

LEGISLATIVE BILL 26

Approved by the Governor April 2, 1979

Introduced by Kremer, 34

AN ACT to amend sections 46-658, 46-663, 46-665, 46-666, and 46-673, Revised Statutes Supplement, 1978, relating to the Nebraska Ground Water Management Act; to change provisions and procedures for establishing or modification of control areas; to provide for dissolution; and to repeal the original sections.

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

Section 1. That section 46-658, Revised Statutes Supplement, 1978, be amended to read as follows:

46-658. (1) An area may be designated a control area by the director following a hearing initiated in accordance with subsection (3) of this section if it shall be determined, following evaluation of relevant hydrologic data, history of developments, and projection of effects of current and new development, that uncontrolled development and utilization of the ground water supply has caused or is likely to cause within the reasonably foreseeable future the existence of either of the following conditions:

(a) An inadequate ground water supply to meet present or reasonably foreseeable needs for beneficial use of such water supply; or

(b) Dewatering of an aquifer, resulting in a deterioration of the quality of such ground water sufficient to make such ground water unsuitable for the present purposes for which it is being utilized. there is an inadequate ground water supply to meet present or reasonably foreseeable needs for beneficial use of such water supply. In determining the adequacy of such ground water supply,

(2) When determining whether to designate a control area because of the existence of either of the conditions listed in subsection (1) of this section, the director's considerations shall include, but not be limited to, a finding that of the existence of any of the following conditions: (a) Conflicts between ground water users are occurring or may be reasonably anticipated, (b) Substantial or that ground water users are experiencing, or will experience within the foreseeable future, substantial economic hardships exist

or-are-foreseeable as a direct result of current or anticipated ground water development or utilization.
~~decline; or~~

~~(c) Other conditions exist that indicate the inadequacy of the ground water supply or that require the area be designated as a control area for protection of the public welfare.~~

(2) (3) A hearing to designate a control area may be initiated by a district whenever it has information, sufficient in the opinion of the board of directors, to require that any portion of such district should be designated as a control area. The board of directors shall report such information to the director with a request that a hearing be held to determine if a control area should be established. The request shall be accompanied by a general description of the area proposed for inclusion in such control area.

(3) (4) (a) Within thirty days after a hearing has been initiated pursuant to subsection (2) (3) of this section, the director shall consult with the district and fix a time and place for a public hearing to consider the information supplied and to hear any other evidence. The hearing shall be held within one hundred twenty days after it has been initiated, shall be open to the public, and shall be located within, or in reasonable proximity to, the area proposed for designation as a control area. If, from information submitted by the district or otherwise available to the director, the director has reason to believe that area other than that identified by the district should be considered for inclusion in any control area which would be established as a result of such request, he shall so notify the district or districts whose boundaries encompass such additional area. Notice of the hearing shall be published in a newspaper of such newspapers as are necessary to provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all area which will be considered by the director for inclusion in the control area.

(b) After the hearing, which shall include testimony of representatives of the Conservation and Survey Division of the University of Nebraska and the Nebraska Natural Resources Commission, and the results of any studies or investigations conducted by the director as he deems necessary, the director shall ~~issue an order declaring that the area shall or shall not be designated a control area. If the director shall determine that an~~

area should be designated as a control area, he shall, by order, following consultation with such state agencies and the district or districts affected, define such area geographically and stratigraphically. determine whether a control area shall be designated. If the director determines that no control area shall be established, he shall issue an order declaring that no control area shall be designated.

(c) If the director determines that a control area shall be established, he shall determine the boundaries of the control area after taking into account the considerations enumerated in subsection (1) of this section, the effect on political subdivisions and the socio-economic and administrative factors directly affecting the ability to implement and carry out local ground water management and control.

(d) If the director determines that contiguous area within the jurisdictional limits of one or more districts other than the district or districts which initiated the hearing is subject to the conditions identified in this section and therefore appropriate for inclusion in such control area, he shall so notify such other district or districts prior to issuance of the order designating the control area. Such additional area shall not be included in the control area unless any such other district consents in writing to such inclusion within sixty days of such notification by the director.

(e) When the boundaries of a control area have been determined, the director shall, following consultation with such state agencies as are named in subdivision (b) of this subsection and the district or districts affected, issue an order designating the area as a control area. Such an order shall include a geographic and a stratigraphic definition of the control area. Notice of the order shall be provided in the same manner as that provided for the hearing.

(4) (5) Modification in control area boundaries or dissolution of a control area may be accomplished utilizing the procedure established in this section for the initial designation of such areas as control areas, but hearings for designation, or modification, or dissolution of such control area may not be initiated more often than once a year.

Sec. 2. That section 46-663, Revised Statutes Supplement, 1973, be amended to read as follows:

46-663. Regardless of whether or not any portion of a district has been designated as a control area

pursuant to the provisions of this act, in order to administer and enforce this act and to effectuate the policy of the state to conserve ground water resources, a district may:

(1) Adopt, following public hearing, notice of which shall have been given in the manner provided in section 46-658, rules and regulations necessary to discharge the administrative duties assigned in this act:

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

(3) 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 this act;

(4) Report to and consult with the Department of Environmental Control on all matters concerning the entry of pollution or polluting materials into ground water supplies;

(5) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds therefor and following reasonable opportunity to be heard, to enforce any of the provisions of this act or of orders or permits issued pursuant hereto, and initiate suits to enforce the provisions of orders issued pursuant to this act; and

(6) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds therefor and following reasonable opportunity to be heard, to restrain the construction of illegal wells or the withdrawal or use of water from such wells.

