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NO.
STATE OF NEBRASKA
OFFICIAL
APR 3 1995
DEPT. OF JUSTICE

DATE: March 24, 1995

SUBJECT: Well Spacing Requirements

REQUESTED BY: J. Michael Jess, Director, Nebraska Department of Water Resources

WRITTEN BY: Don Stenberg, Attorney General
Marie C. Pawol, Assistant Attorney General

You have inquired about whether the well spacing requirements set forth in Neb. Rev. Stat. §§ 46-609 and 46-651 (1993) are applicable to inactive status water wells, as defined in Neb. Rev. Stat. § 46-1207.02 (Cum. Supp. 1994). We are of the opinion that these statutes, when considered together, afford spacing protections to both inactive and active status water wells.

Section 46-609(1) provides that "no irrigation water well shall be drilled upon any land in this state within six hundred feet of any registered irrigation water well . . . ." Under subsection (2) of the foregoing statute, unregistered wells are provided this spacing protection "for a period of thirty days after completion of such water well," which is the time allowed for registering such wells. See, Neb. Rev. Stat. § 46-602(1) (1993).

Section 46-651 provides that no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, irrigation or industrial water well. Again, under subsection (2) of the foregoing statute, unregistered wells are afforded this spacing protection for a period of thirty days following completion.

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Neither § 46-609 nor § 46-651 distinguishes between inactive or active wells. However, it was not until the passage of Neb. Rev. Stat. § 46-1207.02 (Cum.Supp. 1994), effective April 19, 1994, that the legislature categorized wells in this manner. Specifically, § 46-1207.02 defines an inactive status water well, in part, as "a well that is in a good state of repair and for which the owner has provided evidence of intent for future use . . . ." The Water Well Standards and Contractors' Licensing Act, §§ 46-1201 (Cum.Supp. 1994) through 46-1240.06 (Cum.Supp. 1994), contemplates the registration of both active and inactive ground water wells.

Components of a series or collection of statutes pertaining to a subject matter should be conjunctively considered and construed to determine the intent of the legislature so that different provisions are consistent, harmonious, and sensible. ***Metropolitan Life Ins. Co. v. Kissinger Farms Inc.***, 244 Neb. 620, 508 N.W.2d 568 (1993). Further, when the legislature enacts legislation making related preexisting laws applicable thereto, it is presumed that it did so with full knowledge of such preexisting legislation. ***School Dist. No. 17, Douglas County v. State***, 210 Neb. 762, 316 N.W.2d 767 (1982).

Based upon these statutory rules of construction, we believe that the when the legislature enacted Neb. Rev. Stat. § 46-1207.02, it intended to afford registered, inactive status wells the spacing protections delineated in § 46-609 and § 46-651. This statutory construction also better fosters the legislature's declaration of policy set forth in Neb. Nev. Stat. § 46-608 (1993):

> The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state, and that the drilling of irrigation water wells in the state without regard to spacing is detrimental to the public welfare, and that the spacing of irrigation water wells should be regulated.

If well spacing protections are not extended to inactive water wells, which by definition are intended to be used in the future, then the legislative policy set forth in § 46-608 could be defeated or undermined when such wells later become active and, in the interim, other wells were drilled notwithstanding the spacing requirements. Further, the investments made by owners of inactive status water wells, who intend to make future use of these registered wells, would not be protected. Therefore, we conclude

that the spacing protections set forth in § 46-609 and § 46-651 extend to inactive status water wells.

Sincerely,

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Assistant Attorney General

Approved By:

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23-1934-8.25