

AMENDMENTS TO LB 798

Introduced by Natural Resources.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 46-283, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 46-283 The Legislature hereby finds and declares that the
6 practice of reusing ground water from irrigation water reuse pits
7 on irrigated land contributes to the efficient use and conservation
8 of the state's water resources and that such reuse may be more
9 feasible when done from irrigation water reuse pits located within
10 ephemeral natural streams.

11 Sec. 2. Section 46-286, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 46-286 ~~Headwater segment of a~~ An ephemeral natural stream
14 shall mean that portion of a natural stream in which water
15 flows only after a precipitation event or when augmented by
16 surface water runoff caused by the pumping of ground water for
17 irrigation. The ~~that~~ portion of a natural stream that is shown as
18 an intermittent stream on the most ~~recently published~~ recent United
19 States Geological Survey topographic quadrangle map published prior
20 to the effective date of this act shall be considered an ephemeral
21 natural stream unless the Department of Natural Resources has
22 investigated the stream and determined that the stream or a reach
23 of the stream is perennial or intermittent and subject to Chapter

1 46, article 2. The department's determination for the purposes
2 of this section shall be adopted and promulgated in rule or
3 regulation.

4 Sec. 3. Section 46-287, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 46-287 Notwithstanding any other provision of law, any
7 person intending to or in the process of reusing ground water from
8 an irrigation water reuse pit located within a ~~headwater segment of~~
9 ~~a~~ an ephemeral natural stream shall be exempt from the provisions
10 of Chapter 46, article 2, which would otherwise apply to such pits,
11 and from the provisions of section 46-637.

12 Sec. 4. Section 46-291, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 46-291 (1) Upon receipt of an application filed under
15 section 46-290 for a transfer in the location of use of an
16 appropriation, the Department of Natural Resources shall review
17 it for compliance with this subsection. The Director of Natural
18 Resources may approve the application without notice or hearing
19 if he or she determines that: (a) The appropriation is used and
20 will continue to be used exclusively for irrigation purposes; (b)
21 the only lands involved in the proposed transfer are (i) lands
22 within the quarter section of land to which the appropriation is
23 appurtenant, (ii) lands within such quarter section of land and
24 one or more quarter sections of land each of which is contiguous
25 to the quarter section of land to which the appropriation is
26 appurtenant, or (iii) lands within the boundaries or service
27 area of and capable of service by the same irrigation district,

1 reclamation district, public power and irrigation district, or
2 mutual irrigation or canal company; (c) after the transfer, the
3 total number of acres irrigated under the appropriation will be no
4 greater than the number of acres that could legally be irrigated
5 under the appropriation prior to the transfer; (d) all the land
6 involved in the transfer is under the same ownership or is within
7 the same irrigation district, reclamation district, public power
8 and irrigation district, or mutual irrigation or canal company;
9 (e) the transfer will not result in a change in the point of
10 diversion or the point of diversion will be changed but the
11 change meets the following requirements: (i) The new point of
12 diversion is on the same named stream, the same tributary, or
13 the same river or creek as the approved point of diversion; (ii)
14 the proposed point of diversion will not move above or below an
15 existing diversion point owned by another appropriator; and (iii)
16 the proposed point of diversion will not move above or below a
17 tributary stream or a constructed river return or a constructed
18 drain; and (f) the transfer will not diminish the water supply
19 available for or otherwise adversely affect any other surface
20 water appropriator. If transfer of an appropriation with associated
21 incidental underground water storage is approved in accordance
22 with this subsection, the associated incidental underground water
23 storage also may be transferred pursuant to this subsection as
24 long as such transfer would continue to be consistent with the
25 requirements of this subsection. If necessary, the boundaries of
26 the incidental underground water storage area may be modified to
27 reflect any change in the location of that storage consistent with

1 such a transfer. Transfers shall not be approved pursuant to this
2 subsection until the department has adopted and promulgated rules
3 and regulations establishing the criteria it will use to determine
4 whether proposed transfers are consistent with subdivision (1)(f)
5 of this section.

6 (2) If after reviewing an application filed under section
7 46-290 the director determines that it cannot be approved pursuant
8 to subsection (1) of this section, he or she shall cause a notice
9 of such application to be posted on the department's web site,
10 to be sent by certified mail to each holder of a mortgage or
11 deed of trust that is identified by the applicant pursuant to
12 subdivision (1)(b)(v) of section 46-290 and to any entity owning
13 facilities currently used or proposed to be used for purposes
14 of diversion or delivery of water under the appropriation, and
15 to be published at the applicant's expense at least once each
16 week for three consecutive weeks in at least one newspaper of
17 general circulation in each county containing lands to which the
18 appropriation is appurtenant and, if applicable, in at least one
19 newspaper of general circulation in each county containing lands to
20 which the appropriation is proposed to be transferred.

21 (3) The notice shall contain: (a) A description of the
22 appropriation; (b) the number assigned to such appropriation in
23 the records of the department; (c) the date of priority; (d) if
24 applicable, a description of the land or stream reach to which
25 such water appropriation is proposed to be transferred; (e) if
26 applicable, the type of appropriation to which the appropriation
27 is proposed to be changed; (f) if applicable, the proposed change

1 in the purpose of use; (g) whether the proposed transfer or change
2 is to be permanent or temporary and, if temporary, the duration
3 of the proposed transfer or change; and (h) any other information
4 the director deems relevant and essential to provide the interested
5 public with adequate notice of the proposed transfer or change.

6 (4) The notice shall state (a) that any interested person
7 may object to and request a hearing on the application by filing
8 such objections in writing specifically stating the grounds for
9 each objection and (b) that any such objection and request shall be
10 filed in the office of the department within two weeks after the
11 date of final publication of the notice.

12 (5) Within the time period allowed by this section for
13 the filing of objections and requests for hearings, the county
14 board of any county containing land to which the appropriation
15 is appurtenant and, if applicable, the county board of any county
16 containing land to which the appropriation is proposed to be
17 transferred may provide the department with comments about the
18 potential economic impacts of the proposed transfer or change in
19 such county. The filing of any such comments by a county board
20 shall not make the county a party in the application process, but
21 such comments shall be considered by the director in determining
22 pursuant to section 46-294 whether the proposed transfer or change
23 is in the public interest.

24 Sec. 5. Section 46-299, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 46-299 Any person who has obtained a permit for
27 intentional underground water storage associated with a project not

1 ~~existing on August 26, 1983,~~ and recovery of such water, pursuant
2 to section 46-233, 46-240, 46-241, 46-242, or 46-297 may, subject
3 to section 46-2,101, levy a fee or assessment against any person
4 for the right or probable right to withdraw or otherwise use such
5 stored water. Such fee or assessment may be levied against any
6 land in connection with which such underground water storage has
7 occurred or probably will occur, and may be varied based on the
8 degree to which underground water storage has occurred or will
9 occur. No fee or assessment shall represent more than the fair
10 market value of such recharge, except that a fee or assessment may
11 include a sum sufficient to amortize the operation, maintenance,
12 repair, and capital costs of the project, apportioned on the degree
13 to which recharge has occurred or is likely to occur, and on the
14 degree to which any surface water is delivered.

15 Sec. 6. Original sections 46-283, 46-287, and 46-299,
16 Reissue Revised Statutes of Nebraska, and sections 46-286 and
17 46-291, Revised Statutes Cumulative Supplement, 2006, are repealed.