part thereof, at the original sale of the same or by the subsequent purchase of such bonds or treasury notes. Any bonds or treasury notes thus purchased and held may, from time to time, be sold and the proceeds reinvested in bonds or treasury notes as provided in this subdivision. Sales of any bonds or treasury notes thus purchased and held shall, from time to time, be made in season so that the proceeds may be applied to the purposes for which the money with which the bonds or treasury notes were originally purchased was placed in the treasury of the district. The functions and duties authorized by this subdivision shall be performed under such rules and regulations as shall be prescribed by the board;

(11) To refund bonded indebtedness incurred by the district under and pursuant to such rules and regulations as shall be prescribed by the board;

(12) To borrow money, incur indebtedness, and issue bonds or other evidence of such indebtedness;

(13) To adopt bylaws not in conflict with the Constitution of Nebraska and laws of the state for carrying on the business, objects, and affairs of the board and of the district; and

(14) To enter into agreements for water service with agencies of the federal government or the Game and Parks Commission through which water will be made available, at rates determined as provided in subdivision (7) of this section, for hunting, fishing, and recreational development. The water service shall not exceed the amount of water which may be appropriated for such purposes by order of the department, and such amounts shall be included in the total appropriative right of the district or districts involved.

Source: Laws 1947, c. 173, § 13, p. 535; Laws 1951, c. 101, § 96, p. 489; Laws 1951, c. 151, § 2, p. 599; Laws 1953, c. 159, § 1, p. 497; Laws 1955, c. 184, § 1, p. 519; Laws 1959, c. 220, § 1, p. 768; Laws 1961, c. 229, § 1, p. 677; Laws 1971, LB 193, § 1; Laws 1992, LB 1063, § 37; Laws 1992, Second Spec. Sess., LB 1, § 37; Laws 1995, LB 99, § 19; Laws 2000, LB 900, § 168.

46-542. District; levy and collection of taxes; classification of methods.

In addition to the other means of providing revenue for such districts, the board shall have power and authority to levy and collect taxes and special assessments for maintaining and operating such works and paying the obligations and

indebtedness of the district by any one or more of the methods or combinations thereof, classified as follows:

Class A. To levy and collect taxes upon the taxable value of the taxable property within the district;

Class B. To levy and collect assessments for special benefits accruing to lands within municipalities for which water service is furnished;

Class C. To levy and collect assessments for special benefits accruing to lands within irrigation districts for which water service is furnished; and

Class D. To levy and collect assessments for special benefits accruing to lands for which water service is furnished.

Source: Laws 1947, c. 173, § 14, p. 538; Laws 1992, LB 1063, § 38; Laws 1992, Second Spec. Sess., LB 1, § 38.

Annotations

This and succeeding seventeen sections provide for fiscal management of a reclamation district, and give the board of directors power to levy and collect taxes and special assessments. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-543. Taxes; levy; Class A; submission to qualified voters of district.

To levy and collect taxes under Class A, the board shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, to supply funds for paying expenses of organization, for surveys and plans, and for paying the cost of constructing, operating, and maintaining the works of the district. The amount shall not exceed three and five-tenths cents on each one hundred dollars prior to the delivery of water from the works and thereafter shall not exceed seven cents on each one hundred dollars of the taxable value of the taxable property within the district, except that in the event of accruing defaults, deficiencies, or defaults and deficiencies, an additional levy may be made as provided in section 46-553.

The board shall, on or before September 20 of each year, certify to the county board of each county within the district or having a portion of its territory within the district the amount so fixed with direction that, at the time and in the manner required by law for levying of taxes for county purposes, such county board shall levy such tax upon the taxable value of the taxable property within the district in

addition to such other taxes as may be levied by such county board at the rate required to produce the amount so fixed and determined.

No tax shall be levied and collected under Class A until the proposition of levying taxes has been submitted by a resolution of the board to the qualified electors of the district at an election held for that purpose in the same manner as provided for submission of incurring bonded indebtedness in sections 46-564 to 46-566, and when the proposition has been approved by a majority of the qualified electors of the district voting on the proposition at such election, thereafter the board shall be entitled to certify to the county board the amount of tax to be levied.

Source: Laws 1947, c. 173, § 15(1), p. 539; Laws 1969, c. 145, § 37, p. 695; Laws 1979, LB 187, § 172; Laws 1992, LB 1063, § 39; Laws 1992, Second Spec. Sess., LB 1, § 39; Laws 1993, LB 734, § 40; Laws 1995, LB 452, § 13.

Cross References

Budget Act, Nebraska, section included, see section 13-501.

Annotations

Class A are general taxes, uniformly levied upon all tangible property within the district. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-544. Special assessments; levy; limitation.

(1) If the board of a reclamation district determines in any year that there are certain lands within the district, not included within Classes B, C, and D, which receive special direct benefits from recharging of the ground water reservoirs by water originating from district works, the board shall in such year fix an amount to be levied upon the taxable value of the taxable property as a special assessment which in the opinion of the board will compensate the district for the special direct benefits accruing to such property by reason of recharged ground water reservoirs under such land by water originating from the district works. Such amount shall in no case exceed, together with all other amounts levied made under Class A on such land, the sum of fourteen cents on each one hundred dollars of the taxable value of the land. Such owner of lands specially assessed for special direct benefits shall have notice, hearing, and the right of appeal and shall be governed by section 46-554.

(2) The authority provided in this section may not be used if the district has obtained approval to levy fees or assessments pursuant to section 46-2,101.

Source: Laws 1947, c. 173, § 15(2), p. 540; Laws 1969, c. 145, § 38, p. 696; Laws 1979, LB 187, § 173; Laws 1983, LB 198, § 21; Laws 1992, LB 1063, § 40; Laws 1992, Second Spec. Sess., LB 1, § 40; Laws 2015, LB361, § 57.

Cross References

Budget Act, Nebraska, section included, see section 13-501.

Annotations

Board of directors of reclamation district may fix rate of levy upon tangible property where direct benefits are received from recharging of ground water reservoirs. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-545. Special assessments; Class B; water service; petition; contracts.

To levy and collect special assessments under Class B as herein provided, the board shall make contracts for water service with each petitioning municipality in the district in the manner hereinafter provided and shall fix and determine the rate or rates per acre-foot and terms at and upon which water service shall be furnished for use by such municipalities; *Provided,* that such rates shall be equitable although not necessarily equal or uniform for like classes of service throughout the district. In the event any city shall desire to obtain water service from the district for domestic or irrigation purposes, the legislative body of such municipality shall by ordinance authorize and direct its mayor and clerk to petition the board for water service upon terms prescribed by the board, which petition shall contain inter alia, the following: (1) Name of municipality; (2) quantity of water to be supplied; (3) the term of years such service is to be supplied; (4) price per acre-foot to be paid for water service; (5) whether payments are to be in cash or annual installments; and (6) an agreement by the municipality to make payments for such water service together with annual maintenance and operating charges and to be bound by the provisions of sections 46-501 to 46-573 and the rules and regulations of the board.

Source: Laws 1947, c. 173, § 16(1), p. 540; Laws 1951, c. 151, § 3, p. 603.

Annotations

This and two succeeding sections provide as Class B for assessments for special benefits accruing to property within petitioning municipalities for water service contractually furnished by the reclamation district. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-546. Water service; petition; notice.

The secretary of the board shall cause notice of the filing of such petition to be given and published once each week two successive weeks in a newspaper published in the county in which said municipality is situated, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board, at a time named in said notice and show cause in writing, if any they have, why the petition should not be granted.

Source: Laws 1947, c. 173, § 16(2), p. 541.

46-547. Water service; petition; hearing; order.

The board at the time and place mentioned in the notice, or at such time or times to which the hearing of the petition may adjourn, shall proceed to hear the petition and objections thereto presented in writing by any person showing cause as aforesaid why the petition should not be granted. The failure of any person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of the petition. The board may at its discretion accept or reject the petition. If it deems it is for the best interest of the district that the petition be granted, it shall enter an order granting the petition and from and after such order the municipality shall be deemed to have acquired the water service as set forth in the order. If the petition is granted, the board shall determine the amount of money necessary to be raised by taxation from property within such municipality to pay the annual installments and a fair proportionate amount of estimated operating and maintenance charges for each succeeding year, as provided in the order granting the petition, and prepare a statement showing the tax rate to be applied to all property in such municipality, which rate shall be the rate fixed by resolution of the board modified to the extent necessary to produce from each such municipality only the amount of money apportioned thereto in the resolution, less any amount paid or undertaken to be paid by such municipality in cash or as credited thereto by payments from the general funds of such municipality. Upon receipt by the county board of each county, wherein such municipality is located, of a certified copy of such resolution showing the tax rate to be applied to all property in each municipality and showing the municipalities and the property which is exempt therefrom, if any, it shall be the duty of the county officers to levy and collect such tax in addition to such other tax as may be levied by such county board at the rate so fixed and determined.

Source: Laws 1947, c. 173, § 16(3), p. 541; Laws 1951, c. 151, § 4, p. 604.

46-548. Special assessments; Class C; water service; petition; contract.

To levy and collect special assessments upon lands under Class C as herein provided, the board shall make contracts for water service with each of the petitioning irrigation districts within the district in the manner as hereinafter provided and shall fix and determine the rate or rates per acre-foot and terms at and upon which water service shall be supplied to such irrigation district; *Provided,* that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district. In the event any irrigation district shall desire to obtain the beneficial water service from the district, the board of such irrigation district shall by resolution authorize and direct its president and secretary to petition the board for water service, upon terms prescribed by the board, which petition shall contain inter alia, the following: (1) Name of irrigation district; (2) quantity of water to be furnished; (3) the terms of years such service is to be supplied; (4) price per acre-foot to be paid; (5) whether payments are to be made in cash or annual installments; and (6) an agreement by such irrigation district to make payments for such water service, together with annual maintenance and operating charges, and to be bound by the provisions of sections 46-501 to 46-573 and the rules and regulations of the board.

Source: Laws 1947, c. 173, § 17(1), p. 542; Laws 1951, c. 151, § 5, p. 605.

Annotations

This and succeeding section provide as Class C for assessments for special benefits to land within petitioning irrigation districts for water services contractually furnished by the reclamation district. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-549. Water service; petition; notice; hearing; order; assessment; collection.

The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board at a time named in the notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in the notice, or at such time or times to which the hearing of the petition may be adjourned, shall proceed to hear the petition and objections thereto presented in writing by any person showing cause as aforesaid why the petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of the petition. The board may, at its

discretion, accept or reject the petition. If it deems it is for the best interest of the district that the petition shall be granted, it shall enter an order to that effect granting the petition and from and after such order the irrigation district or persons therein shall be deemed to have acquired the water service as set forth in the order. If the petition is granted, the board shall determine the amount of money necessary to be raised by special assessment on lands within such irrigation district and shall certify to the county assessor, or county clerk where he is ex officio county assessor, of the county in which the lands of such irrigation district are located the amount of the assessment, plus a fair proportionate amount of the estimated operating and maintenance charges for each succeeding year on each tract of land and such county assessor shall extend the amount of such special assessment, plus the operating and maintenance charges, on the tax roll as a special assessment against the lands upon which the special assessment is made. Such assessment shall be paid and collected in equal annual installments over the period of years such water service is petitioned for as set forth in this section. If subdistrict or subdistricts are organized as herein provided, assessments of special benefits shall be made, spread on the tax rolls and collected in the same manner as herein provided in the case of irrigation districts.

Source: Laws 1947, c. 173, § 17(2), p. 543; Laws 1951, c. 151, § 6, p. 605.

46-550. Special assessments; Class D; water service; petition; contract.

To levy and collect special assessments upon lands under Class D as herein provided, the board shall make contracts for water service with petitioning owners of lands in the district, upon which water can be beneficially used in the manner as hereinafter provided, and shall fix and determine the rate or rates per acre-foot and the terms at and upon which water service shall be furnished for use on the lands. In the event that any person or private corporation shall elect to purchase, lease, or otherwise obtain water service from the district for irrigation of lands, such person or corporation shall petition for water service upon terms prescribed by the board, which petition shall contain inter alia, the following: (1) Name of applicant; (2) quantity of water to be furnished; (3) the term of years such service is to be supplied; (4) description of lands upon which the water will be used and attached; (5) price per acre-foot to be paid; (6) whether payment will be made in cash or annual installments; and (7) an agreement that the annual installments and the charges for maintenance and operating shall become a tax lien upon the lands for which such water is furnished and to be bound by the provisions of sections 46-501 to 46-573 and the rules and regulations of the board.

Source: Laws 1947, c. 173, § 18(1), p. 544; Laws 1951, c. 151, § 7, p. 606.

Annotations

This and two succeeding sections provide as Class D for assessments for special benefits accruing to lands for which water service may be contractually furnished by the reclamation district to petitioning individual owners of lands for irrigation purposes. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-551. Water service; petition; order; contents.

The board may, in its discretion, accept or reject the said petition. If it deems it for the best interest of the district that said petition be granted, it shall enter an order granting the said petition and from and after such order, the said petitioner shall be deemed to have agreed to the acquiring of water service under the terms set forth in said petition and order. Such order shall provide for payment on the basis of rate per acre-foot of water service contracted for said lands within the district; *Provided,* that the board may divide the district into units and fix a different rate per acre-foot of water in the respective units; *and provided further,* that such rates shall be equitable although not necessarily equal or uniform for like classes of services throughout the district.

Source: Laws 1947, c. 173, § 18(2), p. 544.

46-552. Water service; petition; notice; hearing; order.

The secretary of the board shall cause notice of the filing of such petition to be given and published, which notice shall state the filing of such petition and give notice to all persons interested to appear at the office of the board at a time named in the notice and show cause in writing, if any they have, why the petition should not be granted. The board at the time and place mentioned in said notice, or at such time or times to which the hearing on the petition may be adjourned, shall proceed to hear the petition and objections thereto presented in writing by any person showing cause as aforesaid, why the petition should not be granted. The failure of any person interested to show cause, in writing, as aforesaid, shall be deemed and taken as an assent on his part to the granting of the petition. The board may, at its discretion, accept or reject the petition. If it deems it is for the best interest of the district that the petition shall be granted, it shall enter an order to that effect granting the petition, and from and after such order the petitioner or persons interested therein shall be deemed to have acquired the water service as set forth in the order. If such petition is granted, the board shall cause a certified copy of the order granting the petition to be recorded in the county in which the lands are located and thereafter, the annual installments and annual operating and

maintenance charges shall be a perpetual tax lien upon such lands. The board shall certify to the county assessor, or county clerk acting as ex officio county assessor, of the county within the district in which such lands are located the amount of the annual installments, plus a fair proportionate amount of the estimated operating and maintenance charges apportioned to the lands for the term of years such service is to be supplied, and such county assessor shall extend the amount so certified on the tax roll as a flat special assessment against the lands for which such water is petitioned and allotted.

Source: Laws 1947, c. 173, § 18(3), p. 545; Laws 1951, c. 151, § 8, p. 607.

46-553. Annual assessments; levy; limitations; additional levy.

The board in making the annual assessments and levies as provided in the Reclamation Act shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, the maturing of bonds and interest on all bonds, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the proceeds of such levies and assessments made under the act, together with all revenue of the district, are not sufficient to maintain and operate the works of the district and to punctually pay the annual installments on its contracts, bonds, or contracts and bonds and interest thereon and to pay defaults and deficiencies, then the board shall make such additional levies of taxes, assessments, or taxes and assessments as may be necessary for such purposes and notwithstanding any limitations by contract, order, tax lien, or otherwise. Such taxes and assessments shall be made and continue until the indebtedness of the district is fully paid. The amount of such additional levies of taxes under Class A as provided in section 46-542 shall not in any one year exceed an amount that would be raised by a levy of three and five-tenths cents on each one hundred dollars against the taxable value of such property as fixed for general tax purposes. The levies for defaults and deficiencies shall not at any time be so made as to impose upon Class A as provided in section 46-542 payments in excess of twenty-five percent of the anticipated revenue from all sources to be raised for the specific purpose of payment of existing defaults and deficiencies. In making such additional levies, assessments, or levies and assessments, the board shall take into account all sources of revenue and equitably distribute the burden of such defaults and deficiencies according to the uses and benefits as provided in the act.

Source: Laws 1947, c. 173, § 19, p. 546; Laws 1951, c. 151, § 9, p. 608; Laws 1979, LB 187, § 174; Laws 1992, LB 719A, § 152.

Annotations

An additional levy of taxes is authorized by this section. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-554. Annual assessments; levy; objections; hearing; order; appeal.

Prior to the first day of July of any year in which assessments are made under the authority of sections 46-544 to 46-553, the board shall appoint a time and place or places where it will meet within the district for the purpose of hearing objections to assessments. Prior notice of such hearing shall be given by publication in two issues, a week apart, in some newspaper of general circulation published in each county in which lands within the district are located or, if there is any county in the district in which there is no newspaper published, in an adjoining county. The notice shall notify the owners of property in the district that in the secretary's office and in the office of the county treasurer of the county in which the land to be assessed is located may be found and examined a description of the property so assessed, the amount of the assessment thereon fixed by the board, and the time and place or places fixed by the board for the hearing of objections to such assessments. It shall not be necessary for the notice to contain separate descriptions of the lots or tracts of real estate, but it shall be sufficient if the notice contains such descriptions as will inform the owner whether or not his or her real estate is covered by such description and where the amount of the assessment can be found of record.

If, in the opinion of any person whose property is assessed, his or her property has been assessed too high or has been erroneously or illegally assessed, he or she may at any time before the date of such hearing file written objections to such assessments stating the grounds of such objections, which statement shall be verified by the affidavit of the person or his or her agent. At such hearing the board shall hear such evidence and arguments as may be offered concerning the correctness or legality of such assessment and may modify the same.

Any owner of property desiring to appeal from the findings of the board as to assessments shall, within thirty days from the findings of the board, file with the clerk of the district court of the county within which the property or a part thereof is located a written notice making demand for trial by the court. The appellant at the same time shall file a bond with good and sufficient security to be approved by the clerk of the court in a sum not exceeding two hundred dollars to the effect that if the finding of the court is not more favorable to the appellant than the finding of the board, the appellant will pay the cost of the appeal. The appellant shall state definitely from what part of the order the appeal is taken. In case more than one appeal is taken, the court may, upon a showing that the same may be consolidated without injury to the interests of anyone, consolidate and try the appeals together. The court shall not disturb the findings of the board unless they are manifestly

disproportionate to the assessments imposed upon other property in the district created under sections 46-501 to 46-573. The trial shall be to the court, take precedence before the court, and be taken up as promptly as possible after the appeal is taken from the findings of the board within the time prescribed in this section.

If no appeal is taken from the findings of the board, then the assessment shall be final and conclusive evidence that the assessments have been made in proportion to the benefits conferred upon the property in the district by reason of the improvements to be constructed under such sections, and such assessments shall constitute a perpetual lien upon such property so assessed until paid.

Any person, firm, or corporation owning real property within any reclamation district created or established by virtue of such sections and feeling aggrieved by a final order of the district court may appeal to the Court of Appeals. He or she shall give notice of appeal, deposit the docket fee, and file a transcript as provided in section 25-1912. The appeal being one of public interest shall be advanced by the court to a speedy hearing.

Source: Laws 1947, c. 173, § 20, p. 546; Laws 1949, c. 158, § 1, p. 400; Laws 1951, c. 151, § 10, p. 609; Laws 1991, LB 732, § 108.

Annotations

This section provides that the district board prior to the first day of July shall sit as a board of equalization and assessment. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-555. Taxes; levy; lien; collection.

It shall be the duty of the officer or body having authority to levy taxes within each county, city and county, or village, to levy the taxes and special assessments as provided in sections 46-501 to 46-573 and it shall be the duty of all county, or city and county officials, charged with the duty of collecting taxes, to collect such taxes and special assessments in the time, form and manner and with like interest and penalties as county or city and county taxes are collected and when collected to pay the same to the district ordering its levy or collection. The payment of such collections shall be made through the secretary of the district and paid into the depository thereof to the credit of the district. All taxes and assessments made under sections 46-501 to 46-573 together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall until paid constitute a perpetual lien on a parity with the tax lien of general, state, county, city, village or school taxes and no sale of such property to enforce any general,

state, county, city, village or school tax or other liens, shall extinguish the perpetual lien of such taxes and assessments.

Source: Laws 1947, c. 173, § 21, p. 548.

Cross References

Property tax liens, penalties, and interest, see sections 77-203 to 77-209.

46-556. Taxes; levy; delinquent; sale.

If the taxes, assessments, or taxes and assessments, levied are not paid when due as herein provided, then the real property shall be sold at the regular tax sale for the payment of the taxes and assessments, interest, and penalties, in the manner provided by the statutes of the State of Nebraska for selling property for payment of general taxes. If there are no bids at the tax sale for the property so offered under Class A and Class B, the property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, village, and city taxes. If there are no bids for the property so offered under Class C and Class D, the property shall be struck off to the district and the tax certificate shall be issued in the name of the district and the board shall have the same power with reference to sale of the tax certificate, as now is vested in a county board and a county treasurer when property is struck off to the counties.

Source: Laws 1947, c. 173, § 22, p. 549; Laws 1951, c. 151, § 11, p. 611.

46-557. Taxes; levy; political subdivisions; exemption.

All property of whatever kind and nature owned by the state and by villages, cities, school districts, drainage districts, irrigation districts, park districts, water districts, or any other governmental agency or agencies within the said reclamation district, shall be exempt from assessment and levy by the board as provided by sections 46-501 to 46-573 for the purposes herein contained.

Source: Laws 1947, c. 173, § 23, p. 549.

46-558. Water; contract; security for payment.

The board may enter into contracts for water service with persons, mutual ditch companies, water users' associations and other private corporations for irrigation or commercial use as shall be provided by contracts in writing authorized and entered into by the board; and the board shall require that security be given to secure the payments to be made under such contract or contracts.

Source: Laws 1947, c. 173, § 24, p. 549.

46-559. District; indebtedness; levy of assessments.

Whenever a contract of indebtedness has been created by the district, it shall be lawful for the board to make the levy of taxes and special assessments in such amount as will create a surplus of funds to meet the annual installments of indebtedness or the payment of bonds and interest, and the necessary maintenance and operating charges, and the board shall cause such surplus funds to be placed in a sinking fund which may be used for the payments of contingencies, defaults and delinquencies, and to pay the future annual installments of indebtedness on contract, bonds, or contract and bonds, and interest.

Source: Laws 1947, c. 173, § 25, p. 550; Laws 1951, c. 151, § 12, p. 611.

46-560. Directors; board; powers.

The board shall have the following powers concerning the management, control, delivery, use and distribution of water by the district, to wit:

(1) To make and enforce all reasonable rules and regulations for the management, control, delivery, use and distribution of water;

(2) To withhold the delivery of water upon which there are any defaults or delinquencies of payment;

(3) To provide for and declare forfeitures of contracts for water service upon default or failure to comply with any order, contract or agreement for service;

(4) To provide for and grant the right, upon terms, to transfer water service from lands to which water service has been furnished to other lands within the district and to discharge liens from lands to which same was theretofore attached and to create liens, as provided in sections 46-501 to 46-573, upon lands to which the use of such water service is transferred.

Source: Laws 1947, c. 173, § 26, p. 550.

Annotations

This section confers upon the board of directors certain defined powers concerning the management, control, delivery, use, and distribution of water by the reclamation district. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-561. District; boundaries; change.

The boundaries of any district organized under the provisions of sections 46-501 to 46-573 may be changed in the manner herein prescribed, but the changes of boundaries of the district shall not impair or affect its organization, its right in or to property, or any of its rights or privileges whatsoever and shall not affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it might be liable or chargeable had such change of boundaries not been made. The owners of lands may file with the board a petition, in writing, asking that such lands be included in the district. The petition shall describe the tracts or body of land owned by the petitioners. It shall be deemed to give assent by the petitioners to the inclusion in the district of the lands described in the petition. The petition shall be acknowledged in the same manner that conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of the filing of such petition to be given and published in the county in which the lands are situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned, and the prayer of the petitioners and give notice to all persons interested to appear at the office of the board at the time named in the notice and show cause in writing, if any, why the petition should not be granted. The board shall at the time and place mentioned or at such time or times to which the hearing may be adjourned proceed to hear the petition and all objections presented in writing by any person showing cause why the petition should not be granted. The failure of any person interested to show cause in writing shall be deemed and held and taken as an assent on his or her part to the inclusion of such lands in the district as prayed for in the petition. If the petition is granted, the board shall make an order to that effect.

Source: Laws 1947, c. 173, § 27, p. 550; Laws 1951, c. 151, § 13, p. 612; Laws 1999, LB 103, § 3.

Annotations

This section provides a procedure by petition, notice, and hearing, for including lands within the district which were not included at the time of organization. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-562. District; petition to exclude land; contents; notice; objections; hearing; order; appeal.

The owner or owners in fee of any lands constituting a portion of the district, which lands are not within the corporate limits of any city or village, may file with the board a petition praying that such lands be excluded and taken from the district.

It shall describe the lands which the petitioners desire to have excluded and set out that the lands have not and cannot acquire any benefit from the water resources or other operations of the district. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which the lands, or the major portion thereof, are located. The notice shall state the filing of such petition, the names of petitioners, descriptions of lands mentioned in the petition, and the prayer of the petitioners and notify all persons interested to appear at the office of the board at the time named in the notice, showing cause in writing, if any, why the petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times to which the hearing of the petition may be adjourned, shall proceed to hear the petition and all objections thereto presented in writing by any person showing cause why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the lands mentioned in the petition or any part thereof. The board, if the allegations of the petition are found to be true, shall order that the lands mentioned in the petition or some portion thereof be excluded from a district and, if the board finds that the allegations are not true, shall order that the petition be denied. In case a contract has been made between the district and the United States or any agency thereof, no change shall be made in the boundaries of the district unless the Secretary of the Interior assents to the change in writing and such assent is filed with the board. Upon such assent, any lands excluded from the district shall upon order of the board be discharged from all liens in favor of the United States under the contract with the United States or under bonds deposited with its agents. Appeal may be taken to the district court of the district in which the lands, or the major portion thereof, are located by filing a transcript of the proceedings thereon in the manner and form as provided by sections 25-1901 to 25-1937.

Source: Laws 1947, c. 173, § 28, p. 551; Laws 1991, LB 1, § 5.

Annotations

This section provides a procedure by petition, notice, and hearing, for exclusion of lands from the district which have been included. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-563. Construction, operation, and maintenance; contract with federal government for payment; bonds; term; execution; interest; exempt from taxes.

To pay for construction, operation and maintenance of said works and expenses preliminary and incidental thereto, the board is hereby authorized to enter into contract with the United States or any agency thereof, providing for payment in installments or to issue negotiable bonds of the district. If bonds are authorized, the same shall bear interest payable semiannually, and shall be due and payable not less than ten nor more than fifty years from their dates. The form, terms and provisions of said bonds, provisions for their payment and conditions for their retirement and calling, not inconsistent with law, shall be determined by the board and they shall be issued as hereinafter provided in payment of the works, equipment, expenses and interest during the period of construction. Said bonds shall be executed in the name of and on behalf of the district and signed by the president of the board with the seal of the district affixed thereto and attested by the secretary of the board. They shall be in such denominations as the board shall determine and be payable to bearer and may be registered in the office of the county treasurer of the county wherein the organization of the district has been effected, with the interest coupons payable to bearer, which shall bear the facsimile signature of the president of the board. Such bonds shall be exempt from all state, county, municipal, school and other taxes imposed by any taxing authority of the State of Nebraska and shall not be sold at less than par and accrued interest.

Source: Laws 1947, c. 173, § 29, p. 552; Laws 1969, c. 51, § 115, p. 344.

Annotations

This and succeeding four sections authorize the district to acquire, construct, or maintain sources of water supply or other improvements and to issue bonds. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-564. Bonded indebtedness; submission to qualified electors; election.

Whenever the board incorporated under sections 46-501 to 46-573 shall, by resolution adopted by a majority of the said board, determine that the interests of said district and the public interest or necessity demand the acquisition, construction or completion of any source of water supply, waterworks, or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, to carry out the objects or purposes of said district, wherein the indebtedness or obligation shall be created, to satisfy which shall require a greater expenditure than the ordinary annual income and revenue of the district shall permit, the board shall order the submission of the proposition of incurring such obligation or bonded or other indebtedness for the purposes set forth in said resolution, to the qualified electors of the district at an election held for that purpose. Any election held for the purpose of submitting any proposition or

propositions of incurring such obligation or indebtedness may be held separately, or may be consolidated or held concurrently with any other election authorized by law at which such qualified electors of the district shall be entitled to vote. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of precincts may be made by reference to any order or orders of the county board of the county or counties in which the district or any part thereof is situated, or by reference to any previous order, or resolution of the board or by detailed description of such precincts. Precincts established by the boards of the various counties may be consolidated for special elections held hereunder. In the event any such election shall be called to be held concurrently with any other election or shall be consolidated therewith, the resolution calling the election hereunder need not designate precincts or polling places or the names of officers of election, but shall contain reference to the act or order calling such other election and fixing the precincts and polling places and appointing election officers therefrom.

Source: Laws 1947, c. 173, § 30, p. 553.

Annotations

A contract for the purchase of a water supply which created a forty-year obligation on the part of the reclamation district is required, under this section, to be submitted to the voters of the district for approval.

Twin Loups Reclamation & Irr. District v. Blessing, 202 Neb. 513, 276 N.W.2d 185 (1979).

46-565. Bonded indebtedness; election; notice.

The resolution provided in section 46-564 shall be published once a week two consecutive weeks, the last publication of which shall be at least ten days prior to

the date set for said election, in a newspaper of general circulation printed and published within the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

Source: Laws 1947, c. 173, § 31, p. 555.

46-566. Bonded indebtedness; election; conduct; proclamation.

The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections, and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five days following the date of such election, the returns thereof shall be canvassed and the results thereof declared. In the event that any election held hereunder shall be consolidated with any primary or general election, the returns thereof shall be made and canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body or bodies to promptly certify and transmit to the board a statement of the result of the vote upon the proposition submitted hereunder. Upon receipt of such certificate, it shall be the duty of the board to tabulate and declare the results of the election held hereunder.

Source: Laws 1947, c. 173, § 32, p. 555.

46-567. Bonded indebtedness; bonds; issuance; sale.

In the event that it shall appear from said returns that a majority of said qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, and issue and sell such bonds of the district, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided and at a rate of interest not exceeding the rate of interest recited in such resolution. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

Source: Laws 1947, c. 173, § 33, p. 555.

46-567.01. Revenue bonds; interest; issuance; sale.

In addition to the authority to issue bonds provided by sections 46-563 to 46-567, the board is hereby authorized to issue revenue bonds for any corporate purpose for the payment of which the board is authorized to pledge only the revenue, income, receipts, and profits derived by the district from the sale of power and energy, water for domestic and irrigation uses, and assessments for special benefits authorized under Classes B, C, and D, and money received for all other services, furnished, sold, or supplied by the district. The district shall not pledge to the payment of bonds authorized under this section any taxes levied as Class A under the authority of section 46-543 or under any sections therein referred to, and no bonds shall be issued under the provisions of this section unless authorized by an election as provided in section 46-564. Such bonds shall bear such rate or rates of interest as shall be determined by the board, and such bonds shall be due and payable in not more than fifty years from the date thereof. The form, terms, and provisions of the bonds for the redemption of the bonds prior to maturity, with or without premiums, not inconsistent with the law, shall be determined by the board. The bonds shall be executed in the name of and on behalf of the district and signed by the president of the board with the seal of the district affixed thereto, attested by the secretary of the board, and they shall be in such denominations as the board shall determine, and payable to bearer, or registered as to principal only, or as to principal and interest, as the board shall determine, and the bonds shall be registered in the office of the county treasurer in the county wherein the main office of the district is located. The coupons attached to the bonds shall be executed with the facsimile signature of the president of the board. The bonds and the interest thereon shall be exempt from all state, county, municipal, school, and other taxes imposed by any taxing authority of the State of Nebraska.

Source: Laws 1951, c. 151, § 14, p. 613; Laws 1969, c. 385, § 2, p. 1354; Laws 1969, c. 51, § 116, p. 344.

46-567.02. Revenue bonds; rates; charges; purpose.

