

COMPILATION OF STATUTES  
REGARDING THE  
**DEPARTMENT OF NATURAL RESOURCES**

**GROUNDWATER**

- Includes:
- I. Chapter 46, Article 6: Ground Water
  - II. Chapter 66, Article 11: Geothermal Resources
  - III. Neb. Rev. Stat. § 33-105: Fees
  - IV. Neb. Rev. Stat. § 76-2,124: Water Resources Update Notice
  - V. Neb. Rev. Stat. §§ 46-281 & 46-282: Artesian Water
  - VI. Neb. Rev. Stat. § 25-1062.01: Civil Procedure  
Neb. Rev. Stat. § 25-1064: Civil Procedure  
Neb. Rev. Stat. § 25-2159: Civil Procedure  
Neb. Rev. Stat. § 25-2160: Civil Procedure
  - VII. Neb. Rev. Stat. § 37-807: Nongame & Endangered Species Act
  - VIII. Neb. Rev. Stat. § 2-3254: NRD Special Project

AUGUST 2007

*Disclaimer: This booklet was compiled for the convenience of Department staff and is not intended to replace Nebraska's Reissue Revised Statutes. It is always recommended that one research the actual statutes when making a determination. This book does not always contain all statutes regarding a specific topic and it may become out-of-date when statutes are amended, adopted, or repealed.*



TABLE OF CONTENTS  
CHAPTER 46, ARTICLE 6  
GROUND WATER

(a) REGISTRATION OF WATER WELLS

<u>Section</u>		<u>Page</u>
46-601	Ground water; declaration of policy.	1
46-601.01	Terms, defined.	1
46-602	Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required; abandonment.	2
46-602.01	Water well in management area; duties; prohibited acts; penalty.	5
46-603	Repealed.	6
46-604	Registration form; copies; disposition.	6
46-605	Repealed.	6
46-606	Water wells; registration fees; disposition.	6
46-607	Repealed.	7
46-608	Ground water; conservation; declaration of policy.	7
46-609	Irrigation water wells; spacing; requirements; exceptions.	7
46-610	Irrigation water wells; special permit to drill without regard to spacing; application; fee.	8
46-611	Irrigation water wells; spacing requirements not applicable, when.	9
46-612	Repealed.	9
46-612.01	Transferred to section 46-1127.	9

<u>Section</u>		<u>Page</u>
46-613	Ground water; declaration of policy; preference in use.	9
46-613.01	Ground water; transfer to another state; permit; Department of Natural Resources; conditions.	9
46-613.02	Violation; penalty; false information; enforcement.	11
(b) <u>GROUND WATER CONSERVATION DISTRICTS</u>		
46-614 to 46-632	Repealed.	11
46-633	Conservation district; dissolution; funds; disposition.	11
46-634	Repealed.	11
46-634.01	Ground water conservation districts; dissolved; assets distributed; sections; termination date.	12
(c) <u>PUMPING FOR IRRIGATION PURPOSES</u>		
46-635	Ground water, defined.	12
46-635.01	Water well, defined.	12
46-636	Pumping for irrigation purposes; Legislature; finding.	12
46-637	Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources.	13
(d) <u>MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT</u>		
46-638	Terms, defined; permits to public water suppliers; director; powers.	13
46-639	Application for permit; contents; fee.	14
46-640	Notice of application; publication; objections; hearing.	14
46-641	Application; hearing, when.	14
46-642	Granting of permit; conditions; priority date.	14

<u>Section</u>		<u>Page</u>
46-643	Repealed.	15
46-644	Permits; duration; revocation; procedure.	15
46-645	Recharging ground water reservoirs; permits.	15
46-646	Orders or decisions; review.	15
46-647	Right to recover damages; power of eminent domain; not limited.	16
46-648	Permittee; preference in use of ground water.	16
46-649	Director of Natural Resources; rules and regulations.	16
46-650	Act, how cited.	16
(e) <u>SPACING OF WATER WELLS</u>		
46-651	Spacing of water wells; distance.	16
46-652	Repealed.	17
46-653	Spacing of water wells; special permit; application; contents; fee.	17
46-654	Public water supplier; protections applicable; procedure.	18
46-655	Violations; injunction.	18
46-655.01	Public water supplier; notice of intent to consider wellfield contents; effect; termination.	18
(f) <u>NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT</u>		
46-656	Transferred to section 46-656.02.	20
46.656.01	Transferred to section 46-701.	20
46-656.02	Transferred to section 46-702.	20
46-656.03	Transferred to section 46-704.	20

<u>Section</u>		<u>Page</u>
46-656.04	Transferred to section 46-705.	20
46-656.05	Transferred to section 46-703.	20
46-656.06	Repealed.	20
46-656.07	Transferred to section 46-706.	20
46-656.08	Transferred to section 46-707.	20
46-656.09	Repealed.	20
46-656.10	Transferred to section 46-745.	20
46-656.11	Transferred to section 46-708.	20
46-656.12	Transferred to section 46-709.	20
46-656.13	Transferred to section 46-710.	20
46-656.14	Transferred to section 46-711.	20
46-656.15 to 46-656.18	Repealed.	20
46-656.19	Transferred to section 46-712.	20
46-656.20	Repealed.	20
46-656.21	Transferred to section 46-744.	20
46-656.22	Repealed.	20
46-656.23	Repealed.	20
46-656.24	Transferred to section 46-742.	20
46-656.25	Transferred to section 46-739.	20
46-656.26	Transferred to section 46-740.	20
46-656.27	Transferred to section 46-741.	20

<u>Section</u>		<u>Page</u>
46-656.28	Repealed.	20
46-656.29	Transferred to section 46-735.	20
46-656.30	Transferred to section 46-736.	20
46-656.31	Transferred to section 46-737.	20
46-656.32	Transferred to section 46-738.	20
46-656.33	Transferred to section 46-751.	20
46-656.34	Repealed.	20
46-656.35	Transferred to section 46-721.	20
46-656.36	Transferred to section 46-722.	20
46-656.37	Transferred to section 46-723.	20
46-656.38	Transferred to section 46-724.	20
46-656.39	Transferred to section 46-725.	20
46-656.40	Transferred to section 46-726.	20
46-656.41	Transferred to section 46-727.	20
46-656.42	Transferred to section 46-728.	20
46-656.43	Transferred to section 46-729.	21
46-656.44	Transferred to section 46-730.	21
46-656.45	Transferred to section 46-731.	21
46-656.46	Transferred to section 46-732.	21
46-656.47	Transferred to section 46-733.	21
46-656.48	Transferred to section 46-734.	21

<u>Section</u>		<u>Page</u>
46-656.49 to 46-656.61	Repealed.	21
46-656.62	Transferred to section 46-748.	21
46-656.63	Transferred to section 46-746.	21
46-656.64	Transferred to section 46-747.	21
46-656.65	Transferred to section 46-749.	21
46-656.66	Transferred to section 46-750.	21
46-656.67	Transferred to section 46-752.	21
(g) <u>INDUSTRIAL GROUND WATER REGULATORY ACT</u>		
46-675	Legislative findings and declarations.	21
46-676	Terms; defined.	21
46-676.01	Applicability of act.	22
46-677	Withdrawal of ground water for industrial purposes; permit required; when.	22
46-678	Permit; application; contents.	22
46-678.01	Withdrawal and transfer of less than 150 acre-feet; notice; metering.	22
46-679	Application; director; determination as to completeness.	23
46-680	Completed application; public hearing; when.	23
46-681	Public hearing; evidence presented.	23
46-682	Applicant; agreement with other water users; filing.	24
46-683	Permit; issuance; consideration; conditions.	24
46-683.01	Permit; application to amend; procedures; limitation.	25

<u>Section</u>		<u>Page</u>
46-684	Permit; revocation; procedure; violation of terms of permit; director; powers and duties.	25
46-685	Order or decision; appeal by affected person.	25
46-686	Injured person; remedies available.	26
46-686.01	Withdrawal and transfer of less than 150 acre-feet; injured person; hearing; civil action; appeal; attorney's fees.	26
46-687	Violation; penalty.	26
46-688	Director; rules and regulations.	26
46-689	Permitholder; subject to control area regulations.	27
46-690	Act, how cited.	27
 (h) <u>TRANSFERS</u> 		
46-691	Transfer off overlying land; when allowed; objection; procedure; natural resources district; powers and duties; Director of Natural Resources; duties.	27
46-691.01	Transfer off overlying land for domestic use; limitations; liability.	29
46-691.02	Transfer off overlying land for domestic use; applicability of section.	29
46-691.03	Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties.	29
 (i) <u>REPUBLICAN RIVER BASIN</u> 		
46-692	Wells; measuring devices; cost-share assistance.	30

CHAPTER 66

ARTICLE 11

GEOHERMAL RESOURCES

<u>Section</u>		<u>Page</u>
66-1101	Legislative findings.	32
66-1102	Terms, defined.	32
66-1103	Severance of mineral estate; right to develop geothermal resource; attaches; exception.	32
66-1104	Owner of mineral estate; right of entry; lease of state-owned geothermal resources.	33
66-1105	Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations.	33
66-1106	Development and production of geothermal resources; provisions applicable.	33

CHAPTER 33

ARTICLE 1

FEES

<u>Section</u>		<u>Page</u>
33-105	Department of Natural Resources; fees.	34

CHAPTER 76

ARTICLE 2

WATER RESOURCES UPDATE NOTICE

<u>Section</u>		<u>Page</u>
76-2,124	Water resources update notice; Department of Natural Resources; powers and duties.	36

CHAPTER 46

ARTICLE 2

ARTESIAN WATER

<u>Section</u>		<u>Page</u>
46-281	Artesian water; waste prohibited.	37
46-282	Artesian water; waste; penalty.	37

CHAPTER 25

ARTICLE 10

CIVIL PROCEDURE

<u>Section</u>		<u>Page</u>
25-1062.01	Director of Natural Resources; defined; notice to appropriator; how given.	38
25-1064	Temporary injunctions and restraining orders; courts and judges empowered to issue; conditions; temporary restraining order granted without notice; requirements; actions involving irrigation water; notice, how given.	38

CHAPTER 25

ARTICLE 21

CIVIL PROCEDURE

<u>Section</u>		<u>Page</u>
25-2159	Peremptory writ; when allowed in first instance.	41
25-2160	Peremptory writ; motion; affidavit required; notice; order to show cause; actions involving irrigation water.	41

CHAPTER 37

ARTICLE 8

NONGAME AND ENDANGERED SPECIES ACT

<u>Section</u>		<u>Page</u>
37-807	Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required.	43

CHAPTER 2

ARTICLE 32

NRD SPECIAL PROJECT

<u>Section</u>		<u>Page</u>
2-3254	Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.	45

CHAPTER 46

ARTICLE 6

GROUND WATER

(a) REGISTRATION OF WATER WELLS

46-601. Ground water; declaration of policy. The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state. Complete information as to the occurrence and the use of ground water in the state is essential to the development of a sound ground water policy. The registration of all water wells in this state should be required.

Source: Laws 1957, c. 200, § 1, p. 702; Laws 1967, c. 281, § 1, p. 760; Laws 1993, LB 131, § 1.

46-601.01. Terms, defined. For purposes of Chapter 46, article 6:

(1)(a) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir.

(b) Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation.

(c) Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

Source: Laws 1993, LB 131, § 2; Laws 1999, LB 92, § 1; Laws 2004, LB 962, § 34; Laws 2007, LB 701, § 17.

