

LEGISLATIVE BILL 439

Approved by the Governor March 8, 1993

Introduced by Cudaback, 36

AN ACT relating to water; to amend section 46-673.11, Reissue Revised Statutes of Nebraska, 1943, and sections 46-657, 46-673.09, and 46-673.10, Revised Statutes Supplement, 1992; to redefine a term; to change provisions relating to methods of regulating water use in control and management areas; and to repeal the original sections.

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

Section 1. That section 46-657, Revised Statutes Supplement, 1992, be amended to read as follows:

46-657. ~~As used in~~ For purposes of the Nebraska Ground Water Management and Protection Act and ~~in~~ sections 46-601 to 46-613.01 and 46-636 to 46-655, unless the context otherwise requires:

(1) Person shall mean a natural person, partnership, association, corporation, municipality, irrigation district, or agency or political subdivision of the state;

(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) Well shall mean any artificial opening or excavation in the ground through which ground water flows under natural pressure or is artificially withdrawn. A series of wells developed and pumped as a single unit shall be considered as one well. For purposes of the act, well shall not mean any artificial opening or excavation in which a pump of less than one hundred gallons per minute capacity is to be installed and which is to be used solely for supply of ground water for domestic purposes;

(4) Construction of a well shall mean boring, drilling, jetting, digging, or excavating and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water;

(5) 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;

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

(7) Director shall mean the Director of Water Resources;

(8) Illegal well shall mean (a) any well operated or constructed without or in violation of a permit required by the act, (b) any well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any well not properly registered in

accordance with sections 46-602 to 46-604, or (d) any 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;

(9) Control area shall mean any area so designated by the director following a public hearing initiated and conducted pursuant to section 46-658;

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

(11) Well driller shall mean any person who constructs, reconstructs, alters, or repairs a well. The term shall not include a person who performs labor or services for a well driller at his or her direction and under his or her supervision;

(12) Management area shall mean any area so designated by a district pursuant to sections 46-673.01 to 46-673.06;

(13) 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;

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

(15) 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;

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

(17) 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;

(18) 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;

(19) Special ground water quality protection area shall mean any area designated as such by the Director of Environmental ~~Control~~ Quality following a public hearing, with boundaries approved by the Director of Environmental ~~Control~~ Quality, in which contamination of ground water is occurring;

(20) 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 ~~Control~~ Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground

water is or may be discharged;

(21) 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; and

(22) Rotation shall mean a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, ~~or monthly, or~~ yearly ~~basis or of irrigated acres on an annual~~ basis.

Sec. 2. That section 46-673.09, Revised Statutes Supplement, 1992, be amended to read as follows:

46-673.09. A district may manage the use of water in a management area for water quantity or quality purposes or both by any of the following means:

(1) Allocating the total permissible withdrawal of ground water;

(2) Rotation of use of ground water;

(3) Well-spacing requirements pursuant to section 46-673.12;

(4) Reduction of irrigated acres;

(5) Requiring the use of flow meters on wells;

(6) ~~(5)~~ Best management practices;

(7) ~~(6)~~ Requiring the analysis of water or deep soils for fertilizer and chemical content; or

(8) ~~(7)~~ Educational programs designed to protect water quality.

Sec. 3. That section 46-673.10, Revised Statutes Supplement, 1992, be amended to read as follows:

46-673.10. (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. 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.

(2) A ground water user in a management area shall not be prevented from increasing the number of acres which he or she irrigates, or otherwise adding new or additional acres or uses of ground water, but all such new or additional acres or uses shall be subject to the controls adopted pursuant to sections 46-656 to 46-674. A person who increases the number of acres which he or she irrigates, or otherwise adds new or additional uses of ground water, shall be entitled to the same allocation as existing acres or uses.

(3) 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. That section 46-673.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.11. A district may annually and shall at least once every three years review any allocation, ~~or~~ rotation, or reduction control imposed in a management area and shall adjust allocations, ~~or~~ rotations, or reductions to accommodate new or additional uses or otherwise reflect findings of such review, consistent with the ground water reservoir life goal. 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. That original section 46-673.11, Reissue Revised Statutes of Nebraska, 1943, and sections 46-657, 46-673.09, and 46-673.10, Revised Statutes Supplement, 1992, are repealed.