Whenever revenue bonds have been authorized and issued under the provisions of section 46-567.01, the board is hereby authorized and directed to fix rates and charges for the sale of power and energy, water for domestic and irrigation uses and all other services furnished, sold, or supplied by the district, and Class B, C, and D assessments, which shall be fair and equitable and which shall be sufficient, together with other revenue, taxes, and assessments of the district, to pay the proper operation and maintenance cost of the works of the district, and to provide proper renewals and replacements thereof and extensions thereto, and to pay the principal of and interest on such bonds, as the same become due, including reasonable reserves for all of the purposes, and the board is further authorized to pledge all or any part of the revenue and assessments, except taxes levied as Class A to the payment of such bonds, notes, or other evidences of indebtedness under such terms and conditions as may seem desirable to the board. All provisions

contained in any resolution authorizing the issuance of such bonds providing for the establishment of such rates and charges and the levying of such assessments, and for the collection, deposit, and disbursement of the money of the district from whatever source derived, which are designed for the protection, safeguard, and security of such bonds, and the rights of the holders thereof shall constitute a contract between the district and bondholders, and the provisions thereof and the provisions of sections 46-567.01 to 46-567.06 shall be enforceable by any bondholder by mandamus or any other appropriate suit or action in any court of competent jurisdiction against the board and the officers of the district. The district may also covenant with the holders of the bonds from time to time with respect to limitations upon the right to dispose of any of the works of the district without providing for the payment of bonds, and limitations upon the issuance of additional bonds, and concerning the appointment of trustees, depositories, and paying agents to receive, hold, deposit, invest, and reinvest all or any part of the income, revenue, receipts, profits, and assessments derived by the district, pursuant to sections 46-567.01 to 46-567.06.

Source: Laws 1951, c. 151, § 15, p. 614.

46-567.03. Revenue bonds; registration; effect.

All bonds issued pursuant to the provisions of sections 46-567.01 to 46-567.06 and registered by the county treasurer, provided in section 46-567.01, shall bear a certificate evidencing such registration endorsed thereon. It shall be signed by the county treasurer or a deputy and sealed with the seal of his office. All bonds, after having been registered and bearing such certificate, shall be held in every action, suit, or proceeding in which their validity is or may be brought into question prima facie valid and binding obligations of the district in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the district and the election of the directors thereof or for the authorization and issuance of such bonds or in the sale, execution, or delivery thereof.

Source: Laws 1951, c. 151, § 16, p. 615.

46-567.04. Revenue bonds; negotiable instruments; authorized investments.

All bonds issued under the authority of sections 46-567.01 to 46-567.06 are hereby declared to be negotiable instruments under the law merchant and are hereby made securities in which all state and municipal officers and bodies, all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and societies, and other persons carrying on an insurance business, and all administrators, executors, guardians,

trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital, belonging to them or within their control; and the bonds are hereby made securities which may properly and legally be deposited with and shall be received by any municipal officer or agency for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1951, c. 151, § 17, p. 615.

46-567.05. Districts organized; elections held; proceedings of directors; taxes levied; validated.

All districts heretofore organized under the authority of Chapter 46, article 5, Revised Statutes Supplement, 1949, and all elections and proceedings heretofore held and taken by the boards of directors of the districts, including the levy of taxes pursuant to the provisions hereof, be and the same are hereby ratified, validated and confirmed.

Source: Laws 1951, c. 151, § 18, p. 615.

46-567.06. District; levy of taxes; Class A; issuance of warrants; interest; limitation.

Whenever a district has been authorized to levy Class A taxes, the board may borrow money in anticipation of the collection of such taxes for which a levy has been made to the extent of ninety percent thereof, and may issue negotiable warrants to evidence such loans payable in not more than twelve months from the date thereof, and bearing interest at a rate not to exceed six percent per annum. Such warrants may be issued and sold in such manner as the board may determine.

Source: Laws 1951, c. 151, § 19, p. 616.

46-568. Directors; petition for determination of power; notice; hearing; order; appeal.

The board may at any time file a petition in the court, praying a judicial examination and determination of (1) any power conferred hereby by any amendment hereto, (2) any tax or assessment levied, or (3) any act, proceeding, or contract of the district, whether or not the contract shall have been executed, including proposed contracts for the acquisition, construction, maintenance, or operation of works for the district. Such petition shall set forth the facts on which the validity of such power, assessment, act, proceeding, or contract is founded and

shall be verified by the president of the board. Notice of the filing of the petition shall be given by the clerk of the district court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract or contracts mentioned in the petition may be examined. The notice shall be served by publication in at least three consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the district is located and by posting the same in the office of the district at least thirty days prior to the date fixed in the notice for the hearing on the petition. Any owner of property in the district or person interested in the contract or proposed contract may appear and demur to or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail to appear. The petition and notice shall be sufficient to give the court jurisdiction. Upon hearing, the court shall examine into and determine all matters and things affecting the question submitted, make such findings with reference thereto, and render such judgment and decree thereon as the case warrants. Costs may be divided or apportioned among the contesting parties in the discretion of the trial court. Review of the judgment and decree of the court may be had as in other similar cases but shall be commenced within thirty days after the entry of the judgment, decree, or final order complained of. The code of civil procedure shall govern in matters of pleading and practice where not otherwise specified in this section. The court shall disregard any error, irregularity, or omission which does not affect the substantial rights of the parties.

Source: Laws 1947, c. 173, § 34, p. 556; Laws 1961, c. 227, § 3, p. 672; Laws 1987, LB 33, § 10; Laws 1996, LB 299, § 24; Laws 1999, LB 43, § 23.

Annotations

A determination of the feasibility of a water reclamation project and the determination of the adequacy of a supply of water for the project are legislative functions and not within the scope of judicial review authorized by this section. Twin Loups Reclamation & Irr. District v. Blessing, 202 Neb. 513, 276 N.W.2d 185 (1979).

This and two succeeding sections do not amend or repeal any provision of the Uniform Declaratory Judgments Act, but are simply part of a general act complete within itself which authorize a special confirmatory proceeding. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-569. Notice; defective; effect.

In any and every case where a notice is provided for in sections 46-501 to 46-573, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

Source: Laws 1947, c. 173, § 35, p. 557.

46-570. Organization; validity; hearing.

All cases in which there may arise a question of the validity of the organization of a reclamation district, or a question of the validity of any proceeding under sections 46-501 to 46-573 shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 36, p. 557.

46-571. Sections, how construed.

Sections 46-501 to 46-573, being necessary to secure and preserve the public health, safety, convenience and welfare, and for the security of public and private property, shall be liberally construed to effect the purposes of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 37, p. 557.

Annotations

This section provides a construction clause. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-572. Sections; severability; validity.

Should the courts of the state or of the United States declare any section, provision, paragraph, clause, sentence, phrase, or part thereof, of sections 46-501 to 46-573 invalid or unconstitutional, or in conflict with any other section, provision, paragraph, clause, sentence, phrase, or part thereof, declared to be unconstitutional or unauthorized, the same shall not affect any other part whatsoever of sections 46-501 to 46-573. The Legislature hereby declares that it

would have passed sections 46-501 to 46-573 and each section, provision, paragraph, clause, sentence, or phrase hereof irrespective of the fact that any one or more of the other sections, provisions, paragraphs, clauses, sentences, or phrases, or parts thereof, be declared invalid or unconstitutional.

Source: Laws 1947, c. 173, § 38, p. 557.

Annotations

This section provides an all-inclusive saving clause. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-573. District; laws applicable.

All power plants and systems and all irrigation works constructed or otherwise acquired or used or operated by any reclamation district under the provisions of sections 46-501 to 46-573 or proposed by such districts to be so constructed, acquired, owned, used or operated, are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law now applicable to electric light and power corporations or to irrigation districts or to privately owned irrigation corporations as regards the power of eminent domain, the use and occupation of state and other public lands and highways, the appropriation or other acquisition or use of water, water power, water rights, or storage rights for any of the purposes contemplated in said sections, the manner or method of construction, physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable as nearly as may be to districts organized under sections 46-501 to 46-573 and in performance of the duties conferred or imposed upon them under the provisions of sections 46-501 to 46-573.

Source: Laws 1947, c. 173, § 39, p. 558.

Annotations

This section provides that all works constructed or acquired shall be works of internal improvement, and authorizes the exercise of the power of eminent domain. Nebraska Mid-State Reclamation District v. Hall County, 152 Neb. 410, 41 N.W.2d 397 (1950).

46-574. Boundaries; change; no impairment of rights; petition; contents.

The boundaries of any reclamation district now or hereafter organized under Chapter 46, article 5, may be changed and tracts of land included within the boundaries of such district in the manner prescribed by sections 46-574 to 46-584, but the changes of boundaries of the district shall not impair its organization or its rights in or to property or any of its rights or privileges of whatever kind or nature nor shall it impair or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such annexation and change of boundaries not been made. Before any tracts of land can be annexed and included in such district, a petition shall be filed with the board of directors of the district to which annexation is desired signed by the owners of not less than fifty-one percent of the acreage of lands in the tract or tracts of land to be annexed and included in such district, exclusive of land in cities and villages, and each tract or tracts of land and the total acreage shall be listed opposite the name of the signer. A signing petitioner shall not be permitted after the filing of the petition to withdraw his or her name therefrom. The petition shall set forth:

(1) The name of the district to which the annexation and inclusion shall be made;

(2) That property within the boundaries of the area proposed to be annexed to the district will be benefited by the accomplishment of the purposes enumerated in section 46-515;

(3) A general description of the purpose of the contemplated improvement and of the territory to be included in the tract or tracts of land, which description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether the property is within the territory proposed to be annexed and included in such district;

(4) The taxable value of all irrigable land within the boundaries of the tract or tracts of land to be annexed and included in such district;

(5) A general description of the proposed tract or tracts of land and the division or divisions of such district to which the tract or tracts of land will be included; and

(6) A prayer for the annexation and inclusion of the tract or tracts by the signing petitioner or petitioners.

Source: Laws 1951, c. 147, § 1, p. 589; Laws 1979, LB 187, § 175; Laws 1992, LB 719A, § 153.

46-575. Boundaries; change; petition; bond.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on the petition, a bond shall be filed in the amount of two

thousand dollars, with security approved by the board of directors of such district to pay all expenses connected with the proceedings in case the annexation of said area to such district be not effected. If at any time during the proceeding the board of directors shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed at not less than ten days distant. Upon a failure of the petitioner to execute the same, the petition shall be dismissed.

Source: Laws 1951, c. 147, § 2, p. 590.

46-576. Boundaries; change; petition; board of directors; fix time and place of hearing.

Immediately after the filing of the petition as provided in section 46-575, the board of directors of such district shall (1) by order fix a place and time, not less than ninety days nor more than one hundred twenty days after the petition is filed, for hearing thereon, (2) cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon, and (3) forthwith cause a copy of the notice to be mailed by certified or registered mail to the county boards of each of the several counties having territory within the tract or tracts of land proposed to be annexed.

Source: Laws 1951, c. 147, § 3, p. 591; Laws 1987, LB 93, § 13.

46-577. Boundaries; change; protesting petition; requirements.

At any time after the filing of a petition for the annexation of any tract or tracts of land to an existing reclamation district and not less than thirty days prior to the time fixed by the order of the board of directors of such district for the hearing upon said petition, and not thereafter, a petition may be filed with the board of directors of such district wherein the proceedings for the annexation of any tract or tracts of land to such district is pending, signed by not less than the owners of fifty-one percent of the acreage of lands in the tract or tracts of land to be annexed to such district, exclusive of land in cities and villages, who have not signed the petition for the annexation of a tract or tracts of land to such district, protesting the annexation of such tract or tracts of land to such district. The protesting petition shall list each tract or tracts of land and the total acreage of each signer opposite his name.

Source: Laws 1951, c. 147, § 4, p. 591.

46-578. Boundaries; change; protest petition; disqualification of signer.

Any person who signs a petition for the annexation of any tract or tracts of land to such district as the owner of any land shall be disqualified to sign a protest petition.

Source: Laws 1951, c. 147, § 5, p. 591.

46-579. Boundaries; change; protest petition; when dismissed.

Upon the day set for the hearing upon the original petition for the annexation of any tract or tracts of land to such district, if it shall appear to the board of directors of such district from such evidence as may be adduced by any party in interest, that the protesting petition is not signed by the requisite number of owners of lands, the board of directors of such district shall thereupon dismiss said protesting petition and shall proceed with the original hearing as provided in section 46-525.

Source: Laws 1951, c. 147, § 6, p. 591.

46-580. Boundaries; change; protest petition; requisite number of signers; dismissal of original petition.

If the board of directors of such district shall find from the evidence that the protesting petition is signed by the requisite number of owners of lands, the board of directors of such district shall forthwith dismiss the original petition praying for the annexation of the tract or tracts of land to be annexed and included in such district. The finding of the board of directors of such district upon said question of the genuineness of the signatures, and all matters of law and fact incident to such determination shall be final and conclusive on all parties in interest whether appearing or not.

Source: Laws 1951, c. 147, § 7, p. 592.

46-581. Boundaries; change; objections.

Any owner of real property in the tract or tracts of land to be annexed to such district who did not individually sign a petition for the annexation of the tract or tracts of land to such district and who desires to object to the annexation of the tract or tracts of land to such district may, on or before the date set for the cause to be heard, file objection to the annexation to and incorporation of the tract or tracts of land to such district.

Source: Laws 1951, c. 147, § 8, p. 592.

46-582. Boundaries; change; objections; hearing.

Such objection shall be heard by the board of directors without unnecessary delay.

Source: Laws 1951, c. 147, § 9, p. 592.

46-583. Boundaries; change; hearing; election; final order; filed with Department of Natural Resources.

At the hearing, if the board of directors of such district deems it not for the best interest of such district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, the board of directors of such district shall order that the petition be rejected. But if the board of directors of such district deems it for the best interest of such district that the boundaries of such district be changed and if it appears that the petition for the annexation and incorporation of the tract or tracts of land has been signed and presented as provided in section 46-574, that the allegations of the petition are true, and that no protesting petition has been filed, or if filed has been dismissed as provided by sections 46-574 to 46-584, the board of directors of such district may enter a tentative order annexing and including all lands described in the petition, or some part thereof. The order shall not become final until the proposition of levying taxes as provided for in section 46-543 has been complied with and until the proposition of levying taxes has been submitted by a resolution of the board of directors of such district to the qualified electors residing within the tract or tracts of land described in the tentative order at an election held for that purpose in the same manner as provided for submission of incurring bonded indebtedness in sections 46-564 to 46-566, and when the proposition has been approved by a majority of the qualified electors residing within the tract or tracts of land voting on the proposition at such election, then the board of directors shall enter a final order annexing and including all lands described in the tentative order. If at such election a majority of the qualified electors vote against the proposition, then the board of directors of such district shall set aside the tentative order, shall order that the petition be denied, and shall proceed no further in that matter. If the proposition is approved by a majority of the qualified electors of the tract or tracts voting on the proposition at such election in the manner provided for in section 46-543, the board of directors of such district shall certify to the county board of the county in which the tract or tracts of land are situated the rate of tax to be levied. The final order entered by the board of directors of such district shall describe the entire boundaries of the district, and for that purpose the board of directors may cause a survey of such portions thereof to be made as the board of directors deems necessary. A copy of the final order of the board of directors ordering such annexation, certified by the president and secretary of the board of directors of such district, shall be filed with the Department of Natural Resources, and thereupon the district shall be and remain a

reclamation district as fully and to every intent and purpose as if the lands which are included in the district by the annexation thereof and the change of boundaries had been included therein at the original organization of the district. Such tract or tracts of land so annexed to such district shall enjoy all the rights and privileges, of whatever kind and nature, and be subject to all the contract, obligation, lien, or charge for or upon which the original district was or might become liable or chargeable.

Source: Laws 1951, c. 147, § 10, p. 592; Laws 2000, LB 900, § 169.

46-584. Boundaries; change; decree; determination; directors; terms of office.

Upon the entry of the final order as mentioned in section 46-583, and as soon thereafter as is practical, the board of directors of such district may determine the boundaries of each or of all the subdivisions, and make such adjustments and changes in the boundaries of such subdivisions as are necessary; *Provided,* if adjustments and changes of boundaries in each or all of the subdivisions are made, the directors shall be divided as nearly as possible into three equal groups, the members of the first group to hold office for the remainder of the term for which they were elected and until their successors have been elected at the first general election thereafter and shall have qualified, the members of the second group to hold office for the remainder of the term for which they were elected and until their successors have been elected at the second general state election thereafter and shall have qualified, and the members of the third group to hold office for the remainder of the term for which they were elected and until their successors have been elected at the third general state election thereafter and have been qualified. When the terms of the members of the three respective groups expire, their respective successors shall each be elected for a term of six years, and the terms of all elected successors thereafter shall be six years.

Source: Laws 1951, c. 147, § 11, p. 594.

46-585. Fiscal year, defined; audit; Auditor of Public Accounts; form; prescribe; filing; time.

The fiscal year of a reclamation district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district, subject to the approval of the Auditor of Public Accounts. The audit shall be in a form prescribed by the auditor, and shall contain and show the items set forth in section 46-586. When the audit has been examined and approved by the auditor, written copies thereof shall be placed and kept on file at the principal place of

business of the district, and shall be filed with the Auditor of Public Accounts within one hundred and twenty days after December 31 of each year.

Source: Laws 1965, c. 269, § 1, p. 769.

46-586. Audit; contents.

In each reclamation district in Nebraska, the Auditor of Public Accounts shall cause the books of account kept by the board of directors of such districts to be examined and audited. Such audits shall show (1) the gross income from all sources of the district for the year previous; (2) the gross amount of electrical energy supplied by said district; (3) the amount expended during the previous year for maintenance; (4) the amount expended during the previous year for plant investments; (5) the amount of depreciation of the plant during the previous year; (6) the cost of supplying electrical energy, including production cost, transmission cost and distribution cost; (7) the number of employees as of December 31 of each year; (8) the salaries and expenses paid employees and directors; and (9) all other facts necessary to give an accurate and comprehensive view of the cost of maintaining and operating the plant as well as the district.

Source: Laws 1965, c. 269, § 2, p. 769.

46-587. Audit; information made available.

The audit and report shall be made at the close of the fiscal year. The person making the examination and audit shall have access to all books, records, vouchers, papers, contracts or other data containing information on said subject (1) in the office of the reclamation district, (2) in the office of the general manager of the district, or (3) in the possession or under the control of any of the officers, agents or servants of the district. It is hereby made the duty of all officers, agents and servants of the reclamation district to furnish to the Auditor of Public Accounts, his agents, servants and employees, such information regarding the auditing of such reclamation districts as may be demanded.

Source: Laws 1965, c. 269, § 3, p. 770.

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)(a) 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 fluid as defined in section 81-1502 into the underground water reservoir.

(b) Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation.

(c) Water well does not include (i) 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 or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation; 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; Laws 2004, LB 962, § 34; Laws 2007, LB701, § 17.

Cross References

For additional definitions, see section 46-706.

46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.

(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 licensed 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 licensed 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 subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the online 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)(a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well being replaced, if applicable, and (ii) the date the original water well was decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimis use approved by the applicable natural resources district.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

(c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of the original water well to pump fifty gallons per minute or less for use only for livestock,

monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. Such notices, as required, shall be completed by (i) the licensed water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the licensed pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(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 of Natural Resources 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 licensed water well contractor or licensed pump installation contractor responsible therefor shall notify the department within sixty days 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. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the licensed water well contractor or licensed pump installation contractor shall notify the department within sixty days on a form provided by the department of the water well and pump modifications and equipping of the original water well. A water well owner shall notify the department within sixty days 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 46-706, 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' Practice Act. The licensed water well contractor who decommissions the water well, the licensed pump installation contractor who decommissions the water well, or the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of decommissioning to the Department of Natural Resources within sixty days. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources 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 licensed 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.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

(11) Water wells described in subdivision (1)(b) of section 46-601.01 shall be registered with the Department of Natural Resources as provided in subsection (1) of this section within sixty days after the water well is constructed. Water wells

described in subdivision (1)(b) of section 46-601.01 which were constructed prior to May 2, 2007, shall be registered within one hundred eighty days after such date.

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 310, § 42; Laws 1986, LB 886, § 1; 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; Laws 2003, LB 242, § 5; Laws 2003, LB 245, § 6; Laws 2004, LB 962, § 35; Laws 2006, LB 508, § 2; Laws 2006, LB 1226, § 15; Laws 2007, LB296, § 202; Laws 2007, LB463, § 1140; Laws 2007, LB701, § 18.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Old wells not in use, duty to fill or decommission, see sections 54-311 and 54-315.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

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 or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well replacement procedure, a licensed water well contractor as defined in section 46-1213 or a licensed 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, the modification and change of use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

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; Laws 2006, LB 508, § 3; Laws 2007, LB463, § 1141.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

46-603. Repealed. Laws 1993, LB 131, § 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 licensed 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; Laws 2007, LB463, § 1142.

46-605. Repealed. Laws 1986, LB 886, § 6.

46-606. Water wells; registration fees; disposition.

(1) The Director of Natural Resources shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of 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 forty dollars and the fee required by subsection (3) of 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 forty dollars and the fee required by subsection (3) of 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 forty dollars for each such series and the fee required by subsection (3) of 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 forty

dollars and the fee required by subsection (3) of 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 forty dollars and the fee required by subsection (3) of 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 subsection (3) of 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 forty dollars and the fee required by subsection (3) of 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 the amount determined by the Department of Natural Resources to be necessary to pay for the costs of processing 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. The State Treasurer shall credit the fees required by subsection (3) of section 46-1224 to the Water Well Standards and Contractors' Licensing Fund.

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; Laws 2003, LB 31, § 1; Laws 2003, LB 242, § 6.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

46-607. Repealed. Laws 1993, LB 131, § 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; new use of well; registration modification; approval.

(1) Except as otherwise provided by this section or section 46-610, no irrigation water well shall be constructed upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any water well used to irrigate two acres or less or (b) any replacement irrigation water well if it is constructed within fifty feet of the irrigation water well being replaced and if the water well being replaced was constructed prior to September 20, 1957, and is less than six hundred feet from a registered irrigation water well.

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

(3) No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use, except that a person may use a water well registered for purposes other than its intended purpose for use for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. The change to a new use shall be made by filing a water well registration modification with the Department of Natural Resources and shall be approved only if the water well is in conformity with subsection (1) of this section and with section 46-651.

Source: Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8; Laws 2004, LB 962, § 36; Laws 2007, LB701, § 19.

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, § 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.

Annotations

Defendant liable in damages for withdrawal of irrigation ground water resulting in loss of artesian pressure in plaintiffs' adjacent domestic use wells. Prather v. Eisenmann, 200 Neb. 1, 261 N.W.2d 766 (1978).

The use of ground water by a municipality for human needs is a public use. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

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 or deny such permit, the Director of Natural Resources shall consider:

(1) The nature of the proposed use and whether it 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 ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(4) Any negative effect of the proposed withdrawal on surface water supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(5) Any adverse environmental effect of the proposed withdrawal or transportation of ground water;

(6) The cumulative effect of the proposed withdrawal and transfer relative to the matters listed in subdivisions (3) through (6) of this section when considered in conjunction with all other transfers subject to this section; and

(7) Any other factors consistent with the purposes of this section that the director deems relevant to protect the health, safety, and welfare 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; Laws 2003, LB 619, § 7.

Annotations

This section does not unlawfully delegate legislative power to the director of the Department of Water Resources. This section is not unconstitutionally vague. This section does not discriminate against interstate commerce. Ponderosa Ridge LLC v. Banner County, 250 Neb. 944, 554 N.W.2d 151 (1996).

Severance of the portion of this section, to wit, "if the state in which the water is to be used grants reciprocal rights to withdraw and transport

ground water from that state for use in the State of Nebraska", did not constitute an inducement to the passage of the statute, does not make the act inoperative, and will not frustrate the intent of the Legislature. The remainder of the statute, after the unconstitutional portion is stricken, remains a viable statute. State ex rel. Douglas v. Sporhase, 213 Neb. 484, 329 N.W.2d 855 (1983).

Requirement of obtaining permit to transfer ground water out of state does not violate commerce clause, U.S. Const. Art. I, § 8, since Nebraska ground water is not an article of commerce. Reciprocity provision does not violate due process guarantees since it is but a condition upon which the statute takes effect. This section does not violate equal protection since it operates equally upon all members of the class affected and class bears a reasonable relationship to a legitimate state interest. This section does not deprive affected persons of liberty or property since they have no property right in the water itself and are not at liberty to transfer ground water off overlying land without public consent. State ex rel. Douglas v. Sporhase, 208 Neb. 703, 305 N.W.2d 614 (1981).

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. Each day of a violation may be considered a separate offense. The Attorney General and the county attorneys may pursue appropriate proceedings pursuant to this section when notified by the Director of Natural Resources that such a violation has occurred.

Source: Laws 1978, LB 688, § 1; Laws 1984, LB 1060, § 2; Laws 1993, LB 131, § 12; Laws 2000, LB 900, § 175; Laws 2004, LB 962, § 37.

46-614. Repealed. Laws 1998, LB 896, § 11.

46-614.01. Repealed. Laws 1998, LB 896, § 11.

46-615. Repealed. Laws 1998, LB 896, § 11.

46-616. Repealed. Laws 1998, LB 896, § 11.

46-617. Repealed. Laws 1998, LB 896, § 11.

46-617.01. Repealed. Laws 1998, LB 896, § 11.

46-618. Repealed. Laws 1998, LB 896, § 11.

46-619. Repealed. Laws 1998, LB 896, § 11.

46-620. Repealed. Laws 1998, LB 896, § 11.

46-621. Repealed. Laws 1998, LB 896, § 11.

46-622. Repealed. Laws 1998, LB 896, § 11.

46-623. Repealed. Laws 1998, LB 896, § 11.

46-624. Repealed. Laws 1998, LB 896, § 11.

46-625. Repealed. Laws 1998, LB 896, § 11.

46-626. Repealed. Laws 1998, LB 896, § 11.

46-627. Repealed. Laws 1998, LB 896, § 11.

46-628. Repealed. Laws 1998, LB 896, § 11.

46-629. Repealed. Laws 1998, LB 896, § 11.

46-630. Repealed. Laws 1998, LB 896, § 11.

46-631. Repealed. Laws 1998, LB 896, § 11.

46-632. Repealed. Laws 1998, LB 896, § 11.

46-633. Repealed. Laws 2011, LB 2, § 8.

46-634. Repealed. Laws 1998, LB 896, § 11.

46-634.01. Repealed. Laws 2011, LB 2, § 8.

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.

Annotations

Ground water as defined herein does not include water artificially applied to the land. Peters v. Langrehr, 188 Neb. 480, 197 N.W.2d 698 (1972).

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.

Cross References

For additional definitions, see section 46-706.

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. 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; Laws 2013, LB102, § 2.

Cross References

Exemption for reusing ground water from reuse pit, see section 46-287.
For additional definitions, see section 46-706.

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.

Cross References

For additional definitions, see section 46-706.

Annotations

Permittees under the Municipal and Rural Domestic Ground Water Transfers Permit Act are exonerated from the common-law prohibition against transfer and transportation of ground water. Sorensen v. Lower Niobrara Nat. Resources Dist., 221 Neb. 180, 376 N.W.2d 539 (1985).

Director of Water Resources is authorized to grant and administer permits to cities and villages to develop ground water supplies. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

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.

Annotations

Preference in the use of ground water is given to domestic use. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

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.

(1) 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.

(2) In determining whether to grant or deny a permit under subsection (1) of this section, the director shall consider the factors set forth in subdivisions (1) through (7) of section 46-613.01.

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; Laws 2003, LB 619, § 8.

46-643. Repealed. Laws 1987, LB 140, § 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 five 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; Laws 2007, LB701, § 20.

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.

Annotations

This section supplies a remedy of compensatory damages for a permittee's injury to another's land or water rights in contrast with injunctive relief available under common law. Sorensen v. Lower Niobrara Nat. Resources Dist., 221 Neb. 180, 376 N.W.2d 539 (1985).

Remedy in damages is given to landowners injured by granting of permit to use ground waters. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

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.

Annotations

Use of ground water pursuant to a permit is governed by section 46-613. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

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.

Annotations

A rural water district is not a municipal corporation within the purview of the City, Village and Municipal Corporation Ground Water Permit Act (now the Municipal and Rural Domestic Ground Water Transfers Permit Act). McDowell v. Rural Water District No. 2, 204 Neb. 401, 282 N.W.2d 594 (1979).

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) An existing water well for which a change in the intended use is proposed shall be subject to any spacing requirement in subsection (1) of this section that would apply to the drilling of a new water well at the same location for the new use intended.

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

(4) The spacing requirements in subsection (1) of this section shall not apply to any replacement water well if that water well is drilled within fifty feet of the water well being replaced and if the water well being replaced was drilled prior to July 16, 2004, was in compliance with any applicable spacing statute when drilled, and is less than one thousand feet from the registered water well for which spacing protection is provided.

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; Laws 2004, LB 962, § 38.

Cross References

For definitions, see sections 46-638 and 46-706.

46-652. Repealed. Laws 1981, LB 246, § 4.

46-653. Spacing of water wells; special permit; application; contents; fee.

Any person may apply to the Director of Natural Resources for a special permit to drill or to change the intended use of 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 water well or proposed water well, facts justifying the request for such special permit, the size or proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and, if applicable, 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 the 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; Laws 2004, LB 962, § 39.

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.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

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.

46-655.01. Public water supplier; notice of intent to consider wellfield; contents; effect; termination.

(1) A public water supplier as defined in section 46-638 may obtain protection for a public water supply wellfield from encroachment from other water wells by filing with the Department of Natural Resources a notice of intent to consider a wellfield. The notice of intent shall include:

(a) The legal description of the land being considered as a public water supply wellfield; and

(b) Written consent of the owner of the land considered for a public water supply wellfield, allowing the public water supplier to conduct an evaluation as to whether such land is suitable for a public water supply wellfield.

(2) A notice of intent filed under this section shall be limited to a contiguous tract of land. No public water supplier shall have more than three notices of intent under this section on file with the department at any one time.

(3) A notice of intent filed under this section shall expire one year after the date of filing and may be renewed for one additional year by filing with the department a notice of renewal of the original notice of intent filed under this section before expiration of the original notice of intent.

(4) At the time a notice of intent or a notice of renewal is filed with the department, the public water supplier shall:

(a) Provide a copy of the notice of intent or notice of renewal to the owners of land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice;

(b) Provide a copy of the notice to the natural resources district or districts within which the land being considered for a wellfield is located; and

(c) Publish a copy of the notice in a newspaper of general circulation in the area in which the wellfield is being considered.

(5)(a) Except as provided in subdivisions (b) and (c) of this subsection, during the time that a notice of intent under this section is in effect, no person may drill or construct a water well, as defined in section 46-601.01, within the following

number of feet of the boundaries of the land described in the notice of intent, whichever is greater:

(i) One thousand feet; or

(ii) The maximum number of feet specified in any applicable regulations of a natural resources district that a well of a public water supplier must be spaced from another well.

(b) Any person who, at least one hundred eighty days prior to filing a notice of intent, obtained a valid permit from a natural resources district to drill or construct a water well within the area subject to the protection provided by this section is not prohibited from drilling or constructing a water well.

(c) The public water supplier may waive the protection provided by this section and allow a person to drill or construct a new or replacement water well within the area subject to the protection provided by this section.

(6) Within thirty days after the public water supplier reaches a determination that the land described in a particular notice of intent is not suitable for a public water supply wellfield, the public water supplier shall notify the Department of Natural Resources, all affected natural resources districts, the owner of the land described in the notice of intent, and the owners of all land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice of intent of such determination. Upon receipt by the department of the notice of such determination, the notice of intent that contains the description of such tract of land shall terminate immediately, notwithstanding any other provision of this section.

Source: Laws 2004, LB 962, § 40; Laws 2006, LB 1226, § 16.

46-656. Transferred to section 46-656.02.

46-656.01. Transferred to section 46-701.

46-656.02. Transferred to section 46-702.

46-656.03. Transferred to section 46-704.

46-656.04. Transferred to section 46-705.

46-656.05. Transferred to section 46-703.

46-656.06. Repealed. Laws 2004, LB 962, § 119.

46-656.07. Transferred to section 46-706.

46-656.08. Transferred to section 46-707.

46-656.09. Repealed. Laws 2004, LB 962, § 119.

