

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 and (2) agricultural purposes shall include, but not be limited to, aquaculture as defined in section 2-3804.01.

Source: Laws 1957, c. 199, § 1, p. 701; Laws 1963, c. 279, § 1, p. 835; Laws 1995, LB 871, § 4.

46-613.01. Ground water; transfer to another state; permit; Department of Natural Resources; conditions. The Legislature recognizes and declares that the maintenance of an adequate source of ground water within this state is essential to the social stability of the state and the health, safety, and welfare of its citizens and that reasonable restrictions on the transportation of ground water from this state are a proper exercise of the police powers of the state. The need for such restrictions, which protect the health, safety, and general welfare of the citizens of this state, is hereby declared a matter of legislative determination.

Any person, firm, city, village, municipal corporation, or other entity intending to withdraw ground water from any water well located in the State of Nebraska and transport it for use in another state shall apply to the Department of Natural Resources for a permit to do so. In determining whether to grant or deny such permit, the Director of Natural Resources shall consider:

- (1) The nature of the proposed use and whether it is a beneficial use of ground water;
- (2) The availability to the applicant of alternative sources of surface or ground water;
- (3) Any negative effect of the proposed withdrawal on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (4) Any negative effect of the proposed withdrawal on surface water supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (5) Any adverse environmental effect of the proposed withdrawal or transportation of ground water;
- (6) The cumulative effect of the proposed withdrawal and transfer relative to the matters listed in subdivisions (3) through (6) of this section when considered in conjunction with all other transfers subject to this section; and
- (7) Any other factors consistent with the purposes of this section that the director deems relevant to protect the health, safety, and welfare of the state and its citizens.

Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn. The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the district or the department.

The director may include such reasonable conditions on the proposed use as he or she deems necessary to carry out the purposes of this section.

Source: Laws 1967, c. 281, § 5, p. 761; Laws 1969, c. 9, § 69, p. 144; Laws 1984, LB 1060, § 1; Laws 1993, LB 131, § 11; Laws 2000, LB 900, § 174; Laws 2003, LB 619, § 7.
Effective date April 17, 2003.

This section does not unlawfully delegate legislative power to the director of the Department of Water Resources. This section is not unconstitutionally vague. This section does not discriminate against interstate commerce. *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W.2d 151 (1996).

Severance of the portion of this section, to wit, "if the state in which the water is to be used grants reciprocal rights to withdraw and transport ground water from that state for use in the State of Nebraska", did not constitute an inducement to the passage of the statute, does not make the act inoperative, and will not frustrate the intent of the Legislature. The remainder of the statute, after the unconstitutional portion is stricken, remains a viable statute. *State ex rel. Douglas v. Sporhase*, 213 Neb. 484, 329 N.W.2d 855 (1983).

Requirement of obtaining permit to transfer ground water out of state does not violate commerce clause, U.S. Const. Art. I, s. 8, since Nebraska ground water is not an article of commerce. Reciprocity provision does not violate due process guarantees since it is but a condition upon which the statute takes effect. This section does not violate equal protection since it operates equally upon all members of the class affected and class bears a reasonable relationship to a legitimate state interest. This section does not deprive affected persons of liberty or property since they have no property right in the water itself and are not at liberty to transfer ground water off overlying land without public consent. *State ex rel. Douglas v. Sporhase*, 208 Neb. 703, 305 N.W.2d 614 (1981).

46-613.02. Violation; penalty; false information; enforcement. Any person violating any provision of sections 46-601 to 46-613.01 or furnishing false information under such sections shall be guilty of a Class IV misdemeanor. Each day of a violation may be considered a separate offense. The Attorney General and the county attorneys may pursue appropriate proceedings pursuant to this section when notified by the Director of Natural Resources that such a violation has occurred.

Source: Laws 1978, LB 688, § 1; Laws 1984, LB 1060, § 2; Laws 1993, LB 131, § 12; Laws 2000, LB 900, § 175; Laws 2004, LB 962, § 37.
Operative date July 16, 2004.

(b) GROUND WATER CONSERVATION DISTRICTS

46-614 to 46-632. Repealed. Laws 1998, LB 896, § 11.