Sec. 3. That section 46-665, Revised Statutes Supplement, 1973, be amended to read as follows:

46-665. (1) Within---sixty---days---following Following the designation of any area as a control area, and at such other times as the district desires the adoption, amendment, or repeal of any control authorized in this act, the district shall hold a public hearing meeting to determine the type of controls to be imposed within that control area.

(2) Prior to the adoption, amendment, or repeal of any authorized control, the district shall hold one or

more public hearings to consider testimony regarding such adoption, amendment, or repeal. The text of the control or controls proposed for adoption or repeal, or of the amendment or amendments, shall be made available to the public at least thirty days prior to any such hearing. The hearings provided for by this subsection shall be held within or in reasonable proximity to the control area. Public notice of the time and place of all such hearings shall be given in the manner provided in section 46-658.

Sec. 4. That section 46-666, Revised Statutes Supplement, 1978, be amended to read as follows:

46-666. (1) The district shall by order, after a hearing conducted pursuant to subsection (3) of section 46-665, the record of which shall include the testimony of a representative of the Conservation and Survey Division of the University of Nebraska and the Nebraska Natural Resources Commission, adopt one or more of the following controls: ~~which shall be subject to approval by the director:~~

(a) It may determine the permissible total withdrawal of ground water in the designated control area for each day, month, or year, and allocate such withdrawal among the ground water users within the area;

(b) It may adopt and enforce a system of rotation for use of ground water in the control area;

(c) It may adopt well-spacing requirements more restrictive than those found in Chapter 46, article 6; and

(d) It may adopt such other reasonable regulations as are necessary to carry out the intent of this act.

(2) The adoption, amendment, or repeal of any authorized control shall be subject to the approval of the director. The director may hold a public hearing to consider testimony regarding such controls prior to the issuance of an order approving or disapproving the adoption, amendment, or repeal of such controls. The director shall consult with the district and fix a time, place, and date for such a hearing.

~~(2)~~ (3) If because of varying climatic, hydrologic, or geologic, or soil conditions existing within the control area, the uniform application throughout such area of one or more controls would fail to carry out the intent of this act in a reasonably

effective and equitable manner, the controls adopted by the district pursuant to subsection (1) of this section may contain different provisions for different portions of the control area. Any differences in such provisions shall recognize and be directed toward such varying conditions. The provisions of all controls shall be uniform for all portions of the control area which have substantially similar climatic, hydrologic, and geologic, and soil conditions.

(3) (4) If the district determines, following a public hearing conducted pursuant to section 46-665, that depletion of the ground water supply in the control area or any portion thereof is so excessive that the public interest cannot be protected solely through implementation of reasonable controls adopted pursuant to subsection (1) of this section, it may, with the approval of the director, close the control area or portion thereof to the issuance of any additional permits for a period of one calendar year. Such areas may be further closed thereafter by a similar procedure for additional one-year periods. Any such area may be reopened at any time the district shall determine that conditions warrant new permits, at which time the director shall consider all previously submitted applications for permits in the order in which they were received.

(4) (5) The district shall cause a copy of each order adopted pursuant to this section to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten days prior to the date set for the effective date of such order.

(5) (6) Whenever a control area, designated pursuant to section 46-658, encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and section 46-665 shall be exercised jointly and uniformly by agreement of the respective boards of directors of all districts so affected.

(6) (7) If, at the end of one--year eighteen months following a hearing conducted the designation of a control area pursuant to section 46-665 46-658, the district or districts conducting such hearing encompassed in whole or in part by such control area have not adopted a specific control or controls pursuant to subsection (1) of this section, the power to specify such controls shall vest in the director who shall, within ninety days thereafter, adopt by rule and regulation such control or controls as he shall deem necessary for carrying out the

intent of this act. Subject to section 46-667, the enforcement of controls adopted pursuant to this section shall be the responsibility of the district or districts involved.

(7) (8) If the power to adopt a control or controls shall be vested in the director, he shall be provided with a copy of all information, testimony, and data available to the district or districts as a result of the public hearing for the adoption of a control or controls. At his discretion, the director may conduct one or more additional public hearings prior to making his determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-658.

Sec. 5. That section 46-673, Revised Statutes Supplement, 1978, be amended to read as follows:

46-673. Each district encompassed in whole or in part by a control area designated pursuant to section 46-658 shall have the power and authority to levy a tax not to exceed one-fourth of one mill annually on all of the taxable property, ~~except intangible property,~~ within the portion of the district encompassed by such control area. Such levy, which shall be in addition to that authorized by section 2-3225, shall be utilized only for the costs of ~~administration of this act~~ carrying out the provisions of sections 46-656 to 46-674, Revised Statutes Supplement, 1978, within such control area. Certification and collection of such levy shall be administered by the district and by the county or counties involved in the same manner as the levy authorized by section 2-3225.

Sec. 6. That original sections 46-658, 46-663, 46-665, 46-666, and 46-673, Revised Statutes Supplement, 1978, are repealed.