46-656.10. Transferred to section 46-745.

46-656.11. Transferred to section 46-708.

46-656.12. Transferred to section 46-709.

46-656.13. Transferred to section 46-710.

46-656.14. Transferred to section 46-711.

46-656.15. Repealed. Laws 2004, LB 962, § 119.

46-656.16. Repealed. Laws 2004, LB 962, § 119.

46-656.17. Repealed. Laws 2004, LB 962, § 119.

46-656.18. Repealed. Laws 2004, LB 962, § 119.

46-656.19. Transferred to section 46-712.

46-656.20. Repealed. Laws 2004, LB 962, § 119.

46-656.21. Transferred to section 46-744.

46-656.22. Repealed. Laws 2004, LB 962, § 119.

46-656.23. Repealed. Laws 2004, LB 962, § 119.

46-656.24. Transferred to section 46-742.

46-656.25. Transferred to section 46-739.

46-656.26. Transferred to section 46-740.

46-656.27. Transferred to section 46-741.

46-656.28. Repealed. Laws 2004, LB 962, § 119.

46-656.29. Transferred to section 46-735.

46-656.30. Transferred to section 46-736.

46-656.31. Transferred to section 46-737.

46-656.32. Transferred to section 46-738.

46-656.33. Transferred to section 46-751.

46-656.34. Repealed. Laws 1996, LB 1114, § 75.

46-656.35. Transferred to section 46-721.

46-656.36. Transferred to section 46-722.

46-656.37. Transferred to section 46-723.

46-656.38. Transferred to section 46-724.

46-656.39. Transferred to section 46-725.

46-656.40. Transferred to section 46-726.

46-656.41. Transferred to section 46-727.

46-656.42. Transferred to section 46-728.

46-656.43. Transferred to section 46-729.

46-656.44. Transferred to section 46-730.

46-656.45. Transferred to section 46-731.

46-656.46. Transferred to section 46-732.

46-656.47. Transferred to section 46-733.

46-656.48. Transferred to section 46-734.

46-656.49. Repealed. Laws 2004, LB 962, § 119.

46-656.50. Repealed. Laws 2004, LB 962, § 119.

46-656.51. Repealed. Laws 2004, LB 962, § 119.

46-656.52. Repealed. Laws 2004, LB 962, § 119.

46-656.53. Repealed. Laws 2004, LB 962, § 119.

46-656.54. Repealed. Laws 2004, LB 962, § 119.

46-656.55. Repealed. Laws 2004, LB 962, § 119.

46-656.56. Repealed. Laws 2004, LB 962, § 119.

46-656.57. Repealed. Laws 2004, LB 962, § 119.

46-656.58. Repealed. Laws 2004, LB 962, § 119.

46-656.59. Repealed. Laws 2004, LB 962, § 119.

46-656.60. Repealed. Laws 2004, LB 962, § 119.

46-656.61. Repealed. Laws 2004, LB 962, § 119.

46-656.62. Transferred to section 46-748.

46-656.63. Transferred to section 46-746.

46-656.64. Transferred to section 46-747.

46-656.65. Transferred to section 46-749.

46-656.66. Transferred to section 46-750.

46-656.67. Transferred to section 46-752.

46-657. Transferred to section 46-656.07.

46-658. Repealed. Laws 1996, LB 108, § 80.

46-658.01. Repealed. Laws 1986, LB 894, § 32.

46-659. Transferred to section 46-656.29.

46-660. Transferred to section 46-656.30.

46-661. Transferred to section 46-656.31.

46-662. Transferred to section 46-656.32.

46-663. Transferred to section 46-656.08.

46-663.01. Transferred to section 46-656.09.

46-663.02. Transferred to section 46-656.10.

46-664. Transferred to section 46-656.11.

46-665. Repealed. Laws 1996, LB 108, § 80.

46-666. Transferred to section 46-656.25.

46-666.01. Transferred to section 46-656.23.

46-667. Repealed. Laws 1996, LB 108, § 80.

46-668. Transferred to section 46-656.64.

46-669. Transferred to section 46-656.66.

46-670. Transferred to section 46-656.33.

46-671. Transferred to section 46-656.65.

46-672. Transferred to section 46-656.24.

46-673. Transferred to section 46-656.34.

46-673.01. Transferred to section 46-656.12.

46-673.02. Transferred to section 46-656.13.

46-673.03. Transferred to section 46-656.14.

46-673.04. Transferred to section 46-656.15.

46-673.05. Transferred to section 46-656.19.

46-673.06. Transferred to section 46-656.20.

46-673.07. Transferred to section 46-656.21.

46-673.08. Repealed. Laws 1996, LB 108, § 80.

46-673.09. Repealed. Laws 1996, LB 108, § 80.

46-673.10. Transferred to section 46-656.26.

46-673.11. Transferred to section 46-656.27.

46-673.12. Repealed. Laws 1996, LB 108, § 80.

46-673.13. Transferred to section 46-656.22.

46-673.14. Transferred to section 46-656.16.

46-673.15. Transferred to section 46-656.17.

46-673.16. Transferred to section 46-656.18.

46-674. Transferred to section 46-656.01.

46-674.01. Transferred to section 46-663.02.

46-674.02. Transferred to section 46-656.03.

46-674.03. Transferred to section 46-656.35.

46-674.04. Transferred to section 46-656.36.

46-674.05. Transferred to section 46-656.37.

46-674.06. Transferred to section 46-656.38.

46-674.07. Transferred to section 46-656.39.

46-674.08. Transferred to section 46-656.40.

46-674.09. Transferred to section 46-656.41.

46-674.10. Transferred to section 46-656.42.

46-674.11. Transferred to section 46-656.43.

46-674.12. Transferred to section 46-656.45.

46-674.13. Transferred to section 46-656.46.

46-674.14. Transferred to section 46-656.47.

46-674.15. Repealed. Laws 1996, LB 108, § 80.

46-674.16. Transferred to section 46-656.48.

46-674.17. Transferred to section 46-656.63.

46-674.18. Transferred to section 46-656.44.

46-674.19. Repealed. Laws 1996, LB 108, § 80; Laws 1996, LB 1114, § 75.

46-674.20. Transferred to section 46-656.04.

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 46-706 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; Laws 2004, LB 962, § 94.

46-676.01. Applicability of act.

The Industrial Ground Water Regulatory Act does not apply to any public water supplier providing, or intending to provide, ground water for industrial purposes nor does the act apply to any person who is using, or intends to use, ground water for industrial purposes that is supplied by a public water supplier.

Source: Laws 2005, LB 335, § 75.

46-677. Withdrawal of ground water for industrial purposes; permit required; when.

(1) Except as provided in sections 46-676.01 and 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; Laws 2005, LB 335, § 76.

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;

(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 issued under the Industrial Ground Water Regulatory Act 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; Laws 2004, LB 962, § 95.

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; when.

(1) After the director has accepted the application made under section 46-677 as a completed application, the director 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 land on which one or more water wells are proposed to be located. The notice shall include (a) the amount of ground water the applicant proposes to use, (b) a description of the proposed use and location of that use, (c) the number of water wells proposed at each location of withdrawal, and (d) any other information deemed necessary by the director to provide adequate notice of the application to interested persons. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections stating the grounds for each objection within two weeks after the date of final publication of the notice. Such objections shall be filed in the headquarters office of the department.

(2) The director may hold a hearing on an application made under section 46-677 at his or her discretion and shall hold a hearing on such an application if requested by any interested person pursuant to subsection (1) of this section.

Source: Laws 1981, LB 56, § 6; Laws 1993, LB 131, § 36; Laws 2004, LB 962, § 96.

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 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;

(g) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and

(h) 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. If a hearing is held, the director shall issue such written order within ninety days of the hearing.

Source: Laws 1981, LB 56, § 9; Laws 2003, LB 619, § 13; Laws 2006, LB 1226, § 17.

46-683.01. Permit; application to amend; procedures; limitation.

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

the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five percent from the amounts approved in the original permit, except for an amendment to increase the maximum daily volumetric flow rate or annual volume to levels authorized under a permit issued by the Department of Environmental Quality pursuant to section 81-1504 and subsection (9) of section 81-1505.

Source: Laws 1986, LB 309, § 3; Laws 2012, LB498, § 1.

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 permitholder has failed to exercise the right to withdraw ground water within three years of the date specified in the permit or for a period of three consecutive years thereafter.

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

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

(a) File an application to amend the permit as provided in section 46-683.01;

(b) Request a hearing before the director; or

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

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

If the permitholder requests a hearing, the director shall within thirty days schedule a hearing within or in reasonable proximity to the area where the 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 permitholder, if necessary, to cease and desist from further violations of the permit.

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

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 the Industrial Ground Water Regulatory Act 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; Laws 2005, LB 335, § 77.

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 the Industrial Ground Water Regulatory Act. 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; Laws 2005, LB 335, § 78.

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.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

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.

Source: Laws 1981, LB 56, § 16; Laws 1986, LB 309, § 6; Laws 1993, LB 789, § 10; Laws 2005, LB 335, § 79.

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. The determination made by a natural resources district under subsection (2) of this section or the Director of Natural Resources under subsection (3) of this section shall include consideration of the factors set forth in subdivisions (1) through (7) of section 46-613.01. 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; Laws 2003, LB 619, § 14.

Cross References

Environmental Protection Act, see section 81-1532.
Nebraska Ground Water Management and Protection Act, see section 46-701.

Annotations

Only parties who are affected by the transfer of ground water off overlying land for agricultural purposes or pursuant to a water remediation plan, as required under the Environmental Protection Act, may object to such transfer by the procedures outlined in subsection (2) of this section. Upon an objection to the transfer of ground water pursuant to subsection (2) of this section, a natural resources district shall conduct an investigation to determine whether the transfer of water complained of by the objector, which objectionable transfer must be for agricultural purposes or pursuant to a water remediation plan as required under the Environmental Protection Act, is consistent with the requirements of subsection (1) of this section that the transfer (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. In re Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001).

The Legislature's purpose in enacting this section was to carve out two exceptions from Nebraska's common-law prohibition against transfers of water off overlying land: (1) for agricultural purposes and (2) pursuant to a remediation plan under the Environmental Protection Act. In re Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001).

According to the legislative history of LB 251, later codified as this section, the Legislature manifested an intent to validate agreements made

before the bill's passage to transfer ground water off overlying land for agricultural purposes by failing to void such preexisting transfers. Springer v. Kuhns, 6 Neb. App. 115, 571 N.W.2d 323 (1997).

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.

46-691.03. Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties.

(1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the water well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from such natural resources district. An application for any such permit shall be accompanied by a nonrefundable fee of fifty dollars payable to such district. Such permit shall be in

addition to any permit required pursuant to section 46-252 or 46-735 or subdivision (1)(k) of section 46-739.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefor have been given consistent with the Open Meetings Act.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

(a) Whether the proposed use is a beneficial use of ground water;

(b) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;

(c) Any negative effect of the proposed withdrawal, transport, and use on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, transport, and use, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(d) Any negative effect of the proposed withdrawal, transport, and use on surface water supplies needed to meet present or reasonable future demands for water within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(e) Any adverse environmental effect of the proposed withdrawal, transport, and use of the ground water;

(f) The cumulative effects of the proposed withdrawal, transport, and use relative to the matters listed in subdivisions (3)(c) through (e) of this section when considered in conjunction with all other withdrawals, transports, and uses subject to this section;

(g) Whether the proposed withdrawal, transport, and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections 46-713 to 46-719; and

(h) Any other factors consistent with the purposes of this section which the board of directors deems relevant to protect the interests of the state and its citizens.

(4) 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 and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport, and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Source: Laws 2004, LB 962, § 97; Laws 2006, LB 1226, § 18.

Cross References

Open Meetings Act, see section 84-1407.

46-692. Repealed. Laws 2011, LB 1, § 1.

46-701. Act, how cited.

Sections 46-701 to 46-756 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; Laws 2003, LB 619, § 9; R.S.Supp.,2003, § 46-656.01; Laws 2004, LB 962, § 41; Laws 2006, LB 1226, § 19; Laws 2009, LB477, § 3; Laws 2014, LB1098, § 13.

46-702. Declaration of intent and purpose; legislative findings.

The Legislature finds that ownership of water is held by the state for the benefit of its citizens, 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. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

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 to meet the reasonable needs of all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with reasonable and 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 reasonable and 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 and regionally 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.

The Legislature finds that given the impact of extended drought on areas of the state, the economic prosperity and future well-being of the state is advanced by providing economic assistance in the form of providing bonding authority for certain natural resources districts as defined in section 2-3226.01 and in the creation of the Water Resources Cash Fund to alleviate the adverse economic impact of regulatory decisions necessary for management, protection, and conservation of limited water resources. The Legislature specifically finds that, consistent with the public ownership of water held by the state for the benefit of its citizens, any action by the Legislature, or through authority conferred by it to any agency or political subdivision, to provide economic assistance does not establish any precedent that the Legislature in sections 2-3226.01 and 61-218 or in the future must or should purchase water or provide compensation for any economic impact resulting from regulation necessary pursuant to the terms of Laws 2007, LB 701.

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; Laws 2003, LB 619, § 10; R.S.Supp.,2003, § 46-656.02; Laws 2004, LB 962, § 42; Laws 2007, LB701, § 21.

46-703. 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 to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;

(4) The Legislature recognizes that ground water use or surface water use in one natural resources district may have adverse affects 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 impacts were contained within that district;

(5) 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 conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;

(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 conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, and reaches; and

(7) An Interrelated Water Review Board is needed to resolve any conflicts between the department and the involved natural resources districts concerning the content, implementation, or enforcement of integrated management plans for fully appropriated and overappropriated river basins, subbasins, and reaches.

Source: Laws 1996, LB 108, § 11; Laws 2000, LB 900, § 189; R.S.Supp.,2002, § 46-656.05; Laws 2004, LB 962, § 43.

Annotations

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

46-704. 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; R.S.1943, (1998), § 46-656.03; Laws 2004, LB 962, § 44.

46-705. Act; how construed.

Nothing in the Nebraska Ground Water Management and Protection Act shall be construed to limit the powers of the Department of Health and Human Services provided in the Nebraska Safe Drinking Water Act.

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 1986, LB 894, § 19; R.S.1943, (1993), § 46-674.20; Laws 1996, LB 108, § 10; Laws 1996, LB 1044, § 261; R.S.1943, (1998), § 46-656.04; Laws 2004, LB 962, § 45; Laws 2007, LB296, § 203.

Cross References

Nebraska Safe Drinking Water Act, see section 71-5313.

46-706. 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 means 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 means 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 means 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 means a natural resources district operating pursuant to Chapter 2, article 32;

(5) Illegal water well means (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 means 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 means any area so designated by a district pursuant to section 46-712 or 46-718, by the Director of Environmental Quality pursuant to section 46-725, or by the Interrelated Water Review Board pursuant to section 46-719. Management area includes a control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan means a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to section 46-711;

(9) Ground water reservoir life goal means 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 means the board of directors of a district;

(11) Acre-inch means the amount of water necessary to cover an acre of land one inch deep;

(12) Subirrigation or subirrigated land means 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;

(13) Best management practices means schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or effect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices relating to contamination of ground water may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

(14) Point source means 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;

(15) Allocation, as it relates to water use for irrigation purposes, means 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;

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

(17) Water well has the same meaning as in section 46-601.01;

(18) Surface water project sponsor means 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;

(19) Beneficial use means that use by which water may be put to use to the benefit of humans or other species;

(20) Consumptive use means the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made;

(21) Dewatering well means a well constructed and used solely for the purpose of lowering the ground water table elevation;

(22) Emergency situation means any set of circumstances that requires the use of water from any source that might otherwise be regulated or prohibited and the agency, district, or organization responsible for regulating water use from such source reasonably and in good faith believes that such use is necessary to protect the public health, safety, and welfare, including, if applicable, compliance with federal or state water quality standards;

(23) Good cause shown means a reasonable justification for granting a variance for a consumptive use of water that would otherwise be prohibited by rule or regulation and which the granting agency, district, or organization reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a variance is sought;

(24) Historic consumptive use means the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

(25) Monitoring well means a water well that is designed and constructed to provide ongoing hydrologic or water quality information and is not intended for consumptive use;

(26) Order, except as otherwise specifically provided, includes any order required by the Nebraska Ground Water Management and Protection Act, by rule or regulation, or by a decision adopted by a district by vote of the board of directors of the district taken at any regularly scheduled or specially scheduled meeting of the board;

(27) Overall difference between the current and fully appropriated levels of development means the extent to which existing uses of hydrologically connected surface water and ground water and conservation activities result in the water supply available for purposes identified in subsection (3) of section 46-713 to be less than the water supply available if the river basin, subbasin, or reach had been determined to be fully appropriated in accordance with section 46-714;

(28) Test hole means a hole designed solely for the purposes of obtaining information on hydrologic or geologic conditions;

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (8), or (9) of section 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable;

(30) Certified irrigated acres means the number of acres or portion of an acre that a natural resources district has approved for irrigation from ground water in accordance with law and with rules adopted by the district; and

(31) Certified water uses means beneficial uses of ground water for purposes other than irrigation identified by a district pursuant to rules adopted by the district.

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; Laws 2003, LB 93, § 1; R.S.Supp.,2003, § 46-656.07; Laws 2004, LB 962, § 46; Laws 2006, LB 1226, § 21; Laws 2009, LB477, § 4; Laws 2009, LB483, § 2.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

Annotations

Ground water is owned by the public, and the only right held by an overlying landowner is in the use of the ground water. Bamford v. Upper Republican Nat. Resources Dist., 245 Neb. 299, 512 N.W.2d 642 (1994).

Ground water, as defined in this section, is owned by the public, and the only right held by an overlying landowner is in the use of the ground water. In re Application U-2, 226 Neb. 594, 413 N.W.2d 290 (1987).

46-707. Natural resources district; powers; enumerated; fee.

(1) 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:

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

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

(c) Require the reporting of water uses and irrigated acres by landowners and others with control over the water uses and irrigated acres for the purpose of certification by the district;

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

(e) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(f) 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;

(g) 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

(h) Issue cease and desist orders, following three 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.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

(3) In addition to the powers enumerated in subsections (1) and (2) of this section, a district may assess a fee against a person requesting a variance to cover the administrative cost of consideration of the variance, including, but not limited to, costs of copying records and the cost of publishing a notice in a legal newspaper of general circulation in the county or counties of the district, radio announcements, or other means of communication deemed necessary in the area where the property is located.

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; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22; Laws 2009, LB477, § 5; Laws 2012, LB743, § 1; Laws 2014, LB513, § 1.

46-708. 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 46-743, 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 three 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; R.S.1943, (1998), § 46-656.11; Laws 2004, LB 962, § 48; Laws 2014, LB513, § 2.

46-709. Ground water management plan; required; contents.

Each district shall maintain a ground water management plan based upon the best available information and shall submit amendments to 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 but a management plan does not have to be revised prior to the adoption or implementation of an integrated management plan pursuant to section 46-718 or 46-719;

(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 or amending 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.

Each district's ground water management plan shall also 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.

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; Laws 2003, LB 619, § 12; R.S.Supp.,2003, § 46-656.12; Laws 2004, LB 962, § 49.

46-710. Ground water management plan preparation or modification; district; solicit and utilize information.

During preparation or modification 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 or modifying 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 or modify a plan.

Source: Laws 1982, LB 375, § 4; R.S.1943, (1993), § 46-673.02; Laws 1996, LB 108, § 19; R.S.1943, (1998), § 46-656.13; Laws 2004, LB 962, § 50.

46-711. Ground water management plan; director; review; duties.

(1) The Director of Natural Resources shall review any ground water management plan or plan modification 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.

(2) 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 46-712.

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; R.S.Supp.,2002, § 46-656.14; Laws 2004, LB 962, § 51.

46-712. Management area; establishment; when; hearing; notice; procedure; district; powers and duties.

(1) A natural resources district may establish a ground water management area in accordance with this section to accomplish any one or more of the following objectives: (a) Protection of ground water quantity; (b) protection of ground water quality; or (c) prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.

(2) Prior to establishment by a district of a management area other than a management area being established in accordance with section 46-718, the district's management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of subsection (2) of section 46-711. 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 as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3)(a) 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.

(b) 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 one or more controls authorized by section 46-739 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.

(c) 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.

(4) 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 this section. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Hearings for modification of controls may be initiated as often as deemed necessary by the district, and such modifications may be accomplished using the procedure in this section.

(5) A district shall, prior to adopting or amending any rules or 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.

(6) If a ground water management area has been adopted by a district under this section that includes one or more controls authorized by subdivision (1)(f) or (1)(m) of section 46-739, the district may request the Department of Natural Resources to conduct an evaluation to determine if an immediate stay should be placed on the issuance of new surface water natural-flow appropriations in the area, river basin, subbasin, or reach of the management area, and the department may determine that the stay is in the public interest. The stay may include provisions for exceptions to be granted for beneficial uses as described in subsection (3) of section 46-714 or for a project that provides hydrological benefit to the area of the stay and may include provisions that the stay may be rescinded based on new or additional information that may become available.

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; R.S.Supp.,2002, § 46-656.19; Laws 2004, LB 962, § 52; Laws 2006, LB 1226, § 22.

46-713. Department of Natural Resources; hydrologically connected water supplies; evaluation; report; determinations; revaluation; hearing; notice.

(1)(a) By January 1 of each year beginning in 2006 and except as otherwise provided in this section and section 46-720, the Department of Natural Resources shall complete an evaluation of the expected long-term availability of hydrologically connected water supplies for both existing and new surface water uses and existing and new ground water uses in each of the state's river basins and shall issue a report that describes the results of the evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more subbasins or reaches. A river basin, subbasin, or reach for which an integrated management plan has been or is being developed pursuant to sections 46-715 to 46-717 or pursuant to section 46-719 shall not be evaluated unless it is being reevaluated as provided in subsection (2) of this section. For each river basin, subbasin, or reach evaluated, the report shall describe (i) the nature and extent of use of both surface water and ground water in each river basin, subbasin, or reach, (ii) the geographic area within which the department preliminarily considers surface water and ground water to be hydrologically connected and the criteria used for that determination, and (iii) the extent to which the then-current uses affect available near-term and long-term water supplies. River basins, subbasins, and reaches designated as overappropriated in accordance with subsection (4) of this section shall not be evaluated by the department. The department is not required to perform an annual evaluation for a river basin, subbasin, or reach during the four years following a status change in such river basin, subbasin, or reach under subsection (12) of section 46-714.

(b) Based on the information reviewed in the evaluation process, the department shall arrive at a preliminary conclusion for each river basin, subbasin, and reach evaluated as to whether such river basin, subbasin, or reach presently is fully appropriated without the initiation of additional uses. The department shall also determine if and how such preliminary conclusion would change if no additional legal constraints were imposed on future development of hydrologically connected surface water and ground water and reasonable projections are made about the extent and location of future development in such river basin, subbasin, or reach.

(c) In addition to the conclusion about whether a river basin, subbasin, or reach is fully appropriated, the department shall include in the report, for informational purposes only, a summary of relevant data provided by any interested party concerning the social, economic, and environmental impacts of additional hydrologically connected surface water and ground water uses on resources that are dependent on streamflow or ground water levels but are not protected by appropriations or regulations.

(d) In preparing the report, the department shall rely on the best scientific data, information, and methodologies readily available to ensure that the conclusions and results contained in the report are reliable. In its report, the department shall provide sufficient documentation to allow these data, information, methodologies,

and conclusions to be independently replicated and assessed. Upon request by the department, state agencies, natural resources districts, irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, municipalities, and other water users and stakeholders shall provide relevant data and information in their possession. The Department of Natural Resources shall specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determinations required by this section.

(2)(a) The department shall complete a reevaluation of a river basin, subbasin, or reach for which an integrated management plan has been or is being prepared if the department has reason to believe that a reevaluation might lead to a different determination about whether such river basin, subbasin, or reach is fully appropriated or overappropriated. A decision to reevaluate may be reached by the department on its own or in response to a petition filed with the department by any interested person. To be considered sufficient to justify a reevaluation, a petition shall be accompanied by supporting information showing that (i) new scientific data or other information relevant to the determination of whether the river basin, subbasin, or reach is fully appropriated or overappropriated has become available since the last evaluation of such river basin, subbasin, or reach, (ii) the department relied on incorrect or incomplete information when the river basin, subbasin, or reach was last evaluated, or (iii) the department erred in its interpretation or application of the information available when the river basin, subbasin, or reach was last evaluated. If a petition determined by the department to be sufficient is filed before July 1 of any year, the reevaluation of the river basin, subbasin, or reach involved shall be included in the next annual report prepared in accordance with subsection (1) of this section. If any such petition is filed on or after July 1 of any year, the department may defer the reevaluation of the river basin, subbasin, or reach involved until the second annual report after such filing.

(b) If the reevaluation results in a different determination by the department, then (i) the department shall notify, by certified mail, the affected natural resources districts and any irrigation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach of the preliminary change in the determination and (ii) the department shall hold one or more public hearings not more than ninety days after the publication of the notice required in subdivision (b)(i) of this subsection. Notice of the hearings shall be provided in the same manner as the notice required in subsection (1) of section 46-714. Any interested person may appear at the hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach.

(c) Within thirty days after the final hearing under subdivision (b) of this subsection, the department shall notify the appropriate natural resources districts of

the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach.

(3) A river basin, subbasin, or reach shall be deemed fully appropriated if the department determines based upon its evaluation conducted pursuant to subsection (1) of this section and information presented at the hearing pursuant to subsection (4) of section 46-714 that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural-flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

(4)(a) A river basin, subbasin, or reach shall be deemed overappropriated if, on July 16, 2004, the river basin, subbasin, or reach is subject to an interstate cooperative agreement among three or more states and if, prior to such date, the department has declared a moratorium on the issuance of new surface water appropriations in such river basin, subbasin, or reach and has requested each natural resources district with jurisdiction in the affected area in such river basin, subbasin, or reach either (i) to close or to continue in effect a previously adopted closure of all or part of such river basin, subbasin, or reach to the issuance of additional water well permits in accordance with subdivision (1)(k) of section 46-656.25 as such section existed prior to July 16, 2004, or (ii) to temporarily suspend or to continue in effect a temporary suspension, previously adopted pursuant to section 46-656.28 as such section existed prior to July 16, 2004, on the drilling of new water wells in all or part of such river basin, subbasin, or reach.

(b) Within sixty days after July 16, 2004, the department shall designate which river basins, subbasins, or reaches are overappropriated. The designation shall include a description of the geographic area within which the department has determined that surface water and ground water are hydrologically connected and the criteria used to make such determination.

Source: Laws 2004, LB 962, § 53; Laws 2006, LB 1226, § 23; Laws 2009, LB54, § 1; Laws 2009, LB483, § 3.

Annotations

As an exception to the requirement that a litigant assert its own rights and interests to have standing, a natural resources district has standing under

this section to challenge a state action that requires it to spend the public funds that it is charged with raising and controlling. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

Because the director of the Department of Natural Resources cannot resolve a challenge to a senior appropriator's call before the Department of Natural Resources issues its annual report on January 1, the department cannot base its annual evaluations upon a senior appropriator's call. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

Generally, to be an "interested person" under subsection (2) of this section, a litigant challenging a fully appropriated determination by the Department of Natural Resources must be asserting its own rights and interests, not those of a third party, and must demonstrate an injury in fact sufficient to confer common-law standing. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

Subsection (3)(a) of this section permits the Department of Natural Resources to designate a river basin or subpart as fully appropriated by focusing solely on whether surface water appropriations are sustainable. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations do not permit an independent party to replicate or assess the department's findings or methodologies, as required under subsection (1)(d) of this section. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' 2006 regulations promulgated under this section do not permit the department to determine that a river basin is fully appropriated by comparing a senior appropriation right to the streamflow values at a specific diversion point or streamflow gauge. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

The Department of Natural Resources' promulgated methodologies under this section for determining whether a river basin or subpart is fully appropriated must be followed and applied in a consistent manner. Additionally, under subsection (1)(d) of this section, an independent party must be able to replicate and assess its methodologies and conclusions. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

To petition for a contested hearing challenging a fully appropriated determination of the Department of Natural Resources for a river basin, the challenger must have standing as an interested person under subsection (2) of this section. Middle Niobrara NRD v. Department of Nat. Resources, 281 Neb. 634, 799 N.W.2d 305 (2011).

46-714. River basin, subbasin, or reach; stay on new appropriations; notifications required; hearing; natural resources district; duties; status change; department; natural resources district; duties.

(1) Whenever the Department of Natural Resources makes a preliminary determination that a river basin, subbasin, or reach not previously designated as overappropriated and not previously determined to be fully appropriated has become fully appropriated, the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in such river basin, subbasin, or reach. The department shall also provide prompt notice of such preliminary determination to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Such notice to natural resources districts shall be by certified mail. The notice shall be addressed to the manager of the natural resources district or his or her designee and shall include the signature of the Director of Natural Resources. Immediately upon receipt of such notice by the natural resources district, there shall be a stay on issuance of water well construction permits in the geographic area preliminarily determined by the department to include hydrologically connected surface water and ground water in such river basin, subbasin, or reach. The department shall also notify the public of the preliminary determination that the river basin, subbasin, or reach is fully appropriated and of the affected geographic area. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the department to provide general circulation in the river basin, subbasin, or reach.

(2) If the department preliminarily determines a river basin, subbasin, or reach to be fully appropriated and has identified the existence of hydrologically connected surface water and ground water in such river basin, subbasin, or reach, stays shall also be imposed:

(a) On the construction of any new water well in the area covered by the determination unless a permit with conditions imposed by the natural resources district has been issued prior to the determination. Such conditions shall meet the objectives of subsection (4) of section 46-715 and may include, but are not limited to, conditions in accordance with subsection (6) of section 46-739. Any well constructed pursuant to such permit shall be completed in accordance with section 46-738; and

(b) On the use of an existing water well or an existing surface water appropriation in the affected area to increase the number of acres historically irrigated.

Such additional stays shall begin ten days after the first publication, in a newspaper of statewide circulation, of the notice of the preliminary determination

that the river basin, subbasin, or reach is fully appropriated.

(3) Exceptions to the stays imposed pursuant to subsection (1), (2), (8), or (9) of this section shall exist for (a) test holes, (b) dewatering wells with an intended use of one year or less, (c) monitoring wells, (d) wells constructed pursuant to a ground water remediation plan under the Environmental Protection Act, (e) water wells designed and constructed to pump fifty gallons per minute or less, except that no two or more water wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute, (f) water wells for range livestock, (g) new surface water uses or water wells that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety, (h) water wells defined by the applicable natural resources district as replacement water wells, but the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace or, if applicable, the historic consumptive use of the surface water use it is to replace, (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use or water well from which the right or permit is being transferred, (j) water wells and increases in ground water irrigated acres for which a variance is granted by the applicable natural resources district for good cause shown, (k) subject to any conditions imposed by the applicable natural resources district, to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that were permitted prior to the effective date of the determination made in subsection (1) of this section and completed in accordance with section 46-738 but were not used for irrigation prior to that effective date, (l) to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that are constructed after the effective date of the stay in accordance with a permit granted by that natural resources district prior to the effective date of the stay, (m) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of section 46-233, (n) surface water uses and increases in surface water irrigated acres for which a variance is granted by the department for good cause shown, and (o) water wells for which permits have been approved by the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act prior to the effective date of the stay.

(4) Except as otherwise provided in this section, any stay imposed pursuant to subsections (1) and (2) of this section shall remain in effect for the affected river basin, subbasin, or reach until the department has made a final determination regarding whether the river basin, subbasin, or reach is fully appropriated and, if the department's final determination is that the river basin, subbasin, or reach is

fully appropriated, shall remain in effect as provided in subsection (11) of this section. Within the time period between the dates of the preliminary and final determinations, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources districts. The department shall also hold one or more public hearings not more than ninety days after the first publication of the notice required by subsection (1) of this section. Notice of the hearings shall be provided in the same manner as the notice required by such subsection. Any interested person may appear at such hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether the stays on new uses should be terminated.

(5) Within thirty days after the final hearing under subsection (4) of this section, the department shall notify the appropriate natural resources districts of the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach. If the final determination is that the river basin, subbasin, or reach is fully appropriated, the department, at the same time, shall (a) decide whether to continue or to terminate the stays on new surface water uses and on increases in the number of surface water irrigated acres and (b) designate the geographic area within which the department considers surface water and ground water to be hydrologically connected in the river basin, subbasin, or reach and describe the methods and criteria used in making that determination. The department shall provide notice of its decision to continue or terminate the stays in the same manner as the notice required by subsection (1) of this section.