**Cross Reference**

**For additional definitions,** see section 46-656.07.

46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required; abandonment. (1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the on-line services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2)(a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well being replaced, if applicable, and (ii) the date the original water well was decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimis use approved by the applicable natural resources district.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

(c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of

the original water well to pump fifty gallons per minute or less for use only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. Such notices, as required, shall be completed by (i) the water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services Regulation and Licensure shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) 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. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) 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, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environmental Quality.

(6) The Department of Natural Resources shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The water well contractor or pump installation contractor responsible therefor shall notify the department within sixty days on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the water well contractor or pump installation contractor shall notify the department within sixty days on a form provided by the department of the water well and pump modifications and

equipping of the original water well. A water well owner shall notify the department within sixty days on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act. The water well contractor who decommissions the water well, the pump installation contractor who decommissions the water well, or the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of decommissioning to the Department of Natural Resources within sixty days. The Department of Health and Human Services Regulation and Licensure shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

(11) Water wells described in subdivision (1)(b) of section 46-601.01 shall be registered with the Department of Natural Resources as provided in subsection (1) of this section within sixty days after the water well is constructed. Water wells described in subdivision (1)(b) of section 46-601.01 which were constructed prior to the effective date of this act shall be registered within one hundred eighty days after such date.

Source: Laws 1957, c. 200, § 2, p. 702; Laws 1961, c. 230, § 1, p. 683; Laws 1967, c. 281, § 2, p. 760; Laws 1975, LB 577, § 20; Laws 1979, LB 204, § 2; Laws 1980, LB 643, § 1; Laws 1981, LB 246, § 1; Laws 1983, LB 23, § 1; Laws 1986, LB 886, § 1; Laws 1986, LB 310, § 42; Laws 1993, LB 131, § 3; Laws 1994, LB 981, § 6; Laws 1995, LB 145, § 1; Laws 1995, LB 871, § 3; Laws 1997, LB 30, § 2; Laws 1999, LB 92, § 2; Laws 2000, LB 900, § 170; Laws 2001, LB 667, § 3; Laws 2002, LB 458, § 2; Laws 2003, LB 242, § 5; Laws 2003, LB 245, § 6; Laws 2004, LB 962, § 35; Laws 2006, LB 508, § 2 and LB 1226, § 15; Laws 2007, LB 701, § 18.

#### **Cross References**

**Industrial Ground Water Regulatory Act**, see section 46-690.

**Old wells not in use, duty to fill**, see sections 54-311 and 54-315.

**Water Well Standards and Contractors' Licensing Act**, see section 46-1201.

46-602.01. Water well in management area; duties; prohibited acts; penalty. Prior to commencing construction of or installation of a pump in a water well in a management area or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well replacement procedure, a water well contractor as defined in section 46-1213 or a pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed, the modification and change of use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

Source: Laws 1981, LB 325, § 3; Laws 1993, LB 131, § 4; Laws 2001, LB 667, § 4; Laws 2006, LB 508, § 3.  
Operative date: July 14, 2006.

#### **Cross Reference**

**Nebraska Ground Water Management and Protection Act**, see section 46-701.

46-603.        Repealed.        Laws 1993, LB 131, § 65.

46-604.        Registration form; copies; disposition. The Director of Natural Resources shall retain the registration form required by section 46-602 and shall make a copy available to the natural resources district within which the water well is located, to the owner of the water well, and to the water well contractor as defined in section 46-1213.

Source:        Laws 1957, c. 200, § 4, p. 703; Laws 1961, c. 227, § 4, p. 673; Laws 1961, c. 230, § 3, p. 685; Laws 1986, LB 886, § 3; Laws 1993, LB 131, § 5; Laws 2000, LB 900, § 171; Laws 2001, LB 667, § 5.

46-605.        Repealed. Laws 1986, LB 886, § 6.

46-606.        Water wells; registration fees; disposition. (1) The Director of Natural Resources shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each water well registered under section 46-602 except as provided in subsections (2) through (5) of this section.

(2) For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first ten such water wells registered under section 46-602, and for each group of ten or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224.

(3) For 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, the director shall collect in advance a fee of forty dollars for each such series and the fee required by subsection (3) of section 46-1224.

(4) For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first five such water wells registered under section 46-602, and for each group of five or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of forty dollars and the fee required by subsection (3) of section 46-1224. However, if such water wells are a part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected as if only one water well was being registered and the fee required by subsection (3) of section 46-1224 shall be collected.

(5)(a) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, the director shall collect in advance a

registration fee of forty dollars and the fee required by subsection (3) of section 46-1224 for each of the first two such wells registered under section 46-602.

(b) Any additional water wells which are part of a series registered under this subsection shall not be subject to a new well registration fee.

(6) The director shall remit the fees collected to the State Treasurer for credit to the appropriate fund. From the registration fees required by subsections (1) through (5) of this section, the State Treasurer shall credit to the Department of Natural Resources Cash Fund the amount determined by the Department of Natural Resources to be necessary to pay for the costs of processing notices filed pursuant to section 46-230, the costs of water resources update notices required by section 76-2,124, and the costs for making corrections to water well registration data authorized by subsections (6) and (7) of section 46-602 and shall credit the remainder of the registration fees required by subsections (1) through (5) of this section to the Water Well Decommissioning Fund. The State Treasurer shall credit the fees required by subsection (3) of section 46-1224 to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1957, c. 200, § 6, p. 703; Laws 1986, LB 886, § 4; Laws 1986, LB 310, § 43; Laws 1993, LB 131, § 6; Laws 1994, LB 981, § 7; Laws 1999, LB 92, § 3; Laws 2000, LB 900, § 172; Laws 2001, LB 667, § 6; Laws 2002, LB 458, § 3; Laws 2003, LB 31, § 1; Laws 2003, LB 242, § 6.

#### **Cross Reference**

**Industrial Ground Water Regulatory Act**, see section 46-690.

46-607. Repealed. Laws 1993, LB 131, § 65.

46-608. Ground water; conservation; declaration of policy. The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state, that the drilling of irrigation water wells in the state without regard to spacing is detrimental to the public welfare, and that the spacing of irrigation water wells should be regulated.

Source: Laws 1957, c. 201, § 1, p. 704; Laws 1993, LB 131, § 7.

46-609. Irrigation water wells; spacing; requirements; exceptions. (1) Except as otherwise provided by this section or section 46-610, no irrigation water well shall be constructed upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any water well used to irrigate two acres or less or (b) any replacement irrigation water well if it is constructed within fifty feet of the irrigation water well being replaced and if the water well being replaced was constructed prior to September 20, 1957, and is less than six hundred feet from a registered irrigation water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of sixty days after completion of such water well.

(3) No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use, except that a person may use a water well registered for purposes other than its intended purpose for use for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. The change to a new use shall be made by filing a water well registration modification with the Department of Natural Resources and shall be approved only if the water well is in conformity with subsection (1) of this section and with section 46-651.

Source: Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8; Laws 2004, LB 962, § 36; Laws 2007, LB 701, § 19.

46-610. Irrigation water wells; special permit to drill without regard to spacing; application; fee. (1) Any person may apply to the Director of Natural Resources for a special permit to drill an irrigation water well without regard to the spacing requirements of section 46-609 and shall pay a fee to the Department of Natural Resources of twelve dollars and fifty cents, which fee shall be remitted to the State Treasurer for credit to the General Fund. Such application shall be in such form as the director directs and shall contain a statement of the proposed location of the irrigation water well, the reason for seeking such special permit, the legal description of the land to be irrigated by the irrigation water well, the number of acres to be irrigated, the proposed size of the irrigation water well, the estimated capacity of the irrigation water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and the name of the person who is actually going to construct the irrigation water well.

(2) A separate application, like that provided for in subsection (1) of this section, shall be submitted for each irrigation water well for which a special permit is sought. When considering the approval or rejection of any application, the director shall consider the size, shape, and irrigation needs of the property for which such special permit is sought, the known ground water supply, the effect on the ground water supply and the surrounding land of the irrigation water well for which such special permit is sought, any waiver or agreement allowing the new irrigation water well by the owner of any registered irrigation water well less than six hundred feet from the location of the proposed new irrigation water well, and such other information as may be available. Such application may be approved or disapproved in whole or in part or may be approved with conditions, and the special permit shall be issued or refused accordingly.

Source: Laws 1957, c. 201, § 3, p. 705; Laws 1993, LB 131, § 9; Laws 2000, LB 900, § 173.

46-611.        Irrigation water wells; spacing requirements not applicable; when. The prohibitions of section 46-609 shall not apply to the location of more than one irrigation water well by a landowner on his or her own farm, so long as each such irrigation water well is at least six hundred feet from any other irrigation water well located on a neighboring farm under separate ownership.

Source:        Laws 1957, c. 201, § 4, p. 705; Laws 1993, LB 131, § 10.

46-612.        Repealed. Laws 1993, LB 131, § 65.

46-612.01.    Transferred to section 46-1127.

46-613.        Ground water; declaration of policy; preference in use. Preference in the use of ground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, (1) domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations and (2) agricultural purposes shall include, but not be limited to, aquaculture as defined in section 2-3804.01.

Source:        Laws 1957, c. 199, § 1, p. 701; Laws 1963, c. 279, § 1, p. 835; Laws 1995, LB 871, § 4.

Defendant liable in damages for withdrawal of irrigation ground water resulting in loss of artesian pressure in plaintiffs' adjacent domestic use wells. Prather v. Eisenmann, 200 Neb. 1, 261 N.W.2d 766 (1978).

The use of ground water by a municipality for human needs is a public use. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

46-613.01.    Ground water; transfer to another state; permit; Department of Natural Resources; conditions. The Legislature recognizes and declares that the maintenance of an adequate source of ground water within this state is essential to the social stability of the state and the health, safety, and welfare of its citizens and that reasonable restrictions on the transportation of ground water from this state are a proper exercise of the police powers of the state. The need for such restrictions, which protect the health, safety, and general welfare of the citizens of this state, is hereby declared a matter of legislative determination.

Any person, firm, city, village, municipal corporation, or other entity intending to withdraw ground water from any water well located in the State of Nebraska and transport it for use in another state shall apply to the Department of Natural Resources for a permit to do so. In determining whether to grant or deny such permit, the Director of Natural Resources shall consider:

- (1) The nature of the proposed use and whether it is a beneficial use of ground water;
- (2) The availability to the applicant of alternative sources of surface or ground water;
- (3) Any negative effect of the proposed withdrawal on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (4) Any negative effect of the proposed withdrawal on surface water supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (5) Any adverse environmental effect of the proposed withdrawal or transportation of ground water;
- (6) The cumulative effect of the proposed withdrawal and transfer relative to the matters listed in subdivisions (3) through (6) of this section when considered in conjunction with all other transfers subject to this section; and
- (7) Any other factors consistent with the purposes of this section that the director deems relevant to protect the health, safety, and welfare of the state and its citizens.

Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn. The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the district or the department.

The director may include such reasonable conditions on the proposed use as he or she deems necessary to carry out the purposes of this section.

Source: Laws 1967, c. 281, § 5, p. 761; Laws 1969, c. 9, § 69, p. 144; Laws 1984, LB 1060, § 1; Laws 1993, LB 131, § 11; Laws 2000, LB 900, § 174; Laws 2003, LB 619, § 7.

This section does not unlawfully delegate legislative power to the director of the Department of Water Resources. This section is not unconstitutionally vague. This section does not discriminate against interstate commerce. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W.2d 151 (1996).

