

LEGISLATIVE BILL 894

Approved by the Governor April 18, 1986

Introduced by Schmit, 23; Beutler, 28; Vickers 38;
Hefner 19;

AN ACT relating to ground water; to amend sections 46-656 to 46-658, 46-659, 46-663, 46-666, 46-673, 46-673.03, 46-673.05, 46-673.07, 46-673.09, and 46-674, Reissue Revised Statutes of Nebraska, 1943; to provide for the control of contaminants in ground water; to state findings; to define terms; to provide powers and duties; to provide for special ground water quality protection areas; to provide a penalty; to harmonize provisions; and to repeal the original sections, and also section 46-658.01, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. The Legislature finds that:

(1) The levels of nitrate nitrogen and other contaminants in ground water in certain areas of the state are increasing;

(2) Long-term solutions should be implemented and efforts should be made to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards;

(3) Agriculture has been very productive and should continue to be an important industry to the State of Nebraska;

(4) Natural resources districts have the legal authority to regulate certain activities and, as local entities, are the preferred regulators of activities which may contribute to ground water contamination in both urban and rural areas;

(5) The Department of Environmental Control should be given authority to regulate sources of contamination when necessary to prevent serious deterioration of ground water quality;

(6) The powers given to districts and the Department of Environmental Control should be used to stabilize, reduce, and prevent the increase or spread of ground water contamination; and

(7) There is a need to provide for the orderly

management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as special ground water quality protection areas.

Sec. 2. Each state agency and political subdivision shall promptly report to the Department of Environmental Control any information which indicates that contamination is occurring.

Sec. 3. If, as a result of information provided pursuant to section 2 of this act or studies conducted by or otherwise available to the Department of Environmental Control and following preliminary investigation, the Director of Environmental Control has reason to believe that contamination of ground water is occurring or likely to occur in an area of the state in the reasonably foreseeable future, the department shall, in cooperation with any appropriate state agency and district, conduct a study to determine the source or sources of the contamination and the area affected by such contamination and shall issue a written report within one year of the initiation of the study. The department shall consider the relevant water quality portions of the management plan developed by the district pursuant to section 46-673.01 during the study required in this section.

Sec. 4. If the Director of Environmental Control determines from the study conducted pursuant to section 3 of this act that one or more sources of contamination are point sources, he or she shall expeditiously use the procedures authorized in the Environmental Protection Act to stabilize or reduce the level and prevent the increase or spread of such contamination.

Sec. 5. If the Director of Environmental Control determines from the study conducted pursuant to section 3 of this act that one or more sources of contamination are not point sources, he or she shall, within thirty days after completion of the report required by section 3 of this act, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a special ground water quality protection area should be designated. The hearing shall be held within one hundred twenty days after completion of the report, shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the

report. Notice of the hearing shall be published in such newspapers as are necessary to provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the special ground water quality protection area.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health, the Department of Water Resources, the Nebraska Natural Resources Commission, and the appropriate district shall offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Control as he or she deems necessary, he or she shall determine whether a special ground water quality protection area shall be designated.

Sec. 6. (1) When determining whether to designate a special ground water quality protection area, the Director of Environmental Control shall consider whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future, whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water, whether methods are available to stabilize or reduce the level of contamination, and administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environmental Control determines that no such area should be established, he or she shall issue an order declaring that no special ground water quality protection area shall be designated.

(3) If the Director of Environmental Control determines that a special ground water quality protection area shall be established, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and

administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environmental Control shall include the specific reasons for the creation of the ground water quality protection area and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined, the Director of Environmental Control shall issue an order designating the area as a special ground water quality protection area. Such an order shall include a geographic and a stratigraphic definition of the area.

Sec. 7. (1) Within one hundred eighty days after the designation of a special ground water quality protection area, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a special ground water quality protection area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district in reasonable proximity to the area to be affected. Notice of the hearing shall be published in such newspapers as are necessary to provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas to be affected by the proposed action plan. The text of the proposed action plan shall be made available to the public at least thirty days prior to the hearing.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the department.

Sec. 8. An action plan filed by a district pursuant to section 7 of this act shall include the specifics of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level or prevent the increase or spread of ground water contamination. The action plan shall include one or more of the following protective measures for such area:

(1) A requirement that water users

participate in educational programs;

(2) A requirement that the best management practices be used; and

(3) Such other reasonable requirements as are necessary to carry out the purpose for which a special ground water quality protection area was designated.

Sec. 9. (1) In adopting or amending an action plan authorized by subsection (2) of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the special ground water quality protection area or will improve the administration of the area.

