

LEGISLATIVE BILL 278

Approved by the Governor March 27, 1991

Introduced by Schmit, 23

AN ACT relating to irrigation; to amend sections 46-238, 46-2,114, 46-640, and 46-658, Reissue Revised Statutes of Nebraska, 1943; to provide for payment of certain publication costs as prescribed; and to repeal the original sections.

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

Section 1. That section 46-238, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-238. (1) Within six months after the approval of any application for water for irrigation, power, or other useful purpose by the Department of Water Resources, the person making such application shall commence the excavation or construction of the works in which it is intended to divert the water; and the actual construction of any water power plant and reservoir or reservoirs for storage in connection therewith; and shall vigorously, diligently, and uninterruptedly prosecute such work to completion unless temporarily interrupted by some unavoidable and natural cause. A failure to comply with the provisions of this section shall work a forfeiture of the appropriation and all rights ~~thereunder~~ under the appropriation. The cost of promotion and engineering work shall not be considered a part of the cost of construction, and the progress of the construction work shall be such that one-tenth of the total work shall ~~have been~~ be completed within one year from the date of approval of the application. The construction of all work required in connection with the proposed project shall be prosecuted in the manner described in this section and with such a force as shall assure the average rate of constructional progress necessary to complete such work or works within the time stipulated in the approval of such application, notwithstanding the ordinary delays and casualties that must be expected and provided against. A failure to carry on the construction of either an irrigation project or a water power project as outlined in this section shall work a forfeiture of the appropriation and all rights ~~thereunder~~ under the appropriation, and the

department shall cancel such appropriation. The department shall have free access to all records, books, and papers of any irrigation or water power company, shall have the right to go upon the right-of-way and land of any such company, shall inspect the work to see that it is being done according to plans and specifications approved by the department, and shall also keep a record of the cost of construction work, when the same is deemed advisable for physical valuation purposes.

(2) The department may extend, for reasonable lengths of time, the time for completion of works, the application of water to a beneficial use, or any of the other requirements for completing or perfecting an application for flow or storage rights, ~~or all of them,~~ as fixed in the approval of an application, or otherwise, for the appropriation of water. Such extension may be granted upon a petition to the department and the showing of reasonable cause. The department shall cause a notice of each petition received to be published at the petitioner's expense in at least one newspaper of general circulation in the county or counties of the appropriation once a week for three consecutive weeks. The department shall hold a hearing on the issue of extension on its own motion or if requested by any interested person. If a hearing is held, notice shall be given by certified mail to the applicant, to any person who requested a hearing, and to any person who requests notification of the hearing. The department may grant the extension in the absence of a hearing if no requests for a hearing are received. Any interested person may be made a party to such action. Any party affected by the decision on the petition may appeal directly to the Supreme Court. Subsequent extensions may be made in the same manner.

Sec. 2. That section 46-2,114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-2,114. Prior to taking action on an application for an instream appropriation, the Director of Water Resources shall conduct any studies he or she deems necessary to evaluate the application and shall publish notice of such application at the applicant's expense at least once a week for three consecutive weeks in a newspaper of general circulation in the area of the stream segment and also in a newspaper of statewide circulation. The notice shall state that any person having an interest may in writing object to and request a hearing on the application. Any such objection and

request for hearing shall be filed with the Department of Water Resources within two weeks of final publication of the notice.

Sec. 3. That section 46-640, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-640. Upon receipt of an application filed under section 46-639, the Director of Water Resources shall cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing lands on which the well field or any part thereof of such well field is or is proposed to be located. The notice shall contain a description of the lands upon which such well field is or is proposed to be located, the amount of water requested, the number of wells constructed or proposed, and any other relevant information. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections specifically stating the grounds for each objection within two weeks after the date of final publication in the office of the Director of Water Resources director.

Sec. 4. 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 is determined, following evaluation of relevant hydrologic and water quality data, history of developments, and projection of effects of current and new development, that 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:

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

(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.

(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.

(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 at the expense of the district or districts 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 therefor 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. 5. That original sections 46-238, 46-2,114, 46-640, and 46-658, Reissue Revised Statutes of Nebraska, 1943, are repealed.