

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 328

Introduced by Fischer, 43; Langemeier, 23.

Read first time January 12, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water resources; to amend section 46-233,
2 Reissue Revised Statutes of Nebraska; to provide for
3 amendment of instream hydropower appropriations to
4 recognize certain other purposes as prescribed; and to
5 repeal the original section.
6 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 work in
7 connection with such construction, enlargement, or extension, or (c)
8 taking any water from any constructed works, make an application to
9 the department for a permit to make such appropriation. A permit may
10 be obtained to appropriate public waters for intentional underground
11 water storage and recovery of such water. A public water supplier may
12 make application to appropriate public waters for induced ground
13 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 be
18 made, (c) the amount of the appropriation desired, as nearly as it
19 may be estimated, (d) the location of any proposed work in connection
20 with the appropriation, (e) the estimated time required for its
21 completion, which estimated time shall include the period required
22 for the construction of ditches, pumps, and other features or
23 devices, (f) the time estimated at which the application of the water
24 for the beneficial purposes shall be made, which time shall be
25 limited to a reasonable time following the estimated time of

1 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 the
4 times of the year when and location along a stream where flows for
5 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 as
8 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 flows
11 necessary to sustain the well field throughout the reach identified,
12 and the period of time that a well field would continue to meet
13 minimal essential needs of the public water supplier when there is no
14 flow as those factors relate to and are part of an evaluation of
15 pertinent hydrologic relationships.

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

25 An appropriator may apply to the director to amend an

1 appropriation of water for any hydropower plant located within the
2 channel of a river in the State of Nebraska to provide that, in
3 addition to the use of water for hydropower generation purposes, the
4 appropriation may also recognize benefits for fish, wildlife, and
5 recreational purposes.

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

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

5 (a) June 27, 1963, for water supply wells and facilities
6 constructed and placed in service on or before June 27, 1963;

7 (b) January 1, 1970, for water supply wells and
8 facilities constructed and placed in service on or after June 28,
9 1963, and on or before December 31, 1969;

10 (c) January 1, 1980, for water supply wells and
11 facilities constructed and placed in service on or after January 1,
12 1970, and on or before December 31, 1979;

13 (d) January 1, 1990, for water supply wells and
14 facilities constructed and placed in service on or after January 1,
15 1980, and on or before December 31, 1989; and

16 (e) January 1, 1993, for water supply wells and
17 facilities constructed and placed in service on or after January 1,
18 1990, and on or before September 9, 1993.

19 (5) Prior to taking action on an application for induced
20 ground water recharge, the director shall publish notice of such
21 application at the applicant's expense at least once each week for
22 three consecutive weeks in a newspaper of general circulation in the
23 area of the stream segment and also in a newspaper of statewide
24 circulation. The notice shall state that any person having an
25 interest may, in writing, object to the application. Any such

1 objection shall be filed with the department within two weeks after
2 the final publication of the notice.

3 (6) After the director has accepted the application made
4 under subsection (2) of this section as a completed application and
5 published notice as required under subsection (5) of this section,
6 the director shall, if he or she determines that a hearing is
7 necessary, set a time and place for a public hearing on the
8 application. The hearing shall be held within reasonable proximity to
9 the area in which the wells are or would be located. At the hearing
10 the applicant shall present all hydrological data and other evidence
11 supporting its application. All interested parties shall be allowed
12 to testify and present evidence relative to the application.

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

16 (8) Application may be made to the department for a
17 temporary permit to appropriate water. The same standards for
18 granting a permanent appropriation shall apply for granting such
19 temporary permit except when the temporary permit is for road
20 construction or other public use construction and the amount of water
21 requested is less than ten acre-feet in total volume. For temporary
22 permits for public-use construction, the applicant shall include on
23 the application the location of the diversion, the location of use, a
24 description of the project, the amount of water requested, and the
25 person to contact. Temporary permits for public-use construction and

1 for less than ten acre-feet in total volume may be granted without
2 any determination of unappropriated water and shall be considered to
3 be in the public interest. The requirement of filing a map or plans
4 with the application for a temporary permit may be waived at the
5 discretion of the director. In granting a temporary permit, the
6 director shall specify a date on which the right to appropriate water
7 under the permit shall expire. Under no circumstances shall such date
8 be longer than one calendar year after the date the temporary permit
9 was granted. Temporary permits shall be administered during times of
10 shortage based on priority. The right to appropriate water shall
11 automatically terminate on the date specified by the director on the
12 temporary permit without further action by the department.

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

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