Severance of the portion of this section, to wit, "if the state in which the water is to be used grants reciprocal rights to withdraw and transport ground water from that state for use in the State of Nebraska", did not constitute an inducement to the passage of the statute, does not make the act inoperative, and will not frustrate the intent of the Legislature. The remainder of the statute, after the unconstitutional portion is stricken, remains a viable statute. *State ex rel. Douglas v. Sporhase*, 213 Neb. 484, 329 N.W.2d 855 (1983).

Requirement of obtaining permit to transfer ground water out of state does not violate commerce clause, U.S. Const. Art. I, s. 8, since Nebraska ground water is not an article of commerce. Reciprocity provision does not violate due process guarantees since it is but a condition upon which the statute takes effect. This section does not violate equal protection since it operates equally upon all members of the class affected and class bears a reasonable relationship to a legitimate state interest. This section does not deprive affected persons of liberty or property since they have no property right in the water itself and are not at liberty to transfer ground water off overlying land without public consent. *State ex rel. Douglas v. Sporhase*, 208 Neb. 703, 305 N.W.2d 614 (1981).

46-613.02. Violation; penalty; false information; enforcement. Any person violating any provision of sections 46-601 to 46-613.01 or furnishing false information under such sections shall be guilty of a Class IV misdemeanor. Each day of a violation may be considered a separate offense. The Attorney General and the county attorneys may pursue appropriate proceedings pursuant to this section when notified by the Director of Natural Resources that such a violation has occurred.

Source: Laws 1978, LB 688, § 1; Laws 1984, LB 1060, § 2; Laws 1993, LB 131, § 12; Laws 2000, LB 900, § 175; Laws 2004, LB 962, § 37.

#### (b) GROUND WATER CONSERVATION DISTRICTS

46-614 to 46-632. Repealed. Laws 1998, LB 896, § 11.

46-633. Conservation district; dissolution; funds; disposition. Upon dissolution of a ground water conservation district, the funds on hand or to be collected shall be remitted by the treasurer of the district to the county treasurer of the county in which the main office is located, and the county treasurer shall credit such funds to the general fund of the county.

Source: Laws 1959, c. 221, § 20, p. 780; Laws 1967, c. 282, § 12, p. 768; Laws 1997, LB 78, § 1.

46-634. Repealed. Laws 1998, LB 896, § 11.

46-634.01. Ground water conservation districts; dissolved; assets distributed; sections; termination date. Within ninety days after January 1, 1997, all ground water conservation districts created under the Ground Water Conservation Act of Nebraska and in existence on such date shall be dissolved and the assets distributed as provided in section 46-633. Sections 46-614 to 46-632 and 46-634 shall terminate on April 1, 1997.

Source: Laws 1978, LB 411, § 1; Laws 1981, LB 81, § 3; Laws 1981, LB 204, § 77; Laws 1986, LB 124, § 2; Laws 1987, LB 148, § 5; Laws 1991, LB 137, § 1; Laws 1993, LB 36, § 1; Laws 1997, LB 78, § 2.

(c) PUMPING FOR IRRIGATION PURPOSES

46-635. Ground water, defined. Ground water is that water which occurs or moves, seeps, filters, or percolates through the ground under the surface of the land.

Source: Laws 1963, c. 274, § 1, p. 827.

Ground water as defined herein does not include water artificially applied to the land. *Peters v. Langrehr*, 188 Neb. 480, 197 N.W.2d 698 (1972).

46-635.01. Water well, defined. For purposes of sections 46-636 and 46-637, water well shall have the same meaning as in section 46-601.01.

Source: Laws 1993, LB 131, § 15.

**Cross Reference**

**For additional definitions,** see section 46-656.07.

46-636. Pumping for irrigation purposes; Legislature; finding. The Legislature finds that the pumping of water for irrigation purposes from water wells located within fifty feet of the bank of a channel of any natural stream may have a direct effect on the surface flow of such stream.

Source: Laws 1963, c. 275, § 1, p. 828; Laws 1993, LB 131, § 16; Laws 2001, LB 667, § 7.

46-637. Pumping for irrigation purposes; permit; application; approval by Director of Natural Resources. The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. If the applicant is an individual, the application for a permit shall include the applicant's social security number. In approving or disapproving applications for such permits, the Director of Natural 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 does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

Source: Laws 1963, c. 275, § 2, p. 828; Laws 1993, LB 131, § 17; Laws 1997, LB 30, § 3; Laws 1997, LB 752, § 121; Laws 2000, LB 900, § 176; Laws 2001, LB 667, § 8.

#### **Cross Reference**

**Exemption for reusing ground water from reuse pit**, see section 46-287.

#### **(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT**

46-638. Terms, defined; permits to public water suppliers; director; powers.  
(1) The Director of Natural Resources may grant and administer permits to public water suppliers: (a) To locate, develop, and maintain ground water supplies through water wells or other means and to transport water into the area to be served; and (b) to continue existing use of ground water and the transportation of ground water into the area served.

(2) For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act and sections 46-651 to 46-655, (a) public water supplier shall mean a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes and (b) water well shall have the same meaning as in section 46-601.01.

Source: Laws 1963, c. 276, § 1, p. 829; Laws 1980, LB 643, § 2; Laws 1993, LB 131, § 18; Laws 2000, LB 900, § 177.

#### **Cross Reference**

**For additional definitions**, see section 46-656.07.

Permittees under the Municipal and Rural Domestic Ground Water Transfers Permit Act are exonerated from the common-law prohibition against transfer and transportation of ground water. *Sorensen v. Lower Niobrara Nat. Resources Dist.*, 221 Neb. 180, 376 N.W.2d 539 (1985).

Director of Water Resources is authorized to grant and administer permits to cities and villages to develop ground water supplies. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966).

46-639.        Application for permit; contents; fee. An applicant which desires to avail itself of the Municipal and Rural Domestic Ground Water Transfers Permit Act shall make application in writing to the Director of Natural Resources for a permit. The application shall include (1) a statement of the amount of water for which a permit is desired together with an exhibit of maps showing the location of all water wells and (2) such other information as the director deems necessary or desirable. The application shall be accompanied by a fee in the amount of fifty dollars for the first five million gallons per day and an additional twenty dollars for each additional increment of five million gallons per day requested. The fee shall be based on the amounts of water requested on a daily average basis.

Source:        Laws 1963, c. 276, § 2, p. 829; Laws 1993, LB 131, § 19; Laws 2000, LB 900, § 178.

Preference in the use of ground water is given to domestic use. Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N.W.2d 626 (1966).

46-640.        Notice of application; publication; objections; hearing. Upon receipt of an application filed under section 46-639, the Director of Natural Resources shall cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing lands on which the water well field or any part of such water well field is or is proposed to be located. The notice shall contain a description of the lands upon which such water well field is or is proposed to be located, the amount of water requested, the number of water wells constructed or proposed, and any other relevant information. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections specifically stating the grounds for each objection within two weeks after the date of final publication in the office of the director.

Source:        Laws 1963, c. 276, § 3, p. 829; Laws 1986, LB 960, § 33; Laws 1987, LB 140, § 12; Laws 1991, LB 278, § 3; Laws 1993, LB 131, § 20; Laws 2000, LB 900, § 179.

46-641.        Application; hearing, when. The Department of Natural Resources may hold a hearing on an application filed under section 46-639 on its own motion and shall hold a hearing on such an application if requested by any person pursuant to section 46-640.

Source:        Laws 1963, c. 276, § 4, p. 830; Laws 1987, LB 140, § 13; Laws 2000, LB 900, § 180.

46-642.        Granting of permit; conditions; priority date. (1) If the Director of Natural Resources finds that the withdrawal and transportation of ground water requested by the applicant are reasonable, are not contrary to the conservation and beneficial use of ground water, and are not otherwise detrimental to the public welfare, he or she shall grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The

permit so granted shall have a priority date as of the time when the application is filed with the director.

(2) In determining whether to grant or deny a permit under subsection (1) of this section, the director shall consider the factors set forth in subdivisions (1) through (7) of section 46-613.01.

Source: Laws 1963, c. 276, § 5, p. 830; Laws 1967, c. 284, § 1, p. 772; Laws 1987, LB 140, § 14; Laws 2000, LB 900, § 181; Laws 2003, LB 619, § 8.

46-643. Repealed. Laws 1987, LB 140, § 15.

46-644. Permits; duration; revocation; procedure. Permits granted by the Director of Natural Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it appears that the holder of a permit granted under the act has not used water for a beneficial purpose and in accordance with the terms of the permit for more than five years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

Source: Laws 1963, c. 276, § 7, p. 831; Laws 2000, LB 900, § 182; Laws 2007, LB 701, § 20.

46-645. Recharging ground water reservoirs; permits. The Director of Natural Resources may grant to any public water supplier permits to store excess, unused, and unappropriated water for recharging ground water reservoirs. The procedure to be followed in granting permits to utilize excess, unused, and unappropriated water for recharging ground water reservoirs shall, so far as applicable, be the same as that required for granting permits for the use of ground water as provided in the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source: Laws 1963, c. 276, § 8, p. 831; Laws 1980, LB 643, § 3; Laws 2000, LB 900, § 183.

46-646. Orders or decisions; review. Any person who feels aggrieved by any order or decision in connection with the granting or denial, in whole or in part, of an application for a permit or in connection with the revocation or modification of a permit may institute proceedings in the Court of Appeals in the manner provided for in section 61-207.

Source: Laws 1963, c. 276, § 9, p. 831; Laws 1991, LB 732, § 109; Laws 2000, LB 900, § 184.

46-647.        Right to recover damages; power of eminent domain; not limited. Nothing in sections 46-638 to 46-650 shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his or her land or to any water rights appurtenant thereto; nor shall sections 46-638 to 46-650 limit rights of condemnation which public water suppliers have under the laws of the State of Nebraska.

Source:        Laws 1963, c. 276, § 10, p. 831; Laws 1980, LB 643, § 4.

This section supplies a remedy of compensatory damages for a permittee's injury to another's land or water rights in contrast with injunctive relief available under common law. *Sorensen v. Lower Niobrara Nat. Resources Dist.*, 221 Neb. 180, 376 N.W.2d 539 (1985).

Remedy in damages is given to landowners injured by granting of permit to use ground waters. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966)

46-648.        Permittee; preference in use of ground water. The use of ground water pursuant to a permit granted by the Director of Natural Resources under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be subject to and governed by section 46-613.

Source:        Laws 1963, c. 276, § 11, p. 832; Laws 2000, LB 900, § 185.

Use of ground water pursuant to a permit is governed by section 46-613. *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N.W.2d 626 (1966).

46-649.        Director of Natural Resources; rules and regulations. The Director of Natural Resources may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source:        Laws 1963, c. 276, § 12, p. 832; Laws 2000, LB 900, § 186.

46-650.        Act, how cited. Sections 46-638 to 46-650 shall be known and cited as the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Source:        Laws 1963, c. 276, § 14, p. 832; Laws 1980, LB 643, § 5.

A rural water district is not a municipal corporation within the purview of the City, Village and Municipal Corporation Ground Water Permit Act (now the Municipal and Rural

Domestic Ground Water Transfers Permit Act). *McDowell v. Rural Water District No. 2*, 204 Neb. 401, 282 N.W.2d 594 (1979).

#### (e) SPACING OF WATER WELLS

46-651.        Spacing of water wells; distance. (1) Except as provided in section 46-653 or 46-654, (a) no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) no irrigation

water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well. Such prohibitions shall not apply to water wells owned by the same person.

(2) An existing water well for which a change in the intended use is proposed shall be subject to any spacing requirement in subsection (1) of this section that would apply to the drilling of a new water well at the same location for the new use intended.