(2) The Director of Environmental Control shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If because of varying ground water uses or varying climatic, hydrologic, geologic, or soil conditions existing within a special ground water quality protection area the uniform application throughout such area of one or more protective measures would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the measures adopted by the district pursuant to subsection (1) of this section may vary. Any differences in such protective measures shall recognize and be directed toward such varying ground water uses or conditions. All protective measures for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(4) If the Director of Environmental Control denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days to the Director of Environmental Control for approval.

Sec. 10. The district following approval of the action plan by the Director of Environmental Control

shall cause a copy of each protective measure adopted pursuant to section 9 of this act to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten days prior to the date when such protective measure becomes effective.

Sec. 11. (1) The power to specify protective measures shall vest in the Director of Environmental Control if (a) at the end of one hundred eighty days following the designation of a special ground water quality protection area pursuant to section 6 of this act, a district encompassed in whole or in part by a special ground water quality protection area has not completed an action plan, (b) a district does not submit a revised action plan within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the Director of Environmental Control.

(2) If the power to specify protective measures in a special ground water quality protection area is vested in the Director of Environmental Control, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior to the adoption of protective measures. Notice of any such additional hearings shall be given in the manner provided in section 5 of this act. The enforcement of protective measures adopted pursuant to this section shall be the responsibility of the Department of Environmental Control.

Sec. 12. The protective measures in the action plan approved by the Director of Environmental Control pursuant to section 9 of this act shall be exercised by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination. An action plan may be amended by the same method utilized in the adoption of the action plan.

Sec. 13. A district may petition the Director of Environmental Control to remove the designation of the area as a special ground water quality protection area. If the Director of Environmental Control determines that the level of contamination in a special ground water quality protection area has stabilized at or been reduced to a level which is not detrimental to

beneficial uses of ground water, he or she may remove the designation.

Sec. 14. Any person aggrieved by any order of the district or the Director of Environmental Control issued pursuant to sections 1 to 19 of this act may appeal in the manner provided by Chapter 84, article 9.

Sec. 15. The Environmental Control Council shall adopt and promulgate, in accordance with Chapter 84, article 9, such rules and regulations as are necessary to the discharge of duties under sections 1 to 19 of this act.

Sec. 16. Any person who violates any of the provisions of sections 1 to 19 of this act for which a penalty is not otherwise provided shall be (1) subject to a civil penalty of not more than five hundred dollars or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense.

Sec. 17. Each district in which a special ground water quality protection area has been designated pursuant to sections 1 to 19 of this act shall, in cooperation with the Department of Environmental Control, establish a program to monitor the quality of the ground water in the area and shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

Sec. 18. A district may annually levy a tax of not to exceed two cents on each one hundred dollars on all of the taxable property within the boundaries of the special ground water quality protection area. Such levy, which shall be in addition to that authorized by sections 2-3225 and 46-673, shall be utilized only for the costs of carrying out sections 1 to 19 of this act within such area. Certification and collection of such levy shall be administered by the district and by the county or counties involved in the same manner as the levy authorized by section 2-3225.

Sec. 19. Nothing in sections 1 to 19 of this act shall be construed to limit the powers of the Department of Health provided in Chapter 71, article 53.

Sec. 20. That section 46-656, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-656. The Legislature finds that ground water is one of the most valuable natural resources in the state and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of

agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the correlative rights of other landowners when the ground water supply is insufficient for all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the pollution contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally determined ground water reservoir life goals and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the pollution contamination of ground water is intended to limit the powers of the Department of Environmental Control provided in Chapter 81, article 15.

Sec. 21. That section 46-657, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-657. As used in the Nebraska Ground Water Management and Protection Act and in sections 46-601 to 46-613.01 and 46-636 to 46-655, unless the context otherwise requires:

(1) Person shall mean a natural person, partnership, association, corporation, municipality, irrigation district, or any agency or political subdivision of the state;

(2) Ground water shall mean that water which occurs, in or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Well shall mean any artificial opening or excavation in the ground through which ground water flows under natural pressure or is artificially withdrawn. A series of wells developed and pumped as a single unit shall be considered as one well. For purposes of the Nebraska Ground Water Management and Protection Act, well shall not mean any artificial opening or excavation in which a pump of less than one hundred gallons per minute capacity is to be installed and which is to be used solely for supply of ground water for domestic purposes;

(4) Construction of a well shall mean boring, drilling, jetting, digging, or excavating; and installing casing, pumps, and other devices for withdrawing or facilitating the withdrawal of ground water;

