NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 313
SURPLUS WATERS

324.31301 Definitions.

Sec. 31301. As used in this part:

(a) "Board" means the county board of commissioners.

(b) "Dams" means dams, embankments, dikes, pumps, weirs, locks, gates, tubes, ditches, or any other devices or construction to impound or release water.

(c) "Local unit" means any city, village, township, or soil conservation district acting through its governing body.

(d) "Optimum flow" means that rate and quantity of flow in any stream as determined in accordance with this part.

(e) "Plan" means a plan adopted by the board or boards and approved by an order of the department for the best development, utilization, and conservation of the surplus water of the state.

(f) "Surplus water" means water that may be impounded without decreasing the flow of a river or stream below its optimum flow.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31302 Request for surveys; utilization of reports.

Sec. 31302. Any board or group of boards or local unit or units acting singly or in concert may request the department to undertake a survey of the water in a river basin or watershed located or partially located in the county or counties or in the local unit or units of government to determine whether there is surplus water that may be available and, if so, how it may be best impounded, utilized, and conserved. All studies, surveys, and reports made by public and other competent authorities may be utilized by the department in making this determination.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31303 Request for surveys; involvement of other boards.

Sec. 31303. If it appears to the department, after a review of the request, that a feasible plan for the impoundment, utilization, and conservation of surplus water will involve the water in counties or local units other than those making the request, the department shall so inform the requestors. If the request was originally made by a local unit only, the board of the county in which the local unit is situated shall be informed of the decision of the department; and unless the board joins in the request and becomes an originator of the request, the department shall discontinue any further work on the survey. The requesting board may then request the other boards to join in the request so that a complete survey of the surplus water located in all affected counties may be made. Refusal on the part of any of the other boards to join in the request shall be reported to the department, and if the department believes that the plan can be effectuated without the cooperation of the refusing boards, the department shall enter a decision to that effect and the boards requesting the survey may proceed in accordance with this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31304 Request for surveys; determination of optimum flow; plan for improvement, utilization, and conservation of surplus water; factors; limitations.

Sec. 31304. (1) Upon receipt of a request, the department shall determine the optimum flow for the rivers and streams that may be substantially affected by the impounding and releasing of surplus water and upon its completion shall require the boards to prepare and submit to the department a plan for the impoundment, best utilization, and conservation of the surplus water in accordance with this part. The department shall cooperate and collaborate with the boards in the preparation of the plan. The plan shall specify the persons who may make use of the water and the terms, conditions, and restrictions under which the water may be used.

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(2) In making the determination of optimum flow and in preparing the plan, the department and boards shall consider the following factors:

(a) The range of stream flow variation.

(b) The uses that are being made of the water from the stream or that may be made in the foreseeable future by any riparian owner.

(c) The stream's waste assimilation capacity and its practical utility for domestic use, fish and wildlife habitat, recreation, municipal and industrial water supply, commercial and recreational navigation, including portages, public and private utilities, and water storage purposes.

(d) Other factors that appear to the department to be necessary to adequately protect and preserve the rights of riparians on the streams involved.

(3) A plan shall not permit the impounding of water if the flow is below the optimum flow. This part does not authorize the diversion of water from 1 watershed to another.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31305 Public hearing; determination of optimum flow; notice; order; review.

Sec. 31305. (1) Before making a determination of optimum flow, the department shall hold a public hearing on the issue. The department shall set the time and place for the public hearing and shall publish notice of the hearing. The hearing shall be held not less than 180 days after the date of the first publication. The notice shall be published once during each of 2 separate weeks in at least 1 newspaper of general circulation in each county that requested the survey or later joined in the survey. Notice shall be given by first-class mail to each owner or party in interest of upper and lower riparian property that will be affected by the determination and whose name appears upon the most recent local tax assessment records. The notice shall be mailed at least 60 days prior to the date of the hearing to the address shown on the tax records. At the hearing, any interested person may appear, present witnesses, and submit evidence.

(2) Upon the completion of the public hearing pursuant to subsection (1), the department, if it believes it to further the public interest, shall enter an order making a determination of optimum flow. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as to questions of law only by a writ of superintending control in an action in the nature of certiorari brought before the order becomes final. Only an owner or party in interest of upper or lower riparian property affected by the order who appeared, testified, or filed a written statement at the hearing, who considers himself or herself aggrieved by the order, has the right to file a petition for a writ of superintending control in the nature of certiorari in the circuit court for the county of Ingham or in the circuit court for any county that requested the survey or joined in the survey.