(3) The well-spacing protection of subsections (1) and (2) of this section shall apply to an unregistered water well for a period of only sixty days following completion of such water well.

(4) The spacing requirements in subsection (1) of this section shall not apply to any replacement water well if that water well is drilled within fifty feet of the water well being replaced and if the water well being replaced was drilled prior to July 16, 2004, was in compliance with any applicable spacing statute when drilled, and is less than one thousand feet from the registered water well for which spacing protection is provided.

Source: Laws 1965, c. 270, § 1, p. 771; Laws 1979, LB 201, § 1; Laws 1980, LB 643, § 6; Laws 1981, LB 246, § 2; Laws 1993, LB 131, § 21; Laws 2004, LB 962, § 38.

46-652. Repealed. Laws 1981, LB 246, § 4.

46-653. Spacing of water wells; special permit; application; contents; fee. Any person may apply to the Director of Natural Resources for a special permit to drill or to change the intended use of a water well without regard to the spacing requirements of section 46-651. Such application shall be on a form prescribed and furnished by the director and shall contain a statement of the precise location of the water well or proposed water well, facts justifying the request for such special permit, the size or proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and, if applicable, the name of the person who is actually going to drill the water well. A separate application shall be submitted for each water well for which a special permit is sought, and each application shall be accompanied by a fee of twelve dollars and fifty cents which shall be remitted to the State Treasurer for credit to the General Fund. When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for the special permit, the known ground water supply, and such other pertinent information as may be available. Such application may be approved or disapproved in whole or in part and the special permit issued or refused accordingly.

Source: Laws 1965, c. 270, § 3. p.771; Laws 1993, LB 131, § 22; Laws 2000, LB 900, § 187; Laws 2004, LB 962, § 39.

46-654.        Public water supplier; protections applicable; procedure. (1) Any public water supplier having a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act is hereby granted the protection of sections 46-651 to 46-655 for all water wells for which a permit has been or in the future is granted by the Department of Natural Resources under such act.

(2) If in its application for a permit pursuant to such act a public water supplier requests the protection of the spacing requirements of section 46-651 for test holes and water wells under construction and if the permit is granted, the Director of Natural Resources shall identify in the permit the area to which the spacing protection will apply and the spacing protection of section 46-651 shall then apply to such area for a period of one year from the date the permit is granted. The director shall notify, by certified or registered mail, owners and occupiers of land affected by the granting of such spacing protection, according to information supplied by the applicant. Costs of providing such notice shall be borne by the applicant. Owners or occupiers of land not receiving the notice required by this subsection shall not be bound by the spacing requirements until the applicant's water wells are completed. Such protection may be extended by the director, by a similar procedure, upon application by the public water supplier and good cause shown, for additional one-year periods.

Source:        Laws 1965, c. 270, § 4, p. 772; Laws 1980, LB 643, § 8; Laws 1987, LB 93, § 14; Laws 1993, LB 131, § 23; Laws 2000, LB 900, § 188.

#### **Cross Reference**

**Municipal and Rural Domestic Ground Water Transfers Permit Act**, see section 46-650.

46-655.        Violations; injunction. Any violation of the provisions of sections 46-651 to 46-655 may be enjoined in an action brought in the district court of the county in which such violation or any attempted or threatened violation occurs.

Source:        Laws 1965, c. 270, § 5, p. 772.

46-655.01.    Public water supplier; notice of intent to consider wellfield; contents; effect; termination. (1) A public water supplier as defined in section 46-638 may obtain protection for a public water supply wellfield from encroachment from other water wells by filing with the Department of Natural Resources a notice of intent to consider a wellfield. The notice of intent shall include:

(a) The legal description of the land being considered as a public water supply wellfield;  
and

(b) Written consent of the owner of the land considered for a public water supply wellfield, allowing the public water supplier to conduct an evaluation as to whether such land is suitable for a public water supply wellfield.

(2) A notice of intent filed under this section shall be limited to a contiguous tract of land. No public water supplier shall have more than three notices of intent under this section on file with the department at any one time.

(3) A notice of intent filed under this section shall expire one year after the date of filing and may be renewed for one additional year by filing with the department a notice of renewal of the original notice of intent filed under this section before expiration of the original notice of intent.

(4) At the time a notice of intent or a notice of renewal is filed with the department, the public water supplier shall:

(a) Provide a copy of the notice of intent or notice of renewal to the owners of land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice;

(b) Provide a copy of the notice to the natural resources district or districts within which the land being considered for a wellfield is located; and

(c) Publish a copy of the notice in a newspaper of general circulation in the area in which the wellfield is being considered.

(5)(a) Except as provided in subdivisions (b) and (c) of this subsection, during the time that a notice of intent under this section is in effect, no person may drill or construct a water well, as defined in section 46-601.01, within the following number of feet of the boundaries of the land described in the notice of intent, whichever is greater:

(i) One thousand feet; or

(ii) The maximum number of feet specified in any applicable regulations of a natural resources district that a well of a public water supplier must be spaced from another well.

(b) Any person who, at least one hundred eighty days prior to filing a notice of intent, obtained a valid permit from a natural resources district to drill or construct a water well within the area subject to the protection provided by this section is not prohibited from drilling or constructing a water well.

(c) The public water supplier may waive the protection provided by this section and allow a person to drill or construct a new or replacement water well within the area subject to the protection provided by this section.

(6) Within thirty days after the public water supplier reaches a determination that the land described in a particular notice of intent is not suitable for a public water supply wellfield, the public water supplier shall notify the Department of Natural Resources, all affected natural resources districts, the owner of the land described in the notice of intent, and the owners of all land falling within the spacing protection provided by subdivision (5)(a) of this section pursuant to the notice of intent of such determination. Upon receipt by the department of the notice of such determination, the notice of intent that contains the description of such tract of land shall terminate immediately, notwithstanding any other provision of this section.

Source:           Laws 2004, LB 962, § 40; Laws 2006, LB 1226, § 16.  
Operative date: July 14, 2006.

(f) NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

- 46-656. Transferred to section 46-656.02.
- 46-656.01. Transferred to section 46-701.
- 46-656.02. Transferred to section 46-702.
- 46-656.03. Transferred to section 46-704.
- 46-656.04. Transferred to section 46-705.
- 46-656.05. Transferred to section 46-703.
- 46-656.06. Repealed. Laws 2004, LB 962, § 43.
- 46-656.07. Transferred to section 46-706.
- 46-656.08. Transferred to section 46-707.
- 46-656.09. Repealed. Laws 2004, LB 962, § 83.
- 46-656.10. Transferred to section 46-745.
- 46-656.11. Transferred to section 46-708.
- 46-656.12. Transferred to section 46-709.
- 46-656.13. Transferred to section 46-710.
- 46-656.14. Transferred to section 46-711.
- 46-656.15. Repealed. Laws 2004, LB 962, § 51.
- 46-656.16. Repealed. Laws 2004, LB 962, § 49.
- 46-656.17. Repealed.
- 46-656.18. Repealed.
- 46-656.19. Transferred to section 46-712.
- 46-656.20. Repealed. Laws 2004, LB 962, § 52.
- 46-656.21. Transferred to section 46-744.
- 46-656.22. Repealed. Laws 2004, LB 962, § 52.
- 46-656.23. Repealed. Laws 2004, LB 962, § 52.
- 46-656.24. Transferred to section 46-742.
- 46-656.25. Transferred to section 46-739.
- 46-656.26. Transferred to section 46-740.
- 46-656.27. Transferred to section 46-741.
- 46-656.28. Repealed. Laws 2004, LB 962, § 53 to § 60.
- 46-656.29. Transferred to section 46-735.
- 46-656.30. Transferred to section 46-736.
- 46-656.31. Transferred to section 46-737.
- 46-656.32. Transferred to section 46-738.
- 46-656.33. Transferred to section 46-751.
- 46-656.34. Repealed.
- 46-656.35. Transferred to section 46-721.
- 46-656.36. Transferred to section 46-722.
- 46-656.37. Transferred to section 46-723.
- 46-656.38. Transferred to section 46-724.
- 46-656.39. Transferred to section 46-725.
- 46-656.40. Transferred to section 46-726.
- 46-656.41. Transferred to section 46-727.
- 46-656.42. Transferred to section 46-728.

- 46-656.43. Transferred to section 46-729.
- 46-656.44. Transferred to section 46-730.
- 46-656.45. Transferred to section 46-731.
- 46-656.46. Transferred to section 46-732.
- 46-656.47. Transferred to section 46-733.
- 46-656.48. Transferred to section 46-734.
- 46-656.49. Repealed.
- 46-656.50. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.51. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.52. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.53. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.54. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.55. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.56. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.57. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.58. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.59. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.60. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.61. Repealed. Laws 2004, LB 962, § 53 to § 59.
- 46-656.62. Transferred to section 46-748.
- 46-656.63. Transferred to section 46-746.
- 46-656.64. Transferred to section 46-747.
- 46-656.65. Transferred to section 46-749.
- 46-656.66. Transferred to section 46-750.
- 46-656.67. Transferred to section 46-752.

(g) INDUSTRIAL GROUND WATER REGULATORY ACT

46-675.     Legislative findings and declarations. The Legislature finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users in situations where industrial users withdraw significant quantities of ground water from the aquifers of the state and in situations where such ground water is transferred from the water well site for use at another location.

Source:       Laws 1981, LB 56, § 1; Laws 1993, LB 131, § 33.

46-676.     Terms, defined. For purposes of the Industrial Ground Water Regulatory Act:

- (1) The definitions found in section 46-706 are used;
- (2) Department means the Department of Natural Resources; and
- (3) Director means the Director of Natural Resources.

Source:       Laws 1981, LB 56, § 2; Laws 1996, LB 108, § 74; Laws 2000, LB 900, § 220; Laws 2004, LB 962, § 94.

46-676.01. Applicability of act. The Industrial Ground Water Regulatory Act does not apply to any public water supplier providing, or intending to provide, ground water for industrial purposes nor does the act apply to any person who is using, or intends to use, ground water for industrial purposes that is supplied by a public water supplier.

Source: Laws 2005, LB 335, § 75.  
Effective date September 4, 2005.

46-677. Withdrawal of ground water for industrial purposes; permit required; when. (1) Except as provided in sections 46-676.01 and 46-678.01:

(a) Any person who desires to withdraw and transfer ground water from aquifers located within the State of Nebraska for industrial purposes shall, prior to commencing construction of any water wells, obtain from the director a permit to authorize such withdrawal and transfer of such ground water; and

(b) Any person who prior to April 23, 1993, has withdrawn ground water from aquifers located in the State of Nebraska for industrial purposes may file an application for a permit to authorize the transfer of such ground water at any time.

(2) For purposes of this section, industrial purposes includes manufacturing, commercial, and power generation uses of water and commercial use includes, but is not limited to, maintenance of the turf of a golf course.

Source: Laws 1981, LB 56, § 3; Laws 1993, LB 131, § 34; Laws 1993, LB 789, § 6; Laws 2002, LB 458, § 5; Laws 2005, LB 335, § 76.  
Effective date September 4, 2005.

46-678. Permit; application; contents. (1) Applications for permits required by section 46-677 shall be on forms provided by the director and shall contain:

(a) A statement of the amount of ground water which the applicant proposes to use;

(b) A statement of the proposed use and whether the ground water will be transferred for use at a location other than the well site;

(c) A hydrologic evaluation of the impact of the proposed use on the surrounding area and on existing users;

(d) The date when the applicant expects to first use the ground water; and

(e) Such other relevant information as the director may deem necessary or desirable.