(6) Within ninety days after a final determination by the department that a river basin, subbasin, or reach is fully appropriated, an affected natural resources district may hold one or more public hearings on the question of whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated. Notice of the hearings shall be published as provided in section 46-743.

(7) Within forty-five days after a natural resources district's final hearing pursuant to subsection (6) of this section, the natural resources district shall decide (a) whether to terminate the stay on new water wells in all or part of the natural resources district subject to the stay and (b) whether to terminate the stay on increases in ground water irrigated acres. If the natural resources district decides not to terminate the stay on new water wells in any geographic area, it shall also decide whether to exempt from such stay the construction of water wells for which

permits were issued prior to the issuance of the stay but for which construction had not begun prior to issuance of the stay. If construction of water wells for which permits were issued prior to the stay is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay.

(8) Whenever the department designates a river basin, subbasin, or reach as overappropriated, each previously declared moratorium on the issuance of new surface water appropriations in the river basin, subbasin, or reach shall continue in effect. The department shall also provide prompt notice of such designation to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Immediately upon receipt of such notice by a natural resources district, there shall be a stay on the issuance of new water well construction permits in any portion of such natural resources district that is within the hydrologically connected area designated by the department. The department shall also notify the public of its designation of such river basin, subbasin, or reach as overappropriated and of the geographic area involved in such designation. Such notice shall be published once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspapers as are deemed appropriate by the department to provide general notice in the river basin, subbasin, or reach.

(9) Beginning ten days after the first publication of notice under subsection (8) of this section in a newspaper of statewide circulation, there shall also be stays (a) on the construction of any new water well in the hydrologically connected area if such construction has not commenced prior to such date and if no permit for construction of the water well has been issued previously by either the department or the natural resources district, (b) on the use of an existing water well in the hydrologically connected area to increase the number of acres historically irrigated, and (c) on the use of an existing surface water appropriation to increase the number of acres historically irrigated in the affected area.

(10) Within ninety days after a designation by the department of a river basin, subbasin, or reach as overappropriated, a natural resources district that encompasses any of the hydrologically connected area designated by the department may hold one or more public hearings on the question of whether to terminate the stays on (a) the construction of new water wells within all or part of its portion of the hydrologically connected area, (b) the issuance of new water well construction permits in such area, or (c) the increase in ground water irrigated acres in such area. Notice of any hearing for such purpose shall be provided pursuant to section 46-743. Prior to the scheduling of a natural resources district hearing on the question of whether to terminate any such stay, the department and the affected natural resources district shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin,

subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources district.

(11) Any stay issued pursuant to this section shall remain in effect until (a) the stay has been terminated pursuant to subsection (5), (7), or (10) of this section, (b) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the department and the affected natural resources districts and has taken effect, (c) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the Interrelated Water Review Board and has taken effect, (d) the department has completed a reevaluation pursuant to subsection (2) of section 46-713 and has determined that the affected river basin, subbasin, or reach is not fully appropriated or overappropriated, or (e) the stay expires pursuant to this subsection. Such stay may be imposed initially for not more than three years following the department's designation of the river basin, subbasin, or reach as overappropriated or the department's final determination that a river basin, subbasin, or reach is fully appropriated and may be extended thereafter on an annual basis by agreement of the department and the affected natural resources district for not more than two additional years if necessary to allow the development, adoption, and implementation of an integrated management plan pursuant to sections 46-715 to 46-719.

(12)(a) For purposes of this subsection, (i) a status change occurs when a preliminary or final determination that a river basin, subbasin, or reach is fully appropriated is reversed by the department or by judicial determination and such river basin, subbasin, or reach is determined not to be fully appropriated and (ii) the hydrologically connected area means the geographic area within which the department considers surface water and ground water in such river basin, subbasin, or reach to be hydrologically connected.

(b) If a status change occurs, any stays previously in force by the department or affected natural resources districts shall remain in force until the stays imposed under this subsection are in place and the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in the river basin, subbasin, or reach. The department shall also provide prompt notice of the status change in accordance with subsection (1) of this section. Immediately upon receipt of the notice by the affected natural resources district, there shall be stays imposed as set forth in subsections (1) and (2) of this section, subject to the exceptions set forth in subsection (3) of this section. The stays imposed pursuant to this subsection shall remain in effect within each affected natural resources district until such district adopts rules and regulations in accordance with subdivision (c), (d), or (e) of this subsection.

(c) Upon receipt of notice of a status change, each affected natural resources district shall adopt rules and regulations within one hundred twenty days after receipt of such notice for the prioritization and granting of water well permits

within the hydrologically connected area for the four-year period following the status change. Nothing in this subsection shall be construed to supersede the authority provided to natural resources districts under subsection (2) of section 46-707 and subdivisions (1)(f) and (1)(m) of section 46-739.

(d) The rules and regulations adopted by each affected natural resources district in accordance with subdivision (c) of this subsection shall (i) allow a limited number of total new ground water irrigated acres annually, (ii) be created with the purpose of maintaining the status of not fully appropriated based on the most recent basin determination, (iii) be for a term of not less than four years, and (iv) limit the number of new permits so that total new ground water irrigated acres do not exceed the number set in the rules and regulations. The department shall approve the proposed new number of ground water irrigated acres within sixty days after approval by the natural resources district if such district meets the conditions set forth in subdivision (d)(ii) of this subsection, based on the most recent basin determination.

(e) If the proposed new number of acres is not approved by the department within the applicable time period as provided in subdivision (d) of this subsection, the affected natural resources districts shall adopt rules and regulations that allow water well permits to be issued that will result in no more than two thousand five hundred irrigated acres or that will result in an increase of not more than twenty percent of all historically irrigated acres within the hydrologically connected area of each natural resources district within the affected river basin, subbasin, or reach, whichever is less, for each calendar year of the four-year period following the date of the determination described in this subsection. Each affected natural resources district may, after the initial four-year period has expired, annually determine whether water well permit limitations should continue and may enforce such limitations.

(f) During the four-year period following the status change, the department shall ensure that any new appropriation granted will not cause the basin, subbasin, or reach to be fully appropriated based on the most recent basin determination. The department, pursuant to its rules and regulations, shall not issue new natural flow surface water appropriations for irrigation, within the river basin, subbasin, or reach affected by the status change, that will result in a net increase of more than eight hundred thirty-four irrigated acres in each natural resources district during each calendar year of the four-year period following the date of the determination described in this subsection.

Source: Laws 2004, LB 962, § 54; Laws 2006, LB 1226, § 24; Laws 2009, LB54, § 2; Laws 2009, LB483, § 4.

Cross References

Environmental Protection Act, see section 81-1532.
Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.

(1)(a) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(b) A natural resources district encompassing a river basin, subbasin, or reach that has not been designated as overappropriated or has not been finally determined to be fully appropriated may, jointly with the department, develop an integrated management plan for such river basin, subbasin, or reach located within the district. The district shall notify the department of its intention to develop an integrated management plan which shall be developed and adopted according to sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The objective of an integrated management plan under this subdivision is to manage such river basin, subbasin, or reach to achieve and sustain a balance between water uses and water supplies for the long term. If a district develops an integrated management plan under this subdivision and the department subsequently determines the affected river basin, subbasin, or reach to be fully appropriated, the department and the affected natural resources district may amend the integrated management plan.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could

be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, unless such regulation is necessary to carry out the goals and objectives of a basin-wide plan pursuant to section 46-755, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) In order to provide a process for economic development opportunities and economic sustainability within a river basin, subbasin, or reach, the integrated management plan shall include clear and transparent procedures to track depletions and gains to streamflows resulting from new, retired, or other changes to uses within the river basin, subbasin, or reach. The procedures shall:

(a) Utilize generally accepted methodologies based on the best available information, data, and science;

(b) Include a generally accepted methodology to be utilized to estimate depletions and gains to streamflows, which methodology includes location, amount, and time regarding gains to streamflows as offsets to new uses;

(c) Identify means to be utilized so that new uses will not have more than a de minimis effect upon existing surface water users or ground water users;

(d) Identify procedures the natural resources district and the department will use to report, consult, and otherwise share information on new uses, changes in uses, or other activities affecting water use in the river basin, subbasin, or reach;

(e) Identify, to the extent feasible, potential water available to mitigate new uses, including, but not limited to, water rights leases, interference agreements, augmentation projects, conjunctive use management, and use retirement;

(f) Develop, to the extent feasible, an outline of plans after consultation with and an opportunity to provide input from irrigation districts, public power and irrigation districts, reclamation districts, municipalities, other political subdivisions, and other water users to make water available for offset to enhance and encourage economic development opportunities and economic sustainability in the river basin, subbasin, or reach; and

(g) Clearly identify procedures that applicants for new uses shall take to apply for approval of a new water use and corresponding offset.

Nothing in this subsection shall require revision or amendment of an integrated management plan approved on or before August 30, 2009.

(4) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun, in the case of a river basin, subbasin, or reach designated as overappropriated or preliminarily determined to be fully appropriated in accordance with section 46-713, after the date of such designation or preliminary determination.

(5)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (4) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (4) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing

their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (5) as necessary based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (5) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to

subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (5)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(6) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (4)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

Source: Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23; Laws 2009, LB54, § 3; Laws 2010, LB764, § 1; Laws 2014, LB1098, § 14.

46-716. Integrated management plan; surface water controls.

(1) The surface water controls that may be included in an integrated management plan and may be adopted by the Department of Natural Resources are: (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 consistent with good husbandry and other requirements of section 46-231 and consistent with reasonable reliance by other surface water or ground water users on return flows or on seepage to the aquifer; and (d) other reasonable restrictions on surface water use which are consistent with the intent of section 46-715 and the requirements of section 46-231.

(2) If during the development of the integrated management plan the department determines that surface water appropriators should be required to apply or utilize conservation measures or that other reasonable restrictions on surface water use need to be imposed, the department's portion of the integrated management 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 to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions.

Source: Laws 2004, LB 962, § 56.

46-717. Integrated management plan; scientific data and other information; department; natural resources district; duties.

(1) In developing an integrated management plan, the Department of Natural Resources and the affected natural resources districts shall utilize the best scientific data and other information available and shall review and consider any rules and regulations in effect in any existing ground water management area that encompasses all or part of the geographic area to be encompassed by the plan. Consideration shall be given to the applicable scientific data and other information relied upon by the department in preparing the annual report required by section 46-713 and to other types of data and information that may be deemed appropriate by the department. The department, after seeking input from the affected natural resources districts, shall specify by rule and regulation the types of scientific data and other information that will be considered in developing an integrated management plan. The natural resources districts shall adopt similar rules and regulations specifying the types of scientific data and other information necessary for purposes of this section. Existing research, data, studies, or any other relevant information which has been compiled by or is in possession of other state or federal agencies, other natural resources districts, and other political subdivisions within the State of Nebraska shall be utilized. State agencies and political subdivisions shall furnish information or data upon request of the department or

any affected natural resources district. Neither the department nor the natural resources districts shall be required to conduct new research or to develop new computer models to prepare an integrated management plan, but such new research may be conducted or new computer models developed within the limits of available funding if the additional information is desired by the department or the affected natural resources districts.

(2) During preparation of an integrated management plan for a fully appropriated river basin, subbasin, or reach or of an integrated management plan under subdivision (1)(b) of section 46-715, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or by the affected natural resources districts. They shall also actively solicit public comments and opinions through public meetings and other means.

Source: Laws 2004, LB 962, § 57; Laws 2010, LB764, § 2.

46-718. Integrated management plan; hearings; implementation order; dispute; procedure.

(1) If the Department of Natural Resources and the affected natural resources districts preparing an integrated management plan reach agreement on (a) the proposed goals and objectives of the plan for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to controls, and (c) the surface water and ground water controls and any incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, they shall schedule one or more public hearings to take testimony on the proposed integrated management plan and the proposed controls. Such hearings shall be held within forty-five days after reaching agreement and within or in reasonable proximity to the area to be affected by implementation of the integrated management plan. Notice of such hearings shall be published as provided in section 46-743. The costs of publishing the notice shall be shared between the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(2) Within sixty days after the final hearing under this section, the department and the affected natural resources districts shall jointly decide whether to implement the plan proposed, with or without modifications, and whether to adopt and implement the surface water and ground water controls and incentive programs proposed in the plan. If the department and the natural resources districts agree to implement the plan and to adopt and implement the proposed controls, the natural

resources districts shall by order designate a ground water management area for integrated management or, if the geographic area subject to the integrated management plan is already in a ground water management area, the order shall designate an integrated management subarea for that area. The order shall include a geographic and stratigraphic definition of the ground water management area or integrated management subarea and shall adopt the controls in the integrated management plan that are authorized for adoption by the natural resources district pursuant to section 46-739. The department shall by order adopt the controls in the integrated management plan that are authorized for adoption by the department pursuant to section 46-716. Neither the controls adopted by the district nor those adopted by the department shall include controls substantially different from those set forth in the notice of hearing. The area designated as a ground water management area or an integrated management subarea by the natural resources district shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan. The department and the natural resources district shall each cause a copy of its order to be published in the manner provided in section 46-744.

(3) If at any time during the development of a basin-wide plan or an integrated management plan either the department or the affected natural resources districts conclude that the parties will be unable to reach a timely agreement on the basin-wide plan or on (a) the goals and objectives of the integrated management plan for the affected river basin, subbasin, or reach, (b) the geographic area to be subject to controls, or (c) the surface water or ground water controls or any incentive programs to be proposed for adoption and implementation in the affected river basin, subbasin, or reach, the Governor shall be notified and the dispute shall be submitted to the Interrelated Water Review Board as provided in subsection (2) of section 46-719.

Source: Laws 2004, LB 962, § 58.

46-719. Interrelated Water Review Board; created; members; powers and duties.

(1)(a) The Interrelated Water Review Board is created for the purposes stated in subsections (2) through (5) of this section. The board shall consist of five members. The board, when appointed and convened, shall continue in existence only until it has resolved a dispute referred to it pursuant to such subsections. The Governor shall appoint and convene the board within forty-five days of being notified of the need to resolve a dispute. The board shall be chaired by the Governor or his or her designee, which designee shall be knowledgeable concerning surface water and ground water issues. The Governor shall appoint one additional member of his or her choosing and shall appoint the other three members of the board from a list of no fewer than six nominees provided by the

Nebraska Natural Resources Commission within twenty days after request by the Governor for a list of nominees.

(b) Not more than two members of the board shall reside in the geographic area involved in the dispute. A person is not eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to the person, a member of his or her immediate family, or a business with which the person is associated, unless such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public. The board shall be subject to the Open Meetings Act.

(c) For purposes of subsections (2) and (3) of this section, action may be taken by a vote of three of the board's five members. For purposes of subsections (4) and (5) of this section, action may be taken only by a vote of at least four of the board's five members.

(2)(a) If the Department of Natural Resources and the affected natural resources districts cannot resolve disputes over the content of a basin-wide plan or an integrated management plan by utilizing the process described in sections 46-715 to 46-718, the Governor shall be notified and the dispute submitted to the Interrelated Water Review Board. When the board has been appointed and convened to resolve disputes over a basin-wide plan, the department and each affected district shall present their proposed basin-wide plans to the board. When the board has been convened to resolve disputes over an integrated management plan, the department and each affected natural resources district shall present their (i) proposed goals and objectives for the integrated management plan, (ii) proposed geographic area to be subject to controls, and (iii) proposed surface water and ground water controls and any proposed incentive program for adoption and implementation in the river basin, subbasin, or reach involved. The department and each affected natural resources district shall also be given adequate opportunity to comment on the proposals made by the other parties to the dispute.

(b) When the Interrelated Water Review Board concludes that the issues in dispute have been fully presented and commented upon by the parties to the dispute, which conclusion shall be made not more than forty-five days after the board is convened, the board shall select the proposals or portions of proposals that the board will consider for adoption and shall schedule one or more public hearings to take testimony on the selected proposals. The hearings shall be held within forty-five days after the board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would be affected by implementation of any of the proposals to be considered at the hearings. Notice of the hearings shall be published as provided in section 46-743. The cost of publishing the notice shall be shared by the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within forty-five days after the final hearing pursuant to subdivision (b) of this subsection, the Interrelated Water Review Board shall by order, as applicable, adopt a basin-wide plan or an integrated management plan for the affected river basin, subbasin, or reach and, in the case of an integrated management plan, shall designate a ground water management area for integrated management or an integrated management subarea for such river basin, subbasin, or reach. An integrated management plan shall be consistent with subsection (2) of section 46-715, and the surface water and ground water controls and any applicable incentive programs adopted as part of that plan shall be consistent with subsection (4) of section 46-715. The controls adopted by the board shall not be substantially different from those described in the notice of hearing. The area designated as a ground water management area or an integrated management subarea shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

(d) The order adopted under this subsection shall be published in the manner prescribed in section 46-744.

(e) Surface water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the department. Ground water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the affected natural resources districts.

(3) Whether an integrated management plan is adopted pursuant to section 46-718 or by the Interrelated Water Review Board pursuant to subsection (2) of this section, the department or a natural resources district responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ground water controls, or incentive programs adopted to implement the plan. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this section.

(4) The department and the affected natural resources districts may also raise objections concerning the implementation or enforcement of previously adopted surface water or ground water controls. The department and the affected natural resources districts shall utilize the procedures in sections 46-715 to 46-718 in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing such procedures, either the

department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section. After permitting each party to fully express its reasons for its position on the disputed issues, the board may either take no action or conclude (a) that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place or (b) that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce such portion and that such party's jurisdiction with respect to implementation and enforcement of the plan and controls shall be terminated and reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the Interrelated Water Review Board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in one or more newspapers as necessary to provide general circulation in the area affected by such reassignment.

(5) The board may be reconvened in accordance with subsection (1) of this section at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination and not more than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by such party that it is willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

Source: Laws 2004, LB 962, § 59; Laws 2006, LB 1226, § 26; Laws 2009, LB54, § 4.

Cross References

Open Meetings Act, see section 84-1407.

46-720. Proceedings under prior law; transitional provisions.

(1) The Legislature finds that, prior to July 16, 2004, actions were taken by the Department of Natural Resources and by one or more natural resources districts pursuant to section 46-656.28, as such section existed immediately prior to such date, for the purpose of addressing circumstances that are, after such date, to be addressed in accordance with sections 46-713 to 46-719. It is the intent of the Legislature that actions taken pursuant to section 46-656.28, as such section existed immediately prior to July 16, 2004, should not be negated and that transition from the authorities and responsibilities granted by such section to those

granted by sections 46-713 to 46-719 should occur in as efficient a manner as possible. Such transition shall be therefor governed by subsections (2) through (5) of this section, and all references in such subsections to section 46-656.28 shall be construed to mean section 46-656.28 as such section existed immediately prior to July 16, 2004.

(2) If, prior to July 16, 2004, (a) a natural resources district requested pursuant to subsection (1) of section 46-656.28 that affected appropriators, affected surface water project sponsors, and the department consult and that studies and a hearing be held but (b) the Director of Natural Resources has not made a preliminary determination relative to that request pursuant to subsection (2) of section 46-656.28, no further action on the district's request shall be required of the department. If under the same circumstances a temporary suspension in the drilling of certain water wells has been imposed by the district pursuant to subsection (16) of section 46-656.28 and remains in effect immediately prior to July 16, 2004, such temporary suspension shall remain in effect for thirty days after the department issues its first annual report under section 46-713, except that (i) such temporary suspension shall not apply to water wells for which a permit has been obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and (ii) to the extent any such temporary suspension is in effect for all or part of a hydrologically connected area for a river basin, subbasin, or reach designated as overappropriated by the department, such temporary suspension shall remain in effect only until it is superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the department to have ground water hydrologically connected to the surface water of a fully appropriated river basin, subbasin, or reach, such temporary suspension shall be superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(3)(a) If prior to July 16, 2004, (i) the director has made a preliminary determination pursuant to subsection (2) of section 46-656.28 that there is reason to believe that the use of hydrologically connected ground water and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any conflict, dispute, or difficulty listed in such subsection, (ii) the director has not made a determination pursuant to subsection (4) of section 46-656.28 that a joint action plan should not be prepared, and (iii) preparation of a joint action plan pursuant to subsections (5) through (9) of such section has not been completed, the geographic area involved shall become subject to sections 46-713 to 46-719 on July 16, 2004, and the department need not evaluate such geographic area in its first annual report issued pursuant to section 46-713.

(b) For purposes of this subsection and section 46-714 and except as otherwise provided in this section, (i) July 16, 2004, shall result in the imposition in any geographic area subject to this subsection of the stays required by subsections (1)

and (2) of section 46-714, (ii) such stays shall be imposed in the manner required by such section, and (iii) July 16, 2004, shall be treated as if it were the date of a departmental preliminary determination pursuant to section 46-713 that such area is a geographic area within which ground water and surface water of a fully appropriated river basin, subbasin, or reach are hydrologically connected. Notwithstanding the other provisions of this subsection, if a temporary suspension in the drilling of certain new water wells has previously been imposed by the affected natural resources district, (A) the stays on construction of new water wells and on the increase in ground water irrigated acres shall be limited in geographic extent to only that part of the affected area within which the temporary suspension was in effect unless the director determines that inclusion of additional area is necessary because ground water and surface water are hydrologically connected in such additional area and (B) the stays on construction of certain new water wells shall not apply to a water well constructed in accordance with the terms of a water well construction permit approved by the district prior to July 16, 2004, unless such well was subject to the district's temporary suspension. If, prior to July 16, 2004, the director has held a hearing on a report issued pursuant to subsection (3) of section 46-656.28 but has not yet determined whether a joint action plan should be prepared, no departmental hearing shall be required pursuant to subsection (4) of section 46-714 before a final determination is made about whether the river basin, subbasin, or reach involved is fully appropriated. If, prior to July 16, 2004, the director has determined pursuant to subsection (4) of section 46-656.28 that a joint action plan should be prepared, such determination shall have the same effect as a final departmental determination pursuant to subsection (5) of section 46-714 that the affected river basin, subbasin, or reach is fully appropriated and no separate determination to that effect shall be required. If, after July 16, 2004, the department determines that all or part of the area subject to this subsection is in an overappropriated river basin, subbasin, or reach, that portion of the area shall thereafter be subject to the provisions of the Nebraska Ground Water Management and Protection Act applicable to an overappropriated river basin, subbasin, or reach and stays that have previously taken effect in accordance with this subsection shall continue in effect as stays for an overappropriated river basin, subbasin, or reach without additional action or publication of notice by the department. Any temporary suspension in the drilling of certain water wells that has been imposed in the geographic area involved by a natural resources district pursuant to subsection (16) of section 46-656.28 prior to July 16, 2004, shall remain in effect until superseded by the stays imposed pursuant to subsections (1) and (2) of section 46-714.

(4) If, prior to July 16, 2004, preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of section 46-656.28 but the plan has not yet been adopted pursuant to subsection (11) of such section, the department need not evaluate the affected geographic area in its first annual report issued pursuant to section 46-713. The department and the affected natural

resources district shall review the completed joint action plan for its compliance with sections 46-715 to 46-717. If the joint action plan is determined to be in compliance with sections 46-715 to 46-717 or if agreement is reached on the revisions necessary to bring it into such compliance, the department and the district shall adopt the plan and implement the controls as provided in section 46-718. If the joint action plan is determined not to be in compliance with sections 46-715 to 46-717 and agreement on the proposed plan or the proposed controls cannot be reached pursuant to section 46-718, section 46-719 shall apply. Except to the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of certain water wells imposed in the affected geographic area by a natural resources district pursuant to subsection (16) of section 46-656.28 shall remain in effect until (a) the department and the affected district have jointly decided to implement the plan, with or without modifications, and controls have been adopted and taken effect or (b) the Interrelated Water Review Board, pursuant to section 46-719, has adopted an integrated management plan for the affected river basin, subbasin, or reach and the controls adopted by the board have taken effect. To the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of water wells shall be superseded by the stays imposed pursuant to subsections (8) and (9) of section 46-714.

(5) If, before July 16, 2004, a joint action plan has been adopted and implemented pursuant to subsections (10) through (12) of section 46-656.28 and is in effect immediately prior to such date, the department need not evaluate the geographic area subject to the plan in the department's first annual report issued pursuant to section 46-713. For purposes of the Nebraska Ground Water Management and Protection Act, (a) the plan adopted shall be considered an integrated management plan adopted pursuant to section 46-718, (b) the management area designated shall be considered an integrated management area or subarea designated pursuant to section 46-718, and (c) the controls adopted shall be considered controls adopted pursuant to section 46-718 and shall remain in effect until amended or repealed pursuant to section 46-718 or 46-719.

Source: Laws 2004, LB 962, § 60; Laws 2009, LB483, § 5.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-721. Contamination; 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; R.S.1943, (1998), § 46-656.35; Laws 2004, LB 962, § 61.

46-722. Contamination; Department of Environmental Quality; conduct study; when; report.

If, as a result of information provided pursuant to section 46-721 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 46-709 to 46-711, 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; R.S.1943, (1998), § 46-656.36; Laws 2004, LB 962, § 62.

46-723. Contamination; point source; Director of Environmental Quality; duties.

If the Director of Environmental Quality determines from the study conducted pursuant to section 46-722 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; R.S.1943, (1998), § 46-656.37; Laws 2004, LB 962, § 63.

Cross References

Environmental Protection Act, see section 81-1532.

46-724. 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 46-722 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 46-725 to 46-729.

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 46-722, 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. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

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, 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; R.S.Supp.,2002, § 46-656.38; Laws 2004, LB 962, § 64; Laws 2007, LB296, § 204.

46-725. 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 46-739 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. Such order shall be published in the manner provided in section 46-744.

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; R.S.1943, (1998), § 46-656.39; Laws 2004, LB 962, § 65.

46-726. Management area; contamination; 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. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the Department of Environmental Quality. Notice of the district's order adopting an action plan shall be published as required by section 46-744.

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; R.S.Supp.,2002, § 46-656.40; Laws 2004, LB 962, § 66.

46-727. Management area; contamination; action plan; contents.

An action plan filed by a district pursuant to section 46-726 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 46-739.

Source: Laws 1986, LB 894, § 8; Laws 1991, LB 51, § 12; R.S.1943, (1993), § 46-674.09; Laws 1996, LB 108, § 47; R.S.1943, (1998), § 46-

656.41; Laws 2004, LB 962, § 67.

46-728. Management area; contamination; 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 46-731.

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; R.S.1943, (1998), § 46-656.42; Laws 2004, LB 962, § 68.

46-729. Management area; contamination; action plan; district publish order adopted.

Following approval of the action plan by the Director of Environmental Quality, the district shall cause a copy of the order adopted pursuant to section 46-728 to be published in the manner provided in section 46-744.

Source: Laws 1986, LB 894, § 10; Laws 1993, LB 3, § 21; R.S.1943, (1993), § 46-674.11; Laws 1996, LB 108, § 49; R.S.1943, (1998), § 46-656.43; Laws 2004, LB 962, § 69.

46-730. Management area; action plan; 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 46-725 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; R.S.1943, (1998), § 46-656.44; Laws 2004, LB 962, § 70.

46-731. Management area; action plan; director specify controls; when; powers and duties; hearing.

(1) The power to specify controls authorized by section 46-739 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 46-725, 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 46-743. 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; R.S.1943, (1998), § 46-656.45; Laws 2004, LB 962, § 71.

46-732. Action plan; controls; duration; amendment of plan.

The controls in the action plan approved by the Director of Environmental Quality pursuant to section 46-728 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, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14; Laws 1996, LB 108, § 53; R.S.1943, (1998), § 46-656.46; Laws 2004, LB 962, § 73.

46-733. Removal of designation management area 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 46-725. 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; R.S.1943, (1998), § 46-656.47; Laws 2004, LB 962, § 73.

46-734. Contamination; 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 46-721 to 46-733.

Source: Laws 1986, LB 894, § 15; Laws 1993, LB 3, § 26; R.S.1943, (1993), § 46-674.16; Laws 1996, LB 108, § 54; R.S.1943, (1998), § 46-656.48; Laws 2004, LB 962, § 74.

Cross References

Administrative Procedure Act, see section 84-920.

46-735. 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 fifty-dollar 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; Laws 2003, LB 34, § 1; R.S.Supp.,2003, § 46-656.29; Laws 2004, LB 962, § 75.

46-736. 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, 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; Laws 2003, LB 35, § 1; R.S.Supp.,2003, § 46-656.30; Laws 2004, LB 962, § 76.

46-737. Issuance of permit; no right to violate rules, regulations, or controls.

The issuance by the district of a permit pursuant to section 46-736 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; R.S.Supp.,2002, § 46-656.31; Laws 2004, LB 962, § 77.

46-738. Issuance of permit; commence construction and complete water well within one year; failure; effect.

When any permit is approved pursuant to section 46-736, 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; R.S.1943, (1998), § 46-656.32; Laws 2004, LB 962, § 78.

46-739. 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 allocate the amount of ground water that may be withdrawn by 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 46-740;

(f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;

(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 impose 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 require district approval of (i) transfers of ground water off the land where the water is withdrawn, (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section, (iii) transfers of certified water uses or certified irrigated acres between landowners or other persons, or (iv) transfers of certified water uses or certified irrigated acres between parcels or tracts under the control of a common landowner or other person. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to July 16, 2004, or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare. Approval of any transfer of certified water uses or certified irrigated acres under subdivision (1)(k)(iii) or (iv) of this section shall further be subject to the district having complied with the requirements of section 46-739.01;

(l) It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;

(m) 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; and

(n) 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 46-740 and 46-741, 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 or when any of the controls being proposed are for the purpose of integrated management of hydrologically connected ground water and surface water, 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, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, 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 either permitted or constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells either permitted or constructed on or after the designation date or any other later date or dates established by the district. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the applicable natural resources district.

(c) For a management area in a river basin or part of a river 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) Except as otherwise authorized by law, 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)(m) 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 46-712, regarding the controls before implementing them.

(8) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established and shall further condition participation upon satisfaction of the requirements of section 46-739.01.

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 23, § 7; Laws 1983, LB 506, § 1; 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; R.S.Supp.,2002, § 46-656.25; Laws 2004, LB 962, § 79; Laws 2006, LB 1226, § 27; Laws 2009, LB477, § 6.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-739.01. District; approval of certain transfers or program participation; report of title required; form; written consent of lienholder; rights of lienholder.

(1) Notwithstanding any other provision of law, no district shall approve a transfer of certified water uses or certified irrigated acres or allow a ground water user or landowner to participate in a financial or other incentive program established pursuant to subsection (8) of section 46-739 unless the person seeking such transfer or participation in such program has submitted to the district a report of title issued by an attorney or a registered abstracter, on a form prescribed by the district, reflecting (a) the owner and legal description of the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and (b) the existence of all liens, evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the certified water uses or certified irrigated acres are to be transferred or which is the subject of such program and the name and address of each such lienholder, if any. If the report of title reflects the existence of any lien evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, written consent to such transfer or participation in such program shall be obtained from each such lienholder. The district may assess a fee against the person seeking such transfer or participation in such program to recoup its costs in reviewing the report of title. This subsection does not apply to a transfer of certified water uses or certified irrigated acres resulting from: A one-time transfer of four acres or less; participation in a financial or other incentive program that involves the transfer, purchase, or retirement of four acres or less; or a transfer that involves one landowner on a single tract of land in which there is no reduction or increase in certified water uses or certified irrigated acres and the transfer involves an improvement in irrigation efficiency.

(2) Approval of a transfer of certified water uses or certified irrigated acres or authorization of a ground water user or landowner to participate in such financial or other incentive program by a district shall not affect the rights of any lienholder who is not reflected in the report of title and from whom the required consent was not obtained. Such a lienholder may bring an action against the person seeking such transfer or participation in such program for damages or injunctive or other

relief for any injury done to the lienholder's interest in land or use of ground water resulting from such transfer or participation.

(3) This section does not limit the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 2009, LB477, § 7; Laws 2010, LB862, § 3.

46-739.02. Transfer of right to use ground water; recording; recovery of cost; manner.