(5) ~~Pollution~~ Contamination or contamination of ground water shall mean nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(6) District shall mean a natural resources district operating pursuant to Chapter 2, article 32;

(7) Director shall mean the Director of Water Resources;

(8) Illegal well shall mean (a) any well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any well not in compliance with rules and regulations adopted and promulgated pursuant to such act, (c) any well not properly registered in accordance with sections 46-602 to 46-605, or (d) any well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(9) Control area shall mean any area so designated by the director following a public hearing initiated and conducted pursuant to section 46-658;

(10) To commence construction of a well shall mean the beginning of the boring, drilling, jetting, digging, or excavating of the actual well from which ground water is to be withdrawn;

(11) Well driller shall mean any person who constructs, reconstructs, alters, or repairs a well. The term shall not include a person who performs labor or services for a well driller at his or her direction and under his or her supervision;

(12) Management area shall mean any area so designated by a district pursuant to sections 46-673.01 to 46-673.06;

(13) Ground water reservoir life goal shall mean the finite or infinite period of time which a district establishes as its goal for maintenance of the supply of water in a ground water reservoir at the time a ground water management plan is adopted;

(14) Board shall mean the board of directors of a district;

(15) Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the district and that is actually capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of the allocation;

(16) Acre-inch shall mean the amount of water necessary to cover an acre of land one inch deep; and

(17) Subirrigation or subirrigated land shall mean the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(18) Best management practices shall mean schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application, and other fertilizer and pesticide management programs.

(19) Special ground water quality protection area shall mean any area designated as such by the Director of Environmental Control following a public hearing, with boundaries approved by the Director of Environmental Control, in which contamination of ground water is occurring; and

(20) Point source shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or any other conveyance, over which the Department of Environmental Control has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged.

Sec. 22. That section 46-658, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-658. (1) An area may be designated a control area by the director following a hearing initiated in accordance with subsection (3) of this

section if it shall be determined, following evaluation of relevant hydrologic and water quality data, history of developments, and projection of effects of current and new development, that-

(a) Development development and utilization of the ground water supply has caused or is likely to cause within the reasonably foreseeable future the existence of either of the following conditions:

(i) (a) An inadequate ground water supply to meet present or reasonably foreseeable needs for beneficial use of such water supply; or

(ii) (b) Dewatering of an aquifer, resulting in a deterioration of the quality of such ground water sufficient to make such ground water unsuitable for the present purposes for which it is being utilized, or

(b) Pollution of ground water has occurred or is likely to occur in the reasonably foreseeable future-

(2) When determining whether to designate a control area because of the existence of any of the conditions listed in subsection (1) of this section, the director's considerations shall include, but not be limited to, whether conflicts between ground water users are occurring or may be reasonably anticipated, or whether ground water users are experiencing, or will experience within the foreseeable future, substantial economic hardships as a direct result of current or anticipated ground water development or utilization, or as a direct result of current or reasonably anticipated activities which cause or contribute to pollution of ground water-

(3) A hearing to designate a control area may be initiated by a district whenever it has information, sufficient in the opinion of the board of directors, to require that any portion of such district should be designated as a control area. The board of directors shall report such information to the director with a request that a hearing be held to determine if a control area should be established. The request shall be accompanied by a general description of the area proposed for inclusion in such control area.

(4)(a) Within thirty days after a hearing has been initiated pursuant to subsection (3) of this section, the director shall consult with the district and fix a time and place for a public hearing to consider the information supplied and to hear any other evidence. The hearing shall be held within one hundred twenty days after it has been initiated, shall be open to the public, and shall be located within, or in reasonable proximity to, the area proposed for

designation as a control area. If, from information submitted by the district or otherwise available to the director, the director has reason to believe that area other than that identified by the district should be considered for inclusion in any control area which would be established as a result of such request, he or she shall so notify the district or districts whose boundaries encompass such additional area. Notice of the hearing shall be published in such newspapers as are necessary to provide for general circulation within the geographic area at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all area which will be considered by the director for inclusion in the control area.

(b) At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Nebraska Natural Resources Commission, and the Department of Environmental Control shall offer as evidence any information in their possession which they deem relevant to the purposes of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the director as he or she deems necessary, the director shall determine whether a control area shall be designated. If the director determines that no control area shall be established, he or she shall issue an order declaring that no control area shall be designated.

(c) If the director determines that a control area shall be established, he or she shall consult with such relevant state agencies named in subdivision (b) of this subsection and with the district or districts affected, and determine the boundaries of the control area, taking into account the considerations enumerated in subsection (1) of this section, the effect on political subdivisions, and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection.

