

LEGISLATIVE BILL 23

Approved by the Governor February 24, 1983

Introduced by Sieck, 24

AN ACT to amend sections 46-603, 46-661, and 46-662, Reissue Revised Statutes of Nebraska, 1943, and sections 46-602, 46-659, 46-660, and 46-666, Revised Statutes Supplement, 1982, relating to ground water; to change provisions relating to the issuance of and fees for certain well permits; to provide duties; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 46-602, Revised Statutes Supplement, 1982, be amended to read as follows:

46-602. (1) The owner of each well, except wells used solely for domestic purposes, completed in this state shall complete appropriate registration forms within twenty days after the completion of such well. Registration shall be in such form as the director may direct, and shall contain a statement of (a) the location of such well, (b) the date of its completion, (c) the intended use of such well, (d) the size of such well, (e) the actual capacity of such well expressed in gallons per minute, (f) the identification, by number, of a permit issued pursuant to section 46-660, if applicable, (g) such evidence of ownership of the well as the director may by regulation direct, and (h) such additional information conformable to the statement of purpose contained in section 46-601 as the director might require. Notwithstanding section 46-606, no fee shall be charged for registration of any well for which a permit was obtained pursuant to sections 46-638 to 46-650. ~~or section 46-660.~~ The Department of Water Resources shall be notified of any change in the ownership of a well required to be registered under this section. Notification shall be in such form and shall include such evidence of ownership as the director may by regulation direct. The department shall use such notice to update the well registration on file in that office.

(2) If the well has been drilled by any person other than the owner thereof, the registration shall be furnished in triplicate to the person actually drilling

such well, to be forwarded with the certificate of the well driller required by section 46-603.

(3) Whenever any owner of a registered well, or a well required to be registered pursuant to subsections (1) and (2) of this section, shall abandon such well, he or she shall completely fill the well cavity in accordance with the rules and regulations of the Department of Water Resources. The method specified in such rules and regulations for filling well cavities shall be designed to eliminate any safety hazard created by abandoned wells and to prevent deterioration in the quality of the underlying ground waters. Written notice of any such abandonment shall be provided to the Department of Water Resources within sixty days thereafter.

(4) When any owner of an abandoned registered well or a well required to be registered replaces such well he or she shall, within thirty days after the completion of such replacement well, give notice to the department by filing in the office of the department completed well registration and well driller certificate forms, in triplicate, for the replacement well. No fee shall be collected for filing notice of abandonment or for the registration of the replacement of a registered well.

(5) When any owner of an abandoned well in a control or management area desires to replace such well, he or she shall, prior to commencing construction thereof, obtain a permit pursuant to the provisions of section 46-659. The owner of such abandoned well may immediately proceed to dig a replacement well and pump water therefrom without obtaining a permit if the pump installed in the replacement well has a column size not greater than the pump formerly used in the abandoned well. Following completion of any such well, notice of such completion shall be given in the manner provided by subsection (4) of this section.

Sec. 2. That section 46-603, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-603. Any person actually drilling any well, except wells to be used solely for domestic purposes, either on his or her own account or for hire, shall keep an accurate log in triplicate, on certificate of well driller forms to be furnished by the Director of Water Resources, of the depth, thickness, and character of the different strata penetrated and the location of water-bearing strata. The certificate of the well driller shall also contain the dates of beginning and completion of work, the length, size, and weight of the casing and the method of its placement, the size of the drilled hole, where the drilled hole is sealed, the type of seal used, the legal description of the land on which the well is drilled, and such other data as the Director of Water Resources director may reasonably require. The certificate of the well driller, which shall be accompanied by three copies

of the registration form required by section 46-602, shall be transmitted by the person actually drilling the well to the director within thirty days after the completion of such well. Any certificate so transmitted shall indicate the number of the well permit previously issued by the director district if such a permit was required by section 46-659.

Sec. 3. That section 46-659, Revised Statutes Supplement, 1982, be amended to read as follows:

46-659. (1) Any person who intends to construct a well in a control or management area in this state on land which he or she owns or controls shall, before commencing construction, file with the district in which the well will be located an application for a permit on forms provided by the ~~director~~. The director shall make such forms district. Forms shall be made available at each district in which a control or management area is located, in whole or in part, and at such other places as he or she may deem be deemed appropriate. The district shall review such application and forward it to the director, with any comments or recommendations the district may have, issue or deny the permit within thirty days after the application is filed.

(2) The application shall be accompanied by a twenty-five seventeen dollar and fifty cent filing fee payable to the director, district, except as provided in subsection (9) of section 46-666, and shall contain (a) the name and post-office post office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if said water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, and (h) such other information as the director district may require. Before any well having a capacity of less than one hundred gallons per minute is modified to withdraw ground water at a rate equal to or greater than one hundred gallons per minute, an application shall be filed for a permit pursuant to this act before water is so withdrawn.

(3) Any person who has failed, or in the future fails, to obtain a permit required by subsection (1) of this section shall make application for a late permit on forms provided by the director district.

