

LEGISLATIVE BILL 30

Approved by the Governor April 2, 1997

Introduced by Beutler, 28

AN ACT relating to water wells; to amend section 46-637, Reissue Revised Statutes of Nebraska, and sections 46-235.04, 46-602, 46-656.28, 46-1239, and 46-1240, Revised Statutes Supplement, 1996; to change and eliminate provisions relating to replacement water wells; to authorize temporary suspension of water well drilling; to provide a statute of limitations for actions to collect civil penalties; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 46-235.04, Revised Statutes Supplement, 1996, is amended to read:

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

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the quantity of induced ground water recharge under the original priority date or application, (b) the amount of water withdrawn from water wells under the original priority date or application would not increase, (c) the quantity of streamflow needed to sustain well field operation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

Sec. 2. Section 46-602, Revised Statutes Supplement, 1996, is amended to read:

46-602. (1) For each water well completed in this state on or after September 9, 1993, the water well contractor as defined in section 46-1213 constructing the water well and the owner of the water well shall complete the appropriate registration form after the completion of the water well. The registration form for ~~(*)~~ water wells, ~~excluding replacement water wells and~~ excluding test holes and dewatering wells with intended use of ninety days or less, shall be filed with the Department of Water Resources by the owner within thirty days after completion of the water well, and ~~(b)~~ replacement water wells shall be filed with the department at the same time as the notice of abandonment of the water well being replaced as required by subsection ~~(2)~~ of this section. If no replacement water well is constructed at the time of abandonment but is constructed within the time provided in subsection ~~(3)~~ of this section, the registration form for such replacement water well shall be filed within thirty days after construction of such replacement water well. Registration shall be on a form provided by the Director of Water Resources. The form shall contain ~~(i)~~ (a) the name, address, and signature of the owner, ~~(ii)~~ (b) the legal description of the water well, ~~(iii)~~ (c) the date drilling commenced and the date construction was completed, ~~(iv)~~ (d) the intended use of the water well, ~~(v)~~ (e) the description and depth of geologic materials encountered, ~~(vi)~~ (f) the depth and diameter or dimension of the constructed water well and test hole, ~~(vii)~~ (g) the depth and diameter or dimension of the excavated hole if applicable, ~~(viii)~~ (h) the depth of the formation stabilizer or gravel pack and size of particles if used, ~~(ix)~~ (i) the depth and thickness of grout or other sealing materials if applicable, ~~(x)~~ (j) casing information,

including length, inside diameter, wall thickness, and type of material if applicable, ~~(*)~~ (k) the static water level, ~~(*)~~ (l) the water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable, ~~(*)~~ (m) the yield of the water well in gallons per minute if applicable, ~~(*)~~ (n) the identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law, ~~(*)~~ (o) the name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Licensing Act to any person, other than the owner of the water well, who constructed the water well, ~~(*)~~ (p) screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable, ~~(*)~~ (q) the signature of the water well contractor, ~~(*)~~ (r) when the newly constructed water well is a replacement water well, the registration number of the abandoned water well it replaces, if applicable, and the date the original water well was or will be decommissioned, and ~~(*)~~ (s) such additional information conformable to the statement of purpose contained in section 46-601 as the director requires. A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well, and one registration form and detailed site plan shall be completed for each such series. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, one registration form shall be required which shall include a detailed site plan which shows the location of each such water well in the site and a log from each such water well. The Department of Water Resources shall be notified of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and shall include such evidence of ownership as the director by rule and regulation directs. The department shall use such notice to update the registration on file. The registration requirement in this subsection shall not apply to water wells constructed prior to September 9, 1993, unless previously required to be registered.

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

(3) For purposes of this section, replacement water well means a water well which (a) replaces an abandoned water well within three years of the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned within one year of construction of the new water well and (b) is constructed to provide water to the same tract of land as the abandoned served by the water well being replaced.

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

Sec. 3. Section 46-637, Reissue Revised Statutes of Nebraska, is amended to read:

46-637. The use of water described in section 46-636 may only be made after securing a permit from the Department of Water Resources for such use. In approving or disapproving applications for such permits, the Director of Water 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 shall not apply to (1) water wells located within fifty feet of the bank of any natural stream which were in existence on September 9, 1993, and (2) replacement water wells as defined in subsection (3) of section 46-602 that are located within fifty feet of the banks of a stream if the water wells being replaced were originally constructed prior to September 9, 1993, and were located within fifty feet of the bank of any natural stream.

Sec. 4. Section 46-656.28, Revised Statutes Supplement, 1996, is amended to read:

46-656.28. (1) If a district on its own motion or following a request by a surface water appropriator, surface water project sponsor, ground water user, the Department of Water Resources, or another state agency has reason to believe that a management area should be designated for integrated management of hydrologically connected ground water and surface water or that controls in a management area should be adopted to include such integrated management, the district may utilize the procedures established in sections 46-656.19 to 46-656.21 or may request that the affected appropriators, the affected surface water project sponsors, and the Department of Water Resources consult with the district and that studies and a hearing be held on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water.