(d) If the director determines that contiguous area within the jurisdictional limits of one or more districts other than the district or districts which initiated the hearing is subject to the conditions identified in this section and therefore appropriate for inclusion in such control area, he or she shall so notify such other district or districts prior to issuance of the order designating the control area.

Such additional area shall not be included in the control area unless any such other district consents in writing to such inclusion within sixty days of such notification by the director.

(e) When the boundaries of a control area have been determined, the director shall issue an order designating the area as a control area. Such an order shall include a geographic and a stratigraphic definition of the control area. Notice of the order shall be provided in the same manner as that provided for the hearing.

(5) Modification in control area boundaries or dissolution of a control area may be accomplished utilizing the procedure established in this section for the initial designation of such areas as control areas, but hearings for designation, modification, or dissolution of such control area may not be initiated more often than once a year.

Sec. 23. That section 46-659, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-659. (1) Any person who intends to construct a well in a control or management area in this state on land which he or she owns or controls shall, before commencing construction, file with the district in which the well will be located an application for a permit on forms provided by the district. Forms shall be made available at each district in which a control or management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) The application shall be accompanied by a seventeen dollar and fifty cent filing fee payable to the district, except as provided in subsection (9) (8) of section 46-666, and shall contain (a) the name and post office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if the water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, and (h) such other information as the district may require. Before any well having a capacity of less than one hundred

gallons per minute is modified to withdraw ground water at a rate equal to or greater than one hundred gallons per minute, an application shall be filed for a permit pursuant to this section before water is so withdrawn.

(3) Any person who has failed or in the future fails to obtain a permit required by subsection (1) of this section shall make application for a late permit on forms provided by the district.

(4) The application for a late permit shall be accompanied by a two hundred fifty dollar fee payable to the district, except as provided in subsection (9) (8) of section 46-666, and shall contain the same information required in subsection (2) of this section.

Sec. 24. That section 46-663, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-663. Regardless of whether or not any portion of a district has been designated as a control, ~~or~~ management, or special ground water quality protection area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(1) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(2) Require such reports from ground water users as may be necessary;

(3) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(4) Report to and consult with the Department of Environmental Control on all matters concerning the entry of pollution contamination or polluting contaminating materials into ground water supplies; and

(5) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to it, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal wells or the withdrawal or use of water from such wells.

Sec. 25. That section 46-666, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-666. (1) A district in which a control area has been designated pursuant to subdivision subsection (1) ~~(a)~~ of section 46-658 shall by order adopt one or more of the following controls for the control area:

(a) It may determine the permissible total withdrawal of ground water for each day, month, or year and allocate such withdrawal among the ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from wells; and

(e) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a control area was designated.

(2) A district in which a control area has been designated pursuant to subdivision (1)(b) of section 46-658 shall by order adopt one or more of the following controls for the area:

~~(a) It may adopt any of the controls listed in subsection (1) of this section; and~~

~~(b) It may require water users to implement irrigation scheduling programs to schedule, to the extent reasonably possible, the application of water in amounts which will not move below the root zone.~~

~~(3) In adopting, amending, or repealing any control authorized by subsection (1) or (2) of this section or sections 46-673.08 to 46-673.12, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the control or management area, will encourage a high degree of water use efficiency, or will improve the administration of the area.~~

~~(4) (3) The adoption, amendment, or repeal of any authorized control in a control area shall be subject to the approval of the director. The director may hold a public hearing to consider testimony regarding the control prior to the issuance of an order approving or disapproving the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In approving the adoption, amendment, or repeal of an authorized control in a control area, the~~

director's considerations shall include, but not be limited to, those enumerated in subsection ~~(3)~~ (2) of this section.

~~(5)~~ (4) If because of varying ground water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a control or management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to subsection (1) ~~or~~ ~~(2)~~ of this section or sections 46-673.08 to 46-673.12 may contain different water allocations for different irrigation distribution systems, on the condition that such different water allocations shall be authorized for no more than five years from the time such allocations are adopted, and different provisions for different categories of ground water use or portions of the control or management area. Any differences in such provisions shall recognize and be directed toward such varying ground water uses, distribution irrigation systems, or varying conditions. The provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

~~(6)~~ (5) If the district determines, following a public hearing conducted pursuant to section 46-665, that depletion or ~~pollution~~ contamination of the ground water supply in the control area or any portion of the control area is so excessive that the public interest cannot be protected solely through implementation of reasonable controls adopted pursuant to subsection (1) ~~or~~ ~~(2)~~ of this section, it may, with the approval of the director, close all or a portion of the control area to the issuance of any additional permits for a period of one calendar year. Such areas may be further closed thereafter by a similar procedure for additional one-year periods. Any such area may be reopened at any time the district determines that conditions warrant new permits at which time the district shall consider all previously submitted applications for permits in the order in which they were received.