(4) The application for a late permit shall be accompanied by a twenty-five dollar fee payable to the director and a two hundred fifty dollar fee payable to the district, except as provided in subsection (9) of section 46-666, and shall contain the same information required in subsection (2) of this section.

(5) Attached to any application for a late permit shall be a statement from the district indicating whether or not the well was in conflict with any rule, regulation, or control of the district in effect at the time the well was constructed; whether such well is in conflict with any rule, regulation, or control in effect at the time application for a late permit is made; and whether, in the opinion of the district, the applicant acted in good faith except for the failure to obtain a timely permit.

Sec. 4. That section 46-660, Revised Statutes Supplement, 1982, be amended to read as follows:

46-660. (1) An application for a permit or late permit for a well in a control or management area shall be denied only if the ~~director~~ district in which the well is to be located shall find, ~~with the advice of the district,~~ (a) (1) that the location or operation of the proposed well or other work would conflict with any regulations or controls adopted by the district pursuant to this act, (b) (2) that the proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes, or (c) (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit. If the ~~director~~ district shall find that the application is incomplete or defective, ~~he or she~~ it shall return the application for correction. If the correction is not made within sixty days, the application shall be canceled. All permits shall be issued with or without conditions attached, or denied not later than thirty days after receipt by the ~~director~~ district of a complete and properly prepared application. A permit issued shall specify all controls adopted by a district pursuant to this act relevant to the construction or utilization of the proposed well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The ~~director~~ district shall transmit one copy of each permit issued to the director, district in which the well is to be located.

(2) All procedures set forth in this section shall be conducted in conformance with and subject to the provisions of Chapter 84, article 9.

Sec. 5. That section 46-661, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-661. The issuance by the ~~director~~ district of a permit pursuant to the provisions of this act, or registration of a well by the director pursuant to Chapter 46, article 6, shall not vest in any person the right to violate any district rule, regulation, or control in effect on the date of issuance of the permit or the registration of such a well, or to violate any rule, regulation, or control thereafter properly adopted pursuant to this act.

Sec. 6. That section 46-662, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

46-662. When any permit is approved, the applicant shall commence construction as soon as possible after the date of approval and shall complete the construction and equip the well prior to the date specified in the conditions of approval, which date shall be not more than one year after the date of approval, unless it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant shall fail to complete the project under the terms of the permit, the director district may withdraw the permit.

Sec. 7. That section 46-666, Revised Statutes Supplement, 1982, be amended to read as follows:

46-666. (1) A district in which a control area has been designated pursuant to subdivision (1)(a) of section 46-658 shall by order adopt one or more of the following controls for the control 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 wells; and

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

(2) A district in which a control area has been designated pursuant to subdivision (1)(b) of section 46-658 shall by order adopt one or more of the following controls for the area:

(a) It may adopt any of the controls listed in subsection (1) of this section; and

(b) It may require water users to implement irrigation scheduling programs to schedule, to the extent reasonably possible, the application of water in amounts which will not move below the root zone.

(3) In adopting, amending, or repealing any control authorized by subsection (1) or (2) of this section or sections 46-673.08 to 46-673.12, 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 control or management area, will encourage a high degree of water use efficiency, or will improve the administration of the area.

(4) The adoption, amendment, or repeal of any authorized control in a control area 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 hearing. In approving the adoption, amendment, or repeal of an authorized control in a control area, the director's considerations shall include, but not be limited to, those enumerated in subsection (3) of this section.

(5) If because of varying ground water uses or climatic, hydrologic, geologic, or soil conditions existing within a control or management 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) or (2) of this section or sections 46-673.08 to 46-673.12 may contain different provisions for different categories of ground water use or portions of the control or management area. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or conditions. 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.

(6) If the district determines, following a public hearing conducted pursuant to section 46-665, that depletion or pollution 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) or (2) 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~~ district shall consider all previously submitted applications for permits in the order in which they were received.

(7) The district shall cause a copy of each order adopted pursuant to this section or sections 46-673.08 to 46-673.12 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.

(8) Whenever a control or management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section, section 46-665, and sections 46-673.08 to

46-673.12 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(9) If, at the end of eighteen months following the designation of a control area pursuant to section 46-658, the district or districts encompassed in whole or in part by a control area have not adopted a specific control or controls pursuant to subsection (1) or (2) 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 or she 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. When the controls adopted by the director pursuant to this subsection are in effect in a district, all application fees for well permits in such district pursuant to section 46-659 shall be payable to the director.

(10) If the power to adopt a control or controls in a control area shall be vested in the director, he or she 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 or her discretion, the director may conduct one or more additional public hearings prior to making his or her determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-658.

Sec. 8. That original sections 46-603, 46-661, and 46-662, Reissue Revised Statutes of Nebraska, 1943, and sections 46-602, 46-659, 46-660, and 46-666, Revised Statutes Supplement, 1982, are repealed.