

E AND R AMENDMENTS TO LB 295

Introduced by Enrollment and Review Committee: McGill, 26,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 46-229.04, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 46-229.04 (1) At ~~such~~ a hearing held pursuant to section
6 46-229.03, the verified field investigation report of an employee
7 of the department, or such other report or information that
8 is relied upon by the department to reach the preliminary
9 determination of nonuse, shall be prima facie evidence for the
10 forfeiture and annulment of such water appropriation. If no person
11 appears at the hearing, such water appropriation or unused part
12 thereof shall be declared forfeited and annulled. If an interested
13 person appears and contests the same, the department shall hear
14 evidence, and if it appears that such water has not been put to a
15 beneficial use or has ceased to be used for such purpose for more
16 than five consecutive years, the same shall be declared canceled
17 and annulled unless the department finds that (a) there has been
18 sufficient cause for such nonuse as provided for in subsection (2),
19 (3), or (4) of this section or (b) subsection (5) or (6) of this
20 section applies.

21 (2) Sufficient cause for nonuse shall be deemed to exist
22 for up to thirty consecutive years if such nonuse was caused by the
23 unavailability of water for that use. For a river basin, subbasin,

1 or reach that has been designated as overappropriated pursuant
2 to section 46-713 or determined by the department to be fully
3 appropriated pursuant to section 46-714, the period of time within
4 which sufficient cause for nonuse because of the unavailability
5 of water may be deemed to exist may be extended beyond thirty
6 years by the department upon petition therefor by the owner of
7 the appropriation if the department determines that an integrated
8 management plan being implemented in the river basin, subbasin, or
9 reach involved is likely to result in restoration of a usable water
10 supply for the appropriation.

11 (3) Sufficient cause for nonuse shall be deemed to exist
12 indefinitely if such nonuse was the result of one or more of the
13 following:

14 (a) For any tract of land under separate ownership, the
15 available supply was used but on only part of the land under the
16 appropriation because of an inadequate water supply;

17 (b) The appropriation is a storage appropriation and
18 there was an inadequate water supply to provide the water for the
19 storage appropriation or less than the full amount of the storage
20 appropriation was needed to keep the reservoir full; or

21 (c) The appropriation is a storage-use appropriation and
22 there was an inadequate water supply to provide the water for the
23 appropriation or use of the storage water was unnecessary because
24 of climatic conditions.

25 (4) Sufficient cause for nonuse shall be deemed to exist
26 for up to fifteen consecutive years if such nonuse was a result of
27 one or more of the following:

1 (a) Federal, state, or local laws, rules, or regulations
2 temporarily prevented or restricted such use;

3 (b) Use of the water was unnecessary because of climatic
4 conditions;

5 (c) Circumstances were such that a prudent person,
6 following the principles of good husbandry, would not have been
7 expected to use the water;

8 (d) The works, diversions, or other facilities essential
9 to use the water were destroyed by a cause not within the control
10 of the owner of the appropriation and good faith efforts to repair
11 or replace the works, diversions, or facilities have been and are
12 being made;

13 (e) The owner of the appropriation was in active
14 involuntary service in the armed forces of the United States
15 or was in active voluntary service during a time of crisis;

16 (f) Legal proceedings prevented or restricted use of the
17 water; or

18 (g) The land subject to the appropriation is under
19 an acreage reserve program or production quota or is otherwise
20 withdrawn from use as required for participation in any federal or
21 state program or such land previously was under such a program but
22 currently is not under such a program and there have been not more
23 than five consecutive years of nonuse on that land since that land
24 was last under that program.

25 The department may specify by rule and regulation other
26 circumstances that shall be deemed to constitute sufficient cause
27 for nonuse for up to fifteen years.

1 (5) When an appropriation is held in the name of an
2 irrigation district, a reclamation district, a public power and
3 irrigation district, ~~or~~ a mutual irrigation company or canal
4 company, or the United States Bureau of Reclamation and the
5 director determines that water under that appropriation has not
6 been used on a specific parcel of land for more than five years and
7 that no sufficient cause for such nonuse exists, the right to use
8 water under that appropriation on that parcel shall be terminated
9 and notice of the termination shall be posted on the department's
10 web site and shall be given in the manner provided in subsection
11 (2), (3), or (4) of section 46-229.03. The district or company
12 holding such right shall have five years after the determination,
13 or five years after an order of cancellation issued by the
14 department following the filing of a voluntary relinquishment of
15 the water appropriation that has been signed by the landowner and
16 the appropriator of record, to assign the right to use that portion
17 of the appropriation to other land within the district or the
18 area served by the company, to file an application for a transfer
19 in accordance with section 46-290, or to transfer the right in
20 accordance with sections 46-2,127 to 46-2,129. The department
21 shall issue its order of cancellation within sixty days after
22 receipt of the voluntary relinquishment unless the relinquishment
23 is conditioned upon an action of a governmental agency. If the
24 relinquishment contains such a provision, the department shall
25 issue its order of cancellation within sixty days after receipt of
26 notification that such action has been completed. The department
27 shall be notified of any such assignment within thirty days after