(3) After the order of determination becomes final, the department shall hold a public hearing on the proposed plan as submitted by the board. The department shall set the time and place for the public hearing and shall publish notice in the manner provided in subsection (1). The hearing shall be held not less than 30 days after the date of the first publication. Notice shall be given by first-class mail to the persons and in the manner provided in subsection (1) and shall be mailed at least 30 days prior to the date of the hearing. At the hearing, any interested person may appear, present witnesses, and submit evidence. If the department finds that the proposed plan is in the public interest and in compliance with this part, it shall enter an order approving the plan. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as is provided in subsection (2).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31306 Transmission of plans to boards; adoption; dams; supervision.

Sec. 31306. (1) When the order has become final, the department shall transmit the plan to all of the boards involved, and, if the plan is adopted by the boards involved, the boards may construct, operate, and maintain, either singly or jointly, the dams necessary to impound the surplus waters and to make use or disposition of the surplus water in accordance with the plan. The department shall maintain supervision over the execution of the plan to the extent it considers necessary to protect the public interest of the state.

(2) For the implementation and effectuation of the plan, the boards, either singly or jointly, may establish a governmental agency or commission as may be necessary, may hire employees or assistants as may be

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required, and may enter into contracts with each other and any person as may be necessary to implement this part. The boards constructing, maintaining, or operating the dams shall be responsible for the proper construction, maintenance, and operation of the dams, and they shall be in full and complete charge of the dams and of the impoundments created by the dams.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31307 Gifts and grants; buying, selling, exchanging, or condemning land; restrictions on financing dams.

Sec. 31307. For the purpose of implementing this part, the boards may receive and accept in the name of the county gifts and grants of land and other property and grants-in-aid from any person, and may buy, sell, exchange, or condemn land and other property or property interests, including the rights of riparian owners to surplus waters, in any county where the land and property are located. The department, if direct acceptance by the boards is not possible, may accept the gifts or grants on their behalf. The boards shall not use any money of the county to implement the terms and provisions of this part, but shall finance the construction, operation, and maintenance of the dams wholly and solely from gifts or grants-in-aid that may be received and from fees and charges as may be made for the use of the surplus water.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31308 Gifts and grants-in-aid; acceptance by department.

Sec. 31308. The department, in carrying out the purposes of this part, may receive and accept on behalf of the state gifts and grants-in-aid from any person.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31309 Use of increased flowage; waste assimilation; rates for usage.

Sec. 31309. All increased flowage resulting from operation of a plan shall be available for nonconsumptive use to all riparians. A person shall not utilize for waste assimilation, or divert from the stream, any surplus water created by release from dams operated under this part, except in accordance with the plan. The amount of surplus water released from any impoundment shall be determined by the department by the use of well-recognized engineering computations. The boards may charge users of the surplus water for waste assimilation or consumptive use, except those making an incidental, noncommercial, or recreational use, a reasonable fee or rate for the quantity of water or for the benefits they receive. Those users who contribute to the construction, maintenance, or operation of the dams may be charged a reduced fee or no fee, but the fees and rates charged by the boards shall be sufficient at all times to defray all costs, expenses, and other financial burdens assumed by the boards in the construction, maintenance, and operation of the dams.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31310 Permits granted by department not affected by part.

Sec. 31310. This part does not abridge the authority of the department as it presently exists. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31311 Rules.

Sec. 31311. The department shall promulgate rules to implement this part.

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324.31312 Redetermination of optimum flow; modification of plan; hearings.

Sec. 31312. After a determination or plan has been in effect for 5 years, any riparian owner may petition the department for a redetermination of the optimum flow or modification of the plan, and upon a showing of substantial changes in conditions, the department shall hold hearings as provided in section 31305 and may redetermine the optimum flow or modify the plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31313 Violation as misdemeanor.

Sec. 31313. Any person knowingly violating this part, or any rule promulgated under this part, or any written order of the department in pursuance of this part, is guilty of a misdemeanor.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31314 Applicability of part to river management districts.

Sec. 31314. This part does not apply within the boundaries of any river management district created under part 311.

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