(2) Such applications shall be accompanied by an exhibit of maps showing the location, depth, and capacity of the proposed water wells.

Source: Laws 1981, LB 56, § 4; Laws 1993, LB 131, § 35; Laws 1993, LB 789, § 7.

46-678.01. Withdrawal and transfer of less than 150 acre-feet; notice; metering. Any person who desires to withdraw and transfer a total of less than one hundred fifty acre-feet of ground water per year from aquifers located in the State of Nebraska for industrial purposes to

other property within the state which is owned or leased by such person shall provide written notice to the department and install a water meter or meters that meet the approval of the department. Such notice shall include the amount of the proposed transfer, the point of withdrawal, and the point of delivery and shall be published once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the point of withdrawal is located. The withdrawal and transfer may be made without a permit issued under the Industrial Ground Water Regulatory Act so long as (1) the property which includes the point of withdrawal and the property which includes the point of delivery are owned or leased by the same person, (2) the water is used by such person, and (3) a total of less than one hundred fifty acre-feet of ground water per year is transferred from all sources to the property which includes the point of delivery.

Source: Laws 1993, LB 789, § 8; Laws 2000, LB 900, § 221; Laws 2004, LB 962, § 95.

46-679. Application; director; determination as to completeness. Within thirty days of the receipt of an application made under section 46-677, the director shall accept the application as a completed application or return the application to the applicant as an incomplete application. If the application is deemed to be incomplete, the director shall inform the applicant as to the deficiencies in the application.

Source: Laws 1981, LB 56, § 5.

46-680. Completed application; public hearing; when. (1) After the director has accepted the application made under section 46-677 as a completed application, the director shall cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing land on which one or more water wells are proposed to be located. The notice shall include (a) the amount of ground water the applicant proposes to use, (b) a description of the proposed use and location of that use, (c) the number of water wells proposed at each location of withdrawal, and (d) any other information deemed necessary by the director to provide adequate notice of the application to interested persons. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections stating the grounds for each objection within two weeks after the date of final publication of the notice. Such objections shall be filed in the headquarters office of the department.

(2) The director may hold a hearing on an application made under section 46-677 at his or her discretion and shall hold a hearing on such an application if requested by any interested person pursuant to subsection (1) of this section.

Source: Laws 1981, LB 56, § 6; Laws 1993, LB 131, § 36; Laws 2004, LB 962, § 96.

46-681. Public hearing; evidence presented. At the hearing provided for in section 46-680, the applicant shall present all hydrological data and other evidence supporting its

application. All interested parties shall be allowed to testify and present evidence relative to the application.

Source: Laws 1981, LB 56, § 7.

46-682. Applicant; agreement with other water users; filing. The applicant may negotiate with any user of water in order to obtain an agreement whereby the user waives any cause of action against the applicant for damages or injunctive or other relief for interference with such water use, in exchange for financial payment, substitute water, or other compensation. The applicant shall file copies of any such agreements with the director who shall consider the agreements in determining whether to grant or deny a permit. Nothing in this section shall be construed to limit any power of eminent domain possessed by an applicant.

Source: Laws 1981, LB 56, § 8.

46-683. Permit; issuance; consideration; conditions. (1) The director shall issue a written order containing specific findings of fact either granting or denying a permit. The director shall grant a permit only if he or she finds that the applicant's withdrawal and any transfer of ground water are in the public interest. In determining whether the withdrawal and transfer, if any, are in the public interest, the director's considerations shall include, but not be limited to:

- (a) Possible adverse effects on existing surface or ground water users;
- (b) The effect of the withdrawal and any transfer of ground water on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed ground water withdrawal;
- (c) The availability of alternative sources of surface or ground water reasonably accessible to the applicant in or near the region of the proposed withdrawal or use;
- (d) The economic benefit of the applicant's proposed use;
- (e) The social and economic benefits of existing uses of surface or ground water in the area of the applicant's proposed use and any transfer;
- (f) Any waivers of liability from existing users filed with the director;
- (g) The effects on interstate compacts or decrees and the fulfillment of the provisions of any other state contract or agreement; and
- (h) Other factors reasonably affecting the equity of granting the permit.

(2) The director may grant a permit for less water than requested by the applicant. The director may also impose reasonable conditions on the manner and timing of the ground water withdrawals and on the manner of any transfer of ground water which the director deems necessary to protect existing users of water. If a hearing is held, the director shall issue such written order within ninety days of the hearing.

Source: Laws 1981, LB 56, § 9; Laws 2003, LB 619, § 13; Laws 2006, LB 1226, § 17.  
Operative date: July 14, 2006.

46-683.01. Permit; application to amend; procedures; limitation. If during construction or operation a permit holder determines (1) that an additional amount of water is or will be required for the proposed use set forth in a permit issued pursuant to section 46-683 or (2) that there is a need to amend any condition set forth in the permit, the permit holder may file an application to amend the permit. Following a hearing conducted in the manner prescribed by section 46-680, the director shall issue a written order containing specific findings of fact either granting or denying the proposed amendment in accordance with the public interest considerations enumerated in section 46-683. An application to amend a permit shall not be approved if the amendment would increase the daily peak withdrawal or the annual volume by more than twenty-five percent from the amounts approved in the original permit.

Source: Laws 1986, LB 309, § 3.

46-684. Permit; revocation; procedure; violation of terms of permit; director; powers and duties. (1) A permit granted pursuant to section 46-683 shall be revoked, following a hearing conducted in the same manner as hearings conducted pursuant to section 46-680, if the director determines that the permit holder has failed to exercise the right to withdraw ground water within three years of the date specified in the permit or for a period of three consecutive years thereafter.

(2) If it appears to the director that a permit holder has withdrawn more ground water than the amount specified in the permit or has violated any of the conditions specified in the permit, the director shall give written notice to the permit holder of the alleged violation.

Within thirty days following receipt of such notice, the permit holder may:

- (a) File an application to amend the permit as provided in section 46-683.01;
- (b) Request a hearing before the director; or
- (c) Take appropriate measures to comply with the permit.

If the permit holder fails to take action pursuant to subdivision (2)(a), (2)(b), or (2)(c) of this section, the director may issue an order requiring compliance with the permit and seek, if appropriate, a court injunction prohibiting further violations of the permit.

If the permit holder requests a hearing, the director shall within thirty days schedule a hearing within or in reasonable proximity to the area where the water wells are located. Within forty-five days following the hearing, the director shall issue an order containing specific findings of fact with reference to the alleged violation and directing the permit holder, if necessary, to cease and desist from further violations of the permit.

(3) Nothing in this section shall limit the penalty provisions of section 46-687.

Source: Laws 1981, LB 56, § 10; Laws 1986, LB 309, § 4; Laws 1993, LB 131, § 37.

46-685. Order or decision; appeal by affected person. Any affected person aggrieved by any order issued or final decision made by the director pursuant to the Industrial

Ground Water Regulatory Act may appeal the order to the Court of Appeals. For purposes of this section, affected person means the applicant for a permit which is the subject of the director's order or final decision and any owner of an estate or interest in or concerning land or water whose interest is or may be impacted in a direct and significant manner by the director's order or final decision.

Source: Laws 1981, LB 56, § 11; Laws 1988, LB 352, § 80; Laws 2001, LB 129, § 4.

46-686. Injured person; remedies available. Any owner of an estate or interest in or concerning land or water, except a person who has signed an agreement filed with the director pursuant to section 46-682, may bring an action for damages or injunctive or other relief for any injury done to his or her land or water rights by the holder of a permit issued pursuant to section 46-683. Nothing in the Industrial Ground Water Regulatory Act shall be construed as limiting the right to resort to other means of review, redress, or relief provided by law.

Source: Laws 1981, LB 56, § 12; Laws 2005, LB 335, § 77.  
Effective date September 4, 2005.

46-686.01. Withdrawal and transfer of less than 150 acre-feet; injured person; hearing; civil action; appeal; attorney's fees. The director shall have jurisdiction over any ground water withdrawal and transfer made under section 46-678.01. Any person using ground water at the time a notice to transfer is filed under such section whose wells thereafter suffer an unanticipated decline in ground water levels may petition the director for a hearing. Such petition shall specifically set forth the cause and extent of the ground water decline as well as the nature and extent of any injury resulting from that decline. If at such hearing the injured party presents evidence showing that the ground water levels declined as a result of such transfer and shows the nature and extent of any resulting injury, the director may issue an order terminating or conditioning the transfer to eliminate any further injury. If the injured party prevails and an order is issued pursuant to this section, the order shall provide that the person filing the notice of transfer shall pay the costs of the department and of the injured party, including reasonable attorney's fees. The injured party may maintain a civil action against the person filing the notice of transfer to recover the costs of a hydrologic evaluation. The order of the director may be appealed to the Court of Appeals.

Source: Laws 1993, LB 789, § 9; Laws 2000, LB 900, § 222.

46-687. Violation; penalty. Any person who withdraws or transfers ground water in violation of the Industrial Ground Water Regulatory Act shall be guilty of a Class IV misdemeanor. Each day shall constitute a separate offense in cases of continued violation.

Source: Laws 1981, LB 56, § 13; Laws 1986, LB 309, § 5.

46-688. Director; rules and regulations. The director may adopt and promulgate all rules and regulations necessary or desirable to secure compliance with the Industrial Ground

Water Regulatory Act. The director shall by regulation specify the contents and scope of the hydrologic evaluation required by section 46-678, taking into account the current state of hydrologic knowledge and techniques, and the factors for permit approval listed in section 46-683.

Source: Laws 1981, LB 56, § 14; Laws 2005, LB 335, § 78.  
Effective date September 4, 2005.

46-689. Permitholder; subject to control area regulations. Nothing in the Industrial Ground Water Regulatory Act shall be construed to exempt the holder of a permit issued pursuant to section 46-683 from any regulations adopted by a natural resources district pursuant to the Nebraska Ground Water Management and Protection Act for a control area designated before such permit has been granted.

Source: Laws 1981, LB 56, § 15; Laws 1996, LB 108, § 75.

#### **Cross Reference**

**Nebraska Ground Water Management and Protection Act**, see section 46-701.

46-690. Act, how cited. Sections 46-675 to 46-690 shall be known and may be cited as the Industrial Ground Water Regulatory Act.

Source: Laws 1981, LB 56, § 16; Laws 1986, LB 309, § 6; Laws 1993, LB 789, § 10; Laws 2005, LB 335, § 79.  
Effective date September 4, 2005.

#### **(h) TRANSFERS**

46-691. Transfer off overlying land; when allowed; objection; procedure; natural resources district; powers and duties; Director of Natural Resources; duties. (1) Any person who withdraws ground water for agricultural purposes, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, from aquifers located within the State of Nebraska may transfer the use of the ground water off the overlying land if the ground water is put to a reasonable and beneficial use within the State of Nebraska and is used for an agricultural purpose, or for any purpose pursuant to a ground water remediation plan as required under the Environmental Protection Act, including the providing of water for domestic purposes, after transfer, and if such withdrawal, transfer, and use (a) will not significantly adversely affect any other water user, (b) is consistent with all applicable statutes and rules and regulations, and (c) is in the public interest. The determination made by a natural resources district under subsection (2) of this section or the Director of Natural Resources under subsection (3) of this section shall include consideration of the factors set forth in subdivisions (1) through (7) of section 46-613.01. For purposes of this section, domestic has the same meaning as in section 46-613.

(2) Any affected party may object to the transfer of ground water by filing written objections, specifically stating the grounds for such objection, in the office of the natural resources district containing the land from which the ground water is withdrawn. Upon the filing of such objections or on its own initiative, the natural resources district shall conduct a preliminary investigation to determine if the withdrawal, transfer, and use of ground water is consistent with the requirements of subsection (1) of this section. Following the preliminary investigation, if the district has reason to believe that the withdrawal, transfer, or use may not comply with any rule or regulation of the district, it may utilize its authority under the Nebraska Ground Water Management and Protection Act to prohibit such withdrawal, transfer, or use. If the district has reason to believe that the withdrawal, transfer, and use is consistent with all rules and regulations of the district but may not comply with one or more other requirements of subsection (1) of this section, the district shall request that the Department of Natural Resources hold a hearing on such transfer.

(3) At the hearing, all interested persons may appear and present testimony. Agencies or political subdivisions of this state and the appropriate natural resources districts shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing. After the hearing, if the Director of Natural Resources finds that the withdrawal, transfer, or use of ground water is contrary to the requirements of subsection (1) of this section, he or she shall issue a cease and desist order prohibiting the withdrawal and transfer.

(4) The director may adopt and promulgate rules and regulations to carry out this section.

Source:       Laws 1995, LB 251, § 1; Laws 2000, LB 900, § 223; Laws 2003, LB 619, § 14.

### **Cross References**

**Environmental Protection Act**, see section 81-1532.

**Nebraska Ground Water Management and Protection Act**, see section 46-656.01.

Only parties who are affected by the transfer of ground water off overlying land for agricultural purposes or pursuant to a water remediation plan, as required under the Environmental Protection Act, may object to such transfer by the procedures outlined in subsection (2) of this section. Upon an objection to the transfer of ground water pursuant to subsection (2) of this section, a natural resources district shall conduct an investigation to determine whether the transfer of water complained of by the objector, which objectionable transfer must be for agricultural purposes or pursuant to a water remediation plan as required under the Environmental Protection Act, is consistent with the requirements of subsection (1) of this section that the transfer (a) will not significantly adversely affect any other water user, (b) is consistent with all applicable statutes and rules and regulations, and (c) is in the public interest. In re

Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001).

The Legislature's purpose in enacting this section was to carve out two exceptions from Nebraska's common-law prohibition against transfers of water off overlying land: (1) for agricultural purposes and (2) pursuant to a remediation plan under the Environmental Protection Act. In re Referral of Lower Platte South NRD, 261 Neb. 90, 621 N.W.2d 299 (2001).

According to the legislative history of LB 251, later codified as this section, the Legislature manifested an intent to validate agreements made before the bill's passage to transfer ground water off overlying land for agricultural purposes by failing to void such preexisting transfers. Springer v. Kuhns, 6 Neb. App. 115, 571 N.W.2d 323 (1997).

46-691.01. Transfer off overlying land for domestic use; limitations; liability. Any person other than a public water supplier as defined in section 46-638 may transfer ground water off the overlying land for the purpose of domestic use of ground water required for human needs as it relates to health, fire control, and sanitation if (1) the location and use of the water well and any pipeline or other means of conveyance are authorized by easement or other adequate property interest on all land on which such water well and pipeline or other means of conveyance are located and (2) the capacity of the water well or series of water wells connected together for such purposes does not exceed fifty gallons per minute. Such person may be liable for damages for interference with the use of ground water by another person only if the withdrawal of ground water for such domestic use unreasonably causes harm to another person through the lowering of the water table or by reducing artesian pressure.

Source: Laws 2001, LB 472, § 1.

46-691.02. Transfer off overlying land for domestic use; applicability of section. Section 46-691.01 applies to all such transfers and uses of ground water before, on, and after September 1, 2001.

Source: Laws 2001, LB 472, § 2.

46-691.03. Transfer off overlying land for environmental or recreational benefits; when allowed; application; fee; natural resources district; powers and duties. (1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the water well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from such natural resources district. An application for any such permit shall be accompanied by a nonrefundable fee of fifty dollars payable to such district. Such permit shall be in addition to any permit required pursuant to section 46-252 or 46-735 or subdivision (1)(k) of section 46-739.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefor have been given consistent with the Open Meetings Act.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

- (a) Whether the proposed use is a beneficial use of ground water;
- (b) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;
- (c) Any negative effect of the proposed withdrawal, transport, and use on ground water supplies needed to meet present or reasonable future demands for water in the area of the

proposed withdrawal, transport, and use, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(d) Any negative effect of the proposed withdrawal, transport, and use on surface water supplies needed to meet present or reasonable future demands for water within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(e) Any adverse environmental effect of the proposed withdrawal, transport, and use of the ground water;

(f) The cumulative effects of the proposed withdrawal, transport, and use relative to the matters listed in subdivisions (3)(c) through (e) of this section when considered in conjunction with all other withdrawals, transports, and uses subject to this section;

(g) Whether the proposed withdrawal, transport, and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections 46-713 to 46-719; and

(h) Any other factors consistent with the purposes of this section which the board of directors deems relevant to protect the interests of the state and its citizens.

(4) Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport, and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Source: Laws 2004, LB 962, § 97; Laws 2006, LB 1226, § 18.  
Operative date: July 14, 2006.

#### **Cross Reference**

**Open Meetings Act**, see section 84-1407.

#### **(i) REPUBLICAN RIVER BASIN**

46-692. Wells; measuring devices; cost-share assistance. (1) For purposes of this section:

(a) Measuring device means any accurate method used to measure total volume of water pumped or diverted annually; and

(b) Well means a water well to be used for other than domestic purposes which is capable of pumping more than fifty gallons per minute and which is located in the alluvial aquifer of the Republican River Basin as determined and delineated on a map provided by the Department of Natural Resources.

(2) It is the intent of the Legislature to appropriate five hundred thousand dollars each year for FY1998-99, FY1999-00, and FY2000-01 for a cost-share program to install measuring devices on wells in the alluvial aquifer of the Republican River Basin and on surface water diversion works from the Republican River and its tributaries. The money shall be appropriated to a separate account within the Nebraska Soil and Water Conservation Fund for cost sharing on the purchase and installation of measuring devices if every natural resources district covering any portion of the alluvial aquifer of the Republican River Basin has established by October 1, 1998, a program requiring the installation of measuring devices on a minimum of ninety percent of active eligible wells by June 1, 2001, and adopts and promulgates rules and regulations within a reasonable time governing the program.

(3) To be eligible for cost-share assistance under this section, a surface water diversion works must have a valid surface water appropriation and a well must meet the definition of a well in subsection (1) of this section and the measuring device shall be purchased, installed, and operational by June 1, 2001. If eligible for cost sharing under this section, fifty percent of the cost of purchase and installation of the measuring device, up to a maximum state share of six hundred dollars per well or diversion works, may be provided through the cost-share program.

(4) Any owner or operator of a well upon which cost-share funds are expended under this section shall be responsible for reporting water use to the natural resources district in which the well is located in a manner prescribed by the natural resources district. Any owner or operator of a surface water diversion works upon which cost-share funds are expended under this section shall be responsible for reporting water use to the Department of Natural Resources in a manner prescribed by the department.

(5) If the requirements of subsections (2) and (3) of this section have not been met by June 1, 2001, the natural resources district shall remit to the state an amount equal to the cost-share assistance provided to the natural resources district under such subsections. Any owner or operator of a well upon which cost-share funds are expended shall not be responsible for any repayment requirements under this section.

Source:           Laws 1998, LB 1161, § 1; Laws 2000, LB 900, § 224.

CHAPTER 66

ARTICLE 11

GEOHERMAL RESOURCES

66-1101. Legislative findings. The Legislature finds it to be in the public interest of the state and its citizens to promote the efficient development and prevent the waste of geothermal resources. Geothermal energy is an indigenous, renewable resource the development of which will benefit local economies. The Legislature further finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users, particularly where the development of geothermal energy requires the utilization of geothermal resources at a location other than the well site.

Source: Laws 1982, LB 708, § 1.

66-1102. Terms, defined. As used in sections 66-1101 to 66-1106, unless the context otherwise requires:

(1) Geothermal resources shall mean (a) the natural heat of the earth and the energy produced by that heat, including pressure, and (b) the material medium containing that energy;

(2) Geothermal fluids shall mean the naturally present ground water in geothermal occurrences;

(3) Geothermal occurrence shall mean an underground geologic formation at temperatures higher than the normal gradient; and

(4) Material medium shall mean geothermal fluids or other substances injected into a geothermal occurrence by which geothermal energy is transported to the surface.

Source: Laws 1982, LB 708, § 2.

66-1103. Severance of mineral estate; right to develop geothermal resource; attaches; exception. When the subsurface or mineral estate has been severed from the overlying surface estate, ownership of the right to develop and produce geothermal resources shall derive from the subsurface or mineral estate, except that no such right shall attach to subsurface or mineral estates granted prior to July 17, 1982, unless the document conveying the subsurface or mineral estate specifically granted the right to develop and produce geothermal resources.

Source: Laws 1982, LB 708, § 3.

66-1104. Owner of mineral estate; right of entry; lease of state-owned geothermal resources. (1) When the subsurface or mineral estate in land has been severed from the overlying surface estate, the owner of the subsurface or mineral estate shall have the right to enter upon the overlying surface estate at reasonable times and in a reasonable manner to prospect for, produce, and transport geothermal resources. Fair and equitable compensation shall be paid to the owner of the overlying surface estate for the exercise of such right of entry. The right of entry granted in this section shall not include the right to construct surface facilities for onsite utilization of geothermal energy.

(2) The Board of Educational Lands and Funds shall have the authority to lease state-owned geothermal resources under the procedures contained in Chapter 72, article 3.

Source: Laws 1982, LB 708, § 4.

66-1105. Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations. Any person who desires to withdraw ground water within the State of Nebraska for geothermal resource development shall, prior to commencing construction of any wells, obtain from the Director of Natural Resources a permit to authorize the withdrawal, transfer, and further use or reinjection of such ground water. The Department of Natural Resources shall adopt and promulgate rules and regulations governing the issuance of such permits, consistent with sections 66-1101 to 66-1106 and with Chapter 46, article 6. Such rules and regulations shall provide for consultation with the Department of Environmental Quality pursuant to the issuance of such permits and shall be compatible with rules and regulations adopted and promulgated by the Department of Environmental Quality under the Environmental Protection Act. Any geothermal fluids produced incident to the development and production of geothermal resources shall be reinjected into the same geologic formation from which they were extracted in substantially the same volume and substantially the same or higher quality as when extracted unless the permit issued in accordance with this section authorizes further uses or processing other than those incident to reinjection.

Source: Laws 1982, LB 708, § 5; Laws 1993, LB 3, § 37; Laws 2000, LB 900, § 245.

#### **Cross Reference**

**Environmental Protection Act**, see section 81-1532.

66-1106. Development and production of geothermal resources; provisions applicable. The development and production of geothermal resources shall be subject to Chapter 46, article 6, and the Environmental Protection Act and any rules and regulations adopted thereunder.

Source: Laws 1982, LB 708, § 6.

#### **Cross Reference**

**Environmental Protection Act**, see section 81-1532.

## CHAPTER 33

### ARTICLE 1

#### FEES

33-105. Department of Natural Resources; fees. There shall be paid to the Department of Natural Resources in advance for the services of the Director of Natural Resources by the party demanding or necessitating the service the following fees:

(1) For filing, recording, and examining each application for a storage reservoir, for the first five thousand acre-feet or fraction thereof, twenty-five dollars, and for each additional five thousand acre-feet or fraction thereof, ten dollars;

(2) For filing, recording, and examining each application for, or application for modification of permits to include, intentional or incidental underground water storage and recovery, five hundred dollars;

(3) For filing, recording, and examining each application for water for irrigation from a natural stream, for the first one thousand acres proposed for irrigation or fraction thereof, two hundred dollars, and for each additional one thousand acres or fraction thereof, one hundred dollars;

(4) For filing, recording, and examining each application for water for irrigation from a storage reservoir, for the first one thousand acres proposed for irrigation or fraction thereof, fifty dollars, and for each additional one thousand acres or fraction thereof, twenty-five dollars;

(5) For filing, recording, and examining each application for water for power purposes, for each theoretical fifty horsepower or fraction thereof, five dollars;

(6) For filing, recording, and examining each application for withdrawal of ground water for industrial purposes, for the first four thousand acre-feet or fraction thereof, one thousand five hundred dollars, and for each additional one thousand acre-feet or fraction thereof, seven hundred fifty dollars;

(7) For filing an application to amend a permit for withdrawal of ground water for industrial purposes, five hundred dollars;

(8) For filing any petition, affidavit, other paper, or application for which no fee has been fixed, ten dollars;

(9) For recording any deed or document pertaining to land covered in whole or in part by a water appropriation or any instrument other than an application, ten dollars; and

(10) For certificate and seal, one dollar.

The Director of Natural Resources shall keep a record of all money thus received and shall remit such money to the State Treasurer for credit to and use of the General Fund.

Source: Laws 1905, c. 167, § 1, p. 652; Laws 1911, c. 153, § 34, p. 519; R.S.1913, § 2427-8; C.S.1922, § 2368; C.S.1929, § 33-107; R.S.1943, § 33-105; Laws 1947, c. 119, § 1, p. 352; Laws 1957, c. 365, § 7, p. 1235; Laws 1957, c. 131, § 1, p. 445; Laws 1978, LB 773, § 1; Laws 1979, LB 547, § 1; Laws 1981, LB 56, § 17; Laws 1983, LB 198, § 3; Laws 1985, LB 103, § 1; Laws 1985, LB 488, § 1; Laws 1986, LB 309, § 1; Laws 1989, LB 45, § 1; Laws 1989, LB 132, § 1; Laws 2000, LB 900, § 85; Laws 2005, LB 335, § 73.  
Effective date September 4, 2005.

## CHAPTER 76

### ARTICLE 2

#### WATER RESOURCES UPDATE NOTICE

76-2,124. Water resources update notice; Department of Natural Resources; powers and duties. (1) Any person transferring ownership of real property not inside the corporate limits of a municipality shall complete and provide to the transferee, at or before the closing of the transfer, a water resources update notice acknowledging (a) whether any surface water rights issued pursuant to Chapter 46, article 2, and in the name of any party other than an irrigation district, public power and irrigation district, or mutual irrigation company are attached to the real property, ownership of which is being transferred, and (b) whether there are any water wells, except water wells used solely for domestic purposes and constructed prior to September 9, 1993, on the real property, ownership of which is being transferred. If the water resources update notice discloses the existence of such surface water rights or such water wells, the transferee shall complete the water resources update notice and shall file it with the Department of Natural Resources within sixty days after recording the deed or other instrument by which the transfer of ownership of real property is made. The department shall use such notice to update ownership of surface water rights and water well registrations as required by sections 46-230 and 46-602.

(2) The department shall prescribe the form and content of the water resources update notice and shall make such forms available to title insurance companies and other persons as deemed appropriate by the department. The requirement that a water resources update notice be filed with the department or the failure to file such a notice does not affect the recording, legality, or sufficiency of a deed or other instrument evidencing the transfer of ownership of real property.

(3) The department shall not collect a fee for the filing of the water resources update notices.

Source: Laws 2001, LB 667, § 27; Laws 2002, LB 458, § 9.

## CHAPTER 46

### ARTICLE 2

#### ARTESIAN WATER

46-281.        Artesian water; waste prohibited. It shall be unlawful for any owner or owners, lessee or lessees, occupier or occupiers, foreman or superintendent of any farm, town lot or other real estate in the State of Nebraska, where artesian water has been found or may be found hereafter, to allow the water from wells or other borings or drillings on any farm, town lot, or other real estate in Nebraska to flow out and run to waste in any manner to exceed what will flow or run through a pipe one-half of one inch in diameter, except where the water is first used for irrigation, or to create power for milling or other mechanical purposes.

Source:        Laws 1897, c. 84, § 1, p. 358; R.S.1913, § 3527; C.S.1922, § 2927; C.S.1929, § 46-172.

46-282.        Artesian water; waste; penalty. Any person or persons who own, occupy or have control of any farm, town lot or other real estate in the State of Nebraska, who fail or refuse to close or shut off any wastage of artesian water to the amount that section 46-281 allows on any farm, town lot or other real estate which they own, occupy or have control of, after being notified in writing by any person having the benefit of such mutual artesian water supply, within forty-eight hours after such notification, shall be subject to arrest, and shall be guilty of a Class V misdemeanor; and if such wastage be not abated within twenty-four hours after such arrest and conviction, it shall be a second offense against the provisions of section 46-281 and be subject to the same fine as for the first offense. Every like offense or neglect of each twenty-four hours thereafter shall be considered an additional offense against the provisions of section 46-281.

Source:        Laws 1897, c. 84, § 2, p. 358; R.S.1913, § 3528; C.S.1922, § 2928; C.S.1929, § 46-173; R.S.1943, § 46-282; Laws 1977, LB 40, § 264.

## CHAPTER 25

### ARTICLE 10

#### CIVIL PROCEDURE

##### 25-1062.01. Director of Natural Resources, defined; notice to appropriator; how given.

(1) The words Director of Natural Resources as used in this section and in sections 25-1064, 25-2159, and 25-2160 mean the Director of Natural Resources, State of Nebraska, his or her successor in office, or any agent, servant, employee, or officer of the State of Nebraska, now or hereafter exercising any powers or duties with respect to the administration of the irrigation water in the state, who may be a party in any court of the state in an action when the relief demanded involves the delivery of irrigation water.

(2) Whenever notice by either registered or certified letter to an appropriator is required in such sections, the address of the appropriator shall be that recorded in the office of the Department of Natural Resources under section 46-230.

Source: Laws 1941, c. 29, § 1, p. 133; C.S.Supp.,1941, § 20-10,111; R.S.1943, § 25-1062.01; Laws 1957, c. 242, § 14, p. 828; Laws 1957, c. 365, § 1, p. 1232; Laws 1986, LB 516, § 10; Laws 2000, LB 900, § 65.

25-1064. Temporary injunctions and restraining orders; courts and judges empowered to issue; conditions; temporary restraining order granted without notice; requirements; actions involving irrigation water; notice, how given. (1) The injunction may be granted at the time of commencing the action or at any time afterward before judgment by the Court of Appeals or the Supreme Court or any judge thereof. No restraining order or temporary injunction should be granted at the time of the commencement of the action if the relief demanded involves the delivery of irrigation water and the Director of Natural Resources, as defined in section 25-1062.01, is a party except in accordance with the procedure prescribed in subsection (5) of this section.

(2) No temporary injunction may be granted without notice to the adverse party.

(3) Any judge of the district court, except when the relief demanded involves the delivery of irrigation water and the director is a party, may grant a temporary restraining order without notice to the adverse party or his or her attorney only if (a) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her attorney can be heard in opposition and (b) the applicant or his or her attorney certifies to the court in writing the efforts, if any, which have been made to give such notice and the reasons supporting the applicant's claim that such notice shall not be required.

Every temporary restraining order granted without notice shall: (i) Be endorsed with the date and hour of issuance; (ii) be filed immediately in the office of the clerk of the district court

and entered of record; (iii) define the injury and state why the injury is irreparable and why the order was granted without notice; and (iv) expire by its terms within such time after entry, not to exceed ten days, as the court fixes unless within such fixed time period the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents to an extension for a longer period. The reasons for the extension shall be entered of record. If a temporary restraining order is granted without notice, the motion for a temporary injunction shall be heard at the earliest possible time in the district court and shall take precedence over all matters except older matters of the same character. When the motion for a temporary injunction comes up for hearing, the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and if he or she does not do so, the district court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to such party as the district court may prescribe, the adverse party may appear and move for the dissolution or modification of the order, and in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(4) In the absence from the county of the district judges, any judge of the county court, except when the relief demanded involves the delivery of irrigation water and the director is a party, may grant a temporary restraining order without notice to the adverse party or his or her attorney only if (a) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her attorney can be heard in opposition and (b) the applicant or his or her attorney certifies to the court in writing the efforts, if any, which have been made to give such notice and the reasons supporting the applicant's claim that such notice shall not be required. The judge of the county court shall direct that reasonable notice be given to the party against whom the temporary restraining order is issued to attend at a specified time or place before the district court or any judge thereof to show cause why a temporary injunction should not be issued.

Every temporary restraining order granted without notice shall: (i) Be endorsed with the date and hour of issuance; (ii) be filed immediately in the office of the clerk of the district court and entered of record; (iii) define the injury and state why the injury is irreparable and why the order was granted without notice; and (iv) expire by its terms within such time after entry, not to exceed ten days, as the judge of the county court fixes unless within such fixed time period the order, for good cause shown, is extended by the district court for a like period or unless the party against whom the order is directed consents to an extension for a longer period. The reasons for the extension shall be entered of record.

(5) The Supreme Court or any judge thereof, the Court of Appeals or any judge thereof, the district court or any judge thereof, or a judge of the county court, if and when he or she has jurisdiction, shall have no power, when the relief demanded involves the delivery of irrigation water and the director is a party, to grant a restraining order or temporary injunction at the time of the commencement of the action, except when notice by either registered or certified letter has been mailed seventy-two hours prior to the time of hearing to the director and the division supervisor in the water division created by section 61-212 in which the action is brought and, in the manner provided in section 25-1062.01, to all appropriators whose rights to the delivery of

irrigation water might in any manner be affected, of the time and place of the hearing. At the hearing on the restraining order or temporary injunction, the director, appropriators, or riparian owners shall be entitled to be heard, in person or by their attorney or attorneys, on the question of whether the restraining order should be granted and, if so, in what amount the bond or undertaking is to be fixed.

(6) Any person, natural or artificial, injured or likely to be injured by the granting of a restraining order may intervene in the action at any stage of the proceedings and become a party to the litigation if it involves the delivery of irrigation water and the director is a party.

Source: R.S.1867, Code § 252, p. 435; Laws 1913, c. 65, § 1, p. 198; R.S.1913, § 7793; C.S.1922, § 8737; C.S.1929, § 20-1064; Laws 1941, c. 29, § 4, p. 134; C.S.Supp.,1941, § 20-1064; R.S.1943, § 25-1064; Laws 1955, c. 87, § 1, p. 260; Laws 1957, c. 242, § 15, p. 828; Laws 1957, c. 365, § 2, p. 1232; Laws 1986, LB 516, § 11; Laws 1991, LB 732, § 44; Laws 2000, LB 900, § 66.

Notwithstanding section 24-517(5), the district court has jurisdiction in injunctive actions to enforce zoning ordinances. Village of Springfield v. Hevelone, 195 Neb. 37, 236 N.W.2d 811 (1975).