~~(7)~~ (6) The district shall cause a copy of each order adopted pursuant to this section or sections 46-673.08 to 46-673.12 to be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area

involved, the last publication of which shall be not less than ten days prior to the date set for the effective date of such order.

{8} (7) Whenever a control or management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and sections 46-665 and 46-673.08 to 46-673.12 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

{9} (8) If at the end of eighteen months following the designation of a control area pursuant to section 46-658 a district encompassed in whole or in part by a control area has not adopted any specific controls pursuant to subsection (1) or {2} of this section, the power to specify controls shall vest in the director who shall, within ninety days after the end of the eighteen months, adopt and promulgate by rule and regulation such controls as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. Subject to section 46-667, the enforcement of controls adopted pursuant to this section shall be the responsibility of the district involved. When the controls adopted by the director pursuant to this subsection are in effect in a district, all application fees for well permits in such district pursuant to section 46-659 shall be payable to the director.

{10} (9) If the power to adopt controls in a control area is vested in the director, he or she shall be provided with a copy of all information, testimony, and data available to the district or districts as a result of the public hearing for the adoption of controls. At his or her discretion, the director may conduct one or more additional public hearings prior to making his or her determination or selection of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-658.

Sec. 26. That section 46-673, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673. Each district encompassed in whole or in part by a control or management area shall have the power and authority to levy a tax not to exceed one and eight-tenths cents on each one hundred dollars annually on all of the taxable property within the portion of the district encompassed by such area, except that if any land is designated as a control area under both subdivision {1}(a) and subdivision {1}(b) of section 46-658 the tax levied shall not exceed two and

~~seven-tenths cents on each one hundred dollars annually.~~ Such levy, which shall be in addition to that authorized by section 2-3225, shall be utilized only for the costs of carrying out ~~the provisions of~~ sections 46-656 to 46-674 within such area. Certification and collection of such levy shall be administered by the district and by the county or counties involved in the same manner as the levy authorized by section 2-3225.

Sec. 27. That section 46-673.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.03. The director shall review any ground water management plan submitted by a district to ensure that the best available studies, data, and information were utilized and considered and that such plan is supported by and is a reasonable application of such information. If the primary purpose of the proposed management area is protection of water quality, the director shall consult with the Department of Environmental Control regarding approval or denial of the management plan. The director shall consult with the Conservation and Survey Division of the University of Nebraska, the Natural Resources Commission, and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

Sec. 28. That section 46-673.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.05. If the director has approved the ground water management plan or the district has submitted an explanation of a disapproved plan, the district shall, in prior to proceeding toward establishing a management area, a management plan shall have been approved by the director or the district shall have completed the requirements of section 46-673.04. In order to establish a management area, the district shall as proposed in the plan, fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. Such hearing shall be held within sixty days after receiving the director's approval or after submitting an explanation. The hearing shall be located within, or in reasonable proximity to, the area proposed for designation as a management area. Notice of the hearing shall be given in accordance with section 46-658, and shall provide a general description of the

contents of the plan and of the area which will be considered for inclusion in the management area, and shall provide the text of the control ~~or controls~~ proposed for adoption by the district. All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the Department of Water Resources and the results of any studies or investigations conducted by the district.

Sec. 29. That section 46-673.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.07. Notice of any order adopted pursuant to section 46-673.06 shall be provided in the manner provided for in subsection ~~(7)~~ (6) of section 46-666. Such order shall become effective ninety days after its issuance.

Sec. 30. That section 46-673.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-673.09. A district may manage the use of water in a management area by any of the following means:

(1) Allocating the total permissible withdrawal of ground water;

(2) Rotation of use of ground water; ~~or~~

(3) Well-spacing requirements pursuant to section 46-673.12. A district may also require the use of flow meters on wells;

~~(4) Best management practices; or~~

~~(5) Educational programs designed to protect water quality.~~

Sec. 31. That section 46-674, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-674. Sections 46-656 to 46-674 and sections 1 to 19 of this act shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 32. That original sections 46-656 to 46-658, 46-659, 46-663, 46-666, 46-673, 46-673.03, 46-673.05, 46-673.07, 46-673.09, and 46-674, Reissue Revised Statutes of Nebraska, 1943, and also section 46-658.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.