(2) If, following a request from a district and as a result of information available to the Department of Water Resources and following preliminary investigation, the Director of Water Resources makes a preliminary determination that there is a reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to (a) conflicts between ground water users and surface water appropriators, (b) disputes over interstate compacts or decrees, or (c) difficulties fulfilling the provisions of other formal state contracts or agreements, the department shall, in cooperation with any appropriate state agency and district, conduct or coordinate any necessary studies to determine the cause of such conflicts, disputes, or difficulties and the extent of the area affected. Such studies shall be prioritized and completed within a reasonable time following such preliminary determination. The department shall issue a written report of such preliminary findings within ninety days after the completion of any such studies. The department shall consider all relevant portions of the ground water management plan developed by the district pursuant to sections 46-656.12 to 46-656.16 during the study required by this section.

(3) If the director determines from any studies conducted pursuant to subsection (2) of this section or from information otherwise available that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to conflicts between ground water users and surface water appropriators, to disputes over interstate compacts or decrees, or to difficulties fulfilling the provisions of other formal state contracts or agreements and that conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements could be eliminated or reduced through the exercise of the authority granted by subsection (5) of this section, he or she shall, within thirty days after completion of the report required by subsection (2) of this section, consult with the affected surface water appropriators and district containing the area affected by such conflicts, disputes, or difficulties and fix a time and place for a public hearing to consider the report, hear any other relevant evidence, and secure testimony on whether a joint action plan should be prepared. The hearing shall be held within ninety days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the management area for which the district and director are considering in the preparation of a joint action plan.

(4) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health, the Department of Environmental Quality, the Nebraska Natural Resources Commission, the affected surface water project sponsor or sponsors, and the appropriate surface water appropriators and district or districts may offer as evidence any information in their possession relevant to the purpose of the hearing. Within ninety days after the hearing or after any further studies or investigations conducted by or on behalf of the Director of Water Resources as he or she deems necessary, the district shall determine by order whether to proceed with developing a joint action plan for integrated management.

If the district determines that it should proceed and the district and the director determine that a joint action plan should be prepared, the district and the director shall develop a joint action plan to be utilized within the area in order to mitigate or eliminate conflicts between ground water users and surface water appropriators, disputes over interstate compacts

or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements.

(5) The district's portion of the joint action plan developed under this section shall include one or more of the controls authorized by section 46-656.25 and shall be completed within one year after the date of the district's resolution to proceed. The portion of the joint action plan developed by the Department of Water Resources shall be completed within one year after the date of the district's resolution to proceed and shall include one or more of the following measures concerning the use of surface water:

(a) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually;

(b) The prohibition or limitation of additional surface water appropriations;

(c) Requirements for surface water appropriators to apply or utilize reasonable conservation measures or best management practices consistent with the good husbandry and other requirements of section 46-231; or

(d) Other reasonable restrictions on surface water use that are consistent with the intent of section 46-656.05 and the requirements of section 46-231.

If the department determines that surface water appropriators should be required to apply or utilize reasonable conservation measures or best management practices, the department's portion of the joint action plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty days unless extended by the department, to identify the conservation measures or best management practices to be applied or utilized and a schedule for such application and utilization.

(6) In developing their respective portions of the joint action plan authorized by subsection (5) of this section, the department and the district shall consider, but not be limited to considering, whether it reasonably appears that such action would mitigate or eliminate the condition which led to designation of the management area or the adoption of a joint action plan for the management area or will improve the administration of the management area.

(7) The district shall also determine that designation of a management area and adoption of a joint action plan would be in the public interest.

(8) Neither well registration dates nor appropriation dates shall be a factor in determining whether a management area shall be designated or a joint action plan prepared.

(9) In determining whether designating a management area or adopting a joint action plan would be in the public interest, the district shall consider (a) the impacts of the existing or projected diminution or degradation of water resources on (i) surface water appropriators, (ii) ground water users, (iii) public health and safety, (iv) social, economic, and environmental values in the affected area or areas, and (v) compliance with state laws, rules, or regulations, including, but not limited to, constitutional and statutory preferences in the use of water and interstate compacts or decrees, and (b) whether designation and implementation of a management area or adoption and implementation of a joint action plan would prevent or alleviate the impact of such diminution or degradation of water resources.

(10) Following completion of the district's and the director's portions of the joint action plan, the district, in order to establish a management area, shall fix a time and place for a public hearing to consider the joint action plan information and to hear any other relevant evidence. The hearing shall be held within sixty days after completion of the joint action plan and shall be located within or in reasonable proximity to the area proposed for designation as a management area.