An instrument of transfer of the right to use ground water shall be recorded by a natural resources district with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a transfer of certified water uses or certified irrigated acres occurred, in any case in which a transfer of certified water uses or certified irrigated acres has been approved by such district. The instrument of transfer of the right to use ground water shall include a description of the real estate to and from which the certified water uses or certified irrigated acres were transferred, the nature of the transfer, and the date on which the transfer occurred. The district may recover the cost of filing an instrument of transfer of the right to use ground water from the person seeking the transfer. The instrument of transfer of the right to use ground water shall be executed, acknowledged, and recorded in the same manner as conveyances of real estate.

Source: Laws 2009, LB477, § 8.

46-739.03. Natural resources district determination; effect.

The determination of certified water uses or certified irrigated acres by a natural resources district shall not affect the allocations of ground water established under section 46-740.

Source: Laws 2009, LB477, § 9.

46-740. 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 46-739. 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) Except as permitted pursuant to subsections (4) through (6) of section 46-739, 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.

(3) Unless an integrated management plan, a rule, or an order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a municipality, within an area determined by the Department of Natural Resources to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Any allocations to a municipality that have been made as of November 1, 2005, shall remain in full force and effect unless changed by the appropriate natural resources district;

(b)(i) For any municipality that has not received an allocation as of November 1, 2005, the minimum annual allocation may be the greater of either the amount of ground water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance. Water for commercial and industrial uses may be limited as specified in subdivision (b)(iii) of this subsection.

(ii) The per capita allowance shall be based on the location of the municipality, increasing in equal increments from east to west, and shall not be less than two hundred gallons per person per day at 95 degrees, 19 minutes, 00 seconds longitude and not less than two hundred fifty gallons per person per day at 104 degrees, 04 minutes, 00 seconds longitude. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality's population if such service begins prior to January 1, 2026.

(iii) Prior to January 1, 2026, any new or expanded single commercial or single industrial development served by any municipality within the fully appropriated or overappropriated area which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715;

(c) Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715 and shall not affect the municipal allocations outlined in subdivisions (3)(a) and (b) of this section. Any permanent reduction in consumptive use of water associated with municipal growth, including governmental, industrial, and commercial growth, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such municipality is located; and

(d) To qualify for the exemption specified in subsection (3) of this section, any city of the metropolitan class, city of the primary class, city of the first class, or city of the second class shall file a conservation plan with the natural resources district, if required by the integrated management plan. Villages and other municipalities smaller than a city of the second class shall not be required to submit a conservation plan to qualify for such exemption.

(4) On and after January 1, 2026, the base amount for an annual allocation to a municipality shall be determined as the greater of either (a) the amount of water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the greatest annual use prior to January 1, 2026, for uses specified in subdivision (3)(b) of this section plus the per capita allowance described in subdivision (3)(b)(ii) of this section. On and after January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715. Each municipality may be subject to controls adopted pursuant to such section for amounts in excess of the allocations.

(5) Unless an integrated management plan, rule, or order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a nonmunicipal commercial or industrial water user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Prior to January 1, 2026, the minimum annual allocation for a nonmunicipal commercial or industrial user shall be the greater of either (i) the amount specified in a permit issued pursuant to the Industrial Ground Water Regulatory Act or (ii) the amount necessary to achieve the commercial or industrial use, including all new or expanded uses that consume less than twenty-five million gallons annually. Any increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715;

(b) Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a nonmunicipal well within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715. This subdivision does not apply to a water user described in this subdivision that is regulated by the Industrial Ground Water Regulatory Act and the United States Nuclear Regulatory Commission;

(c) On and after January 1, 2026, the base amount for an annual allocation to a nonmunicipal commercial or industrial user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 shall be the amount specified in subdivision (5)(a) or (b) of this section;

(d) On and after January 1, 2026, increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715; and

(e) Any reduction in consumptive use associated with new nonmunicipal industrial or commercial uses of less than twenty-five million gallons, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such nonmunicipal industrial or commercial user is located.

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; R.S.Supp.,2002, § 46-656.26; Laws 2004, LB 962, § 80; Laws 2006, LB 1226, § 28.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-741. 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; R.S.Supp.,2002, § 46-656.27; Laws 2004, LB 962, § 81.

46-742. Transport of ground water; prohibited; when.

(1) Whenever the drilling of new wells has been stayed pursuant to section 46-714, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the stay took effect, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district in which the stay is in effect and, if the water is withdrawn in another natural resources district, by the other district.

(2) Whenever a natural resources district pursuant to subdivision (1)(m) of section 46-739 has closed all or part of the district to the issuance of additional well permits, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the affected area was closed to the issuance of additional well permits, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district that closed the affected area to additional well permits and, if the water is withdrawn in another natural resources district, by the other district.

(3) If a proposed withdrawal and transport of water under subsection (1) or (2) of this section is intended for municipal purposes, the natural resources district shall approve the withdrawal and transport of ground water into the affected area when a public water supplier providing water for municipal purposes receives a permit from the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source: Laws 2003, LB 619, § 11; R.S.Supp.,2003, § 46-656.24; Laws 2004, LB 962, § 82.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.

46-743. Public hearing; requirements.

Any public hearing required under the Nebraska Ground Water Management and Protection Act shall comply with the following requirements:

(1) The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area or affected by the proposed rule or regulation;

(2) Notice of the hearing shall be published in a newspaper published or of general circulation in the affected area at least once each week for three consecutive weeks, the last publication of which shall be not less than seven days prior to the hearing;

(3) As to the designation of a management area, adoption or amendment of an action plan or integrated management plan, or adoption or amendment of controls, the notice shall provide, as applicable, a general description of (a) the contents of the plan, (b) the geographic area which will be considered for inclusion in the management area, and (c) a general description of all controls proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed plan or controls may be obtained;

(4) For all other rules and regulations, the notice shall provide a general description of the contents of the rules and regulations proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed rules and regulations may be obtained;

(5) The full text of all controls, rules, or regulations shall be available to the public upon request not later than the date of first publication;

(6) All interested persons shall be allowed to appear and present testimony; and

(7) 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, testimony of a representative of the Department of Environmental Quality and shall include the results of any relevant water quality studies or investigations conducted by the district.

Source: Laws 2004, LB 962, § 83.

46-744. Order; publication; effective; when.

Any order adopted pursuant to section 46-712, 46-718, 46-719, 46-725, or 46-726 shall 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 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 adopting district, department, or board, as applicable.

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; R.S.1943, (1998), § 46-656.21; Laws 2004, LB 962, § 84.

46-745. Natural resources district; cease and desist order; violation; penalty; Attorney General; duties; Department of Justice Natural Resources Enforcement Fund; created; use; investment.

(1) Any person who violates a cease and desist order issued by a district pursuant to section 46-707 shall be subject to a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each day an intentional violation occurs. In assessing the amount of the civil penalty, the court shall consider the degree and extent of the violation, the size of the operation, whether the violator has been previously convicted or subjected to a civil penalty under this section, and any economic benefit derived from noncompliance. Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The court shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

(2)(a) Prior to issuing a cease and desist order against a public water supplier as defined in section 46-638, the district shall consult with the Attorney General. If the Attorney General determines that the district does not have sufficient grounds to issue a cease and desist order, the district shall abide by such determination and shall not issue a cease and desist order. The Attorney General shall have exclusive authority to enforce actions under this subsection.

(b) Any determination as to whether a water well is properly registered under sections 46-602 to 46-604 or whether a water well is properly permitted under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be made by the Department of Natural Resources.

(3) When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded. Any recovered costs of the action shall be: (a) Remitted to the State Treasurer for credit to the Department of Justice Natural Resources Enforcement Fund if the action is brought by the Attorney General; (b) credited to the applicable county fund if the action is brought by the county attorney; and (c) remitted to the district if the action is brought by the district's private attorney.

(4) The Department of Justice Natural Resources Enforcement Fund is created. The fund shall consist of money credited pursuant to subsection (3) of this section. Money in the fund shall be used to reimburse the office of the Attorney General for the costs incurred in enforcing this section. 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 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; Laws 2003, LB 30, § 1; R.S.Supp.,2003, § 46-656.10; Laws 2004, LB 962, § 85.

Cross References

Municipal and Rural Domestic Ground Water Transfers Permit Act, see section 46-650.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-746. Violations; civil penalty.

(1) Any person who violates any cease and desist order issued by a district pursuant to section 46-707 or any controls, rules, or regulations adopted by a natural resources district relating to a management area shall be subject to the imposition of penalties imposed through the controls adopted by the district, including, but not limited to, having any allocation of water granted or irrigated acres certified by the district reduced in whole or in part. Before a district takes any action, notice and hearing shall be provided to such person.

(2) Any person who violates any of the provisions of sections 46-721 to 46-733 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; R.S.Supp.,2002, § 46-

656.63; Laws 2004, LB 962, § 86.

46-747. 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; R.S.1943, (1998), § 46-656.64; Laws 2004, LB 962, § 87.

46-748. 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; R.S.Supp.,2002, § 46-656.62; Laws 2004, LB 962, § 88.

Cross References

Administrative Procedure Act, see section 84-920.

46-749. 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; R.S.Supp.,2002, § 46-656.65; Laws 2004, LB 962, § 89.

46-750. 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; R.S.Supp.,2002, § 46-656.66; Laws 2004, LB 962, § 90.

Cross References

Administrative Procedure Act, see section 84-920.

46-751. Ground Water Management Fund; created; use; investment.

All fees paid to the Director of Natural Resources pursuant to the Nebraska Ground Water Management and Protection Act shall be remitted to the State Treasurer for credit to 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; R.S.Supp.,2002, § 46-656.33; Laws 2004, LB 962, § 91.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-752. 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; R.S.Supp.,2002, § 46-656.67; Laws 2004, LB 962, § 92.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-753. Water Resources Trust Fund; created; use; investment; matching funds required; when.

(1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature, transfers authorized by the Legislature, and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. 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.

(2) The fund shall be administered by the department. The department shall adopt and promulgate rules and regulations regarding the allocation and expenditure of money from the fund.

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 46-713, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 46-713, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Source: Laws 2004, LB 962, § 93; Laws 2010, LB1057, § 4; Laws 2011, LB2, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-754. Interrelated Water Management Plan Program; created; grants; commission; duties; use.

The Interrelated Water Management Plan Program is created for the purpose of facilitating and funding the duties of districts arising under the Nebraska Ground Water Management and Protection Act. The program shall function as a grant program administered by the Nebraska Natural Resources Commission and the Department of Natural Resources upon recommendations of the commission using funds appropriated for the program. The commission shall develop guidelines and limitations for grant requests for funding such district's duties, including studies required to carry out those duties. Grant requests shall be made to the commission for review in a manner and form prescribed by the commission. The amounts requested and approved shall be supported by a minimum local revenue match comprising twenty percent of the total project cost. The Director of Natural Resources shall expend funds to implement the commission's recommendations for fiscal support under the program only upon the commission's approval.

Source: Laws 2006, LB 1226, § 20.

46-755. Basin-wide plan; development and adoption; extension; stated goals and objectives; plan contents; department and natural resources districts; duties; public meeting; report; public hearing.

This section shall apply notwithstanding any other provision of the Nebraska Ground Water Management and Protection Act.

(1) If a river basin as described in subdivision (2)(a) of section 2-1504 includes three or more natural resources districts that, pursuant to subdivision (1)(a) of section 46-715, have been or are required to develop an integrated management plan for all or substantially all (eighty-five percent) of the district, such natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin, subbasin, or reach determined by the department to have hydrologically connected water supplies, except that any natural resources district that has developed and implemented a basin-wide plan pursuant to subsection (5) of section 46-715 shall not be affected by this section. If deemed appropriate by the department and the affected natural resources districts, the basin-wide plan may combine two or more river basins.

(2) An integrated management plan developed under subdivision (1)(a) or (b) of section 46-715 shall ensure such integrated management plan is consistent with any basin-wide plan developed pursuant to this section. However, an integrated management plan may implement additional incentive programs or controls pursuant to section 46-739 if the programs and controls are consistent with the basin-wide plan.

(3) A basin-wide plan shall be completed, adopted, and take effect within three years after April 17, 2014, unless the department and the natural resources districts jointly agree to an extension of not more than an additional two years.

(4) A basin-wide plan shall (a) have clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term, (b) ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained, and (c) set forth a timeline to meet the goals and objectives as required under this subdivision, but in no case shall a timeline exceed thirty years after April 17, 2014.

(5)(a) A basin-wide plan developed under this section shall utilize the best generally-accepted methodologies and available information, data, and science to evaluate the effect of existing uses of hydrologically connected water on existing surface water and ground water users. The plan shall include a process to gather and evaluate data, information, and methodologies to increase understanding of the surface water and hydrologically connected ground water system within the basin, subbasin, or reach and test the validity of the conclusions, information, and assumptions upon which the plan is based.

(b) A basin-wide plan developed under this section shall include a schedule indicating the end date by which the stated goals and objectives are to be achieved

and the management actions to be taken to achieve the goals and objectives. To ensure that reasonable progress is being made toward achieving the final goals and objectives of the plan, the schedule shall also include measurable hydrologic objectives and intermediate dates by which the objectives are expected to be met and monitoring plans to measure the extent to which the objectives are being achieved. Such intermediate objectives shall be established in a manner that, if achieved on schedule, will provide a reasonable expectation that the goals of the plan will be achieved by the established end date.

(c) A basin-wide plan shall be developed using a consultation and collaboration process involving representatives from irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, ground water users, range livestock owners, the Game and Parks Commission, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to become an official participant in such process. The department and affected natural resources districts shall involve official participants in formulating, evaluating, and recommending plans and management actions and work to reach an agreement among all official participants involved in a basin-wide plan. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and the affected natural resources districts shall adopt the agreed-upon basin-wide plan. If agreement cannot be reached by all parties involved, the basin-wide plan shall be developed and adopted by the department and the affected natural resources districts or by the Interrelated Water Review Board pursuant to section 46-719.

(d) Within five years after the adoption of the basin-wide plan, and every five years thereafter, the department and affected natural resources districts shall conduct a technical analysis of the actions taken in a river basin to determine the progress towards meeting the goals and objectives of the plan. The analysis shall include an examination of (i) available supplies, current uses, and changes in long-term water availability, (ii) the effects of conservation practices and natural causes, including, but not limited to, drought, and (iii) the effects of the plan in meeting the goal of sustaining a balance between water uses and water supplies. The analysis shall determine if changes or modifications to the basin-wide plan are needed to meet the goals and objectives pursuant to subdivision (4)(a) of this section. The department and affected natural resources districts shall present the results of the analysis and any recommended modifications to the plan at a public meeting and shall provide for at least a thirty-day public comment period before holding a public hearing on the recommended modifications. The department shall submit a report to the Legislature of the results of this analysis and the progress made under the basin-wide plan. The report shall be submitted electronically. Any official

participant or stakeholder may submit comments to the department and affected natural resources districts on the final basin-wide plan adopted by the department and affected natural resources districts, which shall be made a part of the report to the Legislature.

(e) Before adoption of a basin-wide plan, the department and affected natural resources districts shall schedule at least one public hearing to take testimony on the proposed plan. Any such hearings shall be held in reasonable proximity to the area affected by the plan. Notice of hearings shall be published as provided in section 46-743. All interested persons may appear at any hearings and present testimony or provide other evidence relevant to the issues under consideration. Within sixty days after the final hearing, the department and affected natural resources districts shall jointly determine whether to adopt the plan.

(f) The department and the affected natural resources districts may utilize, when necessary, the Interrelated Water Review Board process provided in section 46-719 for disputes arising from developing, implementing, and enforcing a basin-wide plan developed under this section.

Source: Laws 2014, LB1098, § 15.

46-756. Ground water augmentation project; public hearing; notice.

On and after April 17, 2014, a board shall not vote to enter into a ground water augmentation project without conducting a public hearing on the project, with notice of the hearing given as provided in section 46-743.

Source: Laws 2014, LB1098, § 16.

46-801. Natural lakes; drainage; diversion; application.

No person shall drain, lower, or in any manner reduce or divert the water supply of any natural or perennial lake, if the area exceeds twenty acres at low water stage or if the lake is of such depth and character as to have more economic importance for aquaculture, hunting, or other purpose than the bed of such lake would have for agricultural purposes. Any person intending to drain, lower, divert, or in any way reduce the waters or water supply of any natural or perennial lake shall, before commencing the construction of any such work for drainage or diversion, make application to the Department of Natural Resources for a permit to do so.

Source: Laws 1919, c. 190, tit. VII, art. V, § 1, p. 857; C.S.1922, § 8480; C.S.1929, § 81-6401; R.S.1943, § 81-702; Laws 1957, c. 365, § 14, p. 1239; Laws 1994, LB 1165, § 21; Laws 2000, LB 900, § 225.

Annotations

Drainage of natural lake may be enjoined. Lackaff v. Bogue, 158 Neb. 174, 62 N.W.2d 889 (1954).

Drainage of natural lakes covering an area in excess of twenty acres is governed by this section. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

Whether water constitutes natural or perennial lake, requiring permit under this section before attempting to drain same, is question of fact to be determined from evidence. Beem v. Davis, 111 Neb. 96, 195 N.W. 948 (1923).

46-802. Application; recording; investigation.

On the receipt of such application in the form prescribed by the Department of Natural Resources, the department shall cause the same to be recorded in its office. The department shall make a careful examination to ascertain whether it sets forth all the facts necessary to enable the department to determine the nature and extent of the proposed work of drainage and diversion. If such an examination shows the application to be in any way defective, it shall return the same to the applicant for correction.

Source: Laws 1919, c. 190, tit. VII, art. V, § 2, p. 858; C.S.1922, § 8481; C.S.1929, § 81-6402; R.S.1943, § 81-703; Laws 1957, c. 365, § 15, p. 1239; Laws 2000, LB 900, § 226.

46-803. Application; approval; when authorized.

If the proposed work of drainage or diversion will not result in injury or damage to any person and will not be otherwise detrimental to the public welfare but will result in economic benefit to the state, the Department of Natural Resources shall approve the same by endorsement thereon. It shall make a record of such endorsement thereon in some proper manner in its office. It shall also return the same so endorsed to the applicant. Such applicant shall, upon receipt thereof, be authorized to proceed with the work and to take such measures as may be necessary to its completion.

Source: Laws 1919, c. 190, tit. VII, art. V, § 3, p. 858; C.S.1922, § 8482; C.S.1929, § 81-6403; R.S.1943, § 81-704; Laws 1957, c. 365, § 16, p. 1240; Laws 2000, LB 900, § 227.

46-804. Application; rejection; when authorized.

If it appears to the Department of Natural Resources that the proposed works of drainage or diversion will result in injury or damage to any person or will be detrimental to the public welfare and not result in economic benefit to the state, the department shall refuse to approve the application. The party making such application shall not prosecute such work so long as such refusal shall continue in force.

Source: Laws 1919, c. 190, tit. VII, art. V, § 4, p. 858; C.S.1922, § 8483; C.S.1929, § 81-6404; R.S.1943, § 81-705; Laws 1957, c. 365, § 17, p. 1240; Laws 2000, LB 900, § 228.

Annotations

Permit to drain natural lake should not be granted where it will result in damage to another person. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

46-805. Appeal; procedure.

An applicant, feeling himself or herself aggrieved by the endorsement made upon his or her application, may take an appeal therefrom to the district court of the county in which the proposed works may be situated. Such appeal shall otherwise be governed by the Administrative Procedure Act.

Source: Laws 1919, c. 190, tit. VII, art. V, § 5, p. 858; C.S.1922, § 8484; C.S.1929, § 81-6405; R.S.1943, § 81-706; Laws 1957, c. 365, § 18, p. 1240; Laws 1988, LB 352, § 81.

Cross References

Administrative Procedure Act, see section 84-920.

Annotations

On appeal to the district court, trial is de novo. Lackaff v. Department of Roads & Irrigation, 153 Neb. 217, 43 N.W.2d 576 (1950).

46-806. Sections; when inapplicable.

In the event that the ownership of all the land used for drainage construction and of all the land forming the shoreline and the bed of said lake or lakes is vested

in the person performing said work of drainage or diversion, the provisions of sections 46-801 to 46-807 do not apply.

Source: Laws 1919, c. 190, tit. VII, art. V, § 6, p. 859; C.S.1922, § 8485; C.S.1929, § 81-6406; R.S.1943, § 81-707.

46-807. Violations; penalty.

Any person violating the provisions of sections 46-801 to 46-807 shall be guilty of a Class II misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, § 7, p. 859; C.S.1922, § 8486; C.S.1929, § 81-6407; R.S.1943, § 81-708; Laws 1977, LB 40, § 268.

46-901. Repealed. Laws 1987, LB 567, § 1.

46-1001. Terms, defined.

As used in sections 46-1001 to 46-1020, unless the context otherwise requires:

(1) District means a rural water district organized pursuant to sections 46-1001 to 46-1020;

(2) Board means the governing body of a district;

(3) The terms county board and county clerk mean, respectively, the county board and county clerk of the county in which the greatest portion of the territory of any existing or proposed rural water district is located;

(4) Participating member means an individual, firm, partnership, limited liability company, association, or corporation which owns land located within a district and which has subscribed to one or more benefit units of such district; and

(5) Director means the Director of Natural Resources.

Source: Laws 1967, c. 279, § 1, p. 747; Laws 1993, LB 121, § 280; Laws 2000, LB 900, § 229.

46-1001.01. Rural water districts organized prior to June 30, 1972; effect.

After June 30, 1972, no new rural water districts shall be organized under the provisions of sections 46-1001 to 46-1020. Attempted formations of rural water districts under sections 46-1001 to 46-1020 which have not been completed before July 1, 1972, shall be null, void and of no effect for the purpose of organizing such

district. All rural water districts having valid corporate existence before July 1, 1972, shall enjoy all rights, duties, powers and authorities conferred by sections 46-1001 to 46-1020 and shall not be affected by this section, nor shall the legality of formation, organization, or operation of any such district be subject to any legal action based on this section.

Source: Laws 1969, c. 9, § 64, p. 135; Laws 1971, LB 544, § 10.

46-1002. Rural water districts; petition.

The county board of each county in this state shall, upon a proper petition being presented, incorporate and organize rural water districts in the manner provided by sections 46-1001 to 46-1020. No such district shall be incorporated when its boundaries lie within five miles of any incorporated city of the metropolitan, primary, or first class, within two miles of any incorporated city of the second class, or within one mile of any incorporated village until approval has been given by the governing body of the city or village.

Source: Laws 1967, c. 279, § 2, p. 748; Laws 1972, LB 1239, § 1.

46-1003. District; petition; contents.

A petition addressed to the county board praying for the incorporation of a district, signed by or on behalf of at least fifty percent of the owners of the land within the proposed district may be filed with the county clerk. The petition shall define the boundaries of the proposed district and shall state (1) that the lands within such boundaries are without an adequate water supply; (2) that the construction and maintenance of ponds or reservoirs or pipelines or wells or check dams or pumping installations, or any other facility for water storage, transportation or utilization, or that the construction and maintenance of any combination of such projects is necessary for the improvement of the area; and (3) that such improvement or works will be conducive to and will promote the public health, convenience and welfare.

Source: Laws 1967, c. 279, § 3, p. 748.

Annotations

The Rural Water District Act does not require the district to obtain a permit to dig wells for the purpose of supplying water to its patrons in need thereof; rather, the act specifically authorizes the transportation of water into another district for that purpose. McDowell v. Rural Water District No. 2, 204 Neb. 401, 282 N.W.2d 594 (1979).

46-1004. District; petition; county clerk; notice; contents.

Whenever a petition as provided in section 46-1003 is filed with the county clerk, the county clerk shall thereupon give notice to the county board of the filing and pendency of such petition and the county board shall forthwith fix a time and place within thirty days after the date of filing of the petition for a hearing of the same, and the county clerk shall, at least seven days before the date fixed for such hearing, give or send by registered or certified mail written notice thereof to each of the petitioners and shall transmit to the director one copy of the petition and notice of the time and place the same is set for consideration. The county clerk shall also, at least seven days before the date fixed for such hearing, cause to be published in a newspaper of general circulation in the county a notice of the hearing. The published notice shall (1) define the boundaries of the proposed district; (2) state the time and place of hearing; (3) state that all owners of land within such boundaries may appear and be heard; and (4) state that a rural water district, if incorporated, shall have no power or authority to levy any taxes whatsoever.

Source: Laws 1967, c. 279, § 4, p. 748; Laws 2000, LB 900, § 230.

46-1005. District; hearing; order.

At the time and place set for the hearing and consideration of the petition, it shall be the duty of the county board to ascertain (1) whether proper notice of the hearing has been given to the signers of the petition, the director, and the landowners in the district as required by section 46-1004; (2) whether lands within the area defined in the petition are without an adequate water supply; (3) whether the construction and maintenance of ponds, reservoirs, pipelines, wells, check dams, pumping installations, or any other facility for the storage, transportation, or utilization of water or the construction and maintenance of any combination of such proposed projects are necessary for the improvement of the area. The county board shall make no affirmative finding that any proposed project is necessary if the construction and maintenance of such project would encourage the cultivation of lands which are submarginal and which should be devoted to other uses in the public interest. The county board shall make no affirmative finding that any proposed project is necessary unless the director has approved such project; (4) whether such improvement or works will be conducive to and will tend to promote the public health, convenience, and welfare; and (5) whether the boundaries of the proposed district lie within five miles of any incorporated city or village and whether approval for incorporation of the district has been given by the governing body of such city or village. If upon such consideration it is found that such petition is in conformity with the requirements of sections 46-1001 to 46-1020, the county board shall thereupon immediately declare the district within the boundaries

defined in the petition to constitute a public corporation and to be incorporated as a rural water district under the name of Rural Water District No. ....., ... County, Nebraska (inserting number in order of incorporation and name of county) and thereupon shall enter upon its records full minutes of such hearing, together with a declaration that thenceforth such district shall constitute a body politic and corporate under such corporate name for the purposes of sections 46-1001 to 46-1020.

Source: Laws 1967, c. 279, § 5, p. 749; Laws 2000, LB 900, § 231.

46-1006. Board of directors; selection; bylaws; adopt.

Immediately following the granting of incorporation by the county board, the owners of land within any such district shall select from their number a board of directors. The number of members on such board, not to exceed nine, shall be determined by majority vote of those owners of land present; *Provided,* any original director who shall fail to subscribe to one or more benefit units and pay the established unit fee for each unit to which he subscribes within thirty days after entry in the minutes of the board of a declaration of availability of such benefit units for subscription, shall forfeit his office. Within thirty days after the election of the original board, proposed bylaws shall be submitted for adoption at a special meeting of owners of land located within the district, written notice of which shall be mailed to each such landowner. Those owners of land located within the district present at such special meeting may adopt and amend any of such proposed bylaws and may propose and adopt additional or other bylaws. Such bylaws may be amended at any annual or special meeting of the participating members of the district.

Source: Laws 1967, c. 279, § 6, p. 750.

46-1007. Board; meetings; rules and regulations; adopt; vacancies.

The board shall be the governing body of the district and shall meet annually on the same day the annual meeting of participating members of the district is held pursuant to section 46-1016, and such annual meeting of the board of directors shall follow the annual meeting of participating members, and at such other times as may be determined by the board or upon call by the chairman or any two members of the board. Vacancies on the board shall be filled for the unexpired term, and until a successor is elected and has qualified, by appointment by the remaining members of the board. The board shall adopt such rules and regulations in conformity with the provisions of sections 46-1001 to 46-1020 and the bylaws of the district as are deemed necessary for the conduct of the business of the district. It shall be the duty of the secretary to cause an entry to be made upon its

records showing all of its minutes, decisions and orders made pursuant to the provisions of sections 46-1001 to 46-1020.

Source: Laws 1967, c. 279, § 7, p. 750.

46-1008. District; powers.

Every district incorporated under sections 46-1001 to 46-1020 shall:

(1) Have perpetual succession, subject to dissolution as provided by such sections;

(2) In all cases be presumed to have been legally organized when it shall have exercised the franchises and privileges of a district for the term of one year;

(3) Have the power of eminent domain to acquire land or interests in land within the district for the uses and purposes provided in this section;

(4) Be empowered to sue and be sued;

(5) Be capable of contracting and being contracted with;

(6) Be authorized and empowered to hold such real and personal property as may come into its possession by will, gift, purchase, or otherwise, as authorized by law;

(7) Have power to construct, install, maintain, and operate such ponds, reservoirs, pipelines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water and such appurtenant structures and equipment as may be necessary to carry out the purposes of its organization;

(8) Have power to transfer water within the district pursuant to sections 46-2,127 to 46-2,129;

(9) Have power to cooperate with and enter into such agreements as deemed necessary with the Secretary of the United States Department of Agriculture or his or her duly authorized representative and shall have power to accept such financial or other aid which the Secretary of the United States Department of Agriculture is empowered to give pursuant to 7 U.S.C. 1921 et seq., or amendments thereto; and

(10) Have power to borrow money for the financing of the cost of the construction or purchase of any project or projects necessary to carry out the purposes for which such district was organized and to execute notes and mortgages in evidence thereof with interest, or combined interest and mortgage insurance

charges. Any district shall have the same power to borrow money for the refinancing of any such project or projects. Any such loan may be secured by any or all of the physical assets owned by the district, including easements and rights-of-way, except that no district organized under sections 46-1001 to 46-1020 shall have any power or authority to levy any taxes whatsoever.

Source: Laws 1967, c. 279, § 8, p. 751; Laws 1971, LB 514, § 1; Laws 1972, LB 1042, § 1; Laws 1975, LB 492, § 1; Laws 1995, LB 99, § 20.

46-1009. Board; contracts; enter into.

In carrying out the provisions of sections 46-1001 to 46-1020, the board of directors of any such rural water district is authorized to enter into contracts with agencies of the State of Nebraska or of the United States, or municipalities, for the obtaining of water service for use by the district or for furnishing the same for domestic or other uses.

Source: Laws 1967, c. 279, § 9, p. 752.

46-1010. Board; employees.

The board of any such district in this state acting in its capacity as the governing body may employ such common and skilled labor, and professional and other services, as may be necessary to the proper performance of such work or improvement as is proposed to be done within any such district, and the maintenance thereof.

Source: Laws 1967, c. 279, § 10, p. 752.

46-1011. Plans and specifications; filing; approval; benefit units; water sale.

Plans and specifications for any proposed improvement authorized by sections 46-1001 to 46-1020 shall be filed with the director, the Department of Health and Human Services, and the secretary of the district. No construction of any such improvement shall begin until the plans and specifications for such improvement have been approved by the director and the Department of Health and Human Services, except that if the improvement involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review the plans and specifications for such improvement and approve the same if in compliance with Chapter 71, article 53, and departmental regulations adopted thereunder.

The total benefits of any such improvement shall be divided into a suitable number of benefit units. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he or she desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners of land located within the district who are not participating members may subscribe to such units as the board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members. If the capacity of the district's facilities permits, the district may sell water to persons engaged in hauling water and to any political subdivision organized under the laws of the State of Nebraska.

Source: Laws 1967, c. 279, § 11, p. 752; Laws 1979, LB 546, § 2; Laws 1996, LB 1044, § 262; Laws 2000, LB 900, § 232; Laws 2001, LB 667, § 10; Laws 2007, LB296, § 205.

46-1012. Owners of land outside of district; petition; contents.

Owners of land outside any district which can economically be served by the facilities of the district may petition to become attached to such district. Such petition for attachment shall be supported by signatures of landowners in the same manner as prescribed in section 46-1003. Such petition shall be filed with the county clerk addressed to the county board and shall define the boundaries of lands owned by the petitioners desired to be attached, and shall state (1) the name of the district to which attachment is desired; (2) that such lands are without an adequate water supply; and (3) that attachment to such district will be conducive to and will promote the public health, convenience and welfare.

Source: Laws 1967, c. 279, § 12, p. 753; Laws 1972, LB 1502, § 1.

46-1013. Owners outside of district; petition; notice; hearing.

Notice of the filing of a petition for attachment fixing the time and place of hearing and giving notice thereof shall be in the same manner as prescribed in section 46-1004, and in addition thereto the county clerk shall send by registered or certified mail, to each director of the board of the district named in the petition, a copy of such petition and notice of the time and place the same shall be considered.

Source: Laws 1967, c. 279, § 13, p. 753.

46-1014. Owners outside of district; hearing; boundaries; conditions.

