

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1054

Introduced by Carlson, 38.

Read first time January 21, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management and
2 Protection Act; to amend sections 46-701 and 46-706,
3 Revised Statutes Supplement, 2009; to define a term;
4 to adopt the correlative rights doctrine; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-701, Revised Statutes Supplement,
2 2009, is amended to read:

3 46-701 Sections 46-701 to 46-754 and section 3 of this
4 act shall be known and may be cited as the Nebraska Ground Water
5 Management and Protection Act.

6 Sec. 2. Section 46-706, Revised Statutes Supplement,
7 2009, is amended to read:

8 46-706 For purposes of the Municipal and Rural Domestic
9 Ground Water Transfers Permit Act, the Nebraska Ground Water
10 Management and Protection Act, and sections 46-601 to 46-613.02,
11 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
12 requires:

13 (1) Person means a natural person, a partnership,
14 a limited liability company, an association, a corporation, a
15 municipality, an irrigation district, an agency or a political
16 subdivision of the state, or a department, an agency, or a bureau
17 of the United States;

18 (2) Ground water means that water which occurs in or
19 moves, seeps, filters, or percolates through ground under the
20 surface of the land;

21 (3) Contamination or contamination of ground water means
22 nitrate nitrogen or other material which enters the ground water
23 due to action of any person and causes degradation of the quality
24 of ground water sufficient to make such ground water unsuitable for
25 present or reasonably foreseeable beneficial uses;

1 (4) District means a natural resources district operating
2 pursuant to Chapter 2, article 32;

3 (5) Illegal water well means (a) any water well operated
4 or constructed without or in violation of a permit required by
5 the Nebraska Ground Water Management and Protection Act, (b) any
6 water well not in compliance with rules and regulations adopted and
7 promulgated pursuant to the act, (c) any water well not properly
8 registered in accordance with sections 46-602 to 46-604, or (d)
9 any water well not in compliance with any other applicable laws of
10 the State of Nebraska or with rules and regulations adopted and
11 promulgated pursuant to such laws;

12 (6) To commence construction of a water well means the
13 beginning of the boring, drilling, jetting, digging, or excavating
14 of the actual water well from which ground water is to be
15 withdrawn;

16 (7) Management area means any area so designated by a
17 district pursuant to section 46-712 or 46-718, by the Director
18 of Environmental Quality pursuant to section 46-725, or by
19 the Interrelated Water Review Board pursuant to section 46-719.
20 Management area includes a control area or a special ground water
21 quality protection area designated prior to July 19, 1996;

22 (8) Management plan means a ground water management plan
23 developed by a district and submitted to the Director of Natural
24 Resources for review pursuant to section 46-711;

25 (9) Ground water reservoir life goal means the finite or

1 infinite period of time which a district establishes as its goal
2 for maintenance of the supply and quality of water in a ground
3 water reservoir at the time a ground water management plan is
4 adopted;

5 (10) Board means the board of directors of a district;

6 (11) Acre-inch means the amount of water necessary to
7 cover an acre of land one inch deep;

8 (12) Subirrigation or subirrigated land means the natural
9 occurrence of a ground water table within the root zone of
10 agricultural vegetation, not exceeding ten feet below the surface
11 of the ground;

12 (13) Best management practices means schedules of
13 activities, maintenance procedures, and other management practices
14 utilized for purposes of irrigation efficiency, to conserve or
15 effect a savings of ground water, or to prevent or reduce present
16 and future contamination of ground water. Best management practices
17 relating to contamination of ground water may include, but not
18 be limited to, irrigation scheduling, proper rate and timing
19 of fertilizer application, and other fertilizer and pesticide
20 management programs. In determining the rate of fertilizer
21 application, the district shall consult with the University of
22 Nebraska or a certified crop advisor certified by the American
23 Society of Agronomy;

24 (14) Point source means any discernible, confined, and
25 discrete conveyance, including, but not limited to, any pipe,

1 channel, tunnel, conduit, well, discrete fissure, container,
2 rolling stock, vessel, other floating craft, or other conveyance,
3 over which the Department of Environmental Quality has regulatory
4 authority and from which a substance which can cause or contribute
5 to contamination of ground water is or may be discharged;

6 (15) Allocation, as it relates to water use for
7 irrigation purposes, means the allotment of a specified total
8 number of acre-inches of irrigation water per irrigated acre per
9 year or an average number of acre-inches of irrigation water per
10 irrigated acre over any reasonable period of time;

11 (16) Rotation means a recurring series of use and nonuse
12 of irrigation wells on an hourly, daily, weekly, monthly, or yearly
13 basis;

14 (17) Water well has the same meaning as in section
15 46-601.01;

16 (18) Surface water project sponsor means an irrigation
17 district created pursuant to Chapter 46, article 1, a reclamation
18 district created pursuant to Chapter 46, article 5, or a public
19 power and irrigation district created pursuant to Chapter 70,
20 article 6;

21 (19) Beneficial use means that use by which water may be
22 put to use to the benefit of humans or other species;

23 (20) Consumptive use means the amount of water that is
24 consumed under appropriate and reasonably efficient practices to
25 accomplish without waste the purposes for which the appropriation

1 or other legally permitted use is lawfully made;

2 (21) Dewatering well means a well constructed and used
3 solely for the purpose of lowering the ground water table
4 elevation;

5 (22) Emergency situation means any set of circumstances
6 that requires the use of water from any source that might
7 otherwise be regulated or prohibited and the agency, district,
8 or organization responsible for regulating water use from such
9 source reasonably and in good faith believes that such use is
10 necessary to protect the public health, safety, and welfare,
11 including, if applicable, compliance with federal or state water
12 quality standards;

13 (23) Good cause shown means a reasonable justification
14 for granting a variance for a consumptive use of water that
15 would otherwise be prohibited by rule or regulation and which the
16 granting agency, district, or organization reasonably and in good
17 faith believes will provide an economic, environmental, social, or
18 public health and safety benefit that is equal to or greater than
19 the benefit resulting from the rule or regulation from which a
20 variance is sought;

21 (24) Historic consumptive use means the amount of water
22 that has previously been consumed under appropriate and reasonably
23 efficient practices to accomplish without waste the purposes for
24 which the appropriation or other legally permitted use was lawfully
25 made;

1 (25) Monitoring well means a water well that is designed
2 and constructed to provide ongoing hydrologic or water quality
3 information and is not intended for consumptive use;

4 (26) Order, except as otherwise specifically provided,
5 includes any order required by the Nebraska Ground Water Management
6 and Protection Act, by rule or regulation, or by a decision adopted
7 by a district by vote of the board of directors of the district
8 taken at any regularly scheduled or specially scheduled meeting of
9 the board;

10 (27) Overall difference between the current and fully
11 appropriated levels of development means the extent to which
12 existing uses of hydrologically connected surface water and ground
13 water and conservation activities result in the water supply
14 available for purposes identified in subsection (3) of section
15 46-713 to be less than the water supply available if the
16 river basin, subbasin, or reach had been determined to be fully
17 appropriated in accordance with section 46-714;

18 (28) Test hole means a hole designed solely for the
19 purposes of obtaining information on hydrologic or geologic
20 conditions;

21 (29) Variance means (a) an approval to deviate from a
22 restriction imposed under subsection (1), (2), (8), or (9) of
23 section 46-714 or (b) the approval to act in a manner contrary to
24 existing rules or regulations from a governing body whose rule or
25 regulation is otherwise applicable;

1 (30) Certified irrigated acres means the number of acres
2 or portion of an acre that a natural resources district has
3 approved for irrigation from ground water in accordance with law
4 and with rules adopted by the district; ~~and~~

5 (31) Certified water uses means beneficial uses of ground
6 water for purposes other than irrigation identified by a district
7 pursuant to rules adopted by the district; ~~and-~~

8 (32) Correlative rights means the coequal right of each
9 landowner over a common aquifer to extract his, her, or its share
10 of water from the aquifer without (a) unreasonably harming other
11 landowners over the common aquifer through lowering of the water
12 table, (b) directly and substantially affecting a watercourse, or
13 (c) reducing artesian pressure.

14 Sec. 3. (1) The State of Nebraska hereby adopts the
15 correlative rights doctrine as it applies to ground water in the
16 state.

17 (2) The correlative rights doctrine shall apply with
18 regard to the use of ground water within a river basin when the
19 Department of Natural Resources or a district determines it is
20 necessary to comply with state or federal agreements or compacts.

21 (3) If the department or district determines that
22 correlative rights should apply, allocations of ground water in the
23 basin for irrigation purposes may be reduced by the district or the
24 department so that each landowner shares equally in the shortfall.
25 If the allocations of ground water are reduced by the department to

1 zero pursuant to this section, the department shall provide just
2 and fair compensation to the landowner for such reduction.

3 Sec. 4. Original sections 46-701 and 46-706, Revised
4 Statutes Supplement, 2009, are repealed.