Notice of the hearing shall be published at the expense of the district in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks. The last publication shall be not less than seven days prior to the hearing. The notice shall provide a general description of the contents of the joint action plan and of the area which will be considered for inclusion in the management area and shall provide the text of all controls proposed for adoption by the district and the department.

All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the department and shall include the results of any studies or investigations conducted by the district or the director.

(11) Within ninety days after the hearing the district shall

determine by order whether a management area shall be designated.

If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt the joint action plan, to include one or more controls authorized by section 46-656.25 and subsection (5) of this section to be utilized within the area in order to mitigate or eliminate the conflicts, disputes, or difficulties described in subsection (9) of this section. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(12) The district shall cause a copy of any order adopted pursuant to subsection (11) of this section to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved. The last publication shall be not less than ten days prior to the effective date of the order. The order shall become effective on the date specified by the district but not later than ninety days after the date of establishment of the management area.

(13) Modification of a district's portion of a joint action plan may be accomplished utilizing the procedure established for the initial adoption of the joint action plan. Modification of the boundaries of a district-designated management area for integrated management or dissolution of such an area shall be in accordance with the procedures established in sections 46-656.19 to 46-656.21. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Modification of controls also may be accomplished using the procedure in such sections.

(14) Each district in which a joint action plan for a management area has been adopted shall, in cooperation with the surface water appropriators, any surface water project sponsors, and the department, establish a program to monitor use of hydrologically connected ground water and surface water resources in the area which is contributing to or is in the reasonably foreseeable future likely to contribute to conflicts between ground water users and surface water appropriators, to disputes over interstate compacts or decrees, or to difficulties fulfilling the provisions of other formal state contracts or agreements.

(15) For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators under the Nebraska Ground Water Management and Protection Act does not include holders of instream flow appropriations under sections 46-2,107 to 46-2,119.

(16)(a) If a district, in accordance with subsection (1) of this section, has initiated the process for the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water, the district may adopt regulations to require a temporary suspension in the drilling of certain new wells in the district or portion of the district for which the preparation of the joint action plan is proposed. If such temporary suspension is imposed, it shall apply to all new wells in the geographic area involved except (i) test holes or dewatering wells with an intended use of ninety days or less, (ii) water wells designed and constructed to pump fifty gallons per minute or less, and (iii) water wells defined by the district to be replacement water wells. The regulations to impose such temporary suspension may be adopted only after a public hearing for which notice has been given as provided in section 46-656.19. Any such temporary suspension could be imposed initially for not to exceed three years, but could be extended thereafter on an annual basis for not to exceed two years if necessary to allow adoption and implementation of a management area and action plan in accordance with subsections (11) and (12) of this section.

(b) Any such temporary suspension shall be immediately rescinded for the applicable portion or portions of the geographic area involved if any of the following events occur: (i) The Director of Water Resources determines, in accordance with subsection (2) or (3) of this section that there is no reason to believe that the conditions described in such subsections exist and that therefor no hearing is required on a question of whether a joint action plan should be prepared; (ii) the district determines, pursuant to subsection (5), (6), (7), (8), or (9) of this section that it should not proceed to develop a joint action plan; (iii) the district determines pursuant to subsection (11) of this section that a management area should not be adopted; or (iv) an order adopted by the district pursuant to subsection (11) of this section becomes

effective and designates the area or areas involved as a management area and adopts a joint action plan which includes one or more controls authorized by section 46-656.25.

(c) The district may grant a variance from the temporary suspension if it determines that construction of a new well is necessary to alleviate an emergency situation involving the provision of water for human consumption.

This subsection does not authorize the Department of Water Resources to temporarily suspend drilling of water wells.

This subsection terminates on December 31, 2002.

Sec. 5. Section 46-1239, Revised Statutes Supplement, 1996, is amended to read:

46-1239. Any person who fails to employ or use at least one individual appropriately licensed or certified and available, in accordance with section 46-1233, or any person who engages, without a license or certificate for such activities, in the construction of water wells or the installation of pumps and pumping equipment 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, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

Sec. 6. Section 46-1240, Revised Statutes Supplement, 1996, is amended to read:

46-1240. 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, 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' Licensing 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, within thirty days from after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

Sec. 7. Sections 4, 7, 8, and 10 of this act become operative July 1, 1997. The other sections of this act become operative three calendar months after adjournment of this legislative session.

Sec. 8. Original section 46-656.28, Revised Statutes Supplement, 1996, is repealed.

Sec. 9. Original section 46-637, Reissue Revised Statutes of Nebraska, and sections 46-235.04, 46-602, 46-1239, and 46-1240, Revised Statutes Supplement, 1996, are repealed.

Sec. 10. Since an emergency exists, this act takes effect when passed and approved according to law.