At the time and place set for the hearing and consideration of the petition, the county board shall ascertain (1) whether proper notice has been given as required by section 46-1013 and (2) whether the statements contained in the petition are true. If true and if a majority of the members of the board of the district to which attachment is desired do not object to such statement, the county board shall enter into its minutes such findings and shall set forth in such minutes a description of the new boundaries of such district. Thereafter owners of land located within the attached territory shall be entitled to subscribe to such benefit units upon such terms and conditions as the board in its discretion may provide. Any owner of land located within any territory attached to a district as provided by sections 46-1001 to 46-1020, who shall subscribe to one or more benefit units and comply with terms and conditions provided by the board, shall be entitled to the same rights as participating members are entitled to.

Source: Laws 1967, c. 279, § 14, p. 753.

46-1015. Board; bonds; purpose; interest; rate; payment; participating members; conditions.

The board of directors of any water district shall have power to cause to be constructed within such district such works as are authorized by sections 46-1001 to 46-1020 and to issue revenue bonds therefor which shall be exempt from taxation. Such bonds shall be self-liquidating out of the revenue to be derived by the district for its services and facilities, shall be issued to mature in such installments as shall be determined by the board of directors of the district, and shall bear interest payable monthly, annually, or semiannually. Such revenue bonds may also be issued to refund outstanding revenue bonds or notes or other evidences of indebtedness issued to pay costs of improvements for which bonds could be issued. Upon determining a schedule of benefit units and unit fees, the board shall cause a declaration of availability of such units for subscription to be entered in its minutes and any individual who fails to become a participating member within thirty days thereafter shall not be eligible to hold office as a director, nor shall any individual, firm, partnership, limited liability company, association, or corporation which fails to become a participating member within ninety days after such declaration be qualified to participate at any meeting or vote at any election held thereafter unless such individual, firm, partnership, limited liability company, association, or corporation shall thereafter become a participating member.

Source: Laws 1967, c. 279, § 15, p. 754; Laws 1969, c. 51, § 118, p. 346; Laws 1975, LB 492, § 2; Laws 1993, LB 121, § 281.

46-1016. Board; members; term; election.

The term of office of every member elected to an original board shall be until the date of the annual meeting of the participating members of either the first, second or third year following the year of the incorporation of the district and until their successors are elected and have qualified, and as nearly as possible the terms of an equal number of directors on any such board shall expire on each of such dates. At the annual meeting of each year after the year of the election of the original board members, elections shall be held to elect directors to fill any position on the board, the term of office of which has expired, and any director so elected shall hold office for a term of three years and until his successor is elected and qualified. For the purpose of election of board members and for such other purposes as the bylaws may prescribe, annual meetings of participating members shall be held by each district between January 1 and March 1 of each year following the year of incorporation of such district. The board of directors shall cause notice of the time and place of each annual meeting and the purpose thereof to be mailed to each of its participating members or shall cause such notice to be published in a newspaper of general circulation within the district. Every such notice shall be mailed or published not less than ten nor more than thirty days prior to any such meeting. Each participating member shall be entitled to a single vote, regardless of the number of benefit units to which he has subscribed.

Source: Laws 1967, c. 279, § 16, p. 754.

46-1017. Board; officers; election.

The board of directors shall annually elect a chairman, vice-chairman, secretary and treasurer for a term of one year and until a successor is elected and qualified.

Source: Laws 1967, c. 279, § 17, p. 755.

46-1018. Board; powers and duties; compensation; budget; audit; reports.

It shall be the duty of the chairperson of the board of directors to keep in repair such works as are constructed by the district as authorized in sections 46-1001 to 46-1020 and to operate such works, all as directed by the board. Such works shall be operated in conformance with the rules and regulations of the Department of Health and Human Services relating to water supply systems. The chairperson and all persons who may perform any service or labor as provided in sections 46-1001 to 46-1020 shall be paid such just and reasonable compensation as may be allowed by the board of directors, and such board shall annually prepare an estimated budget for the coming year, adjust water rates, if necessary to produce sufficient revenue required by such budget, cause an annual audit of the district's records and accounts to be made, and make a report on such matters at each annual meeting.

Source: Laws 1967, c. 279, § 18, p. 755; Laws 1996, LB 1044, § 263; Laws 2007, LB296, § 206.

46-1019. District; dissolution; procedure.

Whenever a petition signed by three-fourths of the landowners in any district organized under the provisions of sections 46-1001 to 46-1020 is presented to the county board and it shall appear from such petition that such district owns no property of any kind, exclusive of records, maps, plans and files; that all of its debts and obligations have been fully paid; that the board of directors has not held a meeting for more than one year prior to the date of signing such petition; that the district is not functioning, and will probably continue to be inoperative, the county board shall, after such finding, issue a certificate stating the allegations in such petition as true and declaring such district dissolved, and shall make full minutes of such hearing in its records and deliver such certificate to the secretary of such district. The secretary of such district shall, within thirty days thereafter, deliver all records, maps, plans and files to the county clerk, and thereupon such district shall be dissolved.

Source: Laws 1967, c. 279, § 19, p. 756.

46-1020. District; withdrawal of lands; petition; hearing; county board; findings.

If it becomes apparent that certain lands included within a district cannot be economically or adequately served by the facilities of the district, the owners of such lands may petition the county board to release those lands from the district. The petition shall describe by section or fraction thereof and by township and range the lands affected and be signed by all owners desiring release and be endorsed by the board of directors of the district. After a finding that the granting of the petition is to the best interests of the affected landowners and the district, the county board shall issue a certificate stating that the lands involved are released and separated from the district. Full minutes of the hearing shall be entered in the records of the county board and the certificate shall be delivered to the secretary of the district who shall within thirty days cause the records of the district to be amended to exclude the lands affected.

Source: Laws 1967, c. 279, § 20, p. 756.

46-1021. Consolidation of districts; county board; order.

Two or more districts incorporated in the manner provided by sections 46-1001 to 46-1020 prior to July 1, 1972, may be consolidated by order of the county board

of the county in which the district with the largest acreage of land was originally incorporated and organized.

Source: Laws 1972, LB 1502, § 2.

46-1022. Consolidation of districts; members; approval; majority vote; petition; contents.

The participating members of each district to be consolidated shall first authorize such consolidation by majority vote of such members present at a meeting held upon not less than ten days' written notice to such members stating the purpose of such meeting. A petition addressed to the county board, executed by the chairman and secretary of each district seeking consolidation, shall (1) set forth the names of the districts seeking consolidation; (2) be accompanied by a map showing the boundaries of such districts; (3) state that the consolidation has been approved by a majority vote of the participating members of each district at a meeting held upon notice as required in this section; (4) state that the holders of bonds and other instruments of indebtedness of each of such districts have consented to the proposed consolidation and have agreed in writing to the assumption of such indebtedness by the proposed consolidated district; and (5) state that the consolidated district will provide adequate water service within the area of the consolidated district.

Source: Laws 1972, LB 1502, § 3.

46-1023. Consolidation of districts; petition; filing; notice; contents; hearing.

Whenever a petition as provided in section 46-1022 is filed with the county clerk, the county clerk shall thereupon give notice to the county board of the filing and pendency of such petition and the county board shall forthwith fix a time and place within thirty days after the date of filing of the petition for a hearing of the same, and the county clerk shall, at least seven days before the date fixed for such hearing, give or send by registered or certified mail written notice thereof to the chairperson of each district seeking consolidation and shall transmit to the director one copy of the petition and notice of the time and place the same is set for hearing. The county clerk shall also, at least seven days before the date fixed for such hearing, cause a notice of the hearing to be published in a newspaper of general circulation in the county. The published notice shall (1) identify by name the districts seeking consolidation; (2) state the time and place of the hearing; (3) state that all interested persons may appear and be heard; and (4) state that a consolidated water district shall have no power or authority to levy any taxes whatsoever.

Source: Laws 1972, LB 1502, § 4; Laws 2000, LB 900, § 233.

46-1024. Consolidation of districts; hearing; county board; order.

If, at the time and place set for the hearing, the county board shall find and determine that (1) notice of the hearing has been given as required by section 46-1023; (2) the proposed consolidation has been approved by a majority vote of the participating members of each district seeking consolidation as provided by section 46-1022; and (3) that the statements contained in the petition for consolidation are true, the county board shall thereupon enter an order declaring the area within the boundaries of the rural water districts seeking consolidation to be incorporated as a consolidated rural water district under the name of Consolidated Rural Water District No. ...., ... County, Nebraska (inserting number in order of consolidation and name of county), and such consolidated district shall thereupon assume all of the obligations and liabilities and shall be entitled to the benefits, franchises and privileges of each of the districts consolidated by such order, and shall have all of the powers of rural water districts.

Source: Laws 1972, LB 1502, § 5.

46-1025. Consolidated district; board; members; officers; election.

Immediately following the entry of the order of consolidation by the county board, the members of the boards of districts of the former rural water districts which were consolidated by such order shall meet and elect from among themselves a chairman, vice-chairman, secretary and treasurer. The offices of secretary and treasurer may be held by one person. No more than two of such offices may be held by persons from one of such former rural water districts. The members of such boards shall adopt the bylaws of one of such former districts with such changes and modifications as the directors shall deem necessary. The members of such boards of directors shall continue to serve as members of the board of directors of the consolidated district until the next annual meeting of the consolidated district as fixed by the bylaws, at which time a board of directors, not to exceed nine in number, shall be elected for staggered terms of one, two, and three years in the manner prescribed for the election of an original board under section 46-1016.

Source: Laws 1972, LB 1502, § 6.

46-1026. Consolidated district; participating members.

Participating members of each district forming a consolidated district shall be deemed to be participating members of the consolidated district.

Source: Laws 1972, LB 1502, § 7.

46-1101. Act, how cited.

Sections 46-1101 to 46-1148 shall be known and may be cited as the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 1; Laws 1988, LB 1046, § 1; Laws 2014, LB272, § 1.

46-1102. Legislative findings.

The Legislature finds that the use of chemigation throughout the state is increasing and that, although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water.

The Legislature also finds that complete information as to the occurrences and use of chemigation in this state is essential to the development of a sound state water management policy.

For these reasons, the Legislature deems it necessary to provide the natural resources districts and the Department of Environmental Quality with the authority to document, monitor, regulate, and enforce chemigation practices in Nebraska.

Source: Laws 1986, LB 284, § 2; Laws 1993, LB 3, § 28.

46-1103. Definitions, sections found.

For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 46-1104 to 46-1116.01 shall apply.

Source: Laws 1986, LB 284, § 3; Laws 2014, LB272, § 2.

46-1104. Applicator, defined.

Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment

used for chemigation whether for himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.

Source: Laws 1986, LB 284, § 4.

46-1105. Chemical, defined.

Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.

Source: Laws 1986, LB 284, § 5.

46-1106. Chemigation, defined.

Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an onfarm irrigation distribution system.

Source: Laws 1986, LB 284, § 6.

46-1107. Council, defined.

Council shall mean the Environmental Quality Council.

Source: Laws 1986, LB 284, § 7; Laws 1993, LB 3, § 29.

46-1108. Department, defined.

Department shall mean the Department of Environmental Quality.

Source: Laws 1986, LB 284, § 8; Laws 1993, LB 3, § 30.

46-1109. Director, defined.

Director shall mean the Director of Environmental Quality.

Source: Laws 1986, LB 284, § 9; Laws 1993, LB 3, § 31.

46-1110. District, defined.

District shall mean a natural resources district created pursuant to Chapter 2, article 32.

Source: Laws 1986, LB 284, § 10.

46-1111. Fertilizer, defined.

Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

Source: Laws 1986, LB 284, § 11.

46-1112. Injection location, defined.

Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.

Source: Laws 1986, LB 284, § 12.

46-1113. Irrigation distribution system, defined.

Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

Source: Laws 1986, LB 284, § 13.

46-1114. Open discharge system, defined.

Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

Source: Laws 1986, LB 284, § 14.

46-1115. Permitholder, defined.

Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

Source: Laws 1986, LB 284, § 15.

46-1116. Pesticide, defined.

Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Source: Laws 1986, LB 284, § 16.

46-1116.01. Working day, defined.

Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

Source: Laws 2014, LB272, § 3.

46-1117. Permit required; exception; application.

No person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. Any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department or by the district. Upon request, forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in section 46-1119, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each

approved application or the information contained in the application shall be maintained by the district and provided to the department upon request. This section shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

Source: Laws 1986, LB 284, § 17; Laws 2011, LB2, § 4; Laws 2011, LB28, § 1.

46-1117.01. Special permit; issuance.

Permits for those systems determined through inspection by the district as not needing all of the safety equipment prescribed by the Nebraska Chemigation Act shall be forwarded immediately to the department for review. If the department determines that certain elements of the safety equipment otherwise prescribed by the act are not necessary, it shall so inform the district. The district shall then issue a special permit as approved by the department. Issuance of such special permits shall not relieve the permitholder or applicator from compliance with all other responsibilities under the act.

Source: Laws 1988, LB 1046, § 2.

46-1118. Repealed. Laws 2011, LB 2, § 8.

46-1119. Emergency permit; application; fee; violation; penalty.

(1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within two working days after the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129. If the district has not denied an emergency permit within two working days, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee as established in section 46-1121 not to exceed five hundred dollars payable to the district. For each permit, ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 46-1120.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

Source: Laws 1986, LB 284, § 19; Laws 2014, LB272, § 4.

46-1120. Application; contents.

Each application to engage in chemigation shall contain (1) the name and post office address of the applicant, (2) the location by legal description of the land where chemigation is to be used, and (3) such other information as the department, after consultation with the district, may deem necessary.

Source: Laws 1986, LB 284, § 20.

46-1121. Fees; Chemigation Costs Fund; created; investment; annual permits; renewal.

(1) To aid in defraying the cost of administration of the Nebraska Chemigation Act, the district shall collect an initial application fee for a permit, a special permit fee, an annual renewal fee, and an emergency permit fee. The fees shall be established by the district and shall be sufficient to cover the ongoing administrative costs and the costs of annual inspection programs by the district and department. The fees collected pursuant to this section shall be established by the district in the amount necessary to pay reasonable costs of administering the permit program pursuant to the act. The fee for a permit and special permit shall not exceed one hundred fifty dollars. The fee for a renewal permit shall not exceed one hundred dollars. The fee for an emergency permit under section 46-1119 shall not exceed five hundred dollars. The district shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the district by a person or persons applying for a permit to operate a chemigation system.

(2) The fee for initial application for a permit or special permit shall be payable to the district. For each permit, five dollars shall be paid by the district to the department.

(3) The annual fee for renewal of a permit or special permit shall be payable to the district. For each permit, two dollars of the annual fee shall be paid by the district to the department.

(4) All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Chemigation Costs 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.

(5) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Source: Laws 1986, LB 284, § 21; Laws 1987, LB 146, § 5; Laws 1988, LB 1046, § 3; Laws 1995, LB 7, § 43; Laws 2009, First Spec. Sess., LB3, § 21; Laws 2014, LB272, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-1122. Replacement or alteration of chemigation equipment; notice; inspection.

Any permitholder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the district shall notify the district within seventy-two hours of such replacement or alteration. The district shall conduct an inspection of the replaced or altered equipment and shall approve the continuance of chemigation if the replaced or altered equipment remains in compliance with the requirements of section 46-1127. No additional permit fee shall be collected by the district for inspecting a previously approved injection location.

Source: Laws 1986, LB 284, § 22.

46-1123. Districts; annual reports; contents.

Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

Source: Laws 1986, LB 284, § 23; Laws 2011, LB28, § 2.

46-1124. District; conduct inspections; inspection warrant.

(1) Each district shall conduct areawide, selective, and periodic inspections to insure compliance with the Nebraska Chemigation Act and rules and regulations adopted and promulgated under the act. A permitholder or any person believed by the district to be chemigating without a required permit shall be notified by the district of the district's right and intent to inspect the premises concerned. Authorized representatives of the district and the department shall have access at all reasonable times to inspect a chemigation system and to otherwise carry out their duties under the act. Prior to inspection such authorized representatives shall make reasonable efforts to obtain consent to inspect from the permitholder, his or her authorized employee, the applicator, or the owner or operator of the system. If consent for inspection is denied, such authorized representatives may apply to the district or county court of the county in which the chemigation system is located for an inspection warrant to require the permitholder or person believed to be chemigating without a required permit to allow the authorized representatives to enter onto his or her land to carry out their duties under the act or the rules and regulations.

(2) No person shall refuse entry or access to any authorized representative of the district or department who requests entry for purposes of inspection and who presents appropriate credentials and an inspection warrant, and no person shall obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant. If requested, the permitholder, applicator, or person chemigating without a required permit shall receive a report specifying all facts found which relate to compliance status.

(3) Entry upon any property pursuant to the act shall not be considered to be trespass, and no damage shall be recoverable on that account alone. Damage to crops caused by the issuance of any order authorized by the act shall not be recoverable on that account alone.

Source: Laws 1986, LB 284, § 24; Laws 1989, LB 619, § 1.

46-1125. Permit denial, suspension, revocation; grounds.

The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 on any of the following grounds:

(1) Practice of fraud or deceit in obtaining a permit; or

(2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 284, § 25; Laws 2011, LB2, § 5.

46-1126. Permit denial, suspension, or revocation; procedures; suspend operation; when.

(1) Before a district denies, refuses to renew, suspends, or revokes a permit, it shall send to the applicant or permitholder a notice setting forth the specific reasons for the proposed action. The denial, refusal to renew, suspension, or revocation shall become final ten calendar days after mailing of the notice unless such person, within such ten-day period, gives the district written notice of a request for a hearing. If such request is made, the applicant or permitholder shall be given an opportunity for a hearing before the board of directors of the district and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the proposed action shall be affirmed or set aside. A copy of such decision setting forth the findings of fact and the specific reasons upon which it is based shall be sent to the applicant or permitholder.

(2) If the district or department concludes that there is or may be an actual or imminent threat of danger to persons or the environment by the operation of a chemigation system, the district or department shall immediately order suspension of the operation of the system. Any aggrieved person may, within ten days of receipt of an order of suspension pursuant to this section, request a hearing on such order. The hearing shall be held within ten days of receipt of the request. The district or department shall give written notice of the hearing by certified or registered mail or by personal service to the permitholder, applicator, or person responsible for the operation of the chemigation system. The district or department shall issue an order addressing the matters raised at the hearing within ten days after the hearing.

If the district or department concludes that the suspension should be continued, the district or department may, if necessary, apply for a restraining order or a temporary or permanent injunction against the permitholder, applicator, or person responsible for the operation of the chemigation system pursuant to the procedure prescribed by section 46-1138.

Source: Laws 1986, LB 284, § 26; Laws 1989, LB 619, § 2.

46-1127. Irrigation distribution system; improper operation; penalty; equipment; rules and regulations.

(1) Any person who places any chemical in an irrigation distribution system or permits any chemical to be in an irrigation distribution system without having a properly operating (a) check and vacuum relief valve in the irrigation pipe, (b) inspection port or other device to check the performance of the check valve on the irrigation pipeline, (c) automatic low-pressure drain placed between the main check valve and the irrigation pump so that a solution will drain away from the source of water supply, (d) check valve in the chemical injection line, and (e) simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the water supply from contamination in the event such pumping plant ceases to operate or such other properly operating additional or replacement equipment as may be specified by the council pursuant to subsection (3) of this section shall be guilty of a Class IV misdemeanor.

(2) On or before October 1, 1986, the council shall adopt and promulgate rules and regulations specifying the standards for the equipment required pursuant to this section as are necessary to prevent the contamination of the water supply. The standards specified in such rules and regulations shall not be such as to impose an unduly severe or costly burden on any person without substantially contributing to the prevention of water contamination.

(3) The council may adopt and promulgate rules and regulations specifying equipment other than that required in subsection (1) of this section if changes in design, technology, or irrigation practices or other similar reasons warrant the use of equipment in addition to or in lieu of that enumerated in this section. Any equipment specified pursuant to this subsection shall provide protection to the water supply at least equal to that provided by the equipment required in subsection (1) of this section. The districts shall be given forty-five days to review and comment on rules and regulations proposed by the council prior to the hearing by the council.

Source: Laws 1972, LB 1343, § 1; Laws 1977, LB 40, § 267; Laws 1977, LB 421, § 1; Laws 1979, LB 4, § 1; R.S.1943, (1984), § 46-612.01; Laws 1986, LB 284, § 27.

46-1128. Applicators of chemicals; training sessions; certificate; expiration.

In order to insure that applicators of chemicals have sufficient scientific and practical knowledge in the use of chemigation, the director shall conduct training sessions directed toward thorough comprehension and knowledge of the safe use of chemigation or contract with the Cooperative Extension Service of the University of Nebraska to conduct such training sessions through its county extension agents and specialists in the state. If the department contracts for the training sessions, the Cooperative Extension Service shall be reimbursed for conducting the training

sessions. The director shall issue a certificate acknowledging the satisfactory demonstration of competency to be determined by the director through the use of a written examination prepared and administered by the department. Each applicator's certificate, including such certificates issued prior to July 9, 1988, shall expire on January 1 of the fourth year after the date of issuance and shall be renewed upon the satisfactory completion of training and testing.

Source: Laws 1986, LB 284, § 28; Laws 1988, LB 1046, § 4.

46-1129. Training sessions; council; prescribe forms; adopt rules and regulations.

The council shall prescribe the necessary forms and adopt and promulgate such rules and regulations as shall be necessary to carry out the provisions of section 46-1128 regarding the conducting of training sessions and the issuing of certificates.

Source: Laws 1986, LB 284, § 29.

46-1129.01. Applicator's certificate; revocation; grounds.

An applicator's certificate may be revoked by the department if the applicator:

(1) Operates a chemigation system that is known to be defective or not in compliance with permit requirements;

(2) Fails to report any actual or suspected accident resulting from the use of chemigation;

(3) Operates or authorizes operation of a chemigation system without the necessary permit; or

(4) Violates any of the provisions of the Nebraska Chemigation Act or standards, rules, and regulations adopted and promulgated pursuant to such act.

Source: Laws 1988, LB 1046, § 5.

46-1130. Posting of signs.

Signs shall be posted which provide notice that chemicals are applied in irrigation water in the field in areas being treated by means of chemigation with chemicals which appear on the restricted use list in the Federal Insecticide, Fungicide, and Rodenticide Act or chemicals for which labels require posting.

Source: Laws 1986, LB 284, § 30.

46-1131. Accident; report required; investigation; cleanup and recovery plan.

The applicator or the permitholder shall report an actual or suspected accident related to the use of chemigation in his or her system to the department and the appropriate district within twenty-four hours of its discovery. Any accident resulting from the use of chemigation shall be investigated by the appropriate district and the department. In the event that the district or the department finds an adverse effect caused by such an accident, the department shall (1) determine the immediate danger presented by the accident, (2) take all steps necessary to assure immediate public safety, and (3) develop a plan of cleanup and recovery. The cleanup and recovery plan shall be carried out by the permitholder under the supervision of the department or the district.

Source: Laws 1986, LB 284, § 31.

46-1132. Damage to premises; considered tort claim.

Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the district while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the Political Subdivisions Tort Claims Act. Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the department while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the State Tort Claims Act.

Source: Laws 1986, LB 284, § 32.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.
State Tort Claims Act, see section 81-8,235.

46-1133. Assistance to abate water contamination.

Each district or the department may provide technical and other assistance as may be necessary or desirable to abate the risk of water contamination in the state caused by chemigation.

Source: Laws 1986, LB 284, § 33.

46-1134. Department; powers and duties.

The department shall have the power and duty:

(1) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, industries, and groups in furtherance of the purposes of the Nebraska Chemigation Act; and

(2) To receive or initiate complaints of water contamination, hold hearings in connection with water contamination, and institute legal proceedings in the name of the state for the control or prevention of water contamination.

Source: Laws 1986, LB 284, § 34.

46-1135. District; adopt rules and regulations.

Each district may adopt and promulgate such rules and regulations as shall be necessary to carry out its responsibilities under the Nebraska Chemigation Act. The rules and regulations of a district shall be subject to approval by the director.

Source: Laws 1986, LB 284, § 35.

46-1136. Council; adopt rules and regulations.

The council shall adopt and promulgate rules and regulations providing for:

(1) Procedures and specifications for the installation, replacement, or repair of chemigation equipment;

(2) A system for the issuance of permits by the district to engage in chemigation;

(3) A procedure for a permitholder to follow when notifying the department and the appropriate district of any actual or suspected accident related to the use of chemigation;

(4) A procedure for the review and approval of a cleanup and recovery plan for an accident related to the use of chemigation;

(5) The posting of signs providing notice of the use of chemigation; and

(6) Any other chemigation practices necessary to carry out the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 36.

46-1137. Compliance with act; affirmative defense.

Compliance with the Nebraska Chemigation Act shall be an affirmative defense to any civil action resulting from a person's use of chemigation.

Source: Laws 1986, LB 284, § 37.

46-1138. Violation of act; procedures for compliance; prosecuting attorney; duties.

(1) Any person found by the district to be in violation of the Nebraska Chemigation Act or any rules and regulations issued pursuant to the act shall be notified by the district of such violation. Each person so notified by the district shall have ten days in which to comply. The district shall make every reasonable effort to obtain voluntary compliance. Voluntary compliance shall not preclude the district, department, Attorney General, or county attorney from pursuing penalties in the proper court of law based on violations of the act or the rules and regulations. If after such ten-day period the violation has not been corrected, the district shall notify the department of the violation. The department shall make a preliminary investigation. If after such investigation the department determines that there is a violation of the act or rules and regulations, the district or the department shall either revoke the person's chemigation permit until such time as there is satisfactory compliance or issue an order suspending operation of the chemigation system until the required permit is obtained.

(2) The district or department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against the person or persons violating or threatening to violate the Nebraska Chemigation Act or the rules and regulations adopted and promulgated under such act to the district court of the county where the violation is occurring or is about to occur. The court shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(3) If the violation of the Nebraska Chemigation Act occurs with respect to a permitted system, a schedule for compliance may be established by the district in lieu of the ten-day compliance requirement.

(4) It shall be the duty of the Attorney General or the county attorney of the county in which such violation occurs or is about to occur, when notified of such

violation or threatened violation, to cause appropriate proceedings under this section to be instituted and pursued without delay.

Source: Laws 1986, LB 284, § 38; Laws 1989, LB 619, § 3.

46-1139. Engaging in chemigation without a permit; penalty; recovery of costs.

Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 39; Laws 2015, LB207, § 1.

46-1140. Engaging in chemigation with a suspended or revoked permit; penalty; recovery of costs.

Any person who engages in chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 40; Laws 2015, LB207, § 2.

46-1141. Tampering with chemigation equipment; penalty; recovery of costs.

Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 46-1127 shall be (1)

subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 41; Laws 2015, LB207, § 3.

46-1142. Failure to notify of accident; penalty; recovery of costs.

Any permitholder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 42; Laws 2015, LB207, § 4.

46-1143. Other violations; penalty; recovery of costs.

Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of one thousand dollars for each day at each site where a violation occurs for the first violation and not less than one thousand dollars and not more than five thousand dollars for each day at each site where a violation occurs for each subsequent violation or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act. When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty

under this section, the district shall recover the costs of the action if a civil penalty is awarded.

Source: Laws 1986, LB 284, § 43; Laws 2015, LB207, § 5.

46-1144. District; failure to carry out responsibilities; hearing; procedure.

If at any time after January 1, 1988, it is alleged by the department upon its own initiative or as a result of a complaint being filed with the department that a district is not carrying out its responsibilities under the Nebraska Chemigation Act, the department may hold a contested case hearing. Notice of such hearing shall be published in such newspapers as are necessary to provide for general circulation within the district 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 inform the public as to the reasons for such hearing. The director shall receive evidence from all interested parties at the hearing. Each hearing conducted pursuant to this section shall be recorded, and such record shall be available for review.

Source: Laws 1986, LB 284, § 44.

46-1145. District; failure to carry out responsibilities; effect.

If after a hearing held pursuant to section 46-1144 the director determines that the district is not carrying out its responsibilities under the Nebraska Chemigation Act, the powers and duties of the district set out in the act shall vest in the department for a period of twelve months. All application fees shall be payable to the department during such twelve-month period and shall be placed in the Chemigation Costs Fund. Each district which has lost its powers and duties to the department shall, at least thirty days prior to the end of any such twelve-month period, inform the director as to whether it is now able to carry out its responsibilities under the Nebraska Chemigation Act or the reasons why it will continue to be unable to meet such responsibilities. If the district is unable to meet its responsibilities, the department may continue to perform the powers and duties required of the district for an additional twelve-month period.

Source: Laws 1986, LB 284, § 45.

46-1146. Appeal; procedure.

Any affected person aggrieved by any order issued or final decision made by the department pursuant to the Nebraska Chemigation Act may appeal the order or decision, and the appeal shall be in accordance with the Administrative Procedure

Act. As used in this section, affected person shall mean an applicant for a permit which is subject to an order or final decision of the department or district and any owner of an estate or interest in or concerning land whose interest is or may be impacted in a direct or significant manner by the order or final decision of the department or district.

Source: Laws 1986, LB 284, § 46; Laws 1988, LB 352, § 82.

Cross References

Administrative Procedure Act, see section 84-920.

46-1147. Powers of department; construction of act.

Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of the department provided in Chapter 81, article 15.

Source: Laws 1986, LB 284, § 47.

46-1148. Powers of district; construction of act.

Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of a district provided in the Nebraska Ground Water Management and Protection Act.

Source: Laws 1986, LB 284, § 48.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

46-1201. Act, how cited.

Sections 46-1201 to 46-1241 shall be known and may be cited as the Water Well Standards and Contractors' Practice Act.

Source: Laws 1986, LB 310, § 1; Laws 1991, LB 51, § 18; Laws 1993, LB 131, § 38; Laws 1994, LB 981, § 9; Laws 1996, LB 1241, § 2; Laws 2001, LB 133, § 1; Laws 2007, LB463, § 1143.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1202. Purposes of act.

The purposes of the Water Well Standards and Contractors' Practice Act are to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors, pump installation contractors, water well drilling supervisors, pump installation supervisors, water well monitoring technicians, and natural resources ground water technicians in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper decommissioning of water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Source: Laws 1986, LB 310, § 2; Laws 1994, LB 981, § 10; Laws 2001, LB 133, § 2; Laws 2001, LB 667, § 11; Laws 2007, LB463, § 1144.

46-1203. Definitions, where found.

For purposes of the Water Well Standards and Contractors' Practice Act, unless the context otherwise requires, the definitions found in sections 46-1204.01 to 46-1216 shall be used.

Source: Laws 1986, LB 310, § 3; Laws 1991, LB 51, § 19; Laws 1993, LB 131, § 39; Laws 1994, LB 981, § 11; Laws 1996, LB 1241, § 3; Laws 2001, LB 133, § 3; Laws 2007, LB463, § 1145.

46-1204. Repealed. Laws 1993, LB 131, § 65.

46-1204.01. Abandoned water well, defined.

Abandoned water well means any water well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services, and (3) for which the notice of abandonment required by subsection (2) of section 46-602 has been filed with the Department of Natural Resources by the licensed water well contractor or licensed pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

Source: Laws 1994, LB 981, § 12; Laws 1996, LB 1044, § 264; Laws 2000, LB 900, § 234; Laws 2001, LB 667, § 12; Laws 2003, LB 245, § 7; Laws 2007, LB296, § 207; Laws 2007, LB463, § 1146.

46-1204.02. Active status water well, defined.

Active status water well shall mean a water well which is in use and which is not an illegal water well.

Source: Laws 1994, LB 981, § 13.

46-1205. Board, defined.

Board means the Water Well Standards and Contractors' Licensing Board.

Source: Laws 1986, LB 310, § 5; Laws 2007, LB463, § 1147.

46-1205.01. Licensed natural resources ground water technician, defined.

Licensed natural resources ground water technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a license from the department indicating that he or she is a licensed natural resources ground water technician.

Source: Laws 2001, LB 133, § 4; Laws 2007, LB463, § 1148.

46-1206. Construction of water wells, defined.

Construction of water wells shall mean and include all acts necessary to make a water well usable for the purpose for which it is intended including, without limitation, the siting of and excavation for the water well and its construction, alteration, or repair, but excluding the installation of pumps and pumping equipment.

Source: Laws 1986, LB 310, § 6.

46-1206.01. Decommissioned, defined.

Decommissioned, when used in relation to a water well, shall mean the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the department.

