

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 802

Introduced by Louden, 49.

Read first time January 10, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to irrigation; to amend section 46-233,
2 Reissue Revised Statutes of Nebraska; to provide for
3 diversion of water from streams during times of flooding
4 as prescribed; and to repeal the original section.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-233, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-233 (1) The United States and every person intending
4 to appropriate any of the public waters of the State of Nebraska
5 shall, before (a) commencing the construction, enlargement, or
6 extension of any works for such purpose, (b) performing any
7 work in connection with such construction, enlargement, or
8 extension, or (c) taking any water from any constructed works,
9 make an application to the department for a permit to make such
10 appropriation. A permit may be obtained to appropriate public
11 waters for intentional underground water storage and recovery
12 of such water. A public water supplier may make application to
13 appropriate public waters for induced ground water recharge.

14 (2) The application shall be upon a form prescribed and
15 furnished by the department without cost to an applicant. Such
16 application shall set forth (a) the name and post office address of
17 the applicant, (b) the source from which such appropriation shall
18 be made, (c) the amount of the appropriation desired, as nearly
19 as it may be estimated, (d) the location of any proposed work in
20 connection with the appropriation, (e) the estimated time required
21 for its completion, which estimated time shall include the period
22 required for the construction of ditches, pumps, and other features
23 or devices, (f) the time estimated at which the application of
24 the water for the beneficial purposes shall be made, which time
25 shall be limited to a reasonable time following the estimated time

1 of completion of the work when prosecuted with diligence, (g) the
2 purpose for which water is to be applied and (i) if for induced
3 ground water recharge by a public water supplier, a statement of
4 the times of the year when and location along a stream where flows
5 for induced ground water recharge are proposed and (ii) if for
6 irrigation, a description of the land to be irrigated by the water
7 and the amount, and (h) such facts and supporting documentation
8 as are required by the department which shall include, but not be
9 limited to, the depth of all wells, the extent of the underlying
10 aquifer, the expected rate of recharge, the minimum flow or
11 flows necessary to sustain the well field throughout the reach
12 identified, and the period of time that a well field would continue
13 to meet minimal essential needs of the public water supplier when
14 there is no flow as those factors relate to and are part of an
15 evaluation of pertinent hydrologic relationships.

16 A public water supplier making application for induced
17 ground water recharge may submit with its application a statement
18 of the amount of induced ground water recharge water which the
19 public water supplier presently uses as well as the amount of
20 induced ground water recharge water it anticipates using in the
21 next twenty-five-year period. Such statement shall also quantify
22 the total amount of water the public water supplier presently uses
23 from the well field as well as the total amount of water it
24 anticipates using from the well field in the next twenty-five-year
25 period.

1 (3) Upon receipt of an application containing the
2 information set forth in this section, the department shall (a)
3 make a record of the receipt of the application, (b) cause the
4 application to be recorded in its office, and (c) make a careful
5 examination of the application to ascertain whether it sets forth
6 all the facts necessary to enable the department to determine
7 the nature and amount of the proposed appropriation. If such an
8 examination shows the application in any way defective, it shall be
9 returned to the applicant for correction, with a statement of the
10 correction required, within ninety days after its receipt. Ninety
11 days shall be allowed for the refiling of the application, and in
12 default of such refiling, the application shall stand dismissed.
13 Except as provided in subsection (4) of this section, if so filed
14 and corrected as required within such time, the application shall,
15 upon being accepted and allowed, take priority as of the date
16 of the original filing, subject to compliance with the future
17 provisions of the law and the rules and regulations thereunder.
18 During the pendency of any application or upon its approval, the
19 department, upon proper authorization and request of the applicant,
20 may assign the application a later priority date.

21 (4) For public water supplier wells in existence on
22 September 9, 1993, the priority date assigned to an application for
23 induced ground water recharge made by a public water supplier shall
24 be:

25 (a) June 27, 1963, for water supply wells and facilities

1 constructed and placed in service on or before June 27, 1963;

2 (b) January 1, 1970, for water supply wells and
3 facilities constructed and placed in service on or after June 28,
4 1963, and on or before December 31, 1969;

5 (c) January 1, 1980, for water supply wells and
6 facilities constructed and placed in service on or after January 1,
7 1970, and on or before December 31, 1979;

8 (d) January 1, 1990, for water supply wells and
9 facilities constructed and placed in service on or after January 1,
10 1980, and on or before December 31, 1989; and

11 (e) January 1, 1993, for water supply wells and
12 facilities constructed and placed in service on or after January 1,
13 1990, and on or before September 9, 1993.

14 (5) Prior to taking action on an application for induced
15 ground water recharge, the director shall publish notice of such
16 application at the applicant's expense at least once each week for
17 three consecutive weeks in a newspaper of general circulation in
18 the area of the stream segment and also in a newspaper of statewide
19 circulation. The notice shall state that any person having an
20 interest may, in writing, object to the application. Any such
21 objection shall be filed with the department within two weeks after
22 the final publication of the notice.

23 (6) After the director has accepted the application made
24 under subsection (2) of this section as a completed application
25 and published notice as required under subsection (5) of this

1 section, the director shall, if he or she determines that a hearing
2 is necessary, set a time and place for a public hearing on the
3 application. The hearing shall be held within reasonable proximity
4 to the area in which the wells are or would be located. At
5 the hearing the applicant shall present all hydrological data and
6 other evidence supporting its application. All interested parties
7 shall be allowed to testify and present evidence relative to the
8 application.

9 (7) An unapproved application pending on August 26, 1983,
10 may be amended to include appropriation for intentional underground
11 water storage and recovery of such water.

12 (8) Application may be made to the department for a
13 temporary permit to appropriate water. The same standards for
14 granting a permanent appropriation shall apply for granting such
15 temporary permit except when the temporary permit is for road
16 construction or other public use construction and the amount of
17 water requested is less than ten acre-feet in total volume. For
18 temporary permits for public-use construction, the applicant shall
19 include on the application the location of the diversion, the
20 location of use, a description of the project, the amount of
21 water requested, and the person to contact. Temporary permits for
22 public-use construction and for less than ten acre-feet in total
23 volume may be granted without any determination of unappropriated
24 water and shall be considered to be in the public interest. The
25 requirement of filing a map or plans with the application for a

1 temporary permit may be waived at the discretion of the director.
2 In granting a temporary permit, the director shall specify a
3 date on which the right to appropriate water under the permit
4 shall expire. Under no circumstances shall such date be longer
5 than one calendar year after the date the temporary permit was
6 granted. Temporary permits shall be administered during times of
7 shortage based on priority. The right to appropriate water shall
8 automatically terminate on the date specified by the director on
9 the temporary permit without further action by the department.

10 (9) Water may be diverted from any stream, reservoir, or
11 canal by any fire department or emergency response services for
12 the purpose of extinguishing a fire in progress in an emergency
13 without obtaining a permit from the department. The installation
14 of a dry well for this purpose is allowed without the prior
15 permission of the department, but the department shall be informed
16 of any such installation, its location, and the party responsible
17 for its installation and maintenance within thirty days after the
18 installation.

19 (10) Water may be diverted from a stream for the purpose
20 of alleviating harm to downstream landowners and appropriators
21 during times of flooding upon approval by the department and with
22 the consent of downstream appropriators who may be affected.

23 Sec. 2. Original section 46-233, Reissue Revised Statutes
24 of Nebraska, is repealed.