

LEGISLATIVE BILL 135

Approved by the Governor February 6, 2001

Introduced by Natural Resources Committee: Schrock, 38, Chairperson;
Bromm, 23; Bruning, 3; Hudkins, 21; Jones, 43; Kremer, 34;
Preister, 5; Stuhr, 24

AN ACT relating to natural resources districts; to amend sections 46-656.26 and 46-656.27, Reissue Revised Statutes of Nebraska, and sections 46-656.07 and 46-656.25, Revised Statutes Supplement, 2000; to redefine a term; to change ground water management control and allocation provisions; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 46-656.07, Revised Statutes Supplement, 2000, is amended to read:

46-656.07. For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act and the Nebraska Ground Water Management and Protection Act and sections 46-601 to 46-613.02, ~~and~~ 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

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

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

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

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

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

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

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

(8) Management plan shall mean a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to sections 46-656.12 to 46-656.15;

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

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

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

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

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

(14) Best management practices shall mean schedules of activities, maintenance procedures, and other management practices utilized to prevent or

reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs;

(15) Point source shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(16) Allocation shall mean the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time; ~~not to exceed five years;~~

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

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

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

Sec. 2. Section 46-656.25, Revised Statutes Supplement, 2000, is amended to read:

46-656.25. (1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

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

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-656.26;

(f) It may limit or prevent the expansion of irrigated acres;

(g) It may require the use of best management practices;

~~(g)~~ (h) It may require the analysis of water or deep soils for fertilizer and chemical content;

~~(h)~~ (i) It may provide educational requirements, including mandatory educational requirements, designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

~~(i)~~ (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; ~~and~~

(k) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated. This subdivision may be implemented whenever the district determines the impact on surface water supplies or the depletion or contamination of the ground water supply in the management area or any portion of the management area cannot be protected through implementation of reasonable controls specified in subdivisions (1)(a) through (1)(j) of this section; and

(l) ~~(j)~~ It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-656.26 and 46-656.27, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or will improve the administration of the area.

(3) Upon request by the district, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the

adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, the provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems. ~~7 on the condition that such different water allocations shall be authorized for no more than five years from the time such allocations are adopted.~~

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells constructed on or after the designation date or any other later date or dates established by the district.

(c) The district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(k) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-656.19, regarding the controls before implementing them. If the district determines, following a public hearing conducted pursuant to section 46-656.19, that the impact on surface water supplies or the depletion or contamination of the ground water supply in the management area or any portion of the management area 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 close all or a portion of the management area to the issuance of any additional permits for a period of not more than five calendar years. The area may be further closed thereafter by a similar procedure for additional time periods of the same length. Any such area may be reopened at any time the district determines that conditions warrant new permits at which time the district shall consider all previously submitted applications for permits in the order in which they were received.

(8) Whenever a management area designated under section 46-656.39 or 46-656.52 encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and sections 46-656.26 and 46-656.27 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected. Whenever management areas designated by two or more districts adjoin each other, the districts are encouraged to exercise the responsibilities and authorities jointly and uniformly by agreement of the respective boards.

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

Sec. 3. Section 46-656.26, Reissue Revised Statutes of Nebraska, is amended to read:

46-656.26. (1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section 46-656.25. Such allocation shall

specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. ~~not to exceed five years.~~ A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) If annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

Sec. 4. Section 46-656.27, Reissue Revised Statutes of Nebraska, is amended to read:

46-656.27. A district may ~~annually and shall at least once every three years~~ 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.

Sec. 5. Original sections 46-656.26 and 46-656.27, Reissue Revised Statutes of Nebraska, and sections 46-656.07 and 46-656.25, Revised Statutes Supplement, 2000, are repealed.