Source: Laws 1994, LB 981, § 14.

46-1207. Department, defined.

Department shall mean the Department of Health and Human Services.

Source: Laws 1986, LB 310, § 7; Laws 1996, LB 1044, § 265; Laws 2007, LB296, § 208.

46-1207.01. Illegal water well, defined; landowner; petition for reclassification; when.

(1) Illegal water well means any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard;

(f) The water well is an illegal water well in accordance with section 46-706; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Source: Laws 1994, LB 981, § 15; Laws 1996, LB 108, § 76; Laws 2004, LB 962, § 98; Laws 2007, LB463, § 1149.

46-1207.02. Inactive status water well, defined.

Inactive status water well shall mean a water well that is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements:

(1) The water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well;

(2) The top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well;

(3) All entrances and discharge piping to the water well are effectively sealed to prevent the entrance of contaminants; and

(4) The water well is marked so as to be easily visible and located and is labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.

Source: Laws 1994, LB 981, § 16; Laws 2004, LB 962, § 99.

46-1208. Installation of pumps and pumping equipment, defined.

Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Source: Laws 1986, LB 310, § 8; Laws 1993, LB 131, § 40; Laws 2006, LB 508, § 4.

46-1208.01. Person, defined.

Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Source: Laws 1996, LB 1241, § 4.

46-1208.02. Natural resources ground water technician, defined.

Natural resources ground water technician means any individual employed by a natural resources district and engaged in the inspection of chemigation systems, measuring and recording static water levels, inspection and servicing of flow meters, and water sampling practices and techniques. Natural resources ground water technician does not include: (1) An individual who constructs a water well or installs or repairs pumps or pumping equipment or a water well; (2) a water well monitoring technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode.

Source: Laws 2001, LB 133, § 5.

46-1209. Licensed pump installation contractor, defined.

Licensed pump installation contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Source: Laws 1986, LB 310, § 9; Laws 2001, LB 667, § 13; Laws 2007, LB463, § 1150.

46-1210. Licensed pump installation supervisor, defined.

Licensed pump installation supervisor means any individual who has obtained a license from the department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Source: Laws 1986, LB 310, § 10; Laws 2001, LB 667, § 14; Laws 2007, LB463, § 1151.

46-1211. Pumps and pumping equipment, defined.

Pumps and pumping equipment shall mean any equipment or materials utilized or intended for use in withdrawing or obtaining ground water including, but not limited to, seals, tanks, fittings, and controls.

Source: Laws 1986, LB 310, § 11.

46-1212. Water well, defined.

Water well shall mean 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 fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation described in subdivisions (1)(b) and (1)(c) of section 46-601.01.

Source: Laws 1986, LB 310, § 12; Laws 1993, LB 131, § 41; Laws 2004, LB 962, § 100; Laws 2007, LB701, § 24.

46-1213. Licensed water well contractor, defined.

Licensed water well contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells.

Source: Laws 1986, LB 310, § 13; Laws 2001, LB 667, § 15; Laws 2007, LB463, § 1152.

46-1214. Licensed water well drilling supervisor, defined.

Licensed water well drilling supervisor means any individual who has obtained a license from the department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Source: Laws 1986, LB 310, § 14; Laws 2001, LB 667, § 16; Laws 2007, LB463, § 1153.

46-1214.01. Licensed water well monitoring technician, defined.

Licensed water well monitoring technician means any individual who has obtained a license from the department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

Source: Laws 1991, LB 51, § 20; Laws 2001, LB 133, § 6; Laws 2001, LB 667, § 17; Laws 2007, LB463, § 1154.

46-1215. Well repairs, defined.

Well repairs shall mean any change, replacement, or other alteration of any water well, pump, or pumping equipment or any other activity which requires a breaking or opening of the well seal.

Source: Laws 1986, LB 310, § 15.

46-1216. Well seal, defined.

Well seal shall mean an arrangement or device used to cap a water well or to establish and maintain a junction between the casing or curbing of a water well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the water well.

Source: Laws 1986, LB 310, § 16.

46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications.

(1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environmental Quality or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a

category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB296, § 209; Laws 2007, LB463, § 1155.

Cross References

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-151, 38-155, and 38-158 to 38-174.

46-1218. Board; terms; vacancy.

(1) The terms of members of the board appointed pursuant to subdivisions (1)(e) and (f) of section 46-1217 shall be extended by one year to five-year terms, and the successors to members appointed pursuant to subdivisions (1)(a) through (f) of such section shall be appointed for five-year terms. No appointed member shall be appointed to serve more than two consecutive full five-year terms.

(2) Each appointed member shall hold office until the expiration of his or her term or until a successor has been appointed and qualified. Any vacancy occurring in the appointed board membership, other than by expiration of a term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

Source: Laws 1986, LB 310, § 18; Laws 2007, LB463, § 1156.

46-1219. Board; meetings; quorum.

(1) Special meetings of the board shall be called upon the written request of any three members of the board. The place of all meetings shall be at the offices of the department, unless otherwise determined by the board.

(2) A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the total number of members of the board shall be deemed to be an act of the board.

Source: Laws 1986, LB 310, § 19; Laws 2007, LB463, § 1157.

46-1219.01. Repealed. Laws 2007, LB 463, § 1319.

46-1220. Repealed. Laws 2007, LB 463, § 1319.

46-1221. Board; executive secretary; offices.

The department shall designate an individual with the approval of the board to serve as executive secretary of the board, and the department shall furnish such offices and materials as may be necessary for the efficient operation of the board.

Source: Laws 1986, LB 310, § 21.

46-1222. Repealed. Laws 2007, LB 463, § 1319.

46-1223. Examinations; requirements; fee; hardship licensing.

(1) Examinations for water well monitoring technicians shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. Examinations for natural resources ground water technicians shall examine the knowledge of the applicant regarding inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and water sampling practices and techniques. All other examinations shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board.

(2) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within twelve months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved.

(3) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Source: Laws 1986, LB 310, § 23; Laws 1991, LB 51, § 21; Laws 1993, LB 131, § 43; Laws 2001, LB 133, § 8; Laws 2007, LB463, § 1159.

Cross References

For provisions regarding licensure under Uniform Credentialing Act, see section 38-101.

46-1223.01. Department; develop program.

The department shall develop a program that is designed to train individuals to become licensed natural resources ground water technicians. Such course shall be developed by the department in consultation with the natural resources districts. Such course shall include inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples. Training sessions shall not be less than two hours and shall not exceed eight hours.

Source: Laws 2001, LB 133, § 7; Laws 2007, LB463, § 1160.

46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.

(1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the online services for registration of water wells. 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 this section. 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.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which

is designed and constructed to pump fifty gallons per minute or less and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump more than fifty gallons per minute. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. 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 fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161; Laws 2011, LB27, § 2.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-1225. License renewal; continuing competency required.

The board shall adopt rules and regulations to establish continuing competency requirements for persons licensed under the Water Well Standards and Contractors' Practice Act. Continuing education is sufficient to meet continuing competency requirements.

Source: Laws 1986, LB 310, § 25; Laws 1993, LB 131, § 46; Laws 1996, LB 1044, § 267; Laws 2002, LB 458, § 6; Laws 2002, LB 1021, § 2; Laws 2007, LB463, § 1162.

Cross References

For provisions regarding continuing competency requirements under the Uniform Credentialing Act, see sections 38-145 and 38-146.

46-1226. Repealed. Laws 2007, LB 463, § 1319.

46-1227. Department; well and equipment standards; adopt rules and regulations.

The department, with the approval of the board, shall adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a licensed water well contractor, a licensed pump installation contractor, a licensed water well drilling supervisor, a licensed pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Source: Laws 1986, LB 310, § 27; Laws 1993, LB 3, § 33; Laws 1994, LB 981, § 18; Laws 2007, LB463, § 1163.

Cross References

Old wells not in use, duty to fill or decommission, see sections 54-311 and 54-315.

46-1227.01. Activities subject to standards; contractor, supervisor, and technician authority; landowner rights.

(1) All water well construction and monitoring, pump and pumping equipment installation and repair, and decommissioning shall be accomplished following the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) A licensed water well contractor may have supervisory authority over all employees.

(3) A licensed water well drilling supervisor shall work under the supervision of a licensed water well contractor and may have supervisory authority over noncredentialed employees.

(4) A licensed pump installation contractor may have supervisory authority over all employees.

(5) A licensed pump installation supervisor shall work under the supervision of a licensed pump installation contractor and may have supervisory authority over noncredentialed employees.

(6) A licensed water well monitoring technician may work independently and shall not have supervisory authority.

(7) A licensed natural resources ground water technician employed by a natural resources district may work independently and shall not have supervisory authority over any credentialed or noncredentialed persons.

(8) An individual who owns land and uses it for farming, ranching, or agricultural purposes or as his or her place of abode may, on such land, construct a water well, install a pump in a well, or decommission a driven sandpoint well.

Source: Laws 2007, LB463, § 1158.

46-1228. Department; access and inspection; powers.

The department shall have (1) authority to inspect water wells constructed, water wells decommissioned, and water well locations, (2) access to water wells and accompanying pumps and pumping equipment at all reasonable times, and (3) power of inspection in regard to the construction and decommissioning of all water wells.

Source: Laws 1986, LB 310, § 28; Laws 2004, LB 962, § 101.

46-1229. License required; application; qualifications.

Any person desiring to engage in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells shall make initial application for a license to the department in accordance with section 38-130. A license to engage in the construction or decommissioning of water wells or the installation of pumps and pumping equipment shall be issued to every applicant who demonstrates professional competence by successfully passing the examination prescribed in section 46-1223 and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Applicants shall receive licenses for any category or combination of categories for which they have successfully passed the required examination.

Source: Laws 1986, LB 310, § 29; Laws 1997, LB 752, § 122; Laws 2001, LB 667, § 19; Laws 2003, LB 242, § 9; Laws 2007, LB463, § 1164.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1230. Licensees; proof of insurance.

Each applicant for an initial license as a licensed water well contractor or as a licensed pump installation contractor shall furnish proof to the department that there is in force a policy of public liability and property damage insurance issued to the applicant in an amount established by the department by rules and regulations sufficient to protect the public interest. Proof of insurance shall be maintained and submitted annually for the term of the active license.

Source: Laws 1986, LB 310, § 30; Laws 2007, LB463, § 1165.

46-1231. License; application; qualifications.

Each water well drilling supervisor, pump installation supervisor, natural resources ground water technician, and water well monitoring technician shall make application for a license in his or her respective trade. A license shall be issued to every applicant who successfully passes the examination for such license and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Any individual employed by a licensed water well contractor or a licensed pump installation contractor who is not deemed to qualify as a licensed water well drilling supervisor or licensed pump

installation supervisor may apply for a license in his or her respective trade in the same manner as the licensed water well drilling supervisor or the licensed pump installation supervisor. A supervisor holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a supervisor in such trade on such date. A technician holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a technician in such trade on such date.

Source: Laws 1986, LB 310, § 31; Laws 1991, LB 51, § 22; Laws 1997, LB 752, § 123; Laws 2001, LB 133, § 9; Laws 2003, LB 242, § 10; Laws 2007, LB463, § 1166.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1232. Repealed. Laws 2007, LB 463, § 1319.

46-1233. Water well construction or decommissioning; equipment installation or repair; supervision required.

(1) Any person constructing a water well, installing or repairing pumps onsite, or decommissioning a water well shall do such work in accordance with the rules and regulations developed under the Water Well Standards and Contractors' Practice Act.

(2) A water well shall be constructed, pumps and pumping equipment shall be installed and repaired onsite, and water wells shall be decommissioned by a licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor, except that an individual may construct a water well or install and repair pumps and pumping equipment onsite on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. No water well shall be opened or the seal broken by any person other than an owner of the water well unless (a) the opening or breaking of the seal is carried out by a licensed water well monitoring technician or a licensed natural resources ground water technician, (b) the opening or breaking of the seal is carried out by a licensed operator of a public water system in the course of his or her employment or someone under his or her supervision, or (c) a state electrical inspector in the course of his or her employment.

(3) For purposes of this section, supervision means the ready availability of the person licensed pursuant to the Water Well Standards and Contractors' Practice Act for consultation and direction of the activities of any person not licensed who

assists in the construction of a water well, the installation of pumps and pumping equipment, or decommissioning of a water well. Contact with the licensed contractor or supervisor by telecommunication shall be sufficient to show ready availability.

Source: Laws 1986, LB 310, § 33; Laws 1996, LB 1241, § 5; Laws 2001, LB 667, § 20; Laws 2007, LB463, § 1167.

46-1233.01. Repealed. Laws 2007, LB 463, § 1319.

46-1234. Exploratory wells; agreement to decommission required; failure to plug; effect.

Any licensed water well contractor constructing a water well for any customer shall as a part of the agreement include the proper decommissioning of each water well constructed to explore for ground water pursuant to the agreement. Any failure to properly plug any such water well pursuant to such agreement shall subject him or her to suspension, revocation, or refusal of renewal of his or her license.

Source: Laws 1986, LB 310, § 34; Laws 1994, LB 981, § 19.

46-1235. License; disciplinary actions; grounds.

In cases other than those relating to failure to meet the requirements for an initial license, the department may deny, refuse renewal of, suspend, or revoke licenses or may take other disciplinary action in accordance with section 38-196 for the grounds found in sections 38-178 and 38-179 and for any of the following acts or offenses:

(1) Violation of the Water Well Standards and Contractors' Practice Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;

(2) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or of members of the general public;

(3) Practice of the trade while the license to do so is suspended or practice of the trade in contravention of any limitation placed upon the license;

(4) Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of section 46-602 or failing to file a notice required by subsection (7) of such section; or

(5) Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of section 46-602.

Source: Laws 1986, LB 310, § 35; Laws 1993, LB 131, § 47; Laws 1996, LB 1044, § 268; Laws 2001, LB 667, § 21; Laws 2003, LB 245, § 8; Laws 2007, LB296, § 210; Laws 2007, LB463, § 1168.

46-1235.01. Repealed. Laws 2007, LB 463, § 1319.

46-1235.02. Repealed. Laws 2007, LB 463, § 1319.

46-1236. Repealed. Laws 2007, LB 463, § 1319.

46-1237. Repealed. Laws 2007, LB 463, § 1319.

46-1237.01. Repealed. Laws 2007, LB 463, § 1319.

46-1237.02. Repealed. Laws 2007, LB 463, § 1319.

46-1237.03. Repealed. Laws 2007, LB 463, § 1319.

46-1238. License; when required; action to enjoin activities.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices, in addition to the other penalties provided in the Uniform Credentialing Act or the Water Well Standards and Contractors' Practice Act, may be enjoined from continuing such activities.

Source: Laws 1986, LB 310, § 38; Laws 1991, LB 51, § 24; Laws 1996, LB 1241, § 6; Laws 2001, LB 667, § 22; Laws 2006, LB 508, § 7; Laws 2007, LB463, § 1169.

Cross References

Uniform Credentialing Act, see section 38-101.

46-1239. Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty.

Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 39; Laws 1996, LB 1241, § 7; Laws 1997, LB 30, § 5; Laws 2001, LB 667, § 23; Laws 2006, LB 508, § 8; Laws 2007, LB463, § 1170.

46-1240. Failure to comply with standards; criminal penalty; civil penalty; action to enjoin.

Any person who engages in or any person who employs or uses a person who engages in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to decommission or decommissions an illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Practice Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the

penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 40; Laws 1991, LB 51, § 25; Laws 1993, LB 131, § 55; Laws 1994, LB 981, § 20; Laws 1996, LB 1241, § 8; Laws 1997, LB 30, § 6; Laws 2001, LB 667, § 24; Laws 2007, LB463, § 1171.

46-1240.01. False or forged documents; penalty.

Any person who files or attempts to file with the department any false or forged diploma or certificate or affidavit of identification or qualification shall be guilty of forgery.

Source: Laws 1993, LB 131, § 56.

46-1240.02. Repealed. Laws 2007, LB 463, § 1319.

46-1240.03. Repealed. Laws 2007, LB 463, § 1319.

46-1240.04. Repealed. Laws 2007, LB 463, § 1319.

46-1240.05. Repealed. Laws 2007, LB 463, § 1319.

46-1240.06. Variance from rule, regulation, or standard; conditions; injunction.

(1) The department may grant a variance from any rule, regulation, or standard adopted and promulgated by the department relating to the construction of water wells upon proof by a licensed water well contractor or owner of a proposed water well satisfactory to the department that the enforcement of the rule, regulation, or standard would create an unreasonable hardship or be unreasonable, impractical, or not feasible under the circumstances. A variance may be under such terms and conditions and for such time as the department may prescribe. The terms and conditions of a variance may include testing, monitoring, reporting, and additional construction or installation requirements.

(2) A variance shall be limited to the construction of a water well to replace an existing water well.

(3) Any person who owns or operates a water well in violation of the terms and conditions of a variance may be enjoined from continuing such activities. The injunction may include an order to properly decommission the water well.

Source: Laws 1993, LB 131, § 61; Laws 1994, LB 981, § 21.

46-1241. Water well log required; contents.

Any owner of a water well or a licensed water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. The well log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor.

The well log shall include the following information:

(1) Legal description of the water well;

(2) Description and depth of geologic materials encountered;

(3) Depth and diameter or dimension of constructed water well and test hole;

(4) Depth and diameter or dimension of excavated hole if applicable;

(5) Depth of formation stabilizer or gravel pack and size of particles if used;

(6) Depth and thickness of grout or other sealing material if applicable;

(7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;

(8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;

(9) Static water level;

(10) Water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable;

(11) Yield of water well in gallons per minute or gallons per hour if applicable;

(12) Signature of water well contractor;

(13) Dates drilling commenced and construction completed;

(14) Intended use of the water well;

(15) Name and address of the owner;

(16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;

(17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Practice Act of any person, other than the owner of the water well, who constructed the water well; and

(18) Other data as the board reasonably requires.

Source: Laws 1986, LB 310, § 41; Laws 1993, LB 131, § 62; Laws 2001, LB 667, § 25; Laws 2007, LB463, § 1172.

46-1301. Legislative findings.

The Legislature finds that (1) existing monitoring of ground water quality performed by natural resources districts is excellent and deserves recognition, (2) substantial efforts have been undertaken by the Department of Environmental Quality to monitor surface water quality, and (3) it is within the state's capacity to develop a comprehensive, integrated statewide water quality monitoring system.

Source: Laws 2000, LB 1234, § 18.

46-1302. Repealed. Laws 2004, LB 940, § 4.

46-1303. Repealed. Laws 2004, LB 940, § 4.

46-1304. Report required; Department of Environmental Quality; duties.

The Department of Environmental Quality shall prepare a report outlining the extent of ground water quality monitoring conducted by natural resources districts during the preceding calendar year. The department shall analyze the data collected for the purpose of determining whether or not ground water quality is degrading or improving and shall present the results electronically to the Natural Resources Committee of the Legislature beginning December 1, 2001, and each year thereafter. The districts shall submit in a timely manner all ground water quality monitoring data collected to the department or its designee. The department shall use the data submitted by the districts in conjunction with all other readily available and compatible data for the purposes of the annual ground water quality trend analysis.

Source: Laws 2001, LB 329, § 11; Laws 2012, LB782, § 56.

46-1305. Report required; natural resources district; duties.

Each natural resources district shall submit electronically an annual report to the Natural Resources Committee of the Legislature detailing all water quality programs conducted by the district in the preceding calendar year. The report shall include the funds received and expended for water quality projects and a listing of any unfunded projects. The first report shall be submitted on or before December 1, 2001, and then each December 1 thereafter.

Source: Laws 2001, LB 329, § 12; Laws 2012, LB782, § 57.

46-1401. Legislative findings and intent.

The Legislature finds that accelerating the decommissioning of illegal water wells will be an asset to the State of Nebraska and good for the general welfare of the citizens of the state. The Legislature further finds that completing such decommissioning can be most appropriately accomplished by accelerating state financial input into the efforts currently being conducted. It is therefor the intent of the Legislature to embark upon an accelerated program for the decommissioning of Nebraska's illegal water wells and to recommend that the State of Nebraska and the Legislature annually appropriate ninety-nine thousand dollars from the General Fund to carry out this accelerated program during the years required for its completion.

Source: Laws 1994, LB 981, § 2; Laws 2000, LB 900, § 237.

46-1402. Definitions, where found.

For purposes of sections 46-1401 and 46-1403 to 46-1405, the definitions found in sections 46-1206.01, 46-1207.01, 46-1209, 46-1212, and 46-1213 shall be used.

Source: Laws 1994, LB 981, § 5.

46-1403. Water Well Decommissioning Fund; created; use; investment.

There is hereby created the Water Well Decommissioning Fund. The State Treasurer shall credit to the fund for the uses and purposes of sections 46-1401 to 46-1405 such money as is specifically appropriated and such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the Department of Natural Resources from any source, federal, state, public, or private, to be used by the department for the purpose of accelerating the

decommissioning of illegal water wells. The department shall allocate money from the fund for purposes of sections 46-1401 to 46-1405. The fund shall be exempt from provisions relating to lapsing of appropriations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Water Well Decommissioning 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 1994, LB 981, § 3; Laws 1995, LB 7, § 44; Laws 2000, LB 900, § 238; Laws 2009, First Spec. Sess., LB3, § 22.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-1404. Water Well Decommissioning Fund; allocation; rules and regulations.

The Water Well Decommissioning Fund shall be allocated by contractual agreement with natural resources districts for the purpose of accelerating the decommissioning of illegal water wells throughout the state. The allocations each fiscal year shall be made by the Department of Natural Resources to natural resources districts in a proportion based on the number of illegal water wells decommissioned in each district in the previous fiscal year which were part of the district's cost-share program to the total number of illegal water wells decommissioned in the state in the previous fiscal year which were part of a district cost-share program. Subsequent allocations for any district which has had a cost-share program for three or more consecutive years shall be based upon the previous three-year average. The allocations may be adjusted on or after March 1 of any year if the Director of Natural Resources determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. Actual disbursement to each district shall be on a reimbursement basis and shall not exceed the amount expended by the district consistent with sections 46-1401 to 46-1405. The Nebraska Natural Resources Commission shall adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1994, LB 981, § 4; Laws 2000, LB 900, § 239; Laws 2006, LB 508, § 9.

46-1405. Natural resources district; cost-sharing program; qualification for funding.

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

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

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

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

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

A natural resources district may establish maximum cost-share assistance amounts that will be provided to landowners for decommissioning water wells based on well depths and diameters to insure that landowners will be compensated for at least sixty percent of the cost of water well decommissioning.

Source: Laws 1994, LB 981, § 1; Laws 1995, LB 871, § 7; Laws 1996, LB 1241, § 9; Laws 2006, LB 508, § 10.

46-1501. Act, how cited.

Sections 46-1501 to 46-1509 shall be known and may be cited as the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 2.

46-1502. Terms, defined.

For purposes of the Wellhead Protection Area Act:

(1) Controlling entity means a city, a village, a natural resources district, a rural water district, any other entity, including, but not limited to, a privately owned public water supply system, or any combination thereof operating under an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that operates a public water supply system;

(2) Department means the Department of Environmental Quality;

(3) Director means the Director of Environmental Quality; and

(4) Wellhead protection area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

Source: Laws 1998, LB 1161, § 3; Laws 1999, LB 87, § 73.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

46-1503. Wellhead protection area; designation.

Any controlling entity may designate a wellhead protection area and adopt controls pursuant to the Wellhead Protection Area Act for the purpose of protecting the public water supply system. The department shall provide technical assistance to any controlling entity designating a wellhead protection area and adopting controls pursuant to the act.

Source: Laws 1998, LB 1161, § 4.

46-1504. Wellhead protection area designation; controlling entity; duties.

Any controlling entity proposing to designate a wellhead protection area and adopt controls shall:

(1) Designate the boundaries of the wellhead protection area following the procedure in section 46-1505. The wellhead protection area shall be based on all reasonably available hydrogeologic information on ground water flow, recharge, and discharge and other related information necessary to adequately determine the wellhead protection area for the purposes stated in this section;

(2) Identify within each proposed wellhead protection area all potential sources of contaminants which may have any adverse effect on the health of persons;

(3) Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of controls, education, training, and demonstration projects to protect the water supply within the wellhead protection area from such contaminants;

(4) Include contingency plans for the location and provision of alternate drinking water supplies for each affected public water supply system in the event of water well or well field contamination by such contaminants; and

(5) Propose the controls necessary to provide protection from contaminants which may have any adverse effect on the health of persons served by the public water supply system of each participating controlling entity.

Source: Laws 1998, LB 1161, § 5.

46-1505. Proposed wellhead protection area; public notice and comment.

The controlling entity shall publicize proposed boundaries for the wellhead protection area and the proposed controls and shall provide time for public comment at one or more regularly scheduled public meetings of the governing board of the controlling entity. Notice of the time for public comment shall be published in conjunction with notice of such regularly scheduled meeting. A description of the proposed boundaries and the text of the proposed controls shall be available at the office of the controlling entity for thirty days before such meeting. Persons shall be given the opportunity to speak on the proposed designation and the proposed controls or to submit written testimony for consideration by the controlling entity.

Source: Laws 1998, LB 1161, § 6.

46-1506. Boundaries of wellhead protection area; designation; procedure.

Within sixty days after the last time for public comment under section 46-1505, the controlling entity shall make a final designation of the boundaries of the wellhead protection area and the controls necessary to protect the water in the wellhead protection area and shall submit them to the director for approval or disapproval. Such approval shall be based on whether the boundaries of the wellhead protection area are reasonably defined, the controls are reasonably related to the purpose of ground water protection in the area, and such approval is in the public interest. The director shall act on the proposed designation of boundaries and proposed controls within ninety days after the date the proposals are received by him or her.

If the director approves the proposed boundaries and controls, he or she shall so notify the controlling entity, but the boundaries and controls shall not be deemed effective until the controlling entity has adopted such boundaries and controls by ordinance or resolution. If the director disapproves either or both of the proposals, he or she shall return the proposals to the controlling entity with an explanation of the reasons for such disapproval. The controlling entity may revise such proposed designation of boundaries and proposed controls and, after notice and hearing as provided for in the original proposed designation of boundaries and proposed

controls, submit the revised proposed designation of boundaries and proposed controls to the director for approval or disapproval.

If the director does not act on either the original or revised proposed designation of boundaries and proposed controls within ninety days after submission by the controlling entity, the proposed designation of boundaries and proposed controls shall be deemed approved by the director.

Source: Laws 1998, LB 1161, § 7.

46-1507. Existing wellhead protection areas; effect of act.

Any wellhead protection area established before July 15, 1998, by resolution or ordinance of the controlling entity need not be reestablished under the Wellhead Protection Area Act unless controls are proposed. If such controls are proposed, the controls and the boundaries of the wellhead protection area are subject to the requirements of sections 46-1504 to 46-1506. Any wellhead protection area purported to have been established before July 15, 1998, other than by official action of a controlling entity shall be null and void beginning nine calendar months after July 15, 1998, unless reestablished by resolution or ordinance of the controlling entity.

Source: Laws 1998, LB 1161, § 8.

46-1508. Designated wellhead protection area; boundary area changes.

A designated wellhead protection area may be amended as to boundaries and controls as provided for in the initial designation of a wellhead protection area in the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 9.

46-1509. Environmental Quality Council; rules and regulations.

The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 10.

46-1601. Act, how cited.

Sections 46-1601 to 46-1670 shall be known and may be cited as the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 1.

46-1602. Definitions, where found.

For purposes of the Safety of Dams and Reservoirs Act, the definitions found in sections 46-1603 to 46-1634 apply.

Source: Laws 2005, LB 335, § 2.

46-1603. Abandonment, defined.

Abandonment means the process of rendering a dam incapable of impounding by (1) dewatering and filling the reservoir created by such dam with solid materials and (2) creating a stable watercourse around the site.

Source: Laws 2005, LB 335, § 3.

46-1604. Adverse consequences, defined.

Adverse consequences means negative impacts that may occur upstream, downstream, or at locations remote from the dam, including, but not limited to, loss of human life, economic loss including property damage, and lifeline disruption.

Source: Laws 2005, LB 335, § 4.

46-1605. Alterations, defined.

Alterations means alterations to an existing dam that directly affect the safety of the dam or reservoir, as determined by the department, but does not include maintenance and repair of the dam to retain its initial structural integrity.

Source: Laws 2005, LB 335, § 5.

46-1606. Application approval, defined.

Application approval means authorization in writing issued by the department to an owner who has applied to the department for permission to construct,

reconstruct, enlarge, alter, breach, remove, or abandon a dam and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

Source: Laws 2005, LB 335, § 6.

46-1607. Approval to operate, defined.

Approval to operate means authorization in writing issued by the department to an owner who has completed construction, reconstruction, enlargement, or alteration of a dam.

Source: Laws 2005, LB 335, § 7.

46-1608. Appurtenant works, defined.

Appurtenant works include, but are not limited to: Structures such as spillways, either in or separate from the dam; the reservoir and its rim; low-level outlet works; and water conduits including, but not limited to, tunnels, pipelines, or penstocks, either through the dam or its abutments.

Source: Laws 2005, LB 335, § 8.

46-1609. Breach, defined.

Breach means partial removal of a dam creating a channel through the dam to the natural bed elevation of the stream.

Source: Laws 2005, LB 335, § 9.

46-1610. Completion certification, defined.

Completion certification means a statement signed by the design engineer, certifying the completion of work on a dam in conformance with the approved plans and specifications.

Source: Laws 2005, LB 335, § 10.

46-1611. Dam, defined.

(1) Dam means any artificial barrier, including appurtenant works, with the ability to impound water, wastewater, or liquid-borne materials and which (a) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to the maximum storage elevation or (b) has an impounding capacity at maximum storage elevation of fifty acre-feet or more, except that any barrier described in this subsection which is not in excess of six feet in height or which has an impounding capacity at maximum storage elevation of not greater than fifteen acre-feet shall be exempt, unless such barrier, due to its location or other physical characteristics, is classified as a high hazard potential dam.

(2) Dam does not include:

(a) An obstruction in a canal used to raise or lower water;

(b) A fill or structure for highway or railroad use, but if such structure serves, either primarily or secondarily, additional purposes commonly associated with dams it shall be subject to review by the department;

(c) Canals, including the diversion structure, and levees; or

(d) Water storage or evaporation ponds regulated by the United States Nuclear Regulatory Commission.

Source: Laws 2005, LB 335, § 11.

46-1612. Days, defined.

Days, for purposes of establishing deadlines, means calendar days, including Sundays and holidays.

Source: Laws 2005, LB 335, § 12.

46-1613. Department, defined.

Department means the Department of Natural Resources.

Source: Laws 2005, LB 335, § 13.

46-1614. Director, defined.

Director means the Director of Natural Resources.

Source: Laws 2005, LB 335, § 14.

46-1615. Emergency, defined.

Emergency includes, but is not limited to, breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam that may be construed as unsafe or threatening to life.

Source: Laws 2005, LB 335, § 15.

46-1616. Engineer, defined.

Engineer means a professional engineer licensed under the Engineers and Architects Regulation Act who (1) is competent in areas related to dam investigation, design, construction, and operation for the type of dam being investigated, designed, constructed, or operated, (2) has at least four years of relevant experience in investigation, design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams, and (3) understands adverse consequences and dam failures.

Source: Laws 2005, LB 335, § 16.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

46-1617. Enlargement, defined.

Enlargement means any change in or addition to an existing dam which raises or may raise the normal storage elevation of the water impounded by the dam.

Source: Laws 2005, LB 335, § 17.

46-1618. Hazard potential classification, defined.

Hazard potential classification means classification of dams according to the degree of incremental adverse consequences of a failure or misoperation of a dam but does not reflect on the current condition of a dam, including, but not limited to, safety, structural integrity, or flood routing capacity.

Source: Laws 2005, LB 335, § 18.

46-1619. High hazard potential, defined.

High hazard potential means a hazard potential classification such that failure or misoperation of the dam resulting in loss of human life is probable.

Source: Laws 2005, LB 335, § 19.

46-1620. Incremental, defined.

Incremental means the difference in impacts that would occur due to failure or misoperation of the dam over the impacts that would occur without failure or misoperation of the dam.

Source: Laws 2005, LB 335, § 20.

46-1621. Low hazard potential, defined.

Low hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life and in low economic loss.

