

State, NRD Irrigation Control: How Broad Is The Power?

Nebraska Constitution Art XV (Water)

- § 4: The necessity of water for domestic use and for irrigation purposes is hereby declared to be a *natural want*.
- § 5: The use of the water of every natural stream ... is hereby dedicated to the people of the state for beneficial purposes, subject to the provisions of the following section.
- § 6: 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 purpose, *but when the waters of any natural stream are not sufficient ..., those using the water for domestic purposes shall have 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*. Provided, no inferior right to the use of the waters ... shall be acquired by a superior right without just compensation

Art I, § 3: No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws.

Nebraska Statutes: Special Funds

§ 2-1581: Payments may be made from the **Nebraska Soil and Water Conservation Fund** to the owners of private land for the purpose of adopting or implementing practices or measures to reduce the consumptive use of water *in river basins in which an interstate agreement, compact, or decree could require reduction in water usage*.

§ 2-1587. (1) There is hereby created the **Nebraska Resources Development Fund** to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to ... limitation requiring reappropriation of the unexpended balance at the end of the fiscal year....

§ 2-1586: [Purposes of NRD Fund] ...2) to provide financial assistance to *natural resources districts in the preparation of management plans pursuant to section 46-709*.

§ 2-1522: There is hereby created the **Natural Resources Water Quality Fund**...The fund shall be exempt from provisions relating to lapsing of appropriations....

§ 2-1523: (2) The fund shall be allocated to [NRDs] for programs ... including, but not limited to: (d) Source water protection programs undertaken by natural resources districts.

Nebraska Statutes: Shared State, NRD Powers

§ 46-711: **DNR must Review GW Management Plan** & Consult DEQ, UNL Conservation & Survey Division, & other state or federal agencies deemed appropriate.

§ 46-712: **May establish GW Management areas to:** “(a) Protect ground water quantity; (b) protect ground water quality; or (c) prevent or resolve conflicts between users of ground water and appropriators of surface water, which ... are hydrologically connected.

§ 46-719: **Water Review Board:** (1)(a) The Interrelated Water Review Board ...shall consist of five members. The board, when appointed and convened, shall continue in existence only until it has resolved a dispute referred to it pursuant to such subsections.

§ 46-739-40

Limit withdrawals.
 Rotation schedules.
 Well-spacing.
 Measuring Devices.
 Reduce or Limit Acres.
 Require Best Mgmt Pract.
 Require Water, Soil Tests.
 Record Transfers &
 Interests against Title.

Min. Domestic Well Depth.
 Water Use Transfers.
 Spot Specific Rules.
 System Based Allowances.
 Special IMPs for Hydrologically
 Connected Areas.
 Education Programs (Mandatory).
 Financial Incentives.
 Allocation Averaging/ Yrs.

§ 46-739(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the [GW Act] in a reasonably effective and equitable manner, the controls adopted ...may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences ...shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

46-613. Ground water; declaration of policy; preference in use.

Preference in the use of ground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, (1) **domestic use** of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations.