

LEGISLATIVE BILL 252

Approved by the Governor May 22, 1931

Introduced by Beutler, 28

AN ACT to amend sections 46-204, 46-206, 46-234, and 46-235, Reissue Revised Statutes of Nebraska, 1943, relating to surface water; to provide for denial of water applications in the public interest; to define terms; to provide considerations prior to transbasin diversions; and to repeal the original sections.

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

Section 1. That section 46-204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-204. The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purposes, but when the waters of any natural stream are not sufficient for the use of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.

Sec. 2. That section 46-206, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-206. The water appropriated from a river or stream shall not be turned or permitted to run into the waters or channel of any other river or stream than that from which it is taken or appropriated, unless such stream exceeds in width one hundred feet, in which event not more than seventy-five per cent of the regular flow shall be taken and any such taking shall be subject to the provisions of section 6 of this act.

Sec. 3. That section 46-234, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-234. If there is no unappropriated water in the source of supply, or if a prior appropriation has been perfected to water the same land to be watered by

the applicant, the Department of Water Resources may refuse such application, ~~and the~~ An application may also be refused when denial is demanded by the public interest. The party making such application shall not prosecute such work so long as such refusal shall continue in force. An application for appropriation shall not be exclusive of any of the lands included therein until the owner or owners of such land shall give consent to the same in proper form, duly acknowledged. No application made, or canal constructed, prior to the application of the water and the perfection of an appropriation therefor, or the filing of the consent herein provided, shall prevent other applications from being allowed, and other canals from being constructed to irrigate the same lands or any of them. In case of an application for an appropriation of water for the development of water power, the department shall promptly act upon such application and limit the time within which such appropriation shall be perfected to the period within which the proposed power project can be completed by uninterrupted and expeditious construction.

Sec. 4. That section 46-235, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-235. If there is unappropriated water in the source of supply named in the application, and if such application and appropriation when perfected is not otherwise detrimental to the public welfare, and if denial of the application is not demanded by the public interest, the Department of Water Resources shall approve the same, by endorsement thereon, and shall make a record of such endorsement in some proper manner in its office and return the same so endorsed to the applicant, who shall, on receipt thereof be authorized to proceed with the work and to take such measures as may be necessary to perfect such application into an appropriation. The priority of such application and appropriation when perfected shall date from the filing of the application in the office of the department, and the date of filing shall be regarded as the priority number thereof. The department may, upon examination of such application, endorse it approved for a less period of time for perfecting the proposed appropriation, or for a less amount of water, or for a less amount of land than applied for. The department may also impose such other reasonable conditions as it deems appropriate to protect the public interest. An applicant feeling himself or herself aggrieved by the action of the department shall, upon proper showing, be granted a hearing before the department, which hearing shall be conducted in accordance with the rules of procedure adopted by the

department, and a full and complete record shall be kept of all such proceedings. When a complete record of the case has been made up, the department shall render an opinion of facts and of law based upon the evidence before it.

Sec. 5. For purposes of sections 5 and 6 of this act, unless the context otherwise requires, the following definitions shall be used:

(1) Basin of origin shall mean the river basin in which the point or proposed point of diversion of water is located;

(2) Beneficial use shall include, but not be limited to, reasonable and efficient use of water for domestic, municipal, agricultural, industrial, commercial, power production, subirrigation, fish and wildlife, ground water recharge, an interstate compact, water quality maintenance, or recreational purposes. Nothing in this subdivision shall be construed to affect the preferences for use of surface water as provided in section 46-204;

(3) Interbasin transfer shall mean the diversion of water in one river basin and the transportation of such water to another river basin for storage or utilization for a beneficial use; and

(4) River basin shall mean any of the following natural hydrologic basins of the state, with delineations being those on the Nebraska river basin map officially adopted by the Nebraska Natural Resources Commission and on file in the commission's office on the effective date of this act: (a) The White River and Hat Creek basin; (b) the Niobrara River basin; (c) the Platte River basin, including the North Platte and South Platte River basins, except that for purposes of transfer between the North and South Platte River basins each shall be considered a separate river basin; (d) the Loup River basin; (e) the Elkhorn River basin; (f) the Republican River basin; (g) the Little Blue River basin; (h) the Big Blue River basin; (i) the Nemaha River basin; and (j) the Missouri tributaries basin.

Sec. 6. The Legislature finds, recognizes, and declares that the transfer of water to outside the boundaries of a river basin may have impacts on the water and other resources in the basin and that such impacts differ from those caused by uses of water within the same basin in part because any unused water will not be returned to the stream from which it is taken for further use in that river basin. The Legislature therefore

recognizes the need to delineate factors for consideration by the Director of Water Resources when evaluating an application made pursuant to section 46-233 which involves an interbasin transfer of water in order to determine whether denial of such application is demanded by the public interest. Those considerations shall include, but not be limited to, the following factors:

(1) The economic, environmental, and other benefits of the proposed interbasin transfer and use;

(2) Any adverse impacts of the proposed interbasin transfer and use;

(3) Any current beneficial uses being made of the unappropriated water in the basin of origin;

(4) Any reasonably foreseeable future beneficial uses of the water in the basin of origin;

(5) The economic, environmental, and other benefits of leaving the water in the basin of origin for current or future beneficial uses;

(6) Alternative sources of water supply available to the applicant; and

(7) Alternative sources of water available to the basin of origin for future beneficial uses.

The application shall be denied if the benefits to the state from granting the application do not outweigh the benefits to the state from denying the application. The director's order granting or denying an application shall specify the reasons for such action, including a discussion of the required factors for consideration, and shall document such decision by reference to the hearing record, if any, and to any other sources used by the director in making the decision.

Sec. 7. That original sections 46-204, 46-206, 46-234, and 46-235, Reissue Revised Statutes of Nebraska, 1943, are repealed.