Source: Laws 2005, LB 335, § 21.

46-1622. Maximum storage, defined.

Maximum storage means the reservoir storage capacity between the top of dam elevation, or the maximum routed elevation of the probable maximum flood if lower than the top of dam elevation, and the lowest downstream toe or outside limit elevation of the dam.

Source: Laws 2005, LB 335, § 22.

46-1623. Minimal hazard potential, defined.

Minimal hazard potential means a hazard potential classification such that failure or misoperation of the dam would likely result in no economic loss beyond the cost of the structure itself and losses principally limited to the owner's property.

Source: Laws 2005, LB 335, § 23.

46-1624. Normal storage, defined.

Normal storage means the reservoir storage capacity, excluding flood storage and freeboard allowances.

Source: Laws 2005, LB 335, § 24.

46-1625. Owner, defined.

Owner includes any of the following who or which owns, controls, manages, or proposes to construct, reconstruct, enlarge, alter, breach, remove, or abandon a dam:

(1) The United States Government and its departments, agencies, and bureaus;

(2) The state and its departments, institutions, agencies, and political subdivisions;

(3) A municipal or quasi-municipal corporation;

(4) A public utility;

(5) A district;

(6) A person;

(7) A duly authorized agent, lessee, or trustee of any person or entity listed in this section; and

(8) A receiver or trustee appointed by a court for any person or entity listed in this section.

Source: Laws 2005, LB 335, § 25.

46-1626. Person, defined.

Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other political subdivision, public agency, or other legal entity or any officer or governing or managing body of any public or private corporation, municipality, other political subdivision, public agency, or other legal entity.

Source: Laws 2005, LB 335, § 26.

46-1627. Probable, defined.

Probable means likely to occur and reasonably expected.

Source: Laws 2005, LB 335, § 27.

46-1628. Probable maximum flood, defined.

Probable maximum flood means the most severe flood that is considered probable at a site.

Source: Laws 2005, LB 335, § 28.

46-1629. Reconstruction, defined.

Reconstruction means partial or complete removal and replacement of an existing dam.

Source: Laws 2005, LB 335, § 29.

46-1630. Removal, defined.

Removal means complete elimination of the dam embankment or structure to restore the approximate original topographic contours of the site.

Source: Laws 2005, LB 335, § 30.

46-1631. Reservoir, defined.

Reservoir means any basin which contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of such water, wastewater, or liquid-borne materials having been impounded by a dam.

Source: Laws 2005, LB 335, § 31.

46-1632. Significant hazard potential, defined.

Significant hazard potential means a hazard potential classification such that failure or misoperation of the dam would result in no probable loss of human life but could result in major economic loss, environmental damage, or disruption of lifeline facilities.

Source: Laws 2005, LB 335, § 32.

46-1633. Storage elevation, defined.

Storage elevation means the elevation of the reservoir surface associated with a level of impoundment, such as maximum storage or normal storage.

Source: Laws 2005, LB 335, § 33.

46-1634. Top of dam elevation, defined.

Top of dam elevation means the maximum design elevation for the top of the dam, including design freeboard allowances but excluding any allowance for settlement due to consolidation of foundation and embankment.

Source: Laws 2005, LB 335, § 34.

46-1635. Purposes of act.

The purposes of the Safety of Dams and Reservoirs Act are to regulate all dams and associated reservoirs for the protection of public health, safety, and welfare and to minimize the adverse consequences associated with the potential failure of such dams and reservoirs.

Source: Laws 2005, LB 335, § 35.

46-1636. Applicability of other law.

The Safety of Dams and Reservoirs Act does not relieve the owner or operator of a dam or reservoir from obtaining any necessary approvals from the department under sections 46-233 to 46-241 or from any other local, state, or federal regulatory authority.

Source: Laws 2005, LB 335, § 36.

46-1637. Regulation by political subdivisions; restrictions; conditions.

(1) Except as provided in subsections (2) and (4) of this section, no city, village, or county may, by ordinance or resolution enacted by the legislative body thereof or adopted by the people, (a) regulate, supervise, or provide for the regulation or supervision of any dams and associated reservoirs or the construction,

reconstruction, enlargement, repair, alteration, operation, breach, removal, or abandonment thereof or (b) limit the size or the impounding capacity of a dam if such action would conflict with the power and authority vested in the department pursuant to the Safety of Dams and Reservoirs Act.

(2) A city, village, or county may adopt ordinances or resolutions (a) regulating, supervising, or providing for the regulation or supervision of dams and reservoirs that are not within the state's jurisdiction and are not subject to regulation, owned, or operated by another public agency or body or (b) which apply only to adjacent structures not germane to the safety of the dam, such as, but not limited to, roads and fences.

(3) A city, village, or county may institute overlay zoning precluding construction of structures downstream of a state-permitted dam that is classified as having other than a high hazard potential if a breach-inundation study performed by an engineer, in accordance with generally accepted engineering practice, determines that construction of such structures would require that such dam be reclassified as having a high hazard potential. The owners of such dam shall provide such engineering study as a condition to requesting such overlay zoning.

(4) The Safety of Dams and Reservoirs Act does not preempt or supersede any local zoning ordinances, resolutions, rules, or regulations regarding special use permits enacted by a political subdivision with respect to permit applications for livestock waste control facilities.

Source: Laws 2005, LB 335, § 37.

46-1638. Plans and specifications; responsibility of engineer.

All plans and specifications for construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams and supervision of construction shall be the responsibility of an engineer assisted by qualified engineering geologists and other specialists as necessary.

Source: Laws 2005, LB 335, § 38.

46-1639. Immunity from liability; when.

(1) No action shall be brought against the state, the department, or its agents or employees for the recovery of damages caused by the partial or total failure of any dam by reason of control and regulation thereof pursuant to the Safety of Dams and Reservoirs Act, including, but not limited to, any of the following:

(a) Design and construction application approval of the dam or approval of interim flood routing plans during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment;

(b) The issuance or enforcement of orders relative to maintenance or operation of the dam;

(c) Control and regulation of the dam;

(d) Measures taken to protect against failure of the dam during an emergency, except for negligent acts of the department in assuming control of a dam during an emergency; or

(e) Failure to act.

(2) The Safety of Dams and Reservoirs Act does not relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Source: Laws 2005, LB 335, § 39.

46-1640. Orders and approval; effect.

The findings and orders of the department, an application approval, and an approval to operate any dam issued by the department are final, conclusive, and binding upon all owners and state agencies, regulatory or otherwise, as to the safety of design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam.

The department may report all dam incidents as defined by the National Performance of Dams Program to the National Performance of Dams Program archive.

Source: Laws 2005, LB 335, § 40.

46-1641. Change of ownership; notification.

The owner of any dam subject to the Safety of Dams and Reservoirs Act shall notify the department of any change in the ownership of the dam. Notification shall be in such form and include such evidence of ownership as the director may by rule and regulation require.

Source: Laws 2005, LB 335, § 41.

46-1642. Livestock waste control facility; approvals required.

An applicant for a permit for a livestock waste control facility which includes a dam, holding pond, or lagoon for which approval by the Department of Natural Resources is not otherwise required but for which approval by the Department of Environmental Quality under section 54-2429 is required shall submit an application for approval along with plans, drawings, and specifications to the Department of Natural Resources and obtain approval from the Department of Natural Resources before beginning construction. The Department of Natural Resources shall approve or deny the dam, holding pond, or lagoon pursuant to this section within sixty days after such application is submitted.

Source: Laws 2005, LB 335, § 42.

46-1643. Administrative or judicial recourse; not affected.

The Safety of Dams and Reservoirs Act does not deprive the owner of any administrative or judicial recourse to the courts to which such owner is entitled under the laws of this state.

Source: Laws 2005, LB 335, § 43.

46-1644. Department; employ personnel.

The department shall employ an engineer and such individuals otherwise qualified by training and experience in the design, inspection, construction, reconstruction, enlargement, repair, alteration, maintenance, operation, breach, removal, or abandonment of dams as necessary to carry out the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 44.

46-1645. Consulting board required; when; liability for costs.

When the safety and technical considerations pertaining to an application approval, an approval to operate, or the plans and specifications of a dam require it, or when requested in writing by the owner, the department shall appoint a consulting board of three or more consultants to report to the department on the safety features involved. The cost and expense of a consulting board, if appointed at the request of an owner, shall be paid by the owner.

Source: Laws 2005, LB 335, § 45.

46-1646. Dams; review and approval required; when.

(1) The department shall review and approve the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of all dams in the state for the protection of life and property as provided in the Safety of Dams and Reservoirs Act.

(2) No person shall construct, reconstruct, enlarge, alter, breach, remove, or abandon any dam without approval by the department.

(3) An owner of a dam who has entered into a cooperative agreement with the department pursuant to subdivision (2)(d) of section 46-1663 shall be deemed to be in compliance with the act.

Source: Laws 2005, LB 335, § 46.

46-1647. Potentially hazardous dams; emergency action plans.

(1) In order to protect life and property, the owner of every high hazard potential dam shall develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dam. In order to protect life and property, the department may require the owners of any significant hazard potential dam to develop and periodically test and update an emergency action plan to be implemented in the event of an emergency involving such dams.

(2) Such emergency action plan shall include, but not be limited to, the following elements:

(a) Emergency notification plan with flowchart;

(b) A statement of purpose;

(c) A project description;

(d) Emergency detection, evaluation, and classification;

(e) General responsibilities;

(f) Preparedness;

(g) Inundation maps or other acceptable description of the inundated area; and

(h) Appendices.

(3) For purposes of evaluating the adequacy of an emergency action plan, the department shall review, evaluate for adequacy, and approve or disapprove each emergency action plan submitted under this section. The department shall accept emergency action plans developed for dams under a federal dam safety program.

(4) If the department determines that a dam constitutes an immediate risk to life or property, the department shall order the owner to take such action as is necessary to remove such risk.

Source: Laws 2005, LB 335, § 47.

46-1648. Right of entry upon private property; when; immunity.

In making any investigation or inspection necessary to enforce or implement the Safety of Dams and Reservoirs Act, the department or its representatives, upon reasonable notice, may enter upon private property of the dam and reservoir owner as necessary. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable for prosecution for trespass when performing their official duties.

Source: Laws 2005, LB 335, § 48.

46-1649. Department; investigations and studies.

(1) The department may investigate and gather or cause the owner to gather such data, including advances made in safety practices elsewhere, as may be needed for a proper review and study of the various features of the design, construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of dams.

(2) The department may make or cause the owner to make such watershed investigations and studies as are necessary to keep abreast of developments affecting runoff and peak storm discharges in the vicinity of a dam.

(3) The department may make or cause the owner to make such seismic investigations and studies as may be necessary to keep abreast of developments affecting seismic stability of a dam.

Source: Laws 2005, LB 335, § 49.

46-1650. Department; enforcement; powers.

(1) The department may take any administrative or legal action necessary for the enforcement of the Safety of Dams and Reservoirs Act.

(2) An action or proceeding under this section may be initiated whenever any owner or any person acting as an agent of any owner:

(a) Fails to comply with the requirements imposed by the act or by any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act; or

(b) Commits or allows the commission of violations of the act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act.

(3) Any action or proceeding under this section shall be initiated either administratively or in a court in a jurisdiction in which:

(a) The dam, area of hazard potential, or some part thereof exists;

(b) The person named in the complaint has its principal place of business; or

(c) The person named in the complaint resides.

Source: Laws 2005, LB 335, § 50.

46-1651. Rules and regulations.

(1) The department may adopt and promulgate rules and regulations containing standards for the design, inspection, construction, reconstruction, enlargement, alteration, breach, removal, abandonment, and periodic testing of emergency action plans of dams to carry out the purposes of the Safety of Dams and Reservoirs Act. Such rules and regulations may also include, but are not limited to, establishing:

(a) Standards and criteria for the siting and design of dams, considering both existing and projected conditions which may affect the safety of a project during its construction and operational life;

(b) Requirements for operation of dams, including operational plans to be prepared and implemented by owners;

(c) Requirements for monitoring, inspection, and reporting of conditions affecting the safety of dams; and

(d) Requirements for emergency action plans to be prepared and implemented by owners in cooperation with emergency management authorities.

(2) In adopting rules and regulations applicable to dams which may have a high hazard potential or a significant hazard potential, the department may consider:

(a) The state of scientific and technological knowledge and good engineering practices relating to various types of dams;

(b) The economic impact of a failure of a structure upon the state and its citizens; and

(c) The relationship of dams in hydrologic management in the watershed as a whole.

Source: Laws 2005, LB 335, § 51.

46-1652. Construction or enlargement of dam; application for approval; contents.

(1) Construction of any new dam or the enlargement of any dam shall not commence until the owner has applied for and obtained from the department written application approval of plans and specifications.

(2) A separate application for each dam shall be filed with the department upon forms provided by the department. Plans and specifications signed and sealed by the design engineer shall accompany the application.

(3) The application shall provide the following information:

(a) The name and address of the owner;

(b) The name and address of the applicant, if different from the owner;

(c) The name and address of the operator or other person to be contacted regarding arrangements for inspections or other matters associated with the dam;

(d) The location, type, size, purpose, and height of the proposed dam;

(e) The reservoir surface areas and associated storage capacity at elevation intervals not exceeding two feet;

(f) Plans for proposed permanent instrument installations in the dam;

(g) The area of the drainage basin, rainfall records, streamflow records, and flood flow records and estimates, if available;

(h) Maps and design drawings showing plans, elevations, and sections of all principal structures and appurtenant works with other features of the project in sufficient detail, including design analyses, to determine safety, adequacy, and suitability of design;

(i) The estimated construction cost of the dam; and

(j) Such other pertinent information as the department requires.

(4) The department may, when in its judgment it is necessary, also require the following:

(a) Data concerning subsoil and rock foundation conditions and the materials involved in the construction of the dam;

(b) Investigations of, and reports on, subsurface conditions, exploratory pits, trenches and adits, drilling, coring, and geophysical tests to measure in place and in the laboratory the properties and behavior of foundation materials at the dam site;

(c) Investigations and reports on the geology of the dam site, possible geologic hazards, seismic activity, faults, weak seams and joints, availability and quality of construction materials, and other pertinent features; and

(d) Other appropriate information.

(5) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

Source: Laws 2005, LB 335, § 52.

46-1653. Modifications to existing dam; application for approval; contents; exemption.

(1) Before commencing the reconstruction or alteration of a dam or the abandonment, breach, or removal of a dam so that it no longer constitutes a dam, the owner shall file an application and secure the written application approval of the department.

(2) The application shall give such pertinent information or data concerning the dam as may be required by the department.

(3) The application shall give the name and address of the applicant and shall adequately detail, with appropriate references to the existing dam, the proposed reconstruction, alteration, abandonment, breach, or removal of the dam. The application shall be accompanied by plans and specifications signed and sealed by the design engineer. The department may waive any of the requirements of this section if the requirements are unnecessary for the application approval.

(4) If an application is incomplete or defective, it shall be returned to the applicant to complete or to correct the defects. The application shall be corrected and returned to the department within ninety days after it is returned to the applicant or within such additional time as may be allowed by the department. If the application is returned to the department after expiration of such time period, it shall be dismissed.

(5) In case of an emergency in which the department declares that repairs or breaching of the dam are necessary to safeguard life and property, repairs or breaching shall be started immediately by the owner or by the department at the owner's expense. The department shall be notified within twenty-four hours of emergency repairs or breaching when instituted by the owner.

(6) The proposed repairs or breaching shall conform to any orders issued by the department.

Source: Laws 2005, LB 335, § 53.

46-1654. Application approval; issuance; public hearing; notice to department; when.

(1) Approval of applications for which approval under sections 46-233 to 46-242 is not required shall be issued within ninety days after receipt of the completed application plus any extensions of time required to resolve matters diligently pursued by the applicant. At the discretion of the department, one or more public hearings may be held on an application.

(2) Approval of applications under the Safety of Dams and Reservoirs Act, for which approval under sections 46-233 to 46-242 is required, shall not be issued until all pending matters before the department under the Safety of Dams and Reservoirs Act or such sections have been resolved and approved.

(3) Application approval shall be granted with terms, conditions, and limitations necessary to safeguard life and property.

(4) If actual construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is not commenced within the time established

by the department, the application approval becomes void, except that the department may, upon written application and for good cause shown, extend the time for commencing construction, reconstruction, enlargement, alteration, breach, removal, or abandonment. If approval under sections 46-233 to 46-242 is also required, the department may not extend the time for commencing construction without following the procedures and granting a similar extension under subsection (2) of section 46-238.

(5) Written notice shall be provided to the department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment is to begin and such other notices shall be given to the department as it may require.

Source: Laws 2005, LB 335, § 54; Laws 2009, LB209, § 2; Laws 2011, LB32, § 1.

46-1655. Fees.

(1) The application for approval of construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam shall be accompanied by a filing fee as established by rule and regulation of the department but not to exceed (a) two hundred dollars for a dam less than twenty-five feet in height, (b) three hundred dollars for a dam twenty-five feet in height to not more than fifty feet in height, and (c) four hundred dollars for a dam in excess of fifty feet in height.

(2) Only one filing fee shall be collected for an enlargement by flashboards, sandbags, earthen levees, gates, or other works, devices, or obstructions which are from time to time to be removed and replaced or opened and shut and thereby operated so as to vary the surface elevation of the reservoir.

(3) A dam subject to the Safety of Dams and Reservoirs Act and for which plans and specifications have been approved prior to September 4, 2005, shall not be required to pay any additional fee or submit an additional application for approval unless such dam requires reconstruction, enlargement, alteration, breach, removal, or abandonment.

(4) An application shall not be considered by the department until the filing fee is received.

(5) Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Dam Safety Cash Fund.

Source: Laws 2005, LB 335, § 55.

46-1656. Dam Safety Cash Fund; created; use; investment.

The Dam Safety Cash Fund is created. The fund shall consist of fees credited pursuant to section 46-1655 and any money specifically appropriated to the fund by the Legislature. Money in the fund shall not be subject to any fiscal-year limitation or provision for lapse of unexpended balance at the end of any fiscal year or biennium. The fund shall be administered by the department. Money in the fund may be expended by the department for costs incurred by the department in the administration of the Safety of Dams and Reservoirs 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 2005, LB 335, § 56.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

46-1657. New or modified dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of a new or reconstructed dam and reservoir or of the enlargement of a dam and reservoir, the owner shall file with the department, without a filing fee, a completion certification accompanied by supplementary drawings or descriptive matter signed and sealed by the design engineer, showing or describing the work as actually completed. Such supplementary materials may include, but need not be limited to, the following as determined by the department:

(a) A record of all geological boreholes and grout holes and grouting;

(b) A record of permanent location points, benchmarks, and instruments embedded in the structure;

(c) A record of tests of concrete or other material used in the construction, reconstruction, or enlargement of the dam; and

(d) A record of initial seepage flows and embedded instrument readings.

(2) In connection with the enlargement of a dam, the supplementary drawings and descriptive matter need apply only to the new work.

(3) An approval to operate shall be issued by the department upon a finding by the department that the dam is safe to impound within the limitations prescribed in

the application approval. No impoundment by the structure shall occur prior to issuance of the approval to operate.

Source: Laws 2005, LB 335, § 57; Laws 2017, LB154, § 1.

46-1658. Alteration of dam; owner; filing requirements; approval to operate; issuance.

(1) Upon completion of the alteration of any dam, the owner shall file with the department a completion certification accompanied by supplementary drawings or descriptive matter, as determined by the department, signed and sealed by the design engineer, showing or describing the work as actually completed.

(2) An approval to operate shall be issued upon a finding by the department that the dam is safe to impound within the limitations prescribed in the application approval. Pending issuance of a new or revised approval to operate, the owner of the dam shall not cause the dam to impound beyond the limitations prescribed in the existing application approval.

Source: Laws 2005, LB 335, § 58.

46-1659. Removal, breach, or abandonment of dam; design engineer; duties; department; powers.

(1) Upon completion of the removal, breach, or abandonment of a dam, the design engineer shall file with the department a completion certification.

(2) Before final approval of the removal of a dam is issued, the department may inspect the site of the work and determine that all work was accomplished in substantial conformance with the application approval.

(3) Following the removal of a dam, the department may report such removal to the National Performance of Dams Program and to the National Inventory of Dams.

Source: Laws 2005, LB 335, § 59.

46-1660. Approval to operate; department; powers; hearing; notice.

(1) Each approval to operate issued by the department under the Safety of Dams and Reservoirs Act shall contain such terms and conditions as the department may prescribe.

(2) The department shall revoke, suspend, or amend any approval to operate whenever it determines that the dam constitutes a danger to life and property.

(3) Before any approval to operate is revoked by the department, the department shall hold a public hearing. Written notice of the time and place of the hearing shall be mailed to the owner at least thirty days before the date set for the hearing. Any interested persons may appear at the hearing and present their views and objections to the proposed action.

Source: Laws 2005, LB 335, § 60.

46-1661. Complaint; department; duties; unsafe condition; modification.

(1) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department shall cause an inspection and investigation to be made unless the data, records, and inspection reports on file are found adequate to make a determination whether the complaint is valid. The complainant shall be provided with a copy of the official report of the inspection and investigation.

(2) If it is found that an unsafe condition exists, the department shall notify the owner of the dam to take such action as is necessary to correct the condition, including breaching or removal of any dam found to be beyond repair.

Source: Laws 2005, LB 335, § 61.

46-1662. Periodic inspections; when; department; powers and duties.

(1) During the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department may make periodic inspections for the purpose of ascertaining compliance with the approved plans and specifications. The department shall require the owner to direct the design engineer to provide adequate supervision during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment and to provide sufficient information to enable the department to determine that conformity with the approved plans and specifications is being attained.

(2) If, after any inspection or investigation, during the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of a dam or at any time prior to issuance of an approval to operate, it is found by the department that modifications or changes are necessary to ensure the safety of the dam, the department shall order the owner to revise his or her plans and

specifications. The owner may, pursuant to section 46-1645, request an independent consulting board to review the order of the department.

(3) If at any time during construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam, the department finds that the work is not being done in accordance with the approved plans and specifications, the department shall deliver a written notice of noncompliance to the owner. The notice shall be delivered by registered mail or by personal service to the owner, shall state the particulars in which the approved plans and specifications are not being or have not been complied with, and shall order immediate compliance with the approved plans and specifications. The department may order that no further work be done until such compliance has been effected and approved by the department.

(4) Failure to comply with the notice delivered under subsection (3) of this section may cause revocation of application approval by the department. If compliance with the notice has not occurred within sixty days after the date of the notice, the department shall order the incomplete structure removed sufficiently to eliminate any safety hazard to life.

Source: Laws 2005, LB 335, § 62.

46-1663. Record-keeping requirements; maintenance, operation, and inspection; department; powers.

(1) The department shall require owners to keep original records and any modifications to construction available and in good order.

(2) The department may:

(a) Adopt such rules and regulations and issue such orders as necessary to secure adequate maintenance, operation, and inspection by owners;

(b) Require engineering and geologic investigations to safeguard life and property;

(c) Accept approvals and reports of equivalent inspections prepared for dams under a federal dam safety program; and

(d) Enter into cooperative agreements with the owners of dams which are required to comply with a federal dam safety program that has objectives, standards, and requirements that meet or exceed the purposes of the Safety of Dams and Reservoirs Act.

Source: Laws 2005, LB 335, § 63.

46-1664. Safety inspections; when; department; powers and duties.

(1) The department shall inspect dams for the purpose of determining their safety. The normal inspection frequency shall be annually for high hazard potential dams, biennially for significant hazard potential dams, and every five years for low hazard potential dams and every five years or more for minimal hazard potential dams. The department may vary the inspection frequency of some sites based on an evaluation of the site performance history. The department may conduct additional inspections at any time. If serious safety concerns are found by the department during the inspections, the department shall require the owner to conduct tests and investigations sufficient for the department to determine the condition of the dam. After review of the tests or investigations, the department may require modification, removal, or breach of the dam or alteration of operating procedures to restore or improve the safety of the dam and may require installation of instrumentation to monitor the performance of the dam.

(2) The department may report the results of dam inspections that determine unsafe conditions or noncompliance to the National Performance of Dams Program.

Source: Laws 2005, LB 335, § 64.

46-1665. Emergency actions involving a dam; owner; duties; department; duties.

(1) The owner of a dam has the primary responsibility for determining when an emergency exists. When the owner of a dam determines that an emergency exists involving a dam, the owner shall immediately implement the emergency action plan as required pursuant to section 46-1647. The owner shall immediately notify any persons who may be endangered if the dam should fail, notify emergency management organizations in the area, take necessary remedial action to prevent or mitigate the consequences of failure, and notify the department. The department shall take any remedial action necessary to protect life and property if, in its judgment, either:

(a) The condition of any dam is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

(b) Passing or imminent floods or any other condition threatens the safety of any dam.

(2) In applying the remedial means provided for in this section, the department may in an emergency, with its own forces or by other means at its disposal, do any or all of the following:

(a) Take full charge and control of any dam;

(b) Lower the water level by releasing water from the reservoir;

(c) Completely drain the reservoir;

(d) Perform any necessary remedial or protective work at the site; or

(e) Take such other steps as may be essential to safeguard life and property.

(3) The department shall continue in full charge and control of such dam and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased and the owner is able to take back full charge and control. The department's taking full charge and control under this section does not relieve the owner of such dam of liability for any negligent acts of such owner.

(4) The department may report emergency actions involving the safety of a dam to the National Performance of Dams Program in a timely manner.

Source: Laws 2005, LB 335, § 65.

46-1666. Violations; penalties.

(1) Violation of the Safety of Dams and Reservoirs Act or of any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act is a Class V misdemeanor. Each day that the violation continues constitutes a separate and distinct offense.

(2) Any person who willfully obstructs, hinders, or prevents the department from performing the duties imposed by the act commits a Class IV misdemeanor.

(3) Any owner or any person who engages in the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of any dam or who knowingly does work on or permits work to be done on the dam without the approval of the department or in violation of the act and who fails to immediately notify the department thereof commits a Class V misdemeanor.

Source: Laws 2005, LB 335, § 66.

46-1667. Notice of violation; orders; procedure.

(1) If the department has reason to believe that an owner or other person is violating or has violated the Safety of Dams and Reservoirs Act, an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department issued or adopted pursuant to the act, the department shall give the owner or person written notice by certified mail that the owner or person appears to be in violation of the act. The owner or other person shall have thirty days from the mailing of such notice to respond or to request a hearing before the department as to why the owner or other person should not be ordered to cease and desist from the violation. The notice shall inform the owner or other person how to request the hearing and the consequences of failure to request a hearing.

(2) If the department finds that an owner or person is constructing, reconstructing, enlarging, altering, breaching, removing, or abandoning a dam without having first obtained the required application approval, the department shall issue a temporary order for the owner or person to cease and desist the construction, reconstruction, enlargement, alteration, breach, removal, or abandonment pending final action by the department pursuant to subsection (3) of this section. The temporary order shall include written notice by certified mail to the owner or person of the time and date set by the department for a hearing to show cause why the temporary order should be vacated.

(3) After a response to a notice or a hearing pursuant to subsection (1) or (2) of this section or after the expiration of time to request a hearing, the department shall issue a decision and final order. The decision and final order may take such form as the department determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty, and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner or person affected may appeal the hearing decision as provided in section 61-207.

(4) If the owner or person continues the violation after the department has issued a final decision and order pursuant to subsection (3) of this section or a temporary order pursuant to subsection (2) of this section, the department may apply for a temporary restraining order or preliminary or permanent injunction from a court of competent jurisdiction. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

Source: Laws 2005, LB 335, § 67.

46-1668. Violations; civil penalty.

(1) Any person who violates the Safety of Dams and Reservoirs Act or an application approval, an approval to operate, a rule, a regulation, an order, or a requirement of the department under the act may be assessed a civil penalty in an

amount not to exceed five hundred dollars per day for each day the violation continues.

(2) The department shall bring an action to recover a penalty imposed under this section in a court in the jurisdiction in which the violation occurred.

(3) In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or willful, the past conduct of the defendant, whether the defendant has taken steps to cease, remove, or mitigate the violation, and any other relevant information.

Source: Laws 2005, LB 335, § 68.

46-1669. Appeal.

Any affected person aggrieved by any final order or decision made by the director pursuant to the Safety of Dams and Reservoirs Act may appeal the order as provided in section 61-207. For purposes of this section, affected person means the applicant or holder of any approvals under the act 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 such final order or decision.

Source: Laws 2005, LB 335, § 69.

46-1670. Existing unapproved dams; requirements.

(1) Every owner of a dam subject to the Safety of Dams and Reservoirs Act that was completed prior to September 4, 2005, and not previously approved by the department when departmental approval was otherwise required shall file an application with the department for approval of such dam.

(2) A separate application for each dam shall be filed with the department upon forms supplied by the department and shall include such appropriate information concerning the dam as the department requires.

(3) The department may give notice, by certified mail to the owner's last address of record in the office of the county assessor of the county in which the dam is located, to the owner of dams required under this section to file an application who or which have failed to do so, and a failure to file within sixty days after receipt of such notice shall be punishable as provided in the act.

(4) The department may make inspections of such dams and may require owners of such dams and reservoirs to perform, at the owner's expense, such work or tests as may reasonably be required to disclose information sufficient to enable

the department to determine whether to issue an approval to operate or to issue orders directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the department may require an owner to lower the water level of or to drain the reservoir.

(5) If, upon inspection or upon completion to the satisfaction of the department of all work ordered, the department finds that the dam is safe to impound, an approval to operate shall be issued.

(6) If at any time the department finds that the dam is not safe to impound, the department shall notify the owner in writing and shall set a time and place for hearing on the matter. The owner of such dam shall ensure that such dam does not impound following receipt of such notice. Written notice of the time and place of the hearing shall be mailed, at least thirty days prior to the date set for the hearing, to the owner. Any interested person may appear at the hearing and present his or her views and objections to the proposed action.

Source: Laws 2005, LB 335, § 70.

46-1701. Water augmentation project for streamflow enhancement; joint entity or natural resources district; voluntary payments in lieu of taxes; duties; notice; hearing; annual report; contents.

(1) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that acquires title to private lands for the purpose of developing and operating a water augmentation project for streamflow enhancement, as authorized by section 46-715, may agree to make voluntary payments in lieu of taxes to the county treasurer of the county in which the land is located. A payment in lieu of tax may be made for any year in which the joint entity or natural resources district owns the land, including any year prior to March 1, 2018. The amount of the payment in lieu of tax for any year shall not be more than the real property taxes that would have been paid on the land if the land were subject to taxation. The county treasurer shall allocate the payment in lieu of tax to the taxing units in the county in the same proportion that property taxes would have been allocated to such taxing units if the land were subject to taxation.

(2) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that has secured a contract or memorandum of agreement to acquire title to private land for the purpose of developing and operating a water augmentation project for streamflow enhancement, as authorized by section 46-715, shall:

(a) Provide public notice of the joint entity's or district's intention to proceed with the water augmentation project. The notice shall include the project's intended

purpose, an estimate of the amount of water that will be pumped for the purpose of augmentation, and the timeframe in which the water will be used;

(b) Hold a public hearing and accept public comment on the project; and

(c) Seek the input of officials from the county in which the project will be located and adjoining landowners on ways to minimize the effects of the project on the county.

(3)(a) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that is operating a water augmentation project for streamflow enhancement shall publish an annual report that includes the following information regarding the project:

(i) Details on the operation of the project;

(ii) The amount of water pumped;

(iii) The amount of land leased and for what purposes;

(iv) The amount of revenue gained from land leases;

(v) The amount of payments made in lieu of taxes;

(vi) Financial details of the project, including the amount of debt, the amount of outstanding bonds and loans, and the project budget;

(vii) Whether the project is achieving its intended purpose;

(viii) The effect of the project on ground water supplies; and

(ix) Projections for use of the project in the future and the effect of the use on ground water supplies.

(b) The joint entity or natural resources district shall provide public notice and hold a public hearing to allow an opportunity for public comment on the report required under subdivision (3)(a) of this section.

(4) Any joint entity created pursuant to the Interlocal Cooperation Act or natural resources district that has acquired title to private lands for the purpose of developing and operating a water augmentation project for streamflow enhancement, as authorized by section 46-715, shall submit all leases relating to such lands to the appropriate county assessor within thirty days after the effective date of the lease.

Source: Laws 2018, LB758, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.