

LEGISLATIVE BILL 798

Approved by the Governor April 16, 2008

Introduced by Louden, 49.

FOR AN ACT relating to relating to water; to amend sections 46-283, 46-287, and 46-299, Reissue Revised Statutes of Nebraska, and sections 46-286 and 46-291, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to irrigation water reuse pits, applications for transfer of appropriations, and intentional underground water storage permittees as prescribed; to harmonize provisions; and to repeal the original sections.

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

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

46-283 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.

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

46-286 ~~Headwater segment of a~~ 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 ~~that~~ portion of a natural stream that is shown as an intermittent stream on the most recently published recent United States Geological Survey topographic quadrangle map published prior to the effective date of this act 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.

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

46-287 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 a ~~headwater segment of a~~ 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.

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

46-291 (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 or deed of trust 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.

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

46-299 Any person who has obtained a permit for intentional underground water storage associated with a ~~project not existing on August 26, 1983,~~ 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.

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Reissue Revised Statutes of Nebraska, and sections 46-286 and 46-291, Revised Statutes Cumulative Supplement, 2006, are repealed.