1 such assignment. If the district or company does not assign the
2 right to use that portion of the appropriation to other land, does
3 not file an application for a transfer within the five-year period,
4 or does not notify the department within thirty days after any such
5 assignment, that portion of the appropriation shall be canceled
6 without further proceedings by the department and the district or
7 company involved shall be so notified by the department. During
8 the time within which assignment of a portion of an appropriation
9 is pending, the allowable diversion rate for the appropriation
10 involved shall be reduced, as necessary, to avoid inconsistency
11 with the rate allowed by section 46-231 or with any greater rate
12 previously approved for such appropriation by the director in
13 accordance with section 46-229.06.

14 (6) When it is determined by the director that an
15 appropriation, for which the location of use has been temporarily
16 transferred in accordance with sections 46-290 to 46-294, has not
17 been used at the new location for more than five years and that
18 no sufficient cause for such nonuse exists, the right to use that
19 appropriation at the temporary location of use shall be terminated.
20 Notice of that termination shall be posted on the department's
21 web site and shall be given in the manner provided in subsection
22 (2), (3), or (4) of section 46-229.03. The right to reinitiate
23 use of that appropriation at the location of use prior to the
24 temporary transfer shall continue to exist for five years after the
25 director's determination, but if such use is not reinitiated at
26 that location within such five-year period, the appropriation shall
27 be subject to cancellation in accordance with sections 46-229 to

1 46-229.04.

2 (7) If at the time of a hearing conducted in accordance
3 with subsection (1) of this section there is an application for
4 incidental or intentional underground water storage pending before
5 the department and filed by the owner of the appropriation, the
6 proceedings shall be consolidated.

7 Sec. 2. Section 46-601.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 46-601.01 For purposes of Chapter 46, article 6:

10 ~~(1)~~ (1)(a) Water well means any excavation that is
11 drilled, cored, bored, washed, driven, dug, jetted, or otherwise
12 constructed for the purpose of exploring for ground water,
13 monitoring ground water, utilizing the geothermal properties of
14 the ground, obtaining hydrogeologic information, or extracting
15 water from or injecting fluid as defined in section 81-1502 into
16 the underground water reservoir.

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

24 (c) Water well does not include any excavation made for
25 obtaining or prospecting for oil or natural gas or for inserting
26 media to repressure oil or natural gas bearing formations regulated
27 by the Nebraska Oil and Gas Conservation Commission; and

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

4 Sec. 3. Section 46-602, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 46-602 (1) Each water well completed in this state on
7 or after July 1, 2001, excluding test holes and dewatering wells
8 to be used for less than ninety days, shall be registered with
9 the Department of Natural Resources as provided in this section
10 within sixty days after completion of construction of the water
11 well. The water well contractor as defined in section 46-1213
12 constructing the water well, or the owner of the water well if
13 the owner constructed the water well, shall file the registration
14 on a form made available by the department and shall also file
15 with the department the information from the well log required
16 pursuant to section 46-1241. The department shall, by January 1,
17 2002, provide water well contractors with the option of filing such
18 registration forms electronically. No signature shall be required
19 on forms filed electronically. The fee required by subsection (3)
20 of section 46-1224 shall be the source of funds for any required
21 fee to a contractor which provides the on-line services for such
22 registration. Any discount in the amount paid the state by a credit
23 card, charge card, or debit card company or a third-party merchant
24 bank for such registration fees shall be deducted from the portion
25 of the registration fee collected pursuant to section 46-1224.

26 (2)(a) If the newly constructed water well is a
27 replacement water well, the registration form shall include

1 (i) the registration number of the water well being replaced,
2 if applicable, and (ii) the date the original water well was
3 decommissioned or a certification that the water well will be
4 decommissioned within one hundred eighty days or a certification
5 that the original water well will be modified and equipped to
6 pump fifty gallons per minute or less and will be used only for
7 livestock, monitoring, observation, or any other nonconsumptive
8 use or de ~~minimus~~ minimis use approved by the applicable natural
9 resources district.

10 (b) For purposes of this section, replacement water well
11 means a water well which is constructed to provide water for
12 the same purpose as the original water well and is operating in
13 accordance with any applicable permit from the department and any
14 applicable rules and regulations of the natural resources district
15 and, if the purpose is for irrigation, the replacement water well
16 delivers water to the same tract of land served by the original
17 water well and (i) replaces an ~~abandoned~~ decommissioned water
18 well within ~~three years~~ one hundred eighty days after the last
19 ~~operation~~ decommissioning of the ~~abandoned~~ original water well, and
20 the original water well is ~~decommissioned~~ either before or within
21 ~~one hundred eighty days after such construction,~~ (ii) replaces a
22 water well that has not been ~~abandoned~~ decommissioned but will not
23 be used after construction of the new water well and the original
24 water well will be decommissioned within one hundred eighty days
25 after such construction, except that in the case of a municipal
26 water well, the original municipal water well may be used after
27 construction of the new water well but shall be decommissioned

1 within one year after completion of the replacement water well, or
2 (iii) the original water well will continue to be used but will
3 be modified and equipped within one hundred eighty days after such
4 construction of the replacement water well to pump fifty gallons
5 per minute or less and will be used only for livestock, monitoring,
6 observation, or any other nonconsumptive or de ~~minimus~~ minimis use
7 ~~and~~ approved by the applicable natural resources district.

8 (c) No water well shall be registered as a replacement
9 water well until the Department of Natural Resources has received
10 a properly completed notice of decommissioning for the water well
11 being replaced on a form made available by the department, or
12 properly completed notice, prepared in accordance with subsection
13 (7) of this section, of the modification and equipping of the
14 original water well to pump fifty gallons per minute or less
15 for use only for livestock, monitoring, observation, or any other
16 nonconsumptive or de ~~minimus~~ minimis use approved by the applicable
17 natural resources district. Such notices, as required, shall be
18 completed by (i) the water well contractor as defined in section
19 46-1213 who decommissions the water well or modifies and equips
20 the water well, (ii) the pump installation contractor as defined
21 in section 46-1209 who decommissions the water well or modifies
22 and equips the water well, or (iii) the owner if the owner
23 decommissions a driven sandpoint well which is on land owned by him
24 or her for farming, ranching, or agricultural purposes or as his
25 or her place of abode. The Department of Health and Human Services
26 Regulation and Licensure shall, by rule and regulation, determine
27 which contractor or owner shall be responsible for such notice

1 in situations in which more than one contractor or owner may be
2 required to provide notice under this subsection.

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

9 (4) A series of water wells completed for purposes
10 of installation of a ground heat exchanger for a structure
11 for utilizing the geothermal properties of the ground shall be
12 considered as one water well. One registration form and a detailed
13 site plan shall be filed for each such series.

14 (5) One registration form shall be required along with
15 a detailed site plan which shows the location of each such water
16 well in the site and a log from each such water well for water
17 wells constructed as part of a single site plan for (a) monitoring
18 ground water, obtaining hydrogeologic information, or extracting
19 contaminants from the ground, (b) water wells constructed as part
20 of remedial action approved by the Department of Environmental
21 Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and
22 (c) water well owners who have a permit issued pursuant to the
23 Industrial Ground Water Regulatory Act and also have an underground
24 injection control permit issued by the Department of Environmental
25 Quality.

26 (6) The Department of Natural Resources shall be notified
27 by the owner of any change in the ownership of a water well

1 required to be registered under this section. Notification shall be
2 in such form and include such evidence of ownership as the Director
3 of Natural Resources by rule and regulation directs. The department
4 shall use such notice to update the registration on file. The
5 department shall not collect a fee for the filing of the notice.

6 (7) The water well contractor or pump installation
7 contractor responsible therefor shall notify the department within
8 sixty days on a form provided by the department of any pump
9 installation or any modifications to the construction of the water
10 well or pump, after the initial registration of the well. For
11 a change of use resulting in modification and equipping of an
12 original water well which is being replaced in accordance with
13 subsection (2) of this section, the water well contractor or pump
14 installation contractor shall notify the department within sixty
15 days on a form provided by the department of the water well and
16 pump modifications and equipping of the original water well. A
17 water well owner shall notify the department within sixty days on
18 a form provided by the department of any other changes or any
19 inaccuracies in recorded water well information, including, but not
20 limited to, changes in use. The department shall not collect a fee
21 for the filing of the notice.

22 (8) Whenever a water well becomes an illegal water well
23 as defined in section 46-706, the owner of the water well shall
24 either correct the deficiency that causes the well to be an
25 illegal water well or shall cause the proper decommissioning of
26 the water well in accordance with rules and regulations adopted
27 pursuant to the Water Well Standards and Contractors' Licensing

1 Act. The water well contractor who decommissions the water well,
2 the pump installation contractor who decommissions the water well,
3 or the owner if the owner decommissions a driven sandpoint well
4 which is on land owned by him or her for farming, ranching, or
5 agricultural purposes or as his or her place of abode, shall
6 provide a properly completed notice of ~~abandonment~~ decommissioning
7 to the Department of Natural Resources within sixty days. The
8 Department of Health and Human Services Regulation and Licensure
9 shall, by rule and regulation, determine which contractor or owner
10 shall be responsible for such notice in situations in which more
11 than one contractor or owner may be required to provide notice
12 under this subsection. The Department of Natural Resources shall
13 not collect a fee for the filing of the notice.

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

26 (10) Water wells which are or were used solely for
27 injecting any fluid other than water into the underground water

1 reservoir, which were constructed before July 16, 2004, and which
2 have not been properly decommissioned on or before July 16, 2004,
3 shall be registered on or before July 1, 2005.

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

11 Sec. 4. Section 46-609, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 46-609 (1) Except as otherwise provided by this section
14 or section 46-610, no irrigation water well shall be drilled
15 constructed upon any land in this state within six hundred feet of
16 any registered irrigation water well and no existing nonirrigation
17 water well within six hundred feet of any registered irrigation
18 water well shall be used for irrigation purposes. Such spacing
19 requirement shall not apply to (a) any well used to irrigate two
20 acres or less or (b) any replacement irrigation water well if it is
21 drilled constructed within fifty feet of the irrigation water well
22 being replaced and if the water well being replaced was drilled
23 constructed prior to September 20, 1957, and is less than six
24 hundred feet from a registered irrigation water well.

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

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

12 Sec. 5. Section 46-644, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 46-644 Permits granted by the Director of Natural
15 Resources shall be valid for a period of five years after the
16 granting of a permit and as long thereafter as the water for
17 which the permit is granted is used. For the purposes of the
18 Municipal and Rural Domestic Ground Water Transfers Permit Act,
19 the commencement of construction of facilities to provide water
20 for beneficial use shall be deemed the date of the commencement of
21 beneficial use. If it appears that the holder of a permit granted
22 under the act has not used water for a beneficial purpose and in
23 accordance with the terms of the permit for more than ~~three~~ five
24 years, such permit may be revoked or modified by the director. The
25 procedure for such revocation or modification shall be the same as
26 that provided for in sections 46-229.02 to 46-229.05.

27 Sec. 6. Section 46-1212, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 46-1212 Water well shall mean any excavation that is
3 drilled, cored, bored, washed, driven, dug, jetted, or otherwise
4 constructed for the purpose of exploring for ground water,
5 monitoring ground water, utilizing the geothermal properties of
6 the ground, obtaining hydrogeologic information, or extracting
7 water from or injecting fluid as defined in section 81-1502 into
8 the underground water reservoir. Water well shall not include
9 any excavation (1) made for obtaining or prospecting for oil or
10 natural gas or for inserting media to repressure oil or natural
11 gas bearing formations regulated by the Nebraska Oil and Gas
12 Conservation Commission or (2) described in subdivision (1)(b) of
13 section 46-601.01.

14 Sec. 7. Sections 1, 4, 5, and 10 of this act become
15 operative three calendar months after the adjournment of this
16 legislative session. The other sections of this act become
17 operative on their effective date.

18 Sec. 8. If any section in this act or any part of any
19 section is declared invalid or unconstitutional, the declaration
20 shall not affect the validity or constitutionality of the remaining
21 portions.

22 Sec. 9. Original sections 46-601.01 and 46-1212, Reissue
23 Revised Statutes of Nebraska, and section 46-602, Revised Statutes
24 Cumulative Supplement, 2006, are repealed.

25 Sec. 10. Original sections 46-609 and 46-644, Reissue
26 Revised Statutes of Nebraska, and section 46-229.04, Revised
27 Statutes Cumulative Supplement, 2006, are repealed.

1 Sec. 11. Since an emergency exists, this act takes effect
2 when passed and approved according to law.

3 2. On page 1, strike lines 2 through 9 and insert
4 "46-601.01, 46-609, 46-644, and 46-1212, Reissue Revised Statutes
5 of Nebraska, and sections 46-229.04 and 46-602, Revised Statutes
6 Cumulative Supplement, 2006; to change and eliminate provisions
7 relating to irrigation and regulation of water and water wells;
8 to harmonize provisions; to provide operative dates; to provide
9 severability; to repeal the original sections; and to declare an
10 emergency."