Supreme Court may grant a temporary injunction in proceedings by state under Installment Loan Act. State ex rel. Beck v. Associates Discount Corp., 162 Neb. 683, 77 N.W.2d 215 (1956).

District judge has power to allow temporary injunction, notwithstanding provisions of this section. State ex rel. Hahler v. Grimes, 96 Neb. 719, 148 N.W. 942 (1914).

Affidavit not stating Supreme Judges were absent is sufficient to allow county judge to act, latter cannot issue perpetual injunction. State ex rel. Minden-Edison Light & Power Co. v. Dungan, 89 Neb. 738, 132 N.W. 305 (1911).

County judge may grant temporary restraining order if district judge is absent. State ex rel. Downing v. Greene, 48 Neb. 327, 67 N.W. 162 (1896).

Violation of injunction allowed by county judge is contempt for district court. Wilber v. Woolley, 44 Neb. 739, 62 N.W. 1095 (1895).

County judge cannot punish for contempt of violation of restraining order. Johnson v. Bouton, 35 Neb. 898, 53 N.W. 995 (1892).

Judge of Supreme Court may grant temporary injunction. Calvert v. State, 34 Neb. 616, 52 N.W. 687 (1892).

District judge cannot grant injunction out of district unless judge therein is absent or unable to act; injunction void. Ellis v. Karl, 7 Neb. 381 (1878).

Order granted by county judge before petition filed is valid, where both filed forthwith. Commercial State Bank of Crawford v. Ketcham, 3 Neb. Unof. 839, 92 N.W. 998 (1902).

## CHAPTER 25

### ARTICLE 21

#### CIVIL PROCEDURE

25-2159. Peremptory writ; when allowed in first instance. When the right to require the performance of the act is clear and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must be first issued, except that a peremptory mandamus in the first instance shall not be given in any case involving the delivery of irrigation water if the Director of Natural Resources as defined in section 25-1062.01 is a party.

Source: R.S.1867, Code § 648, p. 508; R.S.1913, § 8274; C.S.1922, § 9227; C.S.1929, § 20-2159; Laws 1941, c. 29, § 9, p. 137; C.S.Supp.,1941, § 20-2159; R.S.1943, § 25-2159; Laws 1957, c. 365, § 5, p. 1234; Laws 2000, LB 900, § 68.

When right to writ is clear and no excuse can be given for failure to perform duty, peremptory writ may be issued. State ex rel. Krieger v. Board of Supervisors of Clay County, 171 Neb. 117, 105 N.W.2d 721 (1960).

Peremptory writ may be issued without notice only where court can take judicial notice that a valid excuse is impossible. State ex rel. Beck v. Chicago, St. P., M. & O. Ry. Co., 164 Neb. 60, 81 N.W.2d 584 (1957).

Peremptory writ without notice should be issued only where legal right to it is clearly shown. Summit Fidelity & Surety Co. v. Nimtz, 158 Neb. 762, 64 N.W.2d 803 (1954).

A peremptory writ of mandamus may issue without notice only where there is no room for controversy as to the right of the applicant thereto, and where judicial notice can be taken that a valid excuse for failure to act cannot be given. State ex rel. Platte Valley Irr. Dist. v. Cochran, 139 Neb. 324, 297 N.W. 587 (1941).

Peremptory writ cannot issue without notice unless court can take judicial notice that defense is impossible. State ex rel. Chicago & N. W. Ry. Co. v. Harrington, 78 Neb. 395, 110 N.W. 1016 (1907).

Relator's right and respondent's duty must clearly appear. State ex rel. Niles v. Weston, 67 Neb. 175, 93 N.W. 182 (1903).

Peremptory writ may issue against public officer without notice but not against officer of private corporation. Horton v. State ex rel. Hayden, 60 Neb. 701, 84 N.W. 87 (1900).

Court may grant peremptory writ at chambers only when right is clear. Mayer v. State ex rel. Wilkinson, 52 Neb. 764, 73 N.W. 214 (1897).

When facts are disputed on hearing to show cause, alternative writ should issue. American Waterworks Co. v. State ex rel. O'Connor, 31 Neb. 445, 48 N.W. 64 (1891).

25-2160. Peremptory writ; motion; affidavit required; notice; order to show cause; actions involving irrigation water. The motion for the writ must be made upon affidavit. The court may require a notice of the application to be given to the adverse party, may grant an order to show cause why it should not be allowed, or may grant the writ without notice. No peremptory writ of mandamus shall be allowed in any case involving the delivery of irrigation water if the Director of Natural Resources, as defined in section 25-1062.01, is a party unless notice by either registered or certified mail has been given, as provided therein, seventy-two hours prior to the time of hearing to the director and division supervisor in the water division created by section 61-212 in which the action is brought and to all appropriators whose rights to the delivery of water might in any manner be affected, of the time and place of the hearing. In such case, any

person, natural or artificial, injured or likely to be injured by the granting of such writ, may intervene in such action at any stage of the proceedings and become a party to such litigation.

Source: R.S.1867, Code § 649, p. 508; R.S.1913, § 8275; C.S.1922, § 9228; C.S.1929, § 20-2160; Laws 1941, c. 29, § 10, p. 137; C.S.Supp.,1941, § 20-2160; R.S.1943, § 25-2160; Laws 1957, c. 242, § 20, p. 831; Laws 1957, c. 365, § 6, p. 1235; Laws 2000, LB 900, § 69.

A verification which is a part of an affidavit upon which a writ of mandamus is sought must be positively verified, and a verification based upon mere belief is inadequate. *State ex rel. Van Cleave v. City of No. Platte*, 213 Neb. 426, 329 N.W.2d 358 (1983).

To sustain an application for mandamus, motion for the writ must be made upon affidavit. *Little v. Board of County Commissioners of Cherry County*, 179 Neb. 655, 140 N.W.2d 1 (1966).

If no alternative writ has been granted, case may be heard on petition and response thereto. *State ex rel. Krieger v. Board of Supervisors of Clay County*, 171 Neb. 117, 105 N.W.2d 721 (1960).

Petition must be filed, and writ allowed by judge. *State ex rel. Hansen v. Carrico*, 86 Neb. 448, 125 N.W. 1110 (1910).

Action is not begun until motion and affidavit, or petition verified positively, filed. *State ex rel. Chicago & N. W. Ry. Co. v. Harrington*, 78 Neb. 395, 110 N.W. 1016 (1907).

Affidavit upon information and belief is insufficient but is amendable. *Steidl v. State ex rel. School Dist. of the City of Crete*, 63 Neb. 695, 88 N.W. 853 (1902).

Writ issues upon motion supported by affidavit. *State ex rel. Otto v. County Commissioners of Lancaster County*, 49 Neb. 51, 68 N.W. 336 (1896).

Application must show prior demand and refusal, and facts showing legal duty of respondent. *Kemerer v. State ex rel. Garber*, 7 Neb. 130 (1878).

## CHAPTER 37

### ARTICLE 8

#### NONGAME AND ENDANGERED SPECIES ACT

37-807. Commission; establish conservation programs; agreements authorized; Governor and state agencies; duties; public meeting; when required. (1) The commission shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are necessary for the conservation of nongame, threatened, or endangered species of wildlife or wild plants. Acquisition for the purposes of this subsection shall not include the power to obtain by eminent domain.

(2) In carrying out programs authorized by this section, the commission shall consult with other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or wild plants and may enter into agreements with federal agencies, other states, political subdivisions of this state, or private persons with respect to programs designed to conserve such species including, when appropriate, agreements for administration and management of any area established under this section or utilized for conservation of such species.

(3) The Governor shall review other programs administered by him or her and utilize such programs in furtherance of the purposes of the Nongame and Endangered Species Conservation Act. All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-806 and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the commission to be critical. For purposes of this subsection, state agency means any department, agency, board, bureau, or commission of the state or any corporation whose primary function is to act as, and while acting as, an instrumentality or agency of the state, except that state agency shall not include a natural resources district or any other political subdivision.

(4) The commission shall provide notice and hold a public meeting prior to the implementation of conservation programs designed to reestablish threatened, endangered, or extirpated species of wildlife or wild plants through the release of animals or plants to the wild. The purpose of holding such a public meeting shall be to inform the public of programs requiring the release to the wild of such wildlife or wild plants and to solicit public input and opinion. The commission shall set a date and time for the public meeting to be held at a site convenient to the proposed release area and shall publish a notice of such meeting in a legal newspaper published in or of general circulation in the county or counties where the proposed release is to take place.

The notice shall be published at least twenty days prior to the meeting and shall set forth the purpose, date, time, and place of the meeting.

Source:           Laws 1975, LB 145, § 6; Laws 1984, LB 1106, § 22; Laws 1987, LB 150, § 3; Laws 1991, LB 772, § 3; R.S.1943, (1993), § 37-435; Laws 1998, LB 922, § 357.

As the Department of Water Resources is a state agency within the meaning of the Nongame and Endangered Species Act, the issuance of a permit through its director would qualify as an "action" taken by a state agency. Therefore, the director may not issue permits which would jeopardize the continued existence of an endangered or threatened species, or result in the destruction or modification of their habitat. *Central Platte NRD v. City of Fremont*, 250 Neb. 252, 549 N.W.2d 112 (1996).

Before authorizing a diversion project, the Department of Water Resources must consult with the Game and Parks Commission and must obtain an opinion as to whether the project will jeopardize threatened or endangered species. However, the opinion, merely by being issued, does not impose affirmative requirements upon an application. *Central Platte NRD v. State of Wyoming*, 245 Neb. 439, 513 N.W.2d 847 (1994).

If the director of the state Department of Water Resources, pursuant to subsection (3) of this section, considers and relies on the

opinion of the state Game and Parks Commission in making his or her decision about diversion of unappropriated waters, the applicant is affected by the statute and thus is entitled to challenge its constitutionality. This section does not violate the provisions of Article XV, sections 4, 5, and 6, of the Constitution of Nebraska. In re Applications A-10627 et al., 243 Neb. 419, 499 N.W.2d 548 (1993).

This section places two separate and distinct duties upon state departments and agencies, that of consultation with the Game and Parks Commission and, once done, an independent duty to insure that the actions they take or authorize do not jeopardize the continued existence of an endangered species or its habitat. Both the Department of Water Resources and the various natural resources districts are state departments or agencies within the meaning of this act. *Little Blue N.R.D. v. Lower Platte North N.R.D.*, 210 Neb. 862, 317 N.W.2d 726 (1982).

## CHAPTER 2

### ARTICLE 32

#### NRD SPECIAL PROJECT

2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien. (1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the establishment of or altering the boundaries of an existing improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition, and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government and after the hearing, that the project conforms with all applicable law and with the district's goals, criteria, and policies, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area or alter the boundaries of an existing improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not so conform, the findings shall be entered in the board's records and copies of such findings shall be furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Health and Human Services rather than the Director of Natural Resources. No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Health and Human Services, if applicable, except that if such special project involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review such plans and specifications and

approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project

area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record title representing more than fifty percent of the estimated total assessments file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Source: Laws 1969, c. 9, § 54, p. 131; Laws 1972, LB 543, § 14; Laws 1973, LB 206, § 6; Laws 1981, LB 326, § 10; Laws 1994, LB 480, § 15; Laws 1996, LB 1044, § 39; Laws 1999, LB 436, § 10; Laws 2000, LB 900, § 58; Laws 2001, LB 136, § 3; Laws 2001, LB 667, § 1; Laws 2007, LB296, § 18.  
Operative date: July 1, 2007.

#### **Cross Reference**

**Nebraska Safe Drinking Water